

ORDINANCE NO. 3087-16

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 9.28.030 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.

(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)-(c) [Text unchanged]

(d) Subsection (a)(3) shall not apply to outdoor areas of the two restaurants located at 769 N. Mathilda Avenue and 133 S. Murphy Avenue that have been granted use permits pursuant to Title 19 of this code to allow limited smoking (hookah) uses in outdoor areas, provided, however, that these establishments shall cease operations related to smoking in outdoor dining areas ~~;~~ ~~(1) within two years of the date of adoption of the ordinance codified in this chapter;~~ (2) at such time as either the certificate of occupancy, ownership or use of the establishment changes, ~~;~~ ~~(3) when fifty-one percent or more of the taxable value of the establishment is destroyed by fire or natural disaster;~~ or (4) or when the establishment voluntarily prohibits smoking, whichever occurs soonest.

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:

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:

9.28.050. Reasonable smoking distance required.

(a)-(c) [Text unchanged]

(d) Smoking is prohibited within a reasonable distance of any enclosed or unenclosed 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:

9.28.060. 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:

9.28.070. 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:

9.28.080 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:

9.28.090 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 June 21, 2016, 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