

## **ORDINANCE NO. 832**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COALINGA ADDING COALINGA MUNICIPAL CODE SECTION 5-16 TO REGULATE SMOKING AND TOBACCO PRODUCT USE IN THE CITY OF COALINGA**

**WHEREAS**, tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the nation's leading cause of preventable death;<sup>1</sup> and
- Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths;<sup>2</sup> and

**WHEREAS**, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;<sup>3</sup> and
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;<sup>4,5</sup> and
- The California Environmental Protection Agency (EPA) included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;<sup>6</sup> and

**WHEREAS**, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke occurs at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind and number and proximity of smokers;<sup>7,8</sup> and
- Smoking cigarettes near building entryways can increase air pollution levels by more than two times background levels, with maximum levels reaching the "hazardous" range on the United States EPA's Air Quality Index;<sup>8</sup> and
- To be completely free from exposure to secondhand smoke in outdoor places, a person

may have to move nearly 23 feet away from the source of the smoke, about the width of a two-lane road;<sup>8,9</sup> and

**WHEREAS**, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke;<sup>2,10</sup> and
- Secondhand smoke is responsible for an estimated 41,300 heart disease-related and lung cancer-related deaths among adult nonsmokers each year in the United States;<sup>10</sup> and
- Exposure to secondhand smoke increases the risk of coronary heart disease by about 25 percent to 30 percent<sup>11</sup> and increases the risk of stroke by 20 percent to 30 percent;<sup>12</sup> and

**WHEREAS**, tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- Between 2009 and 2012, the total annual economic burden of smoking in the United States was between \$289 billion and \$332.5 billion;<sup>1</sup> and
- From 2005 to 2009, the average annual health care expenditures attributable to smoking were approximately \$132.5 billion to \$175.9 billion in direct medical care costs for adults and \$151 billion in lost productivity;<sup>1</sup> and
- The total annual cost of smoking in California was estimated at \$548 per resident or between \$2,262 and \$2,904 per smoker per year;<sup>13</sup> and
- California's Tobacco Control Program saved the state and its residents \$134 billion in health care expenditures between the year of its inception, 1989, and 2008, with savings growing yearly;<sup>13</sup> and

**WHEREAS**, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs with a review of over 80 peer-reviewed research studies showing that smoke-free policies effectively do the following:

- Reduce tobacco use: tobacco use is reduced by median of 2.7 percent;<sup>14</sup> and
- Reduce exposure to secondhand smoke: air pollution is reduced by a median of 88 percent and biomarkers for secondhand smoke are reduced by a median of 50 percent;<sup>14</sup> and
- Increase the number of tobacco users who quit by a median of 3.8 percent;<sup>14</sup> and
- Reduce initiation of tobacco use among young people;<sup>14</sup> and

- Reduce tobacco-related illnesses and death: there is a 5.1 percent median decrease in hospitalizations from heart attacks and a 20.1 percent decrease in hospitalizations from asthma attacks after such laws are passed;<sup>14</sup> and

**WHEREAS**, laws restricting electronic smoking devices use also have benefits to the public as evidenced by the following:

- Research has found at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm,<sup>6, 15, 16, 17</sup> such as formaldehyde, acetaldehyde, lead, nickel, and toluene;<sup>18,19, 20</sup> and
- More than one study has concluded that exposure to vapor from electronic smoking devices may cause passive or secondhand vaping;<sup>18,20,21</sup> and
- The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment;<sup>22</sup> and
- The State of California's Tobacco Education and Research Oversight Committee (TEROC) "opposes the use of e-cigarettes in all areas where other tobacco products are banned;"<sup>23</sup> and

**WHEREAS**, smokeless tobacco is not a safe alternative to smoking and causes its own share of death and disease, as evidenced by the following:

- Smokeless tobacco use is associated with oral, esophageal, and pancreatic cancers;<sup>24</sup> and
- Smokeless tobacco is associated with increased risk for heart disease and stroke,<sup>25, 26, 27</sup> stillbirth and preterm delivery,<sup>1, 28</sup> and Parkinson's disease;<sup>1</sup> and

**WHEREAS**, cigarette butts are a major and persistent source of litter, as evidenced by the following:

- In 2007, it was estimated that Americans consume 360 billion cigarettes each year;<sup>29, 30</sup> and
- 55.7 percent of smokers admit to littering cigarettes in the last month;<sup>31</sup> and
- In an observational study of nearly 10,000 individuals, after cigarettes were smoked, 45 percent of cigarettes ended up as litter;<sup>30</sup> and
- In 2011, 22.6 percent of all debris collected from beaches and coastal areas are smoking related products;<sup>32</sup> and

- Cigarette butts are often cast onto sidewalks and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons, and ultimately the ocean;<sup>32, 33</sup> and

**WHEREAS**, cigarette butts pose a health threat to young children, as evidenced by the following:

- In 2012, American poison control centers received nearly 8,648 reports of poisoning by the ingestion of cigarettes, cigarette butts, and other tobacco products and 84.5 percent of these poisonings were in children ages five and younger;<sup>34</sup> and
- Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;<sup>35</sup> and

**WHEREAS**, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions;<sup>36</sup> and

**WHEREAS**, there is broad public recognition of the dangers of secondhand smoke and support for smoke-free air laws, as evidenced by the following:

- A 2008 survey of California voters found that 97 percent thought that secondhand smoke is harmful, 88 percent thought secondhand smoke was harmful even outdoors, 65 percent were bothered by secondhand smoke, and 73 percent support laws restricting smoking in outdoor public places;<sup>37</sup> and

**WHEREAS**, as of April 2014, at least 131 local jurisdictions in California prohibit the use of electronic smoking devices in specific locations;<sup>38</sup> and

**WHEREAS**, as of January 2015, there are at least 348 California cities and counties with local laws restricting smoking in recreational areas;<sup>39</sup> and

**WHEREAS**, there is no Constitutional right to smoke;<sup>40</sup>

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COALINGA DOES ORDAIN AS FOLLOWS:**

**Section 1.** Chapter 16 of Title 5 of the Coalinga Municipal Code is added to read as follows:

**Section 2.** **DEFINITIONS.** The following words and phrases, whenever used in this 5-16 have the meanings defined in this section unless the context clearly requires otherwise:

- (a) “Electronic Smoking Device” means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. “Electronic Smoking Device” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.
- (b) “Public Place” means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.
- (c) “Reasonable Distance” means a distance of twenty-five (25) feet in any direction from an area in which Smoking is prohibited.
- (d) “Recreational Area” means any area that is owned, controlled or used by the City Coalinga and open to the general public for recreational purposes, regardless of any fee or age requirement. The term “Recreational Area” includes but is not limited to parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, amusement parks, and beaches.
- (e) “Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “Smoke” includes, but is not limited to, tobacco smoke, Electronic Smoking Device vapors, cannabis smoke, and crack cocaine smoke.
- (f) “Smoking” means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device, cannabis or any plant product intended for human inhalation.
- (g) “Tobacco Product” means:
  - (1) Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether Smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and

(2) Any Electronic Smoking Device.

(3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “Tobacco Product” includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. “Tobacco Product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

(h) “Unenclosed Area” means any area that is not an Enclosed Area.

#### **Sec. 16-5-2. PROHIBITION OF SMOKING AND TOBACCO PRODUCT USE IN UNENCLOSED AREAS**

(a) Smoking and the use of Tobacco Products is prohibited in the Unenclosed Areas of the following places within the City of Coalinga:

(1) Recreational Areas;

(2) Other Public Places, when being used for a public event, including but not limited to a farmers’ market, parade, craft fair, festival, or any other event open to the general public / , provided that Smoking is permitted on streets and sidewalks used only as pedestrian or vehicular thoroughfares, unless otherwise prohibited by this 5-16 or other law.

(b) Nothing in this Article 5 Chapter 16 prohibits any Person, Employer, or Nonprofit Entity with legal control over any property from prohibiting Smoking and Tobacco Product use on any part of such property, even if Smoking or the use of Tobacco Products is not otherwise prohibited in that area.

#### **Sec. 16-5-3. REASONABLE SMOKING DISTANCE REQUIRED**

(a) Smoking in all Unenclosed Areas shall be prohibited within a Reasonable Distance from any doorway, window, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited except while the Person Smoking is actively passing on the way to another destination .

(b) Smoking in Unenclosed Areas shall be prohibited within a Reasonable Distance from any Unenclosed Areas in which Smoking is prohibited under Sec. 16-3 of this Article 5/ chapter 16, except while the Person Smoking is actively passing on the way to another

destination and provided Smoke does not enter any Unenclosed Area in which Smoking is prohibited.

#### **Sec. 16-5-4. OTHER REQUIREMENTS AND PROHIBITIONS**

- (a) No Person, Employer, or Nonprofit Entity shall knowingly permit Smoking or the use of Tobacco Products in an area which is under the legal or de facto control of that Person, Employer, or Nonprofit Entity and in which Smoking or the use of Tobacco Products is prohibited by law.
- (b) No Person, Employer, or Nonprofit Entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or de facto control of that Person, Employer, or Nonprofit Entity and in which Smoking or the use of Tobacco Products is prohibited by law, including, without limitation, within a Reasonable Distance required by this 5-16 from any area in which Smoking or the use of Tobacco Products is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of Smoking or the use of Tobacco Products in violation of any provision of this 5-16.
- (c) No Person shall dispose of used Smoking or Tobacco Product waste within the boundaries of an area in which Smoking or Tobacco Product use is prohibited, including within any Reasonable Distance required by this 5-16.
- (d) A Person, Employer, or Nonprofit Entity that has legal or de facto control of an area in which Smoking and the use of Tobacco Products is prohibited by this 5-16 shall post a clear, conspicuous and unambiguous “No Smoking” and “No Use of Tobacco Products” or “Smokefree” and “Tobacco-Free” sign at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs shall have letters of no less than one inch in height and shall include 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). Signs posted on the exterior of buildings to comply with this section shall include the Reasonable Distance requirement set forth in Sec. 5-16-4. At least one sign with City of Coalinga phone number to which complaints can be directed must be placed conspicuously in each place in which Smoking is prohibited. For purposes of this section, the City Manager or his / her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the City of Coalinga. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of Smoking or the use of Tobacco Products in violation of any other provision of this 5-16.

- (e) No Person, Employer, or Nonprofit Entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another Person who seeks to attain compliance with this 5-16.
- (f) Each instance of Smoking or Tobacco Product use in violation of this 5-16 shall constitute a separate violation. For violations other than for Smoking, each day of a continuing violation of this 5-16 shall constitute a separate violation.

#### **Sec. 16-5-5. PENALTIES AND ENFORCEMENT.**

- (a) The remedies provided by this 5-16 are cumulative and in addition to any other remedies available at law or in equity.
- (b) Each incident of Smoking or use of Tobacco Products in violation of this 5-16 is an infraction subject to a one hundred dollar (\$100) fine or otherwise punishable pursuant to section 5-16 of this code. Other violations of this 5-16 may, at the discretion of the District Attorney, be prosecuted as infractions or misdemeanors when the interests of justice so require. Enforcement of this chapter shall be the responsibility of . In addition, any peace officer or code enforcement official also may enforce this chapter.
- (c) Violations of this 5-16 are subject to a civil action brought by the City of Coalinga , punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.
- (d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this 5-16 shall also constitute a violation of this 5-16.
- (e) Any violation of this 5-16 is hereby declared to be a nuisance.
- (f) In addition to other remedies provided by this 5-16 or by other law, any violation of this 5-16 may be remedied by a civil action brought by the City Attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.
- (g) Any Person acting for the interests of itself, its members, or the general public (hereinafter "Private Enforcer") may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this 5-16 against any Person who has violated this 5-16 two or more times. Upon proof of the violations, a court shall grant all appropriate relief, including: (1) awarding damages; and (2) issuing an injunction or a conditional judgment. If there is insufficient or no proof of actual damages for a specific violation, the court shall award one-hundred and fifty dollars (\$150) for each violation as statutory damages.



(h) Notwithstanding any other provision of this 5-16, a Private Enforcer may bring a civil action to enforce this 5-16 only if the following requirements are met:

- (1) The Private Enforcer's civil action is begun more than sixty (60) days after the Private Enforcer has given written notice of the alleged violations of this 5—16 to the City Attorney and to the alleged violator; and
- (2) On the date the Private Enforcer's civil action is filed, no other Person acting on behalf of the City of Coalinga or the state has commenced or is prosecuting an administrative, civil, or criminal action based upon, in whole or in part, any violation which was the subject of the Private Enforcer's notice ; and
- (3) A Private Enforcer shall provide a copy of his, her, or its action to the City Attorney within seven (7) days of filing it.
  - (i) Upon a settlement or judgment based upon, in whole or in part, any violation that was the subject of the Private Enforcer's notice, the Private Enforcer shall give the City Attorney notice of the settlement or judgment and final disposition of the case within thirty (30) days of the date of the settlement or judgment. No settlement by a Private Enforcer of a violation of this 5-16 shall be valid or enforceable if, within thirty (30) days of receiving notice of the settlement, the City Attorney determines the settlement to be unreasonable in light of the purposes of this 5-16]. Any settlement or judgment that does not meet the requirements of this subsection may be set aside upon motion to a court of competent jurisdiction by the City Attorney.
  - (j) Except as otherwise provided, enforcement of this 5-16 is at the sole discretion of the City of Coalinga. Nothing in this 5-16 shall create a right of action in any Person against the City of Coalinga or its agents to compel public enforcement of this 5-16 against private parties.

**Sec. 16-5-6 OTHER LAWS.** It is not the intention of this 5-16 to regulate any conduct where the regulation of such conduct has been preempted by the State of California.

**Section 3.** Statutory Construction & Severability

It is the intent of the City Council of the City of Coalinga to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this ordinance, or its application to any Person or circumstance, is for any

reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this ordinance, or its application to any other Person or circumstance. The City Council of the City of Coalinga hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof independently, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

**Section 4.** This ordinance shall take effect thirty days after its adoption.

**Section 5.** The City Clerk is authorized and directed to cause this ordinance or a summary of this ordinance to be published once in a newspaper of general circulation published and circulated in the City of Coalinga, within 15 days after its adoption. If a summary of this ordinance is to be published, then the City Clerk shall cause a summary of the proposed ordinance to be published and a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk at least five days prior to the Council meeting at which the ordinance is adopted, and also shall cause a certified copy of the full text of the adopted ordinance to be posted in the office of the City Clerk after the meeting at which the ordinance is adopted. The summaries shall be approved by the City Attorney.

\* \* \* \*

The foregoing ordinance was introduced by the City Council of the City of Coalinga, California, at a regular meeting held on September 5, 2019 and was passed and adopted by the City Council on \_\_\_\_\_, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**APPROVED:**

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk