

**MEETING DATE:** 01/12/09

**AGENDA ITEM:** Adoption of a Resolution Establishing Penalties for Violations  
of Chapter 9.11, Smoking Regulations.

**ATTACHMENTS**

|                           | <u>Pages</u> |
|---------------------------|--------------|
| 1. Ordinance No. 2008-009 | 1-10         |
| 2. Proposed Resolution    | 11-12        |

## ORDINANCE NO. 2008-009

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                   **§ 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

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

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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.  
28

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.  
28



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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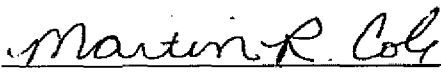
1 adopted the remaining provisions, sections, subsections, paragraphs, sentences, phrases  
2 or words of this ordinance and as such they shall remain in full force and effect.

3  
4 **APPROVED AND ADOPTED** this 22nd day of September, 2008.

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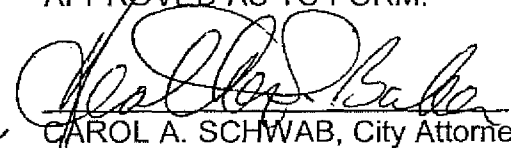
8 D. SCOTT MALSIN, Mayor  
9 City of Culver City, California

10 ATTEST:

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12 MARTIN R. COLE, City Clerk

13 APPROVED AS TO FORM:

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CAROL A. SCHWAB, City Attorney

STATE OF CALIFORNIA                    )  
COUNTY OF LOS ANGELES            )  
CITY OF CULVER CITY                )   SS

I, Ela Valladares, Deputy City Clerk of the City of Culver City, California, do hereby certify that the foregoing Ordinance No. 2008-009 was duly and regularly adopted, passed, and approved by the City Council of the City of Culver City, California, at a regular meeting of said City Council held at the regular meeting place thereof, on the 22<sup>nd</sup> day of September 2008, by the following Councilmember vote:

AYES:           Armenta, Silbiger, Weissman, Malsin  
NOES:           None  
ABSTAIN:       O'Leary  
ABSENT:        None

Dated this 23<sup>rd</sup> day of September, 2008



Ela Valladares  
Deputy City Clerk and Ex-Officio Clerk of the City Council  
City of Culver City, State of California

## RESOLUTION NO. 2009-R\_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
CULVER CITY, CALIFORNIA. ESTABLISHING PENALTIES  
FOR VIOLATIONS OF CHAPTER 9.11, SMOKING  
REGULATIONS.

WHEREAS, pursuant to Culver City Municipal Code Section 9.11.130.C, the  
City Council shall, by resolution, establish the penalties for a violation of Chapter 9.11,  
Smoking Regulations, but in no event shall such penalties exceed the maximum penalties  
permitted under State law; and

WHEREAS, on January 12, 2009, at a duly noticed public meeting, the City  
Council considered establishment of penalties for violations of Chapter 9.11, Smoking  
Regulations; and

WHEREAS, after giving the public an opportunity to be heard and  
considering all information before it, the City Council approved the adoption of said  
penalties as set forth herein below.

NOW, THEREFORE, the City Council of the City of Culver City, California,  
DOES HEREBY RESOLVE as follows:

The following penalties for violations of Chapter 9.11, Smoking  
Regulations, are hereby established:

1. A violation charged as an infraction shall be punishable by:
  - a. A fine not exceeding One Hundred Dollars (\$100.00) for  
a first violation;
  - b. A fine not exceeding Two Hundred Dollars (\$200.00) for  
a second violation of the same provision of Chapter 9.11, Smoking  
Regulations, within one year;

1 c. A fine not exceeding Five Hundred Dollars (\$500.00) for  
2 each additional violation of the same provision of Chapter 9.11, Smoking  
3 Regulations, within one year.

4 2. A violation charged as a misdemeanor shall be punishable by:

5 a. A fine not exceeding Two Hundred Fifty Dollars  
6 (\$250.00) for a first violation;

7 b. A fine not exceeding Five Hundred Dollars (\$500.00) for  
8 a second violation of the same provision of Chapter 9.11, Smoking  
9 Regulations, within one year; and

10 c. A fine not exceeding One Thousand Dollars (\$1000.00)  
11 for each additional violation of the same provision of Chapter 9.11, Smoking  
12 Regulations, within one year.

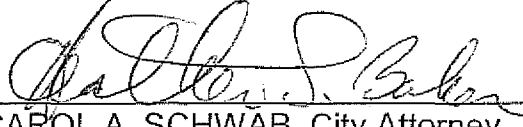
13 APPROVED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

14 D. SCOTT MALSIN, MAYOR  
15 City of Culver City, California

16 ATTEST:

17 APPROVED AS TO FORM:

18 MARTIN R. COLE, City Clerk

19   
20 CAROL A. SCHWAB, City Attorney  
21 for