

ORDINANCE NO. 12-09 N.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND REPEALING CHAPTER 9.18 OF THE CITY OF RICHMOND MUNICIPAL CODE AND ADDING CHAPTER 9.56 OF THE RICHMOND MUNICIPAL CODE REGULATING SMOKING IN PUBLIC PLACES

Now, therefore, the City Council of the City of Richmond does ordain as follows:

SECTION 1 Findings.

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, 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 death;² 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;³ and

WHEREAS, the U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke and neither separating smokers from nonsmokers nor installing ventilation systems effectively eliminates secondhand smoke;⁴ and

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;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, *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).

³ 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).

⁴ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* 11 (2006), available at <http://www.surgeongeneral.gov/library/secondhandsmoke/report/chapter1.pdf> (last accessed Sept. 19, 2006).

WHEREAS, the California Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant;⁶ and

WHEREAS, the California Office of Environmental Health Hazard Assessment has 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;⁷ and

WHEREAS, exposure to secondhand smoke is the third leading cause of preventable death in this country, killing over 52,000 nonsmokers each year,⁸ including 3,000 deaths from lung cancer;⁹ 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;¹⁰ 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,¹¹ exacerbates childhood asthma, and increases the risk of acute chronic middle ear infection in children;¹² and

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;¹³ and

⁵ 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).

⁶ Cal. Air Resources Bd., Resolution 06-01, at 5 (Jan. 26, 2006), available at <http://www.arb.ca.gov/regact/ets2006/res0601.pdf> (last accessed Sept. 19, 2006).

⁷ Cal. Env'tl. Prot. Agency, Office of Env'tl. Health Hazard Assessment, *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity* 17, (Aug. 11, 2006), available at http://www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf (last accessed Sept. 19, 2006).

⁸ 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).

⁹ 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).

¹⁰ 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).

¹¹ 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).

¹² 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).

¹³ Max W, Rice DP, Zhang X, Sung H-Y, Miller L., *The Cost of Smoking in California, 1999*; California Department of Health Services (2002).

WHEREAS, the medical and economic costs to nonsmokers suffering from lung cancer or heart disease caused by secondhand smoke are nearly \$6 billion per year in the United States;¹⁴

WHEREAS, almost 90% of adult smokers started smoking at or before age 18;¹⁵ and

WHEREAS, with certain exceptions, state law prohibits smoking inside an enclosed place of employment;¹⁶ 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;¹⁷ and

WHEREAS, state law prohibits smoking in playgrounds and tot lots and within twenty feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions;¹⁸ and

WHEREAS, creating smokefree areas helps protect the 86% of Californians who are nonsmokers;¹⁹ and

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 cigarette butts;²⁰ and
- children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;²¹ and

¹⁴ American Academy of Actuaries, *Costs Associated with Secondhand Smoke*, October, 2006, available at http://www.actuary.org/pdf/health/smoking_oct06.pdf (last accessed October 11, 2006).

¹⁵ 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).

¹⁶ Cal. Lab. Code § 6404.5 (West 2003).

¹⁷ Cal. Educ. Code § 48901(a) (West 2003).

¹⁸ Cal. Health & Safety Code § 104495 (West 2003) and Cal. Gov't Code § 7596 (effective January 1, 2004).

¹⁹ Tobacco Control Section, Cal. Dep't of Health Servs., *Adult Smoking Prevalence*, at 1, available at <http://www.dhs.ca.gov/tobacco/documents/pubs/AdultSmoking06.pdf> (last accessed October 18, 2006).

²⁰ Am. Ass'n of Poison Control Ctr. *Annual Report of the Toxic Exposure Surveillance System* at 645 (2004), available at <http://www.aapcc.org/Annual%20Reports/04report/AJEM%20-%20AAPCC%20Annual%20Report%202004.pdf> (last accessed October 23, 2006).

²¹ U.S. Dep't of Health and Human Servs., Center for Disease Control and Prevention, *Ingestion of Cigarettes and Cigarette Butts by Children – Rhode Island, January 1994-July 1996*, MORBIDITY AND MORTALITY WEEKLY REPORT, 46(06), at 125-128 (1997), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm> (last accessed October 18, 2006).

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;²² and
- cigarette butts are often cast onto sidewalk and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons and ultimately the ocean;²³ and
- cigarette butts, made of plastic cellulose acetate, take approximately 15 years to decompose;²⁴ and

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 around non-tobacco users; by protecting children from exposure to smoking and tobacco while they play; 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 atmosphere of the City's public places.

SECTION 2

Chapter 9.56 entitled "**Regulation of Smoking**" is hereby added to the City of Richmond Municipal Code to read as follows:

CHAPTER 9.56

Sections:

- 9.56.010** **Definitions.**
- 9.56.020** **Prohibition of Smoking.**
- 9.56.030** **Duty of Person, Employer, Business or Nonprofit Entity.**
- 9.56.040** **Sign Posting Requirements.**
- 9.56.050** **Penalties and Enforcement.**

9.56.010 **Definitions.**

²² Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, at <http://www.surfridersd.org/hotyb.php> (last accessed October 18, 2006).

²³ Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, at <http://www.surfridersd.org/hotyb.php> (last accessed October 18, 2006).

²⁴ Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, at <http://www.surfridersd.org/hotyb.php> (last accessed October 18, 2006).

For the purposes of this chapter, the following definitions shall govern unless the context clearly requires otherwise:

- (a) “Dining Area” means any area, including streets and sidewalks, available to or customarily used by the general public or employees, that is designed, established, or regularly used for consuming food or drink.
- (b) “Enclosed” means:
 - (1) any covered or partially covered space having more than 50% of its perimeter area walled in 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 area walled in or otherwise closed to the outside such as, for example, a courtyard;
 - (3) except that an uncovered space of three thousand (3000) square feet or more is not Enclosed, such as, for example, a field in an open-air arena.
- (c) “Multi-Unit Residence” means a premises that contains two (2) or more units.
- (d) “Multi-Unit Residence Common Area” means any enclosed or unenclosed common area of a multi-unit residence accessible to and usable by more than one residence, including but not limited to halls and pathways, lobbies, laundry rooms, common eating and cooking areas, play areas, swimming pools, and parking areas.
- (e) “Place of Employment” means any area under the control of an employer, business, or nonprofit entity that an employee, volunteer, or the general public may have cause to enter in the normal course of operations, regardless of the hours of operation. Places of employment include, but are not limited to: bars; restaurants; hotel and motel lobbies; vehicles used for business purposes; taxis; employee lounges and breakrooms; conference and banquet rooms; bingo and gaming facilities; long-term health care facilities; warehouses; retail or wholesale tobacco shops; and private residences used as licensed childcare or health-care facilities.
- (f) “Public Place” means any area, publicly or privately owned, to which the general public is invited to or in which the general public is permitted, regardless of any fee or age requirement. “Public Place” does not include streets or sidewalks.
- (g) “Reasonable Distance” means a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty-five (25) feet.
- (h) “Recreational Area” means any area, public or private, open to the general public for recreational purposes, regardless of any fee or age requirement, including, but not

limited to: parklands, including portions of parks, such as picnic areas, playgrounds, or sports fields; walking paths; gardens; hiking trails; bike paths; horseback riding trails; athletic fields; skateboard parks; amusement parks; and beaches.

- (i) “Service Area” means any area, including streets and sidewalks, designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction whether or not such service includes the exchange of money including, but not limited to, ATMs, bank teller windows, telephones, ticket lines, bus stops, and cab stands.
- (j) “Smoking” means possessing 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, tobacco, or any other weed or plant.
- (k) “Unenclosed” means any area that is not enclosed.

9.56.020 Prohibition of Smoking.

(a) Enclosed Places. Smoking shall be prohibited in the following enclosed places within the City of Richmond except in such places as listed in subsection (d) below, and except in such places in which smoking is already prohibited by state or federal law in which case those laws apply:

- (1) Public places;
- (2) Places of employment;
- (3) Multi-Unit Residence Common Areas

(b) Unenclosed Places. Smoking shall be prohibited in the following unenclosed places within the City of Richmond except in such places as listed in subsection (d) below, and except in such places in which smoking is already prohibited by state or federal law in which case those laws apply:

- (1) Dining areas;
- (2) Recreational areas;
- (3) Service areas;
- (4) Public events, including but not limited to a farmers’ market, parade, craft fair, festival, or any other event which may be attended by the general public; and
- (5) Multi-unit residence common areas, except that a landlord may designate a portion of an unenclosed common area as a smoking area. A designated

smoking area located in an unenclosed common area of a multi-unit residence must not overlap with any area where smoking is otherwise prohibited by local, state, or federal law; must be located at least 25 feet in all directions from nonsmoking areas; must not include areas used primarily by children; must be no more than 25 percent of the total unenclosed common area; must have a clearly marked perimeter; and must be identified by conspicuous signs.

(c) 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 so long as smoke does not enter any enclosed area in which smoking is prohibited.

(d) Exceptions. Smoking is permitted in the following locations within the City, unless otherwise prohibited by State or federal law:

(1) Private residential property, except those used as a licensed child-care or health-care facility;

(2) In up to 20 percent of guest rooms in any hotel or motel, as long as the hotel or motel permanently designates at least 80 percent of its guest rooms as nonsmoking rooms, appropriately signs nonsmoking rooms, and permanently removes ashtrays from these rooms. Smoking rooms shall be segregated from nonsmoking rooms on separate floors, wings or portions of either. Smoking rooms and nonsmoking rooms shall not be interspersed. Nothing in this division requires 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) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted; and

(4) By performers during theatrical productions, if smoking is an integral part of the story in the theatrical production.

9.56.030 Duty of Person, Employer, Business or Nonprofit Entity.

(a) No person, employer, business, or nonprofit entity shall knowingly permit smoking 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 law and the person, employer, business or nonprofit entity is not otherwise compelled to act under state or federal 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.

(c) Notwithstanding any other provision of this chapter, any owner, landlord, employer, business, nonprofit entity, or other person who controls any property, establishment, public place 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.

9.56.040 Sign Posting Requirements

(a) “Designated Smoking Area” or “No Smoking” signs, whichever are appropriate, with letters of not 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) shall be clearly and conspicuously posted in every building or other place where smoking is regulated by the City, by the owner, operator, manager, or other person having control of the building.

(b) For purposes of this Chapter, the City Manager or his or her designee shall be responsible for the posting of signs in regulated facilities owned or leased in part by the City.

(c) Every hotel or motel within the City shall post at its entrance a sign clearly stating that nonsmoking rooms are available, and every patron shall be asked whether he or she wants a nonsmoking room.

9.56.050 Penalties and Enforcement.

(a) Violations of this Chapter may, in the discretion of the City Prosecutor, be prosecuted as infractions or misdemeanors.

(b) Each violation of this Chapter by a person because of the person’s smoking is an infraction subject to a one hundred dollar (\$100) fine. Other violations of this Chapter constitute misdemeanors punishable as provided in section 1.04.100 of this Code or may, in the discretion of the City Prosecutor, be prosecuted as infractions if the interests of justice so require.

(c) Violations of this Chapter are subject to a civil action brought by the City Prosecutor or the City Attorney, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.

(d) Any person who smokes in an area where smoking is prohibited is guilty of trespass and, if the area is accessible by the public or any employee during the normal course of operations, such smoking constitutes a public nuisance.

(e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of

this ordinance shall also constitute a violation.

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

(g) Enforcement of this chapter shall be the responsibility of the City Manager or his or her designee. Any peace officer or code enforcement official also may enforce this chapter.

(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 Chapter by a business or to enjoin repeat violations of this chapter by an individual.

SECTION 3

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 Richmond 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

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

I certify that the foregoing was first read at a regular meeting of the City Council of the City of Richmond held on **May 19, 2009**, and finally passed and adopted at a regular meeting thereof held on **June 2, 2009**, by the following vote:

This ordinance shall become effective 30 days after its final passage and adoption.

AYES: Councilmembers Bates, Butt, Ritterman, Rogers, Vice Mayor Lopez, and Mayor McLaughlin

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of Ordinance No. 12-09, finally passed and adopted by the Council of the City of Richmond at a meeting held on June 2, 2009.