

ORDINANCE NO. 11-03

AN ORDINANCE OF THE CITY OF LAGUNA WOODS, CALIFORNIA, RESCINDING, REPLACING AND ESTABLISHING CHAPTER 7.16 – SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY
ORDAIN AS FOLLOWS:

SECTION 1. Findings and Intent - Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI)*, August 1999.)

The Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS), "Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens," *U.S. Department of Health and Human Services (DHHS), Public Health Service, National Toxicology Program*, 2000.)

A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smokefree workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sargent, Richard P.; Shepard, Robert M.; Glantz, Stanton A., "Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study," *British Medical Journal* 328: 977-980, April 24, 2004.)

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer. (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.)

The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability. (Daynard, R.A., "Environmental tobacco smoke and the Americans with Disabilities Act," *Nonsmokers' Voice* 15(1): 8-9.)

The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services. The Health Consequences of Involuntary Smoking: A Report of the Surgeon General. Public Health Service, Centers for Disease Control, 1986.) The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke. (Environmental Protection Agency (EPA), "Indoor air facts no. 5: environmental tobacco smoke," *Washington, D.C.: Environmental Protection Agency (EPA)*, June 1989.)

The Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" *British Medical Journal* 328: 980-983, April 24, 2004.)

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree

workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L. The effect of ordinances requiring smokefree restaurants on restaurant sales in the United States. *American Journal of Public Health*, 87:1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," *GPI Atlantic*, September 2001.)

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)

Accordingly, the City Council of the City of Laguna Woods finds and declares that the purposes of this Chapter are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 2. Laguna Woods Municipal Code Chapter 7.16 is hereby rescinded and replaced with Chapter 7.16 – Smoking in Public Places and Places of Employment

Section 7.16.010. Purpose

The purpose of this chapter is to protect the public health and welfare by regulating smoking in places available to and used by members of the public and in places of employment.

Section 7.16.020. Definitions

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

- (05) "Bar" means an establishment that 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 those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

- (10) "Business" means a sole proprietorship, partnership, joint venture, corporation, association, or other entity formed either for-profit or not-for-profit making purposes, that is open to members of the public and/or has an employee as defined in this section.

- (15) "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and/or a person who volunteers his or her services for an employer, association, nonprofit or volunteer entity.
- (20) "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- (25) "Enclosed" means closed in by a roof and contiguous walls or windows, connected floor to ceiling with appropriate opening for ingress and egress.
- (30) "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions.
- (35) "Multi-unit" Residential Facility means a building or portion thereof that contains more than one dwelling space consisting of essentially complete independent living facilities for one or more persons and includes apartments, condominiums, cooperatives and group homes. A single family residence shared by roommates is not considered a multi-use residence for the purpose of this Chapter.
- (40) "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
- (45) "Public Place" means any enclosed area, public or private, to which the public is permitted, regardless of any fee or age requirement. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
- (50) "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is

prepared on the premises for serving elsewhere. The term "restaurant" shall include an attached bar.

- (55) "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- (60) "Service Area" means any area designated 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 the service involves the exchange of money.
- (65) "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- (70) "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

Section 7.16.030. Prohibition of Smoking in Public Places

Except as otherwise hereinafter provided by this chapter, smoking shall be prohibited in all:

1. Enclosed areas of all public places, including lobbies, elevators, reception, waiting and service areas, hallways, and other areas used by members of the public, located within the City, including but not limited to the following:
 - a. Any portion of a museum, aquariums, gallery, library, or museums which is open to and used by members of the general public;
 - b. Any portion of a grocery store, supermarket or other retail food marketing establishment which is open to and used by the general public;
 - c. Any restroom open to and used by the general public;
 - d. Any portion of a theater, auditorium, clubhouse or hall which is open to the general public and used for exhibiting a motion picture, live theatrical performance, religious or spiritual service, banquet, lecture, musical recital or similar performance;
 - e. Hallways, examination rooms, rooms used for treatment, wards and semi-private rooms of health care facilities;
 - f. Any licensed child care or adult day care facility;

- g. Lobbies, hallways, game rooms, meeting rooms, laundry rooms, and other common areas in multi-unit residential facilities;
 - h. Public transportation facilities, including buses and taxicabs, under the authority of the City of Laguna Woods, and ticket, boarding, and waiting areas of public transit depots;
 - i. Any restaurant or bar, including those in private clubs;
 - j. Any portion of a building owned, leased and/or operated by a public agency or entity which is open to and used by the public and is subject to the jurisdiction of the city;
 - k. Polling places;
 - l. Any recreation or sports facility, including but not limited to gymnasiums, enclosed swimming pools, roller skating and ice skating rinks, bowling alleys, pool halls, health spas, clubhouses and other similar places where members of the public assemble whether to engage in physical exercise, participate in athletic events or participate in sports events;
 - m. Any other business or establishment or portion of a business or establishment which is open to and used by the general public, including but not limited to banks, professional offices, retail stores, enclosed shopping malls, laundromats, beauty and barber shops, nails salons, professional offices, hotels and motels.
2. Unenclosed areas of the following public places, subject to the reasonable distance requirement in Section 7.16.050:
 - a. Any service area where one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money;
 - b. Outdoor dining areas of restaurants;
 - c. Unenclosed swimming pools in a multifamily residence;
 - d. Unenclosed hallways, entryways, breezeways, stairways and other common areas accessible and useable by more than one residence in a multifamily residential facility;
 - e. Balconies and patios in residential facilities. For the purpose of this chapter, balconies and patios shall include unenclosed and screened patios and balconies as well as enclosed patios and balconies unless windows and doors are closed to prevent the escape of smoke.

- f. Covered and semi-covered carports shared by more than one residential unit.
- g. Ticket, boarding and waiting areas for public transportation services;
- h. Entrances and exits to enclosed public areas;
- i. City parks and preserves;
- j. Sites of public events sponsored or co-sponsored by the City, including sports events, entertainment, ceremonies, speaking performances, pageants and fairs.

Section 7.16.040. Prohibition of Smoking in Places of Employment

- (a) Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- (b) This prohibition on smoking shall be communicated to all existing employees by the effective date of the ordinance from which this chapter is derived and to all prospective employees upon their application for employment.

Section 7.16.050. Reasonable Distance

Smoking in unenclosed areas shall be prohibited within a reasonable distance of 20 feet from any entrance, opening, crack or vent into an enclosed area where 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.

Section 7.16.060. Where Smoking Not Regulated

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of Section 7.16.030 of this chapter:

- (1) With the exception of locations specifically identified in Section 7.16.030, private residences, except when used as a licensed child care, adult day care, or health care facility.
- (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

- (3) Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this chapter.
- (4) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Chapter.
- (5) Outdoor areas except those covered by the provisions of Sections 7.16.030 and 7.16.040.

Section 7.16.070. Declaration of Establishment as Nonsmoking

Notwithstanding any other provision of this Chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 7.16.080 of this chapter is posted.

Section 7.16.080. Posting of Signs

(a) "No Smoking" signs 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 public place and place of employment where smoking is prohibited by this chapter, by the owner, operator, manager, or other person in control of that place.

(b) Every public place and place of employment where smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) All ashtrays shall be removed from any area where smoking is prohibited by this chapter by the owner, operator, manager, or other person having control of the area.

Section 7.16.090. Nonretaliation

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this chapter or reports or attempts to prosecute a violation of this chapter.

Section 7.16.100. Enforcement

(a) The provisions of this chapter shall be enforced by the City Manager and/or his or her authorized designee.

(b) Notice of the provisions of this chapter shall be given to all applicants for a business license/permit in the City of Laguna Woods.

(c) Any citizen who desires may register a complaint under this chapter with the City Manager and/or his or her authorized designee who will determine if enforcement is warranted based on the facts of the complaint.

(d) The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this chapter.

(e) An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the appropriate provisions thereof.

(f) Notwithstanding any other provision of this chapter, an employee or private citizen may bring legal action to enforce this chapter.

(g) In addition to the remedies provided by the provisions of this section, the City Manager or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section 7.16.110. Violations and Penalties

(a) A person who smokes in an area where smoking is prohibited by the provisions of this chapter shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this chapter shall be guilty of an infraction, punishable by:

(1) A fine not exceeding one hundred dollars (\$100) for a first violation.

(2) A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.

(3) A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

(c) In addition to the fines established by this section, violation of this chapter by a person who owns, manages, operates, or otherwise controls a public place or place of

employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(d) Each day on which a violation of this chapter occurs shall be considered a separate and distinct violation.

Section 7.16.120. Public Education

The City shall engage in a continuing program to explain and clarify the purposes and requirements of this chapter to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this chapter.

Section 7.16.130. Governmental Agency Cooperation

The City Manager shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this chapter. This includes urging all Federal, State, County and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Section 7.16.140. Other Applicable Laws

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 7.16.150. Liberal Construction

This chapter shall be liberally construed so as to further its purposes.

SECTION 3. Effective Date – This Ordinance shall take effect and be in full force and operation thirty (30) days after its final passage and adoption.

SECTION 4. Severability – If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

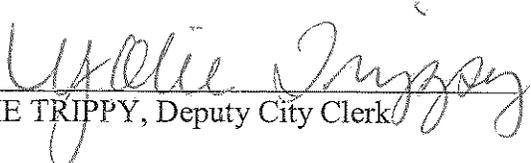
SECTION 5. City Clerk's Certification – The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen (15) days after passage and adoption as required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and post a certified copy of the text of this

Ordinance in the Office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED, AND ADOPTED this 16th day of March 2011.


BERT HACK, Mayor

ATTEST:


YOLIE TRIPPY, Deputy City Clerk

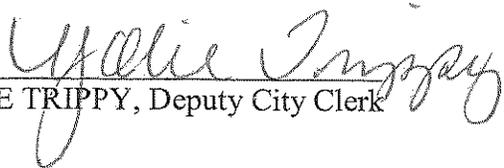
APPROVED AS TO FORM:


STEPHEN A. MCEWEN, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing Ordinance No. 11-03 was duly introduced and placed upon its first reading at a Regular Meeting of the City Council on the 16th day of February 2011, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 16th day of March 2011, by the following vote, to wit:

AYES: COUNCILMEMBERS: Rhodes, Robbins, Connors, Hack
NOES: COUNCILMEMBERS: None
ABSTAIN: COUNCILMEMBERS: Ring


YOLIE TRIPPY, Deputy City Clerk