

ORDINANCE NO. 4502

AN ORDINANCE OF THE COUNTY OF VENTURA REPEALING AND REENACTING CHAPTER 7 OF DIVISION 6 OF THE VENTURA COUNTY ORDINANCE CODE PERTAINING TO THE REGULATION OF SMOKING

Section 1. The Board of Supervisors of the County of Ventura, State of California ordains as follows:

Chapter 7 of division 6 of the Ventura County Ordinance Code pertaining to the regulation of smoking is hereby repealed and reenacted to read as follows:

Section 6700 - TITLE.

This chapter shall be known as the Ventura County Comprehensive Smoke-Free Ordinance.

Section 6701 - PURPOSE AND AUTHORITY.

The Board of Supervisors of the County of Ventura is committed to the good health and well-being of the residents of the County of Ventura. The Health in All Policies Framework adopted by the Board of Supervisors on January 27, 2015 ensures that health is a priority in all policies. Smoke-free air is an important component of a healthy community. Furthermore, the Board of Supervisors is committed to:

- a) Protecting the public health, safety, and general welfare by providing a smoke-free environment in public and private places where nonsmokers may be exposed to secondhand smoke; and
- b) Promoting smoke-free air recognizing that the need to breathe smoke-free air has priority over the desire to smoke.

Section 6702 - FINDINGS.

The Board of Supervisors of the County of Ventura finds that:

- a) Secondhand smoke has been repeatedly identified as a health hazard.
- b) There is no constitutional right to smoke.
- c) The U.S. Surgeon General found there is no risk-free level of exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to secondhand smoke.
- d) 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.
- e) 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.
- f) Exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke occurs at significant levels outdoors, as evidenced by the following:
 - 1) Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on the direction and amount of wind

- and number and proximity of smokers;
- 2) Smoking near building entryways can increase air pollution levels by more than two times as compared with background levels, with maximum levels reaching the “hazardous” range on the U.S. Environmental Protection Agency Air Quality Index; and
 - 3) A person may have to move nearly 23 feet away from the source of the smoke to be completely free from exposure to secondhand smoke in outdoor places.
- g) The U.S. Surgeon General found evidence that in high doses nicotine is acutely toxic. In addition, nicotine exposure during fetal development, a critical window for brain development, has lasting adverse consequences. Nicotine adversely affects maternal and fetal health during pregnancy, contributing to multiple adverse outcomes such as preterm delivery and stillbirth. In addition, nicotine exposure during adolescence, also a critical window for brain development, may have lasting adverse consequences.
 - h) Cigarette butts are a major and persistent source of litter, do not biodegrade, and are often cast onto sidewalks and streets, frequently ending up in storm drains that flow into creeks, rivers, and ultimately the ocean.
 - i) Studies on electronic cigarettes’ vapor emissions and cartridge contents have found a number of dangerous substances including chemicals known to the State of California to cause cancer, such as formaldehyde, acetaldehyde, lead, nickel, and chromium.
 - j) Several studies have concluded that vapor from electronic cigarettes may cause passive or secondhand inhalation of vapor by nearby people.
 - k) There are no studies proving that inhalation of vapor from electronic cigarettes is not harmful to health, and the long-term health risks of the use of electronic cigarettes on device users and nearby people remain unknown.
 - l) Secondhand marijuana smoke contains many of the same chemicals and carcinogens as secondhand tobacco smoke. Results from laboratory testing under standard conditions found that secondhand marijuana smoke contained more than twice as much tar and ammonia as tobacco smoke and more than eight times as much hydrogen cyanide.
 - m) In 2015, of tobacco retailers surveyed in three cities within the County of Ventura, 20 percent sold tobacco products to minors (persons less than 18 years of age) illegally.
 - n) A study published in the Journal of Environmental and Public Health suggests that electronic smoking devices may have the capacity to “re-normalize” tobacco use.
 - o) A California Healthy Kids Survey found that in 2014 the number of 11th graders in the County of Ventura who reported current electronic cigarette use was higher (20 percent) than current conventional cigarette use (10 percent).

Section 6703 - 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) “Business” means any sole proprietorship, partnership, limited liability company, joint venture, corporation, association, or other entity formed for profit-making purposes or for nonprofit charitable, religious, philanthropic,

- educational, political, social, or similar purposes. A government agency is not a business within the meaning of this chapter.
- b) "County" means the County of Ventura, a political subdivision of the State of California.
 - c) "County campus" means enclosed areas and unenclosed areas under the legal control of the County, including property that is owned, leased, or maintained by the County or any district governed by the County Board of Supervisors.
 - d) "Designated smoking area" means a designated portion of an unenclosed area where smoking may be allowed. A designated smoking area must be:
 - 1) Located a reasonable distance in any direction from an operable doorway, window, vent, or other opening into an enclosed area;
 - 2) Located at least 250 feet from any unenclosed recreational area primarily used by children;
 - 3) Located at least 250 feet from unenclosed areas that have improvements that facilitate physical activity, including, but not limited to, playgrounds, tennis courts, swimming pools, walking paths, and sports fields; and
 - 4) Clearly identified by conspicuous signage stating "Designated Smoking Area" and have ash receptacles, such as ash cans, within the area for proper disposal of smoking waste.
 - e) "Dining area" means any area 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.
 - f) "Electronic smoking device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vaping pens or any other product name or descriptor.
 - g) "Employee" means any natural person who is employed or retained as an independent contractor by any employer in consideration for direct or indirect monetary wages or profit, or any natural person who volunteers his or her services for an employer.
 - h) "Employer" means any business with one or more employees.
 - i) "Enclosed area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:
 - 1) Any type of overhead cover and at least three walls or other vertical constraint to airflow; or
 - 2) Four walls or other vertical constraints to airflow.
 - j) "Person" means any natural person, business, personal representative, receiver, trustee, assignee, or any other legal entity.
 - k) "Place of employment" means any area under the legal or de facto control of an employer that an employee or the general public may have cause to enter in the normal course of operations, regardless of the hours of operation.
 - l) "Public place" means any place, publicly or privately owned, when being used for a public event, including but not limited to a farmers' market, parade, craft fair, festival, or any other event open to the general public, provided that Smoking is permitted on streets and sidewalks used only as pedestrian or vehicular thoroughfares, unless otherwise prohibited by this Chapter.
 - m) "Reasonable distance" means a distance of at least 25 feet in any direction.

- n) "Recreational area" means any area that is owned, controlled, or used by the County and open to the general public for recreational purposes, regardless of any fee or age requirement. "Recreational area" includes, but is not limited to, parks, picnic areas, playgrounds, sports fields, walking paths, lakes, gardens, hiking trails, bike paths, riding trails, swimming pools, skateboard parks, amusement parks, and beaches. "Recreational area" does not include golf courses.
- o) "Service area" means any publicly or privately owned area 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. "Service area" includes, but is not limited to, areas including or adjacent to information kiosks, automatic teller machines, ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.
- p) "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, marijuana, or nicotine and the purpose of inhalation is solely olfactory, such as smoke from incense. "Smoke" includes, but is not limited to, tobacco smoke, electronic smoking device vapors, and marijuana smoke.
- q) "Smoking" means inhaling, exhaling, burning, or carrying any ignited, heated, or activated cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product intended for human inhalation including, but not limited to, marijuana.
- r) "Tobacco paraphernalia" means any item designed for the consumption, use, or preparation of any tobacco product.
- s) "Tobacco product" means:
 - 1) Any product containing, made, or derived from marijuana, tobacco or nicotine that is intended for human consumption, whether smoked, heated, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, pipe tobacco; and
 - 2) Any electronic smoking device.
 Notwithstanding any provision of subparagraphs (1) and (2) to the contrary, "tobacco product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" does not include any product that has been approved by the U.S. 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.
- t) "Unenclosed area" means any area that is not an enclosed area.

Section 6704 - APPLICATION OF THE CHAPTER.

This chapter shall be applied throughout the unincorporated areas of the County of Ventura and in all County buildings, whether owned, leased, or controlled by the

County, and on all County campuses. The chapter does not apply to areas within cities that are not County buildings or County campuses.

Section 6705 - PROHIBITION OF SMOKING AND TOBACCO PRODUCT USE IN ENCLOSED PLACES.

The County shall enforce the California smoke-free workplace law (Labor Code section 6404.5), which prohibits smoking in enclosed places of employment, in all areas subject to this chapter. In addition, all smoking and the use of tobacco products are prohibited in the enclosed areas of the following places:

- a) All businesses that are not places of employment and which have a common or shared air space with an enclosed area, such as, without limitation, openings, cracks, air ventilation systems, doorways, hallways, and stairways, in which smoking is prohibited by law. Notwithstanding any other provision of this chapter, the fact that smoke enters one enclosed area from another enclosed area is conclusive proof that the areas share a common or shared air space; and
- b) Public places.

Section 6706 - PROHIBITION OF SMOKING AND TOBACCO PRODUCT USE IN UNENCLOSED AREAS.

Smoking and the use of tobacco products are prohibited in the unenclosed areas of the following places, with the exception of Designated Smoking Areas, as defined in Section 6703 d and 6707 b):

- a) Dining areas.
- b) Entryways.
- c) Public places.
- d) Recreational areas.
- e) Service areas.
- f) Places of employment.

Section 6707 - PROHIBITION OF SMOKING AND TOBACCO PRODUCT USE IN COUNTY VEHICLES AND ON COUNTY CAMPUSES.

- a) Smoking and the use of tobacco products are prohibited in all vehicles leased, owned, or operated by the County or any district governed by the County Board of Supervisors.
- b) Smoking and the use of tobacco products are prohibited in all enclosed areas and unenclosed areas of a County campus, except in designated smoking areas, as authorized by the County Executive Officer or the director of the County Public Health Department.

Section 6708 - REASONABLE SMOKING DISTANCE REQUIRED.

- a) Smoking in all unenclosed areas is prohibited within a reasonable distance from any enclosed or unenclosed areas in which smoking is prohibited.
- b) A private property or Business owner may authorize a Designated Smoking Area in an unenclosed area of his or her private property.

Section 6709 - ADDITIONAL SMOKING-RELATED PROHIBITIONS.

- a) 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 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:
 - 1) Requested that a person who is smoking refrain from smoking in the prohibited place; and
 - 2) 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.
- b) No person shall intimidate, harass, or otherwise retaliate against any person who seeks compliance with this section. Moreover, no person shall intentionally or recklessly expose another person to smoke in response to that person's effort to achieve compliance with this section.

Section 6710 - OTHER REQUIREMENTS AND PROHIBITIONS.

- a) No employer or business doing business with the County and within the County of Ventura shall knowingly or intentionally permit smoking or the use of tobacco products in an area which is under the employer's or business's control and in which smoking is prohibited.
- b) No person shall litter or dispose of smoking or tobacco product waste within the boundaries of an area in which smoking is prohibited except into a waste receptacle or ash can.
- c) No person, employer, or business shall intimidate or threaten or effect any reprisal against another person for the purpose of retaliating against that person for seeking to obtain compliance with this chapter.
- d) Causing, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.

Section 6711 - POSTING OF SIGNS.

A person, employer, or business that has legal or de facto control of an area in which smoking or the use of tobacco products is prohibited by this chapter shall post a clear, conspicuous and unambiguous "No Smoking and No Vaping" or "Smoke-Free" sign at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs will have letters of no less than one inch in height and shall include the international "No Smoking and No Vaping" symbol (consisting of a pictorial representation of a burning cigarette, marijuana leaf and e-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 section 6708. At least one sign with a County phone number (to be determined by the director of the County Public Health Department and made available on the department's website at www.vchca.org/ph) to which complaints can be directed must be placed conspicuously in each place in which smoking is prohibited. The County Public Health Department shall be responsible for providing appropriate signs in public facilities controlled by the County. Notwithstanding this section, the presence or absence of signs shall not be a defense to a charge of smoking or the use of smoking products in violation of any other provision of this

chapter.

Section 6712 - INTERPRETATION.

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

Section 6713 - 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 or use of a tobacco product in violation of this chapter is an infraction subject to a warning for a first violation and then punishable by a fine of \$50 for a second violation within one year, a fine of \$100 for a third violation within one year, and a fine of \$200 for a fourth or subsequent violation occurring within one year
- c) 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.
- d) Enforcement of this chapter is at the sole discretion of the County.

Section 6714 - OTHER LAWS.

It is not the intention of this chapter to regulate any conduct where the regulation of such conduct has been preempted by the State of California.

Section 6715 - STATUTORY CONSTRUCTION AND SEVERABILITY.

It is the intent of the County Board of Supervisors to supplement applicable state and federal law and not to duplicate or contradict such law, and this chapter shall be construed consistently with that intention. If any part of this chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining parts of this chapter, or its application to any other person or circumstance. The County Board of Supervisors 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 section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof be declared invalid or unenforceable.

Section 6716 - PUBLIC EDUCATION.

The County Public Health Department shall conduct an ongoing educational effort to inform the public about the purpose and requirements of this chapter as well as to provide guidance to persons, employers, and businesses. However, lack of such education shall not be a defense to a violation of this chapter. As a part of the education effort, model documents and signage will be available on the County Public Health Department website (www.vchca.org/ph).

Section 6717 - NO PRIVATE RIGHT OF ACTION.

Nothing in this chapter shall create a right of action in any person against the County or its agents to compel enforcement of this chapter against private parties.

Section 2. This ordinance shall take effect 30 days following its passage and be operative and in full force 180 days after its effective date.

PASSED AND ADOPTED this 10th of January 2017 by the following vote:

AYES

Supervisors

Zaragoza, Bennett,
Long, Foy

NOES:

Parks

ABSENT:

none.



John Z. ...
CHAIR, BOARD OF SUPERVISORS

ATTEST:

MICHAEL POWERS

CLERK OF THE BOARD OF SUPERVISORS

COUNY OF VENTURA, STATE OF CALIFORNIA

BY

Lou Annis
DEPUTY CLERK OF THE BOARD