

ORDINANCE NO. 3072-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING CHAPTER 9.28 (REGULATION OF SMOKING) OF TITLE 9 (PUBLIC PEACE, SAFETY OR WELFARE) OF THE SUNNYVALE MUNICIPAL CODE TO REGULATE SMOKING IN MULTI-UNIT RESIDENCES, OUTDOOR DINING ESTABLISHMENTS, AND WITHIN A REASONABLE DISTANCE OF AREAS WHERE SMOKING IS PROHIBITED

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the nation's leading cause of preventable death;¹ and
- Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths;² and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;³ and
- 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;^{4,5} and
- The California Environmental Protection Agency (EPA) 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;⁶ and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke occurs at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind and number and proximity of smokers;^{7,8} and
- Smoking cigarettes near building entryways can increase air pollution levels by more than two times background levels, with maximum levels reaching the "hazardous" range on the United States EPA's Air Quality Index;⁸ and
- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 23 feet away from the source of the smoke, about the width of a two-lane road;^{8,9} and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke;^{2,10} and
- Secondhand smoke is responsible for an estimated 41,300 heart disease-related and lung cancer-related deaths among adult nonsmokers each year in the United States;¹⁰ and
- Exposure to secondhand smoke increases the risk of coronary heart disease by about 25 percent to 30 percent¹¹ and increases the risk of stroke by 20 percent to 30 percent;¹² and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- Between 2009 and 2012, the total annual economic burden of smoking in the United States was between \$289 billion and \$332.5 billion;¹ and
- From 2005 to 2009, the average annual health care expenditures attributable to smoking were approximately \$132.5 billion to \$175.9 billion in direct medical care costs for adults and \$151 billion in lost productivity;¹ and
- The total annual cost of smoking in California was estimated at \$548 per resident or between \$2,262 and \$2,904 per smoker per year;¹³ and
- California's Tobacco Control Program saved the state and its residents \$134 billion in health care expenditures between the year of its inception, 1989, and 2008, with savings growing yearly;¹³ and

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs with a review of over 80 peer-reviewed research studies showing that smokefree policies effectively do the following:

- Reduce tobacco use: tobacco use is reduced by median of 2.7 percent;¹⁴ and
- Reduce exposure to secondhand smoke: air pollution is reduced by a median of 88 percent and biomarkers for secondhand smoke are reduced by a median of 50 percent;¹⁴ and
- Increase the number of tobacco users who quit by a median of 3.8 percent;¹⁴ and
- Reduce initiation of tobacco use among young people;¹⁴ and
- Reduce tobacco-related illnesses and death: there is a 5.1 percent median decrease in hospitalizations from heart attacks and a 20.1 percent decrease in hospitalizations from asthma attacks after such laws are passed;¹⁴ and

WHEREAS, laws restricting electronic smoking devices use also have benefits to the public as evidenced by the following:

- Research has found at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm,^{6, 15, 16, 17} such as formaldehyde, acetaldehyde, lead, nickel, and toluene;^{18,19,20} and
- More than one study has concluded that exposure to vapor from electronic smoking devices may cause passive or secondhand vaping;^{18,20,21} and
- The use of electronic smoking devices in smokefree locations threatens to undermine compliance with smoking regulations and reverse the progress that has

- been made in establishing a social norm that smoking is not permitted in public places and places of employment;²² and
- The State of California's Tobacco Education and Research Oversight Committee (TEROC) "opposes the use of e-cigarettes in all areas where other tobacco products are banned;"²³ and

WHEREAS, cigarette butts are a major and persistent source of litter, as evidenced by the following:

- In 2007, it was estimated that Americans consume 360 billion cigarettes each year;^{24, 25} and
- 55.7 percent of smokers admit to littering cigarettes in the last month;²⁶ and
- In an observational study of nearly 10,000 individuals, after cigarettes were smoked, 45 percent of cigarettes ended up as litter;²⁵ and
- In 2011, 22.6 percent of all debris collected from beaches and coastal areas are smoking related products;²⁷ and
- Cigarette butts are often cast onto sidewalks and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons, and ultimately the ocean;^{27, 28} and

WHEREAS, cigarette butts pose a health threat to young children, as evidenced by the following:

- In 2012, American poison control centers received nearly 8,648 reports of poisoning by the ingestion of cigarettes, cigarette butts, and other tobacco products and 84.5 percent of these poisonings were in children ages five and younger;²⁹ and
- Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;³⁰ and

WHEREAS, though widely perceived as a comprehensive smokefree air law, exemptions and loopholes in the California Smokefree Workplace Act³¹ mean that one in seven Californians faces secondhand smoke exposure at work;³² and

WHEREAS, there is broad public recognition of the dangers of secondhand smoke and support for smokefree air laws, as evidenced by a 2008 survey of California voters, which found that 97 percent thought that secondhand smoke is harmful, 88 percent thought secondhand smoke was harmful even outdoors, 65 percent were bothered by secondhand smoke, and 73 percent support laws restricting smoking in outdoor public places;³³ and

WHEREAS, as of April 2015, there are at least 64 California cities and counties with local laws restricting smoking in workplaces not covered by the state smokefree workplace law;³⁴ and

WHEREAS, as of April 2014, at least 131 local jurisdictions in California prohibit the use of electronic smoking devices in specific locations;³⁵ and

WHEREAS, as of January 2015, there are at least 348 California cities and counties with local laws restricting smoking in recreational areas, 129 with local laws restricting smoking in

outdoor dining places, and 48 with local laws restricting smoking on sidewalks in commercial areas;³⁶ and

WHEREAS, nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke, as evidenced by the following:

- Several peer-reviewed studies on drifting secondhand smoke in multi-unit housing have confirmed that secondhand smoke can and does transfer between units,^{38,39} creeping under doorways and through wall cracks;³⁷
- More than one study has found that residents of multi-unit housing have high levels of cotinine (a biomarker for nicotine) in their blood and saliva;^{38,39}
- 13 peer-reviewed journal articles have found that between 26 percent and 64 percent of residents of multi-unit housing report secondhand smoke drifting into their home;³⁸ and

WHEREAS, harmful residues from tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and then be emitted back into the air, making this "thirdhand smoke" a potential health hazard, as evidenced by the following:

- Thirdhand smoke contains carcinogenic materials that accumulate over time, presenting a health hazard long after the initial smoke is gone;⁴⁰
- A study found that thirdhand smoke remains months after nonsmokers have moved into units where smokers previously lived;⁴¹
- Human exposure to these thirdhand smoke carcinogens can be through inhalation, ingestion, or skin absorption through contact with carpeting, furnishings, or clothing;⁴²
- Thirdhand smoke potentially poses the greatest danger to infants and toddlers, who crawl on rugs and furnishings and suck on items in the home;⁴²
- Nonsmoking people who are exposed to thirdhand smoke have significantly higher nicotine and cotinine levels than those who have not been exposed to thirdhand smoke;⁴¹
- Research has shown that thirdhand smoke damages human cellular DNA;⁴³ and

WHEREAS, smoking is the number one cause of fire deaths, is a leading cause of fire-related injury,⁴⁴ and contributes to fire-related health inequities, as evidenced by the following:

- In 2011, U.S. fire departments responded to an estimated 90,000 smoking-related fires, which resulted in an estimated 1,640 injuries, 540 deaths, and \$621 million in direct property damage;⁴⁵
- One in four fatalities is NOT the smoker whose cigarette started the fire, and 25 percent of those who die are neighbors or friends of the smoker;⁴⁵
- African-American males and American-Indian males have the highest fire death rates;⁴⁴
- The elderly (people 85 and older) have the highest fire death rate (49.2%),⁴⁶ and the risk of dying from smoking-related fires increases with age;⁴⁵
- The U.S. Fire Administration recommends that people smoke outdoors;⁴⁷ and

WHEREAS, the Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure and that

separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure;⁴⁸ and

WHEREAS, several studies have confirmed that smokefree multi-unit housing policies are the most effective method to fully reduce secondhand smoke exposure in multi-unit housing;³⁸ and

WHEREAS, 32 percent of Californians (or 11.8 million people) live in multi-unit housing,⁴⁹ which accounts for one-seventh of the total multi-unit housing population in the country;⁵⁰ and

WHEREAS, between 44 percent to 46.2 percent of Californians living in multi-unit housing with personal smokefree home policies are exposed to secondhand smoke in their home;⁴⁹ and

WHEREAS, surveys have found that between 65 percent and 90 percent of multi-unit housing residents who experience secondhand smoke in their home are bothered by the secondhand smoke incursion;³⁸ and

WHEREAS, secondhand smoke exposure in multi-unit housing contributes to tobacco-related health inequities. For example, when compared with adults who live in single family homes, adults who live in multi-unit housing are more likely to

- Be from communities of color (62.9% of residents of multi-unit homes versus 49.6% of residents of single family homes);⁵⁰
- Be low-income or below the poverty line (46.8% versus 27%);⁵⁰
- Have less than a high school diploma (21.4% versus 14.8%);⁵⁰
- Be current smokers (17.5% versus 13.2%);⁵⁰ as well as
- Be uninsured (23.4% versus 14.2%);⁵⁰ and

WHEREAS, secondhand smoke in multi-unit housing is a significant threat to the health and safety of California children, as evidenced by the following:

- About a quarter of those who live in multi-unit housing (25.2%) are under the age of 18;⁴⁹
- The home is the primary source of secondhand smoke for children;³⁷
- 56.4 percent of youth living in apartment units in which no one smokes have elevated blood cotinine levels above .05 ng/mL, indicating they have been exposed to potentially dangerous levels of secondhand smoke;^{38,51}
- Children who live in apartments have mean cotinine levels that are 45 percent higher than cotinine levels in children who live in detached homes;^{38,51} and

WHEREAS, a majority of multi-unit housing residents, including a large portion of smokers, support smokefree policies in multi-unit residences,³⁸ as evidenced by the following:

- 74 percent of Californians surveyed approve of apartment complexes requiring that at least half of rental units be nonsmoking;⁵²
- 69 percent of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings;⁵²

- 78 percent support laws that create nonsmoking units;⁵² and

WHEREAS, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within rental units is not prohibited by California law;⁵³ and

WHEREAS, at least 55 California cities and counties have adopted smokefree multi-unit housing ordinances,⁵⁴ and at least 25 of these jurisdictions have restricted smoking in 100 percent of units;⁵⁵ and

WHEREAS, there is no Constitutional right to smoke;⁵⁶

WHEREAS, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-tobacco users, especially children, to protect the public from exposure to secondhand smoke where they live, work, and play, and to protect the public from nonconsensual exposure to secondhand smoke in and around their homes the City of Sunnyvale desires to amend and add new sections to the Sunnyvale Municipal Code Chapter 9.28 (Regulation of Smoking) relating to smoking within multi-family housing, smoking distance from doors, windows and similar openings, and outdoor dining establishments.

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

SECTION 1. Chapter 9.28 AMENDED. Chapter 9.28 (Regulation of Smoking) of Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code is hereby amended, added and renumbered to read as follows:

Chapter 9.28.

REGULATION OF SMOKING

- 9.28.010. Purpose.**
- 9.28.020. Definitions.**
- 9.28.030. Locations where smoking is prohibited.**
- 9.28.040. Smoking prohibited in multi-unit residences; required standards for multi-unit residences.**
- 9.28.050. Smoking Optional Areas.**
- 9.28.060. Reasonable smoking distance required.**
- 9.28.070. Violations.**
- 9.28.080. Enforcement.**
- 9.28.090. Penalties.**

9.28.010. Purpose.

The city council of the City of Sunnyvale does hereby find that tobacco smoke is detrimental to the health, welfare and comfort of the general public and that the health, safety and general welfare of the residents of, persons employed in, and persons who frequent this city would be furthered by the prohibition and regulation of smoking in enclosed places or defined places, including places of

employment and multi-unit residences. The purpose of this Chapter is to ensure a healthier environment within the city, improve public safety by reducing litter from smoking waste and the risk of fire from smoking, and 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, and 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.

9.28.020. Definitions.

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

- (a) [Text unchanged]
- (b) “Business” means any sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity formed for profit-making purposes.
- (c) “Common area” means every enclosed area or unenclosed area of a multi-unit residence accessible and usable by residents of more than one unit of that multi-unit residence including, but not limited to, halls, paths, walkways, lobbies, courtyards, elevators and stairs, community rooms, playground areas, gym facilities, swimming pool areas, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.
- (d) “Dining Area” means any area, including streets and sidewalks, that is available to or customarily used by the general public or an employee, and that is designed, established, or regularly used, for consuming food or drink.
- (e) – (f) [Renumbered; text unchanged]
- (g) “Employee” means any person who is employed or retained as an independent contractor by any employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers services for an employer.
- (h) “Employer” means any business or nonprofit entity that retains the service of one or more employees.
- (i) “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 vertical constraint to airflow including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or
 - (2) four (4) walls or other vertical constraints to airflow including, but not limited to, vegetation that exceed six (6) feet in height, whether or not those boundaries include vents or other openings.
- (j) – (k) [Renumbered; text unchanged]
- (l) “Multi-Unit Residence” means property containing two (2) or more Units, except the following specifically excluded types of housing:
 - (1) a hotel or motel that meets the requirements of California Civil Code section 1940(b)(2);
 - (2) a campground;

- (3) a single-family home;
- (4) a single-family home with a detached or attached in-law or second Unit.
- (m) “Reasonable Distance” means a distance of twenty five (25) feet in any direction.
- (n) [Renumbered; text unchanged]
- (o) “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 inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory such as, for example, from incense. The term “smoke” includes but is not limited to tobacco smoke, electronic smoking device vapors, and marijuana smoke.
- (p) “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.
- (q) “Transit Stop” means an area officially marked and designated as a place to wait for a bus, a light rail vehicle, train or any other public transportation vehicle that is operated on a scheduled route and open to use by the general public.
- (r) “Unenclosed Area” means any area that is not an Enclosed Area.
- (~~sf~~) “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 but is not limited to an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room occupancy (“SRO”) facility; or a room in a homeless shelter.

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) - (2) [Renumbered; text unchanged]
- (3) Outdoor dining areas.
- (4) - (5) [Renumbered; text unchanged]
- (b) “No smoking” designation in other areas. Any location on city property, other than public streets and sidewalks, where smoking is not otherwise prohibited by law may be designated by the city manager as a “no smoking” area. Such areas shall be posted with appropriate signage.
- (c) Nothing in this chapter prohibits any person or employer with legal control over any property from prohibiting smoking on any part of such property.
- (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 this ordinance, (2) at such time as either the certificate of occupancy or use of the establishment changes, (3) when fifty-one (51) percent or more of the taxable value of the establishment is destroyed by fire or natural disaster, or (4) when the establishment voluntarily prohibits smoking, whichever occurs soonest.

9.28.040. Smoking prohibited in multi-unit residences; required standards for multi-unit residences.

(a) Beginning September 23, 2016, smoking is prohibited and no person shall smoke in any new or existing unit of a multi-unit residence, in any enclosed or unenclosed common area of a multi-unit residence, or within a reasonable distance of any operable doorway, window, opening, or vent of a multi-unit residence, except in a designated smoking area as provided in this section.

(b) Smoking is prohibited in multi-unit residences as provided in section 9.28.040(a), except that a person with legal control over a common area, or authorized representative, 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 (c) below.

(c) Designated smoking areas in multi-unit residences. A designated smoking area shall:

(1) Be located in an unenclosed and clearly delineated area totaling not more than ten percent (10%) of the total unenclosed area of the multi-unit residence for which it is designated;

(2) Be located at least 25 feet in any direction from any operable doorway, window, opening, or other vent into an enclosed area that is located at a multi-unit residence;

(3) Have receptacles designed for and primarily used for disposal of tobacco waste and that are maintained free of tobacco related litter including but not limited to cigarette butts;

(4) Be at least 25 feet from and shall not include, unenclosed areas primarily used by children or that facilitate physical activity, including, for example, playgrounds, swimming pools, and school campuses.

(d) Common areas free from smoking waste. Persons with legal control over common areas in multi-unit residences, and their authorized representatives, shall ensure that all common areas except those meeting the requirements of subsection (c) remain free of smoking and tobacco waste, and ash trays, ash cans, or other receptacles designed for or primarily used for disposal of smoking and tobacco waste.

(e) Signage. No smoking signs shall be posted as required by section 9.28.070 of this chapter, but are not required inside any unit of a multi-unit residence. Signs shall be maintained by the person or persons with legal control over the common areas or the authorized representative of such person.

(f) Lease terms. The following lease terms are required for all new and existing units in multi-unit residences:

(1) Every lease or other rental agreement for the occupancy of a new or existing unit in a multi-unit residence entered into, renewed, or continued month-to-month after the effective date of this ordinance shall include the following:

(i) A clause providing that as of September 23, 2016, it is a material breach of the agreement to allow or engage in smoking in the unit, including exclusive-use areas such as balconies, porches, or patios. 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 engage in smoking in the unit or exclusive use areas such as balconies, porches, or patios as of September 23, 2016."

(ii) 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 engage in smoking in any common area of the multi-unit residence other than a designated smoking area. 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 engage in smoking in any common area of the property, except in an outdoor designated smoking area, if one exists."

(iii) 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."

(iv) 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 might state, "Other occupants of the property are express third-party beneficiaries of those provisions in this agreement regarding smoking. As such, other occupants of the property may enforce such provisions by any lawful means, including by bringing a civil action in a court of law."

(g) Whether or not a landlord complies with subsection (f)1, the clauses required by that subsection shall be implied and incorporated by law into every agreement to which subsection 1 applies and shall become effective as of the earliest possible date on which the Landlord could have made the insertions pursuant to subsection 1.

(h) A tenant who breaches a smoking provision of a lease or other rental agreement for the occupancy of a unit in a multi-unit residence, or who knowingly permits any other person subject to the control of the tenant or present by invitation or permission of the tenant, shall be liable for the breach to (i) the landlord; and (ii) any occupant of the multi-unit residence who is exposed to smoke or who suffers damages as a result of the breach.

(i) 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.

(g) Property adjacent to multi-unit residences. Smoking 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, except this prohibition does not apply to a person who is smoking in the restricted buffer zone area while actively passing on the way to another destination and provided smoke does not enter any area in which smoking is prohibited.

9.28.050. Smoking optional areas. [Renumbered; text unchanged]

9.28.060. Reasonable smoking distance required.

(a) Smoking in all unenclosed areas shall be prohibited within a reasonable distance in any direction from any operable 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 unenclosed area in which smoking is prohibited.

(b) Smoking in unenclosed areas shall be prohibited within a reasonable distance from any unenclosed areas in which smoking is prohibited under 9.28.030 of this chapter, 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.

(c) The prohibitions in subdivisions (a) and (b) shall not apply to unenclosed areas of private residential properties that are not multi-unit residences.

(d) Smoking is prohibited within a reasonable distance of any enclosed or unenclosed transit stop, 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.

9.28.070. Signposting requirements. [Renumbered]

Posting of signs shall be the responsibility of the owner, operator, manager or other person having control of any area where smoking is prohibited by this chapter.

(a) Except in facilities owned or leased by county, state or federal governmental entities, "No Smoking" signs 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 every room, building or other place where smoking is prohibited by this chapter, including, but not limited to, all entrances, all restrooms and all elevators. Signs posted on the exterior of buildings to comply with this section shall include the reasonable

distance requirement set forth in section 9.28.060 of this chapter. Signs of equivalent size and character reading "Smoking is prohibited except in designated areas" shall be posed at each entrance to a building or structure where smoking is permitted in designated areas. Signs of equivalent size and character reading "Smoking Permitted" may be posted where legally applicable. Alternative means of notification (individual place cards, film clips, etc.) may be employed, provided they are equivalent to the aforementioned signs in their effect. In all motion picture theaters, illuminated "No Smoking" signs shall be installed so as to be readily visible from all seats. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of smoking in violation of any provision of this chapter.

9.28.080. Violations.

(a) It is unlawful for any person to smoke in a place within the city where smoking is prohibited.

(b) No employer or other person with responsibility for management or control of a place where smoking is prohibited shall knowingly and intentionally allow smoking in violation of this chapter, or fail to post signs required by this chapter.

(c) No person shall dispose of used smoking or tobacco product waste within the boundaries of an area in which smoking is prohibited, including within any Reasonable Distance required by this chapter.

(d) No person, employer, or nonprofit entity shall intimidate, threaten any reprisal, effect any reprisal, or in any manner discriminate against another person who seeks to attain compliance with this chapter.

(e) Causing, permitting, aiding, abetting or concealing a violation of any provision of this article shall also constitute a violation of this article.

(f) Any violation of this chapter is declared to be a public nuisance.

9.28.090. Enforcement.

(a) The City Manager may designate enforcement authority for this chapter, including but not limited to peace officers and code enforcement officials.

(b) Any person, including a legal entity or organization acting for the interests of itself, its members, or the general public may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this chapter against any person who has allegedly violated this chapter three or more times. Upon proof of the violations, a court shall grant all appropriate relief, including: (1) awarding damages; and (2) issuing an injunction or a conditional judgment.

(c) Except as otherwise provided, enforcement of this chapter is at the sole discretion of the city. Nothing in this chapter shall create a right of action in any person against the city or its agents to compel public enforcement of this chapter against private parties.

9.28.100 Penalties.

(a) Each instance of smoking or tobacco product use in violation of this chapter shall constitute a separate violation. For violations other than for smoking, each day of a continuing violation of this chapter shall constitute a separate violation.

(b) Any person violating any of the provisions of this chapter shall be guilty of an infraction punishable as set forth in Chapter 1.04 of this code. Subsequent violations within a twelve month period may, in the discretion of the City Attorney, be prosecuted as infractions or misdemeanors when the interests of justice so require.

(c) Violations of this article may be subject to a civil action brought by the city, punishable by a fine of not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.

(d) The remedies provided by this chapter are cumulative and not exclusive, and shall be in addition to any and all other remedies available to the city.

SECTION 2. 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 3. 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 3. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. 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 February 9, 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

ENDNOTES

1. U.S. Department of Health and Human Services. *The Health Consequences of Smoking — 50 Years of Progress A Report of the Surgeon General Executive Summary*.; 2014. Available at: www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf.
2. U.S. Surgeon General. Factsheet: The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. 2014. Available at: www.surgeongeneral.gov/library/reports/50-years-of-progress/factsheet.html. Accessed June 2, 2015.
3. U.S. Department of Health and Human Services. 2006 Surgeon General’s Report—The Health Consequences of Involuntary Exposure to Tobacco Smoke. 2006. Available at: www.cdc.gov/tobacco/data_statistics/sgr/2006/index.htm. Accessed June 14, 2014.
4. California Environmental Protection Agency Air Resources Board. *Environmental Tobacco Smoke: A Toxic Air Contaminant. California Environmental Protection Agency Air Resources Fact Sheet*.; 2006. Available at: www.arb.ca.gov/toxics/ets/factsheetets.pdf.
5. California Environmental Protection Agency Air Resource Board. California Identifies Secondhand Smoke as a “Toxic Air Contaminant.” *News Release*. 2006. Available at: www.arb.ca.gov/newsrel/nr012606.htm.
6. Chemicals known to the state to cause cancer or reproductive toxicity. State of California Environmental Agency Office of Health Hazard Assessment Safe Drinking Water and Toxic Enforcement Act of 1986. 2015. Available at: www.oehha.ca.gov/prop65/prop65_list/files/P65single012315.pdf.
7. Klepeis N, Ott W, Switzer P. *Real-Time Monitoring of Outdoor Environmental Tobacco Smoke Concentrations: A Pilot Study*.; 2004. Available at: http://exposurescience.org/pub/reports/Outdoor_ETS_Final.pdf.
8. Klepeis NE, Ott WR, Switzer P. Real-time measurement of outdoor tobacco smoke particles. *J Air Waste Manag Assoc*. 2007;57(August 2013):522–534. doi:10.3155/1047-3289.57.5.522.
9. Repace J. Benefits of Smokefree Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles. *William Mitchell Law Rev*. 2008;34(4):1621–1638. Available at: www.repace.com/pdf/Repace_Ch_15_Outdoor_Smoke.pdf.
10. Centers for Disease Control and Prevention. Secondhand Smoke (SHS) Facts. 2014. Available at: www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm. Accessed June 13, 2014.
11. Institute of Medicine. *Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence*. Washington, DC; 2010. Available at: www.iom.edu/en/Reports/2009/Secondhand-Smoke-Exposure-and-Cardiovascular-Effects-Making-Sense-of-the-Evidence.aspx.
12. U.S. Department of Health and Human Services. *The Health Consequences of Smoking — 50 Years of Progress A Report of the Surgeon General*.; 2014. Available at: www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf.
13. Lightwood J, Glantz S a. The effect of the California tobacco control program on smoking prevalence, cigarette consumption, and healthcare costs: 1989-2008. *PLoS One*. 2013;8(2):e47145. doi:10.1371/journal.pone.0047145.
14. Guide to Community Preventive Services. Reducing Tobacco Use and Secondhand Smoke Exposure: Smoke-Free Policies. 2012. Available at: www.thecommunityguide.org/tobacco/smokefreepolicies.html. Accessed July 29, 2014.
15. California Department of Public Health California Tobacco Control Program. *State Health Officer’s Report on E-Cigarettes: A Community Health Threat*. Sacramento, CA Available at: http://cdph.ca.gov/programs/tobacco/Documents/Media/State_Health-e-cig_report.pdf.

16. Grana R, Benowitz N, Glantz S. *Background Paper on E-cigarettes (Electronic Nicotine Delivery Systems)*.; 2013. Available at: <http://escholarship.org/uc/item/13p2b72n>.
17. Williams M, Villarreal A, Bozhilov K, Lin S, Talbot P. Metal and silicate particles including nanoparticles are present in electronic cigarette cartomizer fluid and aerosol. *PLoS One*. 2013;8(3):e57987. doi:10.1371/journal.pone.0057987.
18. German Cancer Research Center. "Electronic Cigarettes - An Overview" *Red Series Tobacco Prevention and Control*. Heidelberg; 2013. Available at: www.dkfz.de/de/tabakkontrolle/download/Publikationen/RoteReihe/Band_19_e-cigarettes_an_overview.pdf.
19. Goniewicz ML, Knysak J, Gawron M, et al. Levels of selected carcinogens and toxicants in vapour from electronic cigarettes. *Tob Control*. 2013;1:1–8. doi:10.1136/tobaccocontrol-2012-050859.
20. Schripp T, Markewitz D, Uhde E, Salthammer T. Does e-cigarette consumption cause passive vaping? *Indoor Air*. 2013;23(1):25–31. doi:10.1111/j.1600-0668.2012.00792.x.
21. Schober W, Szendrei K, Matzen W, et al. Use of electronic cigarettes (e-cigarettes) impairs indoor air quality and increases FeNO levels of e-cigarette consumers. *Int J Hyg Environ Health*. 2013. doi:10.1016/j.ijheh.2013.11.003.
22. McMillen R, Maduka J, Winickoff J. Use of emerging tobacco products in the United States. *J Environ Public Health*. 2012;2012. doi:10.1155/2012/989474.
23. Tobacco Education and Research Oversight Committee (TEROC). *Position on Electronic-Cigarettes (e-cigarettes)*.; 2013. Available at: [www.cdph.ca.gov/services/boards/teroc/Documents/Positions/TEROC Official Position of E-Cigs_June_2013_final.pdf](http://www.cdph.ca.gov/services/boards/teroc/Documents/Positions/TEROC_Official_Position_of_E-Cigs_June_2013_final.pdf).
24. United States Department of Agriculture. Tobacco Outlook. *Electron Outlook Rep from Econ Res Serv*. 2007;TBS-263:TBS–263. Available at: <http://usda.mannlib.cornell.edu/usda/ers/TBS/2000s/2007/TBS-10-24-2007.pdf>.
25. Schneider JE, Peterson NA, Kiss N, Ebeid O, Doyle AS. Tobacco litter costs and public policy: a framework and methodology for considering the use of fees to offset abatement costs. *Tob Control*. 2011;20 Suppl 1(Suppl 1):i36–41. doi:10.1136/tc.2010.041707.
26. Rath JM, Rubenstein R a, Curry LE, Shank SE, Cartwright JC. Cigarette litter: Smokers' attitudes and behaviors. *Int J Environ Res Public Health*. 2012;9(6):2189–203. doi:10.3390/ijerph9062189.
27. Ocean Conservancy. *Tracking Trash: 25 Years of Action for the Ocean*. Washington, DC; 2011.
28. Novotny TE, Lum K, Smith E, Wang V, Barnes R. Cigarettes butts and the case for an environmental policy on hazardous cigarette waste. *Int J Environ Res Public Health*. 2009;6(5):1691–705. doi:10.3390/ijerph6051691.
29. Mowry JB, Spyker D a, Cantilena LR, Bailey JE, Ford M. 2012 Annual report of the American Association of Poison Control Centers' National Poison Data System (NPDS): 30th annual report. *Clin Toxicol*. 2013;51(10):949–1229. doi:10.3109/15563650.2013.863906.
30. Lewander W, Wine H, Carnevale R, et al. Ingestion of cigarettes and cigarette butts by children -- Rhode Island, January 1994 - July 1996. *Morb Mortal Wkly Rep*. 1997;40(6):125–128. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm.
31. Cal. Labor Code § 6404.5.; 1995.
32. Al-Delaimy W, White M, Mills A, et al. *Two Decades of the California Tobacco Control Program: California Tobacco Survey, 1990-2008*.; 2010. Available at: www.cdph.ca.gov/programs/tobacco/Documents/Resources/Publications/CDPH_CTS2008_summary_report_final.pdf.
33. Goodwin Simon Victoria Research. Study of California Voters' Attitudes About Secondhand Smoke Exposure. *Cent Tob Policy Organ*. 2008. Available at: <http://center4tobaccopolicy.org/tobacco-policy/smokefree-outdoor->

[areas/secondhand-smoke-california-voters/](#).

34. American Nonsmokers' Rights Foundation. U.S. 100 % Smokefree Laws in Non-Hospitality Workplaces AND Restaurants AND Bars American Nonsmokers' Rights Foundation.; 2015. Available at: www.no-smoke.org/pdf/WRBLawsMap.pdf.
35. American Lung Association in California the Center for Tobacco Policy and Organizing. Local Policies on the Use of Electronic Cigarettes. 2015. Available at: <http://center4tobaccopolicy.org/wp-content/uploads/2015/04/Local-Policies-on-Use-of-E-Cigs-April-2015.pdf>.
36. Association AL. *State of Tobacco Control 2015*.; 2015. Available at: www.lung.org/associations/states/california/assets/pdfs/sotc-2015/sotc-2015_ca-full-report.pdf.
37. Centers for Disease Control and Prevention (CDC). Secondhand Smoke: An Unequal Danger. *CDC Vital Signs*. 2015. Available at: www.cdc.gov/vitalsigns/pdf/2015-02-vitalsigns.pdf.
38. Snyder K, Vick JH, King BA. Smoke-free multiunit housing: a review of the scientific literature. *Tob Control*. 2015;0:1–12. doi:10.1136/tobaccocontrol-2014-051849.
39. Martínez-Sánchez JM, Sureda X, Fu M, et al. Secondhand smoke exposure at home: Assessment by biomarkers and airborne markers. *Environ Res*. 2014;133:111–116. doi:10.1016/j.envres.2014.05.013.
40. Kuschner WG, Reddy S, Mehrotra N, Paintal HS. Electronic cigarettes and thirdhand tobacco smoke: two emerging health care challenges for the primary care provider. *Int J Gen Med*. 2011;4:115–20. doi:10.2147/IJGM.S16908.
41. Matt GE, Quintana PJE, Zakarian JM, et al. When smokers move out and non-smokers move in: residential thirdhand smoke pollution and exposure. *Tob Control*. 2011;20(1):e1. doi:10.1136/tc.2010.037382.
42. Sleiman M, Gundel L a, Pankow JF, Jacob P, Singer BC, Destailats H. Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential thirdhand smoke hazards. *Proc Natl Acad Sci U S A*. 2010;107(15):6576–81. doi:10.1073/pnas.0912820107.
43. Hang B, Sarker AH, Havel C, et al. Thirdhand smoke causes DNA damage in human cells. *Mutagenesis*. 2013;28(4):381–91. doi:10.1093/mutage/get013.
44. U.S. Fire Administration. U.S. fire statistics. 2015. Available at: www.usfa.fema.gov/data/statistics/. Accessed February 11, 2015.
45. Hall JRJ. *The Smoke-Material Fire Problem*. National Fire Protection Association Fire Analysis and Research Division. Quincy, MA; 2013. Available at: [www.nfpa.org/~media/Files/Research/NFPA reports/Major Causes/ossmoking.pdf](http://www.nfpa.org/~media/Files/Research/NFPA_reports/Major_Causes/ossmoking.pdf).
46. U.S. Fire Administration. U.S. fire deaths, fire death rates and risk of dying in a fire. 2014. Available at: www.usfa.fema.gov/data/statistics/fire_death_rates.html. Accessed February 11, 2015.
47. U.S. Fire Administration. *Behavioral Mitigation of Smoking Fires*.; 2006. Available at: www.usfa.dhs.gov/downloads/pdf/publications/fa-302-508.pdf.
48. U.S. Department of Health and Human Services. 2006 Surgeon General's Report—The Health Consequences of Involuntary Exposure to Tobacco Smoke. 2006. Available at: www.cdc.gov/tobacco/data_statistics/sgr/2006/index.htm. Accessed June 14, 2014.
49. King B a, Babb SD, Tynan M a, Gerzoff RB. National and state estimates of secondhand smoke infiltration among U.S. multiunit housing residents. *Nicotine Tob Res*. 2013;15(7):1316–21. doi:10.1093/ntr/nts254.
50. Chambers C, Sung H, Max W. Home Exposure to Secondhand Smoke among People Living in Multiunit Housing and Single Family Housing: A Study of California Adults, 2003 – 2012. *J Urban Heal*. 2014. doi:10.1007/s11524-014-9919-y.
51. Wilson KM, Klein JD, Blumkin AK, Gottlieb M, Winickoff JP. Tobacco-smoke exposure in children who live in multiunit housing. *Pediatrics*. 2011;127(1):85–92. doi:10.1542/peds.2010-2046.
52. American Lung Association in California the Center for Tobacco Policy and Organizing. Secondhand Smoke Survey: California Voters' Attitudes about Secondhand Smoke Exposure. 2008. Available at:

- <http://center4tobaccopolicy.org/wp-content/uploads/2013/06/Summary-of-Key-Findings-SHS-Poll-Overall-Results-November-2008.pdf>. Accessed February 11, 2015.
53. Ops. Cal. Leg. Counsel, No. 21547 (Sept. 23, 1999) (Smoking Bans: Residential Rental Property) (on file with ChangeLab Solutions).
54. American Lung Association in California Center for Tobacco Policy and Organizing. Local California Smokefree-Housing Policies Detailed Analysis December 2013. 2013. Available at: <http://center4tobaccopolicy.org/wp-content/uploads/2013/12/Local-California-Smokefree-Housing-Policies-Detailed-Analysis-December-2013.pdf>.
55. American Lung Association in California Center for Tobacco Policy and Organizing. *Matrix of Strong Local Smokefree Multi-Unit Housing Ordinances December 2013*. Sacramento, CA; 2013. Available at: <http://center4tobaccopolicy.org/wp-content/uploads/2013/12/Matrix-of-Strong-Local-Smokefree-Multi-Unit-Housing-Ordinances-December-2013.pdf>.
56. ChangeLab Solutions. *There is No Constitutional Right to Smoke (CA Version)*. Oakland, CA; 2005. Available at: <http://changelabsolutions.org/publications/no-right-to-smoke-CA>.