

Provisions of Draft Smoking Ordinance for Task Force Consideration
June 25, 2010¹

1) WHERE SMOKING OR TOBACCO USE IS PROHIBITED

a) Except as otherwise provided in this Chapter, no person shall smoke in

i) An Open Air Dining Area

- (1) Open Air Dining Area means any unenclosed area located on private or public property made available to or customarily used by the general public that is designed, established or regularly used for consuming food and/or beverages or where food or beverages are served whether or not for compensation. This includes without limitation restaurants, restaurants at hotels, cafes, and coffee shops.
- (2) Restaurant means an establishment that: (1) sells, or offers for sale, food and beverages during all hours it is open for business ~~primarily by way of table service~~; (2) prepares food on-site in a kitchen capable of preparing food from its component ingredients and otherwise meets the definition of a “bona fide public eating place” contained in California Business & Professions Code §23038; and (3) ~~does not limit entry to persons 21 years of age or older and where~~ service of alcoholic beverages is secondary to service of food, except that the term “restaurant” shall not include a nightclub or bar as defined herein.

ii) A Common Outdoor Patio or Common Open Space Area

- (1) Common Outdoor Patio or “common open space area” means any unenclosed common area located on private or public property other than an Open Air Dining Area, adjacent to or associated with a commercial business, building, or facility, or other building open to the general public, that is accessible to and usable by the patrons, visitors, employees and occupants of the premises. This includes public patios, pedestrian oriented public plazas, and unenclosed parking areas, but does not include designated common areas of residential uses.

iii) Outdoor service area.

- (1) Outdoor Service Area means any unenclosed area where one or more persons wait for, receive or exchange goods or services of any kind; including without limitation lines or waiting areas for: (a) ATM machines; (b) information kiosks; (c) banks; (d) restaurants and other food service; (e) tickets and admission to a theater or other venue event; (f) car washes and vehicle service establishments; and (g) valet parking pick-up areas.

2) WHERE SMOKING OR TOBACCO USE IS ALLOWED

Location Requirements

Except as otherwise provided in this Chapter, an outdoor smoking area shall not be located in any Open Air Dining Area, Common Outdoor Patio, Common Open Space Area, or Outdoor Service Area.

a) Outdoor smoking areas may be located in, and smoking may be permitted, in:

¹ Underline and strike-through indicates substantive changes from the proposed draft presented at May 18th Task Force Meeting.

- i) an Open Air Dining Area of a Bar or Nightclub if, during any time that smoking is allowed:
 - (1) minors are excluded from the entire business establishment; and
 - (2) food service is not provided outside.

Proposed definition:

Bar means an establishment: (1) that sells or offers for sale alcoholic beverages pursuant to a ~~Type 48~~ license from the Department of Alcoholic Beverage Control; (2) that limits entry to persons of a certain age during some or all operating hours; and (3) where food service, if any, is subordinate to the sale of alcoholic beverages. Does not include a bar area that is an integrated part of a restaurant.

Nightclubs means a bars or similar establishments that provide live entertainment (music and/or dancing, comedy, etc.) in conjunction with alcoholic beverage sales.

- b) a Common Outdoor Patio or Common Open Space Area at a hotel, and any area at a hotel adjacent to a swimming pool, provided that the service of food in these areas is secondary to the primary use of the area as an Outdoor Patio, pool area or Open Space Area.
 - c) Private club, where the business operates on a membership basis and is not open to the general public.
- 3) ADDITIONAL CONSIDERATIONS
- a) Buffer Zone – Within a reasonable distance of 5, 10, 15, 20 ?? feet from any unenclosed area where smoking is prohibited.

ADDITIONAL CONSIDERATIONS FOR FUTURE DISCUSSION

- a) Enforcement
- b) Signage