


## REPORT TO CITY COUNCIL

**DATE:** JANUARY 14, 2015

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** GREG RAMIREZ, CITY MANAGER 

**BY:** MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT *MK*

**SUBJECT:** CONDUCT A PUBLIC HEARING AND INTRODUCE FOR FIRST READING ORDINANCE NO. 15-414, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING THE SMOKING IN PUBLIC PLACES ORDINANCE BY REGULATING ELECTRONIC CIGARETTES IN THE SAME MANNER AS OTHER SMOKING DEVICES, AMENDING THE AREAS WHERE SMOKING IS NOT ALLOWED IN PUBLIC PLACES, AMENDING CHAPTER 4 OF ARTICLE V OF THE AGOURA HILLS MUNICIPAL CODE AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CASE NO. 14-ZOA-005) (CITY OF AGOURA HILLS, APPLICANT)

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Staff is requesting the City Council conduct a public hearing to introduce Ordinance No. 15-414 for first reading. The City is the applicant for this Ordinance, which amends the Municipal Code to further define and regulate smoking in public places. Another proposed amendment is the regulation on the use of electronic e-cigarettes in public places.

With the popularity gain in the use of electronic/vapor cigarettes, and the fact that the City Smoking in Public Places Ordinance has not been amended in the last 21 years, the City Council is being asked to revisit the City's smoking regulations and consider amendments to the Municipal Code. Attached for consideration and reference are the proposed amendments in Ordinance No. 15-414.

Municipal Code Section 5403, as shown in the Ordinance, includes the current list of public areas of the City in which smoking is prohibited. The proposed Ordinance would add to the list of prohibited smoking areas to include the following (shown in underline in the Ordinance):

- \* Public parks
- \* Public sports fields
- \* Outdoor service areas
- \* The grounds of Agoura Hills City Hall, Library and Recreation Center.

- \* Outdoor customer dining areas
- \* Outdoor common areas at a shopping center
- \* Outdoors within twenty-five (25) feet of any entrance or exit of any building open to the public
- \* A bus, taxi cab, shuttle van, or other means of public transportation

Municipal Code Section 5403(9) of the Ordinance includes the prohibition of smoking in rooms in which public meetings are held under the control of any board, council, commission or committee of the City, School District, the County, or any other political subdivision of the State. The reference to County, State and School Board meeting places are proposed to be deleted from this Municipal Code section as the City's jurisdiction does not extend to these areas.

To coincide with the proposed prohibited smoking areas listed above, proposed amendments to Municipal Code Section 5402 include new definitions for the following (shown in underline in the draft amendments):

- \* "Common areas at a shopping center"
- \* "Dining area"
- \* "Outdoor Service area"
- \* "Shopping Center"

Also provided in the Ordinance is a new definition for "*Electronic or e-cigarettes*," as well as an amended definition of "*Smoking*" to include electronic cigarettes. With these two specific definitions, electronic cigarettes can be treated the same as cigars, cigarettes, or pipes for regulatory purposes. Staff recently conducted a survey of California jurisdictions to determine which ones regulate electronic cigarettes. Of 54 responses received, 23 jurisdictions (42%) stated they regulate, in some manner, electronic cigarettes. A copy of the survey results are attached for reference. Although they did not respond to the survey, two nearby cities also regulate electronic cigarettes. As of July 1, 2014, the City of Calabasas bans the use of electronic cigarettes anywhere where smoking is prohibited. The City of Camarillo adopted a temporary moratorium on the issuance of permits or entitlements for the establishment and operation of new electronic cigarette businesses in its city.

No amendments are proposed for areas where smoking is specifically not prohibited, as listed in Municipal Code Section 5405(a), which include the following:

1. Bars.
2. Private residences, except when used as a licensed child care or health care facility.
3. Hotel and motel rooms rented to guest(s), unless designated as non-smoking rooms.
4. Retail tobacco stores.
5. Private clubs whose facilities are not available to the public.
6. Restaurants, hotel and motel conference or meeting rooms while these places are being used for private functions, except when the person or entities in charge of

such private functions declare the meeting room or designated part thereof to be a nonsmoking area for the duration of the meeting.

It should be noted that the City's Smoking in Public Places Ordinance allows any owner, operator, manager, or other person who controls an establishment or facility to declare the area or parts thereof as a nonsmoking area. In any event, every employer is subject to compliance with the City's regulations and is required to make known and maintain a written smoking policy that includes:

- (1) Implementing and carrying out the provisions of the Smoking in Public Places Ordinance;
- (2) Prohibiting smoking in auditoriums, classrooms, conference and meeting rooms, elevators, showrooms/sales floors and customer service areas to which the public has access;
- (3) Providing and maintaining separate and contiguous nonsmoking areas of not less than fifty (50) percent of the seating capacity and floor space in cafeterias, lunchrooms, and employee lounges, or, as an alternative provide and maintain separate cafeterias, lunchrooms and employee lounges for non-smokers; and
- (4) Allowing any smoking employee to smoke at his/her work station only if, in the employer's sole judgment, other employees will not be adversely affected.

The draft Ordinance was reviewed by the City Council Legislative Sub-Committee on September 29, 2014, which questioned whether smoking should be allowed in designated areas of the Recreation Center, for special events. The Ordinance, as proposed, would prohibit smoking on the grounds of the Recreation Center. Subsequent to the Legislative Sub-Committee meeting, the Director of Community Services clarified her support of the on-site prohibition as drafted, citing safety and liability concerns.

The Legislative Sub-Committee also inquired how neighboring cities enforce electronic cigarette restrictions. The City of Calabasas is the only neighboring city which currently prohibits the use of electronic cigarettes where smoking is prohibited. According to the City of Calabasas Code Enforcement Division, when their ordinance was adopted, their staff contacted businesses with the City to update them on smoking regulations. Employers in the City of Calabasas are responsible for implementing the City of Calabasas' smoking regulations. However, when complaints are received and verified by the City of Calabasas, warning letters are issued and the City could issue citations with fines to the employer.

Similarly, employers in Agoura Hills are responsible for implementing the City's Smoking in Public Places Ordinance. If staff receives a complaint, the Code Enforcement Officer will remind the employer of the City's regulations. If compliance is

not achieved after this contact, the matter would be referred to the City Prosecutor for enforcement.

Staff concludes that it can be seen with certainty that there is no possibility that the adoption of the Ordinance may have a significant effect on the environment. The adoption of this Ordinance merely establishes definitions and includes minor amendments and clarifications for smoking regulations, and does not include proposed construction or proposed alteration to the physical environment. It is, therefore, exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

The City Attorney has reviewed and approved the Ordinance as to form.

### **RECOMMENDATION**

Staff respectfully recommends the City Council conduct a public hearing, introduce, read by title only, and waive further reading of an Ordinance of the City Council, of the City of Agoura Hills, California, amending the Smoking in Public Places Ordinance by regulating electronic cigarettes in the same manner as other smoking devices, amending the areas where smoking is not allowed in public places, amending Chapter 4 of Article V of the Agoura Hills Municipal Code and making a finding of exemption under the California Environmental Quality Act (Case No. 14-ZOA-005).

Attachments: Ordinance No. 15-414  
Electronic Cigarette Regulation Survey Results  
Smoking in Public Places Ordinance

## ORDINANCE NO. 15-414

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING THE SMOKING IN PUBLIC PLACES ORDINANCE BY REGULATING ELECTRONIC CIGARETTES IN THE SAME MANNER AS OTHER SMOKING DEVICES, AMENDING THE AREAS WHERE SMOKING IS NOT ALLOWED IN PUBLIC PLACES, AMENDING CHAPTER 4 OF ARTICLE V OF THE AGOURA HILLS MUNICIPAL CODE AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CASE NO. 14-ZOA-005)**

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. Pursuant to the California Environmental Quality Act ("CEQA"), as amended, the CEQA Guidelines, and the City's local CEQA Guidelines, City staff for the City of Agoura Hills determined that the proposed Ordinance to amend Chapter 4 (Smoking in Public Places) of Article V of the Agoura Hills Municipal Code has no possibility of causing a significant impact on the environment. Staff concludes that the proposed Ordinance is exempt from the application of CEQA pursuant to CEQA Guidelines Section 15061(b)(3), in that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. This finding is premised on the fact that the project consists of proposed Ordinance definitions and minor amendments and clarifications for smoking regulations, and does not include proposed construction or proposed alteration to the physical environment. Furthermore, the Ordinance will have no adverse environmental effects because it will reduce the public's exposure to the harmful effects of second-hand smoke. The City Council concurs with City staff's determination and therefore directs staff to prepare and file a Notice of Exemption with the County Clerk, pursuant to CEQA Guidelines Section 15062, within five days of the date of this action.

Section 2. Subsection (o) (Smoking) of Section 5402 (Definitions) of Chapter 4 (Smoking in Public Places) of Article V (Sanitation and Health) of the Agoura Hills Municipal Code is hereby amended to read as follows:

- "(o) *Smoking* means burning, carrying, exhaling or inhaling any lighted cigar, cigarette, pipe, weed, plant or other smoking material in any manner or in any form, or operating any electronic cigarette."



Section 3. Section 5402 (Definitions) of Chapter 4 (Smoking in Public Places) of Article V (Sanitation and Health) of the Agoura Hills Municipal Code is hereby amended by adding subsections (r), (s), (t), (u), and (v) to read as follows:

- (r) Common area at a shopping center means any outdoor common area of a shopping center accessible to and useable by the occupants or customers of more than one (1) retail establishment used as a lobby, outdoor eating area, play area, or gathering area with either seats, benches or a water feature such as a fountain.
- (s) Dining area means a non-residential location where food or beverages are served by a business or routinely consumed by customers. This includes, but is not limited to, restaurant or bar seating areas, outdoor customer dining areas and patios.
- (t) Electronic cigarette or e-cigarette means any electronic or battery operated device that delivers vapors for inhalation. This term shall include every variation and type of such devices whether they are manufactured, distributed, marketed or sold as an electronic cigarette, an e-cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, and an electronic hookah, or sold by or distributed by any other product name or descriptor.
- (u) Outdoor service area means a place where people use or wait for services provided by a private or public entity. This includes, but is not limited to, bus stops, bank ATM lines, information kiosks and theater lines.
- (v) Shopping Center means any parcel of land used for retail sales by more than one (1) retailer that is jointly operated or which includes shared parking facilities.

Section 4. Paragraph (9) of subsection (a) of Section 5403 (Prohibition of Smoking in Public Places) of Chapter 4 (Smoking in Public Places) of Article V (Sanitation and Health) of the Agoura Hills Municipal Code is hereby amended to read:

~~“(9) Every room, chamber and place of meeting or public assembly under the control of any board, council, commission, or committee of the city, the school district, the county or any other political subdivision of the state during such time as a public meeting is in progress.”~~

Section 5. Subsection (a) of Section 5403 (Prohibition of Smoking in Public Places) of Chapter 4 (Smoking in Public Places) of Article V (Sanitation and Health) of the Agoura Hills Municipal Code is hereby amended to add paragraphs (12), (13), (14) (15), (16), (17), (18) and (19) to read as follows:

- "(12) Public parks.
- (13) Public sports fields.
- (14) Outdoor service areas.
- (15) The grounds of Agoura Hills City Hall, Library, and Recreation Center.
- (16) Outdoor customer dining areas.
- (17) Outdoor common areas at a shopping center.
- (18) Outdoors within twenty-five (25) feet of any entrance or exit of any building open to the public.
- (19) A bus, taxi cab, shuttle van, or other means of public transportation."

Section 6. If any provision of this ordinance, or the application thereof, to any person or circumstances is held invalid or unconstitutional by any court or competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or applications, and to this end, the provisions of this ordinance are declared to be severable. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof even if one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof is declared invalid or unconstitutional.

PASSED, APPROVED, and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by the following vote to wit:

AYES: (0)  
 NOES: (0)  
 ABSENT: (0)  
 ABSTAIN: (0)

\_\_\_\_\_  
 Illece Buckley Weber, Mayor

ATTEST:

\_\_\_\_\_  
 Kimberly M. Rodrigues, MMC, City Clerk

APPROVED AS TO FORM

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Candice K. Lee, City Attorney



## ELECTRONIC "E" CIGARETTE SURVEY RESULTS

**Question:** Does your jurisdiction regulate electronic "e" cigarettes? ("Yes" or "No" responses were requested).

### Responses:

#### Yes (23)

Apple Valley  
Bellflower  
Benicia  
Claremont  
Davis  
Dixon  
Dublin  
Encinitas  
Foster City  
Lakewood  
Montclair  
National City  
Pinole  
San Francisco  
Santa Cruz  
Santa Rosa  
Seal Beach  
Selma  
Signal Hill  
Vista  
Walnut Creek  
Wasco  
Westminster

#### No (31)

Arcadia  
Banning  
Brentwood  
Carson  
Chowchilla  
Coalinga  
Colma  
Corning  
Eureka  
Fortuna  
Fullerton  
Gilroy  
Glendora  
Grover Beach  
Highland  
Lafayette  
Lakeport  
Lawndale  
Los Banos  
Rocklin  
Rosemead  
Ross  
San Marino  
San Ramon  
Santa Clarita  
Santa Fe Springs  
South Gate  
Thousand Oaks  
West Hollywood  
Wildomar  
Willows

## Chapter 4

## SMOKING IN PUBLIC PLACES\*

## 5400. Short title.

This chapter of the Agoura Hills Municipal Code may be referred to as the "Smoking Control in Public Places Ordinance" of the City of Agoura Hills.

(Ord. No. 204, § 1, 12-11-91; Ord. No. 209, § 1, 4-8-92; Ord. No. 238, § 1, 8-25-93)

## 5401. Purpose.

The purpose of this chapter is to:

- (a) Protect the public health and welfare by ~~prohibiting~~ smoking in public places except in designated smoking areas; and
  - (b) Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers to breathe smoke-free air.
- (Ord. No. 204, § 1, 12-11-91; Ord. No. 238, § 1, 8-25-93)

## 5402. Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

- (a) *Bar* means an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and 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.
- (b) *Bingo establishments* means privately owned facilities used by organizations operating bingo games pursuant to section 326.5 of the California Penal Code.
- (c) *Business* means any sole proprietorship, partnership, joint venture, corporation or

\*Editor's note—Ord. No. 204, § 1, adopted Dec. 11, 1991, enacted provisions which pertained to smoking in public places. Such provisions, designated as Ch. 3, §§ 5300–5309, have been redesignated by the editor as Ch. 4, §§ 5400–5409, in order to avoid duplicative chapter and section numbers.

other business entity formed for profit-making purposes, including but not limited to retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are offered or delivered.

- (d) *Customer service area* means any enclosed area of any business establishment or public place to which customers or members of the public have access, including but not limited to hallways, queue areas, lobbies or portions of a dining area not occupied by a counter or tables.
- (e) *Designated smoking area* means any enclosed area subject to the provisions of this chapter which is authorized hereunder to be designated for smoking.
- (f) *Dining area* means any enclosed area containing a counter and/or tables upon which meals are served.
- (g) *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 profit, nonprofit, or governmental entity.
- (h) *Employer* means any person, partnership, corporation, or governmental entity who employs the services of two (2) or more individual persons exclusive of owners, partners, corporate officers or persons working fewer than twenty (20) hours per week.
- (i) *Enclosed area* means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or non-solid "office landscaping" or similar structures.
- (j) *Nonprofit entity* means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, political, social or other similar

purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a "nonprofit entity" within the meaning of this section.

(k) *Place of Employment* means any enclosed area under the control of a public or private employer as defined in subsection (h) above, which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges, restrooms, conference and classrooms, employee cafeterias, hallways and employer-furnished high-occupancy motor vehicles. Place of employment does not include:

- (1) A private residence unless it is used as a licensed child care or health facility.
- (2) The dining area of a restaurant.

(l) *Public place* means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to banks, educational facilities, governmental facilities, shopping malls, health facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theatres and waiting rooms. A private residence is not a "public place."

(m) *Restaurant* means any enclosed coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private or public school cafeteria or eating establishment, and any other eating establishment, organization, club, guesthouse, guest ranch or hotel, 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 facilities. The term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in subsection (a) above.

(n) *Retail tobacco store* means a retail store utilized primarily for the sale of tobacco prod-

ucts and accessories and in which the sale of other products is merely incidental.

- (o) *Smoking* means burning, carrying, exhaling or inhaling any lighted cigar, cigarette, pipe, weed, plant or other smoking material in any manner or in any form.
- (p) *Sports arena* means enclosed sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, tanning salons, roller and ice-skating rinks, bowling alleys, arcades and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic events or witness such activities.
- (q) *Theatre* means any building not open to the sky which is primarily used for, or designed for the primary purpose of exhibiting any motion picture, stage presentation, drama, lecture, musical recital or similar performance.

(Ord. No. 204, § 1, 12-11-91; Ord. No. 238, § 1, 8-25-93)

**5403. Prohibition of Smoking in Public Places.**

(a) Smoking shall be prohibited in all public places within the City of Agoura Hills during business or other such hours when the public has access to such public places, including but not limited to, the following places:

- (1) Elevators.
- (2) Rest rooms.
- (3) All areas available to and customarily used by the general public in all businesses, governmental entities, and nonprofit entities patronized by the public, including but not limited to professional and other offices, banks, hotels and motels.
- (4) Restaurants as defined herein.
  - (a) The designation of a contiguous area within a restaurant that contains a maximum of fifty (50) percent of the seating capacity of the restaurant, including the area designated as a "Bar", as a designated smoking area; or

- (b) The providing of separate rooms for smokers so long as the rooms designated for smokers do not contain more than fifty (50) percent of the seating capacity of the restaurant, including the area designated as a "Bar".
- (5) Public areas of museums, galleries or libraries when open to the public provided, however, that this prohibition does not prevent the designation of a separate room for smoking in such areas.
- (6) Any building not open to the sky which is used primarily for, or designed for the primary purpose of exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except when smoking is part of the stage production; provided, however, that this prohibition does not prevent the designation of a contiguous area containing a maximum of fifty (50) percent of any area commonly called a lobby as a designated smoking area.
- (7) Public areas of enclosed sports arenas except in designated smoking areas.
- (8) Bingo establishments, except in designated smoking areas.
- (9) Every room, chamber and place of meeting or public assembly under the control of any board, council, commission, or committee of the city, the school district, the county or any other political subdivision of the state during such time as a public meeting is in progress.
- (10) Waiting rooms, hallways, wards and semi-private rooms of health facilities, including but not limited to hospitals, clinics, physical therapy facilities, doctors offices, and dentists offices. In bed space areas of health facilities used for two (2) or more patients, smoking shall be prohibited unless all patients within the room are smokers and request in writing upon the health care facility's admission forms to be placed in a room where smoking is permitted.
- (11) Polling Places.

(b) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility described in this section may declare the entire establishment or facility as a nonsmoking establishment.

(Ord. No. 204, § 1, 12-11-91; Ord. No. 238, § 1, 8-25-93)

#### 5404. Regulation of smoking in places of employment.

(a) Smoking shall be regulated in all places of employment within the City of Agoura Hills as provided in this chapter.

(b) Every employer subject to the provisions of this chapter shall adopt, implement, make known and maintain a written smoking policy which shall:

- (1) Implement and carry out the provisions of this chapter.
- (2) Prohibit smoking in auditoriums, classrooms, conference and meeting rooms, elevators, showrooms/sales floors and customer service areas to which the public has access.
- (3) Provide and maintain separate and contiguous nonsmoking areas of not less than fifty (50) percent of the seating capacity and floor space in cafeterias, lunchrooms, and employee lounges or as an alternative provide, and maintain, separate cafeterias, lunchrooms and employee lounges for nonsmokers.
- (4) Allow any smoking employee to smoke at his/her work station only if, in the employer's sole judgement, other employees will not be adversely affected.

(c) The provisions of this section shall not apply unless the employer causes signs or markings complying with section 5406 to be prominently placed in the location in which this section is to be enforced. However, the failure of an employer to cause the signs required by section 5406 to be posted shall constitute a violation of this chapter.

(d) Notwithstanding any other provision of this section, every employer shall have the right to

designate any place of employment, or any portion thereof, as a nonsmoking area.

(Ord. No. 204, § 1, 12-11-91; Ord. No. 238, § 1, 8-25-93)

#### 5405. Where smoking not prohibited.

(a) Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

- (1) Bars.
- (2) Private residences, except when used as a licensed child care or health care facility.
- (3) Hotel and motel rooms rented to guest(s) unless designated as nonsmoking rooms.
- (4) Retail tobacco stores.
- (5) Private clubs whose facilities are not available to the public.
- (6) Restaurants, hotel and motel conference or meeting rooms while these places are being used for private functions, except when the persons or entities in charge of such private functions declare the meeting room or designated part thereof to be a nonsmoking area for the duration of the meeting.

(b) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire area or parts thereof as a nonsmoking area.

(Ord. No. 204, § 1, 12-11-91; Ord. No. 238, § 1, 8-25-93)

#### 5406. Posting of signs.

(a) "Smoking" or "No Smoking" signs, which ever are appropriate, 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 places. Such signs shall have letters of not less than one (1) inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle

with a bar across it) not less than three (3) inches in diameter.

(b) Every theatre owner, manager, or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theatre or auditorium.

(c) Every restaurant shall have posted at every public entrance a conspicuous sign clearly stating that smoking is prohibited.

(Ord. No. 204, § 1, 12-11-91; Ord. No. 238, § 1, 8-25-93)

#### 5407. Violations and penalties.

(a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions.

(b) It shall be unlawful for any person to smoke in any area where smoking is prohibited by provisions of this chapter.

(c) Any person who violates any provision of this chapter shall be guilty of an infraction.

(Ord. No. 204, § 1, 12-11-91; Ord. No. 238, § 1, 8-25-93)

#### 5408. Exemptions.

(a) Any owner, operator or manager of a business or other establishment subject to this chapter may apply to the city for an exemption to any provision hereof due to the existence of unusual circumstances or conditions which make compliance with this chapter financially or physically infeasible.

(b) Such exemption may be granted if the city manager, or his designee, finds that based upon the evidence presented by the applicant that it is financially or physically infeasible to comply with the requirements from which the exemption is sought.

(c) The city manager is authorized to promulgate administrative regulations to implement the exemption process. Such regulations may include

a final appeal of his or her findings to the city council.

(Ord. No. 204, § 1, 12-11-91; Ord. No. 238, § 1, 8-25-93)

**5409. Other applicable laws.**

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

(Ord. No. 204, § 1, 12-11-91; Ord. No. 238, § 1, 8-25-93)