

ORDINANCE NO. 577

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF MORRO BAY AMENDING SECTION 9.24
OF THE MORRO BAY MUNICIPAL CODE ENTITLED
SMOKING AND FIRES PROHIBITED ON CITY BEACHES AND PIERS
AND RENAMING SECTION 9.24 SECONDHAND SMOKING REGULATIONS**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the U. S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke and neither separating smoker from nonsmokers nor installing ventilation systems effectively eliminates secondhand smoke; and

WHEREAS, the U. S. Environmental Protection Agency (EPA) has found secondhand smoke to be a risk to public health, and has classified secondhand smoke as a group-A carcinogen, the most dangerous class of carcinogen; and

WHEREAS, exposure to secondhand smoke is the third leading cause of preventable death in this country, killing over 52,000 non-smokers each year including 3,000 deaths from lung cancer; and

WHEREAS, there is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke; and

WHEREAS, employees who work in smoke-filled businesses suffer a twenty-five to fifty percent (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; and

WHEREAS, studies measuring cotinine (metabolized nicotine) and NNAL (metabolized nitrosamine NNK, a tobacco-specific carcinogen linked to lung cancer) in New York City hospitality workers find dramatic reductions in the levels of these biomarkers after a smoke-free law takes effect. Average cotinine levels of these restaurant and bar workers decreased by eighty-five percent (85%) after the city's smoke-free law went into effect; and

WHEREAS, 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. 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; and

WHEREAS, the Morro Bay Municipal Code provides that any condition existing in violation of the code is deemed to be a public nuisance.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Morro Bay that Morro Bay Municipal Code is hereby amended by changing the title and contents of Section 9.24 in its entirety as follows:

Chapter 9.24

SECONDHAND SMOKING REGULATIONS

- 9.24.010 Purpose**
- 9.24.020 Definitions**
- 9.24.030 Secondhand smoke generally**
- 9.24.040 Public and other places where smoking shall be prohibited**
- 9.24.050 Reasonable distance**
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- 9.24.070 Modifications of designated smokers' outposts**
- 9.24.080 Allowing, aiding or abetting smoking**
- 9.24.090 Signs**
- 9.24.100 Disposal of smoking waste**
- 9.24.110 Fires on city beaches**
- 9.24.120 Enforcement and penalties**
- 9.24.130 Public education – Purposes of chapter**
- 9.24.140 Governmental cooperation**
- 9.24.150 Other laws**

9.24.010 Purpose.

This chapter is enacted with the specific intent to:

- A. Prohibit smoking in certain public places not preempted by California Labor Code Section 6404.5, which provides further smoking regulations;
- B. Protect the public health, safety and general welfare by prohibiting smoking in certain public places under circumstances where other persons will be exposed to secondhand smoke;
- C. Ensure a cleaner and more hygienic environment for the City, its residents, and its natural resources, including its creeks and streams and beaches;
- D. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including residents and visitors, particularly children, to breathe smoke-free air, recognizing the threat to public health and the environment which smoking causes;
- E. Designate the enforcing agency for this chapter and for Labor Code Section 6404.5.

9.24.020 Definitions.

The following words and phrases, as used in this Chapter or in any other applicable law regulating smoking, shall have the following meanings:

A. **Business.** Any sole proprietorship, partnership, joint venture, corporation, association or other entity formed for profit-making purposes or that has an employee.

B. **City Beach.** The sandy area on either side of the mean high tide line from Atascadero Road all the way up to, but not including the parking lot at the Rock. City Beach shall also include the area of the Sand Spit that is owned by the City.

C. **City T- Piers.** The municipal piers located North of Beach Street and at Tideland Park.

D. **Code compliance officer.** The city code compliance officer or duly authorized designee of the City code compliance officer.

E. **Dining area.** Any area available to or customarily used by the general public that is designed, established or regularly used for consuming food or drink.

F. **Employee.** Any person who is employed or retained as an independent contractor by any employer as defined in this section; or any person who volunteers his or her services for an employer, association, nonprofit or volunteer entity.

G. **Employer.** Any person, partnership, corporation, association, nonprofit or other entity that employs or retains the service of one or more persons, or supervises volunteers.

H. **Enclosed.** Any covered or partially covered space having more than fifty percent (50%) of its perimeter area walled in or otherwise closed to the outside such as, for example, a covered porch with more than two walls; or any space open to the sky (hereinafter "uncovered") having more than seventy five (75) percent of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard.

I. **Nonprofit entity.** 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 of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

J. **Place of employment.** Any area under the legal or de facto control of an employer, business or nonprofit entity that an employee or the general public may have cause to enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, vehicles used in employment or for business purposes, taxis, employee lounges, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses and private residences that are used as childcare or healthcare facilities subject to licensing requirements.

K. **Playground.** Any park or recreational area 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 City property.

L. **Premises.** A lot or contiguous lots and any improvements thereon such as is usually described in a deed, deed of trust or mortgage, and includes legally separate but contiguous pieces of land that are owned by the same person or are under common control.

M. **Present.** Within a reasonable distance.

N. **Public place.** Any public or private place open to the general public regardless of any fee or age requirement, including, for example, streets, sidewalks, parking lots, parking garages, plazas, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, City beaches, T-Piers, taxis and buses. For the purposes of the provisions of this chapter, a "public place" does not mean a

private residence except for residences used as an adult or child care, health care, board and care, or community foster care facility as such terms are defined by the state Health and Safety Code.

O. **Reasonable distance.** The greatest distance practicable that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty (20) feet.

P. **Recreational area.** Any public or private area open to the public for recreational purposes whether or not any fee for admission is charged, including without limitation, parks, trails, gardens, sporting facilities, stadiums, beaches, T-Piers and playgrounds.

Q. **Restaurant.** Any coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria, eating establishment, boardinghouse or guest house or similar establishment which gives or offers for sale food to the public.

R. **Secondhand smoke.** Smoke that is generated from the burning end of a lighted tobacco, weed or plant product, or smoke that is exhaled by a smoker after inhaling or ingesting a lit tobacco; weed or plant product.

S. **Service area.** Any area designed 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 such service includes the exchange of money, including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops, taxi stands and takeout counters.

T. **Smoke or Smoking.** The carrying or holding of a lighted pipe, cigar, cigarette, or any other lighted smoking product or equipment used to burn any tobacco products, weed, plant, or any other combustible substance. Smoking includes emitting or exhaling the fumes of any pipe, cigar, cigarette, or any other lighted smoking equipment used for burning any tobacco product, weed, plant, or any other combustible substance.

U. **Sports arena.** An outdoor or nonenclosed sports pavilion, stadium, swimming pool, roller rink, or 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 concession stand areas thereof.

V. **Unenclosed area.** Any area which is not enclosed.

9.24.030 Secondhand smoke generally

For all purposes within the jurisdiction of the city, the nonconsensual exposure to secondhand smoke and the uninvited presence of secondhand smoke on property in violation of this chapter shall constitute a nuisance, as is further described by Chapter 8 of the Morro Bay Municipal Code.

9.24.040 Public and other places where smoking shall be prohibited

Except as otherwise provided by this chapter or by state or federal law, smoking shall be prohibited everywhere in the City, including but not limited to:

- A. All public places;
- B. Residences used as child care, health care, board and care, or community foster care facility as such terms are defined by state Health and Safety Code;
- C. Places of employment, except outdoor construction sites;

- D. Enclosed and unenclosed places of hotels, businesses, restaurants, bars and other public accommodations; and
- E. Any means of public transit including associated waiting areas, and service areas, enclosed or not.

9.24.050 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.

9.24.060 Places where smoking may be permitted

Except where prohibited by state or federal law, smoking may be permitted in the following locations within the city notwithstanding Section 9.24.040:

A. Private residential and multifamily properties. This chapter does not preclude private regulation of smoking on private residential and multifamily properties.

B. Designated unenclosed areas ("smokers' outposts") provided that all of the following conditions are met:

1. The area is located a reasonable distance away from any doorway or opening into an enclosed area and any access way to a public place;

2. The area has a clearly marked perimeter;

3. The area is posted with one or more conspicuously displayed sign(s) identifying the area as a designated outdoor smoking area pursuant to section 9.24.060 of this code;

4. Smoke is not permitted to enter adjacent areas in which smoking is prohibited by this chapter, other law or by the owner, lessee or licensee of the adjacent property;

5. Appropriate ash can(s) are placed in the smoking area and are maintained regularly by the owner, operator or manager of the smoking area; and

6. No consistent complaints of secondhand smoke are filed with the City.

C. Smoking areas at public events which have been approved as part of the Special Event Permit or Temporary Use Permit issued by the City.

D. Inside a private automobile when no minor child is present.

E. Any unenclosed area in which no nonsmoker is present and, due to the time of day or other factors, it is not reasonable to expect another person to arrive.

9.24.070 Modifications of Designated Smokers' Outposts

The City reserves the right to prohibit or require modifications to a smoker's outpost at a certain location if it undermines the purposes of this chapter.

9.24.080 Allowing, Aiding or Abetting Smoking

A. No person, employer, business or nonprofit entity shall knowingly permit smoking in an area under his, her or its legal or de facto control in which smoking is prohibited by this chapter or other law.

B. Except as provided in Section 9.24.050 of this code, no person, employer, business or nonprofit entity shall allow the placement or maintenance of a receptacle for smoking waste in an area under his, her or its legal or de facto control in which smoking is prohibited by this chapter or other law, provided however, that a receptacle may be placed at the entry to a nonsmoking area, along with a "No Smoking" sign, in order to encourage any smokers in violation of this chapter to immediately extinguish and properly dispose of smoking materials.

C. No person shall intimidate, threaten, effect a reprisal or retaliate against another person who seeks to attain compliance with one or more of this chapter's provisions.

9.24.090 Signs

Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter.

A. "No Smoking" or "Smoke Free" 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) or any alternative signage approved by the Public Services Director must be conspicuously posted by the person, employer, business or nonprofit entity who or which has legal or de facto control of such place at each entrance to a public place in which smoking is prohibited by this chapter or any other place where the Public Services Director reasonably determines that smoking in violation of this chapter has occurred, or is likely to occur.

B. Within designated smoking areas, one or more conspicuously displayed sign(s) shall be posted identifying the area as a smokers' outpost pursuant to section 9.24.060 of this code as follows: signs with arrows directing the public to the smoking area may be allowed; signs shall be no smaller than three (3) inches high and eight (8) inches long with a pictorial representation of a burning cigarette; signs shall contain "Designated Smoking Area" and shall be posted prominently between five (5) feet and seven (7) feet above the floor or ground; and all signs are subject to approval by the Public Services Director.

C. Every hotel and motel shall have signs posted conspicuously in the registration and lobby areas which state that nonsmoking rooms are maintained and may be available; rooms designated as being nonsmoking shall have signs announcing such restriction conspicuously placed inside the room.

D. No person shall alter, deface, obscure, remove or destroy a sign or placard that this chapter authorizes.

9.24.100 Disposal of smoking waste.

No person shall dispose of any cigarette, cigar or tobacco, or any part of a cigarette or cigar, in any place where smoking is prohibited under this Chapter, except in a designated waste disposal container.

9.24.110 Fires on City Beaches

No person shall build, light or maintain any fire on any City Beach except in designated containers or areas approved by the City.

9.24.120 Enforcement and Penalties.

A. A violation of this Section is an infraction.

B. Punishment under this Section shall not preclude punishment pursuant to Health & Safety Code Section 13002, Penal Code Section 374.4, or any other law proscribing the act of littering. Nothing in this Section shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

9.24.130 Public education --Purposes of chapter.

The code compliance officer, in conjunction and coordination with the county health officer of the County of San Luis Obispo and, where feasible, appropriate health or safety oriented community-based organizations and coalitions, shall engage in a continuing program to explain and clarify the purposes of the provisions of the chapter to citizens affected by it, and to guide business owners, operators and managers in their compliance with it.

9.24.140 Governmental cooperation.

The City Manager shall request all governmental and educational agencies which maintain an office within the City to establish local operating procedures to cooperate and comply with this chapter.

9.24.150 Other laws.

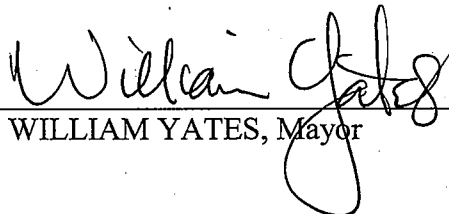
The provisions of this chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. Further, it is not the intent of the provisions of this chapter to regulate smoking where such regulation has been preempted by the state.

This Ordinance shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage, it, or a summary of it, shall be published once, with the names of the City Council members voting for and against the same, in a newspaper of general circulation published in the City of Morro Bay.

INTRODUCED at a regular meeting of the City Council of the City of Morro Bay held on the 10th day of April, 2012 by motion of Councilmember Johnson, seconded by Councilmember Borchard.


PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay on the 24th day of April, 2012 by the following vote:

AYES: Borchard, Johnson, Smukler
NOES: Leage, Yates
ABSENT: None
ABSTAIN: None



WILLIAM YATES, Mayor

ATTEST:



JAMIE BOUCHER, City Clerk

APPROVED AS TO FORM:



ROBERT SCHULTZ, City Attorney