

ORDINANCE NO. 11459
(New Series)

DEC 19 1974

AN ORDINANCE AMENDING CHAPTER IV OF THE SAN DIEGO MUNICIPAL CODE BY ADDING ARTICLE 5, DIVISION 1, SECTIONS 45.0101, 45.0102, 45.0103, 45.0104, 45.0105, 45.0106, 45.0107, 45.0108, 45.0109, 45.0110 AND 45.0111, AND BY AMENDING CHAPTER V, ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING SECTIONS 52.40 AND 52.40.1, ALL RELATING TO THE PROHIBITION OF SMOKING IN CERTAIN AREAS USED BY OR OPEN TO THE PUBLIC.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter IV of the San Diego Municipal Code be and it is hereby amended by adding Article 5, Division 1, Sections 45.0101, 45.0102, 45.0103, 45.0104, 45.0105, 45.0106, 45.0107, 45.0108, 45.0109, 45.0110 and 45.0111 to read as follows:

ARTICLE 5

SMOKING PROHIBITED IN CERTAIN PUBLIC AREAS

DIVISION 1

SEC. 45.0101 PURPOSE OF ARTICLE

Because smoking of tobacco, or any other weed or plant, is a positive danger to health and a cause of material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined places, and in order to serve public health, safety

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and welfare, the declared purpose of this article is to prohibit the smoking of tobacco, or any other weed or plant, in certain areas which are used by or open to the public.

SEC. 45.0102 DEFINITIONS

"Smoke" or "smoking" as defined in this article shall mean and include the carrying of a lighted pipe, or lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar or cigarette of any kind.

"Service line" shall be defined as any indoor line of two (2) or more persons awaiting service of any kind, regardless of whether or not such service involves the exchange of money. Such service shall include, but is not limited to, sales, giving of information, directions or advice, and transfers of money or goods.

SEC. 45.0103 PROHIBITION IN CERTAIN PUBLIC PLACES

Smoking shall be prohibited in the following places within the City of San Diego to the extent the same are subject to the jurisdiction or licensing by The City of San Diego:

a. Elevators, museums, galleries, public transportation facilities open to the public, and service lines of establishments doing business with the general public.

b. Waiting rooms, sleeping rooms or public hallways of every private or public health care facility, including but not limited to hospitals;

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provided further, however, that this prohibition shall not prevent the establishment of a separate waiting room in which smoking is permitted, as long as there also exists a waiting room in the same facility in which smoking is prohibited. This prohibition shall not apply to private rooms.

c. Within waiting rooms, meeting rooms, public assembly rooms, libraries and restrooms located in all buildings owned or operated by The City of San Diego, except in zones designated for smoking by the City Manager. Such smoking zones shall not exceed twenty percent (20%) of the seating capacity of each room or area.

d. Within any building not open to the sky which is primarily used for or designed for the purpose of exhibiting any motion picture, stage drama, lecture, musical recital or other similar performance whenever open to the public (except when smoking is a part of a stage production); within all restrooms; except that smoking will be allowed in an area commonly referred to as a lobby if such lobby is physically separated from the spectator area.

e. Every retail food production and marketing establishment, including grocery stores and supermarkets, open to the public shall be posted with signs.

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prohibiting smoking in every public portion thereof.
This requirement does not apply to restaurants.

f. All restrooms open for public use.

SEC. 45.0104 OPTIONAL PROHIBITION

All managers and owners of any establishments serving or doing business with the public other than those specifically covered under Section 45.0103 may at their discretion post "No Smoking" signs within various areas of their businesses and utilize the full right of the provisions of this ordinance, provided, however, such posting must be annualized and consistent with their business license term.

SEC. 45.0105 POSTING OF SIGNS

Signs which designate smoking or no-smoking areas established by this ordinance shall be clearly, sufficiently, and conspicuously posted in every room, building, or other place so covered by this ordinance. The manner of such posting including the wording, size, color, design, and place of posting whether on the walls, doors, tables, counters, stands or elsewhere shall be at the discretion of the owner, operator, manager, or other person having control of such room, building, or other place so long as clarity, sufficiency, and conspicuousness are apparent in communicating the intent of this ordinance.

SEC. 45.0106 GOVERNMENTAL AGENCY COOPERATION

The City Manager shall annually request such governmental and educational agencies involved with

their specific business within the City of San Diego to establish local operating procedures to cooperate and comply with this ordinance. In Federal, State, County, and special school districts within the City of San Diego, the City Manager shall urge enforcement of their existing no-smoking prohibitions and request cooperation with this ordinance.

SEC. 45.0107 EXCEPTIONS

a. Smoking shall be permitted in any room in which it is otherwise prohibited herein if the owner, operator, manager or other person having control of such room files with the City Manager a written statement from a mechanical engineer registered in the State of California, certifying that such room is ventilated with a mechanical ventilation system which complies with one of the following:

1. An outdoor air change of at least twenty-five (25) cubic feet per minute, per occupant, the occupant load to be determined in accordance with Section 3301(d) of the 1973 Uniform Building Code, on file with the City Clerk, or

2. A system utilizing filters which achieve eighty percent (80%) efficiency, as described in National Bureau of Standards

dust spot method, or other equipment which is equally effective. Such system shall have sufficient capacity to process the air content of the room served every fifteen (15) minutes, or less.

b. The above ventilation exceptions shall not apply to the following areas where smoking is to be absolutely prohibited: elevators, service lines, public transportation facilities open to the public, public health care facilities as regulated in Section 45.0103(b), theaters as regulated in Section 45.0103(d), and restrooms open to public use.

c. In ventilated areas as herein described, the smoking area shall be separated from the non-smoking area and shall not exceed fifty percent (50%) of the seating capacity.

SEC. 45.0108 ENFORCEMENT AND APPEAL

a. The City Manager shall be responsible for compliance with this article when facilities which are owned, operated or leased by The City of San Diego are involved. The City Manager shall provide business license applicants with copies of this article.

b. The owner, operator or manager of any facility, business or agency shall comply with this article as a requirement of receiving a business license to operate

in the City of San Diego. Such owner, operator or manager shall post or cause to be posted all "No Smoking" signs required by this article. Such owner, operator or manager shall not allow service to any person who violates this article by smoking in a posted "No Smoking" area.

SEC. 45.0109 VIOLATIONS AND PENALTIES

Any person who violates any provision of this article 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 article, or by serving any person who violates this article by smoking in a posted "No Smoking" area, is guilty of an infraction and, upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100).

SEC. 45.0110 EDUCATION FOR NO-SMOKING PROGRAM

The City Manager will direct the Director of Environmental Quality to prepare an annual program of educational activities emphasizing the social ramifications as well as the health-degrading aspects of smoking.

The City Manager will work with the County of San Diego through the County Administrator and Director of Public Health to assure countywide educational and legislative programs discouraging the harmful practice of smoking.

SEC. 45.0111 SEVERABILITY

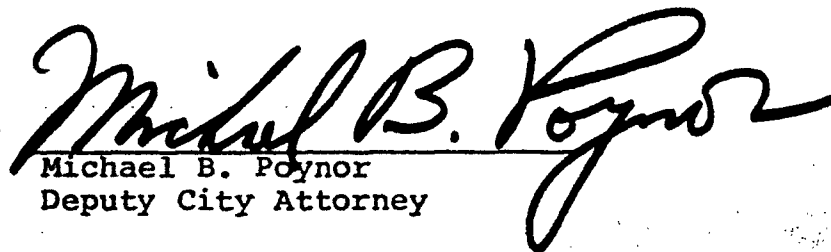
If any provision, clause, sentence or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of the provisions of this article which can be given effect without the invalid provision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

Section 2. That Chapter V, Article 2, of the San Diego Municipal Code be and it is hereby amended by repealing Sections 52.40 and 52.40.1.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By


Michael B. Poynor
Deputy City Attorney

MBP:K:605
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REV. 12-6-74

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Passed and adopted by the Council of The City of San Diego on DEC 19 1974
 by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Gil Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maureen F. O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lee Hubbard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyd L. Morrow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Martinet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Ellis	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Bates	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY: PETE WILSON
 Mayor of The City of San Diego, California.

EDWARD NIELSEN
 City Clerk of The City of San Diego, California.

(Seal)

By Kathleen Martens, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

DEC 6 1974

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, and on _____.

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

EDWARD NIELSEN
 City Clerk of The City of San Diego, California.

(Seal)

By Kathleen Martens, Deputy.

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Office of the City Clerk, San Diego, California

Ordinance Number 11459 Adopted DEC 19 1974

(Signature)

1975 JAN -2 AM 9:33 *ag*

ATTORNEY(S)

San Diego, City of
12th Floor City Admin. Center
San Diego, Ca. 92101

CERTIFICATE OF PUBLICATION

No.

IN THE MATTER OF

AN ORDINANCE AMENDING CHAPTER IV OF THE SAN DIEGO MUNICIPAL CODE, etc.

JAN 02 1975 *ag*

PATRICIA M. APPLESTILL

I, *Patricia M. Applestill* hereby certify that San Diego Daily Transcript is a daily newspaper of general circulation within the provisions of the Government Code of the State of California, printed and published in the City of San Diego, County of San Diego, State of California; that I am the principal clerk of said newspaper; that the

ORDINANCE NO. 11459

is a true and correct copy of which this certificate is annexed and was published in said newspaper on

December 27, 1974

I certify under penalty of perjury that the foregoing is true and correct, at San Diego, California, on

December 27, 1974

Patricia M. Applestill
(Signature)

ORDINANCE NO. 1100
AN ORDINANCE AMENDING CHAPTER IV OF THE SAN DIEGO MUNICIPAL CODE BY ADDING ARTICLE 5, DIVISION 1, SECTIONS 45.0101, 45.0102, 45.0103, 45.0104, 45.0105, 45.0106, 45.0107, 45.0108, 45.0109, 45.0110, 45.0111, 45.0112 AND 45.0113 AND BY AMENDING CHAPTER V, ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING SECTIONS 52.40 AND 52.41, ALL RELATING TO THE PROHIBITION OF SMOKING IN CERTAIN AREAS USED BY OR OPEN TO THE PUBLIC.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:
Section 1. That Chapter IV of the San Diego Municipal Code be and it is hereby amended by adding Article 5, Division 1, Sections 45.0101, 45.0102, 45.0103, 45.0104, 45.0105, 45.0106, 45.0107, 45.0108, 45.0109, 45.0110 and 45.0111 to read as follows:

**ARTICLE 5
SMOKING PROHIBITED IN CERTAIN PUBLIC AREAS
DIVISION 1**

SEC. 45.0101 PURPOSE OF ARTICLE

Because smoking of tobacco, or any other weed or plant, is a positive danger to health and a cause of material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined places, and in order to serve public health, safety and welfare, the declared purpose of this article is to prohibit the smoking of tobacco, or any other weed or plant, in certain areas which are used by or open to the public.

SEC. 45.0102 DEFINITIONS

"Smoke" or "smoking" as defined in this article shall mean and include the carrying of a lighted pipe, or lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar or cigarette of any kind.

"Service line" shall be defined as any indoor line of two (2) or more persons awaiting service of any kind, regardless of whether or not such service involves the exchange of money. Such service shall include, but is not limited to, sales, giving of information, directions or advice, and transfers of money or goods.

SEC. 45.0103 PROHIBITION IN CERTAIN PUBLIC PLACES

Smoking shall be prohibited in the following places within the City of San Diego to the extent the same are subject to the jurisdiction of licensing by The City of San Diego:

a. Elevators, museums, galleries, public transportation facilities open to the public, and service lines of establishments doing business with the general public.

b. Waiting rooms, sleeping rooms or public hallways of any private or public health care facility, including but not limited to hospitals; provided further, however, that this prohibition shall not prevent the establishment of a separate waiting room in which smoking is permitted, as long as there also exists a waiting room in the same facility in which smoking is prohibited. This prohibition shall not apply to private rooms.

c. Within waiting rooms, meeting rooms, public assembly rooms, libraries and restrooms located in all buildings owned or operated by The City of San Diego, except in zones designated for smoking by the City Manager. Such smoking zones shall not exceed twenty percent (20%) of the seating capacity of each room or area.

d. Within any building not open to the sky which is primarily used for or designed for the purpose of exhibiting any motion picture, stage drama, lecture, musical recital or other similar performance whenever open to the public (except when smoking is a part of a stage production); within all restrooms; except that smoking will be allowed in an area commonly referred to as a lobby if such lobby is physically separated from the spectator area.

e. Every retail food production and marketing establishment, including grocery stores and supermarkets, open to the public shall be posted with signs prohibiting smoking in every public portion thereof. This requirement does not apply to restaurants.

f. All restrooms open for public use.

SEC. 45.0104 OPTIONAL PROHIBITION

All managers and owners of any establishments serving or doing business with the public other than those specifically covered under Section 45.0103 may at their discretion post "No Smoking" signs within various areas of their businesses and utilize the full right of the provisions of this ordinance, provided, however, such posting must be annualized and consistent with their business license term.

SEC. 45.0105 POSTING OF SIGNS

Signs which designate smoking or no-smoking areas established by this ordinance shall be clearly, sufficiently, and conspicuously posted in every room, building, or other place so covered by this ordinance. The manner of such posting including the wording, size, color, design, and place of posting whether on the walls, doors, tables, counters, stands or elsewhere shall be at the discretion of the owner, operator, manager, or other person having control of such room, building, or other place so long as clarity, sufficiency, and conspicuousness are apparent in communicating the intent of this ordinance.

SEC. 45.0106 GOVERNMENTAL AGENCY COOPERATION

The City Manager shall annually request such governmental and educational agencies involved with their specific business within the City of San Diego to establish local operating procedures to cooperate and comply with this ordinance. In Federal, State, County, and special school

...that such room is ventilated with a mechanical ventilation system which complies with one of the following:

- 1. An outdoor air change of at least twenty-five (25) cubic feet per minute, per occupant, the occupant load to be determined in accordance with Section 2401(d) of the 1973 Uniform Building Code, as file with the City Clerk; or
- 2. A system utilizing filters which achieve eighty percent (80%) efficiency, as described in National Bureau of Standards test methods, or other equipment which is equally effective. Such system shall have sufficient capacity to process the air content of the room served every fifteen (15) minutes; or
- 3. The above ventilation exceptions shall not apply to the following areas where smoking is to be absolutely prohibited, namely, service lines, public transportation facilities open to the public, public health care facilities as regulated in Section 2401(b), theaters as regulated in Section 2401(d), and restaurants open to public use.
- 4. In ventilated areas as herein described, the smoking area shall be separated from the non-smoking area and shall not exceed fifty percent (50%) of the seating capacity.

SEC. 52.09B ENFORCEMENT AND APPEAL

- a. The City Manager shall be responsible for compliance with this article when facilities which are owned, operated or leased by the City of San Diego are involved. The City Manager shall provide business applicants with copies of this article.
- b. The owner, operator or manager of any facility, business or agency shall comply with this article as a requirement of receiving a license to operate in the City of San Diego. Such owner, operator or manager shall post or cause to be posted all "No Smoking" signs required by this article. Such owner, operator or manager shall not allow service to any person who violates this article by smoking in a posted "No Smoking" area.

SEC. 52.09C VIOLATIONS AND PENALTIES

Any person who violates any provision of this article by smoking in a posted "No Smoking" area, or by failing to post or cause to be posted "No Smoking" signs required by this article, or by serving any person who violates this article by smoking in a posted "No Smoking" area, is guilty of an infraction and, upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100).

SEC. 52.09D EDUCATION FOR NO-SMOKING PROGRAM

The City Manager will direct the Director of Environmental Quality to prepare an annual program of educational activities emphasizing the social ramifications as well as the health-degrading aspects of smoking. The City Manager will work with the County of San Diego through the County Administrator and Director of Public Health to cooperate with educational and legislative programs discouraging the harmful use of tobacco.

...shall be repealed by the City of San Diego and the provisions of this article shall be amended to read as follows:

Section 2, Chapter V, Article 2, of the San Diego Municipal Code be and the same amended by repealing Sections 52.09 and 52.10. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

Introduced on December 8, 1974.
Passed and adopted by the Council of The City of San Diego on December 18, 1974.
ATTESTED BY:
PETE WILSON,
Mayor of The City of San Diego, California.
EDWARD NIELSEN,
City Clerk of The City of San Diego, California.