



CITY OF PALO ALTO OFFICE OF THE CITY CLERK

January 9, 2017

The Honorable City Council
Palo Alto, California

SECOND READING: Adoption of an Ordinance Amending Chapter 9.14 (Smoking and Tobacco Regulations) of the Palo Alto Municipal Code to ban Smoking in Units in Multi-unit Residences and Common Areas, and Make Other Minor Amendments to Smoking Restrictions (Remove Bingo Games as Places and Workplaces Exempt From the City's Prohibition Against Smoking in Enclosed Places) (FIRST READING: December 5, 2016 PASSED: 8-0)

This is the second reading of this ordinance that was first heard by the City Council on December 5, 2016. Below is the Motion and vote.

MOTION RESTATED: Council Member Kniss moved, seconded by Vice Mayor Scharff to:

- A. Approve an Agreement with the County of Santa Clara relating to the administration and enforcement of a Tobacco Retail Permit Program in the City of Palo Alto; and
- B. Direct Staff to draft an Ordinance amending Chapter 9.14 (Smoking and Tobacco Regulations) of the Palo Alto Municipal Code to establish a Tobacco Retail Permit Program; and
- C. Direct Staff to work with Santa Clara County to remove Santa Clara County Code of Ordinances, Chapter XXIII, Section A 18-370, Subsection (f) 2 from the Palo Alto Ordinance; and
- D. Adopt an Ordinance amending Chapter 9.14 (Smoking and Tobacco Regulations) of the Palo Alto Municipal Code to ban smoking in units in multi-unit residences and common areas, and make other minor amendments to smoking restrictions (remove bingo games as places and workplaces exempt from the City's prohibition against smoking in enclosed places).

MOTION SEPARATED FOR THE PURPOSE OF VOTING

MOTION PARTS A-C PASSED: 6-2 Holman, Wolbach no

MOTION PART D PASSED: 8-0

ATTACHMENTS:

- Attachment A: Smoking Restrictions for Multi-Family Housing Second Reading (PDF)

Department Head: Beth Minor, City Clerk

NOT YET APPROVED

Ordinance No. _____
Ordinance of the Council of the City of Palo Alto Amending
Chapter 9.14 (Smoking and Tobacco Regulations) of the Palo Alto
Municipal Code to Establish New Smoking Restrictions for Multi-
Family Housing

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

(a) That the adoption of this Ordinance is necessary to protect the public health, safety and welfare for the reasons set forth in section 9.14.005. The purposes of this Ordinance are to ban smoking in multi-unit housing in order to reduce the risks of second hand smoke and vapor, reduce litter, and enhance enjoyment of these areas.

SECTION 2. Chapter 9.14 of the Palo Alto Municipal Code is hereby amended to read as follows:

Chapter 9.14: Smoking and Tobacco Regulations

9.14.005 Purpose.

The purpose of this Chapter is to:

(a) Protect the public health, safety and general welfare by prohibiting smoking and use of electronic smoking devices in multi-unit housing, public parks, public places, service locations, city pool cars, child day care facilities, and unenclosed eating establishments.

(b) Ensure a cleaner and more hygienic environment within the city, reduce litter, and protect the City's natural resources, including creeks and streams.

(c) Enhance the welfare of residents, workers, and visitors by reducing exposure to second hand smoke, which studies confirm can cause negative health effects in non-smokers.

(d) Balance the needs of persons who smoke with the needs of nonsmokers, including children and youth, to be free from the discomforts and health threats created by exposure to second-hand smoke and vapor.

9.14.010 Definitions.

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

(a) “Adjacent Unenclosed Property” means any Unenclosed Area of property, publicly or privately owned, that abuts a Multi-Unit Residence

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(ab) "Bar" means an area which is devoted to serving alcoholic beverages and in which serving food is only incidental to the consumption of such beverages. "Bar" shall include bar areas within eating establishments which are devoted to serving alcoholic beverages and in which serving food is only incidental to the consumption of such beverages.

(bc) "City car" means any truck, van or automobile owned by the city and operated by a city employee.

~~(d)(e)~~ "Commercial Area" means an area, including all publicly owned sidewalks, alleys, parking areas, public places, outdoor dining areas, service areas, etc. within areas zoned in the City's Comprehensive Plan as regional/community commercial (including Downtown, California Avenue Business District, Town and Country, and Stanford Shopping Center) and Neighborhood Commercial.

(e) "Common Area" means every Enclosed Area and every Unenclosed Area of a Multi-Unit Residence that residents of more than one Unit are entitled to enter or use, including, without limitation, halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

(df) "Eating establishment" means a coffee shop, cafeteria, short-order café, luncheonette, sandwich shop, soda fountain, restaurant, or other establishment serving food to members of the public.

(eg) "Electronic smoking device" means an electronic and/or battery-operated device that can deliver an inhalable dose of nicotine to the user. "Electronic smoking device" includes any product meeting this definition, regardless of whether it is manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, electronic vape, vaporizer or any other product name or descriptor.

(fh) "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

(gi) "Employee eating place" means any place serving as an employee cafeteria, lunchrooms, lounge, or like place.

(hj) "Employer" means any person who employs the services of an individual person or persons.

(ik) "Enclosed" means either closed in by a roof and four walls with appropriate openings for ingress and egress or not open to the sky due to a cover or shelter consisting of a tarpaulin, tent structure or other impermeable or semi-permeable materials or fabric.

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(l) “Enclosed Area” means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

- (1) any type of overhead cover, whether or not that cover includes vents or other openings and at least three (3) walls or other physical boundaries of any height, whether or not those boundaries include vents or other openings; or
- (2) four (4) walls or other vertical boundaries that exceed six (6) feet in height, whether or not those boundaries include vents or other openings.

(m) “Landlord” means any Person or agent of a Person who owns, manages, or is otherwise legally responsible for a Unit in a Multi-Unit Residence that is leased to a residential tenant, except that “Landlord” does not include a tenant who sublets a Unit (e.g., a sublessor).

(jn) "Motion picture theater" means any theater engaged in the business of exhibiting motion pictures.

(o) “Multi-Unit Residence” means property containing two (2) or more Units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. Multi-Unit Residences do not include the following:

- (1) a hotel or motel that meets the requirements of California Civil Code section 1940, subdivision (b)(2);
- (2) a mobile home park;
- (3) a single-family home; and
- (4) a single-family home with a detached or attached in-law or second unit

(p) “Nonsmoking Area” means any Enclosed Area or Unenclosed Area in which Smoking is prohibited by (1) this chapter or other law; (2) binding agreement relating to the ownership, occupancy, or use of real property; or (3) designation of a Person with legal control over the area.

(kq) “Public Event” means events open to the general public, including but not limited to a farmers’ market, parade, craft fair, festival, or any other such event.

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(tr) "Public places" means enclosed areas within publicly and privately owned buildings, structures, facilities, or complexes that are open to, used by, or accessible to the general public. Public places include, but are not limited to, stores, banks, eating establishments, bars, hotels, motels, depots and transit terminals, theaters and auditoriums, enclosed sports arenas, convention centers, museums, galleries, polling places, hospitals and other health care facilities of any kind (including clinics, dental, chiropractic, or physical therapy facilities), automotive service centers, general business offices, nonprofit entity offices and libraries. Public places further include, but are not limited to, hallways, restrooms, stairways, escalators, elevators, lobbies, reception areas, waiting rooms, indoor service lines, checkout stations, counters and other pay stations, classrooms, meeting or conference rooms, lecture rooms, buses, or other enclosed places that are open to, used by, or accessible to the general public.

(ms) "Service locations" means those enclosed or unenclosed areas open to, used by, or accessible to the general public that are listed below:

- (1) Bus, train and taxi shelters;
- (2) Service waiting areas including, but not limited to, ticket or service lines, public transportation waiting areas, and public telephones;
- (3) Areas within twenty-five feet of the entrance or exit to an enclosed public place, where smoking is prohibited;
- (4) Areas in dedicated parks or other publicly accessible areas that are within twenty-five feet of bleachers, backstops, or play structures.

(st) "Smoking" means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product intended for human inhalation.

(ou) "Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, smoking tobacco, and smokeless tobacco.

(pv) "Tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is incidental.

(qw) "Tobacco vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether coin or paper bill, or other thing representative of value, which dispenses or releases a tobacco product and/or tobacco accessories.

(x) "Unenclosed Area" means any area that is not an Enclosed Area.

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(y) “Unit” means a 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. “Unit” includes, without limitation, an apartment; a condominium; a townhouse; a room in a senior facility; a room in a long-term health care facility, assisted living facility, or hospital; a room in a hotel or motel; a dormitory room; a room in a single room occupancy facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit.

(#z) “Vapor” means aerosol produced from use of an electronic smoking device.

(saa) "Workplace" means any enclosed area of a structure or portion thereof used as a place of employment as well as unenclosed workplaces, such as outdoor construction sites.

9.14.020 Smoking prohibited - Enclosed Places.

(a) Smoking and the use of electronic smoking devices is prohibited in the Enclosed Areas of the following places within the City of Palo Alto, except in places subject to prohibition on smoking contained in Labor Code section 6404.5, in which case that law applies

- (1) Workplaces;
- (2) Public places;
- (3) Units within Multi-Unit residences; and
- (4) Common Areas of Multi-Unit residences.

The effective date of the smoking prohibition provided in subdivisions (3) and (4) of this Section is January 1, 2018.

(b) Any places exempted by the California smoke free workplace law (Labor Code Section 6404.5(d)) are not exempt under this chapter. Smoking is prohibited by this chapter in all places exempted by that State law, except as provided in 9.14.070.

9.14.025 Smoking prohibited - Unenclosed Areas.

(a) Smoking and the use of electronic smoking devices in all unenclosed areas defined as Service Locations shall be prohibited, including a buffer zone within 25 feet from any doorway, window, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited, except while the Person Smoking is actively passing on the way to another destination and provided Smoke does not enter any Enclosed Area in which Smoking is prohibited.

(b) Smoking and the use of electronic smoking devices is prohibited in unenclosed eating establishments and bars.

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9.14.030 Smoking prohibited - City pool cars.

Smoking and the use of electronic smoking devices is prohibited in all city cars.

9.14.035 Smoking Prohibited - Public Parks and Public Events.

Smoking and the use of electronic smoking devices is prohibited in all parks, including at public events.

9.14.040 Smoking prohibited - Child day care facilities.

Smoking is prohibited in a private residence which is licensed as a child day care facility within the meaning of Health and Safety Code Section 1596.750 and Section 1596.795 and amendments.

9.14.045 Smoking prohibited – Commercial Areas and Public Events.

Smoking and the use of electronic smoking devices is prohibited in commercial areas, except places where smoking is already prohibited by state or federal law, in which case those laws apply. This prohibition includes public events held on public streets. A shopping center or commercial areas may establish a designated smoking area that is at least 25 feet away from any openings and includes receptacles to control litter.

9.14.050 Smoking Prohibited - Outdoor Common Areas of all Multi Unit Residences.

Smoking and the use of electronic smoking devices is prohibited in Outdoor Common Areas of all Multi-Unit Residences, provided, however, that a Person with legal control over a Common Area may designate a portion of the Unenclosed Area of the Common Area as a designated smoking area if the area meets the following criteria:

- (1) Must be an Unenclosed Area;
- (2) Must be at least twenty-five (25) feet from Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, and school campuses;
- (3) Must be at least twenty-five (25) feet in any direction from any operable doorway, window, opening or other vent into an Enclosed Area that is located at the Multi-Unit Residence and is a Nonsmoking area;
- (4) Shall have a clearly marked perimeter;
- (5) Shall have a receptacle for cigarette butts that is emptied and maintained, and
- (6) Shall be identified by conspicuous signs.

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9.14.055 Smoking Prohibited - Nonsmoking Buffer Zones.

Smoking and the use of electronic smoking devices is prohibited in Adjacent Unenclosed Property within twenty-five (25) feet in any direction of any doorway, window, opening, or other vent into an Enclosed Area of a Multi-Unit Residence.

9.14.060 Required and Implied Lease Terms for all New and Existing Units in Multi-Unit Residences.

(a) Every lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Residence, entered into, renewed, or continued month-to-month, effective January 1, 2018 shall include the following:

(1) A clause stating that Smoking is prohibited in the Unit, including exclusive-use areas such as balconies, porches, or patios.

a. A clause providing that it is a material breach of the lease or agreement for the tenant, or any other Person subject to the control of the tenant or present by invitation or permission of the tenant, to (i) Smoke in any Common Area of the property other than a designated Smoking area; (ii) Smoke in the Unit, or (iii) violate any law regulating Smoking anywhere on the property.

b. A clause providing that it is a material breach of the agreement for tenant or any other Person subject to the control of the tenant to violate any law regulating Smoking while anywhere on the property. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property."

(2) A clear description of all areas on the property and in the buffer zone where Smoking is allowed or prohibited.

(3) A clause expressly conveying third-party beneficiary status to all occupants of the Multi-Unit Residence as to the Smoking provisions of the lease or other rental agreement. Such a clause shall provide that any tenant of the Multi-Unit Residence may sue another tenant/owner to enforce the Smoking provisions of the agreement but that no tenant shall have the right to evict another tenant for a breach of the Smoking provisions of the agreement.

(b) Whether or not a Landlord complies with subsection (a) above, the clauses required by that subsection shall be implied and incorporated by law into every agreement to which subsection (a) applies and shall become effective as of the earliest possible date on which the Landlord could have made the insertions pursuant to subsections (a).

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- (c) This chapter shall not create additional liability for a Landlord to any Person for a tenant's breach of any Smoking provision in a lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Residence if the Landlord has fully complied with this Section.
- (d) Failure to enforce any Smoking provision required by this chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

9.14.065 Other Requirements And Prohibitions.

- (a) Every Landlord shall deliver the following, on or before July 1, 2017, to each Unit of a Multi-Unit Residence:
 - (1) a written notice of the new requirements prohibiting smoking in units and common areas as stated in 9.14. 020
- (b) As of July 1, 2017, every seller of a Unit in a Multi-Unit Residence shall provide prospective buyers with written notice clearly stating that: (1) Smoking is prohibited in Units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of January 1, 2018; and
 - (2) Smoking is prohibited in all Common Areas, except for specifically designated Smoking areas, as of January 1, 2018.
- (c) Clear and unambiguous "No Smoking" signs shall be posted in sufficient numbers and locations in Common Areas where Smoking is prohibited by this chapter or other law. Such signs shall be maintained by the Person or Persons with legal control over the Common Areas. The absence of signs shall not be a defense to a violation of any provision of this chapter.

9.14.060—Reserved.*

~~* Editor's Note: Former Section 9.14.060, Regulation of Smoking in the Workplace, previously codified herein and containing portions of Ordinance Nos. 4056 and 4164 was repealed in its entirety by Ordinance No. 4294.~~

NOT YET APPROVED

9.14.070 Exemptions.

The following places and workplaces are exempt from Section 9.14.020:

(a) Smoking at theatrical production sites is not prohibited by this subsection if the theater general manager certifies that smoking is an essential part of the story and the use of a fake, prop, or special effect cannot reasonably convey the idea of smoking in an effective way to a reasonable member of the anticipated audience. This exception will not apply if minors are performers within the production.

~~(b) — Bingo games, consistent with prohibition on smoking contained in Labor Code section 6404.5 and licensed pursuant to the Palo Alto Municipal Code, which do not permit access by minors under eighteen years of age~~

~~(e)(b)~~ A fully enclosed room in a hotel, motel, other transient lodging establishment similar to a hotel, motel, or public convention center which is being used entirely for a private function and which is not open to the general public, except while food or beverage functions are taking place, including setup, service, and cleanup activities, or when the room is being used for exhibit purposes, sixty-five percent of the guest rooms in a hotel, motel, or similar transient lodging establishment;

~~(d)(c)~~ Tobacco stores with private smokers' lounges meeting the requirements of the applicable portions of subdivision (d)(4) of Labor Code Section 6404.5.

9.14.80 Location of tobacco vending machines.

(a) No person shall locate, install, keep or maintain a tobacco vending machine except in a place which under state law is not lawfully accessible to minors.

(b) This section shall become effective ninety days after its enactment. Any tobacco vending machine not in conformance with this section upon its effective date shall be removed.

9.14.090 Display of tobacco products for sale.

No person shall display or offer tobacco products for sale except in an area, or from within an enclosure, which physically precludes the removal of the tobacco products without the assistance of the person authorizing such display or offer, or an employee of such person.

NOT YET APPROVED

9.14.100 Posting of signs required.

With the exception of service locations, wherever this ordinance prohibits smoking and the use of electronic smoking devices, conspicuous signs shall be posted. Signs of similar size containing the international "no smoking" symbol consisting of a pictorial representation of a burning cigarette and electronic smoking device enclosed in a red circle with a red bar across it may be used in addition to or in lieu of any signs required hereunder. Such signs shall be placed by the owner, operator, manager, or other persons having control of such room, building, or other place where smoking and the use of electronic smoking devices is prohibited. Signs placed at each entrance of buildings in which smoking is totally prohibited shall be sufficient. The absence of signs shall not be a defense to a violation of any provision of this chapter.

9.14.110 Enforcement.

Pursuant to Section 6 of Article IV of the Palo Alto City Charter, the city manager is hereby granted authority to enforce the provisions of this chapter and Labor Code Section 6404.5.

9.14.120 Public nuisance.

Any violation of this chapter is a public nuisance and may be abated in accordance with Chapter 9.56 of the Palo Alto Municipal Code and/or Code of Civil Procedure Section 731.

9.14.130 Violations.

Violation of any provision of this chapter shall be punishable as provided in this code. Violations shall be punishable by the following:

- (1) An administrative citation and a fine not exceeding \$250 for the first violation;
- (2) An infraction and a fine not exceeding \$300 for the second violation
- (3) An infraction or a misdemeanor and a fine not exceeding \$500 for each additional violation within one year

SECTION 3. Severability. If any provision, clause, sentence or paragraph of this ordinance, or the application to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable.

SECTION 4. The Council finds that this project is exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to Section 15061 of the CEQA Guidelines, because it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

NOT YET APPROVED

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Principal City Attorney

City Manager

Director of Public Works