

(O-94-55) REV.

COR.COPY 3/2/94

ORDINANCE NUMBER O-18047 (NEW SERIES)
ADOPTED ON MARCH 8, 1994

AN ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL CODE BY RETITLING CHAPTER IV, ARTICLE 3 TO "ENVIRONMENTAL HEALTH QUALITY CONTROLS"; BY CREATING A NEW DIVISION 10 IN CHAPTER IV, ARTICLE 3, ENTITLED "SMOKING REGULATIONS"; BY AMENDING AND RENUMBERING SECTIONS 45.0101 AND 45.0102 TO SECTIONS 43.1001 AND 43.1002, RESPECTIVELY; BY AMENDING AND RENUMBERING SECTION 45.0103 TO SECTION 43.1003 AND BY REPEALING SECTION 45.0112 AND REENACTING IT AS SUBSECTION (d) OF NEWLY RENUMBERED SECTION 43.1003; BY AMENDING AND RENUMBERING SECTIONS 45.0104 AND 45.0105 TO SECTIONS 43.1004 AND 43.1005, RESPECTIVELY; RENUMBERING SECTION 45.0106 TO SECTION 43.1006; RETITLING, AMENDING AND RENUMBERING SECTIONS 45.0107 AND 45.0108 TO SECTIONS 43.1007 AND 43.1008, RESPECTIVELY; AMENDING AND RENUMBERING SECTION 45.0109 TO SECTION 43.1009; RENUMBERING SECTION 45.0110 TO SECTION 43.1010; REPEALING SECTION 45.0111; AND BY REPEALING DIVISION 1 IN CHAPTER IV, ARTICLE 5, OF THE SAN DIEGO MUNICIPAL CODE; ALL RELATING TO REGULATIONS AFFECTING THE SMOKING OF TOBACCO OR ANY OTHER WEED OR PLANT.

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

Section 1. That Chapter IV, Article 3, of the San Diego

Municipal Code be and the same is hereby amended by amending the title of Article 3 to read as follows:

ARTICLE 3

Environmental Health Quality Controls

Section 2. That Chapter IV, Article 3, of the San Diego Municipal Code be, and the same is hereby amended by creating Division 10, to read as follows:

DIVISION 10

Smoking Regulations

Section 3. That Chapter IV, Article 3, Division 1, of the San Diego Municipal Code be, and the same is hereby amended by amending and renumbering Sections 45.0101 and 45.0102 to Sections 43.1001 and 43.1002, respectively, to read as follows:

SEC. 43.1001 Purpose and Intent

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 43.1005 of this Division.

SEC. 43.1002 Definitions

For purposes of this Division, the following definitions shall apply:

"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.

"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, private offices, employee lounges, conference rooms, and employee cafeterias. A private residence is not a "Place of Employment." A Public Place is not a Place of Employment.

"Public Place" means any enclosed area where the public is routinely permitted without special invitation, including, but not limited to, retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, waiting rooms, reception areas, educational facilities, health facilities and public transportation facilities. A private residence is not a "Public Place."

"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.

"Smoke" or "smoking" 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.

Section 4. That Chapter IV, Article 3, Division 1, of the San Diego Municipal Code be, and the same is hereby amended by amending and renumbering Section 45.0103 to Section 43.1003, and by repealing Section 45.0112 and reenacting it as subsection (d) of newly renumbered Section 43.1003, to read as follows:

SEC. 43.1003 Prohibitions

(a) It is unlawful for any person to smoke in a Public Place or Place of Employment except in a designated smoking area lawfully established in accordance with this Division.

(b) It is unlawful for an owner, operator or manager of any facility, business or agency to designate or maintain a smoking area in a Public Place or Place of Employment which does not comply with the requirements set forth in Sections 43.1004 and 43.1005 of this Division.

(c) It is unlawful for an owner, operator or manager of any facility, business or agency to knowingly permit ashtrays or other ash receptacles to be located in areas where smoking is prohibited by this Division.

(d) It is unlawful for any person to intimidate, threaten any reprisal, or effect any reprisal for the purpose of retaliating against another person who seeks to attain compliance with the provisions of this Division.

Section 5. That Chapter IV, Article 3, Division 1, of the San Diego Municipal Code be, and the same is hereby amended by amending and renumbering Sections 45.0104 and 45.0105 to Sections 43.1004 and 43.1005, respectively, to read as follows:

SEC. 43.1004 Designation of Smoking Areas

(a) Smoking areas may be designated in Public Places, including facilities where bingo games are conducted pursuant to Section 33.3401 et seq., 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, galleries which are open to the public or any other place where smoking is prohibited by the fire marshal or by any other law, ordinance or regulation. Smoking areas may not be designated in areas through which the public must walk to gain access to nonsmoking areas, unless such arrangement is structurally necessary. 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.

(b) In those Public Places where smoking areas may be designated, including bingo facilities, no less than seventy percent (70%) of indoor seating capacity shall be designated as a nonsmoking

area and, after July 1, 1995 no less than eighty percent (80%) of indoor seating capacity shall be designated as a nonsmoking area.

(c) Smoking areas may be designated in Places of Employment only in fully enclosed areas that meet ventilation standards recommended by the National Institute for Occupational Safety and Health (NIOSH). Pursuant to NIOSH standards, the air from designated smoking areas must be exhausted directly outside and not recirculated within the building or mixed with the general dilution ventilation for the building. Smoking areas shall not be designated in a Shared Work Area of a Place of Employment. Smoking shall be permitted in designated smoking areas only when the doors are closed so that no smoke drifts outside the designated smoking area, and when nonsmoking persons are not present in the designated smoking area. Employers shall provide to employees written information concerning smoking at the Place of Employment, including the location of designated smoking and no-smoking areas.

(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. 43.1005 Posting of Signs

(a) The owner, operator or manager of any Public Place or Place of Employment shall insure that signs are posted in accordance with this section to designate smoking and no-smoking areas.

(b) 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.

(c) 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 entering the store, and clearly visible to persons at meat and produce counters.

(d) Signs shall be placed at all entrances to Public Places and Places of Employment that read as follows: **NO SMOKING EXCEPT IN DESIGNATED AREAS.**

(e) Smoking shall be permitted in Public Places and Places of Employment, except restaurants, only in areas containing a sign that reads substantially as follows: **DESIGNATED SMOKING AREA.**

(f) 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 no-smoking areas. The manner consisting of posting signs required by this Division, including the wording, size, color, design, and place or 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.

Section 6. That Chapter IV, Article 3, Division 1, of the San Diego Municipal Code be, and the same is hereby amended by renumbering Section 45.0106 to Section 43.1006.

Section 7. That Chapter IV, Article 3, Division 1, of the San Diego Municipal Code be, and the same is hereby amended by retitling, amending and renumbering Sections 45.0107 and 45.0108 to Sections 43.1007 and 43.1008, respectively, to read as follows:

SEC. 43.1007 Exemptions

(a) No-smoking areas are not required in 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.

(b) No change in text of this subsection.

(c) No change in text of this subsection.

(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 Section 43.1007. 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 Division, 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 Division.

(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 Division 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. 43.1008 Duty to Enforce

(a) No change in text of this subsection.

(b) The owner, operator or manager of any facility, business or agency shall post or cause to be posted all signs required by Section 43.1005 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) No change in text of this subsection.

(d) No change in text of this subsection.

Section 8. That Chapter IV, Article 3, Division 1, of the San Diego Municipal Code be, and the same is hereby amended by amending and renumbering Section 45.0109 to Section 43.1009, to read as follows:

SEC. 43.1009 Violations and Penalties

(a) Any person who violates any provision of this Division 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).

(b) An owner, operator or manager of any facility, business or agency who knowingly permits patrons to violate Section 43.1003, or who knowingly fails to discharge any duty arising from the provisions of this Division, is guilty of a misdemeanor and subject to any enforcement option or penalty provision set forth in Chapter One of this Code to address violations of law.

Section 9. That Chapter IV, Article 3, Division 1, of the San Diego Municipal Code be, and the same is hereby amended by renumbering Section 45.0110 to Section 43.1010.

Section 10. That Chapter IV, Article 3, Division 1, of the San Diego Municipal Code be, and the same is hereby amended by repealing Section 45.0111.

Section 11. That Chapter IV, Article 5, of the San Diego Municipal Code be, and the same is hereby amended by repealing Division 1.

Section 12. This ordinance shall take effect and be in force on July 1, 1994.

APPROVED: JOHN W. WITT, City Attorney

By

Richard A. Duvernay
Deputy City Attorney

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