

ORDINANCE NUMBER O- 15865 (New Series)

Adopted on DEC 6 1982

AN ORDINANCE AMENDING CHAPTER IV, ARTICLE 5, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 45.0101, 45.0102, 45.0103, 45.0104, 45.0105, 45.0107 AND 45.0108 RELATING TO REGULATION OF SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT.

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

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

SEC. 45.0101 PURPOSE OF ARTICLE

Because smoking of tobacco, or any other weed or plant, is a positive danger to health and a material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined spaces, 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 weed or plant, in public places and places of employment except in designated smoking areas.

SEC. 45.0102 DEFINITIONS

"Smoke" or "smoking" as defined in this Article means and includes 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.

"Public place" means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theatres, waiting rooms, reception areas, educational facilities, health facilities and public transportation facilities. A private residence is not a "public place."

"Place of employment" means any enclosed area under the control of a public or private 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."

SEC. 45.0103 PROHIBITIONS

No person shall smoke in a public place or place of employment except in designated smoking areas.

SEC. 45.0104 DESIGNATION OF SMOKING AREAS

(a) Smoking areas may be designated in public places and places of employment by proprietors or other persons in charge except in retail stores, retail service establishments, food markets, public conveyances, theaters, auditoriums, public assembly rooms, meeting rooms, rest rooms, elevators, pharmacies, libraries, museums or galleries which are open to the public or any other place where smoking is prohibited by the Fire Marshal or by other

law, ordinance or regulation. Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas. 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. An employer who in good faith develops and promulgates a policy regarding smoking and nonsmoking in the work place shall be deemed to be in compliance with this section provided that a policy which designates an entire work place as a smoking area shall not be deemed a good faith policy.

Restaurants covered by the provisions of this Article shall designate an adequate amount of seating capacity to sufficiently meet the demands and shall inform all patrons that a no-smoking section is provided. No public place other than the ones enumerated in Section 45.0107 shall be designated as a smoking area in its entirety.

(b) Notwithstanding any other provision of this Article, any facility or area may be designated in its entirety as a no-smoking area by the owner or manager thereof.

SEC. 45.0105 POSTING OF SIGNS

Signs which designate smoking or no-smoking areas established by this Article shall be clearly, sufficiently,

and conspicuously posted in every room, building, or other place so covered by this Article. No-smoking signs shall be specifically placed in retail food production and marketing establishments, including grocery stores and supermarkets open to the public, so that they are clearly visible to persons upon entering the store, clearly visible to persons in checkout lines, and clearly visible to persons at meat and produce counters. 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 Article.

SEC. 45.0107 EXCEPTIONS

(a) No-smoking areas are not required in individual private offices, hotel and motel meeting and assembly rooms rented to guests, areas and rooms while in use for private social functions, private hospital rooms, psychiatric facilities, jails, bars, stores that deal exclusively in tobacco products and accessories and restaurants or eating establishments with a seating capacity of less than 20 persons.

(b) Restaurants or eating establishments with a seating capacity of less than 20 persons shall have the

option of designating a no-smoking section or allowing or prohibiting smoking throughout the establishment.

(c) Any owner or manager of a business or other establishment subject to this Article may apply to the City Council for an exemption or modification of the provisions of this Article due to unique or unusual circumstances or conditions.

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 post or cause to be posted all "No Smoking" signs required by this Article. Owners, operators, managers or employees of same shall be required to orally inform persons violating this Article of the provisions thereof. The duty to inform such violator shall arise when such owner, operator, manager or employee of same becomes aware of such violation.

(c) It shall be the responsibility of employers to disseminate information concerning the provisions of this Article to employees.

(d) The provisions of this Article pertaining to places of employment shall not apply until July 1, 1984.

REVISED 11/15/82

Section 2. 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 Stuart H. Swett
Stuart H. Swett
Chief Deputy City Attorney

SHS:rc:605
10/21/81 REV.11/15/82
Or.Dept:PS&S

SEC. 45.0101 PURPOSE OF ARTICLE

Because smoking of tobacco, or any other weed or plant, is a positive danger to health and ^{cause-of} a material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined ^{places} spaces, and in order to serve public health, safety and welfare, the declared purpose of this ^A article is to prohibit the smoking of tobacco, or any weed or plant, in public places and places of employment except in designated smoking areas.

SEC. 45.0102 DEFINITIONS

"Smoke" or "smoking" as defined in this ^A article ^{shall} means and includes 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.

~~"Public place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theatres, waiting rooms, reception areas, educational facilities, health facilities and public transportation facilities. A private residence is not a "public place."~~

"Public place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theatres, waiting rooms, reception areas, educational facilities, health facilities and public transportation facilities. A private residence is not a "public place."

"Place of employment" means any enclosed area under the control of a public or private 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."

SEC. 45.0103 PROHIBITIONS IN CERTAIN PUBLIC PLACES

Smoking shall be prohibited in the following places within the City of San Diego on the same basis as set forth in the provisions herein:

a. - Business, professional, public transportation facilities open to the public and service firms or establishments conducting business with the general public.

b. - In any room or public building of every 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 or pay the six facilities which are facilities which have provided non-smoking sleeping rooms upon the request of any patient or his physician at the time such person is brought into the facility.

c. - In the area of the pharmacy counter of any store where people are waiting for or receiving medical prescriptions or lab medication.

d. - In non-smoking rooms, waiting rooms, public health rooms, libraries and recreation facilities and buildings owned or operated by the City of San Diego, except for those designated for smoking by the City Manager. Such smoking areas shall be marked clearly with signs (20") of the same capacity of each room or area.

e. - Within any building not open to the public which is primarily used for or designed for the purpose of exhibiting art, motion pictures, stage drama, lecture, musical recital or other similar performance otherwise open to the public (except where smoking is a part of a stage production), with all-ages areas, except the smoking area for adults (18+).

f. - Food production and marketing establishments, including grocery stores and department stores open to the public. Such establishments shall be posted with signs prohibiting smoking or non-public portion thereof. No smoking signs shall be specifically placed so that they are clearly visible to persons operating the store, clearly visible to persons in the store, and clearly visible to persons at the store and product counters. This requirement does not apply to restaurants.

g. - Address open to the public.

No person shall smoke in a public place or place of employment except in designated smoking areas.

SEC. 45.0104 OPTIONAL PROVISION: DESIGNATION OF SMOKING AREAS

All managers and owners of any establishments which are open to the public shall, where they are specifically covered under Section 45.0103, may provide the exemption "No Smoking" signs on the various areas of the business and other the full right of the prohibition of the smoke.

(a) Smoking areas may be designated in public places and places of employment by proprietors or other persons in charge except in retail stores, retail service

establishments, food markets, public conveyances, theaters,
auditoriums, public assembly rooms, meeting rooms, rest
rooms, elevators, pharmacies, libraries, museums or
galleries which are open to the public or any other place
where smoking is prohibited by the Fire Marshal or by other
law, ordinance or regulation. Where smoking areas are
designated, existing physical barriers and ventilation
systems shall be used to minimize the toxic effect of smoke
in adjacent nonsmoking areas. 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. An employer who in good faith
develops and promulgates a policy regarding smoking and
nonsmoking in the work place shall be deemed to be in
compliance with this section provided that a policy which
designates an entire work place as a smoking area shall not
be deemed a good faith policy.

Restaurants covered by the provisions of this Article
shall designate an adequate amount of seating capacity to
sufficiently meet the demands and shall inform all patrons
that a no-smoking section is provided. No public place
other than the ones enumerated in Section 45.0107 shall be
designated as a smoking area in its entirety.

(b) Notwithstanding any other provision of this Article, any facility or area may be designated in its entirety as a no-smoking area by the owner or manager thereof.

SEC. 45.0105 POSTING OF SIGNS

Signs which designate smoking or no-smoking areas established by this ordinance Article shall be clearly, sufficiently, and conspicuously posted in every room, building, or other place so covered by this ordinance Article. No-smoking signs shall be specifically placed in retail food production and marketing establishments, including grocery stores and supermarkets open to the public, so that they are clearly visible to persons upon entering the store, clearly visible to persons in checkout lines, and clearly visible to persons at meat and produce counters. 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 Article.

SEC. 45.0108 ENFORCEMENT AND APPEAL

(a) The City Manager shall be responsible for compliance with this ^Aarticle 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 ^Aarticle.

(b) The owner, operator or manager of any facility, business or agency shall post or cause to be posted all "No Smoking" signs required by this ^Aarticle. Owners, operators, managers or employees of same shall be required to orally inform persons violating this ^Aarticle of the provisions thereof. The duty to inform such violator shall arise when such owner, operator, manager or employee of same becomes aware of such violation.

(c) It shall be the responsibility of employers to disseminate information concerning the provisions of this Article to employees.

(d) The provisions of this Article pertaining to places of employment shall not apply until July 1, 1984.

DEC 6 1982

Passed and adopted by the Council of The City of San Diego on _____
by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible	
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Susan Golding	<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"/>	
Ed Struiksma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Mike Gotch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
District 8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Vacant .
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.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By Barbara Berridge, 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

NOV 15 1982

DEC 6 1982

, 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.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By Barbara Berridge, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number 0-15865 Adopted DEC 6 1982

CERTIFICATE OF PUBLICATION

RECEIVED
CITY CLERK'S OFFICE
1982 DEC 28 PM 12:18
SAN DIEGO, CALIF.

City of San Diego
202 C St. 12th Floor
San Diego, Ca. 92101
ATTN: Barbara Berridge

IN THE MATTER OF

NO.

ORDINANCE NO. 0-15865

ORDINANCE NO. 0-15865
(New Series)

AN ORDINANCE AMENDING CHAPTER IV, ARTICLE 8, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 45.9101, 45.9102, 45.9103, 45.9104, 45.9105, 45.9107 AND 45.9108 RELATING TO REGULATION OF SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT.

This ordinance amends provisions of the San Diego Municipal Code relating to smoking (Sections 45.9101-45.9111) to provide that smoking is not permitted in public places and places of employment except in designated smoking areas. It provides that smoking areas may be designated in public places and places of employment by proprietors or other persons in charge except in retail stores, retail service establishments, food markets, public conveyances, theaters, auditoriums, public assembly rooms, meeting rooms, rest rooms, elevators, pharmacies, libraries, museums or galleries which are open to the public or any other place where smoking is prohibited by the Fire Marshal or by other law, ordinance or regulation. Employers are required after July 1, 1984 to provide smoke-free areas for non-smokers within existing facilities to the maximum extent possible but are not required to incur any expense to make structural or other physical modifications in providing these areas. Requires restaurants with seating capacity of more than 25 persons to designate no-smoking areas and inform all patrons that a no-smoking section is provided. It provides for certain exceptions.

Introduced on November 15, 1982.
Passed and adopted by the Council of The City of San Diego on December 8, 1982.

AUTHENTICATED BY:
PETE WILSON, Mayor of The
City of San Diego, California.
CHARLES G. ABDELNOUR, City Clerk of The
City of San Diego, California.

By BARBARA BERRIDGE, Deputy
Publish December 28, 1982.

I, Shelley Samudio, am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

ORDINANCE NO. 0-15865 (New Series)

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

December 20, 1982

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 20th day of Dec, 1982

Shelley Samudio

(Signature)

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