

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, REPEALING AND REPLACING CHAPTER 8.32 OF THE LANCASTER MUNICIPAL CODE TO REGULATE SMOKING AND TOBACCO PRODUCT USE

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat. In California, tobacco use is the number one cause of preventable death and the California Air Resources Board has identified environmental tobacco smoke, or secondhand smoke, as a Toxic Air Contaminant, which may cause or contribute to death or serious illness, including increased risks of cancer, and is especially hazardous to children and people with asthma and other respiratory problems.

WHEREAS, according to the United States Environmental Protection Agency, any level of exposure to secondhand smoke is harmful.

WHEREAS, it is the intent of the City Council of the City of Lancaster, in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking and tobacco use around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke where they live, work, and play; and by affirming and promoting a healthy environment in the City of Lancaster.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The foregoing recitals and findings are incorporated herein and constitute a substantive part of this Ordinance.

Section 2. Chapter 8.32 of the Lancaster Municipal Code is hereby repealed and replaced to read as set forth in Exhibit "A" attached hereto and incorporated herein by reference.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held for any reason to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Lancaster hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after adoption.

I, Andrea Alexander, City Clerk of the City of Lancaster, do hereby certify that the foregoing ordinance was regularly introduced and placed upon its first reading on the __ day of _____, 2020, and placed upon its second reading and adopted at a regular meeting of the City Council on the _____ day of _____, 2020 by the vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

ANDREA ALEXANDER
City Clerk
City of Lancaster

R. REX PARRIS
Mayor
City of Lancaster

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF LANCASTER)

CERTIFICATION OF ORDINANCE
CITY COUNCIL

I, _____, _____ City of Lancaster, California, do hereby certify that this is a true and correct copy of the original Ordinance No. , for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this _____ day of _____, _____.

(seal)

EXHIBIT “A”
ORDINANCE NO. _____

CHAPTER 8.32

REGULATING SMOKING AND TOBACCO PRODUCT USE

Sections:

8.32.010	Purpose and Intent.
8.32.020	Definitions.
8.32.030	Prohibition of Smoking and Tobacco Product Use in Enclosed Areas
8.32.040	Prohibition of Smoking and Tobacco Product Use in Unenclosed Areas.
8.32.050	Reasonable Smoking Distance Required.
8.32.060	Other Requirements and Prohibitions.
8.32.070	Penalties and Enforcement.
8.32.080	Regulations.

8.32.010 Purpose and Intent.

It is the intent of the City Council of the City of Lancaster, in enacting this chapter, to provide for the public’s health, safety, and welfare by discouraging the inherently dangerous activity of tobacco use around non-consenting individuals, protecting children from exposure to smoking where they live and play and protecting the public from nonconsensual exposure to secondhand smoke in and around their homes.

8.32.020 Definitions.

The following words and phrases, wherever used in this chapter, shall be construed as set forth below, unless it is apparent from the context they have a different meaning:

“Business” means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes. A Business also includes owner-operated entities with no Employees in which the owner is the only worker. A Business also includes a municipal corporation or public entity.

“Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salts, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtain from cannabis. For the purpose of this chapter, "cannabis" does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

“Employee” means any Person who is employed or retained as an independent contractor by any Employer in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for an Employer.

“Employer” means any Business or Nonprofit Entity that retains the service of one or more Employees.

“Enclosed Area” means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has any type of overhead cover, whether or not that cover includes vents or other openings, and at least three (3) walls or other vertical constraint to airflow, including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings. Enclosed Area shall also mean buses, taxicabs, and other means of public transit.

“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 government agency is not a Nonprofit Entity within the meaning of this chapter.

“Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.

“Place of Employment” means any area under the legal or de facto control of an Employer that an Employee or the general public may have cause to enter in the normal course of the operations, regardless of the hours of operation.

“Public Place” means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.

“Reasonable Distance” means a distance of twenty-five (25) feet in any direction from an area in which Smoking is prohibited.

“Recreational Area” means any area that is publicly or privately owned and open to the general public for recreational purposes, regardless of any fee or age requirement. The term “Recreational Area” includes, but is not limited to, parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, and amusement parks.

“Service Area” means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more Persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term “Service Area” includes, but is not limited to, areas including or adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.

“Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “Smoke”

includes, but is not limited to, tobacco smoke, vapors from an electronic device, and Cannabis smoke.

“Smoking” means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic device, or plant product, using any other method or device that delivers nicotine or other substances to a person.

“Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, electronic smoking devices, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

“Tobacco Product” means

(1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and

(2) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.

Notwithstanding any provision of subsections (1) and (2) to the contrary, “Tobacco Product” includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. “Tobacco Product” does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

“Unenclosed Area” means any area that is not an Enclosed Area.

8.32.030 Prohibition of Smoking and Tobacco Product Use in Enclosed Areas

A. Smoking and the use of Tobacco Products is prohibited in the Enclosed Areas of the following places within the City:

- (1) Places of Employment; and
- (2) Public Places.

B. Smoking and the use of Tobacco Products is prohibited by this chapter in all Enclosed Areas exempted by the California smokefree workplace law (Labor Code section 6404.5(e), as that section may be amended from time to time) except as provided below:

(1) Smoking is not restricted by this subsection in up to ten percent (10%) of guest room accommodations in a hotel, motel, or similar transient lodging establishment that meets the requirements of California Civil Code section 1940(b)(2) if the hotel or motel permanently designates particular guest rooms as nonsmoking rooms such that ninety percent (90%) or more of guest rooms are permanently nonsmoking, and ashtrays and matches are permanently removed from such nonsmoking rooms. Permanent “No Smoking” signage shall be placed in nonsmoking guest rooms.

(2) Smoking inside a Tobacco Shop is not prohibited by this subsection if: (a) the Tobacco Shop does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the premises; (b) the Tobacco Shop prohibits minors from entering the store at all times; and (c) the premises of the Tobacco Shop is an independent freestanding building unattached to any other building, establishment, or use. For the purposes of this exception, “Tobacco Shop” means any tobacco retailer that derives more than seventy-five percent (75%) of gross sales receipts from the sale or exchange of Tobacco Products and tobacco paraphernalia.

(3) Smoking in a theatrical production by the actors is not prohibited by this subsection if Smoking is an integral part of the story, and the use of a fake, prop, or special effect cannot reasonably convey the idea of Smoking in an effective way to a reasonable member of the anticipated audience.

8.32.040 Prohibition of Smoking and Tobacco Product Use in Unenclosed Areas.

A. Smoking and the use of Tobacco Products is prohibited in the Unenclosed Areas of the following places within the City:

- (1) Recreational Areas;
- (2) Service Areas;
- (3) Places of Employment; and
- (4) Other Public Places, when being used for a public event including, but not limited to, a farmer’s market, parade, craft fair, festival, or any other event open to the general public, provided that Smoking is permitted on streets and sidewalks used only as pedestrian or vehicular thoroughfares, unless otherwise prohibited by this chapter or other law.

B. Nothing in this chapter prohibits any Person, Employer, or Nonprofit Entity with legal control over any property from prohibiting Smoking and Tobacco Product use on any part of such property, even if Smoking or the use of Tobacco Products is not otherwise prohibited in that area.

8.32.050 Reasonable Smoking Distance Required.

A. Smoking in all Unenclosed Areas shall be prohibited within a Reasonable Distance from any doorway, window, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited, except while the Person Smoking is actively passing on the way to another destination.

B. Smoking in Unenclosed Areas shall be prohibited within a Reasonable Distance from any Unenclosed Areas in which Smoking is prohibited under section 8.32.040 of this chapter, except while the Person Smoking is actively passing on the way to another destination.

C. The prohibitions in subdivisions (a) and (b) shall not apply to Unenclosed Areas of private residential properties, except when used as a child care or health care facilities.

8.32.060 Other Requirements and Prohibitions.

A. No Person, Employer, or Nonprofit Entity shall knowingly permit Smoking or the use of Tobacco Products in an area which is under the legal or de facto control of that Person, Employer, or Nonprofit Entity and in which Smoking or the use of Tobacco Products is prohibited by law.

B. No Person, Employer, or Nonprofit Entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as ashtrays or ash cans, within an area under the legal or de facto control of that Person, Employer, or Nonprofit Entity and in which Smoking or the use of Tobacco Product is prohibited by law, including, without limitation, within a Reasonable Distance required by this chapter from any area in which Smoking or the use of Tobacco Products is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of Smoking or the use of Tobacco Products in violation of any provision of this chapter.

C. No Person shall dispose of used Smoking or Tobacco Product waste within the boundaries of an area in which Smoking or Tobacco Product use is prohibited, including within any Reasonable Distance required by this chapter.

D. No Person, Employer, or Nonprofit Entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another Person who seeks to attain compliance with this chapter.

E. Each instance of Smoking or Tobacco Product use in violation of this chapter shall constitute a separate violation. For violations other than for Smoking, each day of a continuing violation of this chapter shall constitute a separate violation.

F. Pursuant to California state law, Health and Safety Code sections 11362.3 and 11362.79, Cannabis Smoking is prohibited wherever Smoking is prohibited.

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

8.32.070 Penalties and Enforcement.

A. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

B. Each incident of Smoking or use of Tobacco Products in violation of this chapter shall constitute a public nuisance under Chapter 8.28 of the Lancaster Municipal Code and shall be punishable pursuant thereto or by assessment of civil penalties pursuant to Chapter 1.16.

C. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter, which violation shall constitute a public nuisance under Chapter 8.28 of the Lancaster Municipal Code and shall be punishable pursuant thereto or by assessment of civil penalties pursuant to Chapter 1.16.

D. Except as otherwise provided, enforcement of this chapter is at the sole discretion of the City. Nothing in this chapter shall create a right of action in any Person against the City or its agents to compel public enforcement of this chapter against private parties.

8.32.080 Regulations.

The city manager is authorized to promulgate such regulations as may be necessary or convenient to implement this chapter.