

ORDINANCE NO. 2006-217

**AN ORDINANCE OF THE CITY OF CALABASAS
REGULATING SECOND-HAND SMOKE AND AMENDING
THE CALABASAS MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF CALABASAS DOES ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS.

The City Council of Calabasas hereby finds and declares as follows:

WHEREAS, scientific studies have concluded that cigarette smoking causes chronic lung disease, coronary heart disease, stroke, cancer of the lungs, larynx, esophagus, mouth, and bladder, and contributes to cancer of the cervix, pancreas, and kidneys;¹ and

WHEREAS, the use of cigars is known to cause lung, larynx, esophageal, and oral cancer;² and

WHEREAS, more than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable illness;³ and

WHEREAS, the World Health Organization (WHO) estimates that by 2030, tobacco will account for 10 million deaths per year, making it the greatest cause of death worldwide;⁴ and

WHEREAS, deaths from smoking around the world will soon outnumber those from AIDS, tuberculosis, traffic accidents, murder, and suicide combined;⁵ and

¹ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002*, 2 (2002), available at <http://www.cdc.gov/tobacco/overview/oshaag.pdf> (last accessed August 15, 2003).

² U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Annual Smoking – Attributable Mortality, Years of Potential Life Lost, and Economic Costs – United States 1995-1999* (2002) MORBIDITY AND MORTALITY WEEKLY REPORT, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5114a2.htm> (last accessed August 15, 2003).

³ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Highlights Annual Smoking – Attributable Mortality, Years of Potential Life Lost, and Economic Costs – United States 1995-1999* (2002) MORBIDITY AND MORTALITY WEEKLY REPORT, available at http://www.cdc.gov/tobacco/research_data/economics/mmwr5114.highlights.htm (last accessed August 15, 2003).

⁴ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Reducing Tobacco Use: A Report of the Surgeon General*, 437 (2001).

⁵ Macksood Aftab, et. al., *International Cigarette Labeling Practices*, 8:4 TOBACCO CONTROL 368 (1999).

WHEREAS, the United States Environmental Protection Agency (EPA) has found secondhand smoke to be a risk to public health, and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen;⁶ and

WHEREAS, exposure to secondhand smoke is the third leading cause of preventable death in this country, killing over 52,000 non-smokers each year,⁷ including 3,000 deaths from lung cancer;⁸ and

WHEREAS, between 4,200 and 7,440 nonsmokers die of ischemic heart disease from secondhand smoke each year in California;⁹ and

WHEREAS, 87.9% of non-smokers showed detectable levels of cotinine (a metabolite of nicotine) in their blood, the most likely source of which is secondhand smoke exposure;¹⁰ and

WHEREAS, secondhand smoke exposure adversely affects fetal growth, with elevated risk of low birth weight and increased risk of Sudden Infant Death Syndrome (SIDS) in infants of mothers who smoke;¹¹ and

WHEREAS, secondhand smoke exposure causes as many as 300,000 children in the United States to suffer from lower respiratory tract infections, such as pneumonia and bronchitis,¹² exacerbates childhood asthma, and increases the risk of acute, chronic, middle ear infection in children;¹³ and

⁶ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Clean Indoor Air Regulations Fact Sheet* (2001), available at http://www.cdc.gov/tobacco/sgr/sgr_2000/factsheets/factsheet_clean.htm (last accessed Apr. 23, 2003).

⁷ S.A. Glantz & W. Parmley, *Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry*, 83(1) *Circulation* 1 (1991) and California Environmental Protection Agency, Office of Env'tl. Health Hazard Management, *Health Effects of Exposure to Environmental Tobacco Smoke: Final Report* (1997).

⁸ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002*, 2 (2002), available at <http://www.cdc.gov/tobacco/overview/oshaag.pdf> (last accessed August 15, 2003).

⁹ National Cancer Institute, *Health Effects of Exposure to Environmental Tobacco Smoke: The Report of the California Environmental Protection Agency*. Smoking and Tobacco Control Monograph No. 10. Bethesda, MD. U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 99-4645 (1999).

¹⁰ Pirkle, et al., *JOURNAL OF AMERICAN MEDICINE*, 275: 1233-40 (1996).

¹¹ Cal. Env'tl. Prot. Agency, Office of Env'tl Health Hazard Assessment, *Health Effects of Exposure to Environmental Tobacco Smoke, Final Report ES-5* (1997).

¹² U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002*, 2 (2002), available at <http://www.cdc.gov/tobacco/overview/oshaag.pdf> (last accessed August 15, 2003).

¹³ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Clean Indoor Air Regulations Fact Sheet* (2001), available at http://www.cdc.gov/tobacco/sgr/sgr_2000/factsheets/factsheet_clean.htm (last accessed Apr. 23, 2003).

WHEREAS, the total cost of smoking in California was estimated to be \$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;¹⁴ and

WHEREAS, smoking-related health care costs in California in 1999 totaled \$8.6 billion, an estimated 43% of which is paid for by public sources;¹⁵ and

WHEREAS, almost 90% of adult smokers started smoking at or before age 18;¹⁶ and

WHEREAS, it is estimated that 5.9% of youth in California smoke¹⁷ and smoking in front of children is likely to increase the likelihood that they will smoke; and

WHEREAS, state law acknowledges the harms of secondhand smoke by prohibiting the sale or furnishing of cigarettes, tobacco products or smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors;¹⁸ and

WHEREAS, with certain exceptions, state law prohibits smoking inside an enclosed place of employment;¹⁹ and

WHEREAS, state law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees;²⁰ and

WHEREAS, state law prohibits smoking in playgrounds and tot lots and within twenty feet of the main entrances and exits of public buildings and expressly authorizes local communities to enact additional restrictions;²¹

NOW THEREFORE, 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 tobacco use near non-tobacco users; by protecting children

¹⁴ Max W, Rice DP, Zhang X, Sung H-Y, Miller L., *The Cost of Smoking in California, 1999*; California Department of Health Services (2002).

¹⁵ Max W, Rice DP, Zhang X, Sung H-Y, Miller L., *The Cost of Smoking in California, 1999*; California Department of Health Services, 2002 and Bartlett JS, Miller LS, Rice D, Max WB, *Medical care expenditures attributable to cigarette smoking – United States, 1993*; MORBIDITY AND MORTALITY WEEKLY REPORT (1994) 469-472.

¹⁶ National Household Surveys on Drug Abuse, unpublished data, 1998. See also, U.S. Dep't of Health & Human Servs. et al., *Preventing Tobacco Use Among Young People: A Report of the Surgeon General*, 101 (1994).

¹⁷ Tobacco Control Section, Cal. Dep't of Health Servs., *California Tobacco Control Update* (2003), at <http://www.dhs.ca.gov/tobacco/documents/TCSupdate.PDF> (last accessed April 25, 2003).

¹⁸ Cal. Penal Code § 308 (West 2003).

¹⁹ Cal. Lab. Code § 6404.5 (West 2003).

²⁰ Cal. Educ. Code § 48901(a) (West 2003).

²¹ Cal. Health & Safety Code § 104495 (West 2003) and Cal. Gov't Code § 7596 (effective January 1, 2004).

from exposure to smoking and tobacco; by reducing the potential for children to associate smoking and tobacco with a healthy lifestyle; by protecting the public from smoking and tobacco-related litter and pollution; and by affirming and promoting the family-friendly atmosphere of the City's public places.

SECTION 2. CODE AMENDMENT. Chapter 12 of Article 8 of the City Calabasas Municipal Code is hereby amended to read as follows:

Chapter 8.12 Second-Hand Smoke Control

Sections

8.12.010 Title

8.12.020 Purpose

8.12.030 Definitions

8.12.040 Prohibition of Smoking

8.12.050 Reasonable Distance Required

8.12.060 Allowing, Aiding or Abetting Illegal Smoking

8.12.070 Penalties and Enforcement

8.12.080 Private Enforcement

Sec. 8.12.010 Title

This chapter may be referred to as the city's "Comprehensive Second-Hand Smoke Control Ordinance."

Sec. 8.12.020 Purpose

The purposes of this chapter are to:

A. Protect the public health, safety and general welfare by prohibiting smoking in public places under circumstances where other persons will be exposed to second-hand smoke,

B. Assure a cleaner and more hygienic environment for the City, its residents, and its natural resources, including its creeks and streams,

C. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including children, to breathe smoke-free air, recognizing the threat to public health and the environment which smoking causes.

Sec. 8.12.030 DEFINITIONS.

The following definitions shall govern construction of this chapter unless the context clearly requires otherwise:

(a) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an Employee.

(b) "Common Area at a Shopping Mall" means any indoor or outdoor

common area of a Shopping Mall accessible to and usable by the occupants or customers of more than retail establishment, including but not limited to halls, lobbies, outdoor eating areas, play areas and parking lots.

(c) "Employee" means any person who is employed or retained as an independent contractor by any Employer or any person who volunteers his or her services for an Employer, association, Nonprofit Entity.

(d) "Employer" means any person, partnership, corporation, association, nonprofit or other entity who or which employs or retains the service of one or more Employees.

(e) "Enclosed Area" means:

(1) any covered or partially covered area having more than 50% of its perimeter walled or otherwise closed to the outside such as, for example, a covered porch with more than two walls; or

(2) any space open to the sky (hereinafter "uncovered") having more than 75% of its perimeter walled or otherwise closed to the outside such as, for example, a courtyard;

(3) except that an uncovered space of three thousand (3,000) square feet or more is not an Enclosed Area, such as, for example, a field in an open-air arena.

(f) "Multi-Unit Residence" means a building or portion thereof that contains more than one dwelling space each of which consists of independent living facilities for one or more persons, including but not limited to single-room occupancy hotels (SROs), congregate care facilities other than those conducted in single-family residential structures, and dormitories.

(g) "Multi-Unit Residence Common Area" means any common area of a Multi-Unit Residence accessible to and usable by the occupants of more than one dwelling, including but not limited to halls, lobbies, laundry rooms, outdoor eating areas, play areas and swimming pools.

(h) "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 of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

(i) "Place of Employment" means any area under the legal or de facto control of an Employer, Business or Nonprofit Entity that an Employee or the general public may enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, construction sites, vehicles used in employment or for business purposes, taxis, employee lounges, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses, and, while Employees, children or patients are present, private residences that are used as child-care or health-care facilities subject to licensing requirements.

(j) "Playground" means any park or Recreational Area designed in part to be used by children that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on city property.

(k) "Public Place" means any public or private place open to the general public regardless of any fee or age requirement, including, for example, streets, sidewalks, plazas, bars, restaurants, clubs, stores, stadiums, parks, Playgrounds, taxis, and buses.

(l) "Reasonable Distance" means a distance of twenty feet or, with respect to a designated smoking area, such larger area as the city manager reasonably determines in writing to be necessary in a given circumstance to ensure that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area.

(m) "Recreational Area" means any public or private area open to the public for recreational purposes whether or not any fee for admission is charged, including, for example, parks, gardens, sporting facilities, stadiums, and Playgrounds.

(n) "Shopping Mall" means any parcel of land zoned and used for retail sales by more than one retailer that is jointly operated or which includes shared parking facilities.

(o) "Smoking" means possessing (and "Smoke" means to possess) a lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind, including, but not limited to, any Tobacco Product, or any other weed or plant.

(p) "Tobacco Product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

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

Sec. 8.12.040 Prohibition of Smoking

(a) Public and Other Places Where Smoking Prohibited. Except as otherwise provided by this chapter or by state or federal law, smoking is prohibited everywhere in the city, including but not limited to:

(1) Public Places;

(2) Places of Employment;

(3) Multi-Unit Residence Common Areas;

(4) Enclosed and Unenclosed Places of Hotels, Businesses, Restaurants, and Bars, and other public accommodations.

(b) Places Where Smoking Permitted. Notwithstanding paragraph (a) of this subsection, Smoking is permitted in the following locations within the City, unless otherwise provided by state or federal law:

(1) Private Residential Property, other than those used as a child-care or health-care facility subject to licensing requirements when Employees, children or patients are present. Nothing in this ordinance shall require a person or entity who or which owns or controls a private residential property, including but not limited to a condominium association or an apartment owner, to permit smoking and such a person may choose to prohibit smoking throughout the property he, she or it owns or controls.

(2) In up to twenty percent of guest rooms in any hotel or motel, if the hotel or motel permanently designates at least 80 percent of its guest rooms as nonsmoking rooms, appropriately signs non-smoking rooms and permanently removes ashtrays and matches from them. Smoking rooms shall be segregated from non-smoking rooms on separate floors, wings, or portions of either; smoking and non-smoking rooms shall not be interspersed. Nothing in this ordinance shall require a hotel or motel to provide smoking rooms and the owner or operator of a hotel or motel may choose to prohibit smoking throughout the property.

(3) Designated Unenclosed Areas in Shopping Mall Common Areas ("smokers' outposts"), provided that (i) there is not more than one square foot of unenclosed area designated for smoking for every 20,000 square feet of rentable Enclosed or Unenclosed Space a Shopping Mall (provided that each Shopping Mall may have at least one smokers' outpost of 40 or fewer square feet in area, (ii) the area is prominently marked with signs, (iii) it is located at least five (5) feet from any doorway or opening into an Enclosed area or any

access way from parking facilities to the retail areas of the Shopping Mall, (iv) smoke is not permitted to enter adjacent area in which smoking is prohibited by this chapter, other law or by the owner, lessee or licensee of the adjacent property, and (v) the location(s) of the smokers' outpost(s) is or are approved in writing by the community development director of the city based on the standards of this paragraph and the goals of this chapter;

(4) Any outdoor area in which no person who is not smoking or who does not consent to smoking is within a Reasonable Distance of the smoker. A person who is not smoking is legally presumed to object to smoking; proof that a non-smoking person within a Reasonable Distance of an outdoor smoker has consented to the smoking shall be an affirmative defense to any claim of violation of this chapter.

(c) No person shall dispose of Smoking waste or place or maintain a receptacle for Smoking waste in an area in which Smoking is prohibited by this chapter or other law, including within any Reasonable Distance required by this chapter.

Sec. 8.12.050 Reasonable Distance Required

No person shall Smoke in an area in which Smoking is otherwise permitted by this chapter or other law within a Reasonable Distance from any entrance, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited by this chapter, other law or by the owner, lessee or licensee of that Enclosed Area.

Sec. 8.12.060 Allowing, Aiding or Abetting Illegal Smoking

(a) No person, Employer, Business, or Nonprofit Entity shall knowingly permit Smoking in an area under his, her, or its legal or de facto control in which smoking is prohibited by this chapter or other law.

(b) No person, Employer, Business, or Nonprofit Entity shall allow the placement or maintenance of a receptacle for Smoking waste in an area under his, her, or its legal or de facto control in which smoking is prohibited by this chapter or other law.

(c) Notwithstanding any other provision of this chapter, any owner, landlord, Employer, Business, Nonprofit Entity, or other person who or which has legal or de facto control over any property may declare any area in which Smoking would otherwise be permitted to be a nonsmoking area and, provided that signs are posted giving notice of the Smoking restriction, Smoking in or within a Reasonable Distance of that area shall constitute a violation of this chapter.

(d) "No Smoking" or "Smoke Free" signs, with letters of no less than one inch in height or 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) or any alternative signage approved by the community development director of the city shall be conspicuously posted at each entrance to a Public Place in which Smoking is prohibited by this chapter, by the person, Employer, Business, or Nonprofit Entity who or which has legal or de facto control of such place. The city manager shall post signs at each entrance to a Public Place in which Smoking is prohibited by this Chapter which is owned or controlled by the city. Signage required by this paragraph shall not be subject to chapter 17.30 ("Signs") of this code. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter except as to an area in which Smoking is prohibited only by paragraph (c) of this subsection.

Sec. 8.12.070 Penalties and Enforcement

(a) A violation of this ordinance shall constitute a misdemeanor punishable pursuant to chapter 1.16 of this code unless the prosecutor determines to prosecute it as an infraction as authorized by section 1.16.010(a).

(b) The city council hereby declares that exposing other persons to second-hand smoke constitutes a public nuisance and may be remedied as such.

(c) No person shall cause, permit, aid, abet, or conceal a violation of any provision of this chapter.

(d) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

(e) The city prosecutor, city attorney, any peace officer or city code enforcement officer may enforce this chapter.

Sec. 8.12.080 Private Enforcement

(a) The city attorney or city prosecutor may also bring a civil action to enforce this chapter and to obtain the remedies specified below or otherwise available in equity or at law.

(b) Any person acting for the interests of him-, her-, or itself, or of its members, or of the general public (hereinafter "a Private Enforcer") may bring a civil action to enforce this chapter with the remedies specified below, if both of the following requirements are met:

(1) The action is commenced more than 60 days after the Private Enforcer has given written notice of an alleged violation of this chapter to the city attorney and to the alleged violator.

(2) No person acting on behalf of the city or the state has commenced or is prosecuting an action regarding the violation(s) which was or were the subject of the notice on the date the private action is filed.

(c) A Private Enforcer shall provide a copy of his, her or its action to the city attorney within seven days of filing it.

(d) Upon settlement or judgment of an action brought pursuant to paragraph (g) of this subsection, the Private Enforcer shall give the city attorney notice of that settlement or judgment and of the final disposition of the case. No Private Enforcer may settle such an action unless the city attorney or the court determines the settlement to be reasonable in light of the purposes of this chapter and any settlement in violation of this requirement may be set aside upon motion to a court of competent jurisdiction by the city attorney or city prosecutor.

(e) Upon proof of a violation of this chapter, the court shall award the following:

(1) Damages in the amount of either:

(i) upon proof, actual damages; or

(ii) with insufficient or no proof of damages, \$250 for each violation of this chapter (hereinafter "Statutory Damages"). Unless otherwise specified in this chapter, each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this chapter, no Private Enforcer suing on behalf of the general public shall recover Statutory Damages based upon a violation of this chapter if a previous claim brought on behalf of the general public for Statutory Damages and based upon the same violation has been adjudicated, whether or not the Private Enforcer was a party to that earlier adjudication.

(2) Restitution to the appropriate party or parties of the gains obtained by way of violation of this chapter.

(3) Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for the public health and safety.

(4) Attorneys' fees and costs reasonably incurred by a successful party in

prosecuting or defending an action.

Any damages awarded in an action brought by the city attorney or city prosecutor shall be paid into the city's general fund unless the court determines that they should be paid to a damaged third party.

(f) Upon proof of at least one violation of this chapter, a Private Enforcer, the city prosecutor, city attorney, any peace officer or code enforcement official may obtain an injunction against further violations of this chapter or as, to small claims court actions, a judgment payable on condition that a further violation of this chapter occur within a time specified by the court.

(g) Notwithstanding any legal or equitable bar, a Private Enforcer may bring an action to enforce this chapter solely on behalf of the general public. When a Private Enforcer do so, nothing about such an action shall act to preclude or bar the Private Enforcer from bringing a subsequent action on his, her or its own behalf based upon the same facts.

(h) Nothing in this chapter shall prohibit a Private Enforcer from bringing a civil action in small claims court to enforce this chapter, so long as the amount in demand and the relief sought are within the jurisdiction of small claims court.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Calabasas hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 4. CONSTRUCTION. The City Council 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 5. EFFECTIVE DATE. This Ordinance shall take effect thirty days after its adoption pursuant to California Government Code section 36937.

SECTION 6. CERTIFICATION. 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.

PASSED, APPROVED AND ADOPTED, this ___th day of _____ 2006.

Barry Groveman, Mayor

ATTEST:

Gwen Peirce, Assistant City Clerk

APPROVED AS TO FORM:

Michael G. Colantuono, City Attorney