



# City of Palo Alto

## City Council Staff Report

(ID # 5423)

---

**Report Type: Consent Calendar**

**Meeting Date: 2/2/2015**

**Summary Title: Second Reading - Smoking Ordinance**

**Title: SECOND READING: Adoption of an Ordinance Amending Chapter 9.14 (Smoking and Tobacco Regulations) of the Palo Alto Municipal Code to Establish New Smoking Restrictions for Outdoor Commercial Areas, Outdoor Eating Areas, Public Events, Work Sites and Service Locations; Include Penalty Escalation for Repeat Offenders; Require Cigarette Butt Receptacles and Signage Immediately Adjacent and Within Areas Covered by the Ban, Including Designated Smoking Areas (First Reading: December 15, 2014 PASSED: 9-0)**

**From: City Manager**

**Lead Department: Public Works**

### **Recommended Motion**

Staff recommends that Council adopt the proposed ordinance on second reading.

### **Executive Summary**

The proposed ordinance would expand the City's current Smoking and Tobacco Regulations to include commercial areas, outdoor eating areas, public events, work sites and service locations; include penalty escalation for repeat offenders; and require cigarette butt receptacles and signage immediately adjacent and within areas covered by the ban, including designated smoking areas. The ordinance was unanimously approved (first reading) on December 15, 2014 after the City Council requested that the issue of e-cigarettes be deferred and discussed by the Policy and Services Committee at a future meeting (see Attachment B). As directed by the Council, the draft ordinance has been modified to remove reference to vapor or electronic smoking devices and make two corrections in the exceptions to be consistent with State Law. (See Attachment A).

These changes are not sufficiently substantive to warrant another first reading by Council.

### **Attachments:**

- A: Ordinance (DOCX)

- B: Draft Action Minutes December 15, 2014 (DOC)

**Attachment A**

**“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 Outdoor Smoking Restrictions in Commercial Areas and  
Outdoor Dining

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 amended section 9.14.005. The purposes of this Ordinance are to ban smoking in commercial areas, all dining areas, and worksite in order to reduce the risks of second hand smoke, 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:

**Palo Alto Municipal Code 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 in public parks, public places, service locations, city pool cars, child day care facilities, and **some** 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.

(Ord. 5207 § 2, 2013)

**9.14.010 Definitions.**

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

(a) "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.

(b) "City pool car" means any truck, van or automobile owned by the city and operated by a city employee. City pool car does not include vehicles operated by the police department.

(c) "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~~d) "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.

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

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

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

(~~g~~h) "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.

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

(j) "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.

(~~i~~k) "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.

(jl) "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, except when the public place is closed, between ten p.m. and six a.m., or when the entrance or exit is for the exclusive use of employees and not accessible to the general public;
- (4) Areas in dedicated parks or other publicly accessible areas that are within twenty-five feet of bleachers, backstops, or play structures.

(km) "Smoking" means the combustion of any cigar, cigarette, tobacco or any similar article

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

(mo) "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.

(np) "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.

(eq) "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.

(Ord. 52.07 § 3, 2013: Ord. 4294 § 2, 1995: Ord. 4164 § 2 (part), 1993: Ord. 4056 § 4 (part), 1991)

#### **9.14.020 Smoking prohibited - ~~Public places.~~—Enclosed Places**

Smoking is prohibited in ~~all public places, unless such place is exempted pursuant to Section 9.14.070-~~ 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:

Any places exempted by the California smokefree 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.

(Ord. 4056 § 4 (part), 1991)

**9.14.025 Smoking prohibited - ~~Service locations.~~ Unenclosed Areas**

~~—Smoking is prohibited in all service locations, except while passing through the service area on the way to another destination.~~

- (a) Smoking 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 is prohibited in unenclosed eating establishments and bars.

(Ord. 4164 § 3, 1993)

**9.14.030 Smoking prohibited - City pool cars.**

Smoking is prohibited in all city pool cars.

(Ord. 4056 § 4 (part), 1991)

**9.14.035 Smoking Prohibited - Public Parks and Public Events.**

Smoking is prohibited in all parks, including at public events.

(Ord. 5207 § 4, 2013)

**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, during the hours it is operated as a child day care facility and in those enclosed areas where children may be exposed to smoke.

(Ord. 4056 § 4 (part), 1991)

**9.14.050 ~~Smoking prohibited – Fifty percent of Unenclosed eating establishments.~~**

~~(a) Smoking is prohibited in a designated contiguous portion of not less than fifty percent of the unenclosed seating area of an eating establishment.~~

~~—(b) Every eating establishment shall at all times designate, and identify by posting signs pursuant to Section 9.14.100 or by placing table top notices, a contiguous portion of the unenclosed seating area as a nonsmoking area.~~

~~(Ord. 4056 § 4 (part), 1991)~~

**Smoking prohibited – Commercial Areas and Public Events.**

Smoking 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 area may establish a designated

smoking area that is at least 25 feet away from any openings and includes receptacles to control litter.

#### **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.

#### **9.14.070 Exemptions.**

The following places and workplaces are exempt from Section 9.14.020:

~~(a) Bars to the extent and in the manner provided in California Labor Code Section 6404.5;~~

(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;

~~(c) Any property owned or leased by other governmental agencies;~~

~~(d) 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, and rooms within private residences when not operated as a family day care home;~~

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

(Ord. 4294 § 3, 1995; Ord. 4164 § 2 (part), 1993; Ord. 4056 § 4 (part), 1991)

#### **9.14.080 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.

(Ord. 4056 § 4 (part), 1991)

#### **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.

(Ord. 4056 § 4 (part), 1991)

#### **9.14.100 Posting of signs required.**

With the exception of service locations, wherever this ordinance prohibits smoking, conspicuous signs shall be posted so stating, containing all capital lettering not less than one inch in height, on a contrasting background. Signs of similar size containing 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 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 is prohibited. Signs placed at each entrance of buildings in which smoking is totally prohibited shall be sufficient.

(Ord. 4294 § 4, 1995: Ord. 4164 § 2 (part), 1993: Ord. 4056 § 4 (part), 1991)

#### **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.

(Ord. 4294 § 5, 1995)

#### **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.

(Ord. 4056 § 4 (part), 1991)

#### **9.14.130 Violation to be misdemeanors.**

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

- (1) A fine not exceeding \$250 for the first violation
- (2) A fine not exceeding \$300 for the second violation
- (3) A fine not exceeding \$500 for each additional violation within one year

(Ord. 4056 § 4 (part), 1991)





# CITY OF PALO ALTO CITY COUNCIL DRAFT EXCERPT MINUTES

Special Meeting  
December 15, 2014

The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:37 P.M.

Present: Berman, Burt, Holman, Klein arrived at 5:41, Kniss, Price, Scharff, Schmid, Shepherd

Absent:

22. Policy and Services Committee Recommendation to Council for Adoption of an Ordinance Amending Chapter 9.14 (Smoking And Tobacco Regulations) of the Palo Alto Municipal Code to Establish New Smoking Restrictions for Outdoor Commercial Areas, Outdoor Eating Areas, Public Events, Work Sites and Service Locations; Include Penalty Escalation for Repeat Offenders; Require Cigarette Butt Receptacles and Signage Immediately Adjacent and Within Areas Covered by the Ban; and Include E-cigarettes.

**MOTION:** Council Member Price moved, seconded by Vice Mayor Kniss to adopt an Ordinance Amending Chapter 9.14 (Smoking and Tobacco Regulations) of the Palo Alto Municipal Code to:

1. Establish New Smoking Restrictions for Outdoor Commercial Areas, Outdoor Eating Areas, Public Events, Work Sites and Service Locations;
2. Include Penalty Escalation for Repeat Offenders; refer further investigation of tobacco retailers licensing and indoor smoking, including performing outreach to examine banning smoking in multifamily residential units with shared ventilation systems;
3. Require cigarette buttr and signage immediately adjacent and within areas covered by the ban.

# DRAFT ACTION MINUTES

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to refer the issue of e-cigarettes to the Policy & Services Committee for additional consideration.

**AMENDMENT:** Council Member Klein moved, seconded by Council Member XXX to put e-cigarettes back in the Ordinance.

**AMENDMENT FAILED DUE TO LACK OF A SECOND**

**MOTION AS AMENDED PASSED:** 9-0

Adjournment: The meeting was adjourned at 1:11 A.M.