FILE NO. 080621   ORDINANCE NO. 233-08

[Amending Health Code Article 8 – Food Preparation and Service Establishment.]

Ordinance amending San Francisco Health Code Sections 451, 452, 456.4, 456.5, deleting Health Code Section 455, and amending San Francisco Business and Tax Regulations Code Section 249.1 to include definition for licensed health care facilities, clarify the definition for hospital kitchen, update definitions to be consistent with the California Retail Food Code; add a fee for licensed health care facilities; and add lien procedures for enforcing monetary penalties.

Note: Additions are <u><i>single-underline italics Times New Roman</i></u>; deletions are <s><i>strikethrough italics Times New Roman</i></s>. Board amendment additions are <u>double underlined</u>, Board amendment deletions are <s>strikethrough normal</s>.

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

Section 1. The San Francisco Health Code is hereby amended by amending Sections 451, 452, 456.4, 456.5, and deleting Section 455, to read as follows:

SEC. 451. FOOD PREPARATION AND SERVICE ESTABLISHMENT.

(a) "Food preparation and service establishment" as defined in this Section shall mean and include any restaurant, itinerant restaurant, guest house, boardinghouse, special events, school food concessions, bar or tavern, take-out establishment, fast food establishment, catering facility, temporary facility, food demonstration, commissary, pushcart, stadium concession, vending machine, bed and breakfast establishment, private school cafeteria, and hospital kitchen, and licensed health care facility, as those terms are defined herein.

(b) "Restaurant" means any coffee shop, cafeteria, short-order cafe, luncheonette, cocktail lounge, sandwich stand, soda fountain, public school cafeteria or eating establishment, in-plant or employee eating establishment, and any other eating establishment,
organization, club, including Veterans' Club, boardinghouse, bed and breakfast
establishments, guest house, caterer, which gives, sells or offers for sale, food to the public,
guests, patrons, or employees as well as kitchens or other food preparation areas in which
food is prepared on the premises for serving or consumption on or off the premises, and
requires no further preparation and also includes manufacturers of perishable food products
that prepare food on the premises for sale directly to the public. The term "restaurant" shall
not include itinerant restaurants, cooperative arrangements made by employees who
purchase food or beverages for their own consumption and where no employee is assigned
full time to care for or operate equipment used in such arrangement, or private homes; nor
shall the term "restaurant" include churches, church societies, private clubs or other nonprofit
associations of a religious, philanthropic, civic improvement, social, political, or educational
nature, which purchase food, food products, or beverages, or which receive donations of food,
food products, or beverages for service without charge to their members, or for service or sale
at a reasonable charge to their members or to the general public at occasional fundraising
events, for consumption on or off the premises at which the food, food products, or beverages
are served or sold, if the service or sale of such food, food products or beverages does not
constitute a primary purpose or function of the club or association, and if no employee or
member is assigned full-time to care for or operate equipment used in such arrangements.

(c) "Itinerant restaurant" means any restaurant, operating from temporary facility, cart
or vehicle, except those peddler wagons used for peddling as defined in Section 132(a) and
(b) of Part III of the San Francisco Municipal Code, serving, offering for sale, selling or giving
away food or beverage, and includes, but is not limited to, facility or vehicle where only
wrapped sandwiches or other wrapped and packaged, ready-to-eat foods are served, and any
mobile unit on which food is prepared and served.
(d) "Guest house" means any building or portion thereof occupied or intended, arranged, or designed for occupation by 35 or more guests where sleeping rooms and meals are provided to the guests for compensation and shall include "guest house," "residence club," "lodge," "dormitory," "residence cooperative" and any of its variants.

(e) "Boardinghouse" shall mean any building or portion thereof occupied or intended, arranged or designed for occupation by six or more but less than 35 guests where sleeping rooms and meals are provided to the guests for compensation and includes all private institutional type homes where inspection is made by the San Francisco Department of Public Health.

(f) The term "owner" or "owners" as used herein, shall mean those persons, partnerships, or corporations who are financially interested in the operation of a food preparation and service establishment.

(g) An "operator" as used herein shall mean any person engaged in the dispensing of or in assisting in the preparation of food, or a person otherwise employed in a food preparation and service establishment.

(h) "Director" as used herein, shall mean the "Director of Public Health of the City and County of San Francisco," or his or her designee, and "Inspectors" shall mean the "Inspectors of the Department of Public Health," administered by said Director. The Director shall be responsible for the administration and enforcement of Sections 451 to 456.5454, inclusive, of this Article and the rules and regulations relating thereto. The Director shall, after a public hearing, prescribe the rules and regulations relating thereto. Said rules and regulations shall be issued in pamphlet form. All such food preparation and service establishments shall be operated, conducted and maintained in accordance therewith.
(i) "Special events" means any organized collection of food purveyors operating individually or collaboratively out of approved temporary or mobile food facilities at a fixed location for a period of time not to exceed 25 days in a 90-day period in conjunction with a single, weekly, or monthly community event as defined in the California Health and Safety Code Section 113754(b).

(j) "School food concessions" means any food preparation, food service or food products intended for consumption by students attending or participating in activities within a school facility.

(k) "Bar or tavern" shall mean any food preparation and service establishment which primarily prepares and/or serves alcoholic beverages.

(l) "Take-out establishment" shall mean any food preparation and service establishment which primarily prepares food for consumption off premises.

(m) "Catering facility" shall mean any food preparation and service establishment which prepares food on a contractual basis within a fixed location for service at another location.

(n) "Temporary facility" shall mean any food preparation and service facility operating out of temporary facilities approved by the Director of Public Health at a fixed location for a period of time not to exceed 25 days in any 90-day period in conjunction with a single event or celebration.

(o) "Food demonstrations" shall mean any food preparation and/or service facility operating out of temporary facilities approved by the Director of Public Health for a period of time not to exceed seven consecutive days for purposes of demonstrating food preparation or equipment.
(p) "Commissary" shall mean any food establishment in which food, containers, equipment, or supplies are stored or handled for use in vehicles, mobile food preparation units, food carts, or vending machines.

(q) "Stadium concession" shall mean any food preparation and/or service facility operating within a stadium, arena, or auditorium with a seating capacity of 25,000 or more.

(r) "Vending machine" shall mean any self-service device, which upon insertion of money or tokens, dispenses food without the necessity of replenishing the device between each vending operation.

(s) "Private school cafeteria" shall mean any food preparation and service facility serving food to faculty and/or students of a school not operated by the San Francisco Unified School District.

(t) "Hospital kitchen" shall mean any food preparation and service facility operating within a hospital that serves food to patients, staff, or the general public, but not to patients.

(u) "Licensed Health Care Facility" shall mean all of the following health facilities with 16 or more beds designated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence, rehabilitation, and care during and after pregnancy, to which persons are admitted for a 24-hour stay or longer:

(1) General Acute Care Hospital as defined in Cal. Health and Safety Code Section 1250 (a) or any successive statutes;

(2) Acute Psychiatric Hospital as defined in Cal. Health and Safety Code Section 1250 (b) or any successive statutes;

(3) Skilled Nursing Facility as defined in Cal. Health and Safety Code Section 1250 (c) or any successive statutes;
(4) Intermediate Care Facility as defined in Cal. Health and Safety Code Section 1250 (d) or any successive statutes;

(5) Special Hospital as defined in Cal. Health and Safety Code Section 1250 (f) or any successive statutes;

(6) Intermediate Care Facility/Developmentally Disabled as defined in Cal. Health and Safety Code Section 1250 (g) or any successive statutes;

(7) Chemical Dependency Recovery Facility as defined in Cal. Health and Safety Code Section 1250.3 or any successive statutes;

Any of the facility types listed above that are operated by the State of California Departments of Mental Health, Developmental Services, Corrections, or Youth Authority are not included in this definition.

(v) "Bed and breakfast establishment" shall mean a "restricted food service facility" "transient occupancy establishment" as defined in Health and Safety Code Section 113893.

SEC. 452. PERMIT REQUIRED APPLICATIONS FOR PERMITS, ETC.

(a) It shall be unlawful to maintain or operate a food preparation and service establishment within the City and County of San Francisco without having first obtained a permit therefor issued and signed by the Department of Public Health. Any person, partnership or corporation shall, before opening or operating a food preparation and service establishment in the City and County of San Francisco, make an application for a permit in the manner and upon a form provided by the Director, giving the information and particulars required by the Director.
(b) If the applicant for any permit under this Section is a corporation or other business entity, the application shall contain the names of its principal officers and such other particulars as the Director may require.

(c) Before granting the permit the Director shall investigate the facts stated in the application and examine the premises to which the permit shall apply to assure that the applicant is or will be in compliance with the laws, rules and regulations pertaining to the proper operation of a food preparation and service establishment, including the California Retail Food Code Uniform-Retail-Food-Facilities-Law and the Health Code of the City and County of San Francisco. If the Director determines from its investigation and examination of the premises that the applicant is not in compliance with any or all of the laws, rules and regulations pertaining to the proper operation of a food preparation and service establishment prior to the issuance of a permit, the Director shall allow the applicant a reasonable time within which to comply. The applicant’s refusal or neglect to comply in a timely fashion shall be sufficient cause for the Director to deny the application.

(d) Any denial of an application for permit under this section shall be subject to an appeal to the Board of Appeals.

(e) The permit (1) shall set forth the commercial uses permitted and shall be valid \textit{as long as the annual permit fees are paid}, or until suspended or revoked; (2) shall not be transferable and shall be deemed revoked upon sale, transfer or assignment of the commercial uses for which the permit was issued; and (3) shall at all times be displayed on the premises.

(f) The permit may at any time be suspended or revoked for cause after a hearing by the Department of Public Health. Any determination of suspension or revocation of a permit for cause after a hearing shall be subject to appeal to the Board of Appeals. Upon suspension...
or revocation, the premises for which the permit was issued shall be posted with the order of
the Department.

(g) Applications for temporary permits to operate special events shall be submitted no
later than fourteen (14) calendar days prior to the commencement of the event along with the
applicable filing fees listed in Section 249.11(c) of the Business and Tax Regulations Code of
the City and County of San Francisco. If the application and/or filing fees are submitted less
than fourteen (14) calendar days prior to the commencement of the event, the applicant shall
pay an additional fifty percent (50%) of the filing fee as a late charge before the application
can be processed or approved. Applications and/or fees (including any late charges) which
are submitted seven (7) calendar days or less prior to the commencement of the event cannot
be processed.

SEC. 455. PENALTY.

Any person, firm, association, company or corporation violating any of the provisions of Sections 451
to 454, inclusive, of this Article, shall be guilty of a misdemeanor and shall be punished by a fine of not
less than $10 and not in excess of $500, or by imprisonment in the County Jail for a term not exceeding
100 days, or by both such fine and imprisonment.

SEC. 456.4. PENALTIES AND ENFORCEMENT.

A. Criminal Penalties. Any person violating any of the provisions of Section 456 et
seq., inclusive, of this Article on more than three occasions within a twelve month period, or
violating Sections 451 through 454, inclusive, shall be guilty of a misdemeanor and shall be
punished by a fine of not less than $10 and not in excess of $500, or by imprisonment in the
County Jail for a term not exceeding 100 days, or by both such fine and imprisonment.

B. Administrative Penalties. Any firm, association, company or corporation violating any
of the provisions of Section 456 et seq., inclusive, of this Article shall be subject to
administrative penalties imposed by the Director of Health. The Director may assess an
administrative penalty not exceeding fifty dollars ($50) for a first violation; not exceeding one
hundred dollars ($100) for a second violation; and not exceeding two hundred dollars ($200)
for the third and each subsequent violation of Section 456 et seq.

C. Before imposing an administrative penalty, the Director must serve upon the firm,
association, company or corporation with a notice of initial determination. The notice shall
state the proposed administrative penalty and the basis for the Director's initial determination,
including the alleged acts or failures to act that constitute a basis for the administrative
penalty. The notice shall inform the firm, association, company or corporation that it has the
right to request administrative review of the penalty within fifteen (15) days of receipt of the
notice. The notice of initial determination may also require that the establishment cease and desist
from all food preparation and service activity.

D. If no request for review of the Director's decision is filed with the Health
Department within the appropriate period, the decision shall be deemed final and shall be
effective fifteen (15) days after the notice of initial determination was served on the firm,
association, company or corporation. The Director shall issue an Order imposing an
administrative penalty and serve it upon the party served with the notice of initial
determination. Payment of any administrative penalty is due within 30 days of service of the
Director's Order. Any administrative penalty assessed and received in an action brought
under this Article shall be paid to the Treasurer of the City and County of San Francisco. The
firm, association, company or corporation against whom an administrative penalty is imposed
also shall be liable for the costs and attorney's fees incurred by the City and County of San
Francisco in bringing any civil action to enforce the provisions of this section, including
obtaining a court order requiring payment of the administrative penalty.
E. If the firm, association, company or corporation files a timely request for review of the Director's decision with the Health Department, the Director shall conduct a hearing. Within fifteen (15) days of receipt of the request, the Director shall notify the requestor of the date, time, and place of the hearing. Such hearing shall be held no later than thirty (30) days after the Director receives the request, unless time is extended by mutual agreement of the affected parties. The Director may adopt rules and regulations regarding the hearing procedures.

F. Following the hearing, the Director shall serve written notice of the Director's decision on the firm, association, company or corporation. If the Director's decision is that the firm, association, company or corporation must pay an administrative penalty, the notice of decision shall state that the recipient has ten (10) days in which to pay the penalty. Any administrative penalty assessed and received in an action brought under this Article shall be paid to the Treasurer of the City and County of San Francisco. The firm, association, company or corporation against whom an administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco in bringing any civil action to enforce the provisions of this section, including obtaining a court order requiring payment of the administrative penalty.

G. The Director of Health may appoint a designee to perform the Director's functions and responsibilities under Section 456.4.

SEC. 456.5. LIENS.

(a) All final costs, fees, and administrative penalties assessed against a person for violations of Section 451 through 456.4, inclusive, or the California Retail Food Code shall be an obligation owed to the City by the person found to have violated these sections, and the owner of the
property where the food preparation and service establishment is located, provided that both have been
given adequate notice of the alleged violation(s). Such obligation may be collected by means of the
imposition of a lien against the property of the owner of the property or the person or business against
whom the final administrative or civil penalty was assessed. The City shall mail to the owner of the
property and to the person against whom the final amount was assessed (if different from the owner of
the property) a notice of the amounts due and a warning that lien proceedings will be initiated against
the property if the amounts are not paid within 30 days after mailing of the notice.

(b) Liens shall be created and assessed in accordance with Article XX of Chapter 10 of the
San Francisco Administrative Code (commencing with Section 10.230).

SEC. 456.5. BOARD REVIEW—HEARING.
A Committee of the Board of Supervisors shall hold a hearing concerning the implementation of
Section 456 et seq. before July 1, 2005.

Section 2. The San Francisco Business and Tax Regulations Code is hereby amended by
amending Section 249.1, to read as follows

SEC. 249.1. FOOD PREPARATION AND SERVICE ESTABLISHMENTS.
Every person, firm or corporation engaged in the business of operating food
preparation and service establishments, as defined in Section 451 of the San Francisco
Health Code, that require permits from the Health Department shall pay an annual license fee
to the Tax Collector as follows:

(a) Class Fee

Class A. Food preparation and service establishments with a total square footage of:
Less than 1,000 square feet . . . $627
1,000 square feet to 2,000 square feet . . . 829
Greater than 2,000 square feet . . . 951
Class B. Bar or tavern . . . 744
Class C. Take-out establishment . . . 752
Class D. Fast food establishment . . . 852
Class E. Catering facility . . . 732
Class F. Temporary facility . . . 117
Class G. Food demonstrations . . . 105
Class H. Commissary . . . 713
Class I. Pushcart on private property . . . 594
Class J. Stadium concession . . . 504
Class K. Vending machines . . . 143
Class L. Bed and breakfast establishment . . . 806
Class M. Boarding house . . . 194
Class N. Private school cafeteria . . . 237
Class O. Hospital kitchen, with food service to the general public and staff only . . . 758

Class P. Licensed Health Care Facility . . . 1050

The license fees prescribed in this Section are due and payable on an annual basis commencing April 1, 1984. Fees for new licenses issued prior to, or after April 1st, shall be prorated on a monthly basis.

(b) Exemptions. The following establishments are exempt from paying the fees required by this Section:

(1) Food preparation and service establishments used exclusively by day care facilities for children are exempt from paying the fees required by this Section.
For the purpose of this subsection, a "day care facility for children" shall mean a "community care facility" licensed pursuant to the provisions of Chapter 3, Division 2 of the California Health and Safety Code (commencing at Section 1500) which provides nonmedical care to children in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis, or a "family day care home for children" licensed pursuant to the provisions of Chapter 3.6, Division 2 of the California Health and Safety Code (commencing at Section 1597.50).

(2) Food preparation and service establishments funded through the San Francisco Commission on Aging for nutrition projects for older individuals.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: Cecilia T. Mangoba
Deputy City Attorney
Ordinance amending San Francisco Health Code Sections 451, 452, 456.4, 456.5, deleting Health Code Section 455, and amending San Francisco Business and Tax Regulations Code Section 249.1 to include definition for licensed health care facilities, clarify the definition for hospital kitchen, update definitions to be consistent with the California Retail Food Code; add a fee for licensed health care facilities; and add lien procedures for enforcing monetary penalties.

October 7, 2008 Board of Supervisors — PASSED ON FIRST READING
Ayes: 10 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, Mirkarimi, Peskin, Sandoval
Excused: 1 - McGoldrick

October 21, 2008 Board of Supervisors — FINALLY PASSED
Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
I hereby certify that the foregoing Ordinance was FINALLY PASSED on October 21, 2008 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor Gavin Newsom

10/30/2008
Date Approved