

**ORDINANCE NO. 2008-233**

**AN ORDINANCE OF THE TOWN OF WINDSOR REPEALING EXISTING, TITLE 3, CHAPTER 20, "PROHIBITION OF SMOKING," IN ITS ENTIRETY AND ADDING A NEW TITLE 3, CHAPTER 20, "PROHIBITION OF SMOKING" TO THE MUNICIPAL CODE.**

**WHEREAS**, numerous studies have found tobacco smoke is a toxic air contaminant;

**WHEREAS**, reliable studies, including studies by the Surgeon General of the United States, have shown that breathing secondhand smoke is a significant health hazard for certain population groups, including elderly people, individuals with cardiovascular disease, and individual with impaired respiratory function, including asthmatics and those with obstructive airway disease;

**WHEREAS**, in early 2006 following a four-year study, the California Air Resources Board declared second-hand smoke a toxic air contaminant, which has been linked to 400 additional lung cancer deaths a year in nonsmokers, 3,600 deadly heart attacks and 31,000 asthma attacks in children;

**WHEREAS**, nonsmokers with allergies, respiratory diseases and those who suffer ill effects of breathing secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same;

**WHEREAS**, many nonsmokers who are exposed to outdoor tobacco smoke suffer immediate symptoms including breathing difficulties, eye irritation, headache, nausea, and asthma attacks;

**WHEREAS**, individual cigarettes are sources of air pollution, therefore, smoking in groups tends to saturate a local indoor and/or outdoor area with tobacco smoke and exposes those who come into contact with it;

**WHEREAS**, persons have a right to a smoke-free environment if they desire; and

**WHEREAS**, smoking is a documented cause of fires; and,

**WHEREAS**, discarded cigarettes contribute to litter.

**NOW, THEREFORE**, the Town Council of the Town of Windsor does ordain as follows:

Section 1.                   The Town Council adopts the above recitations.

Section 2. Title III, Chapter 20, "Prohibition of Smoking," of the Town of Windsor Municipal Code is repealed in its entirety.

Section 3. Title III, Chapter 20 entitled "Prohibition of Smoking" is hereby added to the Town of Windsor Municipal Code to read as follows:

**"3-20-100 Purpose.**

It is the intent of the Town of Windsor in enacting this ordinance, to provide for the health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-smokers; by protecting children from exposure to smoking while they play; by protecting the public from smoking and smoking-related litter and pollution; and, by affirming and promoting the family atmosphere of the Town of Windsor parks and public places. Title III, Chapter 11, entitled "Regulating the Sale of Tobacco Products and Paraphernalia," is intended to regulate the sale of tobacco products and paraphernalia to minors.

**3-20-105 Findings.**

- a) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution;
- b) Reliable studies, including those by the Surgeon General of the United States, have shown that breathing sidestream or secondhand smoke is a significant health hazard, particularly to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, asthmatics and those with obstructive airway disease;
- c) Health hazards induced by breathing sidestream or secondhand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction and bronchospasm;
- d) Nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing sidestream or secondhand smoke may experience loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to the same; and
- e) Persons, particularly employees, have a right to a smoke-free environment if they desire.

**3-20-110 Definitions.**

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

- a) “**Business**” means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an employee, as defined in this section.
- b) “**Employee**” means any person who is employed; retained as an independent contractor by an employer, as defined in this section; or any person who volunteers his or her services for an employer, association, nonprofit, or volunteer entity.
- c) “**Employer**” means any person, partnership, corporation, association, nonprofit or other entity who employs or retains the services of one or more persons, or supervises volunteers.
- d) “**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 or purposes of the entity and not to private gain. A public agency is not a nonprofit within the meaning of this section.
- e) “**Outdoor Dining Area**” means any outdoor area available to or customarily used by the general public, which is designed, established, or regularly used for consuming food or drink.
- f) “**Playground**” means any park 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 Town grounds.
- g) “**Reasonable Distance**” means a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to second-hand smoke created by smokers outside the area. The distance shall be a minimum of twenty (20) horizontal feet.
- h) “**Recreational Area**” means any area owned or operated by the Town and open to the general public for recreational purposes, including, gardens, the Town Green, playgrounds, and picnic and barbeque areas, sporting facilities including bleachers, dugouts, balls fields, tennis courts, swimming pools and surrounding areas, walking, running, biking and nature trails.
- i) “**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.

**3-20-115 Prohibition on Smoking.**

- a) Smoking shall be prohibited in the following places within the Town of Windsor except in such places in which smoking is already prohibited by state or federal law in which case the state or federal law applies:
  - 1) Recreational Area
  - 2) Playground
  - 3) Outdoor Dining Area

**3-20-120 Reasonable Distance Required—20 Horizontal Feet.**

- a) Smoking shall be prohibited within a Reasonable Distance from any entrance, opening, crack, or vent of a business, except while actively passing on the way to another destination and without entering or crossing any area which smoking is prohibited. Nothing in this section shall be construed to prohibit smoking in a private residence.

**3-20-125 Duty of Employer, Business, or Nonprofit Entity.**

- a) No employer, business, or nonprofit entity shall knowingly or intentionally permit smoking in an area which is under the employer's, business', or nonprofit entity's control and in which smoking is prohibited.
- b) No employer, business, or nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, without limitation, ash trays or ash cans, within an area which is under the employer's, business', or nonprofit entity's control 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 employer, business, nonprofit entity, or other person who controls any area may declare that any part of such area in which smoking would otherwise be permitted is a nonsmoking area.

**3-20-130 Retaliation Prohibited.**

- a) 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.

**3-20-135 Posting of Signs.**

- a) "No Smoking" signs 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, sufficiently and conspicuously posted on the exterior of every building or other place where smoking is controlled by this Chapter, by the owner, operator,

manager or other person having control of such building or other place. The sign shall include the Reasonable Distance smoking limitations contained in this Chapter.

**3-20-140      Violations, Penalties and Enforcement.**

- a) Any violation of any provision of this Chapter may be prosecuted as a misdemeanor punishable by a fine of not more than one thousand dollars or by imprisonment for a period not to exceed six months, or by both fine and imprisonment. At the discretion of the charging officer and/or Town attorney, violations of this Chapter may also be charged as infractions as defined in Section 19(c) of the California Penal Code. Violations charged as infractions shall not be subject to imprisonment and shall be subject to a fine not exceeding five hundred dollars for each offense.
- b) Smoking in any area where smoking is prohibited by this Chapter constitutes a public nuisance and may be abated as such including the application of any of the enforcement remedies provided in the Town's Code Enforcement Ordinance (Town of Windsor Code, Title I, Chapter I, Article 2), and any remedies available under any applicable State or Federal Statute or pursuant to any other lawful power the Town may possess. The provisions of this chapter may also be enforced by a civil court action, prosecuted by the Town Attorney in the name of the Town. All remedies shall be alternative to or in conjunction with, and not exclusive of, one another.
- c) Any private person(s) who is/are aggrieved by a violation of this Chapter may bring a civil action for damages or for injunctive relief in accordance with applicable laws governing such civil actions.

**3-20-145      Interpretation.**

- a) This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by applicable federal and state laws."

**Section 4.                      California Environmental Quality Act ("CEQA").**

The Town Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") because the Ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) for it has no potential for resulting in physical change in the environment, directly or ultimately, the Ordinance is categorically exempt from CEQA under Section 15308 as a regulatory action taken by the City pursuant to its police power authorized in Article XI, Section 7 of the California Constitution to assure the health, safety, and welfare of the City, and the Ordinance is not subject to CEQA under

the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, either directly or indirectly.

Section 5.                    Statutory Severability.

If any section, subsection, sentence, clause or phrase or word in this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions may be declared unconstitutional, unlawful or otherwise invalid.

Section 6.                    Effective Date and Publication.


This Ordinance shall take effect thirty (30) days from its passage. Before the expiration of fifteen (15) days after its passage, this Ordinance, or a summary thereof, as provided in California Government Code Section 36933, shall be published at least once in a newspaper of general circulation published and circulated in the Town of Windsor.

**PASSED, APPROVED AND ADOPTED this 2nd day of April 2008 by the following vote:**

**AYES:            COUNCILMEMBERS ALLEN, PARKER, SALMON AND  
                      MAYOR FUDGE**  
**NOES:            NONE**  
**ABSTAIN:        NONE**  
**ABSENT:         VICE MAYOR GOBLE**

  
**DEBORA FUDGE, MAYOR**

**ATTEST:**

  
**MARIA DE LA O, TOWN CLERK**