

ORDINANCE NO. 181065

An Ordinance amending Subsections A and B of Section 41.50 of the Los Angeles Municipal Code to prohibit smoking in outdoor dining areas.

WHEREAS, tobacco smoking was restricted to smoking rooms for much of American history; and

WHEREAS, smoking only moved into public places in the early twentieth century once the manufacture of cigarettes and safety matches made smoking anywhere possible and affordable; and

WHEREAS, cigarettes and safety matches led to a massive increase in tobacco use long before the dangers posed by smoking and secondhand smoke were well-established; and

WHEREAS, tobacco smoke is now the nation's leading cause of preventable death, causing more than 440,000 deaths every year; and

WHEREAS, exposure to secondhand smoke now causes an estimated 46,000 deaths from heart disease, 3,400 deaths from lung cancer, 150,000 to 300,000 lung infections such as pneumonia and bronchitis in children under the age of 18 months, and more than 750,000 middle ear infections in children; and

WHEREAS, the U.S. Environmental Protection Agency has now classified secondhand smoke as a risk to public health, classifying it as a group A carcinogen, the most dangerous class of carcinogens; and

WHEREAS, the majority of smokers begin to smoke before the age of 18, and one out of three begin before the age of 14; and

WHEREAS, public health has now urged policymakers to address a range of social determinants, that is, social factors that contribute to tobacco exposure, since there is no simple biomedical fix for the challenges posed by secondhand smoke; and

WHEREAS, one such factor is prohibiting smoking in public places; and

WHEREAS, doing so reduces the public's exposure to secondhand smoke and limits places where young people can begin to smoke; and

WHEREAS, the City's public health authority arises from the state's police power; and

WHEREAS, the City has exercised this power to reduce smoking in graduated steps, prohibiting smoking on buses in 1964, in elevators in 1975, and in 1985 becoming one of the first major cities to require no-smoking areas in the workplace; and

WHEREAS, the City now determines to exercise its authority to prohibit smoking in outdoor dining areas, and within ten feet therefrom;

NOW, THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Subsection A of Section 41.50 of the Los Angeles Municipal Code is amended to read as follows:

- A. Definitions.** The following words and phrases, whenever used in this ordinance shall be construed as hereinafter set out, unless it shall be apparent from the context that they have a different meaning.
1. "Bar" shall mean an indoor area utilized primarily for the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.
 2. "Employee" shall mean any person who is employed by any employer in consideration for monetary compensation or profit.
 3. "Employer" shall mean any person, partnership, corporation, excluding municipal corporation, who employs the services of more than four persons.
 4. "Place of employment" shall mean 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, conference rooms, and employee cafeterias. A private residence is not a place of employment.
 5. "Service Line" shall mean 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.
 6. "Smoke" or "Smoking" shall include the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or the lighting or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.

7. "Outdoor dining area" shall mean for purposes of this section an outdoor area:
- a. Of a business, such as a restaurant, that is dedicated by the business as a place for the consumption of food or drinks that are regularly sold or provided by that business, and all non-enclosed areas within ten feet thereof;
 - b. That is dedicated by the person authorized to manage or control the area as a place for the consumption of food or drinks that are regularly sold or provided by one or more nearby businesses, such as a food court, and all non-enclosed areas within ten feet thereof; or
 - c. Within a forty foot radius of a business, such as a food kiosk, food cart or mobile food truck, that regularly sells or provides food or drinks but has no outdoor area dedicated by the business as a place for the consumption of food or drinks that are regularly sold or provided by that business.
 - d. However, an outdoor dining area shall not include an area that is contiguous to one of the following:
 - (i) A bar, or a nightclub that requires that its patrons be eighteen or older; or
 - (ii) A restaurant, business or non-commercial building that is completely closed to the public for a private event.

Sec. 2. Subsection B of Section 41.50 of the Los Angeles Municipal Code is amended by adding a new paragraph 18 to read as follows:

18. Outdoor dining areas.
- a. Exception. The prohibition against smoking within the ten foot non-enclosed areas described in Sections 41.50 A. 7 a and 41.50 A. 7 b shall not apply to persons briefly passing by.
 - b. Grace Period. A one year grace period shall follow the effective date of this ordinance to permit a period of public education.
 - (i) Within thirty days of the effective date of this subsection:

- (1) Any business with an outdoor dining area as defined in Section 41.50 A.7.a, such as a restaurant, shall post a notice near an entrance, exit, or cashier area in size 14 font or larger that is clearly visible and readable to a majority of its customers that shall remain posted through the end of the one year grace period and state:

“Beginning [DAY AFTER GRACE PERIOD ENDS], smoking is prohibited in the outdoor dining area of this business during its hours of operation, and within ten feet of it, by order of the City of Los Angeles.”

- (2) Any business that provides food or drink that is regularly consumed in a nearby outdoor dining area as defined in Section 41.50 A.7.b, such as a food court, shall post a notice near an entrance, exit, or cashier area in size 14 font or larger that is clearly visible and readable to a majority of its customers that shall remain posted through the end of the one year grace period and state:

“Beginning [DAY AFTER GRACE PERIOD ENDS], smoking is prohibited in the outdoor dining area near this business during its hours of operation, and within ten feet of it, by order of the City of Los Angeles.”

- (3) Any person authorized to manage or control an outdoor dining area as defined in Section 41.50 A.7.b, such as a food court, shall post enough notices in size 14 font or larger to ensure that their message is clearly visible and readable to most diners in the outdoor dining area, and most persons passing outdoors within ten feet of it, that shall remain posted through the end of the one year grace period and state:

“Beginning [DAY AFTER GRACE PERIOD ENDS], smoking is prohibited in this outdoor dining area during its hours of operation, and within ten feet of it, by order of the City of Los Angeles.”

- (4) Any business with an outdoor dining area as defined in Section 41.50 A.7.c, such as a food kiosk, food cart

or mobile food truck, shall post a notice near the cashier area in size 14 font or larger that is clearly visible and readable to a majority of its customers that shall remain posted through the end of the one year grace period and state:

“Beginning [DAY AFTER GRACE PERIOD ENDS], smoking is prohibited within forty feet of this business during its hours of operation, by order of the City of Los Angeles.”

- (ii) To continue the public education process, all businesses or persons subject to this subsection are encouraged but not required to continue posting the required notice for a reasonable period after the grace period ends.
 - (iii) The no-smoking provisions of this subsection shall not be enforced during the one year grace period.
- c. Permanent Signs.
- (i) By the end of the one year grace period, the following shall comply with the requirements of Section 41.50 D.1.b, except that the words “in this outdoor dining area or within ten feet of it” shall immediately follow the required “NO SMOKING” phrase or international no-smoking symbol, and need not comply with the 5 feet to 8 feet posting requirement as long as they are of sufficient number and locations to ensure that their message is clearly visible and readable to most diners in the outdoor dining area, and most persons passing outdoors within ten feet of it:
 - (1) Any business with an outdoor dining area as defined in Section 41.50 A.7.a, such as a restaurant; or
 - (2) Any person authorized to manage or control an outdoor dining area as defined in Section 41.50 A.7.b, such as a food court.
 - (ii) By the end of the grace period, any business with an outdoor dining area as defined in Section 41.50 A.7.c, such as a food kiosk, food cart or mobile food truck, shall comply with the requirements of Section 41.50 D.1.b, except that it shall post only one sign, which shall be located near the cashier, shall include the words “within forty feet of this business” immediately following the required “NO SMOKING” phrase or international no-smoking symbol, and need not comply with the 5 feet to 8

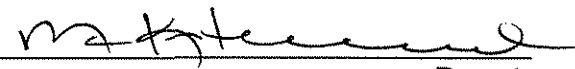
feet posting requirement as long as the sign's message is clearly visible and readable to a majority of its customers.

- d. Penalties. Failure to comply with any of the requirements of this Section 41.50 B.18 shall be an infraction, as provided for in Section 41.50 H.4.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of JAN 20 2010.

JUNE LAGMAY, City Clerk

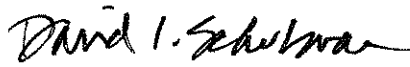
By 
Deputy

Approved JAN 26 2010


Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By 
DAVID I. SCHULMAN
Deputy City Attorney

Date Jan. 8, 2010

File No. 08-1544

DECLARATION OF POSTING ORDINANCE

I, MARIA C. RICO, state as follows: I am, and was at all times hereinafter mentioned, a resident of the State of California, over the age of eighteen years, and a Deputy City Clerk of the City of Los Angeles, California.

Ordinance No. 181065 – Amending Subsections A and B of Section 41.50 of the Los Angeles Municipal Code to prohibit smoking in outdoor dining areas - a copy of which is hereto attached, was finally adopted by the Los Angeles City Council on **January 20, 2010**, and under the direction of said City Council and the City Clerk, pursuant to Section 251 of the Charter of the City of Los Angeles and Ordinance No. 172959, on **January 27, 2010** I posted a true copy of said ordinance at each of the three public places located in the City of Los Angeles, California, as follows: 1) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; 2) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; 3) one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Copies of said ordinance were posted conspicuously beginning on **January 27, 2010** and will be continuously posted for ten or more days.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this **27th** day of **January 2010** at Los Angeles, California.



Maria C. Rico, Deputy City Clerk

Ordinance Effective Date: March 8, 2010

Council File No. 08-1544