

ISLA VISTA RECREATION AND PARK DISTRICT

ORDINANCE NO. 2010-003

AN ORDINANCE OF THE ISLA VISTA RECREATION & PARK DISTRICT REGULATING SMOKING AND THE USE OF TOBACCO PRODUCTS IN RECREATIONAL AREAS

The Board of Directors of the Isla Vista Recreation and Park District makes the following findings in connection with the adoption of this Ordinance.

- A) WHEREAS, tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs, as evidenced by the following:
- (i) More than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death;¹ secondhand smoke is responsible for an estimated 38,000 deaths among non-smokers each year in the United States, which includes 3,000 lung cancer deaths and 35,000 deaths due to heart disease;² and
 - (ii) Secondhand smoke exposure causes as many as 300,000 children in the United States under the age of 18 months to suffer lower respiratory tract infections, such as pneumonia and bronchitis;³ exacerbates childhood asthma; and increases the risk of acute, chronic, middle-ear infections in children;⁴ and
 - (iii) The United States Environmental Protection Agency has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen;⁵ and
 - (iv) the U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke;⁶ and
 - (v) The California Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air

¹ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Annual Smoking – Attributable Mortality, Years of Potential Life Lost, and Economic Costs – United States 1995-1999* MORBIDITY AND MORTALITY WEEKLY REPORT, 51(14), at 300-303 (2002), available at <http://www.cdc.gov/mmwr/PDF/wk/mm5114.pdf> (last accessed October 11, 2006).

² Nat'l Cancer Inst., *NCI Health Information Tip Sheet for Writers: Secondhand Smoke* (2005), at <http://www.cancer.gov/newscenter/tip-sheet-secondhand-smoke> (last accessed October 11, 2006).

³ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002*, at 2 (2004), available at http://www.cdc.gov/nccdphp/aag/aag_osh.htm (last accessed October 18, 2006).

⁴ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Exposure to Environmental Tobacco Smoke and Cotinine Levels — Fact Sheet* (2004), available at http://www.cdc.gov/tobacco/research_data/environmental/factsheet_ets.htm (last accessed October 18, 2006).

⁵ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Exposure to Environmental Tobacco Smoke and Cotinine Levels — Fact Sheet* (2004), available at http://www.cdc.gov/tobacco/research_data/environmental/factsheet_ets.htm (last accessed October 18, 2006).

⁶ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General 11* (2006), available at <http://www.surgeongeneral.gov/library/secondhandsmoke/report/chapter1.pdf> (last accessed Sept. 19, 2006).

contaminant for which there is no safe level of exposure;⁷ and

- (vi) The California Environmental Protection Agency has 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;⁸ and
 - (vii) The medical and economic costs to nonsmokers suffering from lung cancer or heart disease caused by secondhand smoke are nearly \$6 billion per year in the United States;⁹ and
 - (viii) The total annual cost of smoking in California was estimated at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone;¹⁰ and
- B) WHEREAS, creating smoke-free areas helps protect the 86% of Californians who are non-smokers;¹¹ and
- C) WHEREAS, cigarette butts pose a health threat to young children, as evidenced by the following:
- (i) In 2004, American poison control centers received nearly 8,000 reports of children poisoned by the ingestion of cigarette butts;¹² and
 - (ii) Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;¹³ and
- D) WHEREAS, cigarette butts are a major and persistent source of litter, as evidenced by the following:
- (i) it is estimated that over two billion cigarette butts are discarded every day worldwide, and that Americans alone discard more than 175 million pounds of cigarette butts every year;¹⁴ and

⁷ Cal. Air Resources Bd., Resolution 06-01, at 5 (Jan. 26, 2006), available at <http://www.arb.ca.gov/regact/ets2006/res0601.pdf> (last accessed Oct. 6, 2006).

⁸ Cal. Env'tl. Prot. Agency, Office of Env'tl. Health Hazard Assessment, *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity*, at 8 and 17 (Aug. 11, 2006), available at http://www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf (last accessed Oct. 6, 2006).

⁹ American Academy of Actuaries, *Costs Associated with Secondhand Smoke*, October, 2006, available at http://www.actuary.org/pdf/health/smoking_oct06.pdf (last accessed October 11, 2006).

¹⁰ Wendy Max, Dorothy P. Rice, Xiulan Zhang, Hai-Yen Sung, Leonard Miller, Cal. Dept. of Health Servs., *The Cost of Smoking in California, 1999*, at 76 (2002), available at <http://www.dhs.ca.gov/tobacco/documents/pubs/CostOfSmoking1999.pdf> (last accessed October 18, 2006).

¹¹ Tobacco Control Section, Cal. Dep't of Health Servs., *Adult Smoking Prevalence*, at 1, available at <http://www.dhs.ca.gov/tobacco/documents/pubs/AdultSmoking06.pdf> (last accessed October 18, 2006).

¹² Am. Ass'n of Poison Control Ctr. *Annual Report of the Toxic Exposure Surveillance System* at 645 (2004), available at <http://www.aapcc.org/Annual%20Reports/04report/AJEM%20-%20AAPCC%20Annual%20Report%202004.pdf> (last accessed October 23, 2006).

¹³ U.S. Dep't of Health and Human Servs., Center for Disease Control and Prevention, *Ingestion of Cigarettes and Cigarette Butts by Children – Rhode Island, January 1994-July 1996*, MORBIDITY AND MORTALITY WEEKLY REPORT, 46(06), at 125-128 (1997), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm> (last accessed October 18, 2006).

¹⁴ Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, at <http://www.surfridersd.org/hotyb.php> (last accessed October 18, 2006).

- (ii) cigarette butts are often cast onto sidewalk and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons and ultimately the ocean;¹⁵ and
- (iii) cigarette butts, made of plastic cellulose acetate, take approximately 15 years to decompose;¹⁶ and
- E) WHEREAS, smoking is a leading cause of fires and deaths from fires, resulting in an estimated cost of nearly \$7 billion in the United States in 1998, and¹⁷
- F) WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions;¹⁸ and
- G) WHEREAS, there is no Constitutional right to smoke;¹⁹ and

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE ISLA VISTA RECREATION AND PARK DISTRICT ORDAINS AS FOLLOWS:

Section 1. Findings and Intent.

It is the intent of the Board of Directors, in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-smoking individuals, especially children; by protecting the public from exposure to tobacco and secondhand smoke where they play, exercise, and relax; by protecting the public from tobacco-related litter; by reducing the potential for children to wrongly associate smoking and tobacco with a healthy lifestyle; and by affirming and promoting a healthy family atmosphere in the District's recreational areas.

Section 2. Definitions.

- A) "County health officer" means the County of Santa Barbara health officer or his or her duly authorized designee.
- B) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity except the Isla Vista Recreation and Park District.
- C) "Recreational Area" means any outdoor area, owned or operated by Isla Vista Recreation and Park District, open to the general public for recreational purposes, regardless of any fee or age requirement, including, but not limited to: parklands, including portions of parks, such as picnic

¹⁵ Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, at <http://www.surfridersd.org/hotyb.php> (last accessed October 18, 2006).

¹⁶ Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, at <http://www.surfridersd.org/hotyb.php> (last accessed October 18, 2006).

¹⁷ University of California Medical Center, News Release of data from, *Prevention Medicine, August 2000*, http://www.ucdmc.ucdavis.edu/news/smokingdisaster_costs.html, (last accessed February 11, 2010).

¹⁸ CAL. HEALTH & SAFETY CODE § 104495 (West 2003).

¹⁹ Technical Assistance Legal Ctr., Pub. Health Inst., *There Is No Constitutional Right to Smoke* (2004), available at http://talc.phlaw.org/pdf_files/0051.pdf (last accessed October 20, 2006).

areas, playgrounds, or sports fields; walking paths; gardens; hiking trails, amphitheatre(s); bike paths; horseback riding trails; athletic fields; skateboard parks; and other open spaces.

- D) “Smoking” means possessing (and “Smoke” means to possess) a lighted pipe, lighted cigar, hookah pipe, or lighted cigarette of any kind, or the lighting of a pipe, cigar, hookah pipe or cigarette of any kind except those used for ceremonial purposes or religious observation
- E) “Tobacco Product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah pipes, snuff, chewing tobacco, any product or formulation of matter containing biologically active amounts of nicotine or any other preparation of tobacco, that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

Section 3. Prohibition of Smoking and Use of Tobacco Products in Recreational Areas.

- A) Smoking and/or the use of Tobacco Products is prohibited in all Recreational Areas.
- B) No person shall dispose of any cigarette, cigar, tobacco, weed, plant or other substance or product intended to be inhaled and/or exhaled or introduced into the human body in any place where smoking is prohibited under this Ordinance except in a designated waste disposal container.

Section 4. Posting of Signs.

Signs that indicate that Smoking or the use of Tobacco Products is prohibited such as “no smoking” or “smoke free area”, whichever is appropriate, with letters of 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) along with an appropriate citation to this ordinance, shall be clearly, sufficiently and conspicuously posted and maintained at all main entrances to Recreational Areas and additional signs shall be posted in a quantity and manner reasonably likely to inform individuals occupying the District Parks that Smoking and use of Tobacco Products are prohibited within the area. Such signs shall be posted by the owner, owner, operator, manager or other person having control of such Recreational Area. No person shall willfully mutilate or destroy any sign required by this section.

Section 5. Penalties and Enforcement.

- A) It shall be unlawful for any person, business or entity to violate any provision of this Ordinance or to cause, permit or allow, aid, abet or conceal a violation of any provision of this Ordinance.
- B) It shall be unlawful for any person, business or entity to knowingly permit or allow smoking an area that it exercises management or control in which smoking is prohibited by this Ordinance.
- C) Each instance of Smoking or use of Tobacco Products in violation of this Ordinance shall constitute a separate violation.
- D) Any person violating any provision of this Ordinance shall be guilty of an infraction, which is punishable by the following: (i) A fine, not exceeding twenty dollars, for the first violation; (ii) A

fine, not exceeding forty-five dollars, for a second violation within one year; or (iii) A fine, not exceeding two hundred dollars, for each additional violation of this chapter within one year.

- E) Any uniformed District employee, peace officer, including but not limited to, members of the Isla Vista Foot Patrol, the Santa Barbara County Sheriff's Department, the California Highway Patrol, and the University of California Campus Police, shall enforce this Ordinance. Those possessing this authority to act within the boundaries of Isla Vista Recreation and Park District will have the authority to enforce this Ordinance. Furthermore, the General Manager and District staff shall have the authority to deny use of Park District parks and facilities and participation in Park District programs to individuals and groups who fail to comply with this Ordinance.

Section 6. Other smoking laws.

This ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. The Isla Vista Recreation and Park District Board of Directors intend this Ordinance 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.

Section 7. Severability.

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 Board of Directors of the Isla Vista Recreation and Park District hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, 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 8. Effective Date.

This ordinance shall take effect and be in force thirty (30) days from the date of its passage; and before the expiration of fifteen (15) days after its passage it, or a summary of it, shall be published once, in the Santa Barbara News Press, the Daily Nexus, the Goleta Sound, which are newspapers of general circulation, published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

CHAIRPERSON, BOARD OF DIRECTORS

ATTEST:

GABRIEL BRETADO
DISTRICT CLERK

JEFF LINDGREN
GENERAL MANAGER

APPROVED AS TO FORM:

ROXANNE DIAZ
DISTRICT COUNSEL