



COUNTY OF SAN MATEO
Inter-Departmental Correspondence

County Counsel

DATE: April 8, 2003

BOARD MEETING DATE: April 22, 2003

TO: Honorable Board of Supervisors

FROM: Supervisors Rose Jacobs Gibson and Jerry Hill *[Handwritten initials]*

SUBJECT: Amendment to the San Mateo County Ordinance Code Relating to the Regulation of Smoking

Recommendation

Adopt an ordinance amending sections 4.96.030, 4.96.040 and repealing sections 4.96.050 through 4.96.100, repealing sections 4.96.120 and 4.96.130 of Chapter 4.96, of Title 4 of the San Mateo County Code relating to the regulation of smoking.

Background

In 1990, San Mateo County adopted a comprehensive ordinance regulating the smoking of tobacco. In 1994, the State of California Labor Code was amended to prohibit smoking specifically in places of employment. Recently, questions have been raised as to whether under either the Labor Code or the County's ordinance smoking is prohibited in bars that are owner-operated with no employees. There is some concern in this area because there is an exemption under the Labor Code for businesses that have no employees and the County's ordinance exempts bars from its smoking prohibition.

Discussion

Labor Code §6404.5(a) expressly declares the "intent of the Legislature that any area not defined as a 'place of employment' . . . shall be subject to local regulation of smoking of tobacco products." Accordingly, this Board can and does regulate smoking in enclosed areas customarily used by the general public as well as in all businesses patronized by the public and thus could prohibit smoking in those business that do not fall under the definition of a "place of employment." Bars, however, are currently specifically exempted from the ordinance.

The proposed amendment to the smoking ordinance submitted for your consideration deletes the exemption for bars. In addition, the amendment makes the following technical changes:

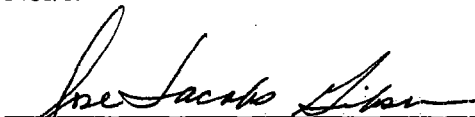
- Changes the list of areas where smoking is prohibited by deleting those areas that are covered by the Labor Code, such as: movie theaters, dining areas, bars, restaurants, classrooms, etc.
- Eliminates exceptions to the prohibition on smoking which are now regulated by the Labor Code. For example, the ordinance currently allows smoking in certain dining areas, bars, and the sheriff's interrogation room.
- Deletes the regulation of smoking in places of employment, the creation of smoking areas, and communicating smoking polices for employees, as each of these are now covered by the Labor Code.

Vision Alignment

The proposed ordinance amendment furthers the County's effort to maintain and enhance the public safety of all residents and visitors.

Fiscal Impact

None.



Supervisor Rose Jacobs Gibson



Supervisor Jerry Hill

cc: John Maltbie, County Manager