

**Chapter 9-20 PROHIBITING SMOKING IN OR AROUND WORKPLACES, PUBLIC PLACES, AND PRIVATE PLACES****9-20.010 Findings.**

- (A) Second hand smoke has been repeatedly identified as a health hazard; and
- (B) There is no Constitutional right to smoke; and
- (C) The U.S. Surgeon General found there is no risk-free level of exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke; and
- (D) 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; and
- (E) The California Environmental Protection Agency 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; and
- (F) Exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke occurs at significant levels outdoors, as evidenced by the following:
  - (1) Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on the direction and amount of wind and number and proximity of smokers; and
  - (2) Smoking cigarettes near building entryways can increase air pollution levels by more than two times as compared with background levels, with maximum levels reaching the “hazardous” range on the U.S. EPA’s Air Quality Index; and
  - (3) According to a study, a person may have to move nearly 23 feet away from the source of the smoke to be completely free from exposure to secondhand smoke in outdoor places; and
- (G) Studies document that secondhand smoke transfers between attached units within a building and increases chemical contamination levels within nonsmoking units; and
- (H) Cigarette butts are a major and persistent source of litter, do not biodegrade, and are often cast onto sidewalks and streets, frequently ending up in storm drains that flow into creeks, rivers, and ultimately the ocean; and
- (I) Studies on electronic cigarettes’ vapor emissions and cartridge contents have found a number of dangerous substances including chemicals known to the State of California to cause cancer such as formaldehyde, acetaldehyde, lead, nickel, and chromium. Additional

substances include PM<sub>2.5</sub>, acrolein, tin, toluene, and aluminum which are associated with a range of negative health effects such as skin, eye, and respiratory irritation, neurological effects, damage to reproductive systems, and even premature death from heart attacks and strokes.

(J) The U.S. Surgeon General found evidence that at high-enough doses nicotine has acute toxicity. In addition, nicotine exposure during fetal development, a critical window for brain development, has lasting adverse consequences for brain development, nicotine adversely affects maternal and fetal health during pregnancy, contributing to multiple adverse outcomes such as preterm delivery and stillbirth, and nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development.

(K) Several studies have concluded that vapor from electronic cigarettes may cause passive or secondhand inhalation of vapor by surrounding people; and

(L) There are no studies that prove that inhalation of vapor from an electronic cigarettes is not harmful to health, and the long-term health risks of the use of electronic cigarettes on device users and surrounding people remain unknown; and

(M) It is in the interest of the City of Santa Rosa to ensure that people living and working in Santa Rosa, and people visiting Santa Rosa, have the opportunity to experience a smoke-free and vapor-free environment if they desire.

**9-20.020 Intent.**

(A) To protect the public health, safety and general welfare by providing a smoke-free and vapor-free environment in public and private places where nonsmokers may be exposed to secondhand smoke and vapor; and

(B) To protect the public health, safety and general welfare; and

(C) To guarantee the right of nonsmokers to breathe smoke-free and vapor-free air, and to recognize that the need to breathe smoke-free and vapor-free air has priority over the desire to smoke or use vapor products.

**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.

"Common area" means every enclosed area or unenclosed area of a multifamily residence that residents of more than one (1) unit of that multifamily residence are entitled to enter or use, including but not limited to halls, paths, lobbies, courtyards, elevators, stairwells, community

rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, shared restrooms, shared laundry rooms, common cooking areas and shared eating areas.

"Designated smoking area" means a designated portion of an unenclosed area where smoking may be allowed. The smoking area must meet all of the following criteria:

(A) Must be located at least 25 feet in any direction from any operable doorway, window, vent or other opening into an enclosed area;

(B) Must be located at least 25 feet from unenclosed recreational areas that are primarily used by children;

(C) Must be located at least 25 feet from unenclosed areas that have improvements that facilitate physical activity including playgrounds, tennis courts, swimming pools, walking paths and sports fields;

(D) Must be clearly identified by conspicuous signs, and have ash receptacles, such as ash trays or ash cans, within the area for proper disposal of smoking waste.

"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.

"Electronic smoking device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. "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. "Electronic smoking device" does not include any product specifically approved by the United States Food and Drug Administration for the use in the mitigation, treatment, or prevention of disease.

"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 area" means all space between a floor and ceiling where the space is closed in on all sides by solid walls or windows that extend from the floor to the ceiling. An enclosed area may have openings for ingress and egress, such as doorways or passageways.

"Existing unit" means any unit that is not a new unit.

"Landlord" means any person who owns property rented for residential use, any person who lets residential property, and any person who manages such property, except that "Landlord" does not include a master tenant who sublets a unit as long as the master tenant sublets only a single unit of a multifamily residence.

"Multifamily residence" for purposes of this chapter means residential property containing two or more units with one or more shared walls, floors or ceilings, including but not limited to apartments, residential cooperatives, residential condominiums, duplexes, and other attached housing. "Multifamily residence" does not include:

- (1) A hotel or motel;
- (2) A mobile home park;
- (3) A campground;
- (4) A single family detached residence;
- (5) A single-family home with an attached or detached second dwelling unit as defined by Government Code Section 65852.2 when permitted pursuant to local ordinance and/or applicable state law;
- (6) Residential care facilities for seniors licensed by the State of California.

"New unit" means a multifamily residence that is issued a certificate of occupancy or final inspection on or after June 1, 2015, and also a unit that is leased or rented for the first time on or after June 1, 2015.

"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.

"Parks and recreational areas" means properties and areas owned or operated by the City and open to the general public for recreational purposes, including parks, gardens, playgrounds, picnic and barbeque areas, sporting facilities, including but not limited to bleachers, dugouts, ball fields, sport courts, golf courses, swimming pools, and nature trails for walking, running, and biking. The entire property, including parking areas, is included in this definition.

"Place of employment" means any area under the control of an employer that an employee or the public may have cause to enter in the normal course of operations, regardless of the hours of operation. Places of employment include, but are not limited to, indoor work areas, bars, restaurants, at least seventy-five percent (75%) of the guest rooms in any hotel and motel, vehicles used for business purposes, taxis, employee lounges and break rooms, conference and banquet rooms, bingo and gaming facilities, long-term health care facilities, warehouses, retail or wholesale tobacco shops, and private residences used as licensed child care or health care facilities when employees, children or patients are present during business hours. The places specified in subdivisions (d)(1)-(8), (12)-(14) of the Labor Code section 6404.5 are places of employment for purposes of this division and are regulated as specified in this chapter. The

places specified in subdivision (d)(9)-(11) of the Labor Code are not places of employment for purposes of this chapter.

“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 property, or on City property.

“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 25 feet.

“Residential care facility” means housing for seniors licensed by the State Health and Welfare Agency, Department of Social Services, typically for residents who are frail and need supervision. Services normally include three meals daily, housekeeping, security and emergency response, a full activities program, supervision in the dispensing of medicine, personal services such as assistance in grooming and bathing, but no nursing care.

“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.

“Service area” means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more persons to wait for or receive a service or make a transaction, whether or not such service or transaction involves the exchange of money, such as but not limited to ATM lines, outdoor food vending, movie theater lines, and taxi cab stands. The term "service area" includes all bus stops and other transit facilities.

"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 consumption of the byproducts. The term "smoke" includes, but is not limited to, tobacco smoke and vapors from electronic smoking

device paraphernalia. "Smoke" does not include the byproducts of any device or product that has been approved for therapeutic purposes by the U.S. Food and Drug Administration (FDA).

"Smoking" means igniting, inhaling, exhaling, burning, vaping, operating, or carrying any lighted cigar, cigarette, pipe, hookah, electronic smoking device, tobacco product, or any other combustible substance including marijuana.

"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. Also includes any product or formulation of matter containing biologically active amounts of nicotine or synthetic nicotine 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, including but not limited to electronic smoking devices.

"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.

"Unenclosed area" means any area that is not an enclosed area.

"Unit" for the purpose of this chapter means a residential personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio.

"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.

**9-20.040 Prohibition of smoking in enclosed nonresidential places.**

(A) Smoking shall be prohibited in the following places within the City except as provided in Section 9-20.080 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 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, 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;

(4) Museums and galleries;

(5) Sports arenas and convention halls;

(6) Retail food establishments, including grocery stores;

(7) Restaurants;

(8) All places of employment.

(B) Smoking shall be prohibited within a reasonable distance (minimum of 25 feet), as defined in this chapter, from any main entrance into an 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.

**9-20.050 Prohibition of smoking in unenclosed nonresidential 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) Parks and recreational areas, as defined in Section 9-20.030. Smoking may be allowed in designated smoking areas as authorized by the City Manager.

(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.

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

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

(7) The City’s Westside Transfer Station located on the corner of Marlow Road and College Avenue.

(B) Smoking shall be prohibited within a reasonable distance (minimum of 25 feet), as defined in this chapter, from any 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.

#### **9-20.060 Prohibition of smoking on and in City owned property**

(A) Smoking shall be prohibited in all vehicles owned, leased or operated by the City. Smoking shall be prohibited in all enclosed areas owned, leased or operated by the City. Smoking shall be prohibited in all unenclosed areas owned by the City. Smoking may be allowed in designated smoking areas as authorized by the City Manager.

(B) The prohibition of smoking on and in public property does not apply to streets, alleys, and abutting sidewalks, except that smoking shall be prohibited within a reasonable distance (minimum of 25 feet) from any 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.



**9-20.070 Prohibition of smoking in multifamily residences**

- (A) Smoking is prohibited in any new unit of a multifamily residence.
- (B) Beginning February 1, 2016, smoking is prohibited in any existing unit of a multifamily residence.
- (C) Smoking is prohibited in all common areas, except that a person with legal control over a common area, such as a landlord or homeowners' association, may designate a portion of the common area as a designated smoking area provided that at all times the designated smoking area complies with subsection (D) below.
- (D) A designated smoking area shall comply with the requirements of Section 9.20-030 above. In addition, designated smoking areas for multifamily residential properties shall be located at least 25 feet from all perimeter property lines abutting residential to minimize the impacts of outdoor smoking on adjacent property owners; and
- (E) No person with legal control over a common area in which smoking is prohibited by this article or other law shall knowingly permit the presence of ash trays, ash cans, or other receptacles designed for or primarily used for disposal of smoking waste within the area.

**9-20.080 Landlord compliance with smoking prohibition in multifamily residences**

- (A) Every landlord of a multifamily residence, as defined in this chapter, in order to demonstrate compliance with the applicable provisions in this chapter, shall at a minimum include in every lease or rental agreement for a multifamily residence a provision prohibiting any smoking within any such unit, including any exclusive use areas such as patios, balconies and porches, as well as in common areas and on the property as a whole, except in a designated smoking area consistent with this chapter. Such provision shall (1) state that any violation of the smoking prohibition by, through or under the control of tenant be construed as a material breach of the lease or rental agreement, and (2) be included in any rental or lease agreement at the soonest date possible, but in no event later than February 1, 2016 for those multi-family units already in existence and subject to a lease as of the effective date of the ordinance.
- (B) Compliance with the requirement set forth in (A) above shall not excuse the landlord of a multi-family unit from taking appropriate steps to ensure tenant compliance with this chapter, and landlord shall be prepared to respond to and address complaints from other tenants on the property of violations of the smoking prohibitions.

**9-20.090 Places where smoking is 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 developed and occupied with single family detached housing, 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 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 25 percent of guest rooms in any hotel or motel, if the hotel or motel permanently designates at least 75 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 75 percent of guest rooms as nonsmoking.

(C) In designated smoking areas that meet the definition contained in Section 9-20.030 or otherwise expressly permitted in this ordinance.

**9-20.100 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.

**9-20.110 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.

**9-20.120 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.

**9-20.130 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.

**9-20.140 Interpretation.**

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**9-20.150 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.

(4) 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) Misdemeanors. Any person who violates any provision of this article in excess of three (3) times within one (1) year shall be deemed guilty of a misdemeanor.

(E) Each day that a violation of this article continues shall constitute a separate violation of this article.

(F) In addition to other remedies provided by this article or by other law, any violation of this article may be remedied by a civil action brought by the City, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. In any such action, the City may seek reimbursement for the costs of any investigation, inspection or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing administrative action under this article. The foregoing remedy shall be deemed nonexclusive, cumulative and in addition to any other remedy the City may have at law or in equity, including but not limited to injunctive relief to prevent violations of this article.

(G) 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.