

ORDINANCE NO. 13-___

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GOLETA
AMENDING TITLE 8 OF THE GOLETA MUNICIPAL CODE TO ADD
CHAPTER 8.15 TO ESTABLISH RESTRICTIONS ON SMOKING IN
CERTAIN PUBLIC AREAS**

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

SECTION 1 CODE AMENDMENT.

Title 8 of the Goleta Municipal Code is hereby amended to add to read as set forth
below:

Chapter 8.15

SECTIONS:

- 8.15.010 Definitions**
- 8.15.020 Inside and Within 20 Feet of City Facilities and Vehicles**
- 8.15.030 Public Places**
- 8.15.040 Places of Employment**
- 8.15.050 Recreational Areas**
- 8.15.060 Posting of Signs**
- 8.15.070 Violations and Penalties**

8.15.010 Definitions.

The words, terms, phrases, and their derivations set forth in this chapter have the
meanings set forth below.

“Bar” means any business licensed or required to be licensed by the Department
of Alcoholic Beverage Control for alcoholic beverage on-sale privileges as a “public
premises” as defined by the California Business and Professions Code.

“City” means the City of Goleta.

“Customer service area” means any enclosed area of any business or public
place to which this chapter is applicable and to which customers or members of the
public have access, including, but not limited to, hallways, waiting areas, lobbies,
entrances and exits, or portions of a dining area not occupied by counters or tables.

“Dining area” means any enclosed area containing a counter or tables upon
which food is served.

“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 for a nonprofit entity.

“Employer” means any person, partnership, firm, or corporation, including public and nonprofit entities, which employs any person other than an owner of the entity.

“Enclosed area” means all space between a floor and ceiling, which is enclosed on all sides by solid walls, windows, or doors, which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid. (For the purposes of this chapter, the term “enclosed” or “enclosed facilities” shall refer to an “enclosed area.”)

“Private smokers’ lounge” means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes.

“Place of employment” means an enclosed area under the control of any employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias, hallways and employer-furnished motor vehicles. A private residence is not a “place of employment” unless it is a child care, health care, board and care, or community foster care facility as such terms are defined by the California Health and Safety Code.

“Public place” means any area to which the public is invited or in which the public is generally permitted. For the purposes of this chapter, a private residence is not a “public place,” except when the residence is used as a child care, health care, board and care, or community foster care facility as such terms are defined by the California Health and Safety Code.

“Recreational area” means any outdoor area, owned or operated by the City of Goleta, open to the general public for recreational purposes, regardless of any fee or age requirement, including, but not limited to: parklands, 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.

“Restaurant” means any coffee shop, cafeteria, luncheonette, sandwich stand, soda fountain, private or public school cafeteria or eating establishment, boardinghouse, or guest home, which gives or offers for sale food to the public, which is not licensed or not required to be licensed by the Department of Alcoholic Beverage Control for alcoholic beverage on-sale privileges.

“Restaurant-bar combination” means any restaurant (as defined above) which is licensed or required to be licensed by the Department of Alcoholic Beverage Control for

alcoholic beverage on-sale privileges as a “bona fide eating place” as defined by the section 23038 of the California Business and Professions Code.

“Retail or wholesale tobacco shop” means any business establishment for which the main purpose is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.

“Service line” means any 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.

“Smoking” or to “smoke” means inhaling, exhaling, burning or carrying any lighted pipe, cigar, cigarette, weed, plant or other combustible organic or chemical substance, the smoke from which is specifically designed or intended to be inhaled or drawn into the nose or mouth.

“Sports arena” means any enclosed or open sports pavilion, gymnasium, health spa, stadium, boxing arena, swimming pool, roller and ice rink, bowling alley, and other similar place where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events, including the customer service areas, and the lobby, foyer, or concession-stand areas thereof.

“Tobacco product” means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.

8.15.020 Inside and Within 20 Feet of City Facilities and Vehicles

- A. Smoking is prohibited in all enclosed areas of City facilities and all vehicles owned, leased or operated by the City.
- B. Smoking is prohibited within 20 feet of any entrance, exit or operable window of a facility owned, leased or operated by the City.
- C. Ashtrays or any other receptacle used to dispose of burning tobacco products shall be prohibited within 20 feet of all enclosed areas of City facilities and all vehicles owned, leased or operated by the City.

8.15.030 Public Places

- A. Smoking is prohibited in all enclosed public places and non-enclosed public places where specified herein within the City including, but not limited to, the following:
 - 1. Restaurants, including customer service areas and outdoor seating sections, except that 25 percent of the outdoor seating sections of restaurants may be set aside and designated and maintained as smoking sections so long as;
 - a. The entire smoking section is in the same area;

- b. The entire smoking section is located the furthest distance from the entrance of the building; and
 - c. The smoking section is clearly marked or labeled with signs.
- 2. Restaurant-bar combinations and bars, except that 100 percent of outdoor seating sections of restaurant-bar combinations or bars may allow smoking so long as:
 - a. The entire smoking section is in the same area;
 - b. The entire smoking section is located the furthest distance from the entrance of the building; and
 - c. The smoking section is clearly marked or labeled with signs.
- 3. Buses or other means of public transit, stops, depots, boarding and wait areas, enclosed or not.
- 4. Service lines, enclosed or not.
- 5. Enclosed common areas in apartment buildings, condominiums, housing developments, mobile home parks, retirement facilities and nursing homes.
- 6. Sports arenas, enclosed or not.
- 7. Areas of the lobby in a hotel, motel or other similar transient lodging establishment
- 8. Meeting and banquet rooms in a hotel, motel or other transient lodging establishment similar to a hotel or motel, restaurant, or other public convention center, including the corridors and pre-function areas adjacent to and serving the meeting or banquet room.
- 9. Polling places, enclosed or not.
- 10. Non-enclosed facilities used for exhibiting motion pictures, stage plays, dramas, lectures, musical concerts or other similar performances, including the lobby, foyer and concession stand areas. To the extent the act of smoking forms part of a dramatic live stage production, this chapter shall not be construed to prohibit the smoking of non-tobacco-product "stage cigarettes" or similar materials in the form of cigars or pipes.
- 11. Areas that share the same air conditioning, heating, or other ventilation systems with other areas in which smoking is prohibited.

8.15.040 Places of Employment

- A. It shall be the responsibility of employers to provide a smoke-free place of employment for all employees.
- B. Smoking is prohibited in all enclosed places of employment that have one or more employees except
 - 1. At a medical research or treatment site if smoking is integral to the research and treatment being conducted;
 - 2. Retail or wholesale tobacco shops and private smokers' lounges;
 - 3. Cabs of motortrucks as defined in section 6404.5, subdivision (d), of the Labor Code, provided those areas are not accessible to minors;
 - 4. Any owner, operator, manager or other person who controls any establishment described in this chapter may declare the entire establishment to be a non-smoking establishment;

5. All employers shall supply a written copy of the smoking policy to any existing or prospective employee who so requests; and
6. No person or employer discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights to a smoke-free place of employment afforded by this chapter or because any such employee or applicant is in full compliance with this chapter.

8.15.050 Recreational Areas

- A. No person shall smoke or use tobacco products anywhere in a recreational area, except as provided in this subsection (C).
- B. Nothing in this article shall be construed to prohibit smoking or use of tobacco in any area in which such smoking or use of tobacco products is already prohibited by state or federal law unless applicable state or federal law does not preempt additional local regulation.
- C. Smoking and use of tobacco products is permitted only in the following locations:
 1. Camping parks.
 2. Within 30 feet of any park employee residence.
- D. Other requirements and prohibitions.
 - a. No ash can, ashtray, or other smoking or tobacco product waste receptacle shall be placed in any area in which smoking and the use of tobacco products are prohibited by this section.
 - b. No person shall knowingly permit smoking or use of tobacco products in an area under the person's legal or de facto control in which smoking and use of tobacco products are prohibited by this section.
 - c. The presence of smoking or tobacco product waste receptacles in violation of this subsection (1) and the absence of signs required by section 8.15.060 shall not be a defense to a violation of any provision of this section.
 - d. No person shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain strict compliance with this section.
 - e. Each instance of smoking or use of tobacco products in violation of this section shall constitute a separate violation. Each day of continuing violation of this section shall constitute a separate violation.

8.15.060 Posting of Signs

- A. Requirements for No Smoking Signs. "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch (1"), 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, sufficiently and conspicuously posted in every building or other place where smoking is regulated by this chapter, by the owner, operator, manager or other person having control of such building or other place.

8.15.070 Violations and Penalties

- A. It shall be unlawful for any person who owns, manages, or operates any premises subject to regulations under this chapter to fail to comply with its provisions.
- B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.
- C. Penalties.
 - a. Any person, business, or owner, proprietor, manager, operator of any establishment subject to this chapter who violates it shall be guilty of an infraction, punishable by:
 - i. A fine, not exceeding one hundred dollars, for the first violation;
 - ii. A fine, not exceeding two hundred dollars, for the second violation;
 - iii. A fine, not exceeding five hundred dollars, for each additional violation of this chapter within one year of the last violation;

SECTION 4 SEVERABILITY.

Should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance shall remain in full force and effect.

SECTION 5 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 6 EFFECTIVE DATE.

This ordinance shall take effect on the 31st day following the date of its final adoption.

SECTION 7 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.

INTRODUCED ON the _____ day of _____, 2013.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2013.

ROGER ACEVES, MAYOR

ATTEST:

APPROVED AS TO FORM:

DEBORAH S. LOPEZ
CITY CLERK

TIM W. GILES
CITY ATTORNEY