

ORDINANCES

SECOND READING/RECOMMENDATIONS

Description of Vote:

Maker/Second Ayes/Noes/Abstain/Absent

Legend:

JD: Dear RR: Ruiz-Raber DH: Davis-Holmes MG: Gipson ES: Santarina

ITEM NO.	ORD. NO.	TITLE	DISPOSITION
19	11-1481	AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, AMENDING MUNICIPAL CODE § 41107 REGULATING SMOKING IN CERTAIN OUTDOOR PLACES	Introduced: 12/6/11 Item No. 11 JD/ES 5/0

ORDINANCE NO. 11-1481

**AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA,
AMENDING MUNICIPAL CODE § 41107 REGULATING
SMOKING IN CERTAIN OUTDOOR PLACES**

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- Tobacco-related illness is the leading cause of preventable death in the United States, accounting for about 443,000 deaths each year; and
- Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth; and
- Some of the most common types of cancers including stomach, liver, uterine cervical, and kidney are related to tobacco use; and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke; and
- 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; and
- 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; and

WHEREAS exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for as many as 73,000 deaths among nonsmokers each year in the United States; and
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty percent; and
- Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis in as many as 300,000 children in the United States under the age of 18 months each year, and exacerbates childhood asthma; and

WHEREAS, smokeless tobacco is not a safe alternative to smoking and causes its own share of death and disease, as evidenced by the following:

- Smokeless tobacco use causes leukoplakia, a disease causing white patches to form in the user's mouth that can become cancerous; smokeless tobacco products are known



to cause lung, larynx, esophageal, and oral cancer; and the regular use of snuff doubles the user's risk of cardiovascular disease and death; and

- Prolonged use of snuff, a form of smokeless tobacco, contributes to high blood pressure, a factor of cardiovascular disease, and to a higher likelihood of suffering a fatal stroke; and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- The total annual economic burden of smoking in the United States is \$193 billion; and
- From 2001-2004, the average annual health care expenditures attributable to smoking were approximately \$96 billion; and
- The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over \$10 billion per year in the United States in 2005; and
- The total annual cost of smoking in California was estimated at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone; and
- California's Tobacco Control Program saved the state and its residents \$86 billion in health care expenditures between the year of its inception, 1989, and 2004, with savings growing yearly; and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does occur at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind and number and proximity of smokers; and
- Irritation from secondhand smoke begins at levels as low as 4 micrograms per cubic meter, and in some outdoor situations this level can be found as far away as 13 feet from the burning cigarette; and
- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 25 feet away from the source of the smoke, about the width of a two lane road; and
- Studies on a cruise ship have found that even while cruising at 20 knots and with unlimited air volume, outdoor smoking areas contained carcinogens in nearly the same amounts as inside the ship's casino where smoking was allowed; and

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WHEREAS, cigarette butts pose a health threat to young children, as evidenced by the following:

- In 2004, American poison control centers received nearly 8,000 reports of children poisoned by the ingestion of cigarettes, cigarette butts, and other tobacco products; and
- Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging; and

WHEREAS, cigarette butts are a major and persistent source of litter, as evidenced by the following:

- It is estimated that over two billion cigarette butts are discarded every day worldwide, and that Americans alone discard more than 175 million pounds of cigarette butts every year; and
- Cigarette butts are often cast onto sidewalks and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons and ultimately the ocean; and
- Cigarette filters, made of plastic cellulose acetate, take approximately 15 years to decompose; and

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs, as evidenced by the following:

- Cities with smokefree laws see an appreciable reduction in hospital admittances for heart attacks in the months and years after such laws are passed; and
- Smoking bans help people reduce the number of cigarettes they smoke or quit altogether; and
- Strong smoking regulations for restaurants decrease the number of children who transition from experimenting with smoking to becoming actual smokers; and

WHEREAS, creating smokefree areas helps protect the health of the 86.7% of Californians who are nonsmokers; and

WHEREAS, society is becoming less tolerant and less accepting of cigarette smoking, as evidenced by the following,

- A 2008 survey of California voters found that 75% thought that secondhand smoke is harmful, 64% were bothered by secondhand smoke, and 73% support laws restricting smoking in outdoor public places; and
- People living in cities with strong smokefree air laws are more likely to believe smoking is not acceptable and that smokers should attempt to quit smoking; and
- As of 2008, there are 187 California cities and counties with local laws restricting smoking in at least one outdoor area; and



WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions; and state law prohibits smoking within 20 feet of entryways and operable windows of government buildings; and

WHEREAS, there is no Constitutional right to smoke;

WHEREAS, it is the intent of the City Council in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke where they live, work, and play; by reducing the potential for children to wrongly associate smoking with a healthy lifestyle; and by affirming and promoting a healthy environment in and around the City's outdoor places.

NOW THEREFORE, the City Council of the city of Carson, California, does hereby ordain as follows:

SECTION 1. Article IV, Chapter 11, Section 41100, of the Carson Municipal Code is hereby amended, in its entirety, to read as follows:

“§ 41100 Definitions. The following words and phrases, whenever used in this article shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) “Smoke” means the gases and particles released into the air by combustion when the apparent or usual purpose of the combustion is human inhalation of the resulting combustion products, such as, for example, tobacco smoke, marijuana smoke, and crack cocaine smoke, except when the combusting material contains no tobacco and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. “Smoking” means engaging in an act that generates Smoke, such as, for example: possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, or a lighted cigarette of any kind; or lighting a pipe, a hookah pipe, a cigar, or a cigarette of any kind.

(b) “Business” means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes.

(c) “Common Area” means every Unenclosed 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, for example, paths, courtyards, playgrounds, swimming pools, parking lots, and picnic areas.

(d) “Dining Area” means any area, including streets and sidewalks, 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.

(e) “Employee” means any Person who is employed or retained as an independent contractor by any Employer or Nonprofit Entity in consideration for



direct or indirect monetary wages or profit, or any Person who volunteers his or her services for an Employer or Nonprofit Entity.

(f) "Employer" means any Business or Nonprofit Entity that retains the service of one or more Employees.

(g) "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 whether or not that cover includes vents or other openings and at least three walls or other vertical boundaries of any height whether or not those boundaries include vents or other openings; or

(2) four walls or other vertical boundaries that exceed six feet in height whether or not those boundaries include vents or other openings.

(h) "Multi-Unit Residence" means property containing two (2) or more Units, except the following specifically excluded types of housing:

(1) a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2);

(2) a mobile home park;

(3) a campground;

(4) a marina or port;

(5) a single-family home;

(6) a single-family home with a detached or attached in-law or second unit when permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City of Carson / County of Los Angeles adopted pursuant to those sections.

(i) "Nonprofit Entity" means any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a Nonprofit Entity within the meaning of this article.

(j) "Person" means any natural person, Business, cooperative association, Nonprofit Entity, personal representative, receiver, trustee, assignee, or any other legal entity including government agencies.

(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 the operations, regardless of the hours of operation.

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

(m) "Reasonable Distance" means a distance of 25 feet in any direction from an area in which Smoking is prohibited.

(n) "Recreational Area" means any area that is owned or operated by the City of Carson and open to the general public for recreational purposes, regardless of any fee or age requirement. The term "Recreational Area" includes but is not limited to parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, horseback riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, amusement parks, and beaches.

(o) "Service Area" means any publicly or privately owned area, including streets and sidewalks, that is 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. The term "Service Area" includes but is not limited to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines or cab stands.

(p) "Tobacco Product" means any substance containing tobacco leaf, and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

(q) "Unenclosed Area" means any area that is not an Enclosed Area.

(r) "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes but is not limited to an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room occupancy ("SRO") facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit."

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SECTION 2. Article IV, Chapter 11, Section 41107, of the Carson Municipal Code is hereby amended, in its entirety, to read as follows:

“§ 41107 Smoking Prohibited.

(a) Smoking is prohibited in the Unenclosed Areas of the following places within the City of Carson, except places where Smoking is already prohibited by state or federal law, in which case those laws apply:

- (1) Recreational Areas;
- (2) Service Areas;
- (3) Dining Areas;
- (4) Places of Employment;
- (5) Common Areas, provided that a Person with legal control over a Common Area may designate a portion of the Unenclosed Area of the Common Area as a designated Smoking area if the area meets all of the following criteria:

(a) the area must be located a Reasonable Distance from any Unit or Enclosed Area where Smoking is prohibited by this Article or other law; by binding agreement relating to the ownership, occupancy, or use of real property; or by designation of a Person with legal control over the property. In the case of a nonsmoking area created by agreement or designation, this provision does not apply unless the Person designating the Smoking area has actual knowledge of, or has been given notice of, the agreement or designation. A designated Smoking area may require modification or elimination as laws change, as binding agreements are created, and as nonsmoking areas on neighboring property are established.

(b) the area must not include, and must be a Reasonable Distance from, Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, school campuses, and sandboxes;

(c) the area must be no more than (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated;

(d) the area must have a clearly marked perimeter;

(e) the area must be identified by conspicuous signs;



(f) the area must be completely within an Unenclosed Area; and

(g) the area must not overlap with any Enclosed or Unenclosed Area in which Smoking is otherwise prohibited by this article or other provisions of this Code, state law, or federal law; and

(6) Other Public Places, when being used for a public event, including a farmers' market, parade, craft fair, festival, or any other event which may be attended by the general public.

(7) Nothing in this article prohibits any Person, Employer, or Nonprofit Entity with legal control over any property from prohibiting Smoking on any part of such property, even if Smoking is not otherwise prohibited in that area."

SECTION 3. Section 41108 is hereby added to Article IV, Chapter 11, of the Carson Municipal Code to read, in its entirety, as follows:

"§ 41108 Smoking Prohibited Within Reasonable Distances.

(a) Smoking in all Unenclosed Areas shall be prohibited within a Reasonable Distance from any doorway, window, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited, except while actively passing on the way to another destination and provided Smoke does not enter any Enclosed Area in which Smoking is prohibited.

(b) Smoking in Unenclosed Areas shall be prohibited within a Reasonable Distance from any Unenclosed Areas in which Smoking is prohibited under section 41107 of this Chapter, except while actively passing on the way to another destination and provided Smoke does not enter any Unenclosed Area in which Smoking is prohibited.

(c) The prohibitions in subdivisions (a) and (b) shall not apply to Unenclosed Areas of private residential properties that are not Multi-Unit Residences."

SECTION 4. Section 41109 is hereby added to Article IV, Chapter 11, of the Carson Municipal Code to read, in its entirety, as follows:

§ 41109 Other Requirements and Prohibitions.

(a) No Person, Employer, or Nonprofit Entity shall knowingly permit Smoking in an area which is under the legal or de facto control of the Person, Employer or Nonprofit Entity and in which Smoking is prohibited by law, unless otherwise required by state or federal law.

(b) No Person, Employer, 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 under the legal or de facto control of the Person, Employer or Nonprofit Entity and in which Smoking or the use of Tobacco Products is prohibited by law, including, without limitation, within a Reasonable Distance required by this article from any area in which Smoking is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of Smoking in violation of any provision of this article.

(c) No Person shall dispose of used Smoking or Tobacco Product waste within the boundaries of an area in which Smoking is prohibited, including inside the perimeter of any Reasonable Distance required by this article.

(d) A Person, Employer, or Nonprofit Entity that has legal or de facto control of an Unenclosed Area in which Smoking is prohibited by this article shall post a clear, conspicuous and unambiguous “No Smoking” or “Smokefree” sign at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs shall have letters of no less than one inch in height and shall include 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). Signs posted on the exterior of buildings to comply with this section shall include the Reasonable Distance requirement set forth in section 41108. For purposes of this section, the City Manager or his/her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the City. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of Smoking in violation of any other provision of this article.

(e) No Person, Employer, or Nonprofit Entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another Person who seeks to attain compliance with this article.

(f) Each instance of Smoking in violation of this article shall constitute a separate violation. For violations other than for Smoking, each day of a continuing violation of this article shall constitute a separate violation.”

SECTION 5. Section 41110 is hereby added to Article IV, Chapter 11, of the Carson Municipal Code to read, in its entirety, as follows:

“§ 41110 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 in violation of this article is an infraction subject to a one hundred dollar (\$100.00) fine. Other violations of this article may, in the discretion of the City Attorney, be prosecuted as infractions or misdemeanors



when the interests of justice so require. Enforcement of this chapter shall be by any code enforcement official.

(c) Violations of this article are subject to a civil action brought by the city of Carson punishable by a civil fine not less than one hundred dollars (\$100.00) per violation.

(d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this article shall also constitute a violation of this article.

(e) Any violation of this article is hereby declared to be a nuisance.

(f) In addition to other remedies provided by this article or by other law, any violation of this article may be remedied by a civil action brought by the City Attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

(g) Except as otherwise provided, enforcement of this article is at the sole discretion of the city. Nothing in this article shall create a right of action in any Person against the city or its agents to compel public enforcement of this article against private parties.

(h) Any Person acting for the interests of itself, its members, or the general public may bring a civil action to enjoin a violation of this article by a landlord, Employer, Business, or Nonprofit Entity or to enjoin repeat violations of this article by an individual.”

SECTION 6. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity : of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that anyone or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 7. The City Clerk shall certify to the passage of this ordinance and cause it to be posted in three conspicuous places in the city of Carson, and it shall take effect after it is approved by the City Council, a second reading has taken place and 30 days has past after the second reading..

PASSED, APPROVED, and ADOPTED this ____ day of _____, 2011.



Jim Dear, Mayor

ATTEST:

Helen Kawagoe, City Clerk, MMC

APPROVED AS TO FORM:

William W. Wynder, City Attorney

