

BOARD of SUPERVISORS



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MEMORANDUM

TO: Daniel Tsai, Director, Department of Public Health
Nikesh Patel, Director, Office of Cannabis

FROM: John Carroll, Assistant Clerk, Land Use and Transportation Committee

DATE: May 11, 2026

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Melgar on May 5, 2026.

File No. 260361 – Substitute Version 2

Ordinance amending the Health Code to prohibit smoking in outdoor patios of bars and taverns; eliminate exceptions allowing indoor smoking in bars with no employees, bars with historically compliant semi-enclosed smoking rooms, and hotel rooms, to conform to provisions of California law; and repeal suspended and superseded provisions regulating smoking in certain locations.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: john.carroll@sfgov.org.

cc:
Office of Chair Melgar
Dr. Naveena Bobba, Department of Public Health
Sneha Patil, Department of Public Health
Raghda Karajah, Department of Public Health
Jeremy Schwartz, Office of Cannabis

1 [Health Code - Smoke-free Places]

2

3 **Ordinance amending the Health Code to prohibit smoking in outdoor patios of bars and**
4 **taverns; eliminate exceptions allowing indoor smoking in bars with no employees, bars**
5 **with historically compliant semi-enclosed smoking rooms, and hotel rooms, to conform**
6 **to provisions of California law; and repeal suspended and superseded provisions**
7 **regulating smoking in certain locations.**

8

9 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.
11 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
12 **Board amendment additions** are in double-underlined Arial font.
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code
15 subsections or parts of tables.

13

14 Be it ordained by the People of the City and County of San Francisco:

15

16 Section 1. Findings.

17 (a) According to the U.S. Surgeon General, Centers for Disease Control and
18 Prevention, and the World Health Organization, there is no safe level of exposure to
19 secondhand smoke.

20 (b) Tobacco kills 480,000 people in the United States every year, including 41,000
21 from secondhand smoke exposure. Tobacco use is the number one preventable cause of
22 death in the country.

23 (c) When the City and County of San Francisco enacted legislation in 1994 to
24 protect workers from exposure to secondhand smoke, smoke-free air laws were viewed as
25 highly controversial and opponents warned that they would cause many businesses to close,

1 including bars and hotels. To address those fears, the City’s groundbreaking smoke-free air
2 law included exceptions for bars with no employees, bars that had semi-enclosed smoking
3 rooms, 25% of a tourist hotel’s rooms, and the outdoor areas of bars and taverns.

4 (d) In 2016, the California Legislature enacted legislation expanding the definition of
5 “enclosed places of employment” to include owner-operated bars and, later, in 2024, to
6 include hotel guest rooms. As a result, state law now prohibits smoking indoors in hotels and
7 bars where it had previously been permitted under San Francisco’s local law.

8 (e) In addition, since the City enacted its first smoke-free air law, researchers have
9 more definitively established the harms of exposure to secondhand smoke in outdoor spaces,
10 underscoring the need to broaden our local smokefree air law to protect individuals working
11 outdoors in bar and tavern patios.

12 (1) The World Health Organization recommends that individuals should be
13 exposed to no more than 15 micrograms per cubic meter of fine particulate matter, averaged
14 over 24 hours. Exposure to secondhand smoke, even in an outdoor space, can exceed this
15 limit for workers over the course of a shift.

16 (2) Air quality measurements taken by UCSF researchers in San Francisco
17 bar patios in 2022 determined that six of the nine patios visited had peak readings in the EPA
18 “unhealthy” air quality range, or higher. One patio, where several patrons were smoking
19 cigars, registered in the “hazardous” range.

20 (3) In reliance on this research, at least 400 cities and counties nationwide,
21 including San Jose, Oakland, and more than 50 other Bay Area cities, have ordinances
22 prohibiting smoking in bar patios.

23 (f) Research has firmly established that smoke-free air laws do not result in loss of
24 business or employment. After California law required bar interiors to become smoke-free,
25 bar revenues increased.

1 (g) Smoke-free bar policies have been found to support smoking cessation,
2 especially in the LGBTQ community.

3 (1) Nearly 70% of smokers want to quit. About half of smokers try to quit
4 every year. Smoking on bar patios makes it harder to quit, as exposure to secondhand smoke
5 and thirdhand smoke is linked to relapse.

6 (2) A survey of more than 1,000 LGBTQ Californians with a history of
7 tobacco use found that 65% believed that smoke-free outdoor bars could help or would have
8 helped them quit, including a greater portion of trans people and former smokers.

9 (3) More than two thirds of LGBTQ California adults are exposed to
10 secondhand tobacco smoke, which is 25% more than the non-LGBTQ adults and LGBTQ
11 adults in California are 60% more likely to be current tobacco users than non-LGBTQ adults.

12 (f) The intent of this ordinance is to update the City's smokefree air laws by
13 removing outdated, suspended provisions from the Municipal Code, broaden protections
14 against secondhand smoke exposure consistent with the protections offered under state law,
15 and go beyond state law by also protecting individuals who work outdoors in bars and taverns
16 from exposure to secondhand smoke.

17
18 Section 2. Article 19F of the Health Code is hereby amended by revising Sections
19 1009.21,1009.22, and 1009.23, to read as follows:

20
21 **SEC. 1009.21. DEFINITIONS.**

22 Unless the term is specifically defined in this Article or the contrary stated or clearly
23 appears from the context, the definitions set forth in this Section shall govern the interpretation
24 of this Article. The definitions set forth in this Article shall be construed so as to make the
25 prohibition against smoking set forth herein broadly applicable.

1 * * * *

2 (m) "Outdoor patio" means a side or rear outside area of a bar or tavern or restaurant
3 that has no walls or ceiling and is open air. ~~Outdoor dining areas of restaurants are not considered~~
4 ~~outdoor patios when food is no longer served in the dining area, even if there is a bar located outside.~~

5 * * * *

6
7 **SEC. 1009.22. PROHIBITING SMOKING IN BUILDINGS, CERTAIN VEHICLES,**
8 **CERTAIN UNENCLOSED AREAS, ENCLOSED STRUCTURES CONTAINING CERTAIN**
9 **USES, AND SPORTS STADIUMS.**

10 (a) Smoking is prohibited in buildings and enclosed structures, throughout the
11 building or structure and in the common areas, such as the elevators, hallways, stairways,
12 restrooms, conference and meeting rooms, and eating and break rooms, and certain
13 unenclosed areas that contain any of the facilities or uses set forth below.

14 * * * *

15 (13) Restaurants, including Outdoor Patios;

16 (14) Bars and Taverns, including Outdoor Patios ~~except for historically compliant semi-~~
17 ~~enclosed smoking rooms, the portion of an outdoor patio at least 10 feet away from the entry, exit, or~~
18 ~~operable window of the bar or tavern, or as specified in Sections 1009.23(c) or 1009.23(d);~~

19 * * * *

20
21 **SEC. 1009.23. EXCEPTIONS.**

22 The following places shall not be subject to this Article 19F:

23 ~~—(a) Tourist lodging facility room accommodations designated as smoking rooms, provided~~
24 ~~that the owners or managers of tourist lodging facilities shall designate at least 75 percent of the guest~~
25 ~~rooms in tourist lodging facilities as smoke free. The owners or managers of tourist lodging facilities~~

1 ~~must permanently designate particular guest rooms as smoke free and ashtrays and matches are to be~~
2 ~~permanently removed from such smoke free rooms. "No smoking" signage shall be displayed in smoke~~
3 ~~free rooms. Where possible, designated smoke free rooms shall not be located on the same floor as~~
4 ~~smoking rooms. It is recommended that smoking be relegated to the top floor with at least 50 percent of~~
5 ~~the rooms on the top floor designated as smoke free. Owners and managers of tourist lodging facilities~~
6 ~~may designate 100% of guest rooms as smoke free; if such 100% smoke free designation is made, "no~~
7 ~~smoking" signage shall only be required in the common areas on each floor of such tourist lodging~~
8 ~~facilities.~~

9 ~~—(b)(a) Private homes, including but not limited to dwelling units, but not the common~~
10 ~~areas, of multi-unit housing complexes and mixed-use buildings.~~

11 ~~—(c) Bars and Taverns located in commercial buildings that submit to the Director within~~
12 ~~three months of the effective date of this ordinance an application and all documents required by the~~
13 ~~Director to demonstrate that the bar or tavern had no employees as of December 31, 2009. If the~~
14 ~~Director approves the application under the criteria of this subsection, the bar or tavern may allow~~
15 ~~smoking on the premises but must immediately 1) notify the Director if the establishment hires any~~
16 ~~employees, and 2) submit all documents to the Director verifying eligibility for this exemption upon~~
17 ~~request. The exemption will continue for as long as the establishment has no employees and the~~
18 ~~building where the bar or tavern is located continues to be commercial. Bars and Taverns located in~~
19 ~~mixed-use buildings that 1) have no employees as of December 31, 2009, and 2) relocate to a~~
20 ~~commercial building within two years of the effective date of this ordinance may allow smoking in their~~
21 ~~establishment after relocation to a commercial building if they submit to the Director within three~~
22 ~~months of the effective date of this ordinance an application and all documents required by the~~
23 ~~Director to demonstrate that the bar or tavern had no employees as of December 31, 2009. The~~
24 ~~application must also document that the Bar or Tavern will be located in a commercial building within~~
25 ~~two years of the effective date of this ordinance. This exemption status immediately expires if the~~

1 ~~establishment hires employees, or is no longer located in a commercial building.~~

2 ~~—(d) Bars and Taverns located in commercial buildings that submit to the Director within~~
3 ~~three months of the effective date of this ordinance an application and all documents required by the~~
4 ~~Director to demonstrate that an area in the establishment is a historically compliant semi-enclosed~~
5 ~~smoking room and qualified as such as of December 31, 2009. If the Director denies the application~~
6 ~~because the Bar or Tavern does not comply with the above requirements, the Director may allow the~~
7 ~~establishments to make alterations to comply with this requirement; if the Bar or Tavern completes the~~
8 ~~alterations to the Director's satisfaction, the Director may approve the application. If the Director~~
9 ~~approves the application under the criteria of this subsection, the Bar or Tavern may allow smoking in~~
10 ~~the historically compliant semi-enclosed smoking room. This exemption status is nontransferable and~~
11 ~~immediately expires if 1) there is a change in the ownership interest(s) of the Bar or Tavern, 2) the~~
12 ~~room no longer meets the definition of historically compliant semi-enclosed smoking room, 3) there are~~
13 ~~structural alterations made to the smoking room after December 31, 2009 not approved by the~~
14 ~~Director, or 4) the establishment is no longer located in a commercial building. If the Director~~
15 ~~approves the application under the criteria of this subsection, the Bar or Tavern may allow smoking in~~
16 ~~the historically compliant semi-enclosed smoking room but must immediately notify the Director of any~~
17 ~~changes that would disqualify the establishment from this exemption. For purposes of this subsection,~~
18 ~~the term "change in ownership interest(s)" means the aggregate change of 50 percent or more of the~~
19 ~~ownership of the business within a 12-month period.~~

20 (eb) Tobacco Shops that are located in commercial buildings as of
21 December 31, 2009. To qualify for the exemption under this Section, the tobacco shop owner
22 must submit an application and all documents required by the Director. If the Director
23 approves the application, the tobacco shop may allow smoking on the premises. The
24 exemption will continue for as long as the establishment continues to qualify as a tobacco
25 shop and the building where the tobacco shop is located continues to be commercial. The

1 tobacco shop must immediately notify the Director of any change that would disqualify the
2 retailer from this exemption and submit all documents to the Director verifying eligibility upon
3 request.

4 (~~f~~) Medicinal Cannabis Retailers, Cannabis Microbusinesses, and Cannabis
5 Retailers that have received and maintain:

6 (1) A Cannabis Business Permit issued by the Director of the Office of Cannabis
7 under Article 16 of the Police Code; and

8 (2) A Cannabis Consumption Permit that authorizes the smoking of cannabis,
9 issued by the Director of Health under Article 8A of the Health Code, unless the smoking of
10 cannabis is authorized under subsection (g) of Section 8A.4, pending the approval or denial of
11 an application for such permit.

12
13 Section 3. Article 19H of the Health Code is hereby amended by revising
14 Section 19H.2 to read as follows:

15
16 **SEC. 19H.2. DEFINITIONS.**

17 The following words and phrases, whenever used in this Article, shall be construed as
18 defined in this section. Words in the singular include the plural and words in the plural include
19 the singular. Words in the present tense include the future.

20 * * * *

21 "Tobacco Sales" means sales, or any offer to sell or exchange, for any form of
22 consideration, Tobacco Products to any person by any person who operates an
23 Establishment. "Tobacco Sales" includes any of the following: display of Tobacco Products,
24 display of images of Tobacco Products for purchase, or the storage of Tobacco Products for purchase.

1 Section 4. The Health Code is hereby amended by deleting Articles 19, 19A, 19B,
2 19C, and 19E, consisting of Sections 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1006.1,
3 1006.2, 1006.3, 1006.4, 1006.5, 1007, 1007.1, 1007.2, 1007.3, 1007.4, 1007.5, 1008, 1008.1,
4 1008.2, 1008.3, 1008.4, 1008.5, 1008.6, 1008.7, 1008.8, 1009.5, 1009.6, 1009.7, 1009.8,
5 1009.9, and 1009.10, as follows:

6
7 *ARTICLE 19:*

8 *SMOKING POLLUTION CONTROL*

9 *SEC. 1000. TITLE.*

10 ~~*—This Article shall be known as the Smoking Pollution Control Ordinance.*~~

11
12 *SEC. 1001. PURPOSE.*

13 ~~*—Because the smoking of tobacco or any other weed or plant is a danger to health and is a*~~
14 ~~*cause of material annoyance and discomfort to those who are present in confined places, the Board of*~~
15 ~~*Supervisors hereby declares that the purposes of this Article are (1) to protect the public health and*~~
16 ~~*welfare by regulating smoking in the office workplace and (2) to minimize the toxic effects of smoking*~~
17 ~~*in the office workplace by requiring an employer to adopt a policy that will accommodate, insofar as*~~
18 ~~*possible, the preferences of nonsmokers and smokers and, if a satisfactory accommodation cannot be*~~
19 ~~*reached, to prohibit smoking in the office workplace.*~~

20 ~~*—This ordinance is not intended to create any right to smoke or to impair or alter an employer's*~~
21 ~~*prerogative to prohibit smoking in the workplace. Rather, if an employer allows employees to smoke in*~~
22 ~~*the workplace, then this ordinance requires (1) that the employer make accommodations for the*~~
23 ~~*preferences of both nonsmoking and smoking employees, and (2) if a satisfactory accommodation to all*~~
24 ~~*affected nonsmoking employees cannot be reached, that the employer prohibit smoking in the office*~~
25 ~~*workplace.*~~

1
2 ~~SEC. 1002. DEFINITIONS.~~

3 ~~—For the purposes of this Article:~~

4 ~~—(1) "City" means the City and County of San Francisco;~~

5 ~~—(2) "Board of Supervisors" means the Board of Supervisors of the City and County of San~~
6 ~~Francisco;~~

7 ~~—(3) "Person" means any individual person, firm, partnership, association, corporation,~~
8 ~~company, organization, or legal entity of any kind;~~

9 ~~—(4) "Employer" means any person who employs the services of an individual person;~~

10 ~~—(5) "Employee" means any person who is employed by any employer in consideration for~~
11 ~~direct or indirect monetary wages or profit;~~

12 ~~—(6) "Office Workplace" means any enclosed area of a structure or portion thereof intended~~
13 ~~for occupancy by business entities which will provide primarily clerical, professional or business~~
14 ~~services of the business entity, or which will provide primarily clerical, professional or business~~
15 ~~services to other business entities or to the public, at that location. Office workplace includes, but is not~~
16 ~~limited to, office spaces in office buildings, medical office waiting rooms, libraries, museums, hospitals~~
17 ~~and nursing homes;~~

18 ~~—(7) "Smoking" or "to smoke" means and includes inhaling, exhaling, burning or carrying any~~
19 ~~lighted smoking equipment for tobacco or any other weed or plant; and~~

20 ~~—(8) "Enclosed" means closed in by a roof and four walls with appropriate openings for~~
21 ~~ingress and egress and is not intended to mean areas commonly described as public lobbies.~~

22
23 ~~SEC. 1003. REGULATION OF SMOKING IN THE OFFICE WORKPLACE.~~

24 ~~—(1) Each employer who operates an office or offices in the city shall within three months of~~
25 ~~adoption of this ordinance, adopt, implement and maintain a written Smoking Policy which shall~~

1 ~~contain, at a minimum, the following provisions and requirements:~~

2 ~~—(a) Any nonsmoking employee may object to his or her employer about smoke in his or her~~
3 ~~workplace. Using already available means of ventilation or separation or partition of office space, the~~
4 ~~employer shall attempt to reach a reasonable accommodation, insofar as possible, between the~~
5 ~~preferences of nonsmoking and smoking employees. However, an employer is not required by this~~
6 ~~ordinance to make any expenditures or structural changes to accommodate the preferences of~~
7 ~~nonsmoking or smoking employees.~~

8 ~~—(b) If an accommodation which is satisfactory to all affected nonsmoking employees cannot~~
9 ~~be reached in any given office workplace, the preferences of nonsmoking employees shall prevail and~~
10 ~~the employer shall prohibit smoking in that office workplace. Where the employer prohibits smoking in~~
11 ~~an office workplace, the area in which smoking is prohibited shall be clearly marked with signs.~~

12 ~~—(2) The Smoking Policy shall be announced within three weeks of adoption to all employees~~
13 ~~working in office workplaces in the city and posted conspicuously in all workplaces under the~~
14 ~~employer's jurisdiction.~~

15
16 ~~SEC. 1004. WHERE SMOKING NOT REGULATED.~~

17 ~~—This Article is not intended to regulate smoking in the following places and under the~~
18 ~~following conditions within the city:~~

19 ~~—(1) A private home which may serve as an office workplace;~~

20 ~~—(2) Any property owned or leased by state or federal government entities;~~

21 ~~—(3) Any office space leased or rented by a sole independent contractor;~~

22 ~~—(4) A private enclosed office workplace occupied exclusively by smokers, even though such~~
23 ~~an office workplace may be visited by nonsmokers, excepting places in which smoking is prohibited by~~
24 ~~the Fire Marshal or by other law, ordinance or regulation.~~

1 ~~cigarettes, or being exposed to secondhand smoke, people inhale various chemicals including, for~~
2 ~~example, formaldehyde, ammonia, tar, nicotine, and carbon monoxide. The Surgeon General of the~~
3 ~~United States has declared that cigarette smoking causes lung cancer, heart disease, and emphysema,~~
4 ~~and that smoking by pregnant women may result in fetal injury, premature birth, and low birth weight.~~
5 ~~The Board of Supervisors desires to prevent disease and promote the health of the people of San~~
6 ~~Francisco by making it easier for residents and visitors to avoid secondhand smoke in eating~~
7 ~~establishments. For the most part, this Article simply extends the smoking prohibitions of Article 19 to~~
8 ~~include eating establishments.~~

9
10 ~~SEC. 1006.1. DEFINITIONS.~~

11 ~~—Unless the term is specifically defined in this Article or the contrary stated or clearly appears~~
12 ~~from the context, the definitions set forth in Article 19, Section 1002 of this Code, shall govern the~~
13 ~~interpretation of this Article.~~

14 ~~—(a) "Eating establishment" shall mean every enclosed restaurant, coffee shop, cafeteria, cafe,~~
15 ~~luncheonette, sandwich stand, soda fountain, or other enclosed eating establishment serving food to the~~
16 ~~general public. The term "eating establishment" shall not include banquet rooms in use for private~~
17 ~~social functions. The term "eating establishment" shall not apply to any property owned or leased by~~
18 ~~State or federal government agencies.~~

19
20 ~~SEC. 1006.2. REGULATION OF SMOKING IN EATING ESTABLISHMENTS.~~

21 ~~—In eating establishments smoking shall be prohibited in lobbies, waiting areas, restrooms, and~~
22 ~~dining areas designated for nonsmoking. Unless the eating establishment has been designated entirely~~
23 ~~nonsmoking, the owner, manager or operator of an eating establishment shall allocate and designate~~
24 ~~by appropriate signage an adequate amount of space in these areas to meet the demands of both~~
25 ~~smokers and nonsmokers, and shall inform all patrons that nonsmoking areas are provided.~~

1
2 ~~SEC. 1006.3. DISCLAIMERS.~~

3 ~~—(a) By regulating smoking in eating establishments, the City and County of San Francisco is~~
4 ~~assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on~~
5 ~~its officers and employees, an obligation for breach of which it is liable in money damages to any~~
6 ~~person who claims that such breach approximately caused injury.~~

7 ~~—(b) No owner of an eating establishment shall be required to construct or erect walls,~~
8 ~~partitions or other barriers to comply with this ordinance.~~

9
10 ~~SEC. 1006.4. PENALTIES AND ENFORCEMENT.~~

11 ~~—The provisions of Section 1005 of Article 19 are applicable to the enforcement of violations of~~
12 ~~this Article. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall~~
13 ~~be paid to the Treasurer of the City and County of San Francisco.~~

14
15 ~~SEC. 1006.5. SEVERABILITY.~~

16 ~~—If any provision of this Article, or the application of any such provision to any person or~~
17 ~~circumstances, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or~~
18 ~~the application of those provisions to persons or circumstances other than those to which it is held~~
19 ~~invalid, shall not be affected thereby, and to this end the provisions of this Article are severable.~~

20
21 ~~ARTICLE 19B:~~

22 ~~REGULATING SMOKING IN SHARED OFFICE WORKPLACE [SUSPENDED]~~

23
24 ~~SEC. 1007. FINDINGS.~~

25 ~~—The question of whether tobacco smoke is harmful to smokers was answered more than 20~~

1 ~~years ago. U.S. Public Health Service reports on the health consequences of smoking have conclusively~~
2 ~~established cigarette smoking as the largest single preventable cause of premature death and disability~~
3 ~~in the United States. As a result many scientists began to question whether the low levels of exposure to~~
4 ~~environmental tobacco smoke (ETS) received by nonsmokers could be harmful.~~

5 ~~—The 1986 Surgeon General's Report on the Health Consequences of Involuntary Smoking~~
6 ~~clearly documents that nonsmokers are placed at increased risk for developing disease as the result of~~
7 ~~ETS exposure. The term "involuntary smoking" denotes that for many nonsmokers, exposure to ETS is~~
8 ~~the result of an unavoidable consequence of being in close proximity to smokers.~~

9 ~~—The report contains the following conclusions: (1) Involuntary smoking is a cause of disease,~~
10 ~~including lung cancer, in healthy nonsmokers. (2) Simple separation of smokers and nonsmokers within~~
11 ~~the same air space may reduce, but does not eliminate, exposure of nonsmokers to environmental~~
12 ~~tobacco smoke.~~

13 ~~—The quality of the indoor environment must be a concern of all who control and occupy that~~
14 ~~environment. Protection of individuals from exposure to environmental tobacco smoke is therefore a~~
15 ~~responsibility shared by all. As employers and employees we must ensure that the act of smoking does~~
16 ~~not expose the nonsmoker to tobacco smoke. For smokers, it is their responsibility to assure that their~~
17 ~~behavior does not jeopardize the health of others. For nonsmokers, it is their responsibility to provide a~~
18 ~~supportive environment for smokers who are attempting to stop.~~

19 ~~—The scientific case against involuntary smoking as a health risk is more than sufficient to~~
20 ~~justify this legislative measure, the goal of which must be to protect the nonsmoker from environmental~~
21 ~~tobacco smoke.~~

22
23 **SEC. 1007.1. DEFINITIONS.**

24 ~~—Unless otherwise defined herein, the definitions set forth in Article 19, Section 1002, of this~~
25 ~~Code, shall govern the interpretation of this Article.~~

1 ~~—(a) "Office workplace" shall include, in addition to the examples noted in Section 1002(6),~~
2 ~~press boxes at stadiums or other locations.~~

3
4 ~~SEC. 1007.2. REGULATION OF SMOKING IN SHARED OFFICE WORKPLACE.~~

5 ~~—The provisions of this Article apply to office workplace shared by the employees of two or~~
6 ~~more employers.~~

7 ~~—(1) Each employer shall notify his or her employees of the following regulations regarding~~
8 ~~smoking:~~

9 ~~—(a) Any nonsmoking employee may object to his or her employer about smoke in the office~~
10 ~~workplace. If the objection concerns another employer's employee, the nonsmoker's employer shall~~
11 ~~notify the smoker's employer of the objection. Using already available means of ventilation or~~
12 ~~separation or partition of office space, the smoker's employer shall attempt to reach a reasonable~~
13 ~~accommodation, insofar as possible, between the preferences of the nonsmoking and smoking~~
14 ~~employees. However, an employer is not required by this ordinance to make any expenditures or~~
15 ~~structural changes to accommodate the preferences of nonsmoking or smoking employees.~~

16 ~~—(b) If an accommodation which is satisfactory to all affected nonsmoking employees cannot~~
17 ~~be reached, the preferences of nonsmoking employees shall prevail and the employers shall prohibit~~
18 ~~smoking in that office workplace. The employers shall clearly mark the area in which smoking is~~
19 ~~prohibited.~~

20
21 ~~SEC. 1007.3. DISCLAIMERS.~~

22 ~~—By regulating smoking in shared office workplace, the City and County of San Francisco is~~
23 ~~assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on~~
24 ~~its officers and employees, an obligation for breach of which it is liable in money damages to any~~
25 ~~person who claims that such breach approximately caused injury.~~

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~~SEC. 1007.4. PENALTIES AND ENFORCEMENT.~~

~~—The provisions of Section 1005 of Article 19 are applicable to the enforcement of violations of this Article. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the Treasurer of the City and County of San Francisco.~~

~~SEC. 1007.5. SEVERABILITY.~~

~~—If any provisions of this Article, or the application of any such provisions to any person or circumstances, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or the application of those provisions to persons at circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable.~~

~~ARTICLE 19C:~~

~~REGULATING SMOKING IN PUBLIC PLACES AND IN HEALTH, EDUCATIONAL AND CHILD CARE FACILITIES [SUSPENDED]~~

~~SEC. 1008. FINDINGS.~~

~~—(a) The United States Surgeon General's 1986 Report on the Health Consequences of Involuntary Smoking reports the following:~~

~~—(1) Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.~~

~~—(2) The children of parents who smoke compared with the children of nonsmoking parents have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung function as the lung matures.~~

~~—(3) The simple separation of smokers and nonsmokers within the same air space may~~

1 ~~reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke.~~

2 ~~—(b) The Board of Supervisors finds and declares:~~

3 ~~—(1) Nonsmokers have no adequate means to protect themselves from the damage inflicted~~
4 ~~upon them when they involuntarily inhale tobacco smoke.~~

5 ~~—(2) Regulation of smoking in public places is necessary to protect the health, safety,~~
6 ~~welfare, comfort, and environment of nonsmokers.~~

7 ~~—(c) It is, therefore, the intent of the Board of Supervisors, in enacting this Article, to protect~~
8 ~~the nonsmoker from environmental tobacco smoke and to eliminate smoking, as much as possible, in~~
9 ~~public places.~~

10
11 ~~SEC. 1008.1. DEFINITIONS.~~

12 ~~—Unless the term is specifically defined in this Article or the contrary stated or clearly appears~~
13 ~~from the context, the definitions set forth in Article 19, Section 1002, of this Code (the Smoking~~
14 ~~Pollution Control Ordinance) shall govern the interpretation of this Article. The definitions set forth in~~
15 ~~this Article shall be construed so as to make the prohibition against smoking set forth herein broadly~~
16 ~~applicable.~~

17 ~~—(a) "Bar" means an area which is devoted to the serving of alcoholic beverages for~~
18 ~~consumption by patrons on the premises and in which the serving of food is only incidental to the~~
19 ~~consumption of such beverages.~~

20 ~~—(b) "Child care facility" means a facility in which a person, at the request and consent of a~~
21 ~~parent or legal guardian, provides care during a part of any 24 hour period for compensation, whether~~
22 ~~or not such person is licensed.~~

23 ~~—(c) "Educational facility" means any school or educational institution, whether commercial~~
24 ~~or nonprofit, operated for the purpose of providing academic classroom instruction, trade, craft,~~
25 ~~computer or other technical training, or instruction in dancing, artistic, musical or other cultural skills.~~

1 ~~—(d) "Enclosed" means closed in by a roof and four walls with appropriate openings for~~
2 ~~ingress and egress. It includes areas commonly described as public lobbies or lobbies when they are in~~
3 ~~an area that is enclosed as defined herein.~~

4 ~~—(e) "Motion picture theater" means any theater engaged in the business of exhibiting motion~~
5 ~~pictures.~~

6 ~~—(f) "Nonprofit establishment" means any office, store, or other place operated by any~~
7 ~~corporation, unincorporated association or other entity created for charitable, philanthropic,~~
8 ~~educational, character building, political, social or other similar purposes, the net proceeds from the~~
9 ~~operation of which are committed to the promotion of the objects or purposes of the organization and~~
10 ~~not to private financial gain. A public agency is not a nonprofit entity.~~

11 ~~—(g) "Person" means a natural person or any legal entity, including but not limited to a~~
12 ~~corporation, firm, partnership or trust.~~

13 ~~—(h) "Public area" means any enclosed area of a building to which members of the general~~
14 ~~public have access. It shall include, by way of example only, lobbies of businesses open to the public;~~
15 ~~reception areas of businesses open to the public; department stores; one-room businesses where the~~
16 ~~room is open to the public; restrooms open to the public; stairways, hallways, escalators and elevators~~
17 ~~in buildings open to the public; and other enclosed areas open to the public as set forth herein.~~

18 ~~—(i) "Business establishment" means any business, store, office or other place where goods or~~
19 ~~services are sold or provided as part of a commercial venture. It includes but is not limited to the~~
20 ~~following: (1) automobile dealerships, furniture or other showrooms for the display of merchandise~~
21 ~~offered for sale; (2) grocery, pharmacy, specialty, department and other stores which sell goods or~~
22 ~~merchandise; (3) service stations, stores or shops for the repair or maintenance of appliances, shoes,~~
23 ~~motor vehicles or other items or products; (4) barbershops, beauty shops, cleaners, laundromats and~~
24 ~~other establishments offering services to the general public; (5) video arcade, poolhall, and other~~
25 ~~amusement centers; (6) offices providing professional services such as legal, medical, dental,~~

1 ~~engineering, and architectural services; (7) banks, savings and loan offices, and other financial~~
2 ~~establishments; (8) hotels and motels, and other places that provide accommodations to the public.~~

3 ~~—(j) "Retail tobacco store" shall mean a retail store utilized primarily for the sale of tobacco~~
4 ~~products and accessories and in which the sale of other products is merely incidental.~~

5 ~~—(k) "Sports arena" means sports stadiums, gymnasiums, health spas, boxing arenas,~~
6 ~~swimming pools, roller and ice rinks, bowling alleys and similar places where the public assembles~~
7 ~~either to engage in physical exercise, participate in athletic competition or witness sports events.~~

8
9 ~~SEC. 1008.2. REGULATION OF SMOKING IN PUBLIC PLACES AND DESIGNATED~~
10 ~~FACILITIES.~~

11 ~~—Smoking shall be prohibited in those enclosed areas of the following places during those times~~
12 ~~when the general public has access to them; notwithstanding any other provision of this Article,~~
13 ~~smoking is permitted in the public areas of the following places without violating this Article if one or~~
14 ~~more designated smoking areas are established which are physically separated by walls or partitions~~
15 ~~so that smoke does not permeate into areas where smoking is prohibited and so long as such designated~~
16 ~~smoking areas do not exceed in aggregate size the area or areas devoted to non-smoking which are for~~
17 ~~the general public.~~

18 ~~—(a) Public areas of every building or portion thereof on property owned or leased by the City~~
19 ~~and County of San Francisco; within 90 days after the effective date of this ordinance, every~~
20 ~~commission, department or agency with jurisdiction over such property shall adopt regulations or~~
21 ~~policies implementing the provisions of this Article;~~

22 ~~—(b) Public areas of hearing rooms, courtrooms, or places of public assembly located in~~
23 ~~buildings in which the business of any governmental body or agency is conducted;~~

24 ~~—(c) Polling places;~~

25 ~~—(d) (1) Public areas of health facilities, including but not limited to hospitals, long term~~

1 ~~care facilities, clinics, physical therapy facilities, and doctors' and dentists' offices, which public areas~~
2 ~~shall include waiting rooms and lobbies;~~

3 ~~—(2) The following private areas of hospitals, long term care facilities, clinics, physical~~
4 ~~therapy facilities, doctors' and dentists' offices, and other health facilities, even though the general~~
5 ~~public may not have access to such areas: wards, inpatient rooms, and outpatient examination and~~
6 ~~treatment rooms;~~

7 ~~—(3) Health Facility Exemptions. Notwithstanding any other provision of this Article,~~
8 ~~smoking is permitted in (i) wards and inpatient rooms if all patients currently in the ward or room~~
9 ~~request in writing to be placed in a room where smoking is permitted; and (ii) in designated areas in~~
10 ~~waiting rooms and lobbies of health facilities which may be established and which are physically~~
11 ~~separated by walls or partitions so that smoke does not permeate into areas where smoking is~~
12 ~~prohibited so long as such designated smoking areas do not exceed in aggregate size the areas in the~~
13 ~~lobbies and waiting rooms which are for the general public and designated as non-smoking; and (iii)~~
14 ~~in publicly owned long term care facilities, provided that such facilities shall adopt within 90 days of~~
15 ~~the effective date of this ordinance a written plan designed to meet the needs of patients, family and~~
16 ~~staff for a smoke free environment;~~

17 ~~—(e) Public areas in educational facilities;~~

18 ~~—(f) Classrooms, meeting or conference rooms, and lecture halls in educational facilities; this~~
19 ~~prohibition is intended to apply even when such areas are open only to persons enrolled or otherwise~~
20 ~~formally authorized to attend;~~

21 ~~—(g) Public areas in business establishments and nonprofit establishments; provided,~~
22 ~~however, that not included are any establishments which employ three or fewer employees;~~

23 ~~—(h) Public areas of privately owned aquariums, galleries, libraries and museums when open~~
24 ~~to the public;~~

25 ~~—(i) Enclosed areas in child care facilities when children are present; provided, however, that~~

1 ~~not included are child care facilities which employ three or fewer employees. This prohibition is~~
2 ~~intended to apply even when such areas are open only to those being cared for in such facilities;~~

3 ~~—(j) Notwithstanding the provision of subsection (g) above that exempts establishments which~~
4 ~~employ three or fewer employees, all areas of all automatic laundries or launderettes intended for use~~
5 ~~by members of the general public.~~

6 ~~—Notwithstanding any other provision of this Article, any owner, operator, manager, or other~~
7 ~~person who controls any establishment or facility described in this Article may declare the entire~~
8 ~~establishment or facility as non-smoking.~~

9
10 ~~SEC. 1008.3. REGULATION OF SMOKING IN PLACES OF ENTERTAINMENT, SPORTS~~
11 ~~ARENAS, CONVENTION FACILITIES, AND HOTEL LOBBIES.~~

12 ~~—The owner of the following premises, or the person who has the right to possession and~~
13 ~~management of the premises, shall designate smoking and non-smoking areas in enclosed areas of the~~
14 ~~following places and shall enforce the smoking prohibition in the non-smoking areas during those~~
15 ~~times when the general public has access to the premises. The owner or person with the right to~~
16 ~~possession and management shall post the signs required by Section 1008.5. An enclosed area may be~~
17 ~~divided into smoking and non-smoking areas without a physical separation between them. The posted~~
18 ~~signs shall clearly designate where the demarcation is between the smoking and non-smoking areas.~~
19 ~~Designated smoking areas shall not exceed in aggregate size the areas which are for the general public~~
20 ~~and which must be devoted to non-smoking.~~

21 ~~—(a) Public areas of any building primarily used for exhibiting motion pictures, drama, dance,~~
22 ~~musical performance or other entertainment, and within any room, hall or auditorium that is~~
23 ~~occasionally used for exhibiting motion pictures, drama, dance, musical performance, lecture or other~~
24 ~~entertainment during the time that said room, hall or auditorium is open to the public for such~~
25 ~~exhibition; provided, however, that smoking is permitted on a stage when such smoking is part of a~~

1 ~~stage production;~~

2 ~~—(b) Public areas of buildings containing sports arenas;~~

3 ~~—(c) Public areas of convention facilities;~~

4 ~~—(d) Hotel lobbies.~~

5
6 ~~SEC. 1008.4. APPLICATION AND EXCEPTIONS.~~

7 ~~—(a) The following shall not be subject to this Article:~~

8 ~~—(1) "Eating establishments" regulated by Article 19A of this Code;~~

9 ~~—(2) Bars; provided, however, that not excluded from the requirements of this Article are~~
10 ~~areas commonly known as lobbies located in hotels, convention centers, theaters, and similar~~
11 ~~establishments;~~

12 ~~—(3) Rooms rented to guests in hotels, motels and similar establishments where not~~
13 ~~designated by the proprietor of said facilities as non-smoking;~~

14 ~~—(4) Retail tobacco stores;~~

15 ~~—(5) Discotheques, dance halls, or other establishments which are primarily devoted to~~
16 ~~entertaining people by providing music and dancing.~~

17 ~~—(b) Article 19 of this Code regulates smoking in the office workplace. In those times and~~
18 ~~places where the provisions of this Article apply, they shall govern. In all other instances, the~~
19 ~~provisions of Article 19 shall apply. Notwithstanding any other provision of this Article, no employee~~
20 ~~shall be entitled to smoke in an office workplace unless the provisions of Article 19 are complied with.~~

21
22 ~~SEC. 1008.5. POSTING OF SIGNS.~~

23 ~~—(a) "No Smoking" signs with letters of not less than one inch in height or the international~~
24 ~~"No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red~~
25 ~~circle with a red bar across it) shall be conspicuously posted in every enclosed area where smoking is~~

1 ~~prohibited by this Article by the owner of such building or, if a different person has the right to~~
2 ~~possession and management of the property, by the person with such right.~~

3 ~~—(b) The owner and the manager or operator of every theater and auditorium shall be~~
4 ~~responsible for conspicuously posting signs in the lobby stating that smoking is prohibited within the~~
5 ~~theater or auditorium and the lobby, and in the case of motion picture theaters, such information shall~~
6 ~~be shown upon the screen for at least five seconds prior to the showing of each feature motion picture.~~

7 ~~—(c) "Smoking" signs may be posted where permitted by this Article.~~

8
9 ~~SEC. 1008.6. UNLAWFUL TO PERMIT SMOKING IN OR TO SMOKE IN PROHIBITED~~
10 ~~AREAS.~~

11 ~~—(a) It shall be unlawful for the owner of any property or establishment subject to this Article,~~
12 ~~or, if a different person has the right to possession and management of such property or establishment,~~
13 ~~for that person, to fail to post or to maintain the signs required by this Article or to permit any person~~
14 ~~to smoke in any area where smoking is prohibited by this Article. The person responsible for enforcing~~
15 ~~the prohibition against smoking in designated areas shall be deemed to have complied with these~~
16 ~~Sections if he or she posts the signs required by this Article and, upon notice of a violation, promptly~~
17 ~~makes a good faith effort to notify the violator that smoking is illegal and requests the violator not to~~
18 ~~smoke, either personally or through a designee.~~

19 ~~—(b) It is unlawful for any person to smoke in an area where signs have been posted indicating~~
20 ~~that smoking is prohibited or to smoke in an area where this Article prohibits smoking.~~

21
22 ~~SEC. 1008.7. PENALTIES AND ENFORCEMENT.~~

23 ~~—(a) The Director of Health (hereinafter "Director") may enforce the provisions of this Article~~
24 ~~against violations by serving notice requiring the correction of any violation within a reasonable time~~
25 ~~specified by the Director. Upon the violator's failure to comply with the notice within the time period~~

1 ~~specified, (1) the Director may request the City Attorney to maintain an action for injunction to enforce~~
2 ~~the provisions of this Article and for assessment and recovery of a civil penalty for such violation and~~
3 ~~(2) the owner of the premises or the person with the right to possession and management of the~~
4 ~~property may maintain an action for injunctive relief to enforce the provisions of this Article and an~~
5 ~~action for damages. Damages may be awarded up to \$500 a day for each day that the violation occurs~~
6 ~~or is permitted to continue. It is necessary to specify the amount of such damages because of the~~
7 ~~extreme difficulty that the owner or other authorized person would have in establishing injury based on~~
8 ~~lost business, lost productivity due to health injuries caused by tobacco smoke, and other costs arising~~
9 ~~because of the health problems created by smoking.~~

10 ~~—(b) Any person that violates or refuses to comply with the provisions of this Article shall be~~
11 ~~liable for a civil penalty, not to exceed \$500 for each day such violation is committed or permitted to~~
12 ~~continue, which penalty shall be assessed and recovered in a civil action brought in the name of the~~
13 ~~people of the City and County of San Francisco, by the City Attorney, in any court of competent~~
14 ~~jurisdiction. Any penalty assessed and recovered in a civil action brought pursuant to this Section shall~~
15 ~~be paid to the Treasurer of the City and County of San Francisco.~~

16 ~~—(c) Any person who violates or refuses to comply with the provisions of this Article shall be~~
17 ~~guilty of an infraction, and shall be deemed guilty of a separate offense for every day such violation or~~
18 ~~refusal shall continue. Every violation is punishable by (1) a fine not exceeding \$100 for a first~~
19 ~~violation; (2) a fine not exceeding \$200 for a second violation within one year; (3) a fine not exceeding~~
20 ~~\$500 for each additional violation within one year.~~

21 ~~—(d) In undertaking the enforcement of this ordinance, the City and County of San Francisco~~
22 ~~is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing~~
23 ~~on its officers and employees, an obligation for breach of which it is liable in money damages to any~~
24 ~~person who claims that such breach proximately caused injury.~~

1 ~~6304.1.~~

2 ~~—(2) "Place of employment" means any place, and the premises appurtenant thereto, where~~
3 ~~employment is carried on. "Place of employment" shall not include:~~

4 ~~—(A) That portion of any hotel or motel lobby designated for smoking, provided that no~~
5 ~~hotel or motel shall designate more than 25 percent of any lobby for smoking, and provided further that~~
6 ~~no hotel or motel shall permit smoking in any room used for exhibit space;~~

7 ~~—(B) Hotel and motel guest room accommodations designated as smoking rooms, provided~~
8 ~~that hotels and motels shall designate at least 35 percent of the guest rooms as nonsmoking;~~

9 ~~—(C) Facilities used to conduct charity bingo games pursuant to Penal Code Section 326.5~~
10 ~~during such times that persons are assembled in the facility in connection with such games;~~

11 ~~—(D) Banquet rooms in use for private social functions;~~

12 ~~—(E) Bars. A "bar" means an area which is devoted to the serving of alcoholic beverages~~
13 ~~for consumption by patrons on the premises and in which the serving of food is only incidental to the~~
14 ~~consumption of such beverages. If a restaurant contains a bar, that portion that constitutes the bar~~
15 ~~shall not be considered a place of employment under this ordinance;~~

16 ~~—(F) Private homes;~~

17 ~~—(G) Any store that engages exclusively in the sale of tobacco and tobacco related~~
18 ~~products and any portion of any store devoted exclusively to the sale of tobacco and tobacco related~~
19 ~~products.~~

20 ~~—(d) For purposes of this Section, an employer who permits any nonemployee access to his or~~
21 ~~her place of employment on a regular basis has not acted knowingly or intentionally if he or she has~~
22 ~~taken the following reasonable steps to prevent smoking by a nonemployee:~~

23 ~~—(1) Posted clear and prominent "No Smoking" signs at each entrance to the workplae~~
24 ~~premises;~~

25 ~~—(2) Has requested, when appropriate, that a nonemployee who is smoking refrain from~~

1 ~~smoking in the enclosed workplace.~~

2 ~~—For purposes of this subsection, "reasonable steps" shall not include the physical ejection of~~
3 ~~a nonemployee from the place of employment.~~

4 ~~—(e) For purposes of this Section, the owner, manager, or operator of a sports arena has not~~
5 ~~acted knowingly or intentionally if he or she has taken the reasonable steps described in Subsection (d)~~
6 ~~to prevent smoking by a person on the premises who is not an employee of the owner, manager or~~
7 ~~operator.~~

8 ~~—(f) Insofar as this Article applies to actions or omissions involving smoking that are also~~
9 ~~governed by any other ordinance of the City and County of San Francisco, the provisions of this Article~~
10 ~~are intended to supersede any other provision; provided, however, that the provisions of this Article~~
11 ~~supersede such other provision only after the provisions of this Article that apply to such act or~~
12 ~~omission become operative. The intent of this Section is that the current ordinances regulating smoking~~
13 ~~continue to be enforced until the applicable provisions of this Article become operative.~~

14
15 ~~SEC. 1009.6. HARDSHIP EXEMPTION FOR RESTAURANTS.~~

16 ~~—(a) Any owner or manager of a restaurant may apply to the Controller for an exemption from~~
17 ~~or modification of the requirements of this Article based on significant financial hardship caused by~~
18 ~~compliance with this Article. The applicant shall include all information required by the Controller. An~~
19 ~~application for exemption or modification shall be accompanied by a reasonable fee established by the~~
20 ~~Controller to cover the costs required to process the application and make a determination. The~~
21 ~~Controller shall give the Department of Public Health an opportunity to present relevant information~~
22 ~~with respect to each application.~~

23 ~~—(b) The applicant shall have the burden of proof in establishing that this Article has created~~
24 ~~an unreasonable economic effect on the applicant's business and threatens the survival of the~~
25 ~~restaurant, and that this economic effect is not the result of seasonal fluctuations or other conditions~~

1 ~~unrelated to the requirements of this Article. The Controller shall act on the application pursuant to~~
2 ~~administrative regulations adopted by the Controller. The Controller shall not be required to conduct a~~
3 ~~hearing on the application. The Controller shall issue a decision in writing to the applicant and to any~~
4 ~~other person who has requested a copy.~~

5 ~~—(c) The decision of the Controller may be appealed within 15 days of the issuance of the~~
6 ~~decision to the Board of Permit Appeals by the applicant or by any person who deems that his or her~~
7 ~~interests or that the general public interest will be adversely affected by the decision. The Board of~~
8 ~~Permit Appeals may concur in, overrule or modify the Controller's decision. The provisions of Sections~~
9 ~~8 through 16 of Part III of the San Francisco Municipal Code shall govern the appeal process.~~

10 ~~—(d) No exemptions or modifications shall be granted to any restaurant which has not been~~
11 ~~smokefree for a period of less than six months. Notwithstanding any other provision of this Article, any~~
12 ~~restaurant which has been granted an exemption or modification from the requirements of this Article~~
13 ~~shall not permit smoking in more than 25 percent of the seating or floor space of the restaurant.~~

14 ~~—(e) Exemptions granted by the Controller or the Board of Permit Appeals shall be valid for a~~
15 ~~period not to exceed 12 months and may be renewed upon application to the Controller. Applications~~
16 ~~for renewal shall be subject to the same requirements and procedures as initial applications.~~

17
18 ~~SEC. 1009.7. VIOLATIONS AND PENALTIES.~~

19 ~~—(a) The Director of Public Health may enforce the provisions of this Article against~~
20 ~~violations by serving notice requiring the correction of any violation within a reasonable time specified~~
21 ~~by the Director. Upon the violator's failure to comply with the notice within the time period specified,~~
22 ~~(1) the Director may request the City Attorney to maintain an action for injunction to enforce the~~
23 ~~provisions of this Article and for assessment and recovery of a civil penalty for such violation and (2)~~
24 ~~the owner of the premises or the person with the right to possession and management of the property~~
25 ~~may maintain an action for injunctive relief to enforce the provisions of this Article and an action for~~

1 ~~damages. Damages may be awarded up to \$500 a day for each day the violation occurs or is permitted~~
2 ~~to continue. It is necessary to specify the amount of such damages because of the extreme difficulty that~~
3 ~~the owner or other authorized person would have in establishing injury based on lost business, lost~~
4 ~~productivity due to health injuries caused by tobacco smoke, and other costs arising because of the~~
5 ~~health problems created by smoking.~~

6 ~~—(b) Any person who violates or refuses to comply with the provisions of this Article, shall be~~
7 ~~liable for a civil penalty, not to exceed \$500 for each day such violation is committed or permitted to~~
8 ~~continue, which penalty shall be assessed and recovered in a civil action brought in the name of the~~
9 ~~people of the City and County of San Francisco, by the City Attorney, in any court of competent~~
10 ~~jurisdiction. Any penalty assessed and recovered in a civil action brought pursuant to this Section shall~~
11 ~~be paid to the Treasurer of the City and County of San Francisco.~~

12 ~~—(c) In addition to any other penalty or provision regarding enforcement set forth in this~~
13 ~~Article, any violation of the prohibition set forth in this Article is a misdemeanor punishable by a fine~~
14 ~~not to exceed \$250 for a first violation, \$350 for a second violation within one year, and \$600 for a~~
15 ~~third and for each subsequent violation within one year.~~

16
17 ~~SEC. 1009.8. DISCLAIMERS.~~

18 ~~—In adopting and undertaking the enforcement of this ordinance, the City and County of San~~
19 ~~Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it~~
20 ~~imposing on its officers and employees, an obligation for breach of which it is liable in money damages~~
21 ~~to any person who claims that such breach proximately caused injury.~~

22
23 ~~SEC. 1009.9. SEVERABILITY.~~

24 ~~—If any provision of this Act or the application thereof to any person or circumstances is held~~
25 ~~invalid, that invalidity shall not affect other provisions or applications of the Act that can be given~~

1 ~~effect without the invalid provision of application, and to this end the provisions of this Act are~~
2 ~~severable.~~

3
4 ~~SEC. 1009.10. OPERATIVE DATE.~~

5 ~~—The provisions of this Article shall not be operative until February 1, 1994; provided,~~
6 ~~however, that with respect to restaurants, the provisions of this Article shall not be operative until~~
7 ~~January 1, 1995.~~

8
9 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
10 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
11 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
12 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
13 additions, and Board amendment deletions in accordance with the “Note” that appears under
14 the official title of the ordinance.

15
16 Section 6. Undertaking for the General Welfare. In enacting and implementing this
17 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
18 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
19 is liable in money damages to any person who claims that such breach proximately caused
20 injury.

21
22 Section 7. Severability. If any section, subsection, sentence, clause, phrase, or word of
23 this ordinance, or any application thereof to any person or circumstance, is held to be invalid
24 or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
25 affect the validity of the remaining portions or applications of the ordinance. The Board of

REVISED LEGISLATIVE DIGEST
(Substituted, May 5, 2026)

[Health Code - Smoke-free Places]

Ordinance amending the Health Code to prohibit smoking in outdoor patios of bars and taverns; eliminate exceptions allowing indoor smoking in bars with no employees, bars with historically compliant semi-enclosed smoking rooms, and hotel rooms, to conform to provisions of California law; and repeal suspended and superseded provisions regulating smoking in certain locations.

Existing Law

State law prohibits smoking in all enclosed places of employment and owner-operated businesses, with limited exceptions. California Labor Code Section 6404.5. This law applies statewide, and preempts local laws that purport to allow smoking in places where it is prohibited under state law. Notably, state law prohibits smoking in 100% of hotels, motels, or other transient lodging facilities and in owner-operated business regardless of the number of employees or the existence of an enclosed area for smoking.

Currently, Article 19F of the Health Code prohibits smoking in certain enclosed spaces, including, but not limited to, facilities owned or leased by the City, polling places, educational facilities, health facilities, and certain business establishments including most restaurants, bars, and taverns. Current local law also bans smoking in certain outdoor spaces, including sports arenas and farmers markets.

Although current local law purports to exempt the following categories of businesses from the smoking prohibition, these businesses are subject to the state ban on smoking:

- up to 25% of guest rooms in tourist lodging facilities;
- certain owner-operated bars and taverns that have no employees; and
- certain bars and taverns with historically compliant semi-enclosed smoking rooms.

Current local law does not prohibit smoking in outdoor patios at bars or taverns.

Current local law defines “Tobacco Sales” in Article 19H of the Health Code to include the display of tobacco products; however, the storage or display of images of tobacco products for purchase are not included in the definition.

Amendments to Current Law

The proposed ordinance would make the following changes to the Health Code.

- Prohibit smoking in the outdoor patios of bars and taverns;
- Conform to state law by eliminating the preempted exceptions for up to 25% of tourist lodging facility guest rooms; 2) owner-operated bars and taverns that have no employees; and 3) bars and taverns with historically compliant semi-enclosed smoking rooms.
- Revise the definition of “Tobacco Sales” in Section 19H.2 to include the storage or display of images of tobacco products for purchase.
- Repeal Articles of the Health Code that have already been suspended and superseded.

Background Information

This ordinance was introduced on May 5, 2026 as a substitute for the ordinance in Board file No. 260361.

When Article 19F of the Health Code was first enacted, its restrictions were more stringent than state law. Since then, state law that has caught up to and in some respects exceeded the protections against secondhand smoke in certain indoor spaces that the City previously enacted, particularly with respect to entirely prohibiting smoking in tourist lodging facilities, and bars and taverns irrespective of the number of employees they have.

Article 19F supersedes and suspends earlier local smoking regulations codified in Articles 19A, 19B, 19C, and 19E, which restricted but did not necessarily prohibit smoking in various indoor spaces. Article 19 similarly restricts some indoor smoking without prohibiting it. When Article 19F was enacted in 1994, it suspended rather than repealed Articles 19A, 19B, 19C, and 19E in case the legality of Article 19F was successfully challenged. The legality of smokefree air laws is now well established, and it is therefore appropriate to repeal the less restrictive regulations codified in Articles 19, 19A, 19B, 19C, and 19E.

Updating the definition of “Tobacco Sales” in Section 19H.2 of the Health Code to include the storage or display of images of tobacco products for purchase as part of the definition is intended to enable efficient enforcement to the permit requirement established in Article 19H.

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor inquires..."
- 5. City Attorney Request
- 6. Call File No. from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: