

Santa Rosa City Code

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*Prior history: Prior code §§ 12.10—12.18; Ords. 2716, 3060, 3093, 3120, 3190.

9-20.010 Findings.

- (A) Numerous studies have found tobacco smoke is a major contributor to indoor air pollution; and
- (B) Reliable studies, including studies by the Surgeon General of the United States, have shown that breathing secondhand smoke is a significant health hazard for certain population groups, including elderly people, individuals with cardiovascular disease, and individual with impaired respiratory function, including asthmatics and those with obstructive airway disease; and
- (C) In early 2006 following a four-year study, the California Air Resources Board declared second-hand smoke a toxic air contaminant, which has been linked to 400 additional lung cancer deaths a year in nonsmokers, 3,600 deadly heart attacks and 31,000 asthma attacks in children;
- (D) Health hazards induced by breathing secondhand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm; and
- (E) Nonsmokers with allergies, respiratory diseases and those who suffer ill effects of breathing secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same; and
- (F) Persons have a right to a smoke-free environment if they desire; and
- (G) Smoking is a documented cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic losses to businesses;
- (H) In order to reduce addiction to tobacco products by children and teens and reduce shoplifting of tobacco products by underage consumers, it is in the public interest to:
 - (1) Prohibit self-service sales and to self-service displays, racks and shelves of tobacco products,
 - (2) Require the posting of warning signs at the point of purchase stating the legal age and that identification is required to purchase tobacco, and
 - (3) Prohibit vending machines that are accessible to minors. (Ord. 3786 § 1, 2006)

9-20.020 Intent.

- (A) To protect the public health, safety and general welfare by providing a smoke free environment in public places where nonsmokers may be exposed to secondhand smoke.
- (B) When areas for smoking are desirable, adequate separation from nonsmoking areas shall be maintained to provide a smoke-free environment for nonsmokers.
- (C) Strike a reasonable balance between the needs of persons who smoke and the need of nonsmokers, including children, to breathe smoke-free air, recognizing the threat to public health and the environment that smoking causes. (Ord. 3786 § 1, 2006)

9-20.030 Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this section:

“Business” means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an employee, as defined in this section.

“Dining area” means any area available to or customarily used by the general public, which is designed, established, or regularly used for consuming food or drink.

“Employee” means any person who is employed by any employer or hired as an independent contractor in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

“Employer” means any person, partnership, corporation or nonprofit entity, including a municipal corporation, who employs the services of one or more persons.

“Enclosed” means closed in by roof and four walls with appropriate openings for ingress and egress.

“Nonprofit entity” means any corporation, unincorporated association or other entity created for charitable, educational, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a “nonprofit entity” within the meaning of this section.

“Place of employment” means any area under the control of a public or private employer that employees may have cause to enter during the normal course of employment, including, but not limited to, work areas, vehicles used in employment or for business purposes, taxis, employee lounges and restrooms, conference rooms and classrooms, cafeterias and hallways, except that a private residence is not a place of employment unless it is used as a child care or a health care facility.

“Playground” means any park or recreational area designed in part to be used by children that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on City grounds.

“Public place” means any area in which the public is invited or in which the public is permitted, including, but not limited to: places of employment, banks, educational facilities, health facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail stores, theaters and waiting rooms.

“Reasonable distance” means a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of 20 feet.

“Recreational areas” means areas owned or operated by the city and open to the general public for recreational purposes, including, gardens, playgrounds, and picnic and barbeque areas, sporting facilities, including any bleachers, dugouts, ball fields, tennis courts, swimming pools and surrounding areas, walking, running, biking and nature trails.

“Restaurant” means any coffee shop, cafeteria, tavern, sandwich stand, soda fountain, private or public school cafeteria, and any other eating establishment, organization, club, boardinghouse or guest house, which gives or offers food for sale to the public, guests, patrons, members or employees.

“Retail tobacco store” means a retail store utilized primarily for the sale of tobacco products and accessories.

“Self-service display” means the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the

retailer or employee of the retailer.

“Smoking” means inhaling, exhaling, burning or carrying any lighted pipe, cigar or cigarette of any kind, or any other combustible substance.

“Sports arena” means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.

“Tobacco paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products.

“Tobacco product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

“Tobacco retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia. “Tobacco retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

“Vending machine” means any electronic or mechanical device or appliance, the operation of which depends upon insertion of money, whether in coin or in paper bill, or other thing representative of value, which dispenses or releases tobacco products and/or tobacco accessories. (Ord. 3793 §§ 1,2 2006; Ord. 3786 § 1, 2006)

9-20.040 Prohibition of smoking in enclosed places.

(A) Smoking shall be prohibited in the following enclosed places within the City except as provided in Section 9-20.060 of this chapter, and except in such places in which smoking is already prohibited by State or federal law in which case the State or federal law applies.

(1) All enclosed areas available to and customarily used by the general public and all businesses patronized by the public, including but not limited to, places of employment, retail stores, hotels and motels, pharmacies, banks, attorneys’ offices, restaurants, offices, and all areas in enclosed shopping malls inside and outside of retail stores;

(2) Waiting rooms, hallways, wards, and rooms of health facilities, including but not limited to, hospitals, clinics, physical therapy facilities, doctors’ offices and dentists’ offices;

(3) Elevators, public restrooms, indoor service lines, buses, taxi cabs, and other means of public transit under the authority of the city and in ticket, boarding and waiting areas of public transit depots;

(4) Museums and galleries;

(5) Enclosed sports arenas and convention halls;

(6) Retail food marketing establishments, including grocery stores and supermarkets;

(7) Restaurants;

(8) All places of employment.

(B) Smoking shall be prohibited within a reasonable distance (minimum of 20 feet), as defined in this chapter, from any main entrance into an enclosed area in which smoking is prohibited except while actively passing on the way to another destination and without entering or crossing any area in which smoking is prohibited.

(C) Notwithstanding any other provision of this chapter, any owner, operator, manager or other person who controls any property may prohibit smoking within the entire property, or any portion of the entire property. (Ord. 3793 § 3, 2006; Ord. 3786 § 1, 2006)

9-20.050 Prohibition of smoking in unenclosed places.

(A) Smoking shall be prohibited in the following unenclosed places within the City except in such places in which smoking is already prohibited by State or federal law in which case the State or federal law applies:

(1) Recreational areas, as defined in Section 9-20.030 of this chapter; it being the express purpose of this subsection to eliminate secondhand smoke in those recreational areas open to the public where it is most likely to impact users, including but not limited to gathering and active use areas, but with the understanding that public recreational areas are subject to the exception set forth in Section 9-20.060(C).

(2) Dining areas, subject to special permit exception as set forth in subsection (C) of this section.

(3) Old Courthouse Square, including any of the grass, fountain and seating areas located within the public square commonly known within the City as “Old Courthouse Square” located between Fourth Street on the northern boundary and Third Street on the southern boundary.

(4) Comstock Mall, consisting of pedestrian ways between the City’s parking garage located on D Street, on the eastern boundary, Santa Rosa Avenue on the western boundary, First Street on the southern boundary and Third Street on the northern boundary, including but not limited to any fountains or benches within that area commonly known as “Comstock Mall.”

(5) The City’s downtown transit mall located between B Street on the western boundary and Santa Rosa Avenue on the eastern boundary.

(6) The City’s westside transfer station located on the corner of Marlow Road and College Avenue.

(7) The pedestrian walk way running north-south, between Fourth Street, on the southern boundary, and the Fifth Street public parking lot, on the southern boundary, named by the City as “Jeju Way.”

(B) Smoking shall be prohibited within a reasonable distance (minimum of 20 feet), as defined in this chapter, from any unenclosed area in which smoking is prohibited except while actively passing on the way to another destination and without entering or crossing any area in which smoking is prohibited.

(C) With respect to privately owned unenclosed dining areas only, to the extent that smoking is not otherwise prohibited by State or federal law, the owner or operator of any such area may apply to the City for a one-day special event permit to allow for any event of which the use of tobacco products is an integral part. (Ord. 3793 § 4, 2006; Ord. 3786 § 1, 2006)

9-20.060 Places where smoking permitted.

Notwithstanding any other section of this chapter, smoking is permitted in the following locations within the City, unless otherwise provided by state or federal law, in which case state or federal law applies:

(A) Private residential property, unless said residential property is used as a child care or a health facility. Nothing in this chapter shall require a person or entity who or which owns or controls a private residential property, including but not limited to a condominium association or homeowners association or an apartment owner to permit smoking and such a person may choose to prohibit smoking throughout the property he, she or it owns or controls.

(B) In up to 50 percent of guest rooms in any hotel or motel, if the hotel or motel permanently designates at least 50 percent of its guest rooms as nonsmoking rooms, appropriately signs nonsmoking rooms and permanently removes ashtrays and matches from them. Smoking rooms shall be segregated from nonsmoking rooms and not

interspersed. Nothing in this ordinance shall require a hotel or motel to provide smoking rooms and the owner or operator of a hotel or motel may choose to prohibit smoking throughout the property or choose to designate more than 50 percent of guest rooms as nonsmoking.

(C) Any outdoor area in which no nonsmoker is present and, due to the time of day or other factors, it is not reasonable to expect another person to arrive. (Ord. 3786 § 1, 2006)

9-20.070 Duty of employer, business, or nonprofit entity.

(A) No employer, business, or nonprofit entity shall knowingly or intentionally permit the smoking of tobacco products in an area which is under the employer's, business's, or nonprofit entity's control and in which smoking is prohibited.

(B) No employer, business, or nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, without limitation, ash trays or ash cans, within an area which is under the employer's, business's, or nonprofit entity's control and in which smoking is prohibited, including, without limitation, inside the perimeter of any reasonable smoking distance required by this chapter.

(C) Notwithstanding any other provision of this chapter, any employer, business, nonprofit entity, or other person who controls any area may declare that any part of such area in which smoking would otherwise be permitted is a nonsmoking area. (Ord. 3786 § 1, 2006)

9-20.080 Tobacco self-service displays and tobacco samples prohibited.

(A) Any person, business or other establishment which sells cigarettes and any other tobacco products for consumption shall post plainly visible signs at each point of purchase of tobacco products which state "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW AND SUBJECT TO PENALTIES. VALID IDENTIFICATION MAY BE REQUIRED TO PURCHASE TOBACCO." The letters of these signs shall be at least one quarter inch high. Notwithstanding the foregoing, any sign or posting in compliance with Title 17, Section 6902(a) of the California Code of Regulations shall also be deemed to be in compliance with this section.

(B) It is unlawful for any person to display tobacco products or tobacco paraphernalia by means of a self-service display or to engage in tobacco retailing by means of a self-service display. Tobacco retailing by means of a vending machine is prohibited by this section.

(C) No person shall knowingly distribute or furnish without charge, or cause to be furnished without charge to the general public, cigarettes or other tobacco products, at any event open to the public, or in any public place including but not limited to, any right-of-way, mall or shopping center, park, playground and any other district, or any park district, except in retail tobacco stores. (Ord. 3786 § 1, 2006)

9-20.090 Retaliation prohibited.

No person or employer shall discharge, refuse to hire, or in any manner, retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter. (Ord. 3786 § 1, 2006)

9-20.100 Posting of signs.

(A) "Smoking" or "No Smoking" signs, whichever are 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) 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 posted on the exterior of a building to indicate no smoking, it shall include the distance limitations contained in this chapter.

(B) Every theater owner, manager or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium, and in the case of motion picture theaters, such information shall be shown upon the screen for at least five seconds prior to the showing of each feature motion picture. (Ord. 3786 § 1, 2006)

9-20.110 Public education by City.

(A) The City Manager shall engage in a continuing program to explain and clarify the purposes of this chapter to citizens affected by it, and to guide owners, operators and managers in their compliance with it.

(B) The City Manager shall leave the responsibility of conducting a public education campaign regarding the health consequences of smoking to other governmental and health agencies equipped with the needed expertise to conduct such campaigns. (Ord. 3786 § 1, 2006)

9-20.120 Public education—Cooperation with other agencies.

The City Manager shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this chapter. The City Manager shall urge federal, state, county and special school district agencies to enforce their existing smoking control regulations and to comply voluntarily with this chapter. (Ord. 3786 § 1, 2006)

9-20.130 Interpretation.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Ord. 3786 § 1, 2006)

9-20.140 Violations, penalties and enforcement.

(A) It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the regulation under this chapter to fail to comply with its provisions.

(B) It is unlawful for any person to smoke in any area restricted by the provisions of this chapter.

(C) Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by:

(1) A fine not exceeding \$100, for first violation;

(2) A fine not exceeding \$250, for a second violation of this chapter within one year;

(3) A fine not exceeding \$500, for each additional violation of this chapter within one year. Any peace officer shall have the authority to enforce the provisions of this chapter. Punishment under this chapter shall not preclude punishment pursuant to any provision of law proscribing the act of littering.

(D) Any owner, manager, operator or employer of any establishment controlled by this chapter shall have the right to inform persons violating this chapter of the appropriate provisions thereof. (Ord. 3786 § 1, 2006)

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