

LEGISLATIVE DIGEST

[Prohibiting Smoking in Enclosed Areas, Certain Unenclosed Areas, and Sports Stadiums]

Ordinance amending Articles 19F and 19I of the San Francisco Health Code by amending Sections 1009.20-1009.23, 1009.25, and 1009.81, adding Sections 1009.26, 1009.27, and 1009.29-1009.32, and repealing Section 1009.24, to prohibit smoking in: 1) business establishments and bars regardless of whether owner-operated, 2) common areas of multi-unit housing complexes, 3) tourist lodging facilities, 4) tobacco shops, 5) charity bingo games, 6) unenclosed dining areas of restaurants, 7) service waiting areas, 8) areas outside entrances, exits and operable windows and vents of all buildings except at the curb of the nearest street, sidewalk or alley, 9) farmers markets, and 10) vehicles owned by the City and County of San Francisco; establishing obligations for property owners and managers to prevent smoking in prohibited areas; adding administrative procedures and penalties; repealing criminal penalties; adding provisions for cost recovery and liens; and adding Administrative Code Section 10.100-193 to establish a new Public Health Environmental Health Code Compliance Fund.

Existing Law

The Health Code currently bans smoking in certain enclosed structures including, but not limited to, facilities owned or leased by the City, polling places, educational facilities, health facilities, and certain business establishments.

The smoking ban does not apply to owner-operated business establishments smaller than five hundred square feet.

The smoking ban does not apply to bars or the bar portion of a restaurant.

The smoking ban does not apply to tobacco shops or facilities used to conduct charity bingo games.

Smoking is not prohibited in outdoor dining areas.

It is not clear whether smoking is prohibited in the enclosed common areas of multi-unit housing complexes.

Smoking is prohibited in ticketing, boarding and waiting areas of public transit vehicles, including bus, train, trolley and cable car stops and shelters.

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Smoking is prohibited on public transit vehicles.

State law prohibits smoking within twenty feet of the entrances of certain State and City owned and occupied buildings, but there is no such provision in local law.

Smoking is prohibited in sports stadiums, except in concourses and ramps outside seating areas, private suites and corridors to private suites, and areas designated for parking.

A person who owns, operates, or manages property will not be deemed to have been in violation of the Health Code if he or she posts no smoking signs and requests, when appropriate, that a person refrain from smoking.

Section 1009.23 lists exceptions to the smoking ban, including but not limited to, the portion of a hotel or motel lobby designated for smoking, provided that no hotel or motel shall designate more than twenty-five percent of any lobby for smoking, facilities used to conduct charity bingo games, banquet rooms for use for private social functions, bars, and private homes.

Section 1009.25 includes civil penalties to be recovered in an action brought by the City Attorney's Office in the name of the people of the City and County of San Francisco, and misdemeanor penalties. There are no administrative penalties. There are criminal penalties.

There are no cost recovery or lien provisions for enforcement.

Article 19I prohibits smoking in certain unenclosed areas of property in the City and County of San Francisco that are open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier or other property used for recreational purposes.

Amendments to Current Law

The proposed ordinance would make the following changes to Health Code Article 19F.

The proposed ordinance would update the findings in Section 1009.20.

Section 1009.21 would: 1) clarify the definition for bar or tavern; 2) include in the business establishment definition those owner-operated businesses that are smaller than five hundred square feet; 3) include definitions for the terms commercial building, director, dwelling unit, enclosed, outdoor patio, mixed-use building, multi-unit housing complex, residential building, residential hotel, residential hotel unit, semi-enclosed smoking room, tourist lodging facility, and tobacco shop. The definition of "enclosed" would clarify that outdoor patios and semi-enclosed smoking rooms, as defined in the ordinance, shall not be considered enclosed.

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Section 1009.22 would prohibit smoking in the following additional areas: bars and the bar portion of restaurants, tourist lodging facilities, homeless shelters, tobacco shops, facilities used to conduct charity bingo games, services areas, areas outside entrances, exits and operable windows and vents of buildings except at the curb of the nearest street (notwithstanding Police Code Section 121(d) pertaining to places of entertainment), sidewalk or alley, ticketing, boarding, and waiting areas of public transit stations unless the MTA Director exempts any such locations, the enclosed common areas of multi-unit housing complexes (although smoking would be allowed in outdoor common areas ten feet or more from the doors and windows of these complexes), vehicles owned by the City and County of San Francisco, and farmers markets. Smoking would also be prohibited in certain areas of sports stadiums.

Section 1009.22 would also require owners and managers of property to: 1) post clear and prominent no smoking signs in a required location and distance from the door, 2) request persons smoking in areas where smoking is prohibited to refrain from smoking, and 3) notify existing tenants of the smoking prohibitions contained in Health Code Article 19F. For common areas of multi-unit housing complexes, the signs need only be posted in the common building lobby, common mailbox area, or common elevator. But a property owner or manager of a multi-unit housing complex of less than 16 units does not have to request that a person refrain from smoking unless the property owner or manager observes the person smoking where smoking is prohibited under this Article. In addition, the Article does not require a property owner or manager of a business to enforce a smoking prohibition outside the business by persons who are not patrons of the business, or a property owner or manager of a multi-unit housing complex to enforce a smoking prohibition outside the building by persons who are not tenants of the building.

Persons who own, manage, or operate property that is LEED ("Leadership in Energy and Environmental Design") certified with a smoking prohibition greater than that stated in the ordinance may post signs that reflect that greater distance.

In addition, upon receipt of a written complaint from a tenant or the Department of Public Health or when a person is observed smoking, an owner or manager of a multi-unit housing complex must post a notice in a common area of the building for a period of not less than ten days. If there is no common area, the building owner must provide notice to tenants in another reasonable manner.

If owners and managers of multi-unit housing complexes have complied with all the requirements under this Article, smoking in a multi-unit housing complex where prohibited shall not be considered a substantial reduction in housing services that would qualify a tenant for a reduction in rent under San Francisco Administrative Code Chapter 37.

Section 1009.23 would eliminate the exceptions to the smoking ban for certain portions of tourist lodging facilities, charity bingo games, banquet rooms used for private social functions,

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bars, and certain portions of multi-unit housing complexes. This section would also state that owners and managers of tourist lodging facilities may designate 100% of guest rooms as smoke-free, and if they do, no smoking signs need only be posted in the common areas on each floor rather than in each room. This section would also clarify that the dwelling units of multi-unit housing complexes and mixed-use buildings are considered private homes for purposes of the exception. This section also allows certain bars and taverns without employees and tobacco shops located in commercial buildings to allow smoking if they obtain an exemption from the Department of Public Health. In addition, bars and taverns with semi-enclosed smoking rooms may continue to allow smoking under certain circumstances if they obtain an exemption from the Department of Public Health.

Section 1009.24 would be repealed, eliminating the hardship exemption for owners and managers of restaurants, and removing provisions no longer in effect as of January 1, 1995.

Section 1009.25 would lower penalty amounts to make them consistent with State law and add administrative enforcement provisions under both San Francisco Administrative Code Chapter 100 and procedures initiated by a Notice of Violation. Criminal penalties would be repealed.

Section 1009.26 and 1009.27 would add cost recovery and lien provisions.

Section 1009.29 gives the Director of Public Health the authority to adopt rules and regulations to implement and enforce the Article.

Section 1009.30 clarifies that in enforcing the ordinance, the City is assuming an undertaking only to promote the general welfare and is not assuming an obligation for breach of which it would be liable in money damages.

Section 1009.31 clarifies that the City is not attempting to regulate in areas preempted by State or federal law.

Section 1009.33 adds a severability section so that if any of the provisions of the Article is held invalid, the remainder of the Article shall not be affected and shall continue in full force and effect.

This ordinance would make the following changes to Article 19I:

Section 1009.81 would add farmers markets to the list of unenclosed areas of property where smoking is prohibited.

This ordinance would add Sec. 10.100-193 to the Administrative Code to create the Public Health Environmental Health Code Compliance Fund. This fund would receive monies

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collected by the Department of Public Health Occupational and Environmental Health Section through this ordinance and others for which the department has enforcement authority.

Background Information

This ordinance expands the locations where smoking is prohibited in San Francisco. These amendments reflect the current understanding of the hazards of secondhand smoke, as reflected in the U.S. Surgeon General's 2006 Report on the Health Consequences of Involuntary Smoking, the January 2006 report of the California Air Resources, and the 2003 Final Report on Tobacco Control Successes prepared by the Cancer Prevention and Control Program at the University of California, San Diego.