

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FRESNO,  
CALIFORNIA, AMENDING SECTIONS 10-1103 AND  
10-1105 OF THE FRESNO MUNICIPAL CODE RELATING  
TO SMOKING POLLUTION CONTROL

WHEREAS, the City adopted the Smoking Pollution Control Ordinance by Ordinance 87-152; and

WHEREAS, on May 4, 2016, the Governor signed into law Senate Bill No. 5, which amended Section 22950.5 of the California Business and Professions Code to broaden the definitions of "smoking" and "tobacco product" to include use of electronic cigarettes; and

WHEREAS, the state Legislature has declared state smoking regulations provide baseline regulations, because "nonsmokers have no adequate means to protect themselves from the damage inflicted upon them when they involuntarily inhale tobacco smoke," and "regulation of smoking in public places is necessary to protect the health, safety, welfare, comfort, and environment of nonsmokers" (Cal. Health and Safety Code 118920); and

WHEREAS, the City's Smoking Pollution Control Ordinance does not currently define "smoking" to include electronic cigarettes and does not define "tobacco product"; and

WHEREAS, the Smoking Pollution Control Ordinance includes findings that health hazards induced by breathing second-hand smoke include lung cancer,

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: ABF

Ordinance No.

respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm; and

WHEREAS, frontage areas of Fresno Yosemite International Airport (FAT) and Fresno Chandler Executive Airport (FCH) are public places used by customers and employees, at which the public is exposed to second-hand smoke when tobacco use is permitted in the frontage areas; and

WHEREAS, the City now desires to amend the Smoking Pollution Control Ordinance to comport with state definitions of "smoking" and "tobacco product" and declare the frontage areas of FAT and FCH public places at which smoking is prohibited.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 10-1103 of the Fresno Municipal Code is amended to read:

SECTION 10-1103. DEFINITIONS. The following words and phrases, whenever used in this article, shall be construed as defined in this section:

(a) "Bar" means an area or a room utilized primarily for the sale of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is incidental to the consumption of such beverages. If a restaurant operates a bar adjacent to a dining area, the term "bar" shall not include the dining area.

(b) "Dining area" or "dining room" means any enclosed area containing a counter or tables upon which meals are served.

(c) "Employee" means any individual who is employed by any employer for the consideration of direct or indirect monetary wages or

profit and any individual who volunteers his or her services for a nonprofit entity.

(d) "Employer" means any person who or which employs the service of five or more persons, and includes the city.

(e) "Enclosed area" means an area closed in by a roof and four or more connected walls with appropriate openings for ingress and egress.

(f) "Place of employment" means any enclosed area under the control of an employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, cafeterias and hallways. "Place of employment" shall not include any business establishment where four or fewer persons are employed.

(g) "Public Place" is an enclosed area to which the public is invited or has general access, including retail stores, theaters, lobbies, reception areas, waiting rooms, and entertainment centers.

(h) "Restaurant" means any coffee shop, cafeteria, tavern, sandwich stand, soda fountain, private or public cafeteria, and any other eating establishment, organization, club, boarding house, food mall or guest house, which offers food for sale to the public, guests, patrons or employees.

(i) "Retail tobacco store" means a retail store, or separate room within a retail store, utilized primarily for the sale of tobacco products and

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

(j) "Semi-private room" means a room in a public or private health care facility containing two or more beds for patients of the facility.

(k) "Service line" means any line or gathering in a public place of one or more persons lined up or gathered to wait for and receive, in the order of the line or the gathering, service or assistance of any kind.

~~(l) "Smoking" means inhaling, exhaling, burning, holding, controlling or carrying any lighted pipe, cigar, cigarette, weed or other combustible substance.~~ ["Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.]

[(m)(1) "Tobacco product" means any of the following:

(a) A 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, or snuff;

(b) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah; or

(c) Any component, part, or accessory of a tobacco product, whether or not sold separately.

(2) "Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.]

SECTION 2. Section 10-1105 of the Fresno Municipal Code is amended to read:

**SECTION 10-1105. PROHIBITION OF SMOKING IN PUBLIC PLACES.**

Except where specifically permitted pursuant to Sections 10-1106 and 10-1108, or specifically not regulated pursuant to Section 10-1107, smoking is prohibited in all public places, including but not limited to the following:

(a) Places of business where five or more persons are employed and where goods are sold, including retail stores, grocery stores and supermarkets, and department stores;

(b) Restaurants;

(c) Places of business where five or more persons are employed and where services are sold, including legal, medical, dental, accounting, engineering, or architectural services;

- (d) Health care facilities;
- (e) Hotels, motels, boarding houses and guest houses;
- (f) Libraries, museums, aquariums, zoos;
- (g) Theaters, including theaters for the showing of moving pictures, stage productions, operas, ballet and musical performances;
- (h) Sports arenas, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys and arcades;
- (i) Convention halls;
- (j) Elevators;
- (k) Restrooms, lounges, lobbies, waiting areas and ticket areas;
- (l) Polling places;

[(m) Regardless of whether enclosed or not, the following areas of Fresno Yosemite International Airport (FAT) and Fresno Chandler Executive Airport (FCH) are “public places” for the purposes of this Article: all airline terminal roadway pedestrian cross walks, terminal frontage sidewalks, loading and unloading curb area, and areas surrounding all building entrances and exits, as well as all areas within the restricted access airside area. Other areas of FAT and FCH may be designated non-smoking in the interest of protecting health and property, at the Director of Aviation’s discretion.]

SECTION 3. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

\* \* \* \* \*

STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2016  
Mayor Approval/No Return: \_\_\_\_\_, 2016  
Mayor Veto: \_\_\_\_\_, 2016  
Council Override Vote: \_\_\_\_\_, 2016

YVONNE SPENCE, CMC  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

BY: \_\_\_\_\_  
Amanda B Freeman Date  
Deputy

ABF:cg,prn [68529cg/ord] 11-02-16