



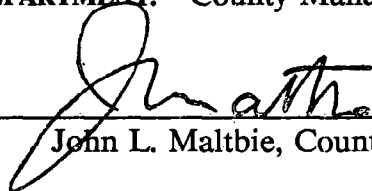
ADMINISTRATIVE MEMORANDUM COUNTY OF SAN MATEO

NUMBER: B-9

SUBJECT: Smoking Control Policy Guidelines

RESPONSIBLE DEPARTMENT: County Manager's Office

APPROVED:



John L. Maltbie, County Manager

DATE: December 7, 1990

On July 17, 1990, the Board of Supervisors enacted the Smoking Pollution Control Ordinance No. 03239 (attached). The Ordinance prohibits smoking in all County-owned buildings and County-leased portions of buildings effective August 16, 1990. This action supersedes the provisions formerly prescribed in Administrative Memorandum B-9, which allowed smoking in county facilities in areas designated by department heads or the County Manager. Due to the Smoking Pollution Control Ordinance, smoking is prohibited in all County facilities at all times.

Admemo.B9

ORDINANCE NO. 03239

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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AN ORDINANCE ADDING CHAPTER 12 CONSISTING OF
SECTIONS 4978 - 5003 TO DIVISION IV OF THE
SAN MATEO COUNTY ORDINANCE CODE REGARDING
SMOKING POLLUTION CONTROL

The Board of Supervisors of the County of San Mateo, State of California, ORDAINS as follows:

SECTION 1. Chapter 12 consisting of Sections 4978 - 5003 is hereby added to Division IV of the San Mateo County Ordinance Code as follows:

"CHAPTER 12. SMOKING POLLUTION CONTROL.

Article 1. GENERAL PROVISIONS.

Section 4978. ORDINANCE DEFINED. This ordinance shall be known and may be cited as the San Mateo County Smoking Ordinance, the provision hereof shall apply to the unincorporated area of San Mateo County and to structures owned or leased by San Mateo County, wherever located.

Section 4979. PURPOSES AND POLICIES. This ordinance shall be construed and applied to promote its basic purposes and policies which are:

- (a) To protect the public health and welfare by prohibiting or limiting smoking in public places and places of employment, as hereinafter set forth.
- (b) To strike a reasonable balance between the needs of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air should have priority.

Section 4980. DEFINITIONS. For the purpose of this ordinance, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section shall have the meanings given to them in this section:

- (a) BAR shall mean an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only

incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area.

- (b) DINING AREA shall mean any enclosed area containing a counter or tables upon which meals are served.
- (c) EMPLOYEE shall mean any person who is employed by any employer in consideration of direct or indirect monetary wages or profit.
- (d) EMPLOYER shall mean any person who employs the services of an individual person.
- (e) ENCLOSED shall mean closed in by a roof and four (4) walls with appropriate openings for ingress and egress.
- (f) MOTION PICTURE THEATER shall mean any theater engaged in the business of exhibiting motion pictures.
- (g) PLACE OF EMPLOYMENT shall mean any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to:
 - (1) conference and class rooms
 - (2) employee cafeterias
 - (3) employee lounges
 - (4) hallways
 - (5) work areas
 - (6) stairways.

Neither a private residence nor a dining area of a restaurant is a place of employment.

- (h) PUBLIC PLACE shall mean any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to:
 - (1) banks
 - (2) educational facilities
 - (3) health facilities
 - (4) public transportation facilities
 - (5) reception areas
 - (6) restaurants
 - (7) retail stores
 - (8) retail service establishments
 - (9) retail food production and marketing establishments
 - (10) waiting rooms.

A private residence is not a public place.

- (i) RESTAURANT shall mean any coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, cafeteria or eating establishment, and any other eating establishment, organization, club, including veterans' club, boardinghouse, or guesthouse which gives or offers for sale food to the public, guests, patrons, or employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering functions, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a bar as defined in section 4980(a).
- (j) SERVICE LINE shall mean any indoor line where one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- (k) SMOKING shall mean inhaling, exhaling, burning or carrying any lighted cigar, pipe, cigarette, weed, plant or other combustible substance in any manner or in any form.
- (l) TOBACCO STORE shall mean a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Article 2. SMOKING PROHIBITED

Section 4981. AREAS WHERE SMOKING IS PROHIBITED. Smoking shall be prohibited:

- (1) Within any structure owned by San Mateo County, wherever located, except private residences leased from the County, and
- (2) Within any structure leased by San Mateo County; provided that this prohibition shall apply only to those areas of the structure actually being leased by the County; and
- (3) In the following other places within the unincorporated area of San Mateo County:
 - (a) elevators
 - (b) stairways
 - (c) buses, taxicabs, and other means of public transit under the authority of San Mateo County, while within the unincorporated area of the County, and in the ticket, boarding, and waiting areas of public transit depots; provided, however, this

prohibition does not prevent the establishment of separate equal-sized waiting areas for smokers and nonsmokers, or establishing no more than one-third of a given waiting area as a smoking area

- (d) public rest rooms
- (e) indoor service lines
- (f) retail stores doing business with the general public, except areas in such stores not open to the public and all areas within retail tobacco stores
- (g) all enclosed areas available to, and customarily used by, the general public in all businesses patronized by the public, including but not limited to, offices, banks, hotels, motels, and pharmacies, and all enclosed passageways between businesses
- (h) within all restaurants and other eating establishments, provided, however, this prohibition does not prevent separate, equal-sized rooms for smokers and nonsmokers or the designating of a contiguous area within the restaurant that contains no more than one-third of the seating capacity of the restaurant as a smoking area
- (i) in bathrooms, halls, reading and viewing rooms of aquariums, libraries, and museums when open to the public, provided however, this prohibition does not prevent the designation of a separate room for smoking
- (j) within any building not open to the sky which is primarily used for, or designed for the primary purpose of exhibiting any motion picture, stage drama, lecture, music recital or other similar performance, except when smoking is part of a stage production; provided however, this prohibition does not prevent designating a contiguous area containing no more than one-third of any area commonly called a lobby as a smoking area
- (k) hearing rooms of the Board of Supervisors
- (l) every room, chamber, place of meeting or public assembly
- (m) polling places
- (n) waiting rooms, hallways, wards, and semi-private rooms of health facilities, including but not

limited to, hospitals, clinics, physical therapy facilities, doctors' and dentists' offices, except in separate designated smoking areas

- (o) Patient rooms, with the exception of patients who have their physician's permission to smoke and no non-smoking patients are in the room.

Article 3. SMOKING REGULATED - PLACES OF EMPLOYMENT

Section 4982. POLICY REGULATING SMOKING. Within 90 days of the effective date of the ordinance, each employer shall adopt, implement, make known and maintain a written smoking policy which shall contain, as a minimum, the following:

(a) Prohibition of smoking in employer

- (1) auditoriums
- (2) classrooms
- (3) conference and meeting rooms
- (4) elevators
- (5) hallways
- (6) medical facilities
- (7) rest rooms
- (8) stairways

- (b) Provision and maintenance of a separate and contiguous nonsmoking area of not less than two thirds (2/3) of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges for smokers and nonsmokers.

- (c) Any employee in a place of employment shall be given the right to designate his or her immediate work area as a nonsmoking area and to post the same with an appropriate sign or signs. The policy adopted by the employer shall include a reasonable definition of the term immediate work area.

- (d) In any dispute arising under the smoking policy in a place of employment, the rights of the non-smoker shall be given precedence over the smoker, and the employer shall formulate restrictions and prohibitions upon smoking which accommodate the nonsmoking employee.

Section 4983. COMMUNICATION OF POLICY TO EMPLOYEES. The smoking policy shall be communicated to all employees within three (3) weeks of its adoption, and at least yearly thereafter.

Section 4984. PROSPECTIVE EMPLOYEES. All employers shall supply a written copy of the smoking policy to any prospective employee who so requests.

Section 4985. NONSMOKING AREA. Notwithstanding the provisions of this article, every employer shall have the right to designate any place of employment, or any portion thereof, as a nonsmoking area.

Section 4986. GOOD FAITH COMPLIANCE. An employer who in good faith develops and promulgates a policy regarding smoking and nonsmoking in the workplace shall be deemed to be in compliance with this section, provided that a policy which knowingly omits the minimum requirements for a policy set forth in this section or which designates an entire work place as a smoking area shall not be deemed a good faith policy.

Article 4. SMOKING OPTIONAL

Section 4987. AREAS WHERE SMOKING IS OPTIONAL.

The following areas, otherwise covered by Section 4981(3), shall not be subject to the smoking restrictions set forth in this ordinance, unless the owner, operator, manager or other person who controls such a business or place declares that smoking is prohibited in all or a portion of such business or place:

- (a) bars
- (b) private residences
- (c) hotel and motel rooms rented to guests
- (d) tobacco stores
- (e) restaurants, hotel and motel conference/meeting rooms, and public and private assembly rooms while these places are being used for private functions
- (f) a private residence which may serve as a place of employment
- (g) a private, enclosed place of employment occupied exclusively by smokers, even though such a place of employment may be visited by nonsmokers
- (h) semi-private rooms of health facilities occupied by one (1) or more patients, all of whom are smokers and have their physician's approval to smoke
- (i) locked psychiatric facilities
- (j) drug or alcohol treatment facilities

Article 5. POSTING OF SIGNS.

Section 4988. BUILDINGS. "Smoking" or "No Smoking" signs, whichever are appropriate, with letters not less than one inch (1") in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be conspicuously posted in every room, building or other place where smoking is regulated by this ordinance, by the owner, operator, manager or other person having control of such building or other place.

Section 4989. THEATERS. Every theater owner and/or manager shall post signs conspicuously in the lobby stating that smoking is prohibited within the theater or auditorium, and in the case of motion picture theaters, such information shall be shown upon the screen for at least five (5) seconds prior to the showing of each feature motion picture.

Section 4990. RESTAURANTS. Every restaurant will have posted at its entrance a sign clearly stating that a nonsmoking section is available, and every patron shall be asked as to their preference.

Article 6. PROCEDURES AND ENFORCEMENT.

Section 4991. COUNTY PUBLIC HEALTH OFFICER. Enforcement of this ordinance shall be implemented by the County Public Health Director and/or his/her designees. The health department shall have the right, in connection with any regular annual inspection of a business located in the unincorporated area of the County, to require that the owner, manager, operator or other person having control of such establishment certify that all applicable requirements of this chapter have been complied with.

Section 4992. CITIZENS. Any citizen may initiate enforcement of this ordinance by notifying the County Public Health Director or his/her designee of any violation.

Section 4993. OWNERS, OPERATORS, EMPLOYEES. Any owner, manager, operator, or employee of any establishment controlled by this ordinance shall have the right to inform persons violating this chapter of the requirements of the provisions being violated and the consequences of such violation.

Section 4994. OWNERS MUST COMPLY. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this ordinance to fail to comply with its provisions.

Section 4995. PERSONS WHO SMOKE MUST COMPLY. It shall be unlawful for any person to smoke in any area restricted by the provisions of this ordinance.

Section 4996. INFRACTION. Any person who violates any provision of this ordinance shall be guilty of an infraction, punishable by:

- (a) A fine not exceeding fifty dollars (\$50) for a first violation.
- (b) A fine not exceeding one hundred dollars (\$100) for a second violation.
- (c) A fine not exceeding two hundred fifty dollars (\$250) for each additional violation within one (1) year.

Section 4997. ENFORCEMENT. The County Public Health Director or his/her designee is hereby authorized to institute and pursue, in the name of the County, pursuant to the provisions of Section 25132 of the Government Code enforcement of the infractions before the Court.

Section 4998. NO RETALIATION. No person shall retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by the ordinance.

Section 4999. SECTIONS FOUND INVALID. If any provision, clause, section, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such validity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

Section 5000. RESTRICTIONS SET BY OTHER APPLICABLE LAWS. This ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety and fire codes.

Section 5001. EXEMPTIONS. Any owner or manager of a business or other establishment subject to this ordinance may apply to the County Public Health Director or his/her designee for an exemption or modification to any provision of this ordinance due to unusual circumstances or conditions.

- (a) Such exemption shall be granted only if the County Public Health Director or his/her designee finds from the evidence presented by the applicant for exemption that due to such unusual circumstances or conditions it would cause a substantial impairment of the function of the establishment or business to carry out some or all of the provisions of this ordinance.
- (b) The applicant for an exemption shall pay the fee prescribed by the Public Health Director to cover the cost of the hearing and noticing of hearing.

Article 7. PUBLIC EDUCATION AND GOVERNMENTAL COOPERATION.

Section 5002. CONTINUING PROGRAM. County Public Health Director or his/her designee shall engage in a continuing program to inform and clarify the purposes of this ordinance to citizens affected by it, and to guide owners, operators and managers in their compliance.

Section 5003. LOCAL OPERATING PROCEDURES. The County Public Health Director or his/her designees shall annually request such governmental and educational agencies having offices within the unincorporated area of the County of San Mateo to establish local operating procedures to cooperate and comply with this ordinance. In Federal, State, school districts and special districts within the County of San Mateo, the County Public Health Director shall urge enforcement of their existing no smoking prohibitions and request cooperation with this ordinance.

Article 8. SALE OF TOBACCO PRODUCTS IN COUNTY BUILDINGS.

Section 5004. SALE OF TOBACCO PRODUCTS IN COUNTY OWNED AND LEASED BUILDINGS. Cigarette vending machines and the sale of tobacco products and accessories are prohibited in County-owned structures and in those areas of other structures leased by the County, wherever located.

Article 9. EXEMPTION OF SAN FRANCISCO INTERNATIONAL AIRPORT.

Section 5005. EXEMPTION OF THE SAN FRANCISCO INTERNATIONAL AIRPORT. This chapter shall not apply at the San Francisco International Airport.

Article 10. DISCIPLINARY ACTION AGAINST COUNTY EMPLOYEES.

Section 5006. VIOLATION GROUNDS FOR DISCIPLINE. A violation of this ordinance by a County employee shall be cause for disciplinary action, under the Rules of the Civil Service Commission.

SECTION 2. This ordinance shall be effective thirty (30) days from the date of passage thereof; except that Section 4981(3) shall be effective ninety (90) days from the date of passage. Further, this ordinance shall, as to jail facilities, be effective ninety (90) days from date of passage.

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3BC:mq
[smoking4]
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Regularly passed and adopted this 17th day of July, 1990.

AYES and in favor of said ordinance:

Supervisors:

MARY GRIFFIN

TOM HUENING

ANNA G. ESHOO

TOM NOLAN

WILLIAM J. SCHUMACHER

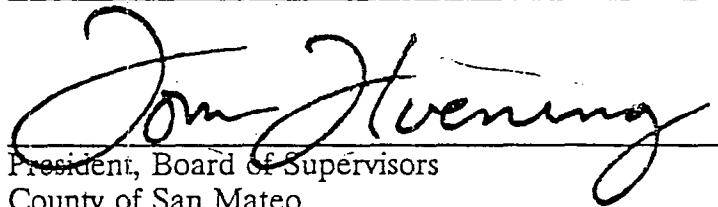
NOES and against said ordinance:

Supervisors:

NONE

Absent Supervisors:

NONE



President, Board of Supervisors
County of San Mateo
State of California

Certificate of Delivery
(Government Code section 25103)

I certify that a copy of the original resolution filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.



ELAINE S. WALTON, Assistant
Clerk of the Board of Supervisors