

ORDINANCE NO. 2009-23

AN ORDINANCE OF THE CITY OF SANTA CRUZ AMENDING SECTIONS 6.04.020,  
6.04.040, 6.05.060 AND 6.04.100 OF THE SANTA CRUZ MUNICIPAL CODE  
PERTAINING TO SMOKING POLLUTION CONTROL

BE IT ORDAINED By The City Of Santa Cruz As Follows:

SECTION 1. Section 6.04.020 of the Santa Cruz Municipal Code is hereby amended to read as follows:

6.04.020 FINDINGS.

The city council of the City of Santa Cruz finds that:

- (1) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke is a cause of disease in nonsmokers; and
- (2) The U.S. Environmental Protection Agency has classified secondhand smoke as a carcinogen for which there is no safe level of exposure. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and
- (3) Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function, bronchoconstriction, and bronchospasm; and
- (4) Cigarette butts are a pervasive form of litter in the City of Santa Cruz, on its streets and in its parks and beaches, and hence constitute a public nuisance as well as a health hazard. Cigarette butts also present a threat to wildlife. Cigarette filters have been found in the stomachs of fish, birds, whales and other marine creatures who mistake them for food. Composed of cellulose acetate, a form of plastic, cigarette butts can persist in the environment as long as other forms of plastic. According to Save Our Shores, a non-profit marine conservation organization based in Santa Cruz, the single most common form of marine debris are cigarette filters and butts.
- (5) Careless smoking is estimated to be the number one cause of fire related death and injury in the nation. While the majority of these cases involve indoor smoking and careless extinguishing of smoking materials, many of these fires are also the result of littered cigarettes, whether tossed out of a car or thrown on the ground by pedestrians and bystanders.

SECTION 2. Section 6.04.040 of the Santa Cruz Municipal Code is hereby amended to read as follows:

6.04.040 DEFINITIONS.

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

- (a) "Bar" means an enclosed and separately ventilated area which is devoted to the service of alcoholic beverages for consumption by guests on the premises and in which the service of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term bar shall not include the restaurant dining area. A bar, for the purpose of this definition, does not include any establishment where tobacco smoke can filter into a restaurant through a passageway or any other means.
- (b) "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods

or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

(c) "City health officer" means the director of the county health department or her or his designee, serving as the city's health officer pursuant to California Health and Safety Code Section 476, Section 901 of the Santa Cruz City Charter, and Chapter 6.80 of the Santa Cruz Municipal Code.

(d) "Employee" means any person, who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services to a nonprofit entity.

(e) "Employer" means any person, partnership, corporation, public agency, or nonprofit entity, which employs the services of one or more individual persons.

(f) "Employment" shall be defined as in Labor Code Section 6303(b).

(g) "Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passageways) and which extends from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.

(h) "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 and restrooms, conference rooms and classrooms, employee cafeterias and hallways. A private residence is not a place of employment unless it is used as a child care, health care, board and care, or community foster care facility.

(i) "Public place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, places of employment, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a public place.

(j) "Restaurant" means: any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests or employees; any kitchen in which food is prepared on the premises for serving elsewhere, including catering facilities. The term restaurant shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in subsection (a).

(k) "Retail tobacco store" means a retail store where the majority of its sales are from tobacco products and smoking accessories and in which the sale of other products is merely incidental.

(l) "Service line" or "service area" means any indoor or outdoor line or area at which one or more persons are waiting for or receiving services or entertainment of any kind, whether or not such service or entertainment involves the exchange of money. Service area includes any outdoor dining area or café unless a smoking area is established in a portion of said outdoor dining area or café which is separated from the non-smoking area by a solid partition no lower than eight feet in height.

(m) "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.

(n) "Sports arena" means: auditoriums where sporting events are conducted from time to time; gymnasiums; health spas; indoor or outdoor swimming pools; skating rinks; bowling alleys; and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sporting events.

(o) “Nonprofit entity” means any corporation, unincorporated association, or other entity created for charitable, philanthropic, educational, character building, political, social, or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a “nonprofit entity” within the meaning of this subsection.

SECTION 3. Section 6.04.060 of the Santa Cruz Municipal Code is hereby amended to read as follows:

**6.04.060 PROHIBITION OF SMOKING IN PUBLIC PLACES.**

(1) Smoking shall be prohibited in all enclosed public places within the city of Santa Cruz, including, but not limited to, the following specifically delineated enclosed public places, and shall also be prohibited in the following specifically delineated outdoor public places:

- (a) Elevators;
- (b) Taxicabs and other public transit vehicles subject to regulation by the city, and ticket, boarding, and waiting areas of public transit depots, bus stops and taxi stands;
- (c) Restrooms;
- (d) Service lines and service areas;
- (e) Retail stores;
- (f) Places of employment;
- (g) All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including, but not limited to, attorneys offices and other offices, banks, laundromats, hotels and motels;
- (h) Restaurants;
- (i) Theater-bar combinations and dinner theaters;
- (j) Public areas of galleries, libraries and museums when open to the public;
- (k) Any area or facility which is primarily used for exhibiting any motion picture, stage or drama production, lecture, musical recital or other similar performance, except when smoking is part of the production or performance;
- (l) Sports arenas and convention halls;
- (m) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city;
- (n) Waiting rooms, hallways, wards and patient rooms of health facilities, including, but not limited to, hospitals, medical centers, clinics, physical therapy facilities, and medical, dental and chiropractic offices;
- (o) Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit facilities;
- (p) Lobbies, hallways, and other indoor and outdoor common areas in multiple-unit commercial and multi-unit housing facilities; however, the owner or manager of any such facility may designate one or more outdoor smoking areas at any such facility provided that the outdoor smoking area is no closer than twenty-five feet to any of the facility’s buildings intended for human occupancy;
- (q) Polling places;
- (r) Child care facilities, as defined in the California Health and Safety Code, and private residences where used as day care homes;

(s) The Municipal Wharf, parks, beaches, recreational trails including all their adjacent landscape and bench areas, and all other outdoor recreation areas unless all or a portion of any such facility is designated by a Parks and Recreation Department posting as an area where smoking is permitted;

(t) Video arcades, bingo parlors, cardrooms, game rooms, poolhalls, dancehalls, amusement centers and bowling alleys;

(u) Areas which share their air space, including, but not limited to, air conditioning, heating, or other ventilation systems, entries, doorways, open windows, hallways, and stairways with other enclosed areas in which smoking is prohibited. It shall be the responsibility of any person smoking outside where smoking is otherwise permitted to ensure that smoke does not enter any buildings where smoking is prohibited through open windows or doors; however, in no event shall smoking be allowed within twenty-five feet of any such door or open window or within twenty-five feet of any other air-intake facility through which air may flow into a building from outside that building. Notwithstanding the prohibition set forth in this subsection an employer may establish an outdoor employee smoking area within twenty-five feet of an employer's service entrance door provided that said door is closed while employee smoking is taking place.

(v) At least ninety percent of the guest rooms in every hotel and motel shall be maintained as fixed nonsmoking rooms.

(w) On the Beach Street right of way between the Municipal Wharf and Third Street; on any portion of the Pacific Avenue right of way; and all City buildings, including parking lots and sidewalks which abut those buildings. Notwithstanding subsection (d) and Section 6.04.040(1) above, the prohibition set forth in this subsection shall include the entirety of any outdoor dining area or café located on the referenced Beach Street and Pacific Avenue rights of way herein referenced.

(x) Abbott Square.

(2) Notwithstanding any other provision of this chapter, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility, including its outdoor areas, to be a nonsmoking establishment or facility.

**SECTION 4.** Section 6.04.090 of the Santa Cruz Municipal Code is hereby amended to read as follows:

**6.04.090 POSTING OF SIGNS.**

(1) "No smoking" signs or the international "no smoking" symbol (consisting of a pictorial presentation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is regulated by this chapter. The owner, operator, manager or other person having control of such building or other place shall be responsible for posting said signage.

(2) Every restaurant shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(3) Every hotel and motel shall have plainly visible signs posted in the registration and lobby areas which state that nonsmoking rooms are maintained and may be available. Rooms designated as nonsmoking rooms shall have signs designating such restriction conspicuously placed within the room.

(4) The City may, but shall not be obligated to, prepare and make publicly available signage called for by this chapter.

SECTION 5. Section 6.04.100 of the Santa Cruz Municipal Code is hereby amended to read as follows:

6.04.100 ENFORCEMENT.

(1) The city health officer, the City Manager and the City Manager's designee shall be authorized to enforce and implement this chapter. In addition, any city department head, personally or through designated department employees, who is responsible for or oversees public buildings or facilities which are subject to the regulations set forth in this chapter, shall have concurrent authority to enforce this chapter's regulations in those public buildings or facilities.

(2) Any person who desires to register a complaint under this chapter may initiate an enforcement action with the city health officer, City Manager or City Manager's designee or, when applicable, the appropriate city department head.

(3) Whenever any facility in which smoking is prohibited by this chapter applies for any permit or regulatory approval from the city or undergoes any required inspection, the city department to whom the application is submitted shall require a certification from the owner, manager, operator or other person having control of such facility that all requirements of this chapter have been complied with.

(4) Any owner, operator, or employee of any facility in which smoking is prohibited may inform persons violating this chapter of the appropriate provisions of this chapter.

(5) Notwithstanding any other provision of this chapter, a private citizen may bring legal action to enforce this chapter.

SECTION 6. SEVERABILITY. If any portion of this ordinance is hereafter determined to be invalid, all remaining portions of this ordinance shall remain in full force and effect, and to this extent, the provisions of this ordinance are severable.

SECTION 7. This ordinance shall be in force and take effect thirty (30) days after final adoption. Notwithstanding the foregoing, for the first thirty days after this ordinance goes into effect citations shall not be issued for violations of the provisions of Chapter 6.04 which have been added pursuant to this ordinance. For the duration of said thirty day period, warnings shall be given in lieu of citations for those violations.

PASSED FOR PUBLICATION this 8th day of September, 2009, by the following vote:  
AYES: Councilmembers Coonerty, Robinson, Lane, Madrigal, Beiers, Vice Mayor Rotkin; Mayor Mathews. NOES: None. ABSENT: None. DISQUALIFIED: None. APPROVED:  
ss/Cynthia Mathews, Mayor. ATTEST: ss/Lorrie Brewer, City Clerk. This Ordinance is scheduled for further consideration at the Council meeting of September 22, 2009.