

ORDINANCE NO. 3717

AN ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK
AMENDING ARTICLE 7 OF CHAPTER 17 OF THE BURBANK
MUNICIPAL CODE TO CONTROL EXPOSURE TO SECONDHAND
SMOKE BY PROHIBITING SMOKING AT CERTAIN LOCATIONS
THROUGHOUT THE CITY.

City Attorney's Synopsis

This Ordinance controls exposure of non-smokers to secondhand smoke in places where they would otherwise typically be exposed to secondhand smoke by prohibiting smoking at certain locations throughout the City of Burbank. Except for within designated smoking areas, this Ordinance generally prohibits smoking at all City facilities and parks; sidewalks, paseos and pedestrian paths in Downtown Burbank; the Chandler Bikeway; outdoor dining areas; outdoor service areas; City transit vehicles and stations; outdoor gathering and event areas; outdoor shopping areas and centers; elevators; within 20 feet of entrances, exits and other openings of buildings while open to the general public; and enclosed common areas in residential developments. Every business or property subject to this Ordinance shall post required signs within 30 days of the Ordinance effective date.

THE COUNCIL OF THE CITY OF BURBANK FINDS:

A. Secondhand smoke, also known as Environmental Tobacco Smoke or ETS, is a complex mixture of thousands of gases and fine particles that is emitted from the burning and use of tobacco products such as cigarettes, cigars, and pipes. Exposure by non-smokers to secondhand smoke is sometimes referred to as "passive smoking" or "involuntary smoking" because non-smokers generally do not want to inhale secondhand smoke.

B. Secondhand smoke contains over 4,000 gases and fine particles. Many of these substances have been individually identified as toxic air pollutants and/or have known adverse health effects; more than 50 have been identified as carcinogens.

C. In 1993, the United States Environmental Protection Agency (EPA) classified secondhand smoke as a Group A carcinogen, meaning that there is sufficient evidence that secondhand smoke causes cancer in humans. The EPA concluded that secondhand smoke causes lung cancer in adult non-smokers and affects the respiratory health of children.

D. In 2000, the National Toxicology Program of the National Institutes of Health added secondhand smoke to the list of "known human carcinogens," meaning that there is sufficient evidence of carcinogenicity from studies in humans to indicate a causal relationship between exposure to secondhand smoke and human cancer.

E. In January 2006, the California Air Resources Board identified secondhand smoke as a toxic air contaminant pursuant to the California Health and Safety Code, meaning that secondhand smoke is identified as "an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health."

C: M. Forbes – Planning, J. Wilson – Publish, I. Cabil – Code

F. In June 2006, secondhand smoke was added to the list of Chemicals Known to the State of California to Cause Reproductive Toxicity pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

G. While studies of secondhand smoke have traditionally focused on smoke in indoor environments, recent studies have shown that secondhand smoke levels in outdoor environments are, under certain circumstances, comparable to indoor levels:

- A 2005 report by the California Environmental Protection Agency found that at certain outdoor locations, people may be exposed to secondhand smoke levels generally associated with indoor concentrations, depending upon the number of smokers, position of smokers in relation to non-smokers, and meteorological conditions.
- A 2004 pilot study by researchers at Stanford University found that average concentrations of secondhand smoke in outdoor areas including patios, parks, and public sidewalks can be the same as average concentrations in indoor areas under certain circumstances, depending upon the distance from the smoke source and wind factors.
- A 2005 report on experiments conducted to measure outdoor secondhand smoke concentrations on a college campus in Maryland found that outdoor concentrations of secondhand smoke could be unhealthy and could be sufficient to trigger an asthma attack in sensitive individuals. The report concluded that the results of the experiments “dispel the common misconception that smoking outdoors can be ignored because smoke plumes immediately dissipate into the environment.”

H. The California Environmental Protection Agency has concluded that there is not sufficient available scientific evidence to support the identification of a threshold exposure level to secondhand smoke below which no adverse health effects would be expected. The United States Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke.

I. The aesthetic impacts and odors of secondhand smoke pose a nuisance and annoyance to non-smokers when in close proximity to people who are smoking.

J. Cigarette and cigar butts and used matches dropped onto the ground in public spaces degrade the aesthetic quality of those spaces.

K. The City of Burbank is committed to keeping its public spaces safe, healthy, and pleasant for everyone.

L. Smoking in City facilities and parks; pedestrian areas of Downtown Burbank; the Chandler Bikeway; outdoor dining areas; outdoor service areas; public transit vehicles, stations, and stops; outdoor gathering and event areas, outdoor shopping areas and centers; elevators; indoor and outdoor common areas of multiple family residential projects; and in proximity to entrances, windows, and vents of buildings open to the public endangers the health of non-smokers who are in the same area.

M. Prohibiting smoking in City facilities and parks; pedestrian areas of Downtown Burbank; the Chandler Bikeway; outdoor dining areas; outdoor service areas; public transit vehicles, stations, and stops; outdoor gathering and event areas, outdoor shopping areas and centers; elevators; indoor and outdoor common areas of multiple family residential projects; and in proximity to entrances, windows, and vents of buildings open to the public is necessary to protect the public health, safety, and welfare of Burbank residents, workers, and visitors.

N. The City Council finds the smoking regulations are exempt from review under the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because there is no possibility that the proposed regulations, which merely prohibits smoking in certain areas throughout the City to control exposure of non-smokers to secondhand smoke in places where they would otherwise typically be exposed to secondhand smoke, may have a significant adverse effect upon the environment. The City Council further finds the proposed ordinance is not considered a “project” under CEQA per Section 15378 and is also exempt under Section 15060(c)(2) of the State CEQA Guidelines because the ordinance is not an activity that would result in a direct or reasonably foreseeable indirect physical change in the environment. The proposed ordinance would prohibit the act of smoking in certain locations and would not cause or require any physical environmental changes. The proposed ordinance would reduce exposure of non-smokers to secondhand smoke.

THE COUNCIL OF THE CITY OF BURBANK ORDAINS:

1. Article 7 of Chapter 17 of the Burbank Municipal Code and Sections 17-701 through 17-707 are hereby amended in their entirety to read as follows:

ARTICLE 7. SECONDHAND SMOKE CONTROL.

Sec. 17-701. Intent and Purpose.

This Article controls exposure to secondhand smoke by prohibiting smoking at certain locations. Exposure to secondhand smoke has been proven to cause adverse health effects including but not limited to cancer, cardiovascular disease, respiratory infections, asthma, and ear and nasal problems. The intent and purpose of prohibiting smoking at the identified locations is to protect the public health, safety, and welfare by reducing the number of locations in Burbank where exposure to secondhand smoke can occur.

Sec. 17-702. Definitions.

The following words and phrases have the meanings stated for the purposes of this Article:

“Enclosed” means a predominantly indoor area covered with a fixed structural roof and generally closed off from the outside.

“Non-enclosed” means a predominantly outdoor area that does not meet the definition of “enclosed,” including but not limited to patios, outdoor dining areas, and outdoor service areas.

“Smoking” means the burning, carrying, or holding of any lighted cigar, cigarette, pipe, weed, plant, or other equipment or combustible substance that is intended to be inhaled and/or exhaled. Smoking includes emitting or exhaling the fumes from any equipment or substance listed herein. Without limiting the foregoing, this definition is not intended to include the burning of incense, candles, and other similar materials.

Sec. 17-703. Locations Where Smoking is Prohibited.

A. **City facilities and parks.** Smoking is prohibited in all enclosed and non-enclosed areas of any facility owned, leased, or operated by the City of Burbank and accessible to the general public as determined by the property lines of such facility, except for 1) within smoking areas designated pursuant to Section 17-705; 2) certain areas of the DeBell Golf Course as

provided in Subsection 3; and 3) public transit facilities, which are addressed separately in Subsection F.

1. Such facilities include but are not limited to City Hall, City offices, parks, recreation facilities, playgrounds, senior centers, meeting or conference facilities, libraries, theaters and amphitheaters, child care facilities, recycling centers, and joint-use facilities owned by the Burbank Unified School District but open to the general public for recreation purposes.
2. Such facilities also include City facilities that are not typically accessible to the general public during such time that they may be accessed by the public, for example during an open house or other community event at a City yard or utility facility.
3. Smoking is not prohibited at the DeBell Golf Course 18-hole course or nine-hole "Par 3" course. However, smoking is prohibited at the DeBell Golf Course driving range, in dining areas and service areas at DeBell Golf Course as provided in Subsections D and E, and within 20 feet of any building opening as provided in Subsection J.

Smoking is further prohibited on all sidewalks and public rights-of-way within 20 feet of the property lines of any City facility identified in this Subsection A.

B. Downtown Burbank. Smoking is prohibited on all non-enclosed sidewalks, paseos, and other pedestrian areas in Downtown Burbank accessible to the general public, except within smoking areas designated pursuant to Section 17-705.

1. For the purposes of this Section, Downtown Burbank means the area bounded by Angeleno Avenue, Third Street, Magnolia Boulevard, and First Street; and the area commonly known as the Burbank Town Center and bounded by Magnolia Boulevard, Third Street, Burbank Boulevard, and the Golden State Freeway.
2. This prohibition applies to the sidewalks along public and private streets within and around the perimeter of the area defined in Subsection 1, pedestrian alleys, pedestrian paseos and plazas including but not limited to the paseo along the former Palm Avenue between First Street and San Fernando Boulevard, walkways providing access from parking lots and structures to stores or sidewalks, and all other pedestrian paths or areas that are accessible to the general public.

Smoking is further prohibited in all non-enclosed areas within five (5) feet of any pedestrian path or area identified in this Subsection B.

C. Chandler Bikeway. Smoking is prohibited on the Chandler Bikeway. For the purposes of this Section, the Chandler Bikeway means the entire area between the curbs of the median of Chandler Boulevard between Mariposa Street and the City boundary with the City of Los Angeles, including the paved bicycle and pedestrian paths and landscaped areas. Smoking is further prohibited on all sidewalks and public rights-of-way within 20 feet of the Chandler Bikeway.

D. Outdoor dining areas. Smoking is prohibited in all outdoor dining areas open to the public except within smoking areas designated pursuant to Section 17-705. For the purposes of this Section, outdoor dining area means any non-enclosed area open to the public in a non-residential zone or adjacent right-of-way, or in a residential zone or adjacent right-of-way and utilized for non-residential purposes, where food or beverages are served, whether or not for

compensation, or where food or beverages are routinely consumed by customers. This includes but is not limited to restaurant and bar standing and seating areas and patios. Smoking is further prohibited in all non-enclosed areas within five (5) feet of any outdoor dining area.

E. **Outdoor service areas.** Smoking is prohibited in outdoor service areas. For the purposes of this Section, outdoor service area means any non-enclosed area where one or more persons wait for or receive goods or services of any kind, whether or not such service involves the exchange of money. This includes but is not limited to lines or waiting areas for ATM machines, information kiosks, banks, restaurants and other food service, tickets, and admission to a theater or event; waiting areas at car washes and vehicle service establishments; and valet parking pick-up areas. Smoking is further prohibited in all non-enclosed areas within 20 feet of any outdoor service area.

F. **City transit vehicles and stations.** Smoking is prohibited in all city transit vehicles and at all city transit stations, except within smoking areas designated pursuant to Section 17-705.

1. For the purposes of this Section, city transit vehicles include all buses, shuttles, and similar transit vehicles owned or operated by the City of Burbank or its contractors on behalf of the City.

2. For the purposes of this Section, city transit stations means all City-owned enclosed and non-enclosed multi-modal platforms, sidewalks, shelters, benches, and areas where people wait for trains, buses, taxis, or other public transit, and ancillary areas such as restrooms, vending machine or kiosk areas, bicycle parking areas, and pedestrian paths and walkways. This includes but may not be limited to the facility commonly known as the Downtown Burbank Station on Front Street, but does not include individual bus stops generally located in public rights-of-way.

Smoking is further prohibited in all non-enclosed areas within 20 feet of those areas identified in Subsection 2. Smoking is not prohibited in vehicle parking lots or structures that serve transit stations or stops, except within 20 feet of those areas identified in Subsection 2.

G. **Outdoor gathering and event areas.** Smoking is prohibited in any non-enclosed area accessible to the general public where people are gathered to witness or participate in an event except within smoking areas designated pursuant to Section 17-705. This prohibition applies from the time 60 minutes before the event begins to the time 60 minutes after the event ends.

1. For the purposes of this Section, such gathering and event areas include but are not limited to permanent or temporary grandstands, bleachers, other seating areas, standing areas, viewing areas, playing courts and fields, circulation areas, and ancillary areas such as lobbies, foyers, restrooms, and concession areas.

2. For the purposes of this Section, events include but are not limited to shows, movies, plays, lectures, exhibitions, demonstrations, concerts, competitions, sporting events, arts and crafts shows, fairs, pageants, and parades, whether or not an admission fee is required or other compensation is provided.

3. This is not intended to prohibit the smoking of non-tobacco-product “stage cigarettes” or similar materials in the form of cigars or pipes by performers.

Smoking is further prohibited in all non-enclosed areas within 20 feet of any outdoor gathering or event area.

H. **Outdoor shopping areas and centers.** Smoking is prohibited in any outdoor shopping area or outdoor shopping center except within smoking areas designated pursuant to Section 17-705.

1. For the purposes of this Section, outdoor shopping area means a non-enclosed area where goods or services are sold, including but not limited to a Farmers Market, swap meet, street fair, plant nursery, or outdoor retail product display area.
2. For the purposes of this Section, outdoor shopping center means the non-enclosed portions of a multi-tenant shopping center with retail, commercial service, and/or restaurant tenants, where the tenant entrances open to a non-enclosed common area. This includes pedestrian sidewalks, walkways, paseos, and other pedestrian circulation areas within the property boundaries of the shopping center that are commonly used and accessed by the patrons of the shopping center.

Smoking is further prohibited in all non-enclosed areas within 20 feet of any outdoor shopping area or outdoor shopping center. Smoking is not prohibited in vehicle parking lots or structures that serve outdoor shopping areas or centers, or on public sidewalks adjacent to outdoor shopping areas or centers, except within 20 feet of those areas where smoking is prohibited.

I. **Elevators.** Smoking is prohibited in any elevator, whether or not accessible to the general public.

J. **Proximity to buildings.** Smoking is prohibited within 20 feet of any entrance or exit, open window (including drive-through, drive-up, and walk-up service windows), air intake, or other opening of a building or other enclosed space that is open to, and while open to the general public. This includes but is not limited to offices, stores, banks, museums, and theaters. This prohibition does not apply to outdoor dining areas as defined in Subsection D.

K. **Designated non-smoking areas.** Smoking is prohibited in any area where the person or entity that either owns or exercises management and control over the property has declared the area, where smoking would otherwise be allowed, to be a non-smoking area.

L. **Common residential areas.** Smoking is prohibited in all enclosed common areas and within five (5) feet of entrances, exits, walkways and hallways in residential development projects including apartments, condominiums, retirement homes, nursing homes, assisted living facilities, and residential portions of mixed-use projects except within smoking areas designated pursuant to Section 17-705. Common areas are those areas that are accessible to all residents living in the development, including but not limited to hallways, stairways, elevators, lobbies, laundry rooms, trash rooms, recreation rooms and gyms. Common area does not include swimming pools, decks, patios, yard areas, play areas, driveways, parking lots and garages, or private balconies or patios that are not generally accessible to other residents.

Sec. 17-704. Locations Where Smoking is Permitted.

Smoking is permitted in the locations provided in this Section, even when smoking would otherwise be prohibited per Section 17-703.

- A. **Private residences.** Smoking is permitted inside attached and detached private residences and in any private non-enclosed area that is not accessible to other residents, including private balconies and patios and non-common yard areas, except when a residence is being used for child care or as a health care facility subject to applicable licensing requirements. This does not preclude a person or entity that owns or controls private residential property, including but not limited to a condominium association or an apartment complex owner, from prohibiting smoking within private residences under its control.
- B. **Private vehicles.** Smoking is permitted inside a private vehicle.
- C. **Designated smoking areas.** Smoking is permitted in any smoking area designated pursuant to Section 17-705.

Sec. 17-705. Designated Smoking Areas.

- A. **Designation.** The owner or operator with control over any privately owned property (i.e., Owner), or the City Manager or his or her designee for public rights-of-way or property owned by or under the control of the City, may designate an area where smoking is permitted in a location where smoking would otherwise be prohibited under Subsections A, B, D, F, G, H, or L of Section 17-703. Except as provided under “Criteria” below, a designated smoking area may be established without approval from the City of Burbank. However, the City Manager or his or her designee may require that any designated smoking area be modified or removed if, in the sole and absolute discretion of the City Manager or his or her designee, it does not satisfy the criteria of Subsection B.
- B. **Criteria.** A designated smoking area must satisfy all of the following criteria:
 - 1. The smoking area is as small as is practicable to accommodate the number of smokers that are expected to use the area. Notwithstanding this criteria, an Owner may not designate a smoking area that would be smaller than fifty (50) square feet, or with a dimension on any side less than five (5) feet.
 - 2. Designated smoking areas within outdoor dining areas shall not exceed forty percent (40%) of the total floor area utilized for outdoor dining. The Owner may apply to the City Manager, or his or her designee, for an administrative exception to increase the designated smoking area to greater than forty percent (40%). An administrative exception may be granted upon making the finding that the nature of the business in question is such that the number of smokers expected to patronize the business is greater than that of normal dining areas, such as tobacco or smoke shops or a bar.
 - 3. The smoking area is not located within any area where smoking is prohibited under Subsections C, E, I, or J of Section 17-703.
 - 4. The smoking area is not located within five (5) feet of any entrance or exit, or walkway to such entrance or exit, of any building or facility open to the public.
 - 5. Within outdoor dining areas, designated smoking areas must be separated from non-smoking areas with a physical barrier that prevents secondhand smoke from passing between the two areas. The physical barrier shall be the lesser of (a) at least seven (7) feet in height, or (b) extend to the ceiling or covering of the outdoor dining area. The Owner may use a ventilation system in place of a physical barrier, provided such

Owner demonstrates to the satisfaction of the City Manager, or his or her designee, that the proposed ventilation system will be at least as effective as a physical barrier in preventing secondhand smoke from passing between designated smoking areas and non-smoking areas.

6. The smoking area is posted with one or more conspicuously displayed signs that identify the area as a designated smoking area.

Sec. 17-706. Posting of Signs.

A. Time of Posting. Every business or property subject to this ordinance shall post the signs required by this Article within thirty (30) days of the Ordinance's effective date. Every business or property which becomes subject to the provisions of this Article after the effective date shall post the required signs immediately upon commencing operations.

B. Sign locations.

1. Every outdoor dining area, outdoor shopping area, and outdoor shopping center where smoking is prohibited per Subsections D and H of Section 17-703 must have one or more conspicuously displayed signs stating that smoking is prohibited in the area. Multiple signs must be provided as appropriate for larger areas to ensure that signs are readily visible to all users of the area.
2. Every entrance to a building or other enclosed space that is open to the general public must have at least one conspicuously displayed sign stating that smoking is prohibited within 20 feet of the entrance and other openings per Subsection J of Section 17-703.
3. The City Manager will cause the installation of conspicuously displayed signs indicating that smoking is prohibited at appropriate locations in all non-enclosed City facilities and City-owned transit facilities and at the entrance to all enclosed City facilities and City-owned transit facilities where smoking is prohibited per Subsections A and F of Section 17-703.
4. The City Manager will cause the installation of conspicuously displayed signs indicating that smoking is prohibited at appropriate locations along the Chandler Bikeway and on public sidewalks and other public pedestrian areas in Downtown Burbank per Subsections B and C of Section 17-703.
5. Signs required under this Section are exempt from the sign requirements in Article 10 of Chapter 31 of this Code.

C. Sign content and materials.

1. The signs required by Subsection A must have text and/or graphics to clearly indicate that smoking is prohibited in the area and include an appropriate Municipal Code citation.
2. Any text must be clearly contrasted with the background and must be a minimum of one inch tall. The text must state "No Smoking," "Smoke Free Area," or another phrase to clearly indicate that smoking is prohibited.

3. Any graphics must be substantially similar to 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.
4. All signs located in non-enclosed areas must be made of permanent, weather-resistant materials.

Sec. 17-707. Disposal of Smoking Waste.

No person shall dispose of any cigarette, cigar, tobacco, weed, plant, or other substance or product intended to be inhaled and/or exhaled in any place where smoking is prohibited under this Article except in a designated waste disposal container.

2. Section 17-708 is hereby added to Article 7 of Chapter 17 to read as follows:

Sec. 17-708. Enforcement, Violation, and Prosecution.

A. Enforcement. The Chief of Police or his or her designee shall be responsible for enforcing compliance with this Article.

B. Violation.

1. It shall be unlawful for any person, business, or entity to violate any provision of this Article or to cause, permit or allow, aid, abet, or conceal a violation of any provision of this Article.
2. It shall be unlawful for any person, business, or entity to knowingly permit or allow smoking in an area that it either owns or over which it exercises management or control in which smoking is prohibited by this Article.

C. Prosecution. Any violation of this Article shall be prosecuted pursuant to Section 1-105 of this Code.

D. Public nuisance. The City Council hereby declares that exposing other persons to secondhand smoke through a violation of this Article constitutes a public nuisance and may be remedied as such.

E. Nonexclusive remedies and penalties. Punishment under this Section does not preclude punishment pursuant to any other law pertaining to smoking or littering. Nothing in this Section precludes any person from seeking any other remedies, penalties, or procedures provided by law. The remedies provided in this Section are cumulative and in addition to any other remedies available at law or in equity.

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

3. The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

4. If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed the remainder of this Ordinance, if such invalid portion thereof

had been deleted.

5. The City Clerk shall certify to the passage of this Ordinance and cause the City Attorney Synopsis of this Ordinance to be published once in a newspaper of general circulation, published and circulated in the City of Burbank, California.

6. This Ordinance shall become effective at 12:01 a.m. of the thirty-first day after publication.

PASSED AND ADOPTED this 3rd day of April, 2007.

s/Todd Campbell
Todd Campbell
Mayor of the City of Burbank

Attest:

s/Margarita Campos
Margarita Campos, CMC, City Clerk

Approved as to Form and Legal Content
Dennis A. Barlow, City Attorney

By: s/Joseph H. McDougall
Joseph H. McDougall, Sr. Asst. City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Margarita Campos, CMC, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No. 3717 was duly and regularly passed and adopted by the Council of the City of Burbank at its regular meeting held on the 3rd day of April, 2007, by the following vote:

- AYES: Council Members Ramos, Vander Borgh and Campbell.
- NOES: Council Members Golonski and Gordon.
- ABSENT: Council Members None.

I further certify that said Synopsis was published as required by law in a newspaper of general circulation in the City of Burbank, California on the 11th day of April, 2007.

s/Margarita Campos
Margarita Campos, CMC, City Clerk