

Title 6

HEALTH AND SANITATION

6.16.010 Findings and Purpose.

A. The City Council does hereby find that:

1. Numerous scientific studies have found that tobacco smoke is a major contributor to indoor air pollution;
2. Reliable scientific studies, including studies by the Surgeon General of the United States and studies commissioned and assessed by the U.S. Environmental Protection Agency, have shown that breathing sidestream or secondhand smoke is a significant health hazard to nonsmokers; particularly to children and teens, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease;
3. Health hazards induced by exposure to environmental tobacco smoke include lung and other forms of cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, broncho-constriction and broncho-spasm, and that the most common cause of premature death from environmental tobacco smoke is heart disease;
4. Reliable scientific studies assessed by the U.S. Environmental Protection Agency have found that sidestream and secondhand tobacco smoke causes the death of at least fifty-three thousand non-smokers annually and is a leading cause of premature death and disability among non-smokers;
5. Non-smokers with allergies, respiratory diseases and those who suffer other ill effects of breathing sidestream or secondhand tobacco smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same;
6. Persons, particularly employees, have a right to a smoke-free environment if they desire;
7. Tobacco smoking is a leading cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic losses to businesses;
8. Substantial scientific evidence exists that the direct use of tobacco products causes cancer, heart disease, and various other medical diseases. The Surgeon General of the U.S. has found that tobacco-caused diseases are the leading cause of premature, preventable death and disability in the U.S.;
9. The National Centers for Disease Control have found that at least four hundred thirty-four thousand Americans die each year from tobacco-caused diseases. The Surgeon General of the U.S. and the U.S. Department of Health and Human Services have found that a majority of those Americans who die of tobacco-caused diseases became addicted to nicotine in tobacco products as adolescents before the age of legal consent;

10. The National Institute on Drug Abuse has concluded that the nicotine in tobacco products is a powerful addictive drug and identifies nicotine addiction as the most widespread example of drug dependence in the U.S.;

11. The Surgeon General of the U.S. has found that nicotine in tobacco products is as addictive as cocaine and heroin;

12. The National Institute on Drug Abuse has found that tobacco use by adolescents precedes and is predictive of adolescent illicit drug use;

13. Recent scientific studies published in the Journal of the American Medical Association found that tobacco companies target children and teens with cigarette advertising and promotion, and that this advertising and promotion encourages young people to smoke cigarettes;

14. California Penal Code Section 308 prohibits selling, giving or furnishing tobacco products to minors, and prohibits minors from buying, receiving or using falsified identification to purchase tobacco products. However, the present legislative scheme of prohibiting tobacco sales to minors has proven ineffective in preventing minors from buying and obtaining tobacco products;

15. The Surgeon General, the U.S. Department of Health and Human Services, and local public health agencies and private health organizations have found that cigarettes and other tobacco products are easily available to minors from tobacco retailers, shoplifting and cigarette vending machines. Therefore, strong legislative action and enforcement are necessary to curtail the wide availability of tobacco products to minors;

16. Easy access by minors to tobacco products from open self-service promotional displays and open store shelves promotes tobacco sales to minors and shoplifting of tobacco products. Therefore, prohibiting self-service sales of tobacco products will promote the health, safety and welfare of residents of City of Larkspur under eighteen years of age;

17. Minors have easy access to cigarette vending machines and that the prohibition of the sale or dispersing of cigarettes through vending machines will thereby promote the health, safety and welfare of the residents of the City of Larkspur under the age of eighteen years of age.

B. Accordingly, the City Council finds and declares that the purposes of this chapter are:

1. To protect public health, safety and general welfare by prohibiting tobacco smoking in public places and places of employment;

2. To guarantee the right of nonsmokers to breathe tobacco smoke-free air, and to recognize that the need to breathe tobacco smoke-free air has priority over the desire to smoke;

3. To reduce youth access to tobacco products, especially to prevent illegal sales of tobacco to minors.

C. The City Council further finds it is within its basic police power to implement and enforce the provisions of this chapter. (Ord. 884 § 1 (part), 1997; Ord. 847 § 1 (part), 1993; Ord. 831 § 1 (part), 1992)

6.16.020 Definitions.

A. The following words and phrases, whenever used in this article, shall be construed as defined in this section:

1. "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which 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. A "bar" for the purpose of this definition does not include any bar where smoke can filter into a restaurant through a passageway, ventilation system, or any other means.

2. "Business" means any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes, including 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 delivered.

3. "City" shall mean the City of Larkspur.

4. "Cocktail lounge" means a bar within a restaurant which is not the sole means of public access to the dining areas, is not the sole waiting area for dining patrons, prohibits minors, has a separate ventilation system, and is enclosed.

5. "Customer-assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.

6. "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 nonprofit entity.

7. "Employer" means any person, partnership, corporation, including a municipal corporation, or nonprofit entity, who employs the services of one or more individual persons.

8. "Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by portions which do not extend to the ceiling or are not solid, such as "office landscaping" or similar structures.

9. "Minor" means any individual who is less than eighteen years old.

10. "Nonprofit entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a "nonprofit entity" within the meaning of this section.

11. "Person" means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

12. "Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care or health care facility.

13. "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, health facilities, shopping malls, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, hotels and motels, theaters and waiting rooms. A private residence is not a "public place".

14. "Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

15. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

16. "Self-service merchandising" means open display of tobacco products and point-of-sale tobacco promotional products to which the public has access without the intervention of an employee.

17. "Separate ventilation system" means a system which is exhausted to the outside and negatively pressurized.

18. "Service line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

19. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.

20. "Sports arena" means enclosed or unenclosed sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

21. "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.

22. "Tobacco vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a tobacco product. (Ord. 884 § 1 (part), 1997; Ord. 847 § 1 (part), 1993; Ord. 831 § 1 (part), 1992)

6.16.030 Application to City-Owned Vehicles and Facilities.

All City-owned vehicles, including jitneys and buses and other means of public transit under the authority of the City, and all enclosed facilities owned and controlled by the City, including jails, and any board, council, commission and agency of the City shall be subject to the provisions of this chapter. (Ord. 884 § 1 (part), 1997; Ord. 847 § 1 (part), 1993; Ord. 831 § 1 (part), 1992)

6.16.040 Prohibition of Smoking in Public Places.

A. Except as otherwise provided, smoking shall be prohibited in all enclosed public places, within the City of Larkspur, including, but not limited to, the following places:

1. Elevators.
2. Buses, taxicabs, and other means of public transit under the authority of the City of Larkspur, and ticket, boarding, and waiting areas of public transit depots.
3. Restrooms.
4. Service lines.
5. Retail stores.
6. All areas available to and customarily used by the general public in all business and nonprofit entities patronized by the public, including but not limited to offices (such as attorneys, doctors, and other professionals), banks, laundromats, malls, hotels and motels.
7. Restaurants, provided:
 - (a) Cocktail lounge areas in restaurants that sell alcoholic beverages shall be exempted. Within one year after adoption of this section, such areas must meet the standards of "cocktail lounge" as defined herein.
 - (b) Children under the age of eighteen are not allowed in the lounge unless for the purpose of using restrooms and only for the purpose of using restrooms.
 - (c) All other indoor dining areas shall be smoke-free.
8. Public areas of aquariums, galleries, libraries and museums when open to the public.
9. Any facility which is primarily used for exhibiting motion pictures, stage productions, lectures, musical recitals or other similar performances, except when smoking is part of such production.
10. Sports arenas and convention halls.
11. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee including joint committees, or agencies of the City or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.
12. Waiting rooms, hallways, wards and rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy, mental health, and drug and alcohol treatment facilities, doctors' and dentists' offices.
13. Lobbies, hallways, and other common areas in apartment buildings, condominiums, senior citizen residences, nursing homes, and other multiple-unit residential facilities.
14. Lobbies, hallways, and other common areas in multiple-unit commercial facilities.
15. Polling places.

B. Cocktail lounges may apply, after their one year exemption from compliance with the section has expired, for a temporary exemption for a specific time period upon a showing of undue hardship. Such applications will be reviewed by the City Manager or his designee. The City Manager's decision regarding these exemptions may be appealed to the City Council pursuant to provisions of Chapter [2.50](#) of the Larkspur Municipal Code.

C. Smoking shall be prohibited in outdoor areas immediately adjacent to any entrance or exit of any building within which smoking is prohibited. For purposes of this section, entrance or exit shall mean an opening into a building from a contiguous street, sidewalk, walkway or parking area.

D. Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment. (Ord. 884 § 1 (part), 1997; Ord. 847 § 1 (part), 1993; Ord. 831 § 1 (part), 1992)

6.16.050 Regulation of Smoking in Places of Employment.

A. No person shall smoke in an enclosed place of employment.

B. Within ninety days of the effective date of this chapter, each employer having an enclosed place of employment located within the City shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles and all other enclosed facilities.

C. The smoking policy shall be communicated to all employees within three weeks of its adoption, and at least annually thereafter.

D. All employers shall comply with these non-smoking provisions and shall be responsible for their implementation in their places of employment.

E. "No Smoking" signs shall be conspicuously posted at building entrances and in employee lounges, cafeterias and lunchrooms.

F. All employers shall supply a written copy of the smoking policy to any existing or prospective employee.

G. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager or other person having control of such area. (Ord. 884 § 1 (part), 1997; Ord. 847 § 1 (part), 1993; Ord. 831 § 1 (part), 1992)

6.16.060 Smoking Optional Areas.

A. Notwithstanding any other provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

1. Private residences, except when used as a child care or health care facility.
2. Retail tobacco stores.
3. A maximum of fifty percent of hotel/motel rooms.

4. Hotel and motel conference or meeting rooms and public and private assembly rooms, which are equipped with a ventilation system which conducts air to the outside, while these places are being used for private functions. However, fifty percent of these areas will be designated nonsmoking.

5. Closed banquet, conference or meeting rooms of hotels/motels and lodges except that a no-smoking area must be provided for nonsmokers.

6. Bars as defined in Section 6.16.020A, 1, except for cocktail lounges as provided in Section 6.16.040A, 7(a).

7. An enclosed place of employment which employs only the owner and no other employee, provided that: (a) The place of employment is not a public place, and (b) The enclosed area containing the place of employment does not share a ventilation system with any other enclosed place of employment or public place.

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 establishment as a nonsmoking establishment. (Ord. 884 § 1 (part), 1997; Ord. 847 § 1 (part), 1993; Ord. 831 § 1 (part), 1992)

6.16.070 Posting of Signs.

A. "No-Smoking" signs 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) shall be clearly, sufficiently and conspicuously posted in every building, as well as on entrances at eye level, 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 place.

B. Every restaurant and mall shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. (Ord. 884 § 1 (part), 1997; Ord. 847 § 1 (part), 1993; Ord. 831 § 1 (part), 1992)

6.16.080 Regulating the Sale of Tobacco Products to Protect Minors.

A. Any person, business, tobacco retailer or other establishment subject to this chapter shall post plainly visible signs at the point of purchase of tobacco products which state:

"THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW".

The letters of said signs should be at least one-quarter inch high.

B. No person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this chapter shall sell, offer to sell or permit to be sold any tobacco product to an individual without requesting and examining identification establishing the purchaser's age as eighteen years or greater unless the seller has some conclusive basis for determining the buyer's age.

C. It shall be unlawful for any person, business, or tobacco retailer to sell, permit to be sold, offer for sale or display for sale any tobacco product by means of self-service merchandising.

D. It shall be unlawful for any person, business, or tobacco retailer to sell, permit to be sold, or offer for sale any tobacco product by means other than customer-assisted sales.

E. No person, business, or tobacco retailer shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises any vending machine for the purpose of selling or distributing any tobacco product. Any tobacco vending machine in use on the effective date of this chapter shall be removed within thirty days after the effective date of this chapter. (Ord. 884 § 1 (part), 1997; Ord. 847 § 1 (part), 1993; Ord. 831 § 1 (part), 1992)

6.16.090 Enforcement.

A. Notice of these regulations shall be given to all applicants for a business license.

B. Enforcement of this chapter shall be implemented by the City Manager or his/her designee.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the City Manager or his/her designee.

D. The Fire Department or the Health Department shall require, while an establishment is undergoing otherwise mandated inspections, certification from the owner, manager, operator or other person having control of such establishment that all requirements of this chapter have been complied with.

E. County Health Inspectors, on their regular restaurant inspections, shall check for compliance with sign posting requirements. Restaurants shall be notified in writing of any violations on the standard health inspection report. Further, such violations shall be reported in writing by the County Health Department, on a quarterly basis, to the administrative authority in the jurisdiction where such violations occur.

F. Notwithstanding any other provision of this chapter, a private citizen may bring legal action to enforce this chapter.

G. Enforcement for this chapter shall include those sections of California Labor Code 6404.5 which pertain to local places of employment, designating cities as enforcement agencies for both local ordinances and state Code. (Ord. 884 § 1 (part), 1997; Ord. 847 § 1 (part), 1993; Ord. 831 § 1 (part), 1992)

6.16.100 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 Section [6.16.040](#) of 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 under Section [6.16.040](#) by the provisions of this chapter.

C. Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to Section [6.16.080](#) of this chapter shall have the following responsibilities:

1. To post plainly visible signs at point of purchase stating that sale of tobacco products to minors is prohibited by law;

2. To request identification from any person buying tobacco products which shows the purchaser is of legal age unless the seller has some conclusive reason for determining that;

3. To prohibit any cigarette sales from a vending machine in said establishment; and

4. To eliminate self-service merchandising of tobacco products.

D. Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this chapter who violates any provision of this chapter shall be deemed guilty of an infraction, punishable by:

1. A fine, not exceeding one hundred dollars and/or five days of community service, for the first violation.

2. A fine, not exceeding two hundred dollars and/or ten days of community service, for a second violation of this chapter within one year.

3. A fine not exceeding five hundred dollars and/or fifteen days of community service, for a third violation of this chapter within one year. (Ord. 884 § 1 (part), 1997; Ord. 847 § 1 (part), 1993; Ord. 831 § 1 (part), 1992)

6.16.110 Nonretaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to a smokefree environment afforded by this chapter. (Ord. 884 § 1 (part), 1997; Ord. 847 § 1 (part), 1993; Ord. 831 § 1 (part), 1992)

6.16.120 Public Education.

The City Manager shall engage in a continuing program to explain and clarify the purposes and requirements of this chapter to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such program may include publication of a brochure for affected business and individuals explaining the provisions of this chapter. (Ord. 884 § 1 (part), 1997; Ord. 847 § 1 (part), 1993; Ord. 831 § 1 (part), 1992)

6.16.130 Governmental Agency Cooperation.

The City Manager shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this chapter. This includes urging all federal, state, county and school district agencies to update their existing smoking control regulations to be consistent with current health findings regarding environmental tobacco smoke. (Ord. 884 § 1 (part), 1997; Ord. 847 § 1 (part), 1993; Ord. 831 § 1 (part), 1992)

6.16.140 Other Applicable Laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Ord. 884 § 1 (part), 1997; Ord. 847 § 1 (part), 1993; Ord. 831 § 1 (part), 1992)