



**OFFICE OF THE
CITY ATTORNEY**

SHARON SIEDORF CARDENAS
CITY ATTORNEY

THEODORE H. KOBAY, JR.
ASSISTANT CITY ATTORNEY

SR. DEPUTY CITY ATTORNEYS:
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO

**Law and Legislation Committee
Sacramento, California**

**CITY OF SACRAMENTO
CALIFORNIA**

February 13, 1991

921 TENTH STREET
SUITE 700
SACRAMENTO, CA
95814-2717

PH. 916-449-5346
FAX 916-449-6755

DEPUTY CITY ATTORNEYS:
EVELYN M. MATTEUCCI
DIANE B. BALTER
RICHARD F. ANTOINE
TAMARA MILLIGAN-HARMON
RICHARD E. ARCHIBALD
TIMOTHY N. WASHBURN
SABRINA M. THOMPSON
JOSEPH McINERNEY
JOE ROBINSON
LESLIE R. LOPEZ

**SUBJECT: SB 93 (Boatwright) and AB 16 (Peace)
Relating to Smoking in Public Places**

Honorable Members in Session:

SUMMARY

This report presents for Committee review SB 93 (Boatwright) and AB 16 (Peace) relating to smoking in public places. Staff recommends that the Committee endorse SB 93 on behalf of the City and notify Assemblyman Peace that the City would endorse AB 16 if a provision preserving more stringent local ordinances were added.

BACKGROUND

SB 93 (Boatwright)

SB 93 (Boatwright) provides that no person shall smoke in any eating establishment, medical care facility, or public building. Eating establishment is defined as any publicly or privately owned restaurant, coffee shop, cafeteria, short order cafe, luncheonette, soda fountain, bar, or other establishment primarily engaged in serving food or beverages to the general public. Medical care facility includes health facilities licensed by the state, and medical offices where physicians provide health care to patients. Public building is any building owned or leased by any state, regional, or local governmental entity.

There are differences between the provisions of this bill and the City's existing smoking regulations. SB 93 would prohibit smoking in all restaurants and bars immediately. Current City law phases in the complete prohibition on smoking in restaurants over the next year and one half, and does not prohibit smoking in bars. As to workplace smoking, however, the bill is less restrictive, prohibiting smoking only in those workplaces which are eating establishments, medical care facilities and public buildings.

Re: SB 93 (Boatwright) and AB 16 (Peace)
Relating to Smoking in Public Places

February 13, 1991

Page 2

Special features of SB 93 are:

a. No owner or employee of an eating establishment shall serve food or beverages to any person smoking within the establishment.

b. While it would be an infraction to smoke where smoking is not permitted, it would be a misdemeanor for any employer conducting business in, or any owner or manager of, an eating establishment, medical care facility, or public building to knowingly and willfully allow the violation of the no-smoking rules. Under this provision, the City and its managers could be guilty of a misdemeanor if no-smoking rules are not enforced.

SB 93 provides that it shall not preempt the implementation and enforcement of any local ordinance whether enacted prior to, or on or after, January 1, 1992, which contains provisions more stringent than those contained in the bill. Thus, the enactment of SB 93 would constitute substantial progress toward achieving a smoke-free workplace statewide, without impinging on local ordinances which move even farther toward that goal.

AB 16 (Peace)

AB 16 (Peace) also prohibits smoking in public places. Public places means common work areas, hallways, restrooms, waiting rooms, service lines, classrooms, theaters, terminals, hotels, commercial establishments of any kind, recreational facilities, enclosed sports pavilions, arenas, gymnasiums, health spas, boxing facilities, swimming pools, bowling alleys and other similar places where the general public assembles indoors to either engage in physical exercise, participate in athletic competition, or witnessing sporting events. Bars are specifically excluded from the term public places. Public places include both publicly and privately owned places.

Smoking is also prohibited in any outdoor sport facility, except that twenty-five percent (25%) of the designated seating area of any outdoor sports facility shall be set aside for smoking. Additionally, other non-seating areas shall be set aside within the outdoor sports facility for smoking.

In some respects AB 16 goes farther than SB 93 in prohibiting smoking in public places. Commercial establishments of any kind, not just eating establishments, would be non-smoking. However, the workplace restrictions are weak, and smoking areas at outdoor sporting events are mandated, rather than authorized at the discretion of the facility operator. Any violation would be a misdemeanor, resulting in the provision of jury trial and publicly appointed and financed attorneys for indigent defendants, and probably reducing the effective enforcement of the provisions.

Most significant, AB 16 does not contain a provision which provides that local ordinances with more stringent provisions are not preempted. The addition of a non-preemption provision is necessary if the City's own smoking regulations are to rest on firm ground.

Re: SB 93 (Boatwright) and AB 16 (Peace)
Relating to Smoking in Public Places

February 13, 1991

Page 3

FINANCIAL DATA

Not applicable.

POLICY CONSIDERATIONS

Support of statewide regulations restricting smoking in public places is consistent with the City Council's goal of reducing non-smokers' exposure to second-hand smoke and to have uniform regulations throughout the County and the State, so that different regulations do not apply across the boundaries of political subdivisions. Insisting upon state legislation that does not preempt more stringent local smoking regulations is consistent with the Council's goal to have progressive regulations relating to smoking.

MBE/WBE

Not applicable.

RECOMMENDATION

It is recommended that the Law and Legislation Committee endorse SB 93 (Boatwright) relating to smoking, and express tentative support for AB 16 (Peace) if amended to provide that it shall not preempt any local ordinance which contains more stringent provisions.

Respectfully submitted,

SHARON SIEDORF CARDENAS
City Attorney



DIANE B. BALTER
Deputy City Attorney

Contact Person to
Answer Questions:

Diane Balter, Deputy City Attorney
449-5346

Law and Legislation
February 21, 1991
All Districts

Introduced by Senator Boatwright**December 11, 1990**

An act to add Chapter 10.75 (commencing with Section 25935) to Division 20 of the Health and Safety Code, relating to smoking.

LEGISLATIVE COUNSEL'S DIGEST

SB 93, as introduced, Boatwright. Smoking: prohibitions. Existing law contains restrictions on smoking in certain types of public places.

This bill would prohibit a person from smoking in any eating establishment, medical care facility, or public building, as defined. The bill also would prohibit the owner or employee of an eating establishment from serving food or beverages to any person smoking within the establishment.

The bill would require the posting of signs regarding "no smoking," as specified, and would prohibit any person from willfully destroying or mutilating any sign posted pursuant to its requirements.

The bill would specify that its provisions would not preempt the implementation and enforcement of any local ordinance whether enacted prior to, or on or after January 1, 1992, which contains provisions more stringent than those contained in the bill.

The bill would make any violation of its provisions an infraction, punishable as specified, and would make it a misdemeanor for an employer conducting business in, or any owner or manager of, an eating establishment, medical care facility, or public building to knowingly and willfully allow a violation of its provisions, thereby imposing a state-mandated local program by creating a new infraction and misdemeanor.

This bill would contain various legislative findings regarding second-hand smoke.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of
2 the following:

3 (a) Research concludes that exposure to second-hand
4 smoke is the third leading cause of preventable death,
5 after smoking and alcohol.

6 (b) Second-hand smoke has been found by the
7 Environmental Protection Agency to be a known
8 carcinogen.

9 (c) The U.S. Surgeon General has concluded that
10 second-hand smoke is a cause of lung cancer and other
11 diseases in healthy nonsmokers.

12 (d) The U.S. Surgeon General has concluded that
13 children exposed to second-hand smoke have more
14 respiratory infections and lung problems than children
15 who are not exposed to second-hand smoke.

16 (e) Numerous government and privately sponsored
17 scientific studies have concluded that approximately
18 40,000 deaths per year occur from lung cancer, other
19 cancers, and heart disease due solely to exposure to
20 second-hand smoke.

21 SEC. 2. Chapter 10.75 (commencing with Section
22 25935) is added to Division 20 of the Health and Safety
23 Code, to read:

24

25 CHAPTER 10.75. SMOKING

26

27 25935. For purposes of this chapter, the following
28 definitions shall apply:

29 (a) "Eating establishment" means any publicly or

1 privately owned restaurant, coffee shop, cafeteria, short
2 order cafe, luncheonette, soda fountain, bar, or other
3 establishment primarily engaged in serving food or
4 beverages to the general public.

5 (b) "Medical care facility" means any health facility,
6 as defined in Section 1250, clinic, as defined in Section
7 1200, or facility in which a physician and surgeon provides
8 health care to patients.

9 (c) "Public building" means any building or portion
10 thereof owned or leased by any state, regional, or local
11 governmental entity.

12 (d) "Smoking" means the carrying or holding of a
13 lighted pipe, cigar, or cigarette of any kind or any other
14 lighted smoking equipment or the lighting or emitting or
15 exhaling of the smoke of a pipe, cigar, or cigarette of any
16 kind.

17 (e) "Smoke" means the gaseous products and particles
18 created by the use of a lighted pipe, cigar, or cigarette of
19 any kind or any other lighted smoking equipment.

20 25936. (a) No person shall smoke in any eating
21 establishment, medical care facility, or public building.

22 (b) No owner or employee of an eating establishment
23 shall serve food or beverages to any person smoking
24 within the establishment.

25 25937. (a) Every eating establishment, medical care
26 facility, or public building shall post or cause to be posted
27 and shall maintain "no smoking" signs in conspicuous
28 locations. All signs shall be prominently displayed, shall
29 clearly read "no smoking," shall use the international no
30 smoking symbol, and shall clearly read "smoking is a
31 violation of state law punishable by a fine of \$50 or \$100."

32 (b) The signs shall be posted not less than five feet nor
33 more than eight feet above floor level and shall be of
34 sufficient number and location to cause the message of
35 the signs to be clearly visible and readable. If the eating
36 establishment, medical care facility, or public building is
37 a multifloor facility, the signs shall be posted on each
38 floor.

39 (c) As an alternative to posting signs as required by
40 this section, an eating establishment may place small

1 signs, containing the messages required pursuant this
2 section, on each dining table.

3 (d) No person shall willfully mutilate or destroy any
4 sign required by this section.

5 25938. This chapter shall not preempt the
6 implementation and enforcement of any local ordinance
7 whether enacted prior to, or on or after, January 1, 1992,
8 which contains provisions more stringent than those
9 contained in this chapter.

10 25939. (a) Any person who violates any provision of
11 this chapter shall be guilty of an infraction, punishable by
12 a fine of fifty dollars (\$50) for the first violation, and one
13 hundred dollars (\$100) for each subsequent violation.

14 (b) It shall be a misdemeanor for any employer
15 conducting business in, or any owner or manager of, an
16 eating establishment, medical care facility, or public
17 building to knowingly and willfully allow the violation of
18 this chapter.

19 SEC. 3. If any provision or clause of this chapter or the
20 application thereof to any person or circumstance is held
21 to be unconstitutional or otherwise invalid, the invalidity
22 shall not affect other provisions, clauses, or applications of
23 this chapter, which may be implemented without the
24 invalid provision, clause, or application of this chapter,
25 and the provisions and clauses of this chapter are hereby
26 declared to be severable.

27 SEC. 4. No reimbursement is required by this act
28 pursuant to Section 6 of Article XIII B of the California
29 Constitution because the only costs which may be
30 incurred by a local agency or school district will be
31 incurred because this act creates a new crime or
32 infraction, changes the definition of a crime or infraction,
33 changes the penalty for a crime or infraction, or
34 eliminates a crime or infraction. Notwithstanding Section
35 17580 of the Government Code, unless otherwise
36 specified in this act, the provisions of this act shall become
37 operative on the same date that the act takes effect
38 pursuant to the California Constitution.

ASSEMBLY BILL

No. 16

Introduced by Assembly Member Peace

December 3, 1990

An act to to repeal and add Chapter 10.8 (commencing with Section 25940) of Division 20 of the Health and Safety Code, relating to smoking in public places.

LEGISLATIVE COUNSEL'S DIGEST

AB 16, as introduced, Peace. Smoking in public places: prohibition: misdemeanor.

Existing law known as the California Indoor Clean Air Act of 1976 requires that specified areas in publicly-owned buildings and other facilities be designated as nonsmoking sections, requires the posting of signs to that effect, and authorizes any person to apply for a writ on mandate to compel compliance.

This bill would repeal those provisions and would, instead, enact provisions prohibiting smoking in public places, as defined, and would make violation of these provisions a misdemeanor. By creating this new crime, this bill would impose a state mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 10.8 (commencing with Section
2 25940) of Division 20 of the Health and Safety Code is
3 repealed.

4 SEC. 2. Chapter 10.8 (commencing with Section
5 25940) is added to Division 20 of the Health and Safety
6 Code, to read:

7
8 CHAPTER 10.8. SMOKING IN PUBLIC PLACES
9

10 25940. (a) Smoking is prohibited in public places.

11 (b) "Smoking" for purposes of this chapter means
12 lighting, inhaling, exhaling or burning any pipe, cigar,
13 cigarette, or carrying any lighted pipe, lighted cigar,
14 lighted cigarette.

15 (c) "Public places" for the purposes of this chapter
16 means common work areas, hallways, restrooms, waiting
17 ~~rooms, service lines, classrooms, theaters, terminals,~~

18 hotels, commercial establishments of any kind, or
19 ~~recreational facilities.~~ "Public places" also includes
20 enclosed sports pavilions, arenas, gymnasiums, health
21 spas, boxing facilities, swimming pools, bowling alleys and
22 other similar places where the general public assembles
23 indoors to either engage in physical exercise, participate
24 in athletic competition, or witness sporting events. For
25 the purposes of this chapter, "public places" does not
26 include bars. "Public places" includes both publicly and
27 privately owned places.

28 25941. Smoking is prohibited in any outdoor sport
29 facility, except as permitted by this section. Twenty-five
30 percent (25%) of the designated seating area of any
31 outdoor sports facility shall be set aside for smoking.
32 Additionally, other nonseating areas shall be set aside
33 within the outdoor sports facility for smoking.

34 25942. A "bar" is a public place of business where
35 alcoholic beverages are provided for consumption on the
36 premises, in which the serving of food, if any, is incidental
37 to the consumption of alcoholic beverages. The dining
38 area of a restaurant utilized primarily for the serving and

1 consumption of food shall not constitute a bar for the
2 purposes of this act.

3 25943. A violation of this chapter shall be punishable
4 as a misdemeanor.

5 SEC. 4. No reimbursement is required by this act
6 pursuant to Section 6 of Article XIII B of the California
7 Constitution because the only costs which may be
8 incurred by a local agency or school district will be
9 incurred because this act creates a new crime or
10 infraction, changes the definition of a crime or infraction,
11 changes the penalty for a crime or infraction, or
12 eliminates a crime or infraction. Notwithstanding Section
13 17580 of the Government Code, unless otherwise
14 specified in this act, the provisions of this act shall become
15 operative on the same date that the act takes effect
16 pursuant to the California Constitution.

O