ORDINANCE NO. 377

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING, IN ITS ENTIRETY, CHAPTER 8.32, PROHIBITING SMOKING IN PUBLIC PLACES, OF TITLE 8, HEALTH AND SAFETY, 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WHEREAS, on July 7, 1993, the City Council repealed Chapter 6.01 of the Municipal Code and adopted Chapter 8.32, Prohibiting Smoking in Public Places, of the Municipal Code; and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 Prohibitions and duties generally.
8.32.060 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:

"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.

"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 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."

"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.

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:

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 (20) 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; and

M. In any city-owned parking lot or parking structure.

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 family health care facility pursuant to applicable state law;

B. Dwellings used for home occupations;

C. Wholesale tobacco distributors and retail tobacco stores, providing they are located twenty (20) 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-percent (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, but is not smaller than fifty (50) square feet in total area, and does not have a dimension on any side less than five (5) feet;

2. The smoking area is not located within twenty (20) 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 as follows: 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; and all signs are subject to approval of the community development director.

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. Outdoor special events, subject to community development director approval of a temporary use permit for a single event or an administrative permit for a recurring event, provided that:

1. Such permit shall be subject to appropriate conditions of approval to limit the duration of such permit and require compliance with State law; 2.

Such permit shall limit, to the extent feasible, exposure of nonsmoking persons to second-hand smoke; and

3. An administrative permit for a recurring event shall be subject to renewal every six (6) months.

8.32.040 Posting of signs.

Every owner, operator, manager, or other person having control of an enclosed or outdoor 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 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 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.

8.32.060 Other applicable laws.

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

8.32.070 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 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 2nd day of September, 2009.

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Janice S. Parvin, Mayor

ATTEST:

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Deborah S. Traffenstedt, City Clerk