

MEETING DATE: 09/22/2008

AGENDA ITEM: Adoption of an Ordinance Amending Chapter 9.11 of the Culver City Municipal Code Relating to Smoking Regulations to 1) Add New Regulations Prohibiting Smoking in Outdoor Dining Areas; 2) Relocate Existing Regulations Prohibiting Smoking in City Parks from Subchapter 9.10.500, et seq. to Chapter 9.11; and 3) Update Existing Regulations Contained in Chapter 9.11 to be Consistent with State Law.

ATTACHMENTS

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ORDINANCE NO. 2008-_____

AN ORDINANCE OF THE CITY OF CULVER CITY, CALIFORNIA, AMENDING CHAPTER 9.11 OF THE CULVER CITY MUNICIPAL CODE RELATING TO SMOKING REGULATIONS TO 1) ADD NEW REGULATIONS PROHIBITING SMOKING IN OUTDOOR DINING AREAS; 2) RELOCATE EXISTING REGULATIONS PROHIBITING SMOKING IN CITY PARKS FROM SUBCHAPTER 9.10.500, *et seq.* TO CHAPTER 9.11; AND 3) UPDATE EXISTING REGULATIONS CONTAINED IN CHAPTER 9.11 TO BE CONSISTENT WITH STATE LAW.

WHEREAS, the California Air Resources Board has identified environmental tobacco smoke, or secondhand smoke, as a Toxic Air Contaminant, which may cause and contribute to death or serious illness, including increased risks of cancer, and is especially hazardous to children and people with asthma and other respiratory problems; and

WHEREAS, according to the United States Environmental Protection Agency, any level of exposure to secondhand smoke is harmful; and

WHEREAS, it is the intent of the City Council of the City of Culver City to provide for the public's health, safety, and welfare by discouraging the inherently dangerous activity of tobacco use around non-consenting individuals; and

WHEREAS, the City Council hereby declares that the intent and purpose of prohibiting smoking at the locations identified in this Ordinance is to protect the public health, safety, and welfare by reducing the number of locations in the City where exposure to secondhand smoke can occur; and

WHEREAS, for organizational purposes and ease of reference for the public, the City's smoke-free parks regulations set forth in Chapter 9.10 shall be relocated to Chapter 9.11; and

WHEREAS, the City's existing general smoking regulations set forth in Chapter 9.11 are unnecessary as they are either duplicative of or in conflict with state law.

1 **NOW THEREFORE**, the City Council of the City of Culver City, California,
2 **DOES HEREBY ORDAIN** as follows:

3 **SECTION 1.** Chapter 9.11 of the Culver City Municipal Code is hereby
4 repealed and replaced with the following:

5 **CHAPTER 9.11: SMOKING REGULATIONS**

6 § 9.11.100 Purpose

7 § 9.11.105 Definitions

8 § 9.11.110 Smoking Prohibited in Outdoor Dining Areas

9 § 9.11.115 Smoking Prohibited in City Parks and Recreational Areas

10 § 9.11.120 Other Prohibitions and Requirements

11 § 9.11.125 Exemptions

12 § 9.11.130 Penalties and Enforcement

13 § 9.11.135 Conflict of Provisions

14 **§ 9.11.100 PURPOSE.**

15 It is the intent of the City Council of the City of Culver City to control
16 exposure to secondhand smoke by prohibiting smoking at certain locations, in
17 addition to those places where smoking is prohibited by state law. The California Air
18 Resources Board has identified environmental tobacco smoke, or secondhand
19 smoke, as a Toxic Air Contaminant, which may cause and contribute to death or
20 serious illness, including increased risks of cancer, and is especially hazardous to
21 children and people with asthma and other respiratory problems. The intent and
22 purpose of prohibiting smoking at the locations identified in this Chapter is to protect
23 the public health, safety, and welfare by reducing the number of locations in the City
24 where exposure to secondhand smoke can occur. The provisions of this Chapter
25 are intended to be a supplement to existing state law smoking prohibitions and
26 restrictions.

1 **§ 9.11.105 DEFINITIONS.**

2 For the purposes of this Chapter, the following definitions shall
3 apply unless the context clearly indicates or requires a different meaning.

4 **Enclosed Area** shall mean an area that is closed in by a roof and
5 walls with appropriate openings for ingress and egress.

6 **Non-enclosed Area** shall mean a predominantly outdoor area that
7 does not meet the definition of "enclosed," including, but not limited to,
8 Outdoor Dining Areas.

9 **Outdoor Bar Patio** shall mean any Non-enclosed area located on
10 private or public property utilized primarily for the serving and/or consumption
11 of alcoholic beverages, in which the serving and/or consumption of food is
12 incidental to the serving and/or consumption of such beverages , and where
13 minors are not allowed to enter and remain. Outdoor Bar Patio does not
14 include an Outdoor Dining Area, regardless of whether alcoholic beverages
15 are served and/or consumed therein.

16 **Outdoor Dining Area** shall mean any Non-enclosed area located on
17 private or public property made available to or customarily used by the
18 general public that is designed, established or regularly used for consuming
19 food and/or beverages or where food and/or beverages are served whether
20 or not for compensation. This includes but is not limited to restaurants,
21 hotels, patios, and coffee shops. This does not include Outdoor Bar Patios.

22 **Park or Recreational Area** shall mean any outdoor area, owned or
23 operated by the City of Culver City or Culver City Redevelopment Agency,
24 open to the general public for primarily recreational purposes, regardless of
25 any fee or age requirement, including, but not limited to, picnic areas,
26 playgrounds, sports or athletic fields, walking paths, gardens, hiking trails,
27 bike paths, skateboard parks and dog parks. A Park or Recreational Area
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1 shall not include the City Hall Courtyard, Town Plaza, any paved public
2 sidewalk immediately abutting the boundary of the Park or Recreational Area
3 or any parking area within the boundaries of the Park or Recreational Area.

4 **Smoking** or to **Smoke** shall mean the possession of a lighted
5 Tobacco Product, lighted Tobacco Paraphernalia, or any other lighted weed
6 or plant, including a lighted pipe, cigar, hookah pipe, or cigarette of any kind;
7 and the lighting of a Tobacco Product, Tobacco Paraphernalia, or any other
8 weed or plant, including a pipe, cigar, hookah pipe, or cigarette of any kind.

9 **Tobacco Paraphernalia** shall mean cigarette papers or wrappers,
10 pipes, holders of smoking materials of all types, cigarette rolling machines,
11 and any other item designed for the smoking, preparation, storing, or
12 consumption of Tobacco Products.

13 **Tobacco Product** shall mean:

14 A. any substance containing tobacco leaf, including but not
15 limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing
16 tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and

17 B. any product or formulation of matter containing
18 biologically active amounts of nicotine that is manufactured, sold, offered for
19 sale, or otherwise distributed with the expectation that the product or matter
20 will be introduced into the human body, but does not include any product
21 specifically approved by the United States Food and Drug Administration for
22 use in treating nicotine or tobacco dependence.

23 **§ 9.11.110 SMOKING PROHIBITED IN OUTDOOR DINING**
24 **AREAS.**

25 A. *Prohibition.* Smoking is prohibited in all Outdoor Dining Areas
26 located on private or public property, including the public right-of-way.
27 Smoking is further prohibited in all non-enclosed areas within five (5) feet of
28 any Outdoor Dining Area, except while actively passing on the way to another

1 destination. Outdoor Bar Patios are exempted from the provisions of this
2 Section, provided the smoke does not enter adjacent areas in which smoking
3 is prohibited by law or by the owner, lessee, or licensee of the adjacent
4 property.

5 B. *Posting of Signs.* Every Outdoor Dining Area subject to the
6 prohibition set forth in subsection (A) above must have one or more
7 conspicuously displayed signs stating that smoking is prohibited in the
8 Outdoor Dining Area. Such signs must have text and/or graphics to clearly
9 indicate that smoking is prohibited in the Outdoor Dining Area and include an
10 appropriate Culver City Municipal Code citation. Any text must be clearly
11 contrasted with the background and must be a minimum of one inch in
12 height. The text must state "No Smoking," "Smoke Free Area," or another
13 phrase to clearly indicate that smoking is prohibited. Any graphics must be
14 substantially similar to the international "No Smoking" symbol, consisting of a
15 pictorial representation of a burning cigarette enclosed in a red circle with a
16 red bar across it. Such signs shall be posted in a quantity and manner
17 reasonably likely to inform individuals occupying the Outdoor Dining Area that
18 smoking is prohibited within the Outdoor Dining Area and must be made of
19 permanent, weather resistant materials.

20 C. *Time of Posting.* Every business or property subject to subsection
21 (A) above shall post the signs required by this Section within thirty (30) days
22 of the effective date of this Chapter. Every business or property which
23 becomes subject to the provisions of this Chapter after its effective date shall
24 post the required signs immediately upon commencing operations.

25 **§ 9.11.115 SMOKING PROHIBITED IN CITY PARKS AND**
26 **RECREATIONAL AREAS.**

27 A. *Prohibition.* Smoking within any Park or Recreational Area is
28 Prohibited.

1 B. *Tobacco Waste.* The disposal of any Tobacco Product or
2 Tobacco Paraphernalia within any Park or Recreational Area is prohibited,
3 except in a City-designated waste receptacle, or unless being done as part of
4 a scene in a film, television or live performance production.

5 C. *Posting of Signs.* The City shall cause the installation of "No
6 Smoking" signs, with letters of no less than one inch in height and including
7 the international "No Smoking" symbol consisting of a pictorial representation
8 of a burning cigarette enclosed in a red circle crossed by a red bar. Such
9 signs shall be clearly and conspicuously posted and maintained at all main
10 entrances to a Park or Recreational Area and additional signs shall be posted
11 in a quantity and manner reasonably likely to inform individuals occupying the
12 Park or Recreational Area that smoking is prohibited within the area.

13 **§ 9.11.120 OTHER PROHIBITIONS AND REQUIREMENTS.**

14 A. Nothing in this Chapter shall be construed to prohibit Smoking
15 in any area in which Smoking is already prohibited by state or federal law
16 unless the applicable state or federal law permits additional local regulation.

17 B. Nothing in this Chapter shall be construed to grant any person
18 an affirmative right to Smoke or permit Smoking in any area in which
19 Smoking is otherwise prohibited by this Chapter or state or federal law, or
20 prohibited by a person with property rights in the no-Smoking area.

21 C. No person shall Smoke or knowingly permit Smoking in
22 an area under the person's legal or de facto control in which Smoking is
23 prohibited by this Chapter or state or federal law except a person
24 who is already compelled to act under state or federal law unless the
25 applicable state or federal law permits additional local regulation.

26 D. No person shall willfully mutilate or destroy any sign required by
27 this Chapter.
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1 E. Signs required by this Chapter are exempt from the sign
2 requirements in Chapter 17.330 of this Code.

3 F. The absence of signs required by this Chapter shall not be a
4 defense to a violation of any provision of this Chapter.

5 G. No person shall intimidate, threaten any reprisal, or effect any
6 reprisal, for the purpose of retaliating against another person who seeks to
7 attain compliance with this Chapter.

8 **§ 9.11.125 EXEMPTION.**

9 The provisions of this Chapter shall not apply to any person acting in a
10 scene of a live performance production or a film or television production, as
11 long as a Film Permit has been obtained, if required pursuant to the
12 provisions of Chapter 11.14 of this Code.

13 **§ 9.11.130 PENALTIES AND ENFORCEMENT.**

14 A. The remedies provided by this Chapter are cumulative and
15 in addition to any other remedies available at law or in equity.

16 B. A violation of this Chapter is subject to a civil action brought
17 by the City Attorney, punishable by a civil fine not less than one hundred
18 dollars (\$100) and not exceeding one thousand dollars (\$1,000) per
19 violation.

20 C. A violation of any provision of this Chapter may, in the
21 discretion of the City Attorney, be prosecuted as an infraction or
22 misdemeanor. The City Council shall, by resolution, establish the penalties
23 for a violation of this Chapter, but in no event shall such penalties exceed
24 the maximum penalties permitted under State law.

25 D. Causing, permitting, aiding, abetting, or concealing a violation of
26 any provision of this Chapter shall also constitute a violation of this
27 Chapter.
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1 E. Any violation of this Chapter is hereby declared to be a
2 public nuisance. In addition, any violation of this Chapter involving
3 Smoking is hereby declared to be a private nuisance.

4 G. Any person acting for the interests of itself, its members, or the
5 general public may bring a civil action to enforce this Chapter.

6 **§ 9.11.135 CONFLICT OF PROVISIONS.**

7 In the event of any conflict between this Chapter and any other
8 provision of this Code, this Chapter shall control.

9 **SECTION 2.** Sections 9.10.500 through and including 9.10.525 of the Culver
10 City Municipal Code are hereby repealed.

11 **SECTION 3.** Pursuant to Section 619 of the City Charter, this Ordinance
12 shall take effect thirty (30) days after the date of its adoption. Pursuant to Sections 616
13 and 621 of the City Charter, prior to the expiration of fifteen (15) days after the adoption,
14 the City Clerk shall cause this Ordinance, or a summary thereof, to be published in the
15 Culver City News and shall post this Ordinance or a summary thereof in at least three
16 places within the City.

17 **SECTION 4.** The City Council hereby declares that, if any provision, section,
18 subsection, paragraph, sentence, phrase or word of this ordinance is rendered or declared
19 invalid or unconstitutional by any final action in a court of competent jurisdiction or by
20 reason of any preemptive legislation, then the City Council would have independently

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APPROVED AND ADOPTED this _____ day of _____, 2008.

ATTEST:

APPROVED AS TO FORM:

CAROL A. SCHWAB, City Attorney