

ORDINANCE NO. 10 _____

AN ORDINANCE OF THE CITY OF WEST HOLLYWOOD
AMENDING THE WEST HOLLYWOOD MUNICIPAL CODE
TO PROHIBIT SMOKING IN OUTDOOR DINING AND
OTHER PUBLIC AREAS AND ELIMINATE EXISTING
REGULATIONS THAT ARE DUPLICATIVE OF STATE LAW

The City Council of the City of West Hollywood does hereby ordain as follows:

Section 1. Subsection 1.08.010.e. of Title 1, Chapter 1.08 of the West Hollywood Municipal Code is hereby amended by amending the third category of offenses listed therein to read as follows:

Sections 7.08.030 and 7.08.040, Smoking Ordinance;

Section 2. Chapter 7.08 of Title 7 of the West Hollywood Municipal Code is amended in its entirety to read as follows

Chapter 7.08 Smoking in Public Places and Outdoor Dining Areas ~~and Places of Employment~~

7.08.010 Purpose.

The smoking of tobacco, or any other weed or plant, is a positive danger to health and a material annoyance, inconvenience, discomfort and a health hazard to those who are ~~present in confined spaces exposed to the resulting smoke.~~ State law prohibits smoking in enclosed places of employment. In order to serve public health, safety and welfare, the purpose of this chapter is to also prohibit the smoking of tobacco, or any weed or plant, in public places and places designated for outdoor dining and congregation, places of employment except in designated smoking areas. This chapter shall be interpreted in a manner supplementary to and consistent with California Labor Code Section 6404.5 and California Health and Safety Code Sections 104495 and 118875, et seq., as amended, and in all cases of conflict between this ordinance and any state law, the applicable state law provision shall prevail.

7.08.020 Definitions.

As used in this chapter:

1. "Bar" shall mean ~~an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving 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.~~ Bar means an establishment: (1) that sells or offers for sale alcoholic beverages pursuant to a license from the Department of Alcoholic Beverage Control; (2) that limits entry to persons of a certain age during some or all operating hours; and (3) where food service, if any, is subordinate to the sale of alcoholic beverages. Does not include a bar area that is an integrated part of a restaurant.

2. “Employee” shall mean any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

3. “Employer” shall mean any person who employs the services of an individual person.

4. “Enclosed” shall mean closed in by a roof and ~~four~~ walls with appropriate openings for ingress and egress.

5. Minor means a person who is under eighteen years of age.

6. Nightclub means a bar or similar establishment that provides live entertainment (music and/or dancing, comedy, etc.) in conjunction with alcoholic beverage sales.

7. Open Air Dining Area means any unenclosed area located on private or public property made available to or customarily used by the general public that is designed, established or regularly used for consuming food and/or beverages, or where food or beverages are served whether or not for compensation. This includes without limitation restaurants, restaurants at hotels and private clubs, cafes, coffee shops and picnic tables and park benches in public parks.

8. Outdoor Service Area means any unenclosed area where one or more persons wait for, receive or exchange goods or services of any kind; including without limitation lines or waiting areas for: (a) ATM machines; (b) information kiosks; (c) banks; (d) restaurants and other food service; (e) tickets and admission to a theater or other venue event; (f) car washes and vehicle service establishments; and (g) valet parking pick-up areas.

95. “Place of Employment” shall have the same meaning as the term is used in California Labor Code Section 6404.5, as amended, ~~mean 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, conference rooms, restrooms, hallways, elevators, and employee cafeterias. A private residence is not a “place of employment,” except for private residences licensed as family day care homes, during the hours of operation as family day care homes and in those areas where children are present.~~

10. “Public Park” shall mean a park operated by the City of West Hollywood or another public agency.

11. ~~6.~~ “Public Place” shall mean any enclosed public place within an establishment where smoking is prohibited by law, in which the public is permitted, including without limitation,

public restrooms, elevators, stairwells and parking facilities, to the extent not otherwise governed by or exempted from California Labor Code Section 6404.5 and California Health and Safety Code Section 118875, et seq. –any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, retail stores, retail service establishments, restaurants, every publicly or privately owned theater, auditorium, or enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event or any other performance or event, waiting rooms, reception areas, educational facilities, health facilities, the meeting room of the City Council or any board, commission or committee of the city during any meeting thereof, and public transportation facilities; including hallways, elevators, escalators, lobbies, reception areas, restrooms and similar areas within such establishments. A private residence is not a “public place”; however, an elevator in a residential building shall constitute a public place.

12. ~~7.~~ “Restaurant” means an establishment that: (1) sells, or offers for sale, food and beverages during all hours it is open for business; (2) prepares food on-site in a kitchen capable of preparing food from its component ingredients and otherwise meets the definition of a “bona fide public eating place” contained in California Business & Professions Code §23038; and (3) where service of alcoholic beverages is secondary to service of food. –shall mean any coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria or eating establishment, and any other eating establishment, organization, club, including veterans’ club, boardinghouse, or guesthouse which gives or offers for sale food to the public, guests, patrons, or employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering functions, except that the term “restaurant” shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a “bar” or “nightclub” as defined above.

~~8.~~ “Service line” shall mean any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

13. ~~9.~~ “Smoke” or “smoking” shall mean and include the carrying of a lighted pipe, or lighted cigar, or lighted cigarette of any kind, or the lighting, burning, inhaling or exhaling of the smoke of a pipe, cigar, or cigarette of any kind.

14. “Unenclosed” means a predominantly outdoor area that does not meet the definition of “enclosed.”

7.08.030 Smoking Regulations. Prohibition

a. No person shall smoke in a public place or place of employment except in designated smoking areas. In addition to all places where smoking is prohibited under state or federal law, in which case those laws apply, no person shall smoke in, and smoking areas shall not be designated in:

1. Open Air Dining Areas, pursuant to subsection (f) below;
2. Outdoor Service Areas;
3. Enclosed Public Places;
4. Any area where the owner, operator, manager or other person exercising management and control over the property has declared the area, where smoking would otherwise be allowed, to be a non-smoking area and posted the appropriate signage as set forth in this chapter; and
5. Within **XX** feet from any doorway, window, opening, crack, or vent into an enclosed or unenclosed area where smoking is prohibited by this chapter or other law, except while actively passing by on the way to another destination, and provided that smoke does not enter any area where smoke is prohibited.

b. No employer and no owner, operator, manager, employee or other person having control of a place of employment or a public place shall make ashtrays available in any area where smoking is prohibited.

c. No owner, operator, manager, employee or other person having control of a restaurant shall place matchbooks on tables or otherwise make matchbooks or matches available to patrons; provided, however, that upon request a promotional matchbook may be provided to a patron only when departing the restaurant.

d. No person shall dispose of smoking waste or place or maintain a receptacle for smoking waste in an area where smoking is prohibited by this chapter or other law, or within a distance of **XX** feet from an area where smoking is prohibited.

e. Notwithstanding section (a) above, smoking may be permitted and smoking areas may be designed in the following places:

(1) an Open Air Dining Area of a Bar or Nightclub provided that during any time that smoking is allowed, minors are excluded from the entire business establishment;

(2) an Open Air Dining Area of a Restaurant provided that an outdoor smoking area can be designated that is completely separate and segregated from any Outdoor Dining Area where smoking is not permitted, and smoke cannot be detected or smelled in the nonsmoking area; and

(3) areas excluded from the definition of "Place of Employment" in California Labor Code Sections 6404.5(d), as may be amended from time to time.

f. Any person who owns, operates, manages or otherwise exercises management and control over a public place, place of employment or any other establishment may designate the entire property, business or facility as a no-smoking area.

g. No business owner, operator or manager shall knowingly or intentionally allow smoking in an Open Air Dining Area that is under his, her or its control in a manner that violates this chapter. This law does not require the physical ejection of any person from the business or the taking of steps to prevent smoking under circumstances that would involve a significant risk of physical harm.

h. A violation of this section shall be subject to the administrative penalty provisions of Sections 1.08.030 through 1.08.070. The City Manager shall have primary responsibility for the enforcement of the regulations contained herein. Nothing in this section shall preclude the City Manager from seeking to obtain voluntary compliance by way of a warning, notice, or informational material.

~~7.08.040 Designation of Smoking Areas.~~

~~—— a. Designation — Not Permitted. Smoking areas shall not be designated in retail stores, food markets, retail service establishments, restaurants (excluding bar areas within restaurants), public conveyances and transportation, taxicabs, theaters, auditoriums, public assembly rooms, elevators, pharmacies, libraries, museums, galleries, hospitals, restrooms, indoor service lines, child care facilities (including those in a private home) and senior citizen facilities which are open or available to the public, except as provided in this section.~~

~~—— b. Designation — Permitted in Particular Places.~~

~~———— 1. Places of Employment. Smoking areas may be designated in a separate and noncontiguous congregation area such as a lounge or cafeteria which does not constitute more than fifty percent of such available congregation area in the premises. Smoking areas may be designated in work areas only if such areas are separated by walls, floor-to-ceiling partitions, distance or other methods in such a way as to keep the nonsmoking areas free from tobacco or any weed or plant smoke to the maximum extent possible. No employee shall be required to work in a designated smoking area, and in all cases of conflict, the preferences of nonsmoking employees as regards working areas shall prevail. Employers shall disseminate information concerning the requirements of this chapter to employees.~~

~~———— 2. Restaurants. Any or all portions of outdoor dining areas of restaurants and eating establishments may be designated for smoking.~~

~~———— 3. Other Congregation Areas. Smoking areas may be designated in public congregation areas such as waiting rooms, lobbies and lounges provided that such areas are~~

~~separate and noncontiguous from nonsmoking areas and do not constitute more than fifty percent of such space in the premises.~~

~~7.08.050 Exclusions.~~

~~— No smoking areas are not required in areas which are described in California Labor Code Sections 6404.5(d)(1), (2), (3), (4), (5), (6), (9), (10), (11), (12), (13) or (14), as they may be amended from time to time, and which are not considered places of employment.~~

~~— Notwithstanding the foregoing, nothing in this section shall prohibit the designation of an entire public place, place of employment or any other establishment as a no-smoking area.~~

7.08.0640 Posting.

a. Signs not less than eight inches by ten inches in size stating “No Smoking” with letters not less than one inch in height and including the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a diagonal red bar) shall be clearly, sufficiently and conspicuously posted by the owner, operator, manager or other person having control of every room, building or other place where smoking is regulated by this chapter either (i) on a wall not less than eight feet nor more than ten feet above floor level, or (ii) on moveable freestanding signs between three feet and five feet in height. In rooms containing tables for patrons or customers, an additional sign not less than four inches by six inches in size containing the same message in the same size lettering shall be placed on each table. Each of the foregoing signs shall, in addition, include a reference to “Chapter 7.08 of the West Hollywood Municipal Code,” and include a telephone number designated by the City to which complaints of violations of this chapter may be reported.

b. For an Open Air Dining Area of a Bar or Nightclub where smoking is permitted pursuant to 7.08.030.f.1, the required sign shall conspicuously state the designated hours during which smoking is permitted in the Outdoor Dining Area because minors are excluded from the business establishment, and state the designated hours when smoking is prohibited because minors are permitted onsite. ~~Every theater owner, manager or operator shall post signs conspicuously in the lobby stating that smoking is prohibited in all areas and, in the case of motion picture theaters, such information shall be shown upon the screen for at least five seconds prior to the showing of each feature motion picture.~~

~~c. “No Smoking” signs shall be specifically placed in retail food production and marketing establishments, including grocery stores and supermarkets open to the public, so that they are clearly visible to persons in checkout lines, and clearly visible to persons at meat and produce counters. The manner of such posting including the wording, size, color, design, and place of posting whether on the walls, doors, tables, counters, stands or elsewhere shall be at the discretion of the owner, operator, manager, or other person having control of such room,~~

~~building, or other place so long as clarity, sufficiency, and conspicuousness are apparent in communicating the intent of this chapter.~~

b. A violation of this section shall be subject to the administrative penalty provisions of Sections 1.08.030 through 1.08.070. The City Manager shall have primary responsibility, with the assistance of the Sheriff's Department as may be necessary or desirable, for the enforcement of the regulations contained herein. Nothing in this section shall preclude the City Manager from seeking to obtain voluntary compliance by way of a warning, notice, or informational material.

7.08.0570 Enforcement.

a. Duty to Inform. Owners, operators, managers or employees of same shall be required to orally inform persons violating this chapter of the provisions thereof. The duty to inform such violator shall arise when such owner, operator, manager or employee of same becomes aware of such violation.

b. Civil Action. Any aggrieved person may enforce the provisions of this chapter by means of a civil action.

c. Injunction. Any person who commits, or proposes to commit, an act in violation of this chapter may be enjoined therefrom by any court of competent jurisdiction. An action for injunction under this subsection may be brought by any aggrieved person, by the City Attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

d. Costs and Fees. In any action under this section by an employee alleging retaliation or discrimination by an employer for exercising rights under this chapter, the prevailing party shall be awarded costs and reasonable attorneys' fees.

~~7.08.080 Retaliation.~~

~~—No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter or acts to enforce any of the provisions of this chapter.~~

7.08.0690 Violations.

a. Any owner, operator, manager or other person in control of an Open Air Dining Area, Outdoor Service Area, Enclosed Public Place ~~a place of employment, public place, restaurant, service line~~ or other establishment where smoking is prohibited under ~~subject to~~ this chapter shall be guilty of a misdemeanor for failing to comply with the requirements of this chapter.

b. Any person smoking in a location which is designated as a nonsmoking area pursuant to this chapter shall be guilty of a misdemeanor.

c. The City Manager shall have primary responsibility, with the assistance of the Sheriff's Department as may be necessary or desirable, for the enforcement of the regulations contained herein. Nothing in this section shall preclude the City Manager from seeking to obtain voluntary compliance by way of a warning, notice, or informational material.

d. Any person violating Labor Code Section 6404.5, as amended, shall be guilty of an infraction, which as set forth in such Section 6404.5(j) requires local law enforcement agencies to enforce those provisions.

Section 3. Grace Period. A **XXXX** grace period shall follow the effective date of this ordinance to permit a period of public education.

a. Within thirty days of the effective date of this Ordinance:

a. Any business with an Open Air Dining Area where smoking will be prohibited by this ordinance shall post a notice near an entrance, exit or cashier area in size 14 font or larger that is clearly visible and readable to a majority of customers that shall remain posted through the end of the **XXXX** grace period that states:

Beginning [DAY AFTER GRACE PERIOD ENDS], smoking is prohibited in the open air dining area of this business and within **XX** feet of this business.