

ORDINANCE NO. 1545 (2010 Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN LUIS OBISPO TO REPEAL AND REENACT CHAPTER 8.16 (SMOKING PROHIBITED IN CERTAIN AREAS) OF TITLE VIII (HEALTH AND SAFETY) OF THE SAN LUIS OBISPO MUNICIPAL CODE

WHEREAS, the 2006 U.S. Surgeon General’s Report stated scientific evidence shows that there is no “safe” level of exposure to secondhand smoke; and

WHEREAS, the United States Environmental Protection Agency (EPA) has found secondhand smoke to be a risk to public health, and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen¹; and

WHEREAS, the California Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant²; and

WHEREAS, exposure to secondhand smoke is the third leading cause of preventable death in this country, killing over 52,000 non-smokers each year³, and as many as 300,000 lower respiratory tract infections such as pneumonia and bronchitis⁴ in children; and

WHEREAS, the City of San Luis Obispo is subject to regulations issued by the Stormwater Management Program mandated by the California Regional Water Quality Control Board to reduce the environmental impact from stormwater run-off and human activities in the local creek systems; and

WHEREAS, cigarette filters and plastic wraps from cigarette packages are not biodegradable and cigarette related waste discarded in parks, along sidewalks, and in street gutters make their way through storm drains into creeks and rivers leaking dangerous chemicals into our watershed⁵; and

WHEREAS, the City is subject to regulation under the California Endangered Species Act and the Federal Endangered Species Act of 1973, as two federally protected species under the Federal Act, Steelhead trout (*Oncorhynchus mykiss*) and California Red-legged frogs (*Rana aurora*), have both been found within the City of San Luis Obispo City limits; and

¹ Cal. Air Resources Bd., Resolution 0-01, at 5 (January 26, 2006)

² U.S. Dep’t of Health and Human Servs., Centers for Disease Control and Prevention, Clean Indoor Air Regulations Fact Sheet (2001)

³ S.A. Glantz & W. Parmley, Passive smoking and heart Disease: Epidemiology, Physiology, and Biochemistry, 83; 1-23 Circulation 1 (1991) and California Environmental Protection Agency, office of Env’tl. Health Hazard management, health Effects of Exposure to Environmental Tobacco Smoke: Final Report (1997)

⁴ U.S. Dept. of Health and Human Services, Center for Disease Control and Prevention, Targeting Tobacco Use: the Nation’s Leading Cause of Death 2002, 2 (2002) available at www.cdc.gov/tobacco

⁵ Cigarette Butt Litter – www.surfrider.org

WHEREAS, cigarette filters have been found in the stomachs of fish, birds, and other animals that mistake them for food, thus swallowing harmful plastic and toxic chemicals; and

WHEREAS, there is a cost to taxpayers for cleaning up tobacco related debris in parks, open space, and the City's storm water system; and

WHEREAS, the disposal of cigarettes can cause severe fire hazards in open space areas, especially during drought years; and

WHEREAS, in 1985 the City council of the City of San Luis Obispo adopted regulations prohibiting smoking in certain areas; and

WHEREAS, in light of the above the City Council desired to amend its regulations prohibiting smoking and all forms of tobacco products in certain areas to address these hazards; and

WHEREAS, on December 1, 2009, the City Council amended the ordinance to include outdoor recreational areas including Mission Plaza and the adjacent creek walk, and

WHEREAS, at this same meeting, Council directed staff to come back with further and more encompassing no-smoking regulations; and

WHEREAS, a Community Task Force of community members representing business, health, and various other interest groups was formed to make recommendations as to the extend of new no-smoking regulations; and

WHEREAS, this Community Task Force has met, concluded its deliberation, and submitted its recommendations.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of San Luis Obispo as follows:

SECTION 1. Chapter 8.16 (Smoking Prohibited in Certain Areas) of Title VIII (Health and Safety) of the San Luis Obispo Municipal Code is hereby repealed in its entirety and reenacted as follows:

Chapter 8.16
SMOKING PROHIBITED AND SECONDHAND SMOKE CONTROL

Sections

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8.16.010 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 secondhand 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 and tobacco causes; and
- D. Recognize the right of residents and visitors to the City of San Luis Obispo to be free from unwelcome secondhand smoke.

8.16.020 Definitions

For the purposes of this chapter the following definitions shall govern unless the context clearly requires otherwise:

- (a) “Business” means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an Employee, as defined in this section.
- (b) “Dining Area” means any area available to or customarily used by the general public, that is designed, established, or regularly used for consuming food or drink.
- (c) “Employee” means any person who is employed; retained as an independent contractor by any Employer, as defined in this section; or any person who volunteers his or her services for an Employer, association, nonprofit, or volunteer entity.
- (d) “Employer” means any person, partnership, corporation, association, nonprofit or other entity who employs or retains the service of one or more persons, or supervises volunteers.
- (e) “Enclosed” means:
 - (1) any covered or partially covered space having more than 50% of its perimeter area walled in or otherwise closed to the outside such as, for example, a covered porch with more than two walls; or
 - (2) any space open to the sky (hereinafter “uncovered”) having more than 75% of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard;
- (f) “Multi-Unit Residence” means a building or portion thereof that contains more than one dwelling space consisting of essentially complete independent living facilities for one or more persons, including, for example, permanent provisions for living, sleeping, eating, cooking, and sanitation. [A single-family house shared by roommates is not Multi-Unit Residences for purposes of this chapter.]
- (g) “Multi-Unit Residence Common Area” means any indoor or outdoor common area of a Multi-Unit Residence accessible to and usable by more than one residence, including but not limited to halls, lobbies, laundry rooms, outdoor eating areas, play and swimming areas
- (h) “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 or purposes of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

(i) "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 have cause to 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 private residences that are used as child care or health care facilities subject to licensing requirements.

(j) "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 grounds.

(k) "Public Place" means any place, public or private, open to the general public regardless of any fee or age requirement, including, for example, streets, sidewalks, parking lots, parking garages, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, taxis, and buses.

(l) "Reasonable Distance" means a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty (20) feet.

(m) "Recreational Area" means any area, public or private, open to the public for recreational purposes regardless of any fee requirement, including, for example, parks, gardens, sporting facilities, stadiums, and playgrounds.

(n) "Service Area" means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction whether or not such service includes the exchange of money including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops, cab stands, and takeout counters.

(o) "Significant Tobacco Retailer" means any tobacco retailer that derives seventy-five percent (75%) or more of gross sales receipts from the sale or exchange of tobacco products and tobacco paraphernalia.

(p) "Smoking" means possessing 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, tobacco, or any other weed or plant.

(q) "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.

8.16.030 Prohibition of smoking in public places, places of employment, and certain other areas

(a) **Enclosed Places.** Smoking shall be prohibited in the following Enclosed places within the City of San Luis Obispo, except in places listed in subsection (d) below:

- (1) Public Places;
- (2) Places of Employment;
- (3) Multi-Unit Residence Common Areas;

(4) Enclosed areas adjacent to an Enclosed area in which smoking is prohibited by any other section of this code, state law, or federal law and that have a common or shared air space such as, without limitation, openings, cracks, air ventilation systems, doorways, hallways, and stairways. Notwithstanding any other provision, the fact that smoke enters one Enclosed area from another Enclosed area is conclusive proof that the areas share a common or shared air space;

(5) Enclosed areas that have a common or shared ventilation, air conditioning or heating system with an Enclosed area in which smoking is prohibited. Notwithstanding any other provision, the fact that smoke enters one Enclosed area from another Enclosed area is conclusive proof that the areas share a common or shared air space.

(b) **Unenclosed Places.** Smoking shall be prohibited in the following Unenclosed places within the City of San Luis Obispo:

(1) Places of Employment;

(2) Service Areas;

(3) Public Places including Dining Areas [except an Unenclosed area of a bar that does not serve food. If smoking is permitted in the Unenclosed area of a bar that does not serve food, the entire smoking section must be limited to one clearly designated area prominently marked with signs, and must be located at least five (5) feet from any doorway or opening into an Enclosed area. Smoking in an Unenclosed area of a bar is only permitted provided the smoke does not enter adjacent areas in which smoking is prohibited by any law or by the owner, lessee or licensee of the adjacent property];

(4) Multi-Unit Residence Common Areas;

(5) Ticket, boarding, and waiting areas of transit centers, bus shelters and stops; and

(6) The sites of public events including, for example, sports events, entertainment, speaking performances, ceremonies, pageants, and fairs.

(c) No person shall dispose of smoking and tobacco materials, waste or debris within the boundaries of an area in which smoking and tobacco products are prohibited, including inside the perimeter of any Reasonable Distance required by this chapter.

(d) Nothing in this chapter shall be interpreted to conflict or regulate any area subject to exclusive regulation under existing State or Federal Law.

8.16.040 Prohibition of smoking and tobacco products in outdoor recreational areas

(a) Smoking and all forms of tobacco products shall be prohibited in the following places:

(1) In any City park and all its amenities, parking areas, trails, and walkways, including contiguous sidewalks.

(2) In all City Open Spaces and Ecological Areas and all appurtenant trail systems, parking areas, and other amenities.

(3) In all City sports facilities, including:

a. the municipal golf course

b. the San Luis Obispo Swim Center

c. skate park

d. roller hockey rink

e. all sports fields

(4) In all City dog parks.

(5) In all public transportation facilities including all bus shelters and bus stops.

(6) In Mission Plaza and the adjacent creek walk from Mission Plaza to Nipomo Street.

(b) No person shall dispose of smoking or tobacco waste within the boundaries of an area in which smoking and tobacco products are prohibited, including inside the perimeter of any Reasonable Distance required by this chapter.

8.16.050 Where smoking is not regulated

Unless otherwise prohibited by law, smoking is permitted in the following Enclosed and/or Unenclosed places:

(1) Significant tobacco retailers in existence as of the effective date of this ordinance provided within 6 months of the effective date a dedicated ventilation system is installed and operational and provided that minors are at all times prohibited from entering the store. If the condition of the required ventilation system is not met within the specified time then this exception will be null and void.

(2) Private residential units, except those used as a child care or health care facility subject to licensing requirements; and

(3) Up to twenty-five percent (25%) of hotel and motel guest rooms, if the hotel or motel permanently designates particular guest rooms as nonsmoking rooms such that seventy-five (75%) or more of its guest rooms are nonsmoking and ashtrays and matches are permanently removed from such nonsmoking rooms. Permanent “no smoking” signage shall be posted in nonsmoking rooms.

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

8.16.060 Reasonable Distance Required.

Smoking in Unenclosed areas shall be prohibited within a Reasonable Distance from any entrance, opening, crack, or vent into an Enclosed area in which smoking is prohibited.

8.16.070 Posting of signs

Signs which designate smoking or nonsmoking areas established by this chapter shall be conspicuously posted in every room, building or other place so covered by this chapter. The manner of such posting shall be at the discretion of the owner, operator, manager or other person having control of such room, building, outdoor recreation areas, and other places and areas so long as clarity, sufficiency and conspicuousness are apparent in communicating the intent of this chapter. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter.

8.16.080 Compliance

A. The City Manager or his or her designated representative shall be responsible for compliance with this chapter as to facilities which are owned, operated or leased by the City. The Finance Director shall provide each business license applicant with a copy of this chapter.

B. The owner, operator or manager of any facility, business or agency within the purview of this chapter shall comply with the provisions of this chapter. Such owner, operator or manager shall post or cause to be posted all no-smoking signs required by this chapter and shall not allow service to any person who violates this chapter by smoking in a posted no-smoking area.

C. Any place of employment conducted or operated without compliance with the provisions of Section 8.16.030 of this chapter applicable thereto shall be and the same is declared to be a

public nuisance. Whenever there is reason to believe such public nuisance exists, any affected employee or any resident of the City, in his or her own name, may maintain an action in equity to abate and prevent such nuisance and to perpetually enjoin the employer from maintaining or permitting it. Upon the granting of equitable relief, in whole or in part, by a court of competent jurisdiction, an employer determined to be in violation of Section 8.16.030 of this chapter shall be liable for the attorney's fees, as may be determined by the court, incurred by the party bringing the action.

D. The City Manager or his or her designee may enforce Section 8.16.030 of this chapter by either of the following actions:

1. Serving notice requiring the correction of any violation of that section; or
2. Requesting the City attorney to maintain an action for injunction to enforce the provisions of Section 8.16.030 of this chapter, to cause the correction of any such violation, and for assessment and recovery of a civil penalty of such violation, including attorney's fees.

E. Any employer who violates Section 8.16.030 of this chapter may be liable for a civil penalty, not to exceed five hundred dollars, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the City. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. Any penalty assessed and recovered in an action brought pursuant to this subsection shall be paid to the finance director of the City.

F. In undertaking the enforcement of Section 8.16.030 of this chapter, the City is assuming an undertaking only to promote the general welfare. It is not assuming any duty or obligation, nor is it imposing any duty or obligation on its officers and employees, nor is it liable in money damages or otherwise to any person who claims that (1) the City or one of its officers or employees breached any such obligation, and (2) the breach proximately caused injury. (Ord. 1172 § 1, 1990)

8.16.090 Violations and penalties


Any person who violates any provision of Section 8.16.030 of this chapter by smoking in a posted no-smoking area, or by failing to post or cause to be posted a no smoking sign required by this chapter, or by serving or accommodating any person who violates this chapter by smoking in a posted no-smoking area, or by knowingly or intentionally permitting any person to violate this chapter by smoking in a posted no-smoking area, is guilty of an infraction, and is subject to punishment as provided for in Chapter 1.12 of this code. (Ord. 1274 § 2, 1994; Ord. 1172 § 1, 1990) or as provided under Chapter 1.24 (Administrative Code Enforcement Procedures) of this code (Ord. 1426 § 1 (part), 2002)

8.16.100 Severability


If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

INTRODUCED on the 6th day of April, 2010, **AND FINALLY ADOPTED** by the Council of the City of San Luis Obispo on the 20th day of April 2010, on the following vote:


AYES: Council Members Marx and Settle, Vice Mayor Carter and Mayor Romero
NOES: Council Member Ashbaugh
ABSENT: None


Mayor David F. Romero

ATTEST:


Elaina Cano
City Clerk

APPROVED AS TO FORM:


J. Christine Dietrick
City Attorney

I hereby certify that this document is a true and accurate original of Ordinance No. 1545, and that the ordinance was published pursuant to Charter Section 602.

4-27-10 
Date City Clerk