

CITY OF SANTA ROSA  
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL  
SUBJECT: SMOKING REGULATIONS UPDATE: BACKGROUND AND  
OVERVIEW OF PROPOSED CHANGES  
STAFF PRESENTER: ERIN MORRIS, SENIOR PLANNER  
COMMUNITY DEVELOPMENT  
  
AGENDA ACTION: NONE

---

ISSUE

Should the City Council accept the report regarding the City's Smoking Regulations Update and direct staff to schedule the proposed revisions to Chapter 9-20 of the City Code and Chapter 20-70 of the Zoning Code for a public hearing and decision?

COUNCIL GOALS/STRATEGIES

City Council Goal 6 is to "Commit to Making Santa Rosa a Healthy Community Where People Feel Safe to Live, Work, and Play." Strategic Objective #2 is to expand the City's smoking ordinance for public/private places.

EXECUTIVE SUMMARY

1. Revised smoking regulations have been developed in response to Council direction provided on August 26, 2014.
2. The following changes are proposed to City Code Chapter 9-20, which would be retitled "Prohibiting Smoking in and Around Workplaces, Public Places, and Private Places:"
  - A. Prohibit smoking in attached multifamily housing, including duplexes, apartments, and condominiums and any building that contains two or more attached residential units.
  - B. Eliminate any allowance for smoking on City-owned recreational properties including parks.
  - C. Prohibit smoking at all City-owned properties including (but not limited to) office buildings, recreation centers, public safety facilities, parking garages, and parking lots.

- D. Prohibit smoking in outdoor service areas, including ATM lines, outdoor food vending, movie theater lines, bus stops and bus shelters.
  - E. Revise the definition of “smoking” in City Code Chapter 9-20 and the definition of “tobacco or smoke shop” in the Zoning Code to explicitly include use and sale of electronic smoking devices.
  - F. Increase the percentage of guest rooms within hotels and motels that must be smoke free from 50% to 75%.
  - G. Increase the reasonable distance, defined as “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,” from 20 feet to 25 feet.
- 3. The revised regulations are intended to reduce the impacts of second hand smoke on nonsmokers, consistent with goal of the current smoking regulations.
  - 4. Electronic smoking devices (e-cigarettes) would be regulated the same as other kinds of smoking because studies show the emissions contain harmful chemicals and may cause negative health effects to surrounding people.
  - 5. The proposed revised definition of smoking is "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."
  - 6. Public input and review was facilitated at two Community Meetings held in September and October of 2014, review by the Board of Community Services and the Planning Commission, and a project web page. A complete draft of the revised regulations has been available for public review since October 15, 2014.
  - 7. The following report will provide greater detail on all of these topics.

## BACKGROUND

- 1. In 2013, the Council established goals and strategic objectives for 2013 to 2015. Council Goal 6 states that the Council will “commit to making Santa Rosa a healthy community where people feel safe to live, work, and play.” Strategic Objective #2 is to expand the City’s smoking ordinance for public/private places. The Community Development Department was tasked with bringing forward revised regulations for smoking in public and private places.
- 2. In July 2014, Community Development facilitated a meeting of City departments including Recreation and Parks, Transportation and Public Works (Transit Division), Economic Development and Housing, City Attorney, Fire, and Police. Departments

identified various topic areas that could be addressed through a comprehensive update to the City's smoking regulations. The ideas generated by staff focused on reducing the impacts of second hand smoke.

3. Various cities in Sonoma County have recently updated local smoking-related regulations to address smoking within multifamily residences, including Petaluma, Rohnert Park, Sebastopol, and County of Sonoma. Other topic areas, including use and impacts of electronic cigarettes, have also been addressed in several local ordinances.
4. On August 26, 2014, the City Council directed Community Development staff to update the City's smoking regulations in eight main areas:
  - a. Prohibit smoking in attached multifamily housing.
  - b. Prohibit smoking on City-owned recreational properties including parks.
  - c. Prohibit smoking at all City-owned properties.
  - d. Prohibit smoking in outdoor service areas.
  - e. Include the use and sale of electronic smoking devices in the definitions of "smoking" in City Code Chapter 9-20 and "tobacco or smoke shop" in the Zoning Code.
  - f. Evaluate increasing the percentage of guest rooms within hotels and motels that must be smoke free from 50% to 75%.
  - g. Evaluate increasing the minimum "reasonable distance" in the current code from 20 feet to 25 feet.
  - h. Research issues related to the declaration of second-hand smoke as a public nuisance.

5. History of Smoking Regulations

Since 1988, Santa Rosa's City Code has included Chapter 9-20 which addresses the impacts of second hand smoke. Initially, Chapter 9-20 prohibited smoking in enclosed public places and all businesses patronized by the public, while allowing designated, separated smoking areas within restaurants, waiting areas, and areas within work places not open to the public. Bars, hotel rooms rented to guests, bowling alleys and pool halls, private enclosed smoking rooms, and retail stores that dealt exclusively in the sale of tobacco and associated smoking paraphernalia were not restricted from indoor smoking.

In 1993, Chapter 9-20 was updated to fully prohibit smoking in enclosed public places including malls, elevators, retail stores, hotels and motels, banks, theaters, grocery stores, restaurants, and all places of employment, and to regulate tobacco

sales. Bars and retail tobacco stores remained exempt from the prohibition. In 1994 and 1995, Chapter 9-20 was amended to allow self-serve sales of pipe tobacco and cigars kept in a humidor.

In 2006, Chapter 9-20 was updated and retitled “Prohibiting Smoking in or Around Workplaces and Public Places.” To further address the impacts of second hand smoke on nonsmokers, smoking was prohibited in outdoor dining areas, City-owned recreational land such as parks (with some exceptions, as noted below), the Transit Mall, and in other unenclosed places, and within a reasonable distance (minimum of 20 feet) from any main entrance into an enclosed area where smoking is prohibited except while actively passing on the way to another destination.

Smoking is currently allowed on private residential property, unless the property is used as a child care or health care facility, in up to 50% of guest rooms in any hotel or motel, and in any outdoor area in which no non-smoker is present and is not expected to arrive. The outdoor area exception was added in response to public concerns expressed to the City Council about the desire to allow smoking at the Bennett Valley Golf Course and in other City parks when nonsmokers are not present. The definition of “smoking” was updated to include “inhaling, exhaling, burning or carrying any lighted pipe, cigar or cigarette of any kind, or any other combustible substance.”

## 6. Proposed Smoking Regulations

The proposed smoking regulations address smoking in four main areas: 1) City owned property; 2) Unenclosed nonresidential places; 3) Enclosed nonresidential places; and 4) Multifamily Residences.

### **City Owned Property**

Proposed Section 9-20.050 addresses unenclosed nonresidential areas where smoking is prohibited. Smoking would be prohibited on all City owned properties, such as City Hall, Laguna Treatment Plant, public safety buildings, and community centers.

### **Unenclosed Nonresidential Places**

Smoking would be prohibited entirely in parks and recreational areas, including parks, gardens, playgrounds, picnic and barbeque areas, ball fields, sport courts, golf courses, swimming pools, and nature trails. As proposed, smoking would be prohibited on the entire property of City parks and recreation facilities, and within a reasonable distance of these areas.

“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. As discussed in further detail below, these restrictions would not prevent people from smoking along a public sidewalk abutting a park

while actively passing on the way to another destination and without entering the area where smoking is prohibited.

Smoking would also be prohibited in outdoor service areas, which are 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, such as ATM lines, outdoor food vending, movie theater lines, and taxi cab stands. The term "service area" includes all bus stops and other transit facilities.

For City owned properties and parks, the draft ordinance allows the City Manager to authorize designated smoking areas that are at least 25 feet from operable doors, windows, vents, or other openings into an enclosed area, from unenclosed recreational areas primarily used by children, and from areas that have improvements that facilitate physical activity including tennis courts, swimming pools, walking paths, and sports fields.

### **Enclosed Nonresidential Places**

The revised smoking regulations would increase the percentage of hotel and motel rooms that must be smoke free from 50 percent to 75 percent. This would potentially affect 26 hotels and motels located in Santa Rosa. Staff contacted each hotel and motel and determined that most hotels and motels are already 75 to 100 percent smoke free. The change will affect some existing establishments. Information about the update was mailed to each hotel and motel and no comments have been received.

### **Attached Multifamily Housing**

Smoking would be prohibited on residential properties containing two or more units with one or more shared walls, floors or ceilings. These prohibitions would include electronic smoking devices. The definition of "multifamily residence" includes apartments, residential condominiums, duplexes, and other attached housing. "Multifamily residence" does not include a single family home with an attached or detached second dwelling unit, or residential care facilities for seniors licensed by the State of California.

As proposed, smoking would be prohibited in any new unit of a multifamily residence, and in all common areas, once the ordinance is in effect. It is expected that new leases would include smoking prohibitions, and that signs would be installed by property owners in common areas identifying that smoking is prohibited. Beginning one year from the effective date of the ordinance, estimated as February 1, 2016, smoking would be prohibited in any existing unit of an attached multifamily residence. It is expected that property owners and managers would transition units from smoking to nonsmoking units over the course of the

year. This would be accomplished by adding language to leases regarding the smoking prohibition. Enforcement is discussed in greater detail below.

The proposed ordinance allows a landlord or homeowners' association to designate a portion of the common area as a designated smoking area if the designated smoking area is located at least 25 feet in any direction from any operable doorway, window, vent or other opening into an enclosed area, from unenclosed recreational areas that are primarily used by children, from unenclosed areas that have improvements that facilitate physical activity including playgrounds, tennis courts, swimming pools, walking paths and sports fields, and from all perimeter property lines abutting residential uses.

#### 7. Electronic Smoking Devices ("E-cigarettes")

Electronic smoking devices, also known as "electronic cigarettes," "e-cigarettes," "hookah pens," or "electronic nicotine delivery systems" are battery operated devices that convert liquid nicotine into a mist, or vapor, that the user inhales. They are designed to be used in a manner similar to conventional tobacco products. The use of electronic smoking devices is referred to as "vaping" because they produce vapor that is inhaled and exhaled by the user.

The proposed changes to the smoking regulations include updating the definition of smoking to clarify that use of electronic smoking devices is regulated the same as other kinds of smoking. The revised definition of "smoking" is as follows:

"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.

Electronic smoking devices are a relatively new technology that are gaining in popularity with consumers around the world. Some companies that manufacture and retail the devices advertise the devices as a way to help people quit smoking tobacco because electronic smoking devices provide an alternative nicotine-delivery system. Claims of efficacy for quitting smoking are unsupported by the scientific evidence to date. Recent research indicates that electronic smoking devices contain hazardous substances and may expose bystanders to secondhand vapor. The long term health effects of vapor inhalation on the user or on surrounding people are unknown.

Santa Rosa's smoking regulations have historically focused on reducing the impacts of second hand smoke on nonsmokers and do not specifically address electronic smoking devices. The inclusion of use of electronic smoking devices in the definition of smoking would protect the public from secondhand vapor until more is known about health effects.

8. Reasonable Distance

The revised ordinance increases the minimum distance from 20 feet to 25 feet based on the study that documented that 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. These restrictions would not prevent people from smoking along a public sidewalk abutting a park while actively passing on the way to another destination and without entering the area where smoking is prohibited.

9. Education and Enforcement

Public education about the new law will be important to ensure that the public is aware of the new regulations. Implementation of the revised regulations would involve a public education campaign and installation of signage at City-owned properties and residential properties where smoking would be prohibited.

Tenants, property managers, and landlords must also be informed about the new regulations pertaining to attached multifamily residences. The County of Sonoma launched a public education campaign regarding the County's ban of smoking in multifamily housing in the unincorporated County. The campaign included direct mailings to all owners of multifamily property and print advertisements in various publications. The County's work provides a starting point for the City's efforts including a method and materials that could be utilized.

Sonoma County Department of Health Services (DHS) has expressed an interest to assist with education about the revised smoking regulations in Santa Rosa, and Community Development staff is pursuing this potential partnership, which has proven effective in Petaluma and in Marin County.

As proposed, all complaints about smoking would be directed to County DHS. County staff would field the calls, provide information about the regulations, gather information from complaining parties, assist the parties in taking steps to resolve the issue, and then send a letter to the property owner informing them of the City's smoking regulations.

If efforts from County DHS staff are unsuccessful in resolving the issue in multifamily residential areas, the matter would be referred to the City's Code Enforcement staff for further action. The Police Department would continue to enforce smoking regulations in nonresidential public places. Currently, enforcement of the smoking ordinance is not a priority but police officers do issue warnings and citations, particularly downtown.

The draft ordinance requires that landlords of attached multifamily residences include provisions in leases to prohibit smoking consistent with the City's ordinance, to take appropriate steps to ensure tenant compliance, and to be prepared to

respond to and address complaints from other tenants on the property of violations of the smoking prohibitions. Staff has met with and received comments from members of the North Coast Rental Housing Association, and the current draft reflects input from the organization.

#### 10. Chapter 20 (Zoning Code) Regulations

Smoke shops were considered a general retail use until March 2009 when the Zoning Code was amended to create a land use called “tobacco or smoke shop,” which is defined as “any store, stand, booth, or concession that devotes 30% or more of its display floor area to tobacco products, or to the display and sale of tobacco or drug paraphernalia to purchasers for consumption or use.” Medical cannabis dispensaries are not included because they are defined separately and regulated by Chapter 10-40 of the City Code.

New tobacco/smoke shops require a Minor Conditional Use Permit (CUP) in commercial zoning districts; the Minor CUP requirement allows public input regarding the proposed new tobacco/smoke shop and consideration of how the tobacco/smoke shop use will fit into the surrounding area. In 2013, in response to a proposal for an electronic cigarette store in downtown Santa Rosa, it was determined by the Community Development Department that the sale of electronic cigarettes and associated products (where the store devotes 30% or more of the floor area to the sale of such products) fits into the definition of tobacco/smoke shop.

There are approximately 15 existing retail stores in Santa Rosa that meet the definition of tobacco/smoke shop. Since 2009, Community Development has received six Minor Conditional Use Permit applications for tobacco/smoke shops. Of the six, three of the applications were approved and the uses commenced, and three of the applications were withdrawn. Four of the six were applications for retail stores that primarily sell electronic smoking devices and associated accessories.

The Zoning Code text amendment includes three specific changes to Section 20-70.020 (Definitions). Minor changes are proposed to the definitions of “Tobacco or Smoke Shop” and “Tobacco or Drug Paraphernalia.” The proposed changes are underlined below:

**Tobacco or Smoke Shop.** Any store, stand, booth, or concession that devotes 30% or more of its display floor area to tobacco products, or to the display and sale of tobacco, electronic smoking devices, or drug paraphernalia to purchasers for consumption or use. This classification of use does not include medical cannabis dispensaries which are defined separately and regulated by Chapter 10-40 (Medical Cannabis Dispensaries) in the Santa Rosa City Code.

**Tobacco, Electronic Smoking Device, or Drug Paraphernalia.** (1) Any device intended or designed primarily for use by individuals for the smoking or ingestion of tobacco, notwithstanding that the device may also be used for the smoking or ingestion of marijuana, hashish, hashish oil, cocaine or any other “controlled substance,” as that term is defined in the Health and Safety Code; examples of such devices include but are not limited to: “pipes,”



“bongs,” “hookahs,” “vaporizers,” “roach clips,” “electric pipes,” “buzz bombs,” “blunts” or similar devices; (2) or any equipment, product, or material that is modified for making, using, or concealing illegal drugs such as cocaine, heroin, marijuana, and methamphetamine; (3) cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, Electronic Smoking Device batteries, Electronic Smoking Device chargers, and any other item specifically designed for the preparation, charging, or use of Electronic Smoking Devices; (4) an Electronic Smoking Device.

A new definition of “Electronic Smoking Device” would be added to Chapter 20-70 (Definitions) as follows:

**Electronic Smoking Device.** 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 electronic smoking 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 use in the mitigation, treatment, or prevention of disease.

## ANALYSIS

### 1. Development of the Smoking Regulations

In order to gain greater understanding of the complex issues associated with smoking, including use of electronic smoking devices, Community Development and City Attorney’s Office staff researched how other California jurisdictions are regulating these issues. Because both County of Sonoma and City of Petaluma have recently updated their laws in these matters, and the new laws are similar to laws in other cities, Santa Rosa’s existing ordinance and these two local ordinances were considered a starting point. A model ordinance from ChangeLab Solutions, a nonprofit organization that specializes in researching and drafting model laws and policies pertaining to public health issues, was also consulted because it is based on the latest research pertaining to the effects of smoking and includes best practices from smoking ordinances across the country.

Staff received research studies and articles from Sonoma County DHS staff and from the public, and reviewed all materials to identify which were most relevant to Santa Rosa. In developing the new regulations, staff considered public comments including written and verbal comments provided at two Community Meetings, and polled other cities regarding specific issues including regulation of marijuana, public nuisance issues associated with smoke, and enforcement of smoking restrictions in multi-family housing. The final draft of the regulations is similar to County of Sonoma, Petaluma, and the ChangeLab Solutions model ordinance but has been uniquely tailored to Santa Rosa.

## 2. Purpose of Smoking Regulations

The current and proposed smoking regulations are based on the goal of protecting people who do not choose to smoke or use electronic smoking devices from the health effects of these activities. The draft regulations identify a series of facts and findings related to this goal and to the purpose of regulating these activities.

There is ample scientific research and data documenting the negative impacts of secondhand smoke on human health, and there are recent studies documenting potential negative health effects of secondhand vapor. The proposed updated smoking regulations includes additional facts and findings, supported by recent studies that are included as an appendix to this report.

## 3. Public Nuisance

As directed by Council, staff researched the proposal to declare smoke a public nuisance. Proponents of the idea state that it would make it easier for residents affected by second hand smoke to pursue private action against people who generate smoke that intrudes onto other people's property. Staff found that very few jurisdictions have declared smoke a public nuisance, and for jurisdictions that have taken this approach, the provisions have not been implemented. City staff does not recommend including the public nuisance component in this update because it is an untested approach and the potential impacts to the City and the public are unclear.

## 4. Public Outreach

Community Development staff facilitated two public meetings to share the proposed smoking regulations update with the public and to obtain public comment and input. Approximately 15 people attended the meeting held on September 25, 2014 at Finley Community Center. Approximately 25 people attended the second meeting held on October 1, 2014.

Meeting attendees expressed a variety of views regarding the proposed changes to the regulations. Comments included:

- General support for prohibiting smoking in public places such as parks due to impacts on nonsmokers, and opposition to such prohibitions because potential issues can be addressed through common courtesy by people who smoke;
- Support for the proposed multifamily residential smoking prohibitions related to tobacco and marijuana smoke, and opposition to the regulation of smoking in residences due to concern about impacts to people who smoke;
- Interest in expanding the multifamily residential smoking prohibitions to include single family detached homes, based on impacts of second hand smoke emanating from adjacent and nearby homes;

- Concern about the regulation of the use of electronic smoking devices because they have different impacts than conventional smoking devices and are used by some as a smoking cessation device.
- Enforcement will be a challenge.

All correspondence received from members of the public is attached to this report.

#### 5. Review by Boards and Commissions

On October 22, 2014, the Board of Community Services considered the proposal to fully prohibit smoking in City parks. In general, the Board was supportive of the proposed changes, and expressed concern about enforcement.

On October 23, 2014, the Planning Commission considered the proposal to explicitly include retail stores selling electronic smoking devices in the definition of “smoke shop,” which means a Minor Conditional Use Permit is required. The Commission unanimously recommended approval of the Zoning Code text amendment.

### RECOMMENDATION

It is recommended by the Department of Community Development that the Council accept the report regarding the Smoking Regulations Update and direct staff to schedule the proposed revisions to Chapter 9-20 of the City Code and the Zoning Code for a public hearing and decision.

Author: Erin Morris

#### Attachments:

- Attachment 1 - Draft Smoking Regulations: Chapter 9-20 Prohibiting Smoking in or Around Workplaces, Public Places, and Private Places
- Attachment 2 - Technical Studies
- Attachment 3 - Public Correspondence

**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.