

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Ordinance of the City Council of the City of)
Lafayette Amending Chapter 5-3 of the Lafayette)
Municipal Code, Entitled "Smoking")

Ordinance No. 622

WHEREAS, scientific studies have concluded that cigarette smoking causes chronic lung disease, coronary heart disease, stroke, cancer of the lungs, larynx, esophagus, mouth, and bladder, and contributes to cancer of the cervix, pancreas and kidneys; and

WHEREAS, the use of cigars is known to cause lung, larynx, esophageal, and oral cancer; and

WHEREAS, more than 440,000 people die in the United States from tobacco related diseases every year, making it the nation's leading cause of preventable illness; and

WHEREAS, the United States Environmental Protection Agency (EPA) has found secondhand smoke to be a risk to public health, and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen; and

WHEREAS, with certain exceptions, state law prohibits smoking inside an enclosed place of employment; and

WHEREAS, state law prohibits smoking in playgrounds and tot lots and within twenty feet of the main entrances and exits of public buildings and expressly authorizes local communities to enact additional restrictions; and

WHEREAS, the City Council wishes to impose additional smoking restrictions, expressly including banning smoking in new multi-family residences given the secondhand smoke risks associated with these residences; and

WHEREAS, 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 tobacco use near non-tobacco users, by protecting children from exposure to smoking and tobacco, by reducing the potential for children to associate smoking and tobacco with a healthy living lifestyle, by protecting the public from smoking and tobacco-related litter and pollution;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings. The City Council hereby adopts the above recitals as its findings in support of this Ordinance.

Section 2. Amendment. Chapter 5-3 of the Lafayette Municipal Code is hereby amended to read in full as set forth in the attached Exhibit A.

Section 3. CEQA. The City Council finds that it can be seen with certainty that adoption of this Ordinance will not have a significant adverse effect on the environment and is therefore exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Section 4. Notice of Exemption. The City Council directs staff to prepare and file a Notice of Exemption no more than five (5) working days after adoption of this Ordinance.

Section 5. Effective Date. This Ordinance becomes effective thirty (30) days after its adoption.

Section 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 7. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption, including the names of the council members who voted for and against its passage.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Lafayette held on October 28, 2013 and was adopted at a meeting of the City Council held on November 12, 2013 by the following vote:

AYES: M. Anderson, Tatzin, Mitchell and Reilly

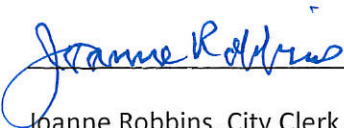
NOES: None

ABSTAIN: None


ABSENT: B. Andersson

ATTEST:

APPROVED:



Joanne Robbins, City Clerk



Mike Anderson, Mayor

EXHIBIT A

Chapter 5-3 - SMOKING

Sections:

- 5-301 - Findings.
- 5-302 - Purpose.
- 5-303 - Definitions.
- 5-304 - City-owned facilities and property and public events.
- 5-305 - Smoking in enclosed area.
- 5-306 - Smoking in places of employment.
- 5-307 – Reasonable smoking distance required – 25 feet.
- 5-308 - Optional smoking areas.
- 5-309 – Designated smoking areas.
- 5-310 - Posting requirements.
- 5-311 - Vending machines.
- 5-312 - Distribution of free samples and coupons.
- 5-313 - Out of package sales.
- 5-314 - Enforcement.
- 5-315 - Penalties.
- 5-316 - Nonretaliation.
- 5-317 - Other applicable laws.

5-301 - Findings.

The city council finds that:

- (a) The U.S. Environmental Protection Agency has determined that tobacco smoke is the major contributor of particulate indoor air pollution;
- (b) Reliable studies have shown that breathing sidestream or secondhand smoke is a significant health hazard, in particular for elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease;
- (c) Health hazards induced by breathing sidestream or secondhand smoke include heart disease, lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction and bronchospasm;
- (d) Nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing sidestream or secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to the same;
- (e) The smoking of tobacco, or any other weed or plant, is a danger to health;
- (f) The health care costs and lost productivity incurred by smoking-related disease and death represent

a heavy and avoidable financial drain on our community; and

- (g) (1) The free distribution of cigarettes and other tobacco products encourages people to begin smoking and using tobacco products, and tempts those who had quit smoking to begin smoking again, and
- (2) Free distribution of cigarettes and other tobacco products promotes unsightly litter, thereby increasing the costs to the public in cleaning the streets, and also causes pedestrian traffic congestion.

5-302 - Purpose.

The purpose of this chapter is to generally promote the health, safety and welfare of all people in the community against the health hazards and harmful effects of the use of addictive tobacco products.

5-303 - Definitions.

In this chapter unless context otherwise requires:

- (a) "Area open to the public" means any area available to and customarily used by the general public.
- (b) "Bar" means an area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages (Department of Alcoholic Beverage Control Type 61, 42 or 48 licenses). That area of a restaurant which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages is also considered a bar. An area in which food service is only incidental may not exceed 40 percent of a restaurant's total seating capacity.
- (c) "Designated smoking area" means an area meeting the requirements of Section 5-309 of this chapter where smoking is permitted, as designated by the landlord.
- (d) "Distribute" means to give, sell, deliver, dispense, issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue.
- (e) "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit.
- (f) "Employer" means and includes a person, municipal corporation or public entity, who employs the services of one or more persons to conduct business within the establishment.
- (g) "Enclosed area" means an area closed in by a roof and walls with appropriate openings for ingress and egress.
- (h) "Existing" means a qualifying use lawfully established and existing as of the effective date of this section and continuing at the same location without interruption.
- (i) "General public" means shoppers, customers, patrons, patients, students, clients and other similar invitees of a commercial enterprise or nonprofit entity.
- (j) "Landlord" includes the owner, manager or person with legal control of a commercial building or

multifamily residence.

- (k) "Multifamily residence" means residential property containing three (3) or more residential units with one or more shared walls, floors or ceilings, including for example, rental complexes, residential cooperatives, condominium complexes, senior residences, assisting living complexes and skilled nursing facilities.
- (l) "Multifamily residence common area" means an indoor or outdoor common area of a multifamily residence accessible to and usable by more than one residence, including but not limited to a hall, lobby, laundry room, outdoor eating area, play area or swimming pool. Smoking is permitted in designated smoking areas that comply with the requirements of Section 5-309 of this chapter.
- (m) "Outdoor dining area" means any unenclosed area available to or customarily used by the general public, which is designed, established or regularly used for consuming food or drink.
- (n) "Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to, work areas, employee lounges, conference rooms and employee cafeterias, except for those places specified in Section 5-308. A private residence is not a place of employment unless it is used as a child care or health care facility.
- (o) "Public events" means indoor and outdoor occurrences where people are seated or congregate in close proximity including, but not limited to, parades, fairs, farmers markets, concerts and ceremonies.
- (p) "Smoking" means the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or the lighting or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind. Smoking does not include the use of an electronic cigarette or similar unlighted device.
- (q) "Sports arena" means sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling center, hall, and other similar place where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.
- (r) "Unenclosed area" means any area that is not an enclosed area.
- (s) "Unit" means a unit in a multifamily residence that is issued a certificate of occupancy on or after 60 days after ordinance takes effect and a unit in a multifamily residence that is leased or rented to a new tenant on or after 60 days after ordinance takes effect. Unit includes all interior and exterior areas under the possession or control of the tenant, including any balconies, patios, porches or fenced outdoor space.
- (t) "Vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper bill, or other thing representative of value, which dispenses or releases tobacco product or tobacco accessories.

5-304 - City-owned facilities and property and public events.

Smoking is prohibited:

- a) In every building, vehicle, or other enclosed area occupied by a city employee that is owned or leased by the city or otherwise operated by the city.
- b) On all city-owned property, whether indoors or outdoors, including without limitation the Lafayette Library and Learning Center, the Lafayette Community Center, the Lafayette Corporation Yard, and Lafayette public parks, except on city owned streets open to normal traffic and on adjacent sidewalks.
- c) At public events.

5-305 - Smoking in enclosed and common areas.

- (a) Smoking is prohibited in each of the following areas within the city and city-owned facilities to the extent permitted by federal or state law:
 - (1) Every enclosed area available to and customarily used by the general public and every business patronized by the public, including but not limited to a restaurant, retail store, the common area of a hotel and motel, pharmacy, bank, shopping mall, and office;
 - (2) Waiting room, hallway, ward, and semiprivate room of a health facility, including but not limited to a hospital, clinic, physical therapy facility, doctor's office, except that a health facility is also subject to Section 5-306 regulating smoking in a place of employment;
 - (3) Elevator, public restroom, indoor service line, bus, taxicab and other means of public transit under the authority of a public entity, and in a ticket, boarding, and waiting area of a public transit depot.;
 - (4) In public areas of a museum and gallery, except that a museum and gallery is also subject to Section 5-306 regulating smoking in places of employment;
 - (5) Theater, auditorium, concert facility and hall which is used for motion pictures, stage drama and musical performance, ballet or other exhibition, both indoor and outdoor, except when smoking is part of such production;
 - (6) Retail food marketing establishment, including a grocery store and supermarket;
 - (7) Public school and other public facility under the control of another public agency, which is available to and customarily used by the general public, to the extent that it is subject to the jurisdiction of the city;
 - (8) Sports arena, both indoor and outdoor, and a convention hall.
 - (10) Single family residence or duplex when used as a child care or health care facility. Such board and care facility shall provide smokefree living quarters for nonsmoking boarders; and
 - (11) A unit in a multifamily residence that is issued a certificate of occupancy on or after 60 days after ordinance takes effect. Smoking may be allowed in designated smoking areas.
 - (12) A unit in a multifamily residence that is leased or rented to a new tenant on or after 60 days after ordinance takes effect. Smoking may be allowed in designated smoking areas.
 - (13) Multifamily residence common area.

(b) An owner, operator, manager or other person who controls an establishment described in this section may declare that the entire establishment is a nonsmoking establishment.

5-306 - Smoking in places of employment.

(a) Smoking is prohibited in any place of employment including, but not limited to every open office area, shared office and private office occupied by an employee performing clerical, technical, administrative or other business or work function, and even a conference and meeting room, classroom, auditorium, rest room, medical facility, hallway and elevator, except for a designated smoking area which complies with Section 5-308

(b) Smoking is prohibited in outdoor dining areas

(c) The provisions of this chapter shall be communicated to all employees at least annually.

5-307– Reasonable smoking distance required – 25 feet.

Unless state law prescribes a shorter distance, smoking that is not otherwise prohibited in unenclosed areas shall be prohibited within twenty five feet (25') from any entrance, window, opening or vent into an enclosed area in which smoking is prohibited, except while actively passing on the way to another destination and so long as smoke does not enter any enclosed area in which smoking is prohibited.

5-308– Optional smoking areas.

Each of the following areas is not subject to the smoking restrictions of this chapter:

(a) A single family residence or duplex, including one which may serve as a place of employment, except when covered by Section 5-305(a)(10);

(b) Any existing hotel and motel room rented to a guest, if the hotel and motel designates not less than 35 percent of its guest rooms as nonsmoking rooms and removes ashtrays from these rooms;

(c) Any existing, hotel and motel conference or meeting room and private assembly room while being used for a private function so long as no food or beverage function is taking place, including setup, service and cleanup activities;

(d) Any existing business establishment that deals exclusively in the sale of tobacco and smoking paraphernalia.

5-309 Designated smoking area.

A landlord may designate a portion of the outdoor area as a smoking area. A designated smoking area must:

a. Be located twenty feet (25') from any entrance, window, opening or vent into an enclosed area in which smoking is prohibited, except while actively passing on the way to another destination and so long as smoke does not enter any enclosed area in which smoking is prohibited;

b. Be at least twenty feet (25') from outdoor areas used by children;

c. Be no more than twenty five percent (25%) of the total outdoor area of the premises for which it is

designated;

- d. Be clearly marked and identified by conspicuous signs; and
- e. Not overlap with any area in which smoking is otherwise prohibited by this Chapter or other provisions of the Municipal Code, state law or federal law.

5-310 - Posting requirements.

(a) "Smoking" or "No Smoking" signs, whichever are appropriate, 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 with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is controlled by this chapter, by the owner, operator, manager or other person having control of such building or other place.

(b) Every hotel or motel regulated by this chapter shall have posted at its entrance a sign clearly stating that nonsmoking rooms are available, and every patron shall be asked as to his or her preference.

5-311 - Vending machines.

A coin-operated cigarette vending machine may be located only on premises which have either a Type 61, Type 42 or Type 48 license from the Department of Alcoholic Beverage Control. Each cigarette vending machine must be located at least 25 feet from any entry into the premises. This section does not apply to a human operated vending machine approved by the county health officer.

5-312 - Distribution of free samples and coupons.

(a) No person in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products for commercial purposes shall in the course of such business distribute, (1) any cigarette or other tobacco product, including any smokeless tobacco product, or (2) coupon, certificate, or other written material which may be redeemed for tobacco products without charge, to any person on a public street or sidewalk or in a public park or other public ground or in any public building.

(b) No agent or employee of any person in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products for commercial purposes shall in the course of such business distribute, (1) any cigarette product, or (2) coupon, certificate, or other written material which may be redeemed for tobacco products without charge, to any person on a public street or sidewalk or in a public park or other public ground or in any public building.

(c) For purposes of this section, "public ground" and "public building" include a publicly or privately owned sports arena and any entertainment facility whether enclosed or not, except a bar, for which a charge is made for admission.

5-313- Out of package sales.

No person shall sell or offer for sale cigarettes or smokeless tobacco not in the original packaging provided by the manufacturer.

5-314 - Enforcement.

- (a) Administration of this chapter is by the city manager or designee.
- (b) A citizen who desires to register a complaint under this chapter may initiate enforcement consideration with the city manager.
- (c) An owner, manager, operator or employer of any establishment controlled by this chapter may inform a person violating this chapter of its provisions.

5-315 - Penalties.

- (a) It is unlawful for a person who owns, manages, operates or controls the use of premises subject to the restrictions of this chapter to knowingly or intentionally permit smoking in a manner inconsistent with the restrictions of this chapter or to fail to properly post signs required by this chapter.
- (b) It is unlawful for a person to smoke in an area restricted by this chapter.
- (c) A person who violates this chapter is guilty of an infraction, punishable by:
 - (1) A fine, not exceeding \$100.00, for the first violation;
 - (2) A fine, not exceeding \$200.00, for a second violation within one year; and
 - (3) A fine, not exceeding \$500.00, for each additional violation of this chapter within one year.

5-316 - Nonretaliation.

No person or employer may discharge, refuse to hire, or in any manner retaliate against an employee or applicant for employment because the employee or applicant exercises any rights provided by this chapter.

5-317- Other applicable laws.

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