



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO AMEND CHAPTER 9.28 OF TITLE 9 (PUBLIC PEACE, SAFETY OR WELFARE) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO REGULATION OF SMOKING IN OUTDOOR AREAS

WHEREAS, the City of Sunnyvale desires to amend certain sections of the Sunnyvale Municipal Code Chapter 9.28 relating to regulation of smoking; and

WHEREAS, on or about February 23, 2016, the Council of the City of Sunnyvale adopted ordinance number 3072-16, amending Chapter 9.28 to prohibit smoking in multi-family residential housing, all outdoor eating areas, and within twenty-five feet of building entryways and public transit stops, and directed staff to return with ordinance amendments to limit smoking in additional outdoor areas, such as service areas and outdoor events; and

WHEREAS, Ordinance No. 3072-16 included extensive findings documenting the dangers of secondhand smoke from tobacco products;

WHEREAS, on May 4, 2016, Governor Brown signed into law five new tobacco control bills, including AB 7 X2, which closes certain loopholes in smoke-free workplace laws, including hotel lobbies, small businesses, and break rooms and changes other provisions related to smoking in workplaces.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. The Council finds that the findings adopted with Ordinance No. 3072-16 apply equally to the additional regulations of smoking describes in this ordinance and hereby incorporates those findings by reference in adoption of this ordinance.

SECTION 2. Section 9.28.020 AMENDED. Section 9.28.020 of Chapter 9.28 (Smoking Regulation) of Title 9 (Public Health, Safety or Welfare) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**9.28.020. Definitions**

(a)-(l) [text unchanged]

(m) “Pedestrian retail district” means the area of South Murphy Avenue bounded by Washington Avenue and Evelyn Avenue.

(n) “Public place” means any enclosed or unenclosed area, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.

(o)-(p) [renumbered;text unchanged]

(q) “Service area” means any publicly or privately owned enclosed or unenclosed area, including streets and sidewalks, that is designed to be used by one or more persons to receive a service, wait to receive a service, or to make a transaction, whether or not the service or transaction includes the exchange of money. The term “service area” includes, but is not limited to areas including or within a reasonable distance of information kiosks, automatic teller machines (ATMs), ticket lines, transit stops or shelters, mobile vendor lines, and cab lines.—

(r)-(v). [renumbered;text unchanged]

**SECTION 3.** Section 9.28.030 AMENDED. Section 9.28.020 of Chapter 9.28 (Smoking Regulation) of Title 9 (Public Health, Safety or Welfare) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**9.28.030 Locations where smoking is prohibited.**

(a) Except as otherwise provided in Section 9.28.050, smoking is prohibited in the following enclosed and unenclosed locations in the city:

(1) - (4) [text unchanged]

(5) Public parks, ~~except that smoking shall be prohibited on golf courses where not otherwise prohibited by law.~~

(6) In service areas.

(7) Public places, when being used for a public event, including a farmer’s market, parade, craft fair, or any event which may be open to or attended by the general public, provided that smoking is permitted on streets and sidewalks being used in a traditional capacity as pedestrian or vehicular thoroughfares, unless otherwise prohibited by this chapter or other law.

(8) In the pedestrian retail district.

(b)-(d) [text unchanged]

**SECTION 4.** Section 9.28.050 DELETED. Section 9.28.050 (Smoking Optional Areas) of Chapter 9.28 (Smoking Regulation) of Title 9 (Public Health, Safety or Welfare) of the Sunnyvale Municipal Code is hereby deleted:

**~~9.28.050. Smoking optional areas.~~**

~~—Subject to any applicable provisions of state and federal law, in which case those laws apply, the following areas are not subject to the smoking restrictions in this chapter:~~

~~—(a) Private residences, except when used as places of business for child or elder care, or as a home business employing one or more employees other than residents, during the hours the residence is used for business.~~

~~—(b) Designated guest rooms in hotels and motels, in conformance with state law.~~

~~—(c) Lobbies, meeting and banquet rooms in hotels and motels, in conformance with~~

state law.

~~—(d) Theatrical production sites, if smoking is an integral part of the story in the theatrical production.~~

~~—(e) Employee breakrooms designated for smoking, in conformance with state law.~~

~~—(f) Patient smoking areas in long term health care facilities, as defined in Section 1418 of the Health and Safety Code.~~

~~—(g) Retail or wholesale tobacco stores, in conformance with state law.~~

~~—(h) Owner-occupied bars, taverns, and gaming clubs that meet the following conditions:~~

~~—(1) No one is paid to assist, on a temporary or regular basis, in the in-house operation of the business, whether serving customers or performing other duties or services on the premises, including, but not limited to, janitorial or bookkeeping services.~~

~~—(2) No salaried or contract employees shall be employed on the premises by the business. "Employees" of the bar, tavern or gaming club shall be deemed to include independent contractors or their employees who perform any type of work including, but not limited to, bartending, janitorial services, catering, bookkeeping or accounting services. Any person who performs any sort of entertainment or other type of service on the premises and receives any sort of compensation, including, but not limited to, tips from the businesses owner, customers, or other persons, shall also be deemed an "employee" for purposes of this section.~~

~~—(3) The bar, tavern or gaming club facility shall not be used or rented by anyone else who hires or uses others to work there as employees.~~

~~—(4) Any bar, tavern, or gaming club, which claims to be an "owner operated" business pursuant to this section, shall provide to the director of community development a written application under oath, signed by each owner of the business, and certifying that the business has no employees within the meaning of this section, is totally "owner operated" as defined herein, and will not engage or employ any employees on the premises without prior notice to the director of community development and a written request to have such certification revoked. Such application shall be made upon a form to be provided by city, and shall include such information as the director of community development reasonably requires to determine if the bar, tavern, or gaming club is exempt from the prohibition against permitting or allowing smoking within such business by reason of being owner-operated.~~

~~—(5) Upon receipt of the application for certification as an "owner operated" bar, tavern, or gaming club, the director of community development shall investigate the application. If the director determines that the business is "owner operated," the director shall issue a certification of such status to the business which shall be valid for one year, or such earlier time as the business requests a withdrawal of the certification. The owner of such business shall apply within sixty days of the expiration of the certification for a renewed certificate of owner operation and shall similarly provide information under oath to the director.~~

~~—(6) A copy of each certificate of "owner operated" status shall be posted in a prominent place in the public area of each such bar, tavern or gaming room.~~

~~—(7) Unless a current and valid "owner operated" certificate is posted in accordance with this section, it shall be presumed that the business is not "owner operated," and smoking or permitting smoking in such business by any person shall be unlawful. This presumption is rebuttable. In any judicial or administrative proceeding, the owner of the business has the burden of establishing that the business is owner-occupied.~~

~~—(8) Notwithstanding the foregoing, in the event that any state statute or regulation~~

~~adopts a different definition of “owner operated” as to bars, taverns, or gaming clubs, for purposes of the definition of “place of employment” pursuant to Labor Code Section 6404.5, that definition~~

~~shall supersede and govern over the definition contained herein.~~

~~(i) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls a business may declare that entire business, or designated sections thereof, as a nonsmoking establishment.~~

SECTION 5. Section 9.28.060 AMENDED. Section 9.28.060 of Chapter 9.28 (Smoking Regulation) of Title 9 (Public Health, Safety or Welfare) of the Sunnyvale Municipal Code is hereby renumbered and amended to read as follows:

**9.28.06050. Reasonable smoking distance required.**

(a)-(c) [text unchanged]

(d) Smoking is prohibited within a reasonable distance of any enclosed or unenclosed ~~transit stop~~service area, except while the person smoking is actively passing on the way to another destination and provided smoke does not enter any unenclosed area in which smoking is prohibited.

SECTION 6. Section 9.28.070 AMENDED. Section 9.28.070 of Chapter 9.28 (Smoking Regulation) of Title 9 (Public Health, Safety or Welfare) of the Sunnyvale Municipal Code is hereby renumbered and amended to read as follows:

**9.28.07060. Signposting requirements.**

[text unchanged]

SECTION 7. Section 9.28.080 AMENDED. Section 9.28.080 of Chapter 9.28 (Smoking Regulation) of Title 9 (Public Health, Safety or Welfare) of the Sunnyvale Municipal Code is hereby renumbered and amended to read as follows:

**9.28.08070. Violations.**

[text unchanged]

SECTION 8. Section 9.28.090 AMENDED. Section 9.28.090 of Chapter 9.28 (Smoking Regulation) of Title 9 (Public Health, Safety or Welfare) of the Sunnyvale Municipal Code is hereby renumbered and amended to read as follows:

**9.28.09080 Enforcement.**

[text unchanged]

SECTION 9. Section 9.28.100 AMENDED. Section 9.28.100 of Chapter 9.28 (Smoking Regulation) of Title 9 (Public Health, Safety or Welfare) of the Sunnyvale Municipal Code is hereby renumbered and amended to read as follows:

**9.28.~~100090~~ Penalties.**  
[text unchanged]

SECTION 10. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 11. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 12. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 13. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on \_\_\_\_\_, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:  
RECUSAL:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
Date of Attestation: \_\_\_\_\_

\_\_\_\_\_  
Mayor

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney