

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OCEANSIDE AMENDING
CHAPTER 10A OF THE OCEANSIDE CITY CODE
PROHIBITING SMOKING IN OUTDOOR UNENCLOSED
DINING ESTABLISHMENTS

The City Council of the City of Oceanside finds as follows:

SECTION 1. Findings.

The City Council of Oceanside 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

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;³ 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;⁴ and

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¹ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: The Nation's Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

² US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

³ US Department of Health and Human Services, Office of the Surgeon General. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*. 2010, p. 9. Report highlights available at: www.surgeongeneral.gov/library/tobaccosmoke/factsheet.html.

⁴ Resolution 06-01, Cal. Air Resources Bd. (2006) at 5. Available at: www.arb.ca.gov/regact/ets2006/res0601.pdf; see also 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.

- 1 • The California Environmental Protection Agency included secondhand smoke on the
2 Proposition 65 list of chemicals known to the state of California to cause cancer, birth
3 defects, and other reproductive harm;⁵ and

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

- 6 • Secondhand smoke is responsible for as many as 3,000 deaths from lung cancer
7 and 46,000 deaths from heart disease among nonsmokers each year in the United
8 States;⁶ and
9
10 • Exposure to secondhand smoke increases the risk of coronary heart disease by
11 approximately thirty percent;⁷ and
12
13 • Secondhand smoke exposure causes lower respiratory tract infections, such as
14 pneumonia and bronchitis in as many as 300,000 children in the United States under
15 the age of 18 months each year;⁸ and exacerbates childhood asthma;⁹ and

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

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23 ⁵ California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. *Chemicals Known to the State to Cause Cancer or*
24 *Reproductive Toxicity*. 2006, p. 8 & 17. Available at: www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf.

25 ⁶ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011,
p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

26 ⁷ Bamoya 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.

27 ⁸ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011,
p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

28 ⁹ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011,
p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

- 1 • Levels of secondhand smoke exposure outdoors can reach levels attained indoors
2 depending on direction and amount of wind and number and proximity of smokers;¹⁰
3 and

4 WHEREAS, the U.S. Food and Drug Administration conducted laboratory analysis of
5 electronic cigarette samples and found they contained carcinogens and toxic chemicals to which
6 users and bystanders could potentially be exposed;¹¹ and

7 WHEREAS, creating smokefree areas helps protect the health of the 86.9% of
8 Californians who are nonsmokers;¹² and

9 WHEREAS, there is no Constitutional right to smoke;¹³

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

16 NOW THEREFORE, the City Council does ordain as follows:

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23 ¹⁰ 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. 80, 87. Available at:

24 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 the Air & Waste Management Association*, 57: 522-534, 2007. Available at:

25 www.ashaust.org.au/pdfs/OutdoorSHS0705.pdf

26 ¹¹ US Food and Drug Administration. *News Release, FDA and Public Health Experts Warn About Electronic Cigarettes*. July 22, 2009. Available at:

27 www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm.

28 ¹² California Department of Public Health, *News Release, State's Latest Tobacco Ads Debut*. December 20, 2010. Available at:

www.cdph.ca.gov/Pages/NR10-099.aspx.

¹³ Public Health Law & Policy, Technical Assistance Legal Center. *There Is No Constitutional Right to Smoke*. 2005. Available at

www.phlpnet.org/tobacco-control/products/there-no-constitutional-right-smoke.

1 SECTION 2. Section 10A.2 of the Oceanside City Code is amended to add subsections
2 (g) and (h) as follows:

3 **Sec. 10A.2. - Definitions.**

4 (g) *Unenclosed Public Dining Area* shall mean any public area within any street or
5 sidewalk, which is available to or customarily used by the general public or an employee, and
6 which is designed, established, or regularly used for consuming food or drink and is not
7 enclosed by a roof and walls.

8 (h) *Reasonable Distance* shall mean a distance of ten (10) feet in any direction from an
9 area in which Smoking is prohibited

10 SECTION 3. Section 10A.3 of the Oceanside City Code is amended to add subsections
11 (g) through (i) as follows:

12 **Sec. 10A.3. - Prohibitions.**

13 (g) *Smoking prohibited-Unenclosed Public Dining Areas.* Smoking is prohibited in
14 Unenclosed Public Dining Areas within the City of Oceanside, except places where Smoking is
15 already prohibited by state or federal law, in which case those laws apply.

16 (h) *Reasonable Distance Required-Unenclosed Public Dining Areas.* Smoking is
17 prohibited within a Reasonable Distance, as defined in this Chapter, from any Unenclosed
18 Public Dining Area.

19 (i) *[Enforcement].* The provisions of this Chapter may be enforced pursuant to Section
20 1.12 of the Municipal Code.

21 SECTION 4: Section 10A.6 of the Oceanside City Code is amended to add subsection
22 (d) as follows:

23 **Sec. 10A.6 Posting of signs.**

24 (d) *Posting of Signs in Unenclosed Public Dining Areas.* A person, business, or other
25 entity that has legal or de facto control of an Unenclosed Public Dining Area in which Smoking
26 is prohibited by this Chapter shall post a clear, conspicuous and unambiguous “No Smoking” or
27 “Smokefree” sign at each point of ingress to the area, and in at least one other conspicuous
28 point within the area. The signs shall have letters of no less than one inch in height and shall

1 include the international "No Smoking" symbol, consisting of a pictorial representation of a
2 burning cigarette enclosed in a red circle with a red bar across it.

3 SECTION 5. Section 10A.7 of the Oceanside City Code, "Exemptions from
4 nonsmoking prohibitions" is amended to delete Section 10A.7 (a)(3) in its entirety.

5 SECTION 6. The city clerk of the City of Oceanside is hereby directed to publish this
6 ordinance once within fifteen (15) days after its passage in the San Diego Union Tribune, a
7 newspaper of general circulation published in the City of Oceanside.

8 SECTION 7. This ordinance shall take effect and be in force on the thirtieth (30th) day
9 from and after its final passage.

10 SECTION 8. Severability.

11 If any section, sentence, clause or phrase of this Ordinance is for any reason held to be
12 invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision
13 shall not affect the validity of the remaining portions of this Ordinance. The city council hereby
14 declares that it would have passed this ordinance and adopted this Ordinance and each
15 section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections,
16 subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

17 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,
18 California, held on the Fifth day of June, 2013, and, thereafter,

19 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
20 Oceanside California, held on the ____ day of _____, 2013, by the following vote:

21 AYES:

22 NAYS:

23 ABSENT:

24 ABSTAIN:

25 _____
26 MAYOR OF THE CITY OF OCEANSIDE

27 ATTEST:

APPROVED AS TO FORM:

28 _____
CITY CLERK

CITY ATTORNEY