

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Deborah S. Traffenstedt, Administrative Services Director/City Clerk
Prepared by: Teri Davis, Senior Management Analyst

DATE: June 10, 2009 (CC Meeting of 6/17/09)

SUBJECT: Consider an Ordinance of the City of Moorpark, California, Amending Chapter 8.32, Prohibiting Smoking in Public Places, of the Municipal Code

BACKGROUND

Originally on the May 20, 2009 City Council Agenda, this Draft Ordinance was continued to provide staff with time to clarify and refine several definitions and sections. Since May 20, 2009, several areas were added to those designated in the Draft Ordinance as no smoking areas. These newly added no smoking areas include athletic fields, publicly-owned spaces, sidewalks, trails, and parking lots and parking structures at shopping centers. Certain definitions or no smoking areas were deleted because the definitions were refined. The deleted portions include the definitions for "reasonable distance", "restaurant", and "retail tobacco store" and the following no smoking areas: ticket, boarding, and waiting areas of transit depots or stops; designated smoking areas at public events; public plazas; construction areas at work sites; theatres or public arts buildings; medical or convalescent facilities; grocery stores; and convenience or liquor stores. New definitions include those for "dining area", "public building", and "shopping center". The optional area language for private residences was changed from "child care or health care" to "family health care". A new exception for designated outdoor smoking areas was added to the Draft Ordinance. "No smoking area" was added to the posting of signs language. "Chapter 1.12" under the violation-penalty language was deleted.

Staff also incorporated the revisions requested by the Council at the May 20, 2009 meeting as follows:

1. Definition for "dining area" added to Section 8.32.010
2. Deleted definition for "reasonable distance" and replaced "reasonable distance" with "twenty feet" in Section 8.32.020(D)
3. Clarified areas where smoking may occur in Section 8.32.020
4. Added word "in" to Section 8.32.020 after the word "smoke" in the first paragraph
5. Researched whether parking lots should be a designated smoking area; included parking lots in Sections 8.32.020(E) and 8.32.020(M)

6. Eliminated reference to "F" In 8.32.030 but added a new smoking area exception, for designated outdoor smoking areas, so there are now six sections in 8.32.030 rather than the five that appeared in the May 20, 2009 Draft Ordinance and "F" is now correct

The State of California Health and Safety, Labor, and Government Codes (California Code) require all jurisdictions (including municipalities) to enforce smoking in workplace and public places statutes set forth in the California Code. The City of Moorpark (City), as a municipality, has the authority to adopt additional provisions that not only comply with, but also reach beyond the California Code.

This Draft Ordinance includes amendments to specific Moorpark Municipal Code (Municipal Code) Sections in Chapter 8.32 which address smoking in public places. These Sections were last adopted or amended in 1993 while the California Code has been significantly amended since 1993. The Municipal Code is not currently in full compliance with the California Code.

DISCUSSION

Many studies deem second hand smoke to be harmful. Over time, increasingly restrictive laws to reduce the effects of second hand smoke in the workplace, as well as in public places, were adopted into the California Code. In an effort to enhance public health where second hand smoke is concerned, many cities have adopted second hand smoke ordinances that exceed the statutes set forth in the California Code. A trend has developed. Observing this trend, the City is seeking to adopt, in addition to those sections which will bring the Code into full compliance with state law, other sections which will exceed the statutes set forth in the California Code, thereby effecting a commitment to improving public health.

In addition to harmful health effects of second hand smoke, smoking in public places often contributes to littering which is not only unsightly but exposes the City to potential storm water system violations.

Most of the amendments in the Draft Ordinance fall into one of two categories: Amendments that bring the Municipal Code into full compliance with the California Code or amendments that exceed the statutes in the California Code. The following distinguishes which proposed amendments fall into which of the two aforementioned categories:

Amendments that comply with California Code statutes:

Municipal Code Section	California Code Section	Comments
8.32.020 (B)	H&S§104495	Park, playground and recreation area only
8.32.020 (C)	H&S§118935	Ticket, boarding, and waiting areas of transit depots or stops only
8.32.020 (D)	GOV§7597	
8.32.020 (F)	LAB§6404.5	Indoor only
8.32.020 (G)	GOV§7597, H&S§118890, 118895, & 118915	
8.32.020 (J)	H&S§1596.795	
8.32.020 (K)	H&S§118915	
8.32.030 (C)	LAB§6404.5	Except "ventilation system ..."
8.32.040 (B)	LAB§6404.5, GOV§7598 & H&S§11935	
8.32.040 (C)	LAB§6404.5, GOV§7598 & H&S§11935	Except "or outdoor" and "or ground"
8.32.040 (E)	LAB§6404.5, GOV§7598 & H&S§11935	
8.32.040 (F)	H&S§118885	

GOV – Government Code
 H&S – Health and Safety Code
 LAB – Labor Code

Amendments that exceed California Code statutes:

- 8.32.020. A, B (except as noted above), C (except as noted above), E, F (except noted as above), H, I, L, and M
- 8.32.030. A, B, C ("ventilation system..." only), D, E, and F
- 8.32.040. A, C ("or outdoor" and "or ground" only), and D
- 8.32.050. In its entirety

Any other amendment in the Draft Ordinance is either a strikeout reflecting statutory changes, the addition of a definition, or the renumbering of a section. The legislative format will be removed from the final Ordinance and all changes will be incorporated as approved by the City Council.

Upon adoption of the Draft Ordinance and as a measure of public outreach, Code Compliance staff will meet with shopping center managers to discuss questions, comments, and issues related to Chapter 8.32 of the Municipal Code.

The City Attorney's Office reviewed the Draft Ordinance as presented at the May 20, 2009 City Council meeting.

FISCAL IMPACT

There would be a nominal cost for staff time related to enforcement, signage and informing the public about the new restrictions on smoking in public.

STAFF RECOMMENDATION

Introduce Ordinance No. _____ for first reading, waive full reading, and direct staff to schedule second reading for July 1, 2009.

Attachment: Draft Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING CHAPTER 8.32, PROHIBITING SMOKING IN PUBLIC PLACES, OF THE MOORPARK MUNICIPAL CODE

WHEREAS, secondhand smoke is harmful to nonsmokers exposed to secondhand smoke on a frequent basis; and

WHEREAS, on December 19, 1988, the City Council (City Council) of the City of Moorpark (City) adopted Chapter 6.01, Regulation on Smoking, of the Moorpark Municipal Code (Municipal Code); and

WHEREAS, on July 7, 1993, the City Council repealed Chapter 6.01 of the Municipal Code and adopted Chapter 8.32, Prohibiting Smoking in Public Places, of the Municipal Code; and

WHEREAS, on December 15, 1993, the City Council amended Chapter 8.32, to add Section 8.32.040, Posting of Signs, to the Municipal Code; and

WHEREAS, at the time of adoption, Chapter 8.32 of the Municipal Code complied with the California Health and Safety, Labor, and Government Codes (California Code); and

WHEREAS, certain portions of the California Code have been amended since the adoption of Chapter 8.32; and

WHEREAS, the City desires to bring the Municipal Code into compliance with the California Code; and

WHEREAS, the City Council has determined the following with regard to Chapter 8.32 of the Municipal Code:

The Municipal Code shall be amended: 1) to incorporate sections of the California Code pertaining to smoking in public places; and 2) to add requirements reaching beyond the restrictions set forth in the California Code pertaining to smoking in public places.

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

SECTION 1. Chapter 8.32 of the Moorpark Municipal Code is hereby amended in its entirety to read as follows:

Chapter 8.32

PROHIBITING SMOKING IN PUBLIC PLACES

Sections:

- 8.32.010** **Definitions.**
- 8.32.020** **Prohibition of smoking in public places.**
- 8.32.030** **Smoking – Optional areas.**
- 8.32.040** **Posting of signs.**
- 8.32.050** **Other applicable laws. Prohibitions and duties generally.**
- 8.32.060** **Violation – Penalty. Other applicable laws.**
- 8.32.070** **Violation – Penalty.**

8.32.010 Definitions. The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

~~“Bar” means premises licensed, with any type of license, and maintained and operated for the selling or serving of alcoholic beverages to the public for consumption on the premises. Food products may be sold or served incidentally to the sale or service of alcoholic beverages.~~

~~“Bikeway” means any Class 1 Bike Path or Trail, separated right-of-way for bicycles; Class 2 Bike Lane, restricted right-of-way; or Class 3 Bike Route, travel lane shared by motor vehicles and bicycles designated by signs.~~

~~“Dining Area” means any indoor or outdoor non-residential location where food or beverages are served by a business or routinely consumed by customers and/or employees.~~

~~“Enclosed area” means all space between a floor and ceiling which is enclosed on all sides by solid walls. The walls may be penetrated by windows, doors or passageways.~~

~~“Home occupation” means any use within a dwelling which has been issued a home occupation permit by the city.~~

~~“Incidental food sales/service” means the sale or service of food products in a bar if such sale/service constitutes less than twenty five percent (25%) of the annual gross income of the bar, an amount higher than twenty five percent (25%) of sale/service of food products constitutes a premises other than a bar.~~

~~“Place of employment” means any enclosed area under the control of the city or a private employer or any outdoor working area, such as a construction area, which employees normally frequent during the course of employment.~~

“Public building” means any building to which the public is invited or in which the public is permitted.

“Public event” means any art show, fair, parade, firework display, sports activity, or any other similar event in a public place within the City.

“Public place” means any enclosed area to which the public is invited or in which the public is permitted.

“Outdoor” means an area that does not meet the definition of “enclosed.”

~~“Restaurant” means the any establishment which gives or offers for sale food to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term restaurant shall not include a bar as defined in this section.~~

~~“Retail tobacco store” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products are merely incidental.~~

“Separate ventilation system” means a system which is exhausted to the outside and negatively pressurized.

“Service area” means a place where people use or wait for services provided by a private or public entity, including but not limited to, bus stops, train stations, Automated Teller Machines (ATM) lines, information kiosks, and theatre lines.

“Shopping Center” means any parcel of land zoned and used for retail sales by four or more businesses and totaling over 25,000 square feet of gross floor area.

“Smoke” or “smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or plant in any manner or in any form.

8.32.020 Prohibition of smoking in public places. ~~Except as otherwise provided, it is unlawful for any person to smoke in violation of any law or regulation of the State of California and in any place set forth herein in any public place or place of employment within the city.~~

A. In any elevator;

B. In any park, athletic field (including spectator viewing areas), playground, trail, recreational area or publicly-owned open space;

- C. In any outdoor service area;
- D. Within twenty feet of the entrance, exit, or open window of any public building;
- E. In indoor or outdoor public places within shopping centers, including parking lots and parking structures;
- F. In any dining area;
- G. Inside any public building;
- H. At any public event;
- I. In any place of employment or work sites;
- J. In any family day care facility, with the exception of a private residence operating a day care facility, providing no smoking is allowed during the service hours of the facility;
- K. In any location where food, designated for sale or distribution to the public, is prepared, served, or stored, or where such food utensils are cleaned or stored;
- L. On any sidewalk, trail, or bikeway; or
- M. In any city-owned parking lot or parking structure; or

8.32.030 Smoking—Optional areas. Notwithstanding any other provisions of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

- A. Private residences, except when used as a ~~child care or health care~~ family health care facility pursuant to applicable state law;
- B. Dwellings used for home occupations;
- C. Retail tobacco stores, providing they are located twenty feet or more from any opening of a private residence and the establishment does not share a ventilation system with any other enclosed area or public place not exempted in this section;
- D. A maximum of ~~twenty-five~~ twenty percent (~~50~~20%) of the guest rooms in hotels and motels;

E. A designated outdoor smoking area, subject to approval of the Community Development Director, for shopping centers, public places, or parking lots provided that:

1. The smoking area is as small as practicable to accommodate the number of smokers that are expected to use the area. Notwithstanding this criteria, the owner, operator, or manager of a space regulated by this chapter may not designate a smoking area that would be smaller than fifty (50) square feet, or with a dimension on any side less than five (5) feet,

2. The smoking area is not located within twenty feet of any outdoor service area; entrance, exit, or open window of any public building; or dining area,

3. Appropriate ash can(s) are placed in the smoking area and are maintained regularly by the owner, operator, or manager of the smoking area, and

4. The smoking area is posted with one or more conspicuously displayed sign(s) identifying the area as a designated outdoor smoking area. Signs with arrows, directing the public to the smoking area may be allowed. Signs shall be no smaller than three (3) inches high and eight (8) inches long with a pictorial representation of a burning cigarette. Signs shall contain "Designated Smoking Area" and shall be posted prominently between five (5) feet and seven (7) feet above the floor or ground. All signs are subject to approval of the Community Development Director; and

~~E. Restaurant dining rooms, hotel and motel conference or meeting rooms and public and private assembly rooms, which are equipped with separate ventilation systems, while such places are being used for private functions. However, at least fifty percent (50%) of these areas shall be designated nonsmoking;~~

F. A place of employment which employs only the owner and no other employee, provided that:

1. The place of employment does not allow members of the public within enclosed areas, and

2. The enclosed area containing the place of employment does not share a ventilation system with any other enclosed area or public place not exempted in this section;

~~G. Bar areas within restaurants provided that by March 7, 1994 such areas meet the separation standards enumerated in subsection (G)(3) of this~~

~~section and provided that the restaurant/bar intends to comply with these standards. The intent to comply shall be demonstrated by the restaurant/bar owner in the following manner:~~

~~1. Prior to September 7, 1993, the owner shall submit plans drawn by a California registered engineer or architect to the department of building and safety along with appropriate fees;~~

~~2. Such plans shall indicate in detail the method to be used by the owner to fully comply with the standards enumerated in subsection (G)(3) of this section;~~

~~3. In order for a bar to be considered separate from a restaurant, the separation must meet the following criteria:~~

~~a. The bar must have a separate ventilation system from the restaurant;~~

~~b. There must be a wall or walls with no penetration between the two uses. A doorway may penetrate the wall if the doorway contains a door which is self-closing;~~

~~c. If a bar and restaurant are both attached through a kitchen or other space, that space must be ventilated independently or through the restaurant ventilation system. This space must also have self-closing doors which are used to access the two uses separately and be smoke free;~~

~~H. Bars.~~

8.32.040 Posting of signs. Every owner, operator, manager, or other person having control of an enclosed ~~or outdoor space~~ no smoking area regulated by this chapter shall post "No-Smoking" signs (no smaller than three (3) inches high and eight (8) inches long) with 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) hereafter known as "sign." Said signs shall be posted as specified below:

A. The owner of a multi-tenant enclosed space which is served through a limited amount of common entrances must post all exterior entrances to the enclosed space with signs (as described in this section). Individual enclosed spaces within the multi-tenant enclosed space need not be posted.

B. Every owner, operator, manager, or other person having control of an enclosed space not served through a limited amount of common entrances and regulated by this chapter, must post signs (as described in this section) at all

entrances to the enclosed space. The signs may be posted on the exterior of the enclosed space or in the interior, as long as the sign is clearly visible to all who access the enclosed space.

C. All signs which are posted ~~on an enclosed space~~ in compliance with this section shall be posted prominently between five (5) feet and seven (7) feet above the floor or ground.

D. As an alternate to the requirements of this section, the property owner may request the city, at no expense to the property owner, to specify the location of the signs for a multi-tenant property.

E. The owner, operator, manager, or other person having control of a restaurant shall post signs as prescribed in subsections B and C of this section.

F. “No Smoking” signs shall be posted whenever and wherever a public meeting is being held. All public buildings and public facilities shall have “No Smoking” signs posted.

8.32.050 ~~Other applicable laws. Prohibitions and duties generally.~~

A. No person, employer, business, or nonprofit entity shall knowingly permit the smoking of tobacco products in an area which is under the legal or de facto control of the person, employer, business, or nonprofit entity and in which smoking is prohibited by this chapter or other law.

B. No person, employer, business, or nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as for example, ash trays or ash cans, within an area which is under the legal or de facto control of the person, employer, business, or nonprofit entity and in which smoking is prohibited, including, without limitation, inside the perimeter of any reasonable distance required by this chapter or other law.

C. Notwithstanding any other provision in this chapter, any owner, landlord, employer, business, nonprofit entity, or other person who controls any property, establishment, or place of employment regulated by this chapter may declare any part of such area in which smoking would otherwise be permitted to be a nonsmoking area.

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

8.32.060 ~~Violation — Penalty. Other applicable laws.~~ This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

8.32.0670 Violation—Penalty.—Any person who violates any provision of, or fails to comply with, any requirement of this chapter is guilty of a misdemeanor/infraction and, upon conviction thereof, shall be punished in accordance with Chapter 1.12 of this code. The remedies provided by this code are cumulative and in addition to any other remedies available at law or in equity.”

—**SECTION 2.** If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 3. This Ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 4. The City Clerk shall certify to the passage and adoption of this Ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and the adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this _____ day of _____, 2009

Janice S. Parvin, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk