

MEETING DATE:

December 10, 2007

AGENDA ITEM:

Discussion of Smoking Prohibition Options and Consideration to Direct Staff to Begin the Process to Evaluate the Expansion of Specified Smoke Free Areas if Desired.

ATTACHMENTS

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Attachment 1

City of Culver City

CHAPTER 9.11: SMOKING REGULATIONS

Section

- 9.11.005 Definitions
- 9.11.010 City-owned facilities
- 9.11.015 Prohibition of smoking in public places
- 9.11.020 Regulation of smoking in places of employment
- 9.11.025 Optional smoking areas
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- 9.11.035 Air circulation in smoking restaurants
- 9.11.040 Certification for smoking restaurants
- 9.11.045 Designation as nonsmoking restaurant
- 9.11.050 Fees for smoking restaurants
- 9.11.055 Register of complaint; notice of provisions
- 9.11.060 Violations; penalties
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- 9.11.075 Public education
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§ 9.11.005 DEFINITIONS.

The following words and phrases, whenever used in this Chapter, shall be construed as hereafter set out, unless it is apparent from the context they have a different meaning:

BAR. An area which is devoted primarily to the serving of alcoholic beverages and in which the serving of food is only incidental to the consumption of such beverages. "Incidental" shall mean the serving of hors d'oeuvres and snacks, but not including meals.

EMPLOYEE. Any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

EMPLOYER. Any person, partnership, corporation, including a municipal corporation or public entity, who has more than three (3) employees.

ENCLOSED. Closed in by a roof and four (4) walls with appropriate openings for ingress and egress.

NON-PROFIT ENTITY. Any corporation, unincorporated association or other entity created for charitable, philanthropic, educational or other similar purposes, the net proceeds from the operation of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain.

PLACE OF EMPLOYMENT. Any enclosed area under control of an employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges, conference rooms and employee cafeterias. A private residence is not a place of employment.

PUBLIC PLACE. Any area to which the public is generally invited or in which the public is generally permitted.

RESTAURANT. Any publicly or privately owned coffee shop, cafeteria, short order cafe, luncheonette, sandwich shop, soda fountain, or other eating establishment which gives or offers for sale food to the public, guests, patrons or employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except the term **RESTAURANT** shall not include any area within the facility containing the restaurant if such area is non-contiguous to the eating area and otherwise meets the definition of **BAR** as set forth in Subsection A. above.

RESTAURANT, NONSMOKING. Any restaurant with a seating capacity of twenty-five (25) or more persons throughout which the owner, operator or manager who controls the restaurant has elected to prohibit smoking, or a restaurant with a seating capacity of fewer than twenty-five (25) persons.

RESTAURANT, SMOKING. Any restaurant with a seating capacity of twenty-five (25) or more persons in which the owner, operator or manager who controls the restaurant has elected to permit smoking.

SERVICE LINES. Any indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money or other consideration.

SMOKING. The inhaling, exhaling, burning or carrying of any lighted pipe, cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.

('65 Code, § 27-1) (Ord. No. 87-022 § 2; Ord. No. 91-004 § 1)

§ 9.11.010 CITY-OWNED FACILITIES.

To the extent allowed by law, all enclosed facilities owned by the City of Culver City shall be subject to the provisions of this Chapter.

('65 Code, § 27-2) (Ord. No. 87-022 § 2)

§ 9.11.015 PROHIBITION OF SMOKING IN PUBLIC PLACES.

Smoking shall be prohibited in all enclosed public places within the City of Culver City during any time they are open for use by members of the public, including, but not limited to, the following places:

- A. Passenger elevators;
- B. Buses, taxicabs and other means of public transit under the authority of the City of Culver City, and ticket, boarding, and waiting areas of public transit depots; provided, however, this prohibition does not prevent:
 - 1. The establishment of two (2) separate waiting areas for smokers and nonsmokers; or
 - 2. The establishment of a maximum of fifty percent (50%) of a single given waiting area as a smoking area.
- C. Restrooms;
- D. Service lines;
- E. Retail stores, except areas not open to the public and all areas within a retail store the primary purpose of which is to sell tobacco products;

F. All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including but not limited to all offices, banks, hotels and motels;

G. Waiting rooms, hallways, wards, and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists offices, except that health facilities shall also be subject to the provisions of § 9.11.020 regulating smoking in places of employment;

H. A building or hall used for entertainment, including theater, auditorium and sports arena, except any lobby and any area which is not open to the public;

I. In any enclosed theater, auditorium and/or hall which is used for motion pictures, stage dramas and musical performances, ballets or other exhibition, except when smoking is part of such production;

J. Retail food marketing establishments, including grocery stores and supermarkets, except those areas of such establishments set aside for the serving of food and drink, restrooms and offices and areas thereof not open to the public, which may otherwise be regulated by other sections of this Chapter;

K. Public schools and other public facilities under the control of another public agency, which are available to and customarily used by the general public, to the extent that the same are subject to the jurisdiction of the City of Culver City;

L. Any restaurant; provided that any owner, operator or manager of a restaurant regulated by this Chapter shall, by signs, designate no more than thirty-four percent (34%) of the total eating area seating capacity as a smoking area.

M. Any non-smoking restaurant.

('65 Code, § 27-3) (Ord. No. 87-022 § 2; Ord. No. 90-032 § 1; Ord. No. 91-004 §§ 2, 3)

§ 9.11.020 REGULATION OF SMOKING IN PLACES OF EMPLOYMENT.

A. It shall be the responsibility of employers to provide smoke free areas for nonsmokers within existing facilities to the maximum extent possible, but employers are not required to incur any expense to make structural or other physical modifications in providing these areas.

B. Within ninety (90) days of the effective date of this Chapter, each employer and each place of employment located within the City of Culver City shall adopt, implement and make known and maintain a written smoking policy which shall contain at a minimum the following requirements:

1. Prohibition of smoking within any employee's immediate work area if requested by the employee and designated by signs provided by the employer; provided that, the employer may reasonably define the "immediate work area."

2. Prohibition of smoking in conference and meeting rooms, classrooms, auditoriums, restrooms, medical facilities, hallways and elevators.

3. An annual poll of all employees shall be conducted to determine the percentage of smokers and nonsmokers. The employer shall then establish smoking and nonsmoking areas within lunchrooms, cafeterias and employee lounges in proportion to these percentages. In lieu of conducting such a poll, an employer may establish nonsmoking areas of not less than fifty percent (50%) of the seating capacity and floor space in lunch rooms, cafeterias and employee lounges.

4. In any dispute arising under the smoking policy, the health concerns of the nonsmoker shall be given precedence.

C. The smoking policy shall be communicated to all employees within three (3) weeks of its adoption and at least annually thereafter.

D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

E. Notwithstanding any other provision of this Section, every employer shall have the right to prohibit smoking in all areas of the place of employment.

('65 Code, § 27-4) (Ord. No. 87-022 § 2)

§ 9.11.025 OPTIONAL SMOKING AREAS.

A. Notwithstanding any other provisions of this Chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this Chapter:

1. Private residences, except when used as a child care or health care facility;
2. Bars;
3. Hotel rooms and motel rooms rented to guests;
4. Retail stores the primary purpose of which is to sell tobacco products;
5. Restaurant, hotel and motel conference and meeting rooms and public and private assembly rooms while these places are being used for private functions open only to invitees or members of the organization and their guests;

6. A private enclosed office workplace occupied exclusively by smokers, even though such an office workplace may be visited by non-smokers. Nothing contained herein shall permit smoking where it is otherwise prohibited by other applicable laws;

B. Notwithstanding any other provision of this Section, any owner, operator, manager, or other person who controls any establishment described in this Section may prohibit smoking in all areas of the establishment.

('65 Code, § 27-5) (Ord. No. 87-022 § 2; Ord. No. 90-032 § 2)

§ 9.11.030 POSTING REQUIREMENTS.

A. Every owner, operator, manager or person having control of a building or place where smoking is regulated by this Chapter shall clearly and conspicuously post or cause to be posted in every such building or place "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than three (3) inches in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

B. Every theater owner, manager or operator subject to this Chapter shall clearly and conspicuously post or cause to be posted signs in the lobby stating smoking is prohibited within the theater or auditorium, and in the case of motion picture theaters, such information shall be shown on the screen for at least five (5) seconds prior to the showing of each feature motion picture.

C. Every restaurant subject to this Chapter shall have, at its entrance or in its reception area, signs designating smoking and nonsmoking areas which clearly direct patrons to the correct area of the restaurant. In any restaurant where smoking is entirely prohibited, there shall be a sign to that effect at its entrance or reception area.

('65 Code, § 27-6) (Ord. No. 87-022 § 2)

§ 9.11.035 AIR CIRCULATION IN SMOKING RESTAURANTS.

A. The City Council shall, by resolution, establish standards applicable to smoking restaurants which are required, pursuant to § 9.11.015 L., to designate no more than thirty-four percent (34%) of the total eating area capacity as a smoking area. These standards shall provide for segregation of the smoking and nonsmoking air streams or for removal of smoke and its products from the atmosphere prior to recirculation into a nonsmoking area.

B. Prior to issuance of a building permit for construction of a new or significant remodelling or repair of an existing restaurant with a seating capacity of twenty-five (25) or more persons, the Building Official shall determine whether the restaurant is a smoking restaurant or a nonsmoking restaurant. As used herein, the remodelling or repair is "significant" if the value of work, as determined by the City, is at least One Hundred Thousand Dollars (\$100,000.00).

C. The Building Official shall not issue a building permit for a smoking restaurant unless the restaurant shall contain either dual fresh air circulation, or ventilation systems with negative pressure in smoking areas, or floor-to-ceiling physical barriers segregating “smoking” and “nonsmoking” areas, or an alternate system reviewed and approved by the Building Official; provided that the means which are chosen to separate smoke-free air from air which contains tobacco smoke must meet or exceed the standards.

('65 Code, § 27-6.1) (Ord. No. 91-004 § 4)

§ 9.11.040 CERTIFICATION FOR SMOKING RESTAURANTS.

A. No Certificate of Occupancy for a newly constructed smoking restaurant shall be issued until the Building Official has tested and approved the installation of the air circulation system.

B. Whenever a building permit is issued for an existing restaurant to be significantly remodelled as defined in this Chapter, the Building Official shall revoke the Certificate of Occupancy for such restaurant and concurrently issue a temporary Certificate of Occupancy for the period of construction, and issue a new Certificate of Occupancy for the remodelled smoking restaurant only after the Building Official has approved and tested the installation of the air circulation system.

C. No application for business tax certificate for a smoking restaurant shall be considered complete unless the Building Official approves, after review and testing of the ventilation systems required by the standards, the issuance of such business tax certificate.

D. The owner, operator or manager of a smoking restaurant shall be required to submit to the Building Official annually a certified report of a licensed contractor stating that the ventilation systems are in proper operating order.

E. The application for renewal of a business tax certificate shall not be complete until a copy of the certified report, in compliance with Subsection D., has been submitted to the Tax Collector.

('65 Code, § 27-6.2) (Ord. No. 91-004 § 5)

§ 9.11.045 DESIGNATION AS NONSMOKING RESTAURANT.

A. If the owner, operator or manager of a restaurant with a seating capacity of twenty-five (25) or more persons and the land owner elect to prohibit smoking throughout the restaurant, and execute land-use restriction(s) so to prohibit smoking throughout the restaurant in a form approved by the City Attorney and recorded with the County Recorder, the Building Official shall issue a building permit for the proposed new construction or significant remodelling without certifying that the air circulation, filtration, ventilation or other systems meet the special standards adopted by resolution of the City Council to implement these §§ 9.11.035 through 9.11.050.

B. The Building Official shall not issue a Certificate of Occupancy for a nonsmoking restaurant until the land use restriction required by Subsection A. has been recorded, and no application for a business tax certificate for a nonsmoking restaurant shall be considered complete until the Building Official has issued the Certificate of Occupancy.

C. If the owner, operator or manager of the restaurant and the property owner elect to permit smoking in a restaurant previously designated as nonsmoking pursuant to Subsection A., the restaurant shall be made to conform to the provisions of § 9.11.040 prior to the change of use.

D. No Certificate of Occupancy for a smoking restaurant shall be issued unless and until the Building Official has certified that the restaurant has installed and tested a system which meets or exceeds the standards.

E. The Building Official shall cause to be recorded a release of the land use restrictions in a form approved by the City Attorney as soon as practicable after the Certificate of Occupancy for the smoking restaurant has been issued.

('65 Code, § 27-6.3) (Ord. No. 91-004 § 6)

§ 9.11.050 FEES FOR SMOKING RESTAURANTS.

The City Council shall, by resolution, establish fees to be paid to the Building Department to cover the cost of inspections and testing of air segregation systems.

('65 Code, § 27-6.4) (Ord. No. 91-004 § 7)

§ 9.11.055 REGISTER OF COMPLAINT; NOTICE OF PROVISIONS.

A. Any person who desires to register a complaint under this Chapter may do so with the Parks, Recreation and Community Services Department.120

B. Any owner, manager, operator or employee of any establishment regulated by this Chapter may inform persons violating this Chapter of the appropriate provisions thereof.

('65 Code, § 27-17) (Ord. No. 87-022 § 2; Ord. No. 2002-005 § 1 (part))

§ 9.11.060 VIOLATIONS; PENALTIES.

A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Chapter to fail to comply with any of its provisions. The owner, manager or operator of a restaurant shall not be deemed in violation of § 9.11.030 if the host or hostess of the restaurant fails to ask the seating preference of patrons, but

shall be deemed in violation thereof if the restaurant has no stated policy requiring patrons be asked their preference.

B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Chapter.

C. Any person who violates any provision of this Chapter shall be guilty of an infraction, punishable by:

1. A fine not exceeding One Hundred Dollars (\$100.00) for the first violation;
2. A fine not exceeding Two Hundred Dollars (\$200.00) for a second violation of this Chapter within one year;
3. A fine not exceeding Five Hundred Dollars (\$500.00) for each additional violation of this Chapter within one year.

('65 Code, § 27-8) (Ord. No. 87-022 § 2; Ord. No. 90-032 § 3)

§ 9.11.065 NON-RETALIATION.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this Chapter.

('65 Code, § 27-9) (Ord. No. 87-022 § 2)

§ 9.11.070 EXEMPTIONS AND MODIFICATIONS.

A. Any owner, operator or manager of a business or other establishment subject to this Chapter may apply to the City of Culver City for an exemption or modification to any provision of this Chapter due to financial impracticability, based on the cost of complying with the requirements of this Chapter.

B. Such exemption shall be granted only upon a finding, from the evidence presented by the applicant for exemption at a public hearing before the Parks and Recreation Commission, that it is financially impracticable for the applicant to comply with the requirements of this Chapter, based upon the actual costs to be incurred in order to make physical modifications to a facility.

C. The applicant for an exemption shall be required to pay a reasonable fee to cover the costs of the hearing. Said fee shall be established by the City Council by resolution. Notice of the time and place of said hearing shall be mailed to the applicant and published in a newspaper of general circulation within the City of Culver City not less than ten (10) days prior to said hearing.

D. The Parks and Recreation Commission shall be empowered to grant such an exemption.

E. Any decision regarding exemptions by the Parks and Recreation Commission shall be appealable to the City Council by any interested person, within fifteen (15) days of the date of the decision. The appellant shall be required to pay a reasonable fee to cover the costs of the appeal. The fee shall be established by the City Council by resolution.

('65 Code, § 27-10) (Ord. No. 87-022 § 2; Ord. No. 2002-005 § 3 (part))

§ 9.11.075 PUBLIC EDUCATION.

The Parks, Recreation and Community Services Department shall leave the responsibility of conducting a public education campaign regarding the health consequences of smoking to other governmental and health agencies equipped to conduct such campaigns.

('65 Code, § 27-11) (Ord. No. 87-022 § 2; Ord. No. 2002-005 § 1 (part))

§ 9.11.080 GOVERNMENTAL AGENCY COOPERATION.

The City Manager shall annually request other governmental and educational agencies having facilities within the City of Culver City to establish local operating procedures in cooperation and compliance with this Chapter.

('65 Code, § 27-12) (Ord. No. 87-022 § 2; Ord. No. 2006-009 § 22 (part))

§ 9.11.085 OTHER APPLICABLE LAWS.

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

('65 Code, § 27-13) (Ord. No. 87-022 § 2)

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Attachment 2

City of Beverly Hills

ORDINANCE

07-O-2518

PROHIBITING SMOKING IN OPEN AIR DINING AREAS

Disclaimer:

This is provided for informational purposes only. The formatting of this ordinance may vary from the official hard copy. In the case of any discrepancy between this ordinance and the official hard copy, the official hard copy will prevail.

AN ORDINANCE OF THE CITY OF BEVERLY HILLS PROHIBITING SMOKING IN OPEN AIR DINING AREAS AND AMENDING THE BEVERLY HILLS MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS DOES HEREBY ORDAIN AS FOLLOWS:

Section 1 .Findings and Intent

The City Council finds, determines and declares that:

- A. Tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs; and
- B. The World Health Organization estimates that by 2030, tobacco will account for 10 million deaths per year, making it the greatest cause of death worldwide; and
- C. Secondhand smoke is responsible for an estimated 38,000 deaths among non-smokers each year in the United States, which includes 3,000 lung cancer deaths and 35,000 deaths due to heart disease; and
- D. 84% of Californians are non-smokers; and
- E. State law prohibits smoking in virtually all indoor places of employment reflecting the state policy to protect against the dangers of exposure to secondhand smoke; and
- F. It is the intent of the City Council of the City of Beverly Hills in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the behavior of smoking around non-tobacco users in open air dining areas.

Section 2 .Section 5-4-1 of Chapter 4 of Title 5 of the Beverly Hills Municipal Code is hereby amended to read as follows:

“5-4-1: Definitions.

“ENCLOSED: Closed in by a roof and walls with appropriate openings for ingress and egress.

HOTEL: Hotel shall have the same definition as that set forth in Chapter 3 of Title 10 of this Code.

NON-ENCLOSED: A predominately outdoor area that does not meet the definition of "enclosed," including but not limited to open air dining areas.

OPEN AIR DINING AREA: An open air dining area means any non-enclosed 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 and/or beverages are served whether or not for compensation. This includes but is not limited to restaurants, hotels, bar standing and seating areas, patios, and coffee shops. An open air dining area does not include open air dining areas that are immediately adjacent to and accessory to a private smokers lounge, as that term is defined in Labor Code Section 6405.5 or its successor statute.

SMOKE OR SMOKING: The carrying or holding of a lighted pipe, cigar, cigarette, or other kind of smoking equipment, or the lighting or the emitting or exhaling of the smoke of a pipe, cigar, cigarette or other kind of smoking equipment. Smoke also means the gaseous products and particles created by the use of a lighted pipe, cigar, cigarette, or other kind of smoking equipment."

Section 3 .Sections 5-4-2, 5-4-3, 5-4-4, 5-4-5 and 5-4-6 of Chapter 4 of Title 5 of the Beverly Hills Municipal Code are hereby repealed in their entirety.

Section 4 .A new Section 5-4-2 is hereby added to Chapter 4 of Title 5 of the Beverly Hills Municipal to read as follows:

"5-4-2: Smoking in Open Air Dining Areas Prohibited.

Smoking is prohibited in all open air dining areas located on private or public property, including the public right-of-way. In addition, smoking is prohibited within five feet of an open air dining area, except while actively passing on the way to another destination. Notwithstanding this prohibition, smoking shall be allowed in up to 25% of contiguous deck space surrounding hotel swimming pools."

Section 5 .A new Section 5-4-3 is hereby added to Chapter 4 of Title 5 of the Beverly Hills Municipal Code to read as follows:

"5-4-3: Posting or Placing of Signs:

Any business with an area subject to the prohibition set forth in section 5-4-7 of this chapter shall post or cause to be posted and shall maintain "no smoking" signs in conspicuous locations within said area. All such signs shall be prominently displayed, shall clearly recite the phrase "no smoking" and/or use the international no smoking symbol and shall cite section 5-4-7 of this chapter. Such signs shall be posted not less than five feet (5') nor more than eight feet (8') above floor level and shall be of sufficient

number and location to cause the message of the signs to be clearly visible and readable and must be made of permanent, weather-resistant materials. No person shall willfully mutilate or destroy any sign required by this section. Signs required under this Section are exempt from the sign requirements in Chapter 4 of Title 10 of this Code."

Section 6 .A new Section 5-4-4 is hereby added to the Chapter 4 of Title 5 of the Beverly Hills Municipal Code to read as follows:

"5-4-4: Rights and Obligations of Owners, Operators and Employers:

- A. A. Any person who owns, operates, manages, or controls any business regulated by this chapter may designate the entire business as a no smoking area.
- B. B. The provisions of this chapter shall not be construed to require the owner, operator or manager of any existing business to make any structural or other physical alterations, modifications, or improvements to such business, other than the posting or placing of signs required by section 5-4-3 of this chapter."

Section 7 .A new Section 5-4-5 is hereby added to Chapter 4 of Title 5 of the Beverly Hills Municipal Code to read as follows:

"5-4-5: Prohibition of Cigarette Vending Machines:

Unless otherwise prohibited by state or federal law, no person shall install, place, operate, or maintain within the city any cigarette vending machine. "Cigarette vending machine" shall mean any self-service device which, upon insertion of money or tokens, dispenses cigarettes without the necessity of replenishing the device between each vending operation."

Section 8 .A new section 5-4-6 is hereby added to Chapter 4 of Title 5 of the Beverly Hills Municipal Code to read as follows:

"5-4-6: Penalties and Enforcement.

- A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the regulation under this chapter to fail to comply with its provisions.
- B. It is unlawful for any person to smoke in any area restricted by the provisions of this chapter.
- C. Any person who violates any provision of this chapter shall be guilty of an infraction.
- D. The City prosecutor, any peace officer or city code enforcement officer shall have the authority to enforce the provisions of this chapter.
- E. Punishment under this chapter shall not preclude punishment pursuant to any provision of law pertaining to smoking or littering. Nothing in this chapter precludes any person from seeking any other remedies, penalties or procedures

provided by law. The remedies provided in this Section are cumulative and in addition to any other remedies available at law or in equity."

Section 9. Environmental Compliance The City Council hereby finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") in its entirety pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant adverse effect on the environment. The Ordinance will have no adverse environmental effects because it will reduce the public's exposure to the harmful effects of second-hand smoke.

Section 10. Construction The City Council intends this Ordinance to supplement, not to duplicate or contradict applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section 11. Severability If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, or invalid, or ineffective.

Section 12. Publication . The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code; shall attest and certify to the adoption of this Ordinance and shall cause this Ordinance and the City Clerk's certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 13. Effective Date . This Ordinance shall go into effect on October 1, 2007. This ordinance shall automatically be suspended until reinstated by the Council if staff fails to submit an evaluation and the Council fails to start the public hearing process by May 31, 2008 unless the Council votes at a public meeting to delay the suspension.

Section 14. Evaluation Period . It is the intent of the City Council that an evaluation of this ordinance be conducted by City Staff. The City Council hereby directs City Staff to: (i) collect data of the Ordinance's impacts (if any) during the months of October, November and December; (ii) provide a report to the City Council at a public meeting no later than May 31, 2008 regarding such data; and (iii) hold a public hearing (which may be conducted in conjunction with the City Council report set forth in (ii)) to allow the public to provide its input in this Ordinance.

Adopted: June 19, 2007

Effective: October 1, 2007

JIMMY DELSHAD
Mayor of the City of Beverly Hills, California

(SEAL)

BYRON POPE
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

RODERICK J. WOOD
City Manager

Attachment 3

Burbank

Eff. 5/12/07

902

ORDINANCE NO. 3717

AN ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK AMENDING ARTICLE 7 OF CHAPTER 17 OF THE BURBANK MUNICIPAL CODE TO CONTROL EXPOSURE TO SECONDHAND SMOKE BY PROHIBITING SMOKING AT CERTAIN LOCATIONS THROUGHOUT THE CITY.

City Attorney's Synopsis

This Ordinance controls exposure of non-smokers to secondhand smoke in places where they would otherwise typically be exposed to secondhand smoke by prohibiting smoking at certain locations throughout the City of Burbank. Except for within designated smoking areas, this Ordinance generally prohibits smoking at all City facilities and parks; sidewalks, paseos and pedestrian paths in Downtown Burbank; the Chandler Bikeway; outdoor dining areas; outdoor service areas; City transit vehicles and stations; outdoor gathering and event areas; outdoor shopping areas and centers; elevators; within 20 feet of entrances, exits and other openings of buildings while open to the general public; and enclosed common areas in residential developments. Every business or property subject to this Ordinance shall post required signs within 30 days of the Ordinance effective date.

THE COUNCIL OF THE CITY OF BURBANK FINDS:

A. Secondhand smoke, also known as Environmental Tobacco Smoke or ETS, is a complex mixture of thousands of gases and fine particles that is emitted from the burning and use of tobacco products such as cigarettes, cigars, and pipes. Exposure by non-smokers to secondhand smoke is sometimes referred to as "passive smoking" or "involuntary smoking" because non-smokers generally do not want to inhale secondhand smoke.

B. Secondhand smoke contains over 4,000 gases and fine particles. Many of these substances have been individually identified as toxic air pollutants and/or have known adverse health effects; more than 50 have been identified as carcinogens.

C. In 1993, the United States Environmental Protection Agency (EPA) classified secondhand smoke as a Group A carcinogen, meaning that there is sufficient evidence that secondhand smoke causes cancer in humans. The EPA concluded that secondhand smoke causes lung cancer in adult non-smokers and affects the respiratory health of children.

D. In 2000, the National Toxicology Program of the National Institutes of Health added secondhand smoke to the list of "known human carcinogens," meaning that there is sufficient evidence of carcinogenicity from studies in humans to indicate a causal relationship between exposure to secondhand smoke and human cancer.

E. In January 2006, the California Air Resources Board identified secondhand smoke as a toxic air contaminant pursuant to the California Health and Safety Code, meaning that secondhand smoke is identified as "an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health."

C: M. Forbes -- Planning, J. Wilson -- Publish, I. Cabil -- Code

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F. In June 2006, secondhand smoke was added to the list of Chemicals Known to the State of California to Cause Reproductive Toxicity pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

G. While studies of secondhand smoke have traditionally focused on smoke in indoor environments, recent studies have shown that secondhand smoke levels in outdoor environments are, under certain circumstances, comparable to indoor levels:

- A 2005 report by the California Environmental Protection Agency found that at certain outdoor locations, people may be exposed to secondhand smoke levels generally associated with indoor concentrations, depending upon the number of smokers, position of smokers in relation to non-smokers, and meteorological conditions.
- A 2004 pilot study by researchers at Stanford University found that average concentrations of secondhand smoke in outdoor areas including patios, parks, and public sidewalks can be the same as average concentrations in indoor areas under certain circumstances, depending upon the distance from the smoke source and wind factors.
- A 2005 report on experiments conducted to measure outdoor secondhand smoke concentrations on a college campus in Maryland found that outdoor concentrations of secondhand smoke could be unhealthy and could be sufficient to trigger an asthma attack in sensitive individuals. The report concluded that the results of the experiments "dispel the common misconception that smoking outdoors can be ignored because smoke plumes immediately dissipate into the environment."

H. The California Environmental Protection Agency has concluded that there is not sufficient available scientific evidence to support the identification of a threshold exposure level to secondhand smoke below which no adverse health effects would be expected. The United States Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke.

I. The aesthetic impacts and odors of secondhand smoke pose a nuisance and annoyance to non-smokers when in close proximity to people who are smoking.

J. Cigarette and cigar butts and used matches dropped onto the ground in public spaces degrade the aesthetic quality of those spaces.

K. The City of Burbank is committed to keeping its public spaces safe, healthy, and pleasant for everyone.

L. Smoking in City facilities and parks; pedestrian areas of Downtown Burbank; the Chandler Bikeway; outdoor dining areas; outdoor service areas; public transit vehicles, stations, and stops; outdoor gathering and event areas, outdoor shopping areas and centers; elevators; indoor and outdoor common areas of multiple family residential projects; and in proximity to entrances, windows, and vents of buildings open to the public endangers the health of non-smokers who are in the same area.

M. Prohibiting smoking in City facilities and parks; pedestrian areas of Downtown Burbank; the Chandler Bikeway; outdoor dining areas; outdoor service areas; public transit vehicles, stations, and stops; outdoor gathering and event areas, outdoor shopping areas and centers; elevators; indoor and outdoor common areas of multiple family residential projects; and in proximity to entrances, windows, and vents of buildings open to the public is necessary to protect the public health, safety, and welfare of Burbank residents, workers, and visitors.

N. The City Council finds the smoking regulations are exempt from review under the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because there is no possibility that the proposed regulations, which merely prohibits smoking in certain areas throughout the City to control exposure of non-smokers to secondhand smoke in places where they would otherwise typically be exposed to secondhand smoke, may have a significant adverse effect upon the environment. The City Council further finds the proposed ordinance is not considered a "project" under CEQA per Section 15378 and is also exempt under Section 15060(c)(2) of the State CEQA Guidelines because the ordinance is not an activity that would result in a direct or reasonably foreseeable indirect physical change in the environment. The proposed ordinance would prohibit the act of smoking in certain locations and would not cause or require any physical environmental changes. The proposed ordinance would reduce exposure of non-smokers to secondhand smoke.

THE COUNCIL OF THE CITY OF BURBANK ORDAINS:

1. Article 7 of Chapter 17 of the Burbank Municipal Code and Sections 17-701 through 17-707 are hereby amended in their entirety to read as follows:

ARTICLE 7. SECONDHAND SMOKE CONTROL.

Sec. 17-701. Intent and Purpose.

This Article controls exposure to secondhand smoke by prohibiting smoking at certain locations. Exposure to secondhand smoke has been proven to cause adverse health effects including but not limited to cancer, cardiovascular disease, respiratory infections, asthma, and ear and nasal problems. The intent and purpose of prohibiting smoking at the identified locations is to protect the public health, safety, and welfare by reducing the number of locations in Burbank where exposure to secondhand smoke can occur.

Sec. 17-702. Definitions.

The following words and phrases have the meanings stated for the purposes of this Article:

"Enclosed" means a predominantly indoor area covered with a fixed structural roof and generally closed off from the outside.

"Non-enclosed" means a predominantly outdoor area that does not meet the definition of "enclosed," including but not limited to patios, outdoor dining areas, and outdoor service areas.

"Smoking" means the burning, carrying, or holding of any lighted cigar, cigarette, pipe, weed, plant, or other equipment or combustible substance that is intended to be inhaled and/or exhaled. Smoking includes emitting or exhaling the fumes from any equipment or substance listed herein. Without limiting the foregoing, this definition is not intended to include the burning of incense, candles, and other similar materials.

Sec. 17-703. Locations Where Smoking is Prohibited.

A. **City facilities and parks.** Smoking is prohibited in all enclosed and non-enclosed areas of any facility owned, leased, or operated by the City of Burbank and accessible to the general public as determined by the property lines of such facility, except for 1) within smoking areas designated pursuant to Section 17-705; 2) certain areas of the DeBell Golf Course as

provided in Subsection 3; and 3) public transit facilities, which are addressed separately in Subsection F.

1. Such facilities include but are not limited to City Hall, City offices, parks, recreation facilities, playgrounds, senior centers, meeting or conference facilities, libraries, theaters and amphitheaters, child care facilities, recycling centers, and joint-use facilities owned by the Burbank Unified School District but open to the general public for recreation purposes.
2. Such facilities also include City facilities that are not typically accessible to the general public during such time that they may be accessed by the public, for example during an open house or other community event at a City yard or utility facility.
3. Smoking is not prohibited at the DeBell Golf Course 18-hole course or nine-hole "Par 3" course. However, smoking is prohibited at the DeBell Golf Course driving range, in dining areas and service areas at DeBell Golf Course as provided in Subsections D and E, and within 20 feet of any building opening as provided in Subsection J.

Smoking is further prohibited on all sidewalks and public rights-of-way within 20 feet of the property lines of any City facility identified in this Subsection A.

- B. **Downtown Burbank.** Smoking is prohibited on all non-enclosed sidewalks, paseos, and other pedestrian areas in Downtown Burbank accessible to the general public, except within smoking areas designated pursuant to Section 17-705.

1. For the purposes of this Section, Downtown Burbank means the area bounded by Angeleno Avenue, Third Street, Magnolia Boulevard, and First Street; and the area commonly known as the Burbank Town Center and bounded by Magnolia Boulevard, Third Street, Burbank Boulevard, and the Golden State Freeway.
2. This prohibition applies to the sidewalks along public and private streets within and around the perimeter of the area defined in Subsection 1, pedestrian alleys, pedestrian paseos and plazas including but not limited to the paseo along the former Palm Avenue between First Street and San Fernando Boulevard, walkways providing access from parking lots and structures to stores or sidewalks, and all other pedestrian paths or areas that are accessible to the general public.

Smoking is further prohibited in all non-enclosed areas within five (5) feet of any pedestrian path or area identified in this Subsection B.

- C. **Chandler Bikeway.** Smoking is prohibited on the Chandler Bikeway. For the purposes of this Section, the Chandler Bikeway means the entire area between the curbs of the median of Chandler Boulevard between Mariposa Street and the City boundary with the City of Los Angeles, including the paved bicycle and pedestrian paths and landscaped areas. Smoking is further prohibited on all sidewalks and public rights-of-way within 20 feet of the Chandler Bikeway.
- D. **Outdoor dining areas.** Smoking is prohibited in all outdoor dining areas open to the public except within smoking areas designated pursuant to Section 17-705. For the purposes of this Section, outdoor dining area means any non-enclosed area open to the public in a non-residential zone or adjacent right-of-way, or in a residential zone or adjacent right-of-way and utilized for non-residential purposes, where food or beverages are served, whether or not for

compensation, or where food or beverages are routinely consumed by customers. This includes but is not limited to restaurant and bar standing and seating areas and patios. Smoking is further prohibited in all non-enclosed areas within five (5) feet of any outdoor dining area.

- E. **Outdoor service areas.** Smoking is prohibited in outdoor service areas. For the purposes of this Section, outdoor service area means any non-enclosed area where one or more persons wait for or receive goods or services of any kind, whether or not such service involves the exchange of money. This includes but is not limited to lines or waiting areas for ATM machines, information kiosks, banks, restaurants and other food service, tickets, and admission to a theater or event; waiting areas at car washes and vehicle service establishments; and valet parking pick-up areas. Smoking is further prohibited in all non-enclosed areas within 20 feet of any outdoor service area.
- F. **City transit vehicles and stations.** Smoking is prohibited in all city transit vehicles and at all city transit stations, except within smoking areas designated pursuant to Section 17-705.
1. For the purposes of this Section, city transit vehicles include all buses, shuttles, and similar transit vehicles owned or operated by the City of Burbank or its contractors on behalf of the City.
 2. For the purposes of this Section, city transit stations means all City-owned enclosed and non-enclosed multi-modal platforms, sidewalks, shelters, benches, and areas where people wait for trains, buses, taxis, or other public transit, and ancillary areas such as restrooms, vending machine or kiosk areas, bicycle parking areas, and pedestrian paths and walkways. This includes but may not be limited to the facility commonly known as the Downtown Burbank Station on Front Street, but does not include individual bus stops generally located in public rights-of-way.

Smoking is further prohibited in all non-enclosed areas within 20 feet of those areas identified in Subsection 2. Smoking is not prohibited in vehicle parking lots or structures that serve transit stations or stops, except within 20 feet of those areas identified in Subsection 2.

- G. **Outdoor gathering and event areas.** Smoking is prohibited in any non-enclosed area accessible to the general public where people are gathered to witness or participate in an event except within smoking areas designated pursuant to Section 17-705. This prohibition applies from the time 60 minutes before the event begins to the time 60 minutes after the event ends.
1. For the purposes of this Section, such gathering and event areas include but are not limited to permanent or temporary grandstands, bleachers, other seating areas, standing areas, viewing areas, playing courts and fields, circulation areas, and ancillary areas such as lobbies, foyers, restrooms, and concession areas.
 2. For the purposes of this Section, events include but are not limited to shows, movies, plays, lectures, exhibitions, demonstrations, concerts, competitions, sporting events, arts and crafts shows, fairs, pageants, and parades, whether or not an admission fee is required or other compensation is provided.
 3. This is not intended to prohibit the smoking of non-tobacco-product "stage cigarettes" or similar materials in the form of cigars or pipes by performers.

Smoking is further prohibited in all non-enclosed areas within 20 feet of any outdoor gathering or event area.

H. **Outdoor shopping areas and centers.** Smoking is prohibited in any outdoor shopping area or outdoor shopping center except within smoking areas designated pursuant to Section 17-705.

1. For the purposes of this Section, outdoor shopping area means a non-enclosed area where goods or services are sold, including but not limited to a Farmers Market, swap meet, street fair, plant nursery, or outdoor retail product display area.
2. For the purposes of this Section, outdoor shopping center means the non-enclosed portions of a multi-tenant shopping center with retail, commercial service, and/or restaurant tenants, where the tenant entrances open to a non-enclosed common area. This includes pedestrian sidewalks, walkways, paseos, and other pedestrian circulation areas within the property boundaries of the shopping center that are commonly used and accessed by the patrons of the shopping center.

Smoking is further prohibited in all non-enclosed areas within 20 feet of any outdoor shopping area or outdoor shopping center. Smoking is not prohibited in vehicle parking lots or structures that serve outdoor shopping areas or centers, or on public sidewalks adjacent to outdoor shopping areas or centers, except within 20 feet of those areas where smoking is prohibited.

- I. **Elevators.** Smoking is prohibited in any elevator, whether or not accessible to the general public.
- J. **Proximity to buildings.** Smoking is prohibited within 20 feet of any entrance or exit, open window (including drive-through, drive-up, and walk-up service windows), air intake, or other opening of a building or other enclosed space that is open to, and while open to the general public. This includes but is not limited to offices, stores, banks, museums, and theaters. This prohibition does not apply to outdoor dining areas as defined in Subsection D.
- K. **Designated non-smoking areas.** Smoking is prohibited in any area where the person or entity that either owns or exercises management and control over the property has declared the area, where smoking would otherwise be allowed, to be a non-smoking area.
- L. **Common residential areas.** Smoking is prohibited in all enclosed common areas and within five (5) feet of entrances, exits, walkways and hallways in residential development projects including apartments, condominiums, retirement homes, nursing homes, assisted living facilities, and residential portions of mixed-use projects except within smoking areas designated pursuant to Section 17-705. Common areas are those areas that are accessible to all residents living in the development, including but not limited to hallways, stairways, elevators, lobbies, laundry rooms, trash rooms, recreation rooms and gyms. Common area does not include swimming pools, decks, patios, yard areas, play areas, driveways, parking lots and garages, or private balconies or patios that are not generally accessible to other residents.

Sec. 17-704. Locations Where Smoking is Permitted.

Smoking is permitted in the locations provided in this Section, even when smoking would otherwise be prohibited per Section 17-703.

- A. **Private residences.** Smoking is permitted inside attached and detached private residences and in any private non-enclosed area that is not accessible to other residents, including private balconies and patios and non-common yard areas, except when a residence is being used for child care or as a health care facility subject to applicable licensing requirements. This does not preclude a person or entity that owns or controls private residential property, including but not limited to a condominium association or an apartment complex owner, from prohibiting smoking within private residences under its control.
- B. **Private vehicles.** Smoking is permitted inside a private vehicle.
- C. **Designated smoking areas.** Smoking is permitted in any smoking area designated pursuant to Section 17-705.

Sec. 17-705. Designated Smoking Areas.

- A. **Designation.** The owner or operator with control over any privately owned property (i.e., Owner), or the City Manager or his or her designee for public rights-of-way or property owned by or under the control of the City, may designate an area where smoking is permitted in a location where smoking would otherwise be prohibited under Subsections A, B, D, F, G, H, or L of Section 17-703. Except as provided under "Criteria" below, a designated smoking area may be established without approval from the City of Burbank. However, the City Manager or his or her designee may require that any designated smoking area be modified or removed if, in the sole and absolute discretion of the City Manager or his or her designee, it does not satisfy the criteria of Subsection B.
- B. **Criteria.** A designated smoking area must satisfy all of the following criteria:
 - 1. The smoking area is as small as is practicable to accommodate the number of smokers that are expected to use the area. Notwithstanding this criteria, an Owner may not designate a smoking area that would be smaller than fifty (50) square feet, or with a dimension on any side less than five (5) feet.
 - 2. Designated smoking areas within outdoor dining areas shall not exceed forty percent (40%) of the total floor area utilized for outdoor dining. The Owner may apply to the City Manager, or his or her designee, for an administrative exception to increase the designated smoking area to greater than forty percent (40%). An administrative exception may be granted upon making the finding that the nature of the business in question is such that the number of smokers expected to patronize the business is greater than that of normal dining areas, such as tobacco or smoke shops or a bar.
 - 3. The smoking area is not located within any area where smoking is prohibited under Subsections C, E, I, or J of Section 17-703.
 - 4. The smoking area is not located within five (5) feet of any entrance or exit, or walkway to such entrance or exit, of any building or facility open to the public.
 - 5. Within outdoor dining areas, designated smoking areas must be separated from non-smoking areas with a physical barrier that prevents secondhand smoke from passing between the two areas. The physical barrier shall be the lesser of (a) at least seven (7) feet in height, or (b) extend to the ceiling or covering of the outdoor dining area. The Owner may use a ventilation system in place of a physical barrier, provided such

Owner demonstrates to the satisfaction of the City Manager, or his or her designee, that the proposed ventilation system will be at least as effective as a physical barrier in preventing secondhand smoke from passing between designated smoking areas and non-smoking areas.

6. The smoking area is posted with one or more conspicuously displayed signs that identify the area as a designated smoking area.

Sec. 17-706. Posting of Signs.

A. Time of Posting. Every business or property subject to this ordinance shall post the signs required by this Article within thirty (30) days of the Ordinance's effective date. Every business or property which becomes subject to the provisions of this Article after the effective date shall post the required signs immediately upon commencing operations.

B. Sign locations.

1. Every outdoor dining area, outdoor shopping area, and outdoor shopping center where smoking is prohibited per Subsections D and H of Section 17-703 must have one or more conspicuously displayed signs stating that smoking is prohibited in the area. Multiple signs must be provided as appropriate for larger areas to ensure that signs are readily visible to all users of the area.
2. Every entrance to a building or other enclosed space that is open to the general public must have at least one conspicuously displayed sign stating that smoking is prohibited within 20 feet of the entrance and other openings per Subsection J of Section 17-703.
3. The City Manager will cause the installation of conspicuously displayed signs indicating that smoking is prohibited at appropriate locations in all non-enclosed City facilities and City-owned transit facilities and at the entrance to all enclosed City facilities and City-owned transit facilities where smoking is prohibited per Subsections A and F of Section 17-703.
4. The City Manager will cause the installation of conspicuously displayed signs indicating that smoking is prohibited at appropriate locations along the Chandler Bikeway and on public sidewalks and other public pedestrian areas in Downtown Burbank per Subsections B and C of Section 17-703.
5. Signs required under this Section are exempt from the sign requirements in Article 10 of Chapter 31 of this Code.

C. Sign content and materials.

1. The signs required by Subsection A must have text and/or graphics to clearly indicate that smoking is prohibited in the area and include an appropriate Municipal Code citation.
2. Any text must be clearly contrasted with the background and must be a minimum of one inch tall. The text must state "No Smoking," "Smoke Free Area," or another phrase to clearly indicate that smoking is prohibited.

3. Any graphics must be substantially similar to the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.
4. All signs located in non-enclosed areas must be made of permanent, weather-resistant materials.

Sec. 17-707. Disposal of Smoking Waste.

No person shall dispose of any cigarette, cigar, tobacco, weed, plant, or other substance or product intended to be inhaled and/or exhaled in any place where smoking is prohibited under this Article except in a designated waste disposal container.

2. Section 17-708 is hereby added to Article 7 of Chapter 17 to read as follows:

Sec. 17-708. Enforcement, Violation, and Prosecution.

- A. **Enforcement.** The Chief of Police or his or her designee shall be responsible for enforcing compliance with this Article.
- B. **Violation.**
 1. It shall be unlawful for any person, business, or entity to violate any provision of this Article or to cause, permit or allow, aid, abet, or conceal a violation of any provision of this Article.
 2. It shall be unlawful for any person, business, or entity to knowingly permit or allow smoking in an area that it either owns or over which it exercises management or control in which smoking is prohibited by this Article.
- C. **Prosecution.** Any violation of this Article shall be prosecuted pursuant to Section 1-105 of this Code.
- D. **Public nuisance.** The City Council hereby declares that exposing other persons to secondhand smoke through a violation of this Article constitutes a public nuisance and may be remedied as such.
- E. **Nonexclusive remedies and penalties.** Punishment under this Section does not preclude punishment pursuant to any other law pertaining to smoking or littering. Nothing in this Section precludes any person from seeking any other remedies, penalties, or procedures provided by law. The remedies provided in this Section are cumulative and in addition to any other remedies available at law or in equity.
- F. **Other smoking laws.** This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

3. The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

4. If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed the remainder of this Ordinance, if such invalid portion thereof

had been deleted.

5. The City Clerk shall certify to the passage of this Ordinance and cause the City Attorney Synopsis of this Ordinance to be published once in a newspaper of general circulation, published and circulated in the City of Burbank, California.

6. This Ordinance shall become effective at 12:01 a.m. of the thirty-first day after publication.

PASSED AND ADOPTED this 3rd day of April, 2007.

s/Todd Campbell
Todd Campbell
Mayor of the City of Burbank

Attest:

s/Margarita Campos
Margarita Campos, CMC, City Clerk

Approved as to Form and Legal Content
Dennis A. Barlow, City Attorney

By: s/Joseph H. McDougall
Joseph H. McDougall, Sr. Asst. City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Margarita Campos, CMC, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No. 3717 was duly and regularly passed and adopted by the Council of the City of Burbank at its regular meeting held on the 3rd day of April, 2007, by the following vote:

AYES: Council Members Ramos, Vander Borcht and Campbell.

NOES: Council Members Golonski and Gordon.

ABSENT: Council Members None.

I further certify that said Synopsis was published as required by law in a newspaper of general circulation in the City of Burbank, California on the 11th day of April, 2007.

s/Margarita Campos
Margarita Campos, CMC, City Clerk

Attachment 4

Calabasas

Title 8 HEALTH**Chapter 8.12 SECOND-HAND SMOKE CONTROL ***Editor's Note:8.12.010 Title.8.12.020 Purpose.8.12.030 Definitions.8.12.040 Prohibition of smoking.8.12.050 Reasonable distance required.8.12.060 Allowing, aiding or abetting illegal smoking.8.12.070 Penalties and enforcement.8.12.080 Private enforcement.**Editor's Note:**

* Prior ordinance history: Ord. 93-61.

8.12.010 Title.

This chapter may be referred to as the city's "Comprehensive Second-hand Smoke Control Ordinance." (Ord. 2006-217 § 2 (part), 2006)

8.12.020 Purpose.

The purposes of this chapter are to:

- A. Protect the public health, safety and general welfare by prohibiting smoking in public places under circumstances where other persons will be exposed to second-hand smoke;
- B. Assure a cleaner and more hygienic environment for the city, its residents, and its natural resources, including its creeks and streams;
- C. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including children, to breathe smoke-free air, recognizing the threat to public health and the environment which smoking causes;
- D. Recognize the right of residents and visitors to the city to be free from unwelcome second-hand smoke. (Ord. 2006-217 § 2 (part), 2006)

8.12.030 Definitions.

The following definitions shall govern construction of this chapter, unless the context clearly requires otherwise:

"Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an employee.

"Common area at a shopping mall" means any indoor or outdoor common area of a shopping mall accessible to and usable by the occupants or customers of more than retail establishment

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including, but not limited to halls, lobbies, outdoor eating areas, play areas and parking lots.

"Employee" means any person who is employed or retained as an independent contractor by any employer or any person who volunteers his or her services for an employer, association, nonprofit entity.

"Employer" means any person, partnership, corporation, association, nonprofit or other entity who or which employs or retains the service of one or more employees.

"Enclosed area" means:

1. Any covered or partially covered area having more than fifty (50) percent of its perimeter walled or otherwise closed to the outside such as, for example, a covered porch with more than two walls;

2. Any space open to the sky (hereinafter "uncovered") having more than seventy-five (75) percent of its perimeter walled or otherwise closed to the outside such as, for example, a courtyard;

3. Except that an uncovered space of three thousand (3,000) square feet or more is not an enclosed area, such as, for example, a field in an open-air arena.

"Multi-unit residence" means a building or portion thereof that contains more than one dwelling space each of which consists of independent living facilities for one or more persons, including but not limited to single-room occupancy hotels (SROs), congregate care facilities other than those conducted in single-family residential structures, and dormitories.

"Multi-unit residence common area" means any common area of a multi-unit residence accessible to and usable by the occupants of more than one dwelling, including but not limited to halls, lobbies, laundry rooms, outdoor eating areas, play areas and swimming pools.

"Nonprofit entity" means any entity that meets the requirements of California Corporations Code Section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

"Place of employment" means any area under the legal or de facto control of an employer, business or nonprofit entity that an employee or the general public may enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, construction sites, vehicles used in employment or for business purposes, taxis, employee lounges, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses, and, while employees, children or patients are present, private residences that are used as child-care or health-care facilities subject to licensing requirements.

"Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on city property.

"Present" means with a reasonable distance.

"Public place" means any public or private place open to the general public, regardless of any fee or age requirement, including, for example, streets, sidewalks, plazas, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, taxis and buses. "Reasonable distance" means a distance of twenty (20) feet or, with respect to a designated smoking area, such larger area as the city manager reasonably determines in writing to be necessary in a given circumstance to ensure that occupants of an area in which smoking is prohibited are not exposed to second-hand smoke created by smokers outside the area.

"Recreational area" means any public or private area open to the public for recreational purposes whether or not any fee for admission is charged, including, for example, parks, gardens, sporting facilities, stadiums and playgrounds.

"Shopping mall" means any parcel of land zoned and used for retail sales by more than one retailer that is jointly operated or which includes shared parking facilities.

"Smoking" means possessing (and "smoke" means to possess) a lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind, including, but not limited to, any tobacco product, or any other weed or plant.

"Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

"Unenclosed area" means any area which is not an enclosed area. (Ord. 2006-217 § 2 (part), 2006)

8.12.040 Prohibition of smoking.

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A. Public and Other Places Where Smoking Prohibited. Except as otherwise provided by this chapter or by state or federal law, smoking is prohibited everywhere in the city, including but not limited to:

1. Public places;
2. Places of employment;
3. Multi-unit residence common areas;
4. Enclosed and unenclosed places of hotels, businesses, restaurants, and bars, and other public accommodations.

B. Places Where Smoking Permitted. Notwithstanding subsection (A) of this section, smoking is permitted in the following locations within the city, unless otherwise provided by state or federal law:

1. Private residential property, other than those used as a child-care or health-care facility subject to licensing requirements when employees, children or patients are present. Nothing in this chapter shall require a person or entity who or which owns or controls a private residential property, including but not limited to a condominium association or an apartment owner, to permit smoking and such a person may choose to prohibit smoking throughout the property he, she, or it owns or controls.

2. In up to twenty (20) percent of guest rooms in any hotel or motel, if the hotel or motel permanently designates at least eighty (80) percent of its guest rooms as nonsmoking rooms, appropriately signs nonsmoking rooms and permanently removes ashtrays and matches from them. Smoking rooms shall be segregated from nonsmoking rooms on separate floors, wings, or portions of either; smoking and nonsmoking rooms shall not be interspersed. Nothing in this chapter shall require a hotel or motel to provide smoking rooms and the owner or operator of a hotel or motel may choose to prohibit smoking throughout the property.

3. Designated unenclosed areas in shopping mall common areas ("smokers' outposts"), provided that (i) there is not more than one square foot of unenclosed area designated for smoking for every twenty thousand (20,000) square feet of rentable enclosed or unenclosed space shopping mall (provided that each shopping mall may have at least one smokers' outpost of forty (40) or fewer square feet in area, (ii) the area is prominently marked with signs, (iii) it is located the greatest distance practicable, and at least five feet, from any doorway or opening into an enclosed area or any access way from parking facilities to the retail areas of the shopping mall, (iv) smoke is not permitted to enter adjacent area in which smoking is prohibited by this chapter, other law or by the owner, lessee or licensee of the adjacent property, and (v) the location(s) of the smokers' outpost(s) is or are approved in writing by the community development director of the city based on the standards of this subsection and the goals of this chapter.

4. Any outdoor area in which no nonsmoker is present and, due to the time of day or other factors, it is not reasonable to expect another person to arrive.

C. No person shall dispose of smoking waste or place or maintain a receptacle for smoking waste in an area in which smoking is prohibited by this chapter or other law, including within any reasonable distance required by this chapter. (Ord. 2006-217 § 2 (part), 2006)

8.12.050 Reasonable distance required.

No person shall smoke in an area in which smoking is otherwise permitted by this chapter or other law within a reasonable distance from any entrance, opening, crack, or vent into an enclosed area in which smoking is prohibited by this chapter, other law or by the owner, lessee or licensee of that enclosed area. (Ord. 2006-217 § 2 (part), 2006)

8.12.060 Allowing, aiding or abetting illegal smoking.

A. No person, employer, business, or nonprofit entity shall knowingly permit smoking in an area under his, her, or its legal or de facto control in which smoking is prohibited by this chapter or other law.

B. No person, employer, business, or nonprofit entity shall allow the placement or maintenance of a receptacle for smoking waste in an area under his, her, or its legal or de facto control in which smoking is prohibited by this chapter or other law.

C. Notwithstanding any other provision of this chapter, any owner, landlord, employer, business, nonprofit entity, or other person who or which has legal or de facto control over any property may declare any area in which smoking would otherwise be permitted to be a nonsmoking area and,

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provided that signs are posted giving notice of the smoking restriction, smoking in or within a reasonable distance of that area shall constitute a violation of this chapter.

D. "No Smoking" or "Smoke Free" signs, with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) or any alternative signage approved by the community development director of the city shall be conspicuously posted at each entrance to a public place in which smoking is prohibited by this chapter, by the person, employer, business, or nonprofit entity who or which has legal or de facto control of such place. The city manager shall post signs at each entrance to a public place in which smoking is prohibited by this chapter which is owned or controlled by the city. Signage required by this subsection shall not be subject to Chapter 17.30 ("Signs") of this code. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter, except as to an area in which smoking is prohibited only by subsection (C) of this section. (Ord. 2006-217 § 2 (part), 2006)

8.12.070 Penalties and enforcement.

A. A violation of this chapter shall constitute a misdemeanor punishable pursuant to Chapter 1.16 of this code, unless the prosecutor determines to prosecute it as an infraction as authorized by Section 1.16.010(a) of this code.

B. The city council declares that exposing other persons to second-hand smoke constitutes a public nuisance and may be remedied as such.

C. No person shall cause, permit, aid, abet, or conceal a violation of any provision of this chapter.

D. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

E. The city prosecutor, city attorney, any peace officer or city code enforcement officer may enforce this chapter. (Ord. 2006-217 § 2 (part), 2006)

8.12.080 Private enforcement.

A. The city attorney or city prosecutor may also bring a civil action to enforce this chapter and to obtain the remedies specified below or otherwise available in equity or at law.

B. Any person acting for the interests of him-, her-, or itself, or of its members, or of the general public (hereinafter "a private enforcer") may bring a civil action to enforce this chapter with the remedies specified below, if both of the following requirements are met:

1. The action is commenced more than sixty (60) days after the private enforcer has given written notice of an alleged violation of this chapter to the city attorney and to the alleged violator.

2. No person acting on behalf of the city or the state has commenced or is prosecuting an action regarding the violation(s) which was or were the subject of the notice on the date the private action is filed.

C. A private enforcer shall provide a copy of his, her, or its action to the city attorney within seven days of filing it.

D. Upon settlement or judgment of an action brought pursuant to subsection (G) of this section, the private enforcer shall give the city attorney a notice of that settlement or judgment and of the final disposition of the case. No private enforcer may settle such an action, unless the city attorney or the court determines the settlement to be reasonable in light of the purposes of this chapter and any settlement in violation of this requirement may be set aside upon motion to a court of competent jurisdiction by the city attorney or city prosecutor.

E. Upon proof of a violation of this chapter, the court shall award the following:

1. Damages in the amount of either:

a. Upon proof, actual damages;

b. With insufficient or no proof of damages, two hundred fifty dollars (\$250.00) for each violation of this chapter (hereinafter "statutory damages"). Unless otherwise specified in this chapter, each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this chapter, no private enforcer suing on behalf of the general public shall recover statutory damages based upon a violation of this chapter if a previous claim brought on behalf of the general public for statutory damages and based upon the same violation has been adjudicated, whether or not the private enforcer was a party to that earlier adjudication.

2. Restitution to the appropriate party or parties of the gains obtained by way of violation of this

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chapter.

3. Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for the public health and safety.

4. Attorney's fees and costs reasonably incurred by a successful party in prosecuting or defending an action.

Any damages awarded in an action brought by the city attorney or city prosecutor shall be paid into the city's general fund, unless the court determines that they should be paid to a damaged third party.

F. Upon proof of at least one violation of this chapter, a private enforcer, the city prosecutor, city attorney, any peace officer or code enforcement official may obtain an injunction against further violations of this chapter or as, to small claims court actions, a judgment payable on condition that a further violation of this chapter occur within a time specified by the court.

G. Notwithstanding any legal or equitable bar, a private enforcer may bring an action to enforce this chapter solely on behalf of the general public. When a private enforcer do so, nothing about such an action shall act to preclude or bar the private enforcer from bringing a subsequent action on his, her, or its own behalf based upon the same facts.

H. Nothing in this chapter shall prohibit a private enforcer from bringing a civil action in small claims court to enforce this chapter, as long as the amount in demand and the relief sought are within the jurisdiction of small claims court. (Ord. 2006-217 § 2 (part), 2006)

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City Council Meeting: March 23,
2004 Santa Monica,
California

Attachment 5

ORDINANCE NUMBER (CCS)

(City Council Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA
AMENDING CHAPTER 4.44 OF THE SANTA MONICA MUNICIPAL CODE ON SMOKING
TO PROHIBIT SMOKING ON THE BEACH AND THE PIER, IN WAITING AREAS FOR
PUBLIC SERVICES
AND WITHIN 20 FEET OF AN ENTRANCE OR EXIT TO A PUBLIC FACILITY

WHEREAS, smoking endangers public health; and

WHEREAS, numerous studies have shown that second-hand smoke is a significant public health hazard; and

WHEREAS, the United States Environmental Protection Agency (EPA) has classified second-hand smoke as a Group A carcinogen, the most dangerous class of carcinogens; and

WHEREAS, the EPA has concluded that second-hand smoke causes coronary heart disease in non-smokers; and

WHEREAS, the United States Center for Disease Control and Prevention (CDC) estimates that second-hand smoke causes 3,000 lung cancer death per year among adult non-smokers in the United States; and

WHEREAS, second-hand smoke is especially hazardous to particular groups, including those with chronic health problems, the elderly and children; and

WHEREAS, the CDC has found that second-hand smoke causes children to suffer from lower respiratory tract illness, such as bronchitis and pneumonia, exacerbates childhood asthma, and increases the risk of acute chronic middle ear infections in children; and

WHEREAS, the City of Santa Monica is committed to keeping its recreational spaces safe, healthy and pleasant for everyone; and

WHEREAS, smoking on the beach and the Santa Monica Pier endangers children and adults by exposing them to second-hand smoke; and

WHEREAS, cigarette and cigar butts and used matches dropped onto the ground in public spaces degrade the aesthetic quality of those spaces; and

WHEREAS, cigarette and cigar butts and used matches dropped into the sand on the beach are particularly dangerous because young children play in the sand and may ingest them; and

WHEREAS, smoking in waiting areas for public services endangers the health of those who use the waiting area to obtain the service; and

WHEREAS, smoking near entrances and exits to public facilities endangers the health of those who use and work within the facilities; and

WHEREAS, children and youth who observe smoking in public places may model the behavior; and

WHEREAS, banning smoking on the beach, on the Santa Monica Pier, within waiting areas for public services, and within 20 feet of entrances and exits to public buildings is necessary to protect the public health, safety and welfare of Santa Monica residents, workers and visitors,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 4.44 of the Santa Monica Municipal Code is hereby amended to read as follows:

CHAPTER 4.44

REGULATION OF SMOKING

Section 4.44.020010 **Definitions.**

The following words and phrases, as used in this Chapter or in any other applicable law regulating smoking, shall have the following meanings:

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~~(a) Bar. An area where alcoholic beverages are served for consumption on the premises and in which the serving of food, if any, is only incidental and consists solely of hors d'oeuvres, snacks and similar foods.~~

(ba) Smoke or Smoking. The carrying or holding of a lighted pipe, cigar, or cigarette of any kind, or any other lighted smoking product or equipment used to burn any tobacco products, weed, plant, or any other combustible substance. Smoking includes the emitting or exhaling the fumes of any pipe, cigar, or cigarette of any kind, or any other lighted smoking equipment used for burning any tobacco product, weed, plant, or any other combustible substance.

(b) Service area. A place where people use or wait for services provided by a government entity, such as waiting areas for public transportation.

Section 4.44.010020 ~~General~~ Prohibitions.

(a) Smoking in specific locations

It shall be unlawful to smoke in the following places:

(a1) Any elevator;

(2) Any public park;

(3) Any public beach;

(4) Anywhere on the Santa Monica Pier;

(5) Any outdoor service area;

(6) Inside any public building (as that term is defined in Government Code Section 7596) or within 20 feet of any entrance, exit or window of a public building.

~~(b) On any bus used in the business of transporting passengers for hire~~

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~~in the City, excepting for charter operations;~~

~~(c) Any restroom open to the general public or provided for use to customers or patrons, unless there are separate smoking and nonsmoking restrooms;~~

~~(d) Every building owned or leased by the City of Santa Monica and used for municipal purposes. If only a portion of a building is used for municipal purposes, this subsection shall apply only to that portion of the building used for municipal purposes.~~

(b) Disposal of smoking waste.

No person shall dispose of any cigarette, cigar or tobacco, or any part of a cigarette or cigar, in any place where smoking is prohibited under this Chapter, except in a designated waste disposal container.

(c) Enforcement and Penalties.

(1) Infraction. A violation of this Section is an infraction and shall be punished by a fine of two hundred fifty dollars.

(2) Nonexclusive Remedies and Penalties. Punishment under this section shall not preclude punishment pursuant to Health & Safety Code Section 13002, Penal Code Section 374.4, or any other law proscribing the act of littering. Nothing in this Section shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

Section 4.44.030 Sale of tobacco by vending machine or other mechanical device or out of package.

(a) Purpose. The City Council finds cigarette smoking and other tobacco use by minors to be a continuing problem with grave public health

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consequences. Studies show that the vast majority of adult smokers began as teenagers, and that teenagers who begin using tobacco before the age of fifteen eventually have much higher cancer rates than non-tobacco using teenagers. In recognition of the Surgeon General's conclusion that nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of minors to cigarettes and other tobacco products. Furthermore, by adoption of ~~Santa Monica Municipal Code Sections 4.44.010 through 4.44.030~~, the City has ~~already prohibited smoking in public places, work places, and restaurants. The sale of tobacco by vending machine encourages violations of these Sections of the Municipal Code since minors have access to most of these types of premises.~~ The purpose of this Chapter is to implement a strict and enforceable system to prevent the illegal sale of cigarettes and other tobacco products to minors.

(b) Vending Machines. On or after May 1, 1991, no person shall sell or dispense cigarettes or other tobacco products by vending machine or any other device that automatically sells or dispenses tobacco products.

(c) Out of Package Sales Prohibited. It is unlawful to sell cigarettes out of the manufacturer's package ~~or without~~with required health warnings.

~~Section 4.44.040 Smoking in public parks.~~

~~(a) Prohibitions:~~

~~(1) No person shall smoke within the boundaries of any public park.~~

~~(2) No person shall dispose of any cigarette, cigar or tobacco, or any part of a cigarette or cigar, within the boundaries of any public park, except in a designated waste disposal container.~~

~~(b) Enforcement and Penalties:~~

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~~(1) Infraction. A violation of this Section is an infraction and shall be punished by a fine of two hundred fifty dollars.~~

~~(2) Nonexclusive Remedies and Penalties. Punishment under this section shall not preclude punishment pursuant to Health & Safety Code Section 13002, Penal Code Section 374.4, or any other law proscribing the act of littering. Nothing in this Section shall preclude any person from seeking any other remedies, penalties or procedures provided by law.~~

SECTION 2. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AS TO FORM:

MARSHA JONES MOUTRIE
City Attorney

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