



INTERNAL AFFAIRS COMMITTEE AGENDA

Meeting of November 8, 2011 – 8:00 a.m. to 10:00 a.m.

A Committee of the Chico City Council:
Councilmembers Evans, Holcombe and Chair Walker
Council Chamber Building, 421 Main Street, Conference Room No. 1

REGULAR AGENDA

- A. **Consideration of Request from American Lung Association for Comprehensive Policy Regarding Smoke Free Areas** - By letter received September 7, 2011, the American Lung Association (ALA) requested that the City Council consider a comprehensive policy to protect the public from outdoor secondhand smoke exposure and to reduce tobacco product waste in public areas. At its meeting of September 20, 2011 the City Council referred the request to the Internal Affairs Committee for consideration and review. **(Report: City Manager Dave Burkland)**
- Recommendation:*** *The Committee should determine whether the City Council should consider an amendment to the Chico Municipal Code prohibiting smoking in outdoor places and imposing more stringent regulations regarding tobacco product waste.*
- B. **Business from the Floor** - Members of the public may address the Committee at this time on any matter not already listed on the agenda, with comments being limited to three minutes. The Committee cannot take any action at this meeting on requests made under this section of the agenda.
- C. **Adjournment and Next Meeting** - The meeting will adjourn no later than 10:00 a.m. The next regular Internal Affairs Committee meeting is scheduled for Tuesday, December 13, 2011, at 8:00 a.m. in Conference Rm. No. 1.

Distribution available in the office of the City Clerk

Prepared: 11/3/11
Posted: 11/3/11
Prior to: 5:00 pm

Chico City Clerk's Office
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Internal Affairs Agenda Report

Meeting Date: November 8, 2011

TO: Internal Affairs Committee
FROM: City Manager David Burkland (896-7201)
RE: Request from American Lung Association for Comprehensive Policy Regarding Smoke Free Areas

REPORT IN BRIEF:

By letter received September 7, 2011, the American Lung Association (ALA) requested that the City Council consider a comprehensive policy to protect the public from outdoor secondhand smoke exposure and to reduce tobacco product waste in public areas (Attachment A). At its meeting of September 20, 2011 the City Council referred the request to the Internal Affairs Committee for consideration and review.

Recommendation:

The Committee should determine whether the City Council should consider an amendment to the Chico Municipal Code prohibiting smoking in outdoor places and imposing more stringent regulations regarding tobacco product waste.

FISCAL IMPACT:

Prohibiting the disposal of tobacco product waste would require the removal of existing smoking waste receptacles and the installation of signs depicting areas where smoking is no longer permitted. In areas where smoking would be permitted, waste receptacles may need to be installed. Some signage requirements associated with nuisance abatement efforts may result in the expenditure of existing department resources. Many of the requirements of an amended ordinance would require voluntary compliance. In some cases, minimal enforcement resources may be required by Code Enforcement. Any major new expense associated with signage or enforcement requirements would require City Council approval. If new regulations are implemented, grants would be sought to offset any costs borne by the City.

A strong educational program would also be required. Grants may be available to support public education and promotion of a comprehensive outdoor smoking ordinance. Public education may be provided through the ALA, the City website, community access channel, local papers, Park Division staff, and staff from Chico Area Recreation and Park District (CARD).

BACKGROUND:

Smoking is currently prohibited in designated areas of Bidwell Park from May 1 to November 1 annually, and within the city plaza. Per state law, smoking is prohibited 20 feet from entryways, exits, or operable windows of all public buildings and within 25 feet of tot lots and playgrounds. Smoking is prohibited within a building owned and occupied, or leased and occupied, by the state, county, or city. Chapter 8.28 and Sections 12R.04.230 and 12R.04.235 of Title 12R of the Chico Municipal Code are attached for reference (Attachment B).

The ALA is requesting a policy prohibiting smoking in all of Bidwell Park, within 25 feet of all business entryways, and in all outdoor dining and bar areas. The ALA is also requesting the addition of strict litter policies regarding tobacco product waste and has provided a sample ordinance (Attachment C).

DISCUSSION:

The California Constitution grants cities the police power to enact ordinances and regulations that protect the health, safety, welfare and morals of their citizens. Under California law, local communities have great flexibility in adopting smoking laws. State law expressly provides local jurisdictions with the authority to expand upon state smoking regulations.

RE: Request for Comprehensive Policy Regarding Smoke Free Areas

Meeting Date: November 8, 2011

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Staff recommends that if the Committee wishes to pursue this issue further, that it solicit input from community groups representing businesses, health care and enforcement, such as the Bidwell Park and Playground Commission, Public Health, Enloe Hospital, CARD, Chamber of Commerce, and DCBA.

PUBLIC CONTACT:

None

A handwritten signature in blue ink, appearing to read "Dave Burkland", is written over a horizontal line.

Dave Burkland, City Manager

DISTRIBUTION:

City Clerk (16)

American Lung Association:

Shelly Brantley and DeAnne Blankenship, 10 Landing Circle, Suite 1, Chico, CA, 95973

ATTACHMENTS:

A - Letter dated September 7, 2011 and background information from the American Lung Association

B - Chapter 8.28 and Section 12R.04.230 and 12R.04.235 of Title 12R of the Chico Municipal Code

C - Sample Ordinance from the American Lung Association

FILE: PS-10-42-1-2



RECEIVED
SEP 07 2011
CITY OF CHICO
CITY OF CHICO

September 7, 2011

10 Landing Circle
Suite 1
Chico, CA 95973
530-345-5864 phone
530-345-6035 fax

The Honorable Ann Schwab, Mayor
c/o Chico City Clerk
City of Chico
P.O. Box 3420
Chico, CA 95927

lungusa.org/california

Dear Mayor Schwab,

On behalf of the American Lung Association in California and the California Health Collaborative, we are writing to request the City of Chico consider a comprehensive policy to protect the public from outdoor secondhand smoke exposure and reduce tobacco litter in public areas.

We encourage you to protect Chico residents from secondhand smoke in outdoor public places where people gather, such as parks, recreation areas, restaurant & bar patios, and entryways. To that end, we ask you to consider a policy to:

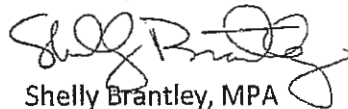
- Prohibit smoking in Bidwell Park
- Prohibit smoking within 25 feet of business entryways
- Prohibit smoking in outdoor dining and bar areas

Despite strong smoke-free laws in California, there are still many people who are exposed to secondhand smoke. This includes families enjoying Bidwell Park, customers and employees trying to access stores and services, and wait staff and outdoor dining guests; many of whom will receive exposure that exceeds the current U.S. Environmental Protection Agency's limit on fine particulate matter pollution. And even just a short exposure to secondhand smoke can trigger an asthma attack and breathing problems for people with chronic lung disease.

We are also concerned with the environmental impact tobacco litter has in our community. Cigarette butts soil our sidewalks and parks, and chemicals from cigarette filters bleed into soils and waterways. In addition, butts have been found in the mouths of small children and in the stomachs of wildlife.

Many California cities have passed policies to protect citizens from outdoor secondhand smoke and butt litter. We thank you for considering the same.

Sincerely,


Shelly Brantley, MPA
Project Director


DeAnne Blankenship, MPH
Program Manager

DATE 9/7/11 AGENDA COUN 7
ADD. INFO CM ✓ ACM CA
GSD CP/SD ASD CLK PSD
BDS/ HR/IR/ F/IND COP FC
HNSD File OTHER

Frequently Asked Questions

Why do we need smoke-free entryway policies?

We need smoke-free entryway policies to protect the public from secondhand smoke. When California passed the landmark Smoke-Free Workplace Act (AB 13), which made virtually all indoor workplaces smoke-free, it was a huge step toward protecting the public from secondhand smoke. However, smokers now congregate in entryways, creating an unhealthy zone that everyone coming or going must enter.

People inside the building are also at risk. Smoke around entryways can drift into the buildings or be sucked in by powerful ventilation systems.

Californians want smoke-free outdoor air. Of those polled, 82 percent of nonsmokers and 59 percent of smokers agree that workplaces should designate smoke-free zones around all building entrances.

California Assembly Bill 846, which went into effect January 1, 2004, prohibits smoking within 20 feet of entryways and windows of all city, county or state owned or leased buildings in the state. All workers, not just government employees, deserve to have this protection around their workplace.

Smoke-free entryway policies are good for business. They keep entryways free from loitering so that customers or clients are greeted with a more professional atmosphere when entering office buildings or other businesses. Besides, 82 percent of Californians don't smoke so most customers or clients don't want to smell or breathe in smoke as they enter the building.

What is the concern about secondhand smoke?

In 1993, the Environmental Protection Agency classified secondhand smoke as a Class A carcinogen, putting it in the same category as asbestos and radon. Class A carcinogens are known to cause cancer in humans.

Secondhand smoke contains more than 4,000 chemicals, including nicotine, arsenic, benzene, formaldehyde, and carbon monoxide. Many of these chemicals are poisonous and deadly.

Secondhand smoke kills nearly 3,000 nonsmokers each year from lung cancer in the United States and another 35,000 to 62,000 from coronary heart disease.

Exposure to secondhand smoke can have immediate health consequences, including eye, nose and throat irritation, as well as asthma attacks and breathing problems in people with chronic lung disease.

Secondhand smoke is especially harmful to children and has been linked to sudden infant death syndrome, low birth rates, acute lower respiratory infections, middle ear infections, asthma and other respiratory ailments.

Isn't it safe to smoke outside?

We used to think it was safe to smoke outdoors and encouraged smokers to step outside. While smoke does dissipate more quickly outdoors, studies conducted by former Environmental Protection Agency researcher James Repace and others show the deadly particles linger in the air long enough to be breathed into the lungs. The fact is secondhand smoke is not safe, not even outdoors.

Why is 20 feet the minimum distance required?

Researcher James Repace and other environmental tobacco smoke experts at the University of California at Berkeley and the University of California at San Francisco agree that 20 feet from a doorway is adequate to protect from the carcinogenic particles in secondhand smoke.

It is consistent with the state law which currently prohibits smoking within 20 feet of the entryways of all city, county or state owned or leased buildings in the state.

Do smoke-free entryway policies work?

Cities, counties and businesses across California are finding that smoke-free entryway policies work with 26 percent of government jurisdictions and 23 percent of private businesses already having smoke-free entryway policies in place that range from 20 to 50 feet.

Cities include: Albany, Berkeley, Davis, Fremont, Oakland, Palo Alto, Pleasanton, Rancho Cucamonga, Sacramento, San Fernando, San Ramon, Santa Barbara, and Union City.

Counties include: Marin, Shasta, San Mateo, Santa Barbara, and Yolo.

Many hospitals, health centers and other businesses have smoke-free entryway policies, including Kaiser Permanente, St. Joseph's Hospital, Colusa Regional

Medical Center, Darin Camerena Health Center, Foothill Community Clinics, Cathay Bank and Mechanics Bank.

The State of California passed a smoke-free entryway law which protects the entryways of all city, county or state owned or leased buildings. This law, California Assembly Bill 846, bans smoking within 20 feet of the entryways, operable windows, and ventilation systems of these buildings.

How do we enforce smoke-free entryway policies?

For those cities, counties and businesses that have already passed smoke-free entryway ordinances, enforcement has not been an issue. The key components of enforcement and compliance are signage and public awareness. In the vast majority of cases, smoke-free entryway policies are self-enforcing. When people see the no-smoking signs they don't smoke there.

Are smoke-free laws fair to smokers?

Smoke-free laws are fair to smokers. Both federal and state courts have determined there is no legal right to smoke. These policies do not keep smokers from smoking, they just restrict where smoking can occur just as other laws restrict where activities can occur in public. We aren't allowed to drink alcohol in entryways either. We live in a society where millions of people have to coexist together, so we must set policies that protect the rights of all people. The public has a right not to be subjected to a deadly substance.

Are there any other benefits?

Another benefit of smoke-free policies is they help to reduce tobacco use, the number one preventable cause of death and disease in this country. Smoke-free policies encourage smokers to quit and make it easier for those trying to quit to succeed. They also help to reduce tobacco use by de-glamorizing smoking and making it less attractive to young people.

The
CENTER FOR TOBACCO POLICY & ORGANIZING

 **AMERICAN
LUNG
ASSOCIATION.**
of California
www.californialung.org/thecenter

KLEAN Students Scour Bidwell Park for Cigarette Butt Litter

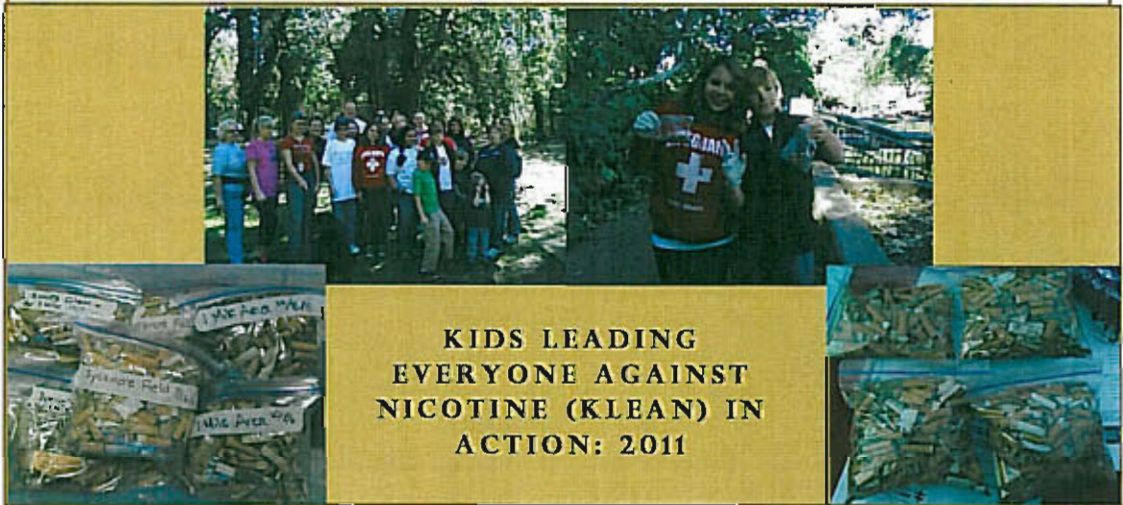
A group of students from Chico Junior, Marsh, and Bidwell Junior High schools participated in three park clean up events in 2010 and 2011, with the goal of removing cigarette butts from local parks, including Bidwell Park. The volunteers picked up cigarette butt litter from around benches and picnic tables, along trails, in parking lots, and playground areas. The KLEAN (Kids Leading Everyone Against Nicotine) students collected hundreds of cigarette butts during each clean up event.



These cigarette butts were collected by student volunteers in Bidwell Park in 2011.

Why *Smoke-Free Parks*?

- Secondhand smoke contains hundreds of chemicals known to be toxic or carcinogenic, including formaldehyde, benzene, cadmium, and arsenic.
- Short-term exposure to tobacco smoke *outdoors* can trigger asthma attacks, migraines, and allergic reactions.
- Cigarette butts in parks create unsightly litter that can wash into storm drains and end up in local waterways.
- Chemicals from non-biodegradable cigarette filters also leach into the soil.
- Young children can pick up cigarette butts and put them in their mouth.



KLEAN is working with the American Lung Association in California on Fresh Air Chico, a project to encourage Chico city leaders to adopt a smoke-free parks policy to reduce secondhand smoke exposure and reduce cigarette butt litter.

Fresh Air Chico



AMERICAN LUNG ASSOCIATION
IN CALIFORNIA

Paid for by Prop. 99, the Tobacco Tax Initiative, under Grant No. 10-10197

CLEARING THE AIR



The Science Surrounding Outdoor Tobacco Smoke

AMERICAN LUNG ASSOCIATION

Question: Why is exposure to tobacco smoke outdoors a problem?

Answer: Tobacco smoke contains dangerous chemicals.

Secondhand smoke contains hundreds of chemicals known to be toxic or carcinogenic, including formaldehyde, benzene, vinyl chloride, arsenic ammonia and hydrogen cyanide.(2)

Answer: Tobacco smoke is toxic, no matter where you are.

The California Air Resources Board (CARB) has identified environmental tobacco smoke, or secondhand smoke, as a toxic air contaminant that may cause and/or contribute to death or serious illness. (1)

There is no risk-free level of secondhand smoke exposure. Even brief exposure can be dangerous. (2)



Answer: Even outside, non-smokers are exposed to secondhand smoke and breathe in the dangerous chemicals found in tobacco smoke.

"A nonsmoker who is 1 or 2 feet away from a single burning cigarette, can easily inhale pollution that is 10 times greater, on average, than background "clean" levels...However, with multiple smokers present, the average levels could be 20, 30, or 50+ times greater than background." (3)



According to controlled experiments at the University of Maryland in Baltimore County, outdoor tobacco smoke levels did not approach background levels either for fine particles or carcinogens until about 23 feet from the source.(4)

Outdoor tobacco smoke concentrations dissipate rapidly after smoking ceases outdoors. But during smoking, levels may be as high as secondhand smoke indoors, especially in close proximity to smokers. (5)

Sources:

1. California Identifies Second-Hand Smoke as a "Toxic Air Contaminant." California Air Resources Board
2. U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General.
3. Klepeis, Neil and Wayne Ott, and Paul Switzer. 2007. Real-time measurement of outdoor tobacco smoke particles.
4. Repace, James L. 2005. "Measurements of Outdoor Air Pollution From Secondhand Smoke on the UMBC Campus."
5. Repace, James L. 2008. "Outdoor Smoking Ban Studies and Policies." William Mitchell Law Review, Inc.

This flyer is funded by CA Dept. of Public Health under contract #10-10203
Designed by Brady Kennedy, 2010, for American Lung Association, Chico, CA | (530)345-5864



Smokefree Recreation Areas

List of Municipalities that Restrict Smoking in Recreation Areas

March 2011

Cities and counties in California have always been at the forefront of protecting residents from exposure to secondhand smoke. Local communities led the way on smokefree indoor workplace laws and are leading the way once again with local laws to protect residents from secondhand smoke exposure in recreation areas, including parks, beaches and trails. While California state law only restricts smoking within 25 feet of tot lots and playgrounds, municipalities are not preempted from passing a stronger law to prohibit smoking within all recreation areas.

As of January 1, 2011, 273 municipalities in California have restricted smoking in at least some recreation areas beyond state law. The below table lists all of these cities and counties and divides the policies into three categories:

(1) Municipalities that prohibit smoking in all recreation areas

There are 123 municipalities with this type of policy. This is the strongest type of restriction because no designated smoking areas are allowed, ensuring that residents will not be exposed to secondhand smoke in all recreation areas.

(2) Municipalities that restrict smoking in all recreation areas but allow designated smoking areas

There are 35 municipalities with this type of policy. Examples of this type of policy include allowing designated smoking areas that meet certain conditions in all parks or only in specific areas of certain parks. The policies do a lot to protect people from secondhand smoke, but mean that people can continue to be exposed to secondhand smoke in certain parts of recreation areas.

(3) Municipalities that restrict smoking in some recreation areas

There are 115 municipalities with this type of policy. These policies range from only restricting smoking at beaches to restricting smoking within certain recreation areas during fire season to only restricting smoking at specific parks or skate parks. While these ordinances do protect people from secondhand smoke exposure in some recreation areas, there is still more that can be done to restrict smoking at and protect residents from secondhand smoke in all recreation areas.

For more information about smokefree recreation areas and other restrictions on smoking in outdoor areas, visit www.center4tobaccopolicy.org/localpolicies-outdoorareas. These resources include information on the need for and benefits of these policies, a list of cities and counties that have adopted comprehensive outdoor secondhand smoke ordinances and answers to tough questions about smokefree outdoor policies.

Source: The list of cities and counties in this document is based on a review of county codes and city municipal codes, compiled in the American Lung Association in California's *State of Tobacco Control 2010: California Local Grades* report available at www.lungusa.org/associations/states/california/advocacy/flight-state-of-tobacco-control-2010.html. This report provides grades on local tobacco control policies for all cities and counties in California. One of the categories is restricting smoking in recreation areas and points are awarded based on the strength of the smoking restrictions.

List of Municipalities that Restrict Smoking in Recreation Areas (continued)

County	Prohibit Smoking in All Recreation Areas	Restrict Smoking in All Recreation Areas but Allow Designated Smoking Areas	Restrict Smoking in Some Recreation Areas
Alameda County	Alameda County Albany Emeryville Hayward Oakland San Leandro Union City	Berkeley	Dublin Livermore
Alpine County			Alpine County
Amador County			Ione Jackson
Butte County			Chico Paradise
Colusa County			Colusa County
Contra Costa County	Clayton Contra Costa County Martinez Pinole Richmond		Concord Danville San Ramon Walnut Creek
Del Norte County	Crescent City		
El Dorado County		El Dorado County	Placerville
Fresno County	Clovis Firebaugh Fresno Mendota Orange Cove Reedley		Kerman Kingsburg Selma
Humboldt County	Blue Lake Eureka		Arcata
Imperial County			Calexico
Inyo County			Bishop Inyo County
Kern County			California City Delano Shafter
Kings County			Lemoore
Lake County	Lakeport		
Lassen County			Susanville

List of Municipalities that Restrict Smoking in Recreation Areas (continued)

County	Prohibit Smoking in All Recreation Areas	Restrict Smoking in All Recreation Areas but Allow Designated Smoking Areas	Restrict Smoking in Some Recreation Areas
Los Angeles County	Alhambra Baldwin Park Beverly Hills Calabasas Carson Cerritos Claremont Culver City El Monte Gardena Glendale Glendora Hawthorne Huntington Park Inglewood La Habra Heights La Verne Lomita Long Beach Los Angeles County Malibu Manhattan Beach Monterey Park Pasadena Redondo Beach Rolling Hills Rosemead San Dimas San Fernando San Gabriel Santa Clarita Santa Monica South Pasadena Temple City Walnut	Burbank Los Angeles Palmdale Rancho Palos Verdes	Arcadia Avalon Azusa Diamond Bar El Segundo Hermosa Beach Irwindale La Puente Maywood Monrovia Palos Verdes Estates Pico Rivera Pomona Sierra Madre Torrance
Madera County			Chowchilla Madera Madera County
Marin County	Marin County Novato Ross San Anselmo		Fairfax
Mariposa County			Mariposa County
Mendocino County	Fort Bragg Ukiah		
Merced County			Atwater Merced
Mono County	Mammoth Lakes		
Monterey County	Gonzales Pacific Grove		Carmel-by-the-Sea Monterey Sand City
Napa County	Napa		American Canyon St. Helena

List of Municipalities that Restrict Smoking in Recreation Areas (continued)

County	Prohibit Smoking in All Recreation Areas	Restrict Smoking in All Recreation Areas but Allow Designated Smoking Areas	Restrict Smoking in Some Recreation Areas
Nevada County	Nevada City	Grass Valley Truckee	Nevada County
Orange County	Fountain Valley Laguna Beach Laguna Hills Laguna Woods Seal Beach	Dana Point Irvine San Clemente	Cypress Fullerton Huntington Beach Laguna Niguel Lake Forest Los Alamitos Mission Viejo Newport Beach Orange County
Placer County	Roseville		Placer County
Plumas County			Plumas County
Riverside County	Banning Corona Palm Desert Temecula	Eastvale Menifee Moreno Valley Norco Riverside Riverside County Wildomar	Coachella Desert Hot Springs Indio La Quinta Murrieta Palm Springs Perris
Sacramento County		Sacramento	Elk Grove Folsom Rancho Cordova Sacramento County
San Bernardino County	Adelanto Apple Valley Colton Loma Linda Rancho Cucamonga Redlands Yucaipa		Chino Chino Hills Fontana Montclair San Bernardino San Bernardino County Upland
San Diego County	Chula Vista Del Mar El Cajon Encinitas Escondido Imperial Beach Lemon Grove National City San Diego County Solana Beach Vista	Carlsbad Coronado La Mesa Oceanside Poway San Diego San Marcos	
San Francisco County	San Francisco		
San Joaquin County			Lathrop Lodi San Joaquin County
San Luis Obispo County	Arroyo Grande Atascadero Pismo Beach San Luis Obispo		Grover Beach Morro Bay Paso Robles San Luis Obispo County

List of Municipalities that Restrict Smoking in Recreation Areas (continued)

County	Prohibit Smoking in All Recreation Areas	Restrict Smoking in All Recreation Areas but Allow Designated Smoking Areas	Restrict Smoking in Some Recreation Areas
San Mateo County	Belmont Menlo Park Pacifica Redwood City San Mateo County	Burlingame	Brisbane
Santa Barbara County	Carpinteria	Santa Barbara County	Santa Barbara
Santa Clara County	Palo Alto San Jose Santa Clara County Saraloga		Cupertino Milpitas Mountain View
Santa Cruz County	Capitola Watsonville	Santa Cruz Scotts Valley	Santa Cruz County
Sierra County			Sierra County
Siskiyou County			Mount Shasta Siskiyou County Weed
Solano County		Vacaville	Fairfield Solano County
Sonoma County	Healdsburg Petaluma Santa Rosa Sebastopol Windsor		Cotati
Stanislaus County		Riverbank	Ceres Modesto Oakdale Turlock
Sutter County	Yuba City		
Tehama County			Red Bluff
Trinity County			Trinity County
Tulare County			Dinuba Tulare Tulare County
Ventura County	Camarillo Moorpark Simi Valley	Ojai	Thousand Oaks Ventura
Yolo County	Winters	Woodland	Davis Yolo County
Yuba County		Yuba County	

TABLE OF COMPREHENSIVE OUTDOOR SECONDHAND SMOKE ORDINANCES

The 37 cities and counties in California with comprehensive ordinances are listed below, which details each outdoor area where a community prohibits smoking in its ordinance. When there are limitations or exceptions to completely prohibiting smoking in the seven outdoor areas, it is noted with a footnote.

CITY / COUNTY	OUTDOOR AREA WHERE SMOKING IS PROHIBITED						
	Dining Areas	Entryways	Public Events	Recreation Areas	Service Areas	Sidewalks	Worksites
Sebastopol August 2010	X	X	X	X	X		X
Eureka July 2010	X	X	X	X	X	X*	X
San Luis Obispo April 2010	X*	X	X	X	X	X	X
Camarillo April 2010	X	X	X	X	X	X*	X
Pinole April 2010	X	X	X	X	X		
Santa Barbara County April 2010	X*	X	X*	X	X		
San Francisco March 2010	X*	X*	X*	X	X		
San Leandro December 2009	X	X	X	X	X		X
Del Mar December 2009	X	X	X	X	X	X	X
Moorpark September 2009	X	X	X*	X	X	X	X
Richmond June 2009	X	X	X	X	X		
Martinez April 2009	X	X	X	X	X		X
Pasadena October 2008	X	X	X	X	X		
Glendale October 2008	X*	X	X	X	X		X
Dublin October 2008	X	X	X*	X*	X		
Thousand Oaks July 2008	X*	X	X*	X*	X		
Loma Linda June 2008	X	X	X	X	X	X	X
Albany May 2008	X*	X	X	X	X	X*	X
Hayward May 2008	X	X	X*	X	X	X	

continued on the next page

*Eureka – sidewalk prohibitions only apply to Eureka boardwalk

*San Luis Obispo – allows designated smoking areas that meet certain criteria in outdoor seating of bars that do not serve food

*Camarillo – only applies to sidewalks designated by city resolution

*Santa Barbara County – allows exemptions for smoking to be allowed at free standing bars and 25% of outdoor seating at restaurants

*Santa Barbara County – only applies to outdoor concerts, sporting events, plays and similar performances

*San Francisco – for outdoor dining areas of bars, the ordinance only restricts smoking within 10 feet of entrances and windows

*San Francisco – for building entrances, exits and windows, smoking is allowed at the curb outside the building or if there is no curb, smoking is prohibited within 15 feet

*San Francisco – only specifically prohibits smoking at farmer's markets, but smoking is also prohibited at public events that are held in other locations where smoking is prohibited, such as in parks

*Moorpark – allows exceptions for an outdoor special event subject to approval by the community development director

*Glendale - allows for creation of designated smoking section in outdoor dining

*Dublin – allows for creation of designated smoking areas at public events

*Dublin - recreation areas does not include community parks

*Thousand Oaks – allows restaurants to apply for a permit for a designated outdoor smoking section if certain conditions are met

*Thousand Oaks – allows for creation of designated smoking areas at public events

*Thousand Oaks – smoking prohibitions only apply to recreational areas under the city's authority; city parks are under a separate jurisdiction

*Albany – allows exceptions for permitting smoking in outdoor areas at stand-alone bars if certain conditions are met

*Albany – only prohibits smoking on sidewalks adjacent to school property and sidewalks on Solano Avenue between San Pablo Avenue and the City of Berkeley jurisdictional border

*Hayward – allows for creation of designated smoking areas at public events

TABLE OF COMPREHENSIVE OUTDOOR SECONDHAND SMOKE ORDINANCES (continued)

CITY / COUNTY	OUTDOOR AREA WHERE SMOKING IS PROHIBITED						
	Dining Areas	Entryways	Public Events	Recreation Areas	Service Areas	Sidewalks	Worksites
Novato April 2008	X*	X	X	X	X		X
Berkeley December 2007	X	X		X	X	X*	X
Ross December 2007	X	X	X	X	X		
Belmont October 2007	X	X	X	X	X		X
El Cajon August 2007	X	X	X	X	X	X	X
Blue Lake June 2007	X*	X	X*	X	X		
Temecula May 2007	X	X	X	X	X		X
Burbank April 2007	X*	X	X	X*	X*	X*	
Baldwin Park February 2007	X	X	X*	X	X		
Emeryville December 2006	X	X	X	X	X		
Laguna Woods November 2006	X*	X	X	X	X		
Marin County November 2006	X*	X	X	X	X		X
Contra Costa County October 2006	X	X	X	X	X		
Santa Monica October 2006	X	X	X*	X	X	X*	
Mammoth Lakes June 2006	X	X	X	X	X		X
Santa Rosa June 2006	X	X	X	X	X*	X*	
Calabasas February 2006	X	X	X	X	X	X	X
Davis March 1993	X	X	X	X*	X		

*Novato – allows exceptions for permitting smoking in outdoor areas at stand-alone bars if certain conditions are met

*Berkeley – only prohibits smoking on sidewalks in commercial areas

*Blue Lake – allows exemptions for smoking to be allowed at bars

*Blue Lake – allows for designated smoking areas at public events

*Burbank – allows restaurants to apply for a designated outdoor smoking section that can cover up to 40% of dining area

*Burbank – allows for creation of designated smoking areas in recreation areas

*Burbank – service areas prohibition does not include individual bus stops in public rights-of-way

*Burbank – only prohibits smoking on sidewalks in downtown Burbank

*Baldwin Park – only prohibits smoking at farmer's markets

*Laguna Woods - only applies to restaurants, not bars

*Marin County – allows exceptions for permitting smoking at outdoor dining at bars if certain conditions are met

*Santa Monica – only prohibits smoking at farmer's markets

*Santa Monica – only applies to sidewalks at the Third Street Promenade

*Santa Rosa – service areas prohibition only includes downtown transit mall

*Santa Rosa – only applies to sidewalks at Comstock mall and Jeju Way

*Davis – only applies to open space areas that are used for recreation

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The Center for Tobacco Policy & Organizing • American Lung Association in California
1029 J Street, Suite 450 • Sacramento, CA 95814 • Phone: (916) 554.5864 • Fax: (916) 442.8585 • www.Center4TobaccoPolicy.org

October 2010

Chapter 8.28**SMOKING REGULATIONS*****Section:**

8.28.004	Purpose.
8.28.008	Findings.
8.28.010	Definitions.
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*Prior ordinance history: Ords. 1671 and 1886.

8.28.004 Purpose.

This chapter is adopted pursuant to the municipal affairs provisions of the city charter for the purpose of prohibiting smoking in most enclosed places open to the public in order to reduce the hazards which smoking causes to those persons involuntarily exposed to side-stream and secondhand smoke, and for the further purpose of prohibiting and regulating smoking in places of employment also for the protection of those employees who are involuntarily exposed to side-stream or secondhand smoke.

(Adopted by initiative, dated 11/3/92 (part))

8.28.008 Findings.

The city council finds as follows:

- A. That tobacco smoke is a major contributor to indoor air pollution;
- B. That breathing side-stream or secondhand tobacco smoke is a cause of disease, including lung cancer in nonsmokers;
- C. That persons at special risk from the breathing of side-stream or secondhand smoke include pregnant women, children, elderly persons, persons with cardiovascular disease, persons with impaired respiratory function, including asthmatics, and persons with obstructive airway disease;
- D. That health hazards induced by breathing side-stream or secondhand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, broncho-spasm and ear infections in children;
- E. That persons who suffer ill effects from breathing side-stream or secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same; and

- F. That by reason of the foregoing, the smoking of tobacco or other weed or plant is hazardous to the health of the general public.

(Adopted by initiative, dated 11/3/92 (part))

8.28.010 Definitions.

Unless the contrary is stated or clearly appears from the context, the following definitions shall govern the construction of the words and phrases used in this chapter:

- A. "Bar" means any establishment open to and used by the general public which is devoted to the service of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages, and any portion of such establishment, including any portion of a restaurant, which is devoted to the service of alcoholic beverages, in which the service of food is only incidental to the consumption of such beverages and which is within an enclosed area which separates the bar from the other areas of the establishment.
- B. "Employee" means any person who regularly performs services for an employer either for compensation or as a noncompensated volunteer.
- C. "Employer" means any person, partnership, corporation, unincorporated association and/or any nonprofit organization which employs or otherwise uses the services of one or more employees.
- D. "Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls, windows or other impermeable surfaces which extend from the floor to the ceiling except for doors or similar openings used for ingress or egress.
- E. "Health officer" means the city health officer; provided, that where the city council has consented by ordinance or resolution to the enforcement of public health laws in the city by the Butte County health officer, the term "health officer" shall mean the Butte County health officer.
- F. "Place of employment" means any enclosed area under the control of an employer which employees normally frequent during the course of employment, including but not limited to, work areas, individual and group offices, employee lounges, restrooms, conference rooms, classrooms and employee cafeterias and hallways.
- G. "Public place" means any establishment or facility area to which the public is invited or in which the public is permitted, including but not limited to banks, educational facilities, health facilities, professional offices, public transportation facilities, recreation and sports facilities, restaurants, retail food production and marketing establishments, retail service establishments, retail stores and theaters.
- H. "Restaurant" means any establishment or portion of an establishment, other than a bar or portion of a restaurant used as a bar, which is open to and used by the general public and which is devoted to the service of food and/or beverages.
- I. "Smoking" means the carrying or holding of a lighted cigarette, cigar, pipe, or other similar smoking device or equipment, or emitting or exhaling the smoke of a cigarette, cigar, pipe, or other similar smoking device or equipment.

(Adopted by initiative, dated 11/3/92 (part))

8.28.020 Smoking prohibited in city buildings and facilities.

Smoking shall be prohibited in all enclosed areas of any building or facility owned or operated by the city, except that smoking shall be permitted in city buildings or facilities leased to other persons when not otherwise prohibited by the provisions of this chapter.

(Adopted by initiative, dated 11/3/92 (part))

8.28.030 Prohibition of smoking in enclosed areas.

- A. Except as otherwise hereinafter provided by this chapter, smoking shall be prohibited in the enclosed areas of all public places located within the city, including but not limited to the enclosed areas of the following public places:
1. The hallways, waiting rooms, examination rooms, rooms used for treatment, wards and semi-private rooms of health facilities, including but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices;
 2. Any portion of a grocery store, supermarket or other retail food marketing establishment which is open to and used by the general public;
 3. Any portion of a museum, gallery or library which is open to and used by the general public;
 4. Any portion of a theater, auditorium, or hall which is open to the general public, and used for exhibiting a motion picture, live theatrical performance, lecture, musical recital or similar performance;
 5. Any portion of a building owned and/or operated by a public agency or entity which is open to and used by the general public and is subject to the jurisdiction of the city;
 6. Any elevator or restroom open to and used by the general public;
 7. Any bus, taxicab or other means of public transportation which is subject to the jurisdiction of the city, and any ticket, boarding or waiting area of a public transit depot;
 8. Any common area in an apartment building, condominium, congregate care facility, nursing home or day care facility;
 9. Any recreation or sports facility, including but not limited to gymnasiums, enclosed swimming pools, roller skating and ice skating rinks, bowling alleys, pool halls, health spas and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic activities or witness sports events;
 10. Any service line where one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money;
 11. Any restaurant or bar; and
 12. Any other business or establishment or portion of a business or establishment which is open to and used by the general public, including but not limited to retail stores, hotels and motels.
- B. Notwithstanding the provisions of this section, the owner, operator, manager or other person who controls the enclosed area of any establishment described in this section may declare the entire establishment as a nonsmoking area.

(Adopted by initiative, dated 11/3/92 (part); amended by initiative, dated 11/5/96)

8.28.050 Prohibition and regulation of smoking in places of employment.

It shall be the responsibility of employers to provide a smoke free work place for all employees. To carry out this responsibility each employer operating a place of employment within the city shall, on or before February 1, 1993, adopt, make known, implement and maintain a smoking policy prohibiting smoking within all enclosed places located at a place of employment without exception. This includes common work areas, individual and group offices, employee lounges, employee restrooms, conference rooms, classrooms, employee cafeterias, hallways and all other enclosed facilities. The smoking policy required by this section shall be communicated to all employees within three

weeks of its adoption and employers shall supply a written copy of such smoking policy upon request of any existing or prospective employee.

(Adopted by initiative, dated 11/3/92 (part))

8.28.055 Prohibition of smoking in outdoor cafés.

Smoking shall be prohibited in all outdoor cafés authorized to serve alcoholic beverages pursuant to a licence granted under Chapter 14.70.

(Ord. 2409 §1)

8.28.060 Exceptions to smoking prohibitions and regulations.

Notwithstanding anything herein to the contrary, the following areas shall not be subject to the smoking prohibitions and regulations provided for in this chapter:

- A. Private residences, other than portion of a private residence used as a child care or health care facility;
- B. Hotel and motel rooms rented to guests;
- C. Retail stores that deal exclusively in the sale of tobacco and smoking paraphernalia;
- D. Restaurant, hotel and motel conference or meeting rooms, and other assembly rooms when being used for private functions.

(Adopted by initiative, dated 11/3/92 (part), amended by initiative, dated 11/5/96)

8.28.070 Signs and notices.

“No Smoking” signs, with letters of not less than one inch in height or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle not less than four inches in diameter with a red bar across it), shall be conspicuously posted in every enclosed area where smoking is prohibited by this chapter, by the owner, operator, manager or other person having control of such enclosed area. In addition, every restaurant shall have posted at every restaurant entrance a conspicuous sign clearly stating that smoking is prohibited in the restaurant.

(Adopted by initiative, dated 11/3/92 (part))

8.28.080 Administration and implementation.

- A. The health officer shall administer the provisions of this chapter and may, at the health officer’s sole discretion, take any of the following actions to enforce the provisions of this chapter:
 - 1. Service of a notice upon a person violating the provisions of this chapter requiring the correction of such violation;
 - 2. Commencement of a civil action in a court of appropriate jurisdiction to enjoin violation of the provisions of this chapter or otherwise require compliance herewith; and
 - 3. Initiation of criminal proceedings to assess any of the penalties hereinafter provided by this chapter.
- B. The health officer or fire chief may require, when an enclosed area or place of employment is undergoing an otherwise mandated inspection, a "self-certification" from the owner, manager, operator or other person having control of such area or place of employment that the enclosed area or place of employment fully complies with the requirements of this chapter.
- C. The owner, manager, operator or other person having control of an enclosed area or place of employment shall inform any person violating this chapter, or any employer’s

- smoking policy adopted pursuant to this chapter of the appropriate provisions hereof.
- D. A private citizen may also commence a civil action in a court of appropriate jurisdiction to enjoin violation of this chapter or otherwise require compliance herewith.

(Adopted by initiative, dated 11/3/92 (part))

8.28.090 Violations.

- A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any enclosed area or place of employment subject to the provisions of this chapter to fail or refuse to:
1. Adopt or implement the employer's no smoking policy required by this chapter;
 2. Provide or post the signs or give the notices required by this chapter; or
 3. Otherwise comply with any other requirements of this chapter.
- B. It is unlawful for any person to smoke in any area in which smoking is prohibited by the provisions of this chapter.
- C. It is unlawful for any person to mutilate or destroy any signs posted pursuant to the provisions of this chapter.

(Adopted by initiative, dated 11/3/92 (part))

8.28.100 Penalties.

Any person who violates the provisions of this chapter shall be guilty of an infraction and upon conviction thereof, shall be punished by:

- A. A fine, not exceeding \$100, for the first violation;
- B. A fine, not exceeding \$200, for the second violation occurring within the same year, and
- C. A fine, not exceeding \$500, for the third and any additional violation occurring within the same year.

(Adopted by initiative, dated 11/3/92 (part))

8.28.110 Nonretaliation.

No employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right afforded by this chapter.

(Adopted by initiative, dated 11/3/92 (part))

8.28.120 Smoking prohibited by other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise prohibited by other applicable laws or regulations.

(Adopted by initiative, dated 11/3/92 (part))

8.28.130 Severability.

If any provisions or clause of this chapter or the application thereof to any person or circumstances is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect the other provisions or clauses of this chapter or application thereof which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of this chapter are declared to be severable.

(Adopted by initiative, dated 11/3/92 (part))

not limited to, any pistol, revolver, rifle, gun, flare gun, paint ball gun, zip gun, spring gun, air gun, BB or pellet gun, rocket, rocket launcher, rocket propelled projectile launcher, slingshot, wrist rocket, bow and arrow, or crossbow or compound bow designed to propel an arrow.

(Res. No. 19 93-94 §2 (part), Res. No. 39 02-03)

12R.04.230 Smoking - Prohibited in designated areas from May 1st to November 1st annually.

Except as otherwise provided or permitted by these rules, no person, between the first day of May and the following first day of November of any calendar year, shall light matches, smoke cigars, pipes, cigarettes or any other smoking device or instrument or carry in or upon or across the area herein designated any lighted cigars, pipes, cigarettes or other lighted flammable material. Such areas designated as the nonsmoking areas are described as follows:

A. That portion of Bidwell Park described as follows:

Beginning at the most northerly corner of Bidwell Park in the center of Chico Creek, and running thence west and southwesterly along the north boundary of such park to the westerly line of Manzanita Avenue, projected northerly, thence easterly along the last mentioned Manzanita Avenue to the centerline of Lindo Channel; thence northeasterly up the center of Lindo Channel to the center of Big Chico Creek at the confluence of such channel and Big Chico Creek; thence northeasterly up the center of Chico Creek to the point of beginning saving and excepting therefrom that portion of Bidwell Park commonly known as the Bidwell Municipal Golf Course, the facilities of the Chico Rod and Gun Club, and inside an enclosed vehicle;

B. Such other areas as the Bidwell Park and Playground Commission may by resolution determine as fire hazard areas and so designate by appropriate signs.

(Res. No. 19 93-94 §2 (part))

12R.04.235 Smoking - Prohibited in Plaza Park

No person shall light or carry in any lighted cigar, pipe, cigarette or other smoking device within Plaza Park, or on the sidewalks adjacent to and surrounding Plaza Park.

(Res. No. 68-09)

12R.04.240 Fireworks - Prohibited.

No person shall possess or discharge any fireworks in any city park or playground.

(Res. No. 19 93-94 §2 (part), Res. No. 39 02-03)

12R.04.250 Hang-gliding and para-gliding.

A. Hang-gliding. No person shall participate in the sport of hang-gliding within the boundaries of any city park or playground.

B. Para-gliding. Para-gliding in Bidwell Park is permitted as follows:

A. No person shall para-glide in Bidwell Park without first obtaining a permit from the park director. Permit applications shall be filed in the office of the park director. The park director shall issue permits only to pilots who provide evidence of current membership in the United States Hang Gliding and Para-gliding Association (USHPA) and possess, at a minimum, a USHPA intermediate rating of Para 3. A permit may also be issued to a pilot who is a member of USHPA and has a beginner rating of Para 2, subject to the condition that a pilot with a Para 2 rating may only para-glide

SAMPLE ORDINANCE SUBMITTED BY THE AMERICAN LUNG ASSOCIATION

**AN ORDINANCE OF THE CITY OF CHICO
AMENDING TITLE [] OF THE CHICO MUNICIPAL CODE TO REGULATE
SMOKING IN OUTDOOR PLACES**

The City Council of the City of Chico does ordain as follows:

SECTION I. FINDINGS.

The City Council of the City of Chico hereby finds and declares as follows:

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- Tobacco-related illness is the leading cause of preventable death in the United States,¹ accounting for about 443,000 deaths each year;² and
- Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth;³ and
- Some of the most common types of cancers including stomach, liver, uterine cervix, and kidney are related to tobacco use;⁴ and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;⁵ and
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;⁶ and

¹US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death*. 2008, p. 2. Available at: www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf.

²US Department of Health and Human Services, Centers for Disease Control and Prevention. "Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses — United States, 2000-2004." *Morbidity and Mortality Weekly Report*, 57(45): 1226-1228, 2008. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm.

³US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death*. 2008, p. 2. Available at: www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf.

⁴Leistikow B, Zubair K, et al. "Male Tobacco Smoke Load and Non-Lung Cancer Mortality Associations in Massachusetts." *BMC Cancer*, 8:341, 2008. Available at: www.biomedcentral.com/1471-2407/8/341.

⁵US Department of Health and Human Services, Office of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. 2007. Report highlights available at: www.surgeongeneral.gov/library/secondhandsmoke/factsheets/factsheet7.html.

⁶Resolution 06-01, Cal. Air Resources Bd. (2006) at 5. Available at: www.arb.ca.gov/regact/ets2006/res0601.pdf; See California Environmental Protection Agency, Air Resources Board. *News Release, California Identifies Secondhand Smoke as a "Toxic Air Contaminant."* Jan. 26, 2006. Available at: www.arb.ca.gov/newsrel/nr012606.htm.

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- The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;⁷ and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for as many as 73,000 deaths among nonsmokers each year in the United States;⁸ and
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty percent;⁹ and
- Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis in as many as 300,000 children in the United States under the age of 18 months each year;¹⁰ and exacerbates childhood asthma;¹¹ and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- The total annual economic burden of smoking in the United States is \$193 billion;¹² and
- From 2001-2004, the average annual health care expenditures attributable to smoking were approximately \$96 billion;¹³ and
- The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over \$10 billion per year in the United States in 2005;¹⁴ and
- The total annual cost of smoking in California was estimated at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related

⁷ California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity*. 2006, p. 8 & 17. Available at: www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf.

⁸ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Secondhand Smoke*. 2006. Available at: www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm.

⁹ Barnoya J and Glantz S. “Cardiovascular Effects of Secondhand Smoke: Nearly as Large as Smoking.” *Circulation*, 111: 2684-2698, 2005. Available at: www.circ.ahajournals.org/cgi/content/full/111/20/2684.

¹⁰ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation’s Leading Cause of Preventable Death*. 2008, p. 2. Available at: www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf.

¹¹ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Secondhand Smoke*. 2006. Available at: www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm.

¹² Centers for Disease Control and Prevention. *News Release, Slightly Lower Adult Smoking Rates*. 2008. Available at: www.cdc.gov/media/pressrel/2008/r081113.htm.

¹³ Centers for Disease Control and Prevention. *News Release, Slightly Lower Adult Smoking Rates*. 2008. Available at: www.cdc.gov/media/pressrel/2008/r081113.htm.

¹⁴ Behan DF, Eriksen MP and Lin, Y. *Economic Effects of Environmental Tobacco Smoke*. Schaumburg, IL: Society of Actuaries, 2005, p. 2. Available at: [www.soa.org/files/pdf/ETSReportFinalDraft\(Final%203\).pdf](http://www.soa.org/files/pdf/ETSReportFinalDraft(Final%203).pdf).

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costs in 1999 alone;¹⁵ and

- California's Tobacco Control Program saved the state and its residents \$86 billion in health care expenditures between the year of its inception, 1989, and 2004, with savings growing yearly;¹⁶ and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does occur at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind and number and proximity of smokers;¹⁷ and
- Irritation from secondhand smoke begins at levels as low as 4 micrograms per cubic meter, and in some outdoor situations this level can be found as far away as 13 feet from the burning cigarette;¹⁸ and
- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 25 feet away from the source of the smoke, about the width of a two lane road;¹⁹ and
- Studies on a cruise ship have found that even while cruising at 20 knots and with unlimited air volume, outdoor smoking areas contained carcinogens in nearly the same amounts as inside the ship's casino where smoking was allowed;²⁰ and

¹⁵ Max W, Rice DP, Zhang X, et al. *The Cost of Smoking in California, 1999*. Sacramento, CA: Tobacco Control Section, California Department of Health Services, 2002, p. 74. Available at: <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1026&context=ctcre>.

¹⁶ Lightwood JM, Dinno A and Glantz SA. "Effect of the California Tobacco Control Program on Personal Health Care Expenditures." *PLoS Med*, 5(8): e178, 2008. Available at: www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050178.

¹⁷ Klepeis NE, Ott WR, and Switzer P. *Real-Time Monitoring of Outdoor Environmental Tobacco Smoke Concentrations: A Pilot Study*. San Francisco: University of California, San Francisco and Stanford University, 2004, p. 34, 80. Available at: http://exposurescience.org/pub/reports/Outdoor_ETS_Final.pdf; See also Klepeis NE, Ott WR and Switzer P. "Real-Time Measurement of Outdoor Tobacco Smoke Particles." *Journal of Air and Waste Management Association*, 57: 522-534, 2007. Available at: www.ashaust.org.au/pdfs/OutdoorSHS0705.pdf.

¹⁸ Junker MH, Danuser B, Monn C, et al. "Acute Sensory Responses of Nonsmokers at Very Low Environmental Tobacco Smoke Concentrations in Controlled Laboratory Settings." *Environmental Health Perspectives*, 109(10): 1046-1052, 2001. Available at: www.pubmedcentral.nih.gov/picrender.fcgi?artid=1242082&blobtype=pdf; Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review*, 34(4): 1621-1638, 2008. Available at: <http://tobacco.health.usyd.edu.au/site/supersite/contact/pdfs/WilliamMitchellRepace.pdf>.

¹⁹ Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review*, 34(4): 1621-1638, 2008. Available at: <http://tobacco.health.usyd.edu.au/site/supersite/contact/pdfs/WilliamMitchellRepace.pdf>.

²⁰ Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review*, 34(4): 1621-1638, 2008. Available at: <http://tobacco.health.usyd.edu.au/site/supersite/contact/pdfs/WilliamMitchellRepace.pdf>.

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WHEREAS, creating smokefree areas helps protect the health of the 86.7% of Californians who are nonsmokers;²¹ and

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions;²² and state law prohibits smoking within 20 feet of entryways and operable windows of government buildings;²³ and

WHEREAS, there is no Constitutional right to smoke;²⁴

NOW THEREFORE, it is the intent of the City Council, in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke where they live, work, and play; by reducing the potential for children to wrongly associate smoking with a healthy lifestyle; and by affirming and promoting a healthy environment in and around the City's outdoor places.

SECTION II. Chapter [] of the Chico Municipal Code is hereby amended to read as follows:

Sec. [] (*1). **DEFINITIONS.** The following words and phrases, whenever used in this chapter shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) "Dining Area" means any area, including streets and sidewalks, which is available to or customarily used by the general public or an Employee, and which is designed, established, or regularly used for consuming food or drink.

(b) "Employee" means any Person who is employed or retained as an independent contractor by any Employer or Nonprofit Entity in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for an Employer or Nonprofit Entity.

(c) "Employer" means any business or Nonprofit Entity that retains the service of one or more Employees.

(d) "Enclosed Area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

²¹Hong M, Barnes RL and Glantz SA. *Tobacco Control in California 2003-2007: Missed Opportunities*. San Francisco: Center for Tobacco Control Research and Education, 2007, p. 9. Available at: <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1074&context=ctcre>.

²²Cal. Health & Safety Code § 104495 (West 2008).

²³Cal. Gov't Code § 7597 (West 2008).

²⁴Public Health Law & Policy, Technical Assistance Legal Center. *There Is No Constitutional Right to Smoke*. 2005. Available at: http://talc.phlaw.org/pdf_files/0051.pdf.

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(1) any type of overhead cover whether or not that cover includes vents or other openings and at least three (3) walls or other vertical boundaries of any height whether or not those boundaries include vents or other openings; or

(2) four (4) walls or other vertical boundaries that exceed six (6) feet in height whether or not those boundaries include vents or other openings.

(e) “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 government agency is not a Nonprofit Entity within the meaning of this chapter.

(f) “Parking Area” means a parking lot or any other area designated or primarily used for parking vehicles of Persons accessing a Recreational Area.

(g) “Person” means any natural person, cooperative association, Nonprofit Entity, personal representative, receiver, trustee, assignee, or any other legal entity including government agencies.

(h) “Reasonable Distance” means a distance of twenty (20) feet in any direction from an area in which Smoking is prohibited by law.

(i) “Recreational Area” means any area that is publicly or privately owned and open to the general public for recreational purposes, regardless of any fee or age requirement. The term “Recreational Area” includes but is not limited to parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, horseback riding trails, swimming pools, roller- and ice-skating rinks, and skateboard parks.

(j) “Service Area” means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more Persons to receive a service, wait to receive a service or to make a transaction, whether or not such service or transaction includes the exchange of money. The term “Service Area” includes but is not limited to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines or cab stands.

(k) “Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “Smoke” includes, but is not limited to, tobacco smoke, electronic cigarette vapors, and marijuana smoke.

(l) “Smoking” means engaging in an act that generates Smoke, such as for example: possessing a lighted pipe, lighted hookah pipe, operating an electronic cigarette, a lighted cigar, or a lighted cigarette of any kind; or; or lighting or igniting of a pipe, cigar, hookah

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pipe, or cigarette of any kind.

(m) "Unenclosed Area" means any area that is not an Enclosed Area.

Sec. [] (*2) . PROHIBITION OF SMOKING IN UNENCLOSED AREAS

(a) Smoking is prohibited in the Unenclosed Areas of the following places within the City of Chico, except places where Smoking is already prohibited by state or federal law, in which case those laws apply:

- (1) Recreational Areas, including Parking Areas;
- (2) Service Areas; and
- (3) Dining Areas.

(b) Nothing in this chapter prohibits any Person, Employer, or Nonprofit Entity with legal control over any property from prohibiting Smoking on any part of such property, even if Smoking is not otherwise prohibited in that area.

Sec. [] (*3) . REASONABLE SMOKING DISTANCE REQUIRED

(a) Smoking in all Unenclosed Areas shall be prohibited within a Reasonable Distance from any doorway, window, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited by law, except while actively passing on the way to another destination and provided Smoke does not enter any Enclosed Area in which Smoking is prohibited.

(b) Smoking in Unenclosed Areas shall be prohibited within a Reasonable Distance from any Unenclosed Areas in which Smoking is prohibited under Sec. [] (*2) of this chapter, except while actively passing on the way to another destination and provided Smoke does not enter any Unenclosed Area in which Smoking is prohibited.

Sec. [] (*4) . OTHER REQUIREMENTS AND PROHIBITIONS

(a) No Person, Employer, or Nonprofit Entity shall knowingly permit Smoking in an area which is under the legal or de facto control of the Person, Employer or Nonprofit Entity and in which Smoking is prohibited by law, unless otherwise required by state or federal law.

(b) No Person, Employer, or Nonprofit Entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or de facto control of the Person, Employer or Nonprofit Entity and in which Smoking is prohibited by law, including, without limitation, within a Reasonable Distance required by this chapter from any area in which Smoking is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of Smoking in violation of any provision of this chapter.

(c) No Person shall dispose of used Smoking or tobacco product waste within the boundaries of an area in which Smoking is prohibited, including inside the perimeter of any

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Reasonable Distance required by this chapter.

(d) A Person, Employer, or Nonprofit Entity that has legal or de facto control of an Unenclosed Area in which Smoking is prohibited by this chapter shall post a clear and unambiguous "No Smoking" or "Smokefree" sign at a conspicuous point within the Unenclosed Area. The signs shall have letters of no less than one inch in height and shall include the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it). Signs posted on the exterior of buildings to comply with this section shall include the Reasonable Distance requirement set forth in Sec. [] (*3)]. At least one sign with the City phone number where complaints can be directed must be conspicuously posted in each place in which Smoking is prohibited. For purposes of this section, the City Manager or his/her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the City. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of Smoking in violation of any other provision of this chapter.

(e) No Person, Employer, or Nonprofit Entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another Person who seeks to attain compliance with this chapter.

(f) Each instance of Smoking in violation of this chapter shall constitute a separate violation. For violations other than for Smoking, each day of a continuing violation of this chapter shall constitute a separate violation.

Sec. [] (*5)]. PENALTIES AND ENFORCEMENT.

(a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

(b) Each incident of Smoking in violation of this chapter is an infraction subject to a one hundred dollar (\$100) fine or otherwise punishable pursuant to section [] of this code. Other violations of this chapter may, in the discretion of the City Prosecutor, be prosecuted as infractions or misdemeanors when the interests of justice so require. Enforcement of this chapter shall be the responsibility of []. In addition, any peace officer or code enforcement official also may enforce this chapter.

(c) Violations of this chapter are subject to a civil action brought by the City of Chico, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.

(d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.

(e) Any violation of this chapter is hereby declared to be a nuisance.

(f) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the City Attorney, including, but

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not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

(g) Except as otherwise provided, enforcement of this chapter is at the sole discretion of the City. Nothing in this chapter shall create a right of action in any Person against the City or its agents to compel public enforcement of this chapter against private parties.

(h) Any Person acting for the interests of itself, its members, or the general public may bring a civil action to enjoin a violation of this chapter by an Employer or Nonprofit Entity or to enjoin repeat violations of this article by an individual.

SECTION III. STATUTORY CONSTRUCTION & SEVERABILITY. It is the intent of the City Council of the City of Chico to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Chico hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof independently, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.