

(O-91-143)

ORDINANCE NUMBER O- 17633 (NEW SERIES)

ADOPTED ON APR 29 1991

AN ORDINANCE AMENDING CHAPTER IV, ARTICLE 5, DIVISION 1, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 45.0101, 45.0102, 45.0104, 45.0105, 45.0107, 45.0108, 45.0109, 45.0110 AND 45.0111, AND BY ADDING SECTION 45.0112, RELATING TO SMOKING REGULATIONS.

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 the same is hereby amended by amending Sections 45.0101, 45.0102, 45.0104, 45.0105, 45.0107, 45.0108, 45.0109, 45.0110 and 45.0111 to read as follows:

SEC. 45.0101 Purpose of Division

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 Division is to prohibit the smoking of tobacco, or any weed or plant, in public places and places of employment except in designated smoking areas identified by signs as set forth in Section 45.0105 of this Division.

SEC. 45.0102 Definitions

"Smoke" or "smoking" as defined in this Division 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."

"Bar" means an establishment where the primary business is sale of alcoholic beverages for consumption on the premises and where all occupants are required to be

twenty-one (21) years or older.

"Private office" means a room in a place of employment assigned to only one person with fully enclosed floor to ceiling walls and a solid door that shuts.

"Shared work area" means a room in a place of employment in which more than one person is assigned to perform work during the course of a work shift period.

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, food service lines, restaurant waiting areas, hospitals and health care facilities, public conveyances, theaters, auditoriums, public assembly rooms, meeting rooms, rest rooms, elevators, pharmacies, libraries, museums or galleries which are open to the public, including restaurants within the above specified establishments which are constructed so that smoke can drift into the non-restaurant part of the establishment, or any other place where smoking is prohibited by the Fire Marshal or by other law, ordinance or regulation. Smoking areas may

not be designated in areas which the public must walk through to gain access to nonsmoking areas, unless such arrangement is structurally impossible. 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.

Restaurants covered by the provisions of this Division shall designate no less than fifty percent (50%) of indoor seating capacity as a nonsmoking area 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) Smoking areas shall not be designated in a shared work area of a place of employment. Employers shall provide to employees written information concerning smoking at the place of employment, including the location of designated smoking and nonsmoking areas.

(c) No ashtrays or other ash receptacles shall be placed in areas where smoking is prohibited.

(d) Notwithstanding any other provisions of this Division, 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 Division shall be clearly, sufficiently, and conspicuously posted in every room, building, or other place so covered by this Division. 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. In addition, signs shall be placed at all entrances to public places and places of employment, except restaurants, that read substantially as follows: **NO SMOKING EXCEPT IN DESIGNATED AREAS.** Smoking shall be permitted only in public places and places of employment, except restaurants, in areas containing a sign that reads substantially as follows: **DESIGNATED SMOKING AREA.** Restaurants shall either place a sign at the restaurant entrance as provided above or

shall place signs in the restaurant interior which designate smoking or nonsmoking areas. 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 Division.

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, including psychiatric units of hospitals, chemical dependency and substance abuse facilities, including chemical dependency and substance abuse treatment units within hospitals, long term nursing facilities, jails, bars, and stores that deal exclusively in tobacco products and accessories. Smoking shall be permitted in private offices only when the doors are closed so that no smoke drifts outside the closed private office, and when

nonsmoking persons are not present.

(b) Nothing in this Division shall be construed to prohibit smoking by any theatrical or musical artist while such artist is performing on stage, provided that smoking is a bona fide part of the act and that no other laws, ordinances, or regulations are violated thereby.

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

(d) Criteria for Exemption

The City Manager, or a designee of the City Manager, shall have the sole authority and discretion to grant or deny requests for exemptions submitted under subsection (c) of this section. In passing decision on such applications, the City Manager, or designee, shall take due account of the following considerations, as they reasonably apply to each application:

1. Whether the applicant has demonstrated an adequate understanding of the requirements of this Article, such that it is clear that the application is not based on a

misunderstanding of the minimum requirements of compliance.

2. The extent of efforts the business has made toward compliance with the requirements of this Article.

3. The physical structure of the area for which the exemption is sought.

4. The number of employees in or near the area for which the exemption is sought.

5. The nature and frequency of contact that the applicant's business has with the public.

6. Whether physical disabilities of employees would render compliance with the requirements of this Article unreasonably difficult.

The burden of proof shall be upon the applicant to show by substantial evidence that such unique or unusual circumstances exist, in respect to the foregoing considerations, that there is a necessary and compelling reason to grant an exemption.

SEC. 45.0108 Enforcement and Appeal

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

(b) The owner, operator, or manager of any facility, business or agency shall post or cause to be posted all signs required by Section 45.0105 of this Division. Owners, operators, managers, or employees of same shall be required to orally inform persons violating this Division 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 Division to employees.

(d) Any owner, operator, manager, or employee of any facility, business, or agency who after having informed a violator of this Division of the provisions herein continues to witness said violation, shall have the express right to refuse business or service to that violator.

SEC. 45.0109 Violation and Penalties

Any person who violates any provision of this Division 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 Division, or by a knowing failure to inform any person who violates the provisions of this Division, when such duty to inform arises as set forth in Section 45.0108, subsection (b) above, is guilty of an infraction and, upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00).

SEC. 45.0110 Education for No-Smoking Program

The City Manager, through the office of Citizens Assistance and Information, shall engage in a continuing program to inform and clarify the purposes of this Division to citizens affected by it, and to guide owners, operators and managers in their compliance.

The City shall leave the responsibility of conducting a public education campaign, regarding the health-degrading aspects of smoking, to other governmental and health agencies equipped with the needed expertise to conduct such campaigns.

SEC. 45.0111 Severability

If any provision, clause, sentence or paragraph of this Division or the application

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

Section 2. That Chapter IV, Article 5, Division 1, of the San Diego Municipal Code be and the same is hereby amended by adding Section 45.0112 to read as follows:

SEC. 45.0112 Reprisal Prohibited

No person shall intimidate or threaten any reprisal or effect any reprisal for the purpose of retaliating against another person because such other person seeks to attain compliance with the provisions of this Division.

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 Frederick M. Ortlieb
Frederick M. Ortlieb
Deputy City Attorney

FMO:mrh:mb
04/02/91
Or.Dept:Mgr.
O-91-143
Form=o.code

APR 29 1991

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

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Hartley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Wes Pratt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tom Behr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Bruce Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR

Mayor of The City of San Diego, California.

(Seal)

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

By *Linda Lugans*, 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

APR 15 1991

APR 29 1991

....., 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 *Linda Lugans*, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number **0-17633** Adopted **APR 29 1991**

CERTIFICATE OF PUBLICATION

RECEIVED
CITY CLERK'S OFFICE
91 MAY 15 AM 9:33
SAN DIEGO, CALIF.

CITY CLERK'S OFFICE
CITY ADMN. BLDG.
202 C ST.
SAN DIEGO, CA 92101

IN THE MATTER OF

NO.

~~AN ORDINANCE AMENDING CHAPTER IV, ARTICLE 5, DIVISION 1,~~

ORDINANCE NUMBER 0-17633 (NEW SERIES)

AN ORDINANCE AMENDING CHAPTER IV, ARTICLE 5, DIVISION 1, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 48.0101, 48.0102, 48.0104, 48.0106, 48.0107, 48.0108, 48.0109, 48.0110 AND 48.0111, AND BY ADDING SECTION 48.0112, RELATING TO SMOKING REGULATIONS.

This ordinance amends Chapter IV, Article 5, Division 1, of the San Diego Municipal Code relating to the regulation of smoking in public places and places of employment by replacing the word "Article" with the word "Division;" by adding definitions for the terms "bar," "private office," and "shared work area"; by adding food service lines, restaurant waiting areas, hospitals, and health care facilities to the express list of public places where smoking areas may not be established; by providing that smoking areas may not be designated in areas which the public must pass through to gain access to non-smoking areas; by deleting a provision that employers are not required to incur any expense in modifying their facilities to meet the requirements of this Division; by deleting a provision that good faith efforts of employers to comply with this Division shall be deemed compliance with same; by deleting a provision that restaurants must designate an adequate amount of seating as non-smoking area and adding the provision that restaurants must dedicate at least half of indoor seating as non-smoking area; by adding a provision prohibiting smoking in shared work areas; by adding a provision prohibiting the placement of ash trays in non-smoking areas; by adding a provision that employers must provide written notice of smoking laws to employees; by providing that "No Smoking Except in Designated Areas" signs must be posted at entrances to public places and places of employment, except restaurants, which must otherwise post signs to designate smoking and non-smoking areas; by adding psychiatric units of hospitals, chemical dependency and substance abuse facilities, and long term nursing facilities to the exceptions list of public places where non-smoking areas are not required; by providing that smoking shall be permitted in private offices behind closed doors when non-smoking persons are not present, by providing that stage artists shall not be prohibited from smoking on stage if such is part of the performance, by deleting a provision that applications for variances be made to the City Council, and adding a provision that such applications be made to the City Manager; by adding criteria to be used by the City Manager in deciding whether to grant or deny variances; by deleting a prior provision that the Article became effective July 1, 1994 and adding a provision that owners, managers, or employees of businesses may refuse service to violators of this Division, and by providing that reprisal, threatened or actual, against persons who seek to enforce the provisions of this Division is prohibited.

A complete copy of this ordinance is available for inspection in the City Clerk's office, City of San Diego, City Administration Building, 202 C Street, San Diego, CA 92101.

INTRODUCED ON APR 15 1991
Passed and Adopted by the Council of The City of San Diego on APR 29 1991

AUTHENTICATED BY:
MAUREEN O'CONNOR
Mayor of The City of San Diego, CA
CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, CA

By Linda Lugano, Deputy

(SEAL)

Pub. May 13

218004

I, Thomas D. Kelleher, 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

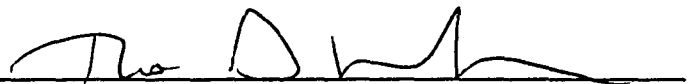
ORDINANCE NUMBER 0-17633 (NEW SERIES)

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:

MAY 13

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

Dated at San Diego, California this 13TH day of MAY, 19 91.


(Signature)

PAGE 1 of 1 103/8 = 129.96