California Health and Safety Code, Section 104495
Restriction of Smoking at Public Playgrounds

104495. (a) For the purposes of this section, the following definitions shall govern:

(1) "Playground" means any park or recreational area specifically designed to be used by children that has play equipment installed, or any similar facility located on public or private school grounds, or on city, county, or state park grounds.

(2) "Tot lot sandbox area" means a designated play area within a public park for the use by children under five years of age. Where the area is not contained by a fence, the boundary of a tot lot sandbox area shall be defined by the edge of the resilient surface of safety material, such as concrete or wood, or any other material surrounding the tot lot sandbox area.

(3) "Public park" includes a park operated by a public agency.

(4) "Smoke or smoking" means the carrying of a lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind, including, but not limited
to, tobacco, or any other weed or plant.

(5) "Cigarette" means the same as defined in Section 104556.

(6) "Cigar" means the same as defined in Section 104550.

(b) No person shall smoke a cigarette, cigar, or other tobacco-related product within 25 feet of any playground or tot lot sandbox area.

(c) No person shall dispose of cigarette butts, cigar butts, or any other tobacco-related waste within 25 feet of a playground or a tot lot sandbox area.

(d) No person shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this section.

(e) Any person who violates this section is guilty of an infraction and shall be punished by a fine of two hundred fifty dollars ($250) for each violation of this section. Punishment under
this section shall not preclude punishment pursuant to Section 13002, Section 374.4 of the Penal Code, or any other provision of law proscribing the act of littering.

(f) The prohibitions contained in subdivisions (b), (c), and (d) shall not apply to private property.

(g) The prohibitions contained in subdivisions (b) and (c) shall not apply to a public sidewalk located within 25 feet of a playground or a tot lot sandbox area.

(h) This section shall not preempt the authority of any county, city, or city and county to regulate smoking around playgrounds or tot lot sandbox areas. Any county, city, or city and county may
enforce any ordinance adopted prior to January 1, 2002, or may adopt and enforce new regulations that are more restrictive than this section, on and after January 1, 2002.

REGULAR

NUMBER: 227.4

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 215 OF TITLE V TO THE MILPITAS MUNICIPAL CODE RELATED TO PROHIBITIONS ON SMOKING AT ENTRANCES TO CITY-OWNED BUILDINGS, PUBLIC PLAYGROUNDS AND SPORTS FACILITIES

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of February 7, 2006, upon motion by Councilmember_____ and was adopted (second reading) by the City Council at its meeting of_____, upon motion by Councilmember _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

Section 1. Findings. State law presently prohibits smoking in enclosed places of employment, and public playgrounds. Chapter 215 of Title V of the Milpitas Municipal Code incorporates by reference those provisions of state law and sets out the City's enforcement authority with respect to state law. The purpose of this ordinance is to add additional restrictions on smoking in certain unenclosed public places, more specifically at entrances to City-owned buildings, playgrounds and sports facilities. The City Council has received information from the public that smoking in areas where it is still permissible under state law continues despite the known health risks to smokers and nonsmokers alike, specifically from secondhand smoke. The City Council's intent in adopting this ordinance is to preserve and improve the health of children engaging in play at City owned and operated playgrounds, athletic participants and spectators at City owned sports facilities and workers of the City by reducing their exposure to secondhand smoke and the harmful effects thereof on human health.

Section 2. Amendment to Chapter 215 of Title V. Chapter 215 of Title V of the Milpitas Municipal Code is hereby amended as follows:

Chapter 215

REGULATION OF SMOKING IN CERTAIN PLACES

V-215-1.10 Purpose

The City Council of the City of Milpitas recognizes the right and need of those who wish to breathe fresh air while working, or engaging in play or athletic activity. In order to serve the public health, safety and general welfare, the purpose of this chapter is to prohibit smoking in public playground areas, athletic facilities and certain places of employment, except in designated smoking areas. The City Council hereby adopts and incorporates as if set out at length herein, California Labor Code Section 6404.5, and California Health and Safety Code, Section 104495, as now written and as amended from time to time. A copy of California Labor Code Section 6404.5 and California Health and Safety Code, Section 104495, shall be available for inspection during regular business hours in the office of the City Clerk.

V-215-1.15 Definitions

This section is hereby enacted to include the following definitions:

(a) *Smoke or smoking* shall mean and include the lighting and/or carrying of a lighted cigarette of any kind, lighted pipe or lighted cigar.

(b) *Public facility* shall mean any building owned or leased by the City of Milpitas, including city vehicles.

(c) *Playground* means any tot lot, park or recreational area specifically designed to be used by children that has play equipment installed, or any similar facility located on public property.

(d) *Sport facility* shall mean any athletic field, tennis court, basketball court, swimming pool, and other similar place where members of the public assemble to engage in physical exercise, participate in athletic competitions, or witness sports events, including concession stands.

V-215-1.20 Prohibition of Smoking in City-owned Facilities

Smoking shall be prohibited Within 25 feet of entrances, exits, open windows, and ventilation-intake systems of any building owned or leased by the City of Milpitas, including city vehicles

V-215-1.25 Prohibition of Smoking in Certain Places

Except as specified in Section V-215-1.29 Smoking – Optional Areas, smoking shall be prohibited in the following places within the City of Milpitas:

(a) Within 25 feet of all playgrounds owned and operated by the City of Milpitas.

(b) Within 25 feet of any sports facility owned by the City of Milpitas, including bleacher areas, spectator seating areas and concession stands.

V-215-1.29 Smoking – Optional Areas

Notwithstanding any other provisions of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

(a) On-stage smoking as part of a stage production, or similar exhibition in a public facility.

(b) A public sidewalk within 25 feet of a public facility, playground or sports facility.

(c) Any public area not restricted to smoking.

(d) Private property.

V-215-1.30 Posting of Signs

"Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch (1") 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) shall be clearly, sufficiently, and conspicuously posted in or outside of every building or other place where smoking is controlled by this chapter, by the owner, operator, manager, or other person having control of such building or other place. When a sign is posed on the exterior of a building to indicate "No Smoking," it shall include the distance limitations contained in this chapter.

V-215-1.40 Inspection

The City Manager, or his or her designee(s), shall have the authority to enforce provisions of this Chapter. Such enforcement shall include the right to enter places of employment or any playground or sports facility, as defined in California Labor Code Section 6404.5, and California Health and Safety Code, Section 104495, at any time a city owned and/or operated facility is open to the public, or during

regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with this Chapter.

V-215-1.50 Penalty

Persons violating section 1.20 and 1.25 of this Chapter shall be guilty of an infraction punishable by a fine of two hundred and fifty dollars ($250) for each violation of this section.

V-215-1.60 Violations Reports to State

If any person is convicted of a third violation of state law provisions concerning smoking in enclosed places of employment within one year, a report of all three violations shall be made to the Compliance Section of the Division of Occupational Safety and Health in the California Department of Industrial Relations. (Ord. 227.2 (part), 5/2/95)

Section 3: Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid or unenforceable by a court of competent jurisdiction, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of the ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clause, or phases, or the application of any of the foregoing to a particular person or circumstance, be held unconstitutional, invalid, or unenforceable.

Section 4: Effective Date; Publication. Pursuant to the provisions of Government Code Section 36933, a Summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the City Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting.