

ORDINANCE NO. 3413

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING
CHAPTER 8.22 OF THE CHULA VISTA MUNICIPAL CODE
TO EXPAND SMOKING PROHIBITIONS

WHEREAS, jurisdictions are becoming increasingly aware that cities play a critical role in supporting the health and well-being of their communities; and

WHEREAS, the Healthy Chula Vista Action Plan, adopted January 5, 2016, included strategies to prohibit smoking on City facilities and in affordable housing projects; and

WHEREAS, smoking and exposure to cigarette smoke are associated with health risks such as the onset of diseases, including various cancers as well as cardiovascular and respiratory diseases; and

WHEREAS, e-cigarettes have been found to contain a number of toxins, carcinogens and components suspected of being harmful to humans; and

WHEREAS, research shows each smoker costs employers nearly \$6,000 in indirect and direct medical costs per year; and

WHEREAS, the City desires to follow U.S. Department of Housing and Urban Development guidelines surrounding smoking in affordable housing projects where the City has deed and rent restrictions on such property; and

WHEREAS, the City, including various City Departments, have previously adopted policies to prohibit and/or regulate smoking, including, but not limited to, Council Policy Nos. 840-01 and 840-02 and an Environmental Tobacco Smoke Control Directive (adopted in 2017); and

WHEREAS, in order to streamline and advance policy related to smoking exposure in the City, amendments have been proposed to Chula Vista Municipal Code Chapter 8.22.

NOW, THEREFORE, the City Council of the City of Chula Vista does ordain as follows:

Section I.

Chula Vista Municipal Code Chapter 8.22 is hereby amended to read as set forth in Attachment A.

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Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

[SIGNATURES ON FOLLOWING PAGE]

Presented by

Approved as to form by

DocuSigned by:

04E0EC224BA74B0
 Kelly G. Broughton, FASLA
 Director of Development Services

DocuSigned by:

F4947E7D3E384CE
 Glen R. Googins
 City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 9th day of January 2018, by the following vote:

AYES: Councilmembers: Aguilar, Diaz, McCann, Padilla, and Salas

NAYS: Councilmembers: None

ABSENT: Councilmembers: None

DocuSigned by:

002BFD7C0386456
 Mary Salas, Mayor

ATTEST:

DocuSigned by:

3074D104EAF342E
 Kerry K. Bigelow, MMC, City Clerk

STATE OF CALIFORNIA)
 COUNTY OF SAN DIEGO)
 CITY OF CHULA VISTA)

I, Kerry K. Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3413 had its first reading at a regular meeting held on the 19th day of December 2017 and its second reading and adoption at a regular meeting of said City Council held on the 9th day of January 2018; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

2/5/2018

 Dated

DocuSigned by:

3074D104EAF342E
 Kerry K. Bigelow, MMC, City Clerk

ATTACHMENT A

Chapter 8.22

**REGULATION OF SMOKING IN PUBLIC PLACES, AFFORDABLE HOUSING
PROJECTS AND PLACES OF EMPLOYMENT**

Sections:

- 8.22.010 Purpose.
- 8.22.020 Definitions.
- 8.22.030 Prohibitions.
- 8.22.040 Designation of smoking areas.
- 8.22.050 Posting of signs.
- 8.22.060 Governmental agency cooperation.
- 8.22.070 Exceptions.
- 8.22.080 Enforcement and appeal.
- 8.22.090 Violations and penalties.
- 8.22.100 Education for no-smoking program.
- 8.22.110 Severability.

8.22.010 Purpose.

Because smoking of tobacco, or any other weed or plant, is a danger to health and a cause of material annoyance, inconvenience, discomfort, and a health hazard, and in order to serve public health, safety and welfare, the declared purpose of this chapter is to prohibit the smoking of tobacco, or any weed or plant, in Public Places, Affordable Housing Projects, and Places of Employment, except in designated smoking areas.

8.22.020 Definitions.

“Smoke” or “Smoking” means and includes the carrying or use of a lighted pipe, or lighted cigar, or lighted cigarette or e-cigarette of any kind, including any device use for vaping, or the lighting of a pipe, cigar or cigarette of any kind.

“Public Place” means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, waiting rooms, reception areas, educational facilities, health facilities, and public transportation facilities. A private residence is not a “public place.”

“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. A private residence is not a “place of employment.”

“Affordable Housing Project” means a housing complex which is subject to income and rent restrictions recorded against the property to the benefit of the City of Chula Vista and/or the Chula Vista Housing Authority.

8.22.030 Prohibitions.

A. No person shall smoke in a Public Place or Place of Employment, except in designated smoking areas.

B. No person shall Smoke in the dining area of any restaurant or establishment where people eat, including outdoor patios, outdoor bars that serve food, or any covered eating area.

C. No person shall Smoke within 50 feet of any entrance to any restaurant or establishment where people eat.

D. No person shall Smoke on any portion of City owned property inclusive of all parks, libraries, City buildings, and associated parking lots.

E. No person shall Smoke within an Affordable Housing Project, except in designated smoking areas as defined in Section 8.22.040.B.

8.22.040 Designation of smoking areas.

A. Smoking areas may be designated in public places and places of employment by proprietors or other persons in charge, except in retail stores, retail service establishments, food markets, public conveyances, theaters, auditoriums, public assembly rooms, meeting rooms, rest rooms, elevators, pharmacies, libraries, museums or galleries which are open to the public or any other place where Smoking is prohibited by the Fire Marshal or by other law, ordinance or regulation. Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas. It shall be the responsibility of employers to provide Smoke-free areas for nonsmokers within existing facilities to the maximum extent possible, but employers are not required to incur any expense to make structural or other physical modifications in providing these areas. An employer who in good faith develops and promulgates a policy regarding Smoking and nonsmoking in the workplace shall be deemed to be in compliance with this section; provided, that a policy, which designates an entire workplace as a smoking area, shall not be deemed a good faith policy. No public place other than the ones enumerated in CVMC 8.22.070 shall be designated as a smoking area in its entirety.

B. Outdoor smoking areas may be designated within an Affordable Housing Project as long as they are not within 25 feet of any window, door, or common area amenities.

C. Notwithstanding any other provision of this chapter, any facility or area may be designated in its entirety as a no-smoking area by the owner or manager thereof.

8.22.050 Posting of signs.

Signs which designate Smoking or no-smoking areas established by this chapter shall be clearly, sufficiently, and conspicuously posted in every room, building, or other place so covered by this chapter. No-smoking signs shall be specifically placed in retail food production and marketing establishments, including grocery stores and supermarkets open to the public, so that they are clearly visible to persons upon entering the store, clearly visible to persons in checkout lines, and

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clearly visible to persons at meat and produce counters. The manner of such posting, including the wording, size, color, design, and place of posting, whether on the walls, doors, tables, counters, stands or elsewhere, shall be at the discretion of the owner, operator, manager, or other person having control of such room, building or other place, so long as clarity, sufficiency, and conspicuousness are apparent in communicating the intent of this chapter.

8.22.060 Governmental agency cooperation.

The City Manager shall annually request that governmental and educational agencies who conduct their specific business within the City of Chula Vista establish local operating procedures to cooperate and comply with this chapter. In federal, state, county and special school districts within the City of Chula Vista, the City Manager shall urge enforcement of their existing no-smoking prohibitions and request cooperation with this chapter.

8.22.070 Exceptions.

A. No-smoking areas are not required in individual private offices, hotel and motel meeting and assembly rooms rented to guests, areas and rooms while in use for private social functions, psychiatric facilities, jails, stores that deal exclusively in tobacco products and accessories, and smoking lounges as that term is defined in Government Code Section 7596.

B. Any owner or manager of a business or other establishment subject to this chapter may apply to the City Council for an exemption or modification of the provisions of this chapter due to unique or unusual circumstances or conditions.

8.22.080 Enforcement and appeal.

A. The City Manager shall be responsible for compliance with this chapter when facilities which are owned, operated or leased by the City of Chula Vista are involved, including designating smoking areas, if any, when the City is the public employer. The City Manager shall provide business license applicants with copies of this chapter.

B. The owner, operator or manager of any facility, business or agency shall post or cause to be posted all "No Smoking" signs required by this chapter. Owners, operators, managers or employees of covered entities shall be required to orally inform persons violating this chapter of the provisions of the chapter. The duty to inform such violator shall arise when such owner, operator, manager or employee becomes aware of the violation.

C. It shall be the responsibility of employers to disseminate information covering the provisions of this chapter to employees.

8.22.090 Violations and penalties.

Any person who violates any provision of this chapter by smoking in a posted "No Smoking" area, or by failing to post or cause to be posted a "No Smoking" sign required by this chapter, or by a knowing failure to inform any person who violates the provisions of this chapter, when such duty to inform arises, as set forth in CVMC 8.22.080(B), is guilty of an infraction.

8.22.100 Education for no-smoking program.

The City Manager shall engage in a continuing program to inform and clarify the purposes of this chapter to citizens affected by it, and to guide owners, operators and managers in their compliance.

The City shall leave the responsibility of conducting a public education campaign, regarding the health-degrading aspects of smoking, to other governmental and health agencies equipped with the needed expertise to conduct such campaign.

8.22.110 Severability.

If any provision, clause, sentence or paragraph of this chapter, or the application of this chapter to any person or circumstance, shall be 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 hereby declared to be severable.