

Chapter 8.48 SMOKING

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8.48.010 Purpose and findings.

A. The U.S. Environmental Protection Agency (EPA) has determined that tobacco smoke is a major source of indoor air pollution, and the Surgeon General's 1986 report on the health consequences of involuntary smoking includes that exposure to tobacco smoke places healthy nonsmokers at increased risk for developing lung cancer. Other health hazards on involuntary smoking include respiratory infection, bronchoconstriction, and broncho-spasm. While all members of the population are truly at increased risk due to exposure to second-hand tobacco smoke, it constitutes a special health hazard for children, the elderly and people with chronic lung disorders, including asthmatics and those with obstructive airway disease and cardiovascular disease.

B. The Surgeon General labels smoking "the largest single preventable cause of death and disability for the U.S. population."

C. Employees, subjected to prolonged exposure to second-hand smoke in the workplace, have been found in scientifically conducted studies to experience a loss of job productivity and some have been forced to take periodic sick leave because of reactions to said second-hand smoke. Furthermore, studies have shown higher costs to the employer are associated with smoking in the workplace due to increases in absenteeism, accidents, cost of medical care, loss of productivity, and cleaning and maintenance requirements. A recent scientific study has reported that second-hand smoke from tobacco may cause a significant amount of cardiovascular disease in the United States and that the number of deaths from this cause may exceed the deaths caused by lung disease associated with second-hand smoke.

D. Smoking in public places and workplaces is a major cause of fires and damage to merchandise and equipment as well as costly maintenance and repairs to furniture and fixtures.

E. The health care costs produced by smoking-related ailments and diseases constitute a heavy and avoidable financial drain on our community.

F. Opinion surveys show that a majority of the citizens of Visalia favor restriction on smoking in areas accessible to the general public.

G. Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort of non-smokers and constitutes a public nuisance.

H. Research concludes that exposure to second-hand smoke is the third leading cause of preventable death, after smoking and alcohol.

I. Second-hand smoke has been found by the Environmental Protection Agency to be a known carcinogen.

J. The U.S. Surgeon General has concluded that second-hand smoke is a cause of lung cancer and other diseases in healthy nonsmokers.

K. The U.S. Surgeon General has concluded that children exposed to second-hand smoke have more respiratory infections and lung problems than children who are not exposed to secondary smoke.

L. Numerous government and privately sponsored scientific studies have concluded that approximately forty thousand (40,000) deaths per year occur from lung cancer, other cancers, and heart disease due solely to exposure to second-hand smoke.

M. Accordingly, the city council declares that the purpose of this chapter is to protect the health, safety and general welfare of the residents of, persons employed in, and persons who frequent the city who would benefit by the regulation of smoking, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke. (Prior code § 4047)

8.48.020 Authority.

This chapter is enacted pursuant to provisions of Health and Safety Code Sections 25946 and 25949 for the purpose of restricting and regulating smoking in order to reduce the hazards and nuisance which smoking causes those who are involuntarily exposed. (Prior code § 4048)

8.48.030 Definitions.

As used in this chapter, those terms identified in this section shall, unless the context indicates otherwise, be ascribed the meaning contained herein.

Bar. The term “bar” means an area which is devoted to the serving of alcoholic beverages for consumption on the premises, in which the serving of food, if any, is incidental to the consumption of alcoholic drinks. The dining area of a restaurant utilized primarily for the serving and consumption of food shall not constitute a bar, even though alcoholic beverages may be served therein.

Commercial Enterprise--Nonprofit Entity-- Person--Public Agency.

1. The term “commercial enterprise” means any business entity formed for the profit making purposes, including, but not limited to, professional corporations and other entities under which legal, medical, dental, engineering, architectural, or other professional services are delivered, and also any person charged with the responsibility of controlling conduct on behalf of the enterprise upon any premises regulated by this chapter.

2. The term “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 operations of which are committed to promotion of the objects or purposes of the organization and not to private gain, together with any person charged with the responsibility of controlling conduct on behalf of the entity upon any premises regulated by the provisions of this chapter.

3. A public agency is not a “nonprofit entity” within the meaning of this section.

4. The term “person” means any natural person, partnership, corporation, unincorporated association, joint venture, business trust, joint stock company, club or other organization of any kind.

5. For purposes of this chapter, and to the fullest extent allowed by law, public agencies and their facilities, located within the city, shall be subject to all provisions herein, in the same manner and to the extent as commercial enterprises, persons and non-profit entities.

Employee. The term “employee” means any person, who is employed by an employer in the consideration for direct or indirect monetary wages or profit and any person who volunteers his or her services for a nonprofit entity.

Employer. The term “employer” means any person, partnership, corporation, including any public entity, or nonprofit entity, who employs the services of one or more individuals.

Enclosed Area. The term “enclosed area” means all space between a floor and ceiling which is served by a common heating, ventilating and air conditioning system and is enclosed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, office landscaping, or similar structures.

Members of the General Public. The term “members of the general public” means shoppers, customers, patrons, patients, students, clients and other similar invitees of a commercial enterprise, public agency or nonprofit entity, and excludes employees thereof, sales representatives, service repair persons and persons delivering goods, merchandise or services to a commercial enterprise, nonprofit entity or public agency.

Office. The term “office” means an area enclosed by walls containing a desk, table or similar furnishings for clerical, administrative or supervisory work, a complex of such enclosures and a building containing such enclosures, whether or not the building is utilized primarily for other purposes such as retailing, wholesaling, or storage, or manufacturing, together with all hallways, stairways, elevators, escalators, restrooms, lobbies, waiting rooms, reception areas, entry areas, and conference rooms within or associated with the complex of such enclosures, including: (1) legal, medical, dental, engineering, accounting, counseling and other professional offices; (2) insurance, real estate, ticket, collection agency, and other offices where business services are offered to or goods or services are offered to or may be ordered by or may be paid for by members of the general public; and (3) offices to which members of the general public are admitted in order to promote the objects or purposes of the public agency or nonprofit entities.

Organized Outdoor Event. The term “organized outdoor event” means a scheduled concert, performance, sporting event, public demonstration or other similar occurrences, open to members of the general public taking place outside an enclosed area.

Proprietor. The term “proprietor” means each owner, operator, manager or other person having control of an establishment or facility within which smoking is regulated by this chapter.

Restaurant. The term “restaurant” means any dinner house, coffee shop, cafeteria, luncheonette, soda fountain, fast food service and other establishment where cooked or otherwise prepared food is sold to members of the general public for consumption on the premises. The term does not include a cafeteria or lunchroom defined as a workplace, whether or not members of the general public incidentally frequent the facility.

Smoking. The term “smoking” means lighting, inhaling, exhaling or burning any pipe, cigar, cigarette, weed or plant, or carrying any lighted pipe, lighted cigar, lighted cigarette, lighted weed, lighted plant or other ignited combustible substance in any manner or in any form.

Tobacco Store. The term “tobacco store” means a place utilized primarily for the retail sale to members of the general public of tobacco products or accessories and in which the sale of any other products is merely incidental.

Workplace. The term “workplace” means any enclosed area which is occupied by two or more employees of a commercial enterprise, nonprofit entity or public agency including to but not limited to the following:

1. A place utilized for the manufacturing, processing, assembly, maintenance or repair of any products, goods, equipment, tools, appliances, furnishings or other object; or the physical storage for purposes of wholesaling, future utilization for operational purposes, or future transfer preceding consumption or other utilization of any products, goods, merchandise, materials, supplies, equipment, tools, appliances or furnishings;

2. A place utilized or operated for a purpose described by Sections [8.48.040](#) through [8.48.190](#) and from which members of the general public are excluded;

3. A place utilized as a union hall, cafeteria, lounge, lunchroom, restroom, conference room, training room, lecture room, or classroom primarily for the use or benefit of employees.

Notwithstanding the provisions of this definition, a private residence including either an attached or detached garage shall not constitute a workplace, except when the residence serves as a licensed or unlicensed day care facility for children or the elderly. (Prior code § 4049)

8.48.040 Smoking prohibitions, public places.

A. Except as otherwise provided in this chapter, it is unlawful for any member of the general public or any other person including an employee to smoke in the public places named and described in Sections [8.48.040](#) through [8.48.170](#) and other public places similarly situated, including but not limited to the following Enclosed Areas:

1. Merchandise display areas, checkout stations, and counters and other pay stations;
2. Hallways;
3. Restrooms;
4. Escalators, elevators and stairways;
5. Lobbies;
6. Reception areas;
7. Waiting rooms;
8. Service lines;
9. Classrooms, meeting or conference rooms, or lecture halls; and
10. Other places in which members of the general public congregate for service or otherwise frequent.

B. It is also unlawful for any member of the general public or any other person, including an employee, to smoke in an area where public seating is provided while attending an outdoor public event, except in designated areas. Seating in areas designated for smoking will not exceed forty (40) percent of the total public seating provided. (Prior code § 4050)

8.48.050 Stores.

The prohibitions contained in Section [8.48.040](#) shall be applicable to: (1) the enclosed common areas of shopping malls; (2) automobile dealerships, furniture or other showrooms for the display of merchandise offered for sale at retail; (3) grocery, specialty, department and other stores which sell goods or merchandise at retail, and (4) service stations, stores or shops for the repair or maintenance of appliances, shoes, or motor vehicles, barbershops, beauty shops, cleaners and laundromats, video game, pool hall and other amusement centers, and other similar establishments offering services or products to members of the general public. (Prior code § 4051)

8.48.060 Banks.

The prohibitions contained in Section [8.48.040](#) shall be applicable to banks, including savings and loan associations, credit unions and other similar institutions which offer financial services to members of the general public. (Prior code § 4052)

8.48.070 Hotels/motels.

The prohibitions contained in Section [8.48.040](#) shall be applicable to hotels and motels in which guests typically rent lodging for continuous periods less than thirty (30) days. Smoking is permissible in rental rooms and in on-premise restaurants, bars and other areas as provided in Sections [8.48.130](#), [8.48.190](#)(B) and [8.48.190](#)(E). The availability of nonsmoking rooms will be prominently posted in the lobby sign-in area.

The rooms so designated will be posted as smoking prohibited and ash trays removed. Customers seeking accommodations should be routinely advised of the availability of nonsmoking rooms. (Prior code § 4053)

8.48.080 Terminals.

The prohibitions contained in Section [8.48.040](#) shall be applicable to depots and other terminals utilized by members of the general public for the purpose of being transported upon or departing from airplanes, trains, buses and taxis. (Prior code § 4054)

8.48.090 Buses and taxis.

Smoking, by either passengers or operators, shall be prohibited within buses, taxicabs and all public transit conveyances operated by or licensed by the city. (Prior code § 4055)

8.48.100 Theaters.

The prohibitions contained in Section [8.48.040](#) shall be applicable to theaters, including motion picture theaters, meeting halls and auditoriums where motion pictures or live theatrical musical or dramatic productions are made to an audience consisting of members of the general public assembled for the purpose of witnessing the performance or presentation; provided that neither this section nor Section [8.48.040](#) shall be construed to prevent smoking by performers in connection with a stage production or by persons making a presentation concerning addiction to tobacco or other drugs. (Prior code § 4056)

8.48.110 Recreational facilities.

A. The prohibitions, contained in Section [8.48.040](#), shall be applicable to enclosed areas of sports pavilions, gymnasiums, exercise rooms, health spas, boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys and other similar places where members of the general public assemble to either engage in physical exercise, participate in athletic competition or witness sports events.

B. Smoking is prohibited at all times within the seating areas of an enclosed arena and in the surrounding open concourses where food and beverages are dispensed.

C. Smoking may be allowed in enclosed on-site restaurants, subject to the provisions of Section [8.48.130](#), and in enclosed on-site bars.

D. Smoking may be allowed in bowling alleys on those occasions when league play occupies the majority of bowling lanes in the establishment, and a majority of the members of the league(s) vote to allow smoking. Evidence of the voting procedure and outcome of the vote must be retained by the establishment, for inspection by the city upon request, for the duration of the leagues's play. (Prior code § 4057)

8.48.120 Recreation halls.

A. The prohibitions, contained in Section [8.48.040](#), shall be applicable to those areas of recreation halls and other similar facilities where members of the general public play

bingo or cards, dance or engage in recreational, character-building or cultural activities which are designated as nonsmoking.

B. An owner, manager or operator of a recreation hall shall designate not less than fifty (50) percent of the main activities area of such facility not including restrooms, lounges and kitchens as nonsmoking. Commencing nine months after the adoption of the ordinance codified in this chapter, an owner, manager or operator of a recreation hall shall designate not less than seventy-five (75) percent of the main activities area of such facility not including restrooms, lounges and kitchens as non-smoking. Commencing eighteen (18) months after the adoption of the ordinance codified in this chapter, the owner, manager or operator of a recreation hall shall designate the entire premises of such facility including restrooms, lounges and kitchens as nonsmoking. Signs shall be posted in the manner prescribed by Section [8.48.220](#). It shall not constitute a violation of this chapter to smoke in a location where smoking has been authorized by this chapter.

C. The provisions of this section shall not be construed in any manner to restrict or otherwise impair the authority of an owner, manager or operator to increase the nonsmoking area of a recreation hall. (Prior code § 4058)

8.48.130 Restaurants.

A. Within all restaurants, the prohibitions contained in Section [8.48.040](#), shall be applicable to lobbies, waiting areas, restrooms and those dining seating areas which are designated as nonsmoking.

B. The owner, manager or operator of a restaurant shall designate not less than fifty (50) percent of the available customer seating as nonsmoking. Commencing nine months after the adoption of the ordinance codified in this chapter, the owner, manager or operator of a restaurant shall designate not less than seventy-five (75) percent of the available customer seating as nonsmoking. Commencing eighteen (18) months after the adoption of the ordinance codified in this chapter, the owner, manager or operator of a restaurant shall designate all available customer seating as nonsmoking. The owner, manager or operator of the restaurant shall post signs as prescribed by Section [8.48.200](#) and remove all ashtrays from tables located in the nonsmoking areas. Where a bar shares the same enclosed area with the restaurant, the bar seats must be counted with the restaurant seats in determining the total number of nonsmoking restaurant seats. The owner, manager or operator shall post a notice at the restaurant entrance that a nonsmoking section is available. It shall not constitute a violation of this chapter to smoke in a location where smoking has been authorized by this chapter.

C. The provisions of this section shall not be construed in any manner to restrict or otherwise impair the authority of an owner, manager or operator to increase the nonsmoking seating in a restaurant or bar. (Prior code § 4059)

8.48.140 Places of exhibition.

The prohibitions contained in Section [8.48.040](#), shall be applicable to libraries, museums, galleries, convention halls and similar facilities where members of the

general public assemble for the purpose of viewing the exhibition of art, artifacts, objects of historical or cultural significance, products, merchandise, equipment, appliances or services. (Prior code § 4060)

8.48.150 Hospitals.

The prohibitions, contained in Section [8.48.040](#), shall be applicable to hospitals, rest and convalescent homes, medical clinics, physical therapy facilities and other places where medical, dental, psychiatric or counseling services are delivered to members of the general public. Operators of facilities treating psychiatric or chemically impaired patients may permit smoking by patients in designated areas; provided, the medical director of such facility has determined in writing that the practice is beneficial for the recovery or treatment of such patients and that the practice will not interfere with the recovery and treatment of nonsmoking patients; and provided, that adequate nonsmoking areas are made available for nonsmoking patients. Neither this section nor Section [8.48.040](#) shall be construed to prevent smoking in locations or otherwise under conditions in which smoking is expressly authorized by or under statutes or administrative regulations applicable to such licensed facilities. (Prior code § 4061)

8.48.160 Schools.

The prohibitions, contained in Section [8.48.040](#), shall be applicable to any school or educational institution operated by a commercial enterprise, public agency or nonprofit entity for the purpose of providing academic classroom instruction, trade, craft, computer or other technical training, or instruction in dancing, artistic, musical or other cultural skills. (Prior code § 4062)

8.48.170 Day care facilities.

The prohibitions, contained in Section [8.48.040](#), shall be applicable to private residences during the time when such residences are operated as licensed or unlicensed day care facilities for children or the elderly. (Prior code § 4063)

8.48.180 Smoking prohibitions, workplace.

A. Smoking is prohibited in enclosed workplaces under the control of a public or private employer which the general public has access to in the course of conducting business, including but not limited to, open office areas, shared offices, private offices, hallways, restrooms, escalators, elevators, stairways, lobbies, reception areas, waiting rooms, classrooms, meeting or conference rooms, and auditoriums.

B. On-site cafeterias, lunchrooms and lounges shall be deemed workplaces and smoking prohibited therein, whether or not such facilities are open to members of the general public.

C. Each commercial enterprise, nonprofit entity and public agency shall comply with these smoking prohibitions and be responsible for their implementation in the workplace, and “No smoking” signs shall be posted in the manner prescribed by Section 8.48.200. (Prior code § 4064)

8.48.190 Places where smoking permissible.

A. Smoking may be permitted in all locations where smoking is not prohibited by this chapter, including the following locations:

1. A private residence, including an attached or detached garage, whether or not the residence is utilized for office or other business purposes, except when such residence is operated as a licensed or unlicensed day care facility for children or the elderly;
2. Bars;
3. Tobacco stores, whether operated as a separate business entity or as a physically separated facility within a department store or other business entity;
4. Private clubs during events attended exclusively by members of the organization and their invited guests and from which members of the general public are excluded;
5. Within conference/meeting rooms, public and private assembly rooms, banquet rooms, dining rooms or areas of restaurants, hotels and motels, while these places are occupied for private functions to which only persons specially invited are entitled to attend and from which members of the general public are excluded;
6. Within bowling alleys while the majority of available bowling lanes are occupied by league play and the league(s) have voted to allow smoking;
7. In any enclosed place wherein this chapter specifically permits smoking, notwithstanding the fact that such location is a workplace accessible to the general public.

B. It shall not constitute a violation of Section [8.48.040](#) a person to smoke in a location where smoking has been authorized in the manner prescribed by this section.

C. The foregoing places are not considered workplaces, subject to the provisions of Section [8.48.180](#). Employers will, however, attempt to find a reasonable alternative accommodation where feasible for nonsmoking employees who do not wish to be assigned to work in a smoking permissible area.

D. Notwithstanding any provision in this chapter which permits smoking in a place of employment, any nonsmoking employee may object to his or her employer about smoke in his or her workplace. The employer shall attempt to reach a reasonable accommodation, insofar as possible. The area in which smoking is prohibited shall be posted by "No Smoking" signs in the manner prescribed by the provisions of Section [8.48.200](#). (Prior code § 4065)

8.48.200 Posting requirements.

A. Each owner, operator, manager or other person having control of an establishment or facility within which smoking is regulated by this chapter shall conspicuously post in every place where smoking is prohibited "No Smoking" signs with letters not less than one inch 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).

B. An owner, operator, or manager of a building wherein, pursuant to these regulations, there is no smoking permitted in any space in the building may limit the “No Smoking” postings to first floor entrances and exits and to the elevator lobby areas of all other floors.

C. Motion picture theaters shall show upon the movie or live action screens for at least five seconds prior to the showing of each feature motion picture the message that smoking is prohibited within the audience seating and other areas as specified.

D. Hotels and motels will prominently post in the lobby a sign notifying patrons of the availability of nonsmoking accommodations. The rooms so designated will be posted as nonsmoking rooms and ashtrays removed. (Prior code § 4066)

8.48.210 Retaliation prohibited.

A. It is unlawful for a commercial enterprise, nonprofit entity or public agency to retaliate against any member of the general public or an employee or applicant for employment of the enterprise, entity or public agency because such member of the general public, employee or applicant seeks enforcement of the provisions of this chapter or otherwise protests smoking by others.

B. Violation of any of the provisions of Section [8.48.200](#) shall be remedied through criminal or civil action filed in a court of competent jurisdiction for injunctive, criminal prosecutions or other appropriate relief. (Prior code § 4067)

8.48.220 Violation--Smoking or posting.

A. Any person who violates the prohibitions contained in Sections [8.48.050](#) through [8.48.170](#) and any proprietor who violates Section [8.48.200](#) by failing to post the signs or take the other actions required by this section may be prosecuted as of an infraction, punishable in the manner hereinafter prescribed and/or may have his/her business license revoked.

B. Fines for the crimes made infractions by this section shall be levied in the amounts prescribed. Any person, who violates any provisions of this chapter by smoking in a designated nonsmoking area, shall be guilty of an infraction, punishable by a fine of fifty dollars (\$50.00) for the first violation, and one hundred dollars (\$100.00) for each subsequent violation. Any employer/proprietor, who violates any provisions of this chapter by failure to post required signs, by failure to request violating smokers to extinguish the lit object may be guilty of an infraction punishable by a fine of one hundred dollars (\$100.00) for the first violation, and two hundred fifty dollars (\$250.00) for each subsequent violation and/or may have his/her business license revoked. Subsequent violations may be prosecuted as misdemeanors with fines up to one thousand dollars (\$1,000.00) and/or jail time up to six months. (Prior code § 4068)

8.48.230 Enforcement.

A. Voluntary enforcement of and mandatory compliance of this chapter shall lie with the employer/proprietor of the establishment. An individual violating this chapter shall be requested by the employer/proprietor not to smoke and shall be made aware of the posted "No Smoking" signs. If the individual continues to violate the chapter, the employer/proprietor shall inform the individual they are guilty of an infraction of a city ordinance punishable by a fifty dollar (\$50.00) fine for the first violation and one hundred dollars (\$100.00) for each subsequent violation.

B. It shall be the responsibility of the chief of the police department to enforce, on behalf of the city, the provisions of this chapter. The chief shall be authorized to prosecute, in the name of the city, criminal actions for the recovery of fines for violations of this chapter made infractions by Section [8.48.220](#) for violations of Sections [8.48.050](#) through [8.48.200](#).

C. In the performance of the enforcement responsibilities assigned by this chapter, the chief of the police department shall:

1. Establish a telephone number through which all complaints by citizens relating to violations of this chapter may be directed or referred;

2. Reduce such complaints to writing, and analyze the frequency and volume thereof in relation to alleged violations of this chapter by or at particular establishments or facilities;

3. Conduct an on-site inspection of any establishment or facility with respect to which the nature and volume of complaints suggests long-standing and pronounced violations of any of the provisions of this chapter;

4. Provide to the owner, operator or manager of any such establishment or facility a copy of the provisions of this chapter and such advisory assistance to rectify future violations as may be necessary to achieve compliance with the provisions of this chapter;

5. Follow up such investigation and advice with a written directive explaining in detail the steps required in order to achieve future compliance with the provisions of this chapter;

6. If the violations do not cease following expiration of a reasonable period of time, request commencement of a criminal or civil proceeding by the city attorney pursuant to the provisions of Section [8.48.250](#), or civil remedies listed below as may be appropriate to do one, some or all of the following civil remedies:

- a. Public Nuisance. Any continuing violation of the provisions of this chapter may be declared a public nuisance hereunder, and the city attorney may proceed to abate the same by filing a civil action in a court of competent jurisdiction.

- b. Licensed Revocation. Any continuing violation of the provisions of this chapter by proprietor may be punishable by the city revoking his/her business license.

c. Injunctive Relief. Any continuing violation of the provisions of this chapter by proprietors may be restrained by a temporary restraining order, preliminary and/or permanent injunction. (Prior code § 4069)

8.48.240 Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Prior code § 4070)

8.48.250 Severability.

If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision(s) or application(s), and to this end the provisions of this chapter are declared to be severable. (Prior code § 4071)