

009-05 C.S.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 7, DIVISION 5 OF PART VI, OF THE STOCKTON MUNICIPAL CODE BY REPEALING DIVISION 5 OF PART VI, SECTIONS 7-150 THROUGH 7-162, OF CHAPTER 7, DIVISION 5 OF PART VI, AND BY ENACTING A NEW DIVISION 5 OF PART VI, SECTIONS 7-150 THROUGH 7-157, REGARDING SMOKING REGULATIONS

WHEREAS, it is the intent of the City of Stockton, in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging and limiting smoking around non-smokers; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

SECTION I. AMENDMENT OF CODE.

Chapter 7, Division 5 of Part VI, sections 7-150 through 7-162, of the Stockton Municipal Code is hereby repealed.

SECTION II. AMENDMENT OF CODE.

Chapter 7, Division 5 of Part VI, sections 7-150 through 7-157, are hereby added to the Stockton Municipal Code and shall read as follows:

SEC. 7-150. TITLE:

This Division shall be known as the Smoke-free Entryway Ordinance.

SEC. 7-151. FINDINGS AND PURPOSE:

The City Council of the City of Stockton hereby finds that:

Studies have shown that breathing second-hand smoke is a significant health hazard; and

Exposure to second-hand smoke is the third leading cause of preventable death in this country; and

State law acknowledges the harms of second-hand smoke by prohibiting smoking inside an enclosed place of employment, with certain exceptions; and

State law further prohibits smoking within twenty (20) feet of the main entrances, exits, or operable windows of public buildings while expressly authorizing local communities to enact additional restrictions.

SEC. 7-152. DEFINITIONS:

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

1. "Bar" means an enclosed area, which is devoted to the serving of alcoholic beverages and in which the serving of food, if any, is merely incidental to the consumption of such beverages.

2. "Building open to the public" means publicly and privately owned buildings, structures, facilities, or complexes that are open to, used by, or accessible to

City Atty
Review LSW
Date August 10, 2005

the general public, including, but not limited to; banks, savings and loan offices, and other financial establishments; grocery, pharmacy, specialty, department, and other stores, which sell goods or merchandise; automotive service stations; hotels and motels; restaurants and bars; general business offices; non-profit entity offices; hospitals and other health care facilities of any kind (including clinics, dental, chiropractic, or physical therapy facilities); barbershops, hair and nail salons, dry cleaners, laundromats, and other establishments offering services to the general public; theaters; museums; and libraries.

3. "Main entrance or exit" means that area or areas which are designated to be used by the general public as the point of ingress or egress. It shall not include those areas not intended to be accessible by the general public.

4. "Outdoor seating area" means any area associated with a restaurant or bar available to or customarily used by its patrons that is designed, established, or regularly used for consuming food or drink.

5. "Person" means any individual person, firm, partnership, association, corporation, company, organization, or legal entity of any kind.

6. "Restaurant" means any coffee shop, cafeteria, sandwich stand, soda fountain, private or public school cafeteria, and any other eating establishment, organization, club, boarding house, or guest house, which gives or offers food for sale to the public, guests, patrons, or employees, except that the term "restaurant" shall not include cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in Section 7-152(1) of this Division.

7. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible organic or chemical substance, the smoke from which is specifically designed or intended to be inhaled or drawn into the nose or mouth.

SEC. 7-153. PROHIBITION:

Smoking shall be prohibited within twenty (20) feet of all main entrances, exits, or operable windows to any building that is open to the public where smoking is prohibited, except while passing on the way to another destination. Ashtrays are not required. However, if present, ashtrays or any receptacle used to dispose of burning tobacco products shall be located twenty (20) feet or the furthest reasonable distance from the main entrance, exit, or operable windows so as to minimize the chance of smoke entering through the main entrance, exit, or operable windows of a building open to the public.

EXCEPTION FOR RESTAURANTS AND BARS: Restaurants may allow smoking in an outdoor seating area, provided that the smoking area is located the furthest reasonable distance from the main entrance, exit, or operable windows so as to minimize the chance of smoke entering the restaurant. One-hundred percent (100%) of the outdoor seating areas of bars may allow smoking, provided that reasonable efforts are made to minimize the chance of smoke entering the bar.

SEC. 7-154. POSTING OF SIGNS:

"No Smoking Within Twenty (20) Feet" signs with letters of not less than one-half inch (1/2") 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) combined with the words "Within Twenty (20) Feet" shall be clearly, sufficiently, and conspicuously posted at all main entrances and exits of buildings open to the public where smoking is prohibited.

SEC. 7-155. 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 Division to permit smoking that is in violation of this Division. A violation of this Division shall constitute a misdemeanor. Notwithstanding the foregoing, a violation of this Division is an infraction when the prosecutor files a complaint charging the offense as an infraction.

B. No person who owns, manages, operates, or otherwise controls the use of any premises will be deemed to be in violation of the requirements of this section with respect to persons smoking in such areas over whom they have no right of direction and control if they have taken the following reasonable steps to prevent smoking by such persons:

- 1) Posted clear and prominent "No Smoking Within Twenty (20) Feet" signs at all main entrances and exits.
- 2) Requested, when appropriate, that such person refrain from smoking within twenty (20) feet of the main entrance or exit, and requested that such person leave the premises if they fail to comply with the requirements of this Division. There is no requirement for subsection (2) if the person requesting fears for his/her safety in making the request.

SEC. 7-156. OTHER APPLICABLE LAWS:

This Division 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 this Division to regulate smoking where such regulation has been preempted by the State of California.

SEC. 7-157. SEVERABILITY:

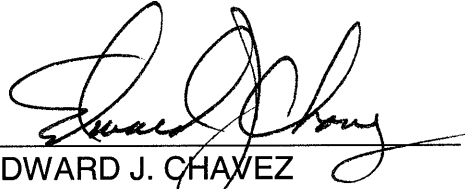
If any provision, clause, sentence, or paragraph of this Division or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Division, which can be given effect without the invalid provision or application, and to this end, the provisions of this Division are declared to be severable.

SECTION III. EFFECTIVE DATE.

This ordinance shall take effect and be in full force thirty (30) days after its passage.

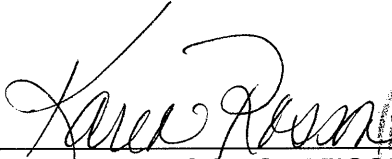
ADOPTED: **AUG 16 2005**

EFFECTIVE:



EDWARD J. CHAVEZ
Mayor of the City of Stockton

ATTEST:



KATHERINE GONG MEISSNER
City Clerk of the City of Stockton



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