

AN ORDINANCE AMENDING TITLE 8, CHAPTER 8.22 (NO SMOKING ON COUNTY PROPERTY) OF THE SAN LUIS OBISPO COUNTY CODE

The Board of Supervisors of the County of San Luis Obispo, State of California, ordains as follows:

SECTION 1: Chapter 8.22 of the San Luis Obispo County Code is amended to read as follows:

Chapter 8.22

~~NO SMOKING ON COUNTY PROPERTY~~

SMOKING PROHIBITED IN PUBLIC PLACES

Sections:

8.22.010 - Purpose.

8.22.020 - Definitions.

8.22.030 – Prohibition of smoking in ~~certain~~ public places and other areas open to the public.

8.22.040 – ~~Reserved.~~ Additional smoking-related prohibitions.

8.22.050 – Enforcement and penalties.

8.22.060 - Violation—Penalty.

8.22.070 - Severability.

SECTION 2: Chapter 8.22, Section 8.22.010 is amended to read as follows:

8.22.010 - Purpose.

~~Because smoking of tobacco or any other weed or plant is a positive danger to health and a cause of material discomfort and a health hazard to those who are present in confined places, and in order to serve public health, safety and welfare, the declared purpose of this chapter is to establish county property as a smoke free environment where persons will be free from inhaling smoke by prohibiting the smoking of tobacco or any other weed or plant on certain county properties.~~

Because smoking is a positive danger to health, a cause of material discomfort, and a health hazard even to those exposed to secondhand smoke, the declared purposes of this chapter are to:

- (1) Promote the public health, safety and welfare by prohibiting smoking, expressly including the use of tobacco, cannabis and electronic smoking devices, in certain areas which are used by or open to the public;
- (2) Ensure a cleaner and more hygienic environment for the county, its residents, visitors, and natural resources; and

- (3) Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including children, to breathe smoke-free and drug-free air, recognizing the threat to public health and the environment caused by smoking and unwelcome secondhand smoke.

SECTION 3: Chapter 8.22, Section 8.22.020 is amended to read as follows:

8.22.020 - 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:

"Cannabis" or "marijuana" means all parts of the plant cannabis sativa linnaeus, cannabis indica, or cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

"Common area" means every indoor and outdoor area of a multi-unit residence that residents of more than one unit of that multi-unit residence are entitled to enter or use, including, but not limited to halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

"County" means the County of San Luis Obispo.

"County property," for purposes of this chapter 8.22, means a building or structure owned, leased or otherwise operated by the County of San Luis Obispo to conduct county business, and land appurtenant to that building or structure, including but not limited to parking lots, landscapes, walkways and patios. ~~"County property" additionally includes certain county parks and parklands.~~

"Electronic smoking device" means an electronic device which can be used to deliver an inhaled dose of nicotine or any other substance, including any component, part, or accessory of such a device, whether or not sold separately, including but not limited to e-liquid, e-juice, vape juice, or vape pods. "Electronic smoking device" includes but is not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

"Multi-unit residence" means property containing two (2) or more units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities

"Public place" means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.

~~"Smoke" or "smoking," as defined in this chapter, means and includes the carrying of a pipe, cigar, or cigarette of any kind which is burning, or the igniting of a pipe, cigar, or cigarette of any kind.~~

"Smoking" means inhaling, exhaling, burning or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any other device that delivers nicotine, marijuana, or other substances to a person.

"Tobacco product" means:

- (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff;
- (2) any electronic smoking device as defined above;
- (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, tobacco product

includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately. Tobacco product does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

SECTION 4: Chapter 8.22, Section 8.22.030 is amended to read as follows:

8.22.030 – Prohibition of smoking in certain public places ~~on county property~~ and other areas open to the public.

In addition to all places where smoking is prohibited under California or federal law, smoking shall be prohibited in the following places within the unincorporated areas of the county:

- ~~(1) Buildings or structures owned, leased or otherwise operated by the County of San Luis Obispo to conduct county business, and land appurtenant to that building or structure including but not limited to parking lots, landscapes, walkways and patios.~~
- ~~(2) All areas of mini, neighborhood and community parks, plazas and special places as listed in the park and recreation element of the county general plan.~~
- ~~(3) In regional parks within thirty feet of any building, playground, tot lot or group picnic area.~~
- ~~(4) Notwithstanding the prohibition as set forth in this chapter, smoking may be allowed in designated smoking areas as authorized by the county public health officer.~~
- (1) County property.
- (2) All recreational areas, which includes any public or private area open to the general public for recreational purposes whether or not any fee or admission is charged, including without limitation, parks, trails, gardens, tot lots, picnic areas, sporting facilities, stadiums, beaches, piers, and playgrounds and special places as listed in the park and recreation element of the county general plan.
- (3) All public places, including any public or private place open to the general public regardless of any fee or age requirement, including for example, streets, sidewalks, parking lots, parking garages, plazas, bars, restaurants, clubs, stores, stadiums, taxis, buses and service areas (ticket lines, bus stops, or takeout counters etc.)
- (4) All open-air dining areas, or within twenty feet of any open-air dining area.
- (5) Within twenty feet of the entrance, exit, operable window, or air intake vent of any public place. For the purposes of this subsection, entrance or exit shall mean an opening into an enclosed public place from a contiguous street, sidewalk, walkway, or parking areas, and “air intake vent” shall mean an opening into an enclosed public place that draws in air from the outside as part of a structural ventilation system.
- (6) All enclosed areas exempted by the California smokefree workplace law (California Labor Code Section 6404.5(d)), as that section may be amended from time to time.
- (7) Common areas of multi-unit residential complexes which includes any indoor or outdoor common area of a multi-unit residence (apartments, condominiums, townhomes, mobile home parks, etc.) accessible to and usable by more than one resident, including but not limited to halls, lobbies, laundry rooms, outdoor eating areas, play and swimming areas.
- (8) Notwithstanding the prohibition as set forth in this chapter, smoking may be allowed in certain designated areas as authorized by the County Health Officer, and in certain designated areas of County Regional Parks and Golf Courses as authorized jointly by the County Health Officer and the County Director of Parks and Recreation.

SECTION 5: Chapter 8.22, Section 8.22.040 is amended to read as follows:

8.22.040 - ~~Reserved.~~ Additional smoking-related prohibitions.

- (1) A person who owns, manages, operates, or otherwise controls the use of any place where smoking is prohibited by this Chapter may not knowingly or intentionally permit smoking in those places. For the purposes of this section, a person has acted knowingly or intentionally if the person has not taken the following actions to prevent smoking by another person:
 - a. Requested that a person who is smoking refrain from smoking in the prohibited place; and
 - b. Requested that a person who is smoking leave the prohibited place if the person refuses to stop smoking in the prohibited place after being asked to stop. This section does not require physically ejecting a person from a place or taking steps to prevent smoking under circumstances that would involve risk of physical harm.

SECTION 6: Chapter 8.22, Section 8.22.050 is amended to read as follows:

8.22.050 – Enforcement.

~~Employees or visitors who are smoking on county property where smoking is prohibited will be asked to extinguish their smoking materials. Employees or visitors unwilling to comply, or repeatedly in noncompliance, may be cited under County Code Section 8.22.060.~~

- (1) Enforcement of this chapter shall be the responsibility of the County Administrative Office and County staff.
- (2) Enforcement of this Chapter is at the sole discretion of the County.
- (3) Nothing in this Section shall be construed to limit the authority of the County to treat any violation of this Chapter as a public nuisance pursuant to any County or state law.

SECTION 7: Chapter 8.22, Section 8.22.060 is amended to read as follows:

8.22.060 - Violation—Penalty.

~~Any person who violates any provision of this chapter by smoking in an area where smoking is prohibited,~~ including an owner, operator or manager of any facility or business within the purview of this Chapter who knowingly permits any person to violate this Chapter while within such facility or business, is guilty of an infraction pursuant to Chapter 1.04 and is subject to the fines set forth therein.

SECTION 8: Chapter 8.22.070 remains unchanged:

8.22.070 - Severability.

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

SECTION 9: The Board of Supervisors has considered the amendments to Chapter 8.22 that are proposed with respect to the matter described above. The Board of Supervisors has, as a result of its consideration, the evidence presented at the hearings on said matter, and all comments that were received during the public hearing process, determined that this activity is exempt from review pursuant to CEQA Guidelines section 15061(b)(3) which provides that an activity is not subject to CEQA review where it can be seen with certainty that there is no possibility that it may have a "significant effect on the environment." The Board of Supervisors finds that it can be seen with certainty that there is no possibility that the adoption of the amendments to Chapter 8.22 as stated above may have a significant effect on the environment because there is no substantial evidence that the adoption of this ordinance will have a significant effect on the environment. The Board of Supervisors hereby approves this adoption of the above amendment to Chapter 8.22 in accordance with the California Environmental Quality Act (CEQA) and the County's regulations implementing said Act.

SECTION 10: If any section, subsection, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 11: This ordinance shall take effect and be in full force on and after 30 days from the date of its passage hereof. Before the expiration of 15 days after the adoption of this ordinance, a summary of the ordinance shall be published once in a newspaper of general circulation published in the County of San Luis Obispo, State of California, together with the names of the members of the Board of Supervisors voting for and against the ordinance and the Clerk shall post in the office of the Clerk of the Board of Supervisors a certified copy of the full text of the adopted ordinance along with the names of those Supervisors voting for and against the ordinance.

INTRODUCED at a regular meeting of the Board of Supervisors held on the _____ day of _____, 20____, and PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the _____ day of _____, 20____, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

Chairperson of the Board of Supervisors
~~County of San Luis Obispo, State of California~~

ATTEST:

WADE HORTON
Ex-Officio Clerk of the Board of Supervisors

By: _____
Deputy Clerk

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: _____
Deputy County Counsel

Dated: _____

ATTEST:

~~County Clerk and Ex Officio Clerk
of the Board of Supervisors
County of San Luis Obispo, State of California~~

[SEAL]

~~ORDINANCE CODE PROVISIONS APPROVED
AS TO FORM AND CODIFICATION~~

~~WARREN R. JENSEN
County Counsel~~

By:

Rita L. Neal
Assistant County Counsel

Dated: November 11, 2019