Summary Title: Anti-Smoking Ordinance and Tobacco Prevention

Title: Discussion of the Santa Clara County Public Health Department Tobacco Prevention Initiative Grant and Recommendation to Direct Staff to Apply for a Program Grant in Order to Develop a More Comprehensive Tobacco Prevention Policy for the City of Palo Alto

From: City Manager

Lead Department: Police

Recommendation

Staff recommends that the Policy and Services Committee review the City of Palo Alto’s current smoking and tobacco regulations and discuss the enhanced prevention recommendations as proposed by the Santa Clara County Public Health Department and advise if staff should apply for the Tobacco Prevention Initiative Grant which could encompass all or part of:

1. Strengthening the existing Palo Alto Smoking and Tobacco regulations by incorporating a more comprehensive smoking ban to include tobacco and smoke free City parks and public spaces.
2. Implementing a Tobacco Retail Establishment Licensing Program.
3. Entering into a grant agreement with the County of Santa Clara whereby the City of Palo Alto could be eligible to receive $51,724.62 to reimburse staff time and other directly related expenses implementing the Tobacco Prevention Initiative program.

Background

In March 2010, the County of Santa Clara Public Health Department was awarded a $6.975 million two-year grant through the Center for Disease Control and Prevention (CDC), and the Communities Putting Prevention to Work program, funded through the American Recovery and Reinvestment Act. In part, the grant was intended to address policy, systems and environmental change to decrease smoking prevalence, prevent youth access to tobacco products and decrease exposure to secondhand smoke.

According to the CDC, cigarette smoking is the single most preventable cause of premature death in the United States and cigarette smoking causes approximately 443,000 deaths.
annually. Nationally, the CDC estimates that each day nearly 4,000 children under the age of 18 smoke their first cigarette, and about 1,500 young people under the age of 18 will begin smoking daily. In California, 14% of the adult population, over 3,839,000, are current cigarette smokers. Among youth ages 12 to 17, 6.9% smoke in California. In Santa Clara County, about one in ten adults and youths smoke, and based on survey information, age 13 is the most common age of experimentation.

The impact of tobacco products reaches beyond the individual smoker. The U.S. Department of Health and Human Services reports that non-smokers, who are exposed to secondhand smoke at home or the workplace, increase their heart disease risk by 25 to 30 percent and their lung cancer risk by 20 to 30 percent. Secondhand smoke contains over 4000 chemicals including more than 40 cancer causing agents and 200 known poisons. The CDC reported in their 2006 study on secondhand smoke, that as many as 73,000 non-smoker deaths each year in the U.S. are attributed to secondhand smoke. A 2007 Stanford study of tobacco smoke in outdoor settings, including parks and outdoor dining establishments, where cigar and cigarette smokers were present showed that levels of smoke were comparable to indoor levels. The U.S. Surgeon General Regina M. Benjamin has stated there is no safe level of exposure to tobacco smoke, any exposure to tobacco smoke, even an occasional cigarette or exposure to secondhand smoke, is harmful.

The economic cost of smoking has an impact on everyone; a 2002 study by the California Department of Health Services estimated the cost to California from smokers is $475 per resident per year, in the same study, a survey of smokers who quit in the past 10 years said that having smoke-free public places made it easier for them to quit smoking. In Santa Clara County, an estimated $380 million a year is spent in tobacco related health care costs.

**Discussion**

In 2002, the State of California restricted smoking within 25 feet of a playground or tot lot sandbox area (California Health & Safety Code 104495). In 2004, the State of California increased the restriction on smoking in and around public buildings (California Government Code Sections 7596-7598) and in 2006, the California Air resources Board declared secondhand smoke, or environmental tobacco smoke, as a Toxic Air Contamination, and as such, the Board formally identified environmental tobacco smoke as an airborne toxic substance that may cause and/or contribute to death or serious illness.

The California State Legislature has declared smoking to be the single most important source of preventable disease and premature death in California. As a result, the legislature has expressly permitted cities and counties to enact local tobacco retail establishment licensing ordinances which require such venues to obtain a license from the city or county they are located in prior to engaging in the sale of any tobacco products or paraphernalia and which allows for the suspension or revocation of a license for a violation of any State tobacco control law.
Palo Alto Tobacco Regulatory Efforts

For the last thirty-eight years the City of Palo Alto has recognized the health concerns and public nuisance of tobacco smoke, and as such, has been in the forefront of protecting the public from the harmful effects of tobacco and secondhand smoke. Palo Alto first tackled smoking in theaters in 1974, then portions of restaurants in 1977 and 1981; smoking in workplaces was addressed in 1983, in 1991 smoking was prohibited in restaurants which were completely in public places; and, in 1995 smoking in areas within twenty feet of the entrance to an enclosed public place, with some exceptions, was prohibited.

The City of Palo Alto Smoking and Tobacco Regulations, Chapter 9.14 of the Palo Alto Municipal Code (Attachment A) prohibits smoking within:

- Publicly and privately owned buildings, structures, facilities, or complexes that are open to, used by, or accessible to the general public. Such as stores, banks, restaurants, bars, hotels, theaters, auditoriums, hospitals, healthcare facilities ...
- All enclosed (closed by a roof and four walls) places of employment.
- Enclosed and unenclosed bus, train, taxi shelters and other public transportation waiting areas.
- Areas within twenty feet of the entrance or exit to an enclosed public place.
- Parks and other publicly accessible areas that are within twenty feet of bleachers, backstops or twenty-five feet from play grounds and tot lots.
- City vehicles.
- Private residence which is licensed as a child care facility.

Exceptions to these prohibitions include:

- Fifty percent of unenclosed areas in Bars.
- Sixty-five percent of hotel and motel guest rooms.
- Twenty-five percent of hotel and motel lobbies.
- Private function meeting and banquet rooms without food and beverages.
- Theater productions as part of the story.
- Medical research and treatment related to smoking.
- Private residences.
- Patient smoking areas.
- Tobacco Stores.

Many of these exceptions have been superseded by California Labor Code, which has broad restrictions on smoking in all places of employment.
The Parks and Recreation Building Use and Regulations, Chapter 22.04 of the Palo Alto Municipal Code prohibits smoking:

- On any trail in Foothills Park.

Areas where smoking is permitted:

- City parks and recreational fields, picnic and barbeque areas, outdoor aquatic facility areas, golf course and sport courts which are not within twenty-five feet of play grounds and tot lots, or twenty feet from the entrance or exit of an enclosed public building or bleachers and backstops.
- Most of the above ground city parking lots and garages, except inside elevators or restroom facilities.
- Various outdoor activities and events such as Street Fairs, Parades, Art and Wine Festivals, although not within twenty-five feet of play grounds and tot lots, or twenty feet from the entrance or exit of an enclosed public building or bleachers and backstops. County Health prohibits smoking at in and around food service and retail events such as Chili Cook-Off or the Farmer’s Markets.

Although State law currently prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors and requires that tobacco retail establishments check the identification of tobacco purchasers who reasonably appear to be under 18 years of age, the number of youth having access to tobacco products continues to be high.

The Palo Alto Police Department periodically conducts tobacco sale sting operations to identify illegal sales of tobacco to minors. The last sting operation was in the spring of 2010, in that operation almost 50% of the tobacco retailers approached sold tobacco products to an underage youth. This is a much higher than average result compared to other Santa Clara County agencies. (Attachment B) The Palo Alto Police Department is planning its next sting operations this summer.

**Tobacco Prevention Initiative**

The Santa Clara County Public Health Department has been tracking tobacco prevention policies that other agencies have in place and what efforts are currently underway in collaboration with the Tobacco Prevention Initiative (Attachments C and D). Of the sixteen local government agencies within Santa Clara County, the County of Santa Clara has adopted the strongest regulations, including banning smoking in most unenclosed areas including recreational and outdoor seating, in all common areas within multi-unit residential developments and within apartments, condominiums and townhomes (Attachment E). Twelve other cities in the county are also participating in the grant initiative at some level, including San Jose which is implementing a Tobacco Retail Licensing program and expanding existing codes to include prohibiting smoking in parks, community centers and libraries.
The Santa Clara County Public Health Department through the Tobacco Prevention Initiative program suggest grant recipients consider three general policy areas in developing new local strategies with stronger restrictions than what is already imposed by Federal and State law. These areas include Smoke-Free Indoor Air policies, Reduced Outdoor Exposure to Secondhand Smoke policies and limiting tobacco sales to youth through Tobacco Retail policies.

To better assist agencies in developing sound policies and strong local ordinances, the California Department of Public Health provided funding to the Public Health Law and Policy Technical Assistance Legal Center (TALC), a nonprofit organization that provides legal information on matters relating to public health and also has created a variety of California model ordinances to assist local jurisdictions when updating their smoking regulations or creating new policies. TALC has developed comprehensive secondhand smoke model ordinances and a model ordinance for requiring a tobacco retailer License. The cities of San Jose, Saratoga, Campbell, Cupertino, Gilroy, Los Gatos, Milpitas, Morgan Hill, Mountain View Sunnyvale and the County of Santa Clara have incorporated one or more of the TALC model ordinances into their respective jurisdiction’s smoking ordinances or scheduled to be adopted smoking ordinance. Some of the areas covered by the model ordinances which might also be considered by the City of Palo Alto are as follows:

- Prohibiting smoking within both private and public outdoor recreational areas;
- Prohibit smoking within all public areas, such as sidewalks, parking lots and garages, streets, public right-of-way;
- Prohibit smoking within the interior of multiple unit attached housing developments;
- Prohibit smoking within all areas (interior, exterior, common) of multiple attached housing developments;
- Prohibit smoking within all outdoor public and private areas, such as public event sites, common areas of multiple unit housing, private parking lots, private sidewalks;
- Prohibit smoking in any area where the public may be present, both public and private, with the exception of the interior of a standard single family residence;
- Require a 20 plus foot no smoking buffer around all areas where smoking is prohibited, and;
- Require a Tobacco Retailer License.

The TALC model ordinances provides options for regulating agencies to allow both civil and criminal enforcement by the City and civil action by private citizens and organizations in order to alleviate complaints when enforcement personnel are unavailable due to staffing or higher priority calls. The inclusion of liability clauses where the City cannot be held liable for a failure to enforce smoking restrictions is also provided in the TALC model ordinances.
The City Council has made known its desire to achieve Leadership in Energy and Environmental Design (LEED) green building certification for all new and renovated buildings. LEED rules require a twenty-five foot no smoking distance from buildings, whereas the Palo Alto Smoking and Tobacco Regulations municipal code delineates twenty feet. Adoption of the TALC model ordinance or changing the current ordinance to twenty-five feet would further the ability of projects in Palo Alto to qualify for more points in the LEED building certification process.

**Tobacco Retail Establishment Licensing Program**

Palo Alto does not presently have a licensing mechanism to track retail tobacco establishments operating within the city; however, in accordance with the California Cigarette and Tobacco Products Licensing Act of 2003, every retailer who sells or will sell cigarettes or tobacco products in California is required to obtain a retailer’s license from the Board of Equalization and renew it annually. According to the Board of Equalization, there are 39 licensed tobacco retailers in Palo Alto (Attachment F).

Considering the statistics of youth access and experimentation with tobacco products and the high percentage of those who will begin smoking daily, the grant initiative highly recommends local authorities limit tobacco sales to youth through the adoption of a Tobacco Retail Establishment Licensing Program which would establish a regulatory and inspection program. The TALC model ordinance suggests Cities establish a Tobacco Retail Establishment Licensing Ordinances which requires businesses to first obtain a Tobacco Retail Establishment License before it is allowed to sell tobacco products or tobacco related paraphernalia. The licenses typically have a one year term so that retailers are required to renew the license on an annual basis. To underwrite program costs or ensure that the program is 100% cost recoverable, a fee charged for the license to cover the time spent reviewing applications for License and the time staff would spend conducting initial site inspections and compliance inspections to verify that violations identified during the initial inspection had been corrected. Of the agencies in Santa Clara County with Tobacco Retail Licensing, the fee range from $350 to $450 annually.

Some of the provision which the model Tobacco Retail Establishment Licensing Program includes are:

- Require all retailers of tobacco products or paraphernalia to obtain a Tobacco Retail Establishment License and pay an associated fee.
- Require that a valid Tobacco Retail Establishment License be prominently displayed in a publicly visible location at the licensed location.
- Prohibit the sale or transfer of tobacco products or tobacco paraphernalia to anyone under the age of 18. This would require retailers to first examine the identification of the recipient to confirm they are at least the minimum age under state law to purchase and possess the tobacco product or tobacco paraphernalia.
- Prohibit a person who is younger than the minimum age established by state law for the purchase or possession of tobacco products to engage in tobacco retailing.
• Prohibit all self-service displays of tobacco products.
• Require all tobacco products and tobacco paraphernalia to be stored or kept out of public view.
• Allow a process for license suspension and revocation for violations of state law and/or local ordinance, as well as establish a process for hearing and appealing such sanctions.
• Establish operational and maintenance standards for tobacco retail business, such as number and size of tobacco related advertisements.
• Prohibit mobile retailers and retailers operating at temporary events.
• Prohibit selling of tobacco products or paraphernalia at pharmacies.
• Prohibit tobacco retailers located within 1,000 feet of a school.
• Prohibit tobacco retailers from being within 500 feet of another tobacco retailer.
• Prohibit the selling of flavored tobacco products.

Santa Clara County adopted a Tobacco Retailer Permit Ordnance in November of 2010; much of the TALC model ordinance was incorporated into the County’s regulations. While the County ordinance prohibits tobacco retailers with pharmacies, limits tobacco retailers from being within 1,000 feet of schools and does not allow tobacco retailers to be within 500 feet of each other, the County chose not to apply the new ordinance to those lawfully existing tobacco retailers, instead elected to grandfather these businesses in.

To strengthen efforts to limit tobacco exposure and access to youths, the County required tobacco retailers to have no more than 15 percent of the square footage of the windows and clear doors of an establishment to bear advertising or signs of any sort and all advertisement and signage shall be placed and maintained to ensure that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the cash registers. The County ordinance also obliges the retailer to inspect the identification of tobacco purchaser who appears to be under 30 years of age. Santa Clara County’s Tobacco Retailer Permit Ordinance requires retailers to be checked twice per year to ensure no sales to youth occur and once per year for compliance with all other components of the ordinance. The County ordinance includes sanctions for non-compliance including tiered fines of $100 for the first violation in a twelve month period, $200 for the second violation within the same twelve month period, and $500 for the third and subsequent violation in the same twelve month period. Additionally, repeat offenses can lead to permit suspension for 30 days for the first violation within two years, a 90 day suspension for the second violation within two years and a one year suspension for the third violation within two years. The County gave 60 days after the ordinance was approved for tobacco retailers to obtain a permit and comply with the ordinance.

The City of San Jose’s Tobacco Retail Ordinance went into effect earlier this year and San Jose staff is presently working on implementing the licensing aspect of their program. San Jose’s Tobacco Retail Licensing program, while not as far reaching as Santa Clara County’s, incorporated some slightly differing requirements and penalty schedules, however does take
account of the recommendations found in the TALC model ordinance (Attachment G). Sanctions for violations of San Jose ordinance include penalty fees of $500 for the first violations, $750 for the second violation and $1,000 for the third and subsequent violations within the same twelve month period; additionally, retailers that are causing a nuisance, regularly selling to minors or are repeat violators risk having their license suspended or revoked.

Community’s Health on Tobacco Report Card Project

Each year the Santa Clara County Public Health Department conducts an annual assessment of how cities and the county are working towards limiting access to tobacco and tobacco products to minors. The program is more commonly known as the Community’s Health on Tobacco Report Card Project. Each July, the final findings of their twelve month study are published wherein each city and the county receive a letter grade from A to F reflecting the respective jurisdiction’s efforts and compliance in specific benchmark areas.

The Community’s Health on Tobacco Report Card Project was first adapted for use in Santa Clara County in 2004, based on a model project of the American Lung Association in San Diego County, to address the increased rates of smoking in low-income communities with the compounded issue of those same communities having higher rates of exposure to tobacco advertising and tobacco access. The Tobacco Report Card focuses on the tobacco retail environment, where all cities and the county with tobacco retail outlets are graded on a 100-point scale based upon the criteria of the following key areas: 1) Level of compliance with local, state and federal advertising, sales and signage requirements; 2) Strength of tobacco control policies relating to preventing tobacco sales to minors; 3) Level of enforcement of tobacco sales to minors laws; 4) Extra credit points are awarded to cities for community education efforts, secondhand smoke policies and for conducting additional tobacco prevention enforcement.

The criteria is weighted to award cities the most points for actions and policies which have the strongest proven correlation to a reduction in youth tobacco prevalence rates, such measures include, conducting tobacco youth decoy enforcement, adopting tobacco retail licensing policies, retailer education and outreach programs aimed at compliance with display and window advertising restrictions. From 2008 to 2010, the Community’s Health on Tobacco Report Card Project realized some of the most significant efforts and improvements since the program’s inception as measured by the storefront observational survey, law enforcement operations and municipal code enforcement. Through collaborative efforts with city officials, advertising compliance rates increased, the level of tobacco enforcement of illegal sales to minors increased and cities adopted new policies restricting youth access to tobacco products. (Attachment H)

Palo Alto’s efforts to improve compliance from the City’s tobacco retailers have also improved. Over the last few years greater efforts have been made by the Police Department to conduct decoy sting operations and code enforcement compliance checks. While these efforts have
slowly brought Palo Alto’s report card grade up, it has also revealed the need for greater enforcement and educational efforts at the retailer level. Cities which have adopted tobacco retail licensing programs have had the most success in limiting access to tobacco products and minimizing exposure to tobacco advertising to youth. As a result, the cities have also achieved the highest report card grades.

**City Resources**

It is difficult to fully assess staff’s ability to implement and manage such programs until a more defined recommendation is made as to the type and extent of smoking regulations which might be implemented. A Tobacco Retail Establishment Licensing Program would be the most resource intensive to put into operation and maintain. The ability of Police Department staff to absorb the added oversight and administration of this regulation is uncertain. Over the last several years, the Police Department’s Support Services Division has undergone staffing reductions. The Division once had ten fulltime positions and now is down to six; however, the work tasks, job responsibilities and legal mandates have remained consistent, and in some areas increased. To help alleviate the added individual workload, the division has reduced the number of hours per week they are open to the public. Most recently, the Division combined the two Code Enforcement Officers positions into one, now a single Code Enforcement Officer handles all of the regulatory and licensing mandates (i.e. Taxi Cab inspections, Massage Establishments, Solicitation Permits, Block Parties, Pushcart Applications, Helicopter Lifts, Secondhand Dealer Permit) and the management and administrative enforcement of the City’s alarm ordinance. A more thorough analysis would need to be completed to assess if and how the Police Department’s Support Services Division could undertake the added responsibilities of a tobacco licensing program.

On the enforcement side, Police Officers, Park Rangers and Code Enforcement Officers may be limited in their ability to proactively enforce more restrictive regulations. Similarly, response times to reported violations could vary appreciably depending on other, higher priority, calls-for-service. Here again, the impact is difficult to fully assess until more specific regulatory options are recommended.

Considering the limitations of City resources, a strong educational program supplemented by reactive enforcement could help to achieve desired compliance. This might include public education through the City’s website, community cable channel, local media, utility billing mailer, collaborative community partners, non-profits and enhanced signage. If such education and outreach activities fail with particular individuals who regardless ignore smoking regulations, then reactive enforcement may be necessary from Police Officers, Park Rangers or Code Enforcement personnel.

The TALC model ordinance, acknowledging the limited resources of most present day agencies, offers an alternative consideration for enforcement. Such ordinance modification would allow
private individuals or organizations the authority to enforce the smoking regulations through civil action.

**Next Steps**

As staff receives further policy guidance regarding modifications to the existing Smoking and Tobacco Regulations or the interest in exploring a Tobacco Licensing program, more specific analysis and research can be completed to fully assess the impact to the community, businesses and staff. Additionally, a more complete financial examination of city resources and potential cost recovery opportunities can be completed.

Other next steps, once City Council provides direction, would possibly involve outreach to the community and business owners to educate and inform, as well as, seek input and feedback. Such outreach efforts may be in the form of city sponsored public meetings, attendance at commerce meetings, neighborhood groups and engaging other related community groups.

**Attachments**

Attachment A Smoking and Tobacco Regulations, PAMC 9.14  
Attachment B Illegal Tobacco Sales Rate Data – Santa Clara County  
Attachment C Tobacco Prevention Policies by Santa Clara County Jurisdictions  
Attachment D Communities Putting Prevention to Work Tobacco – Cities  
Attachment E Santa Clara County Anti-Smoking Ordinance Overview  
Attachment F Licensed Tobacco Retailers in Palo Alto  
Attachment G City of San Jose Tobacco Retailers License Ordinance  
Attachment H Tobacco Report Card Results for 2007-2010

**Attachments:**

- Attachment A Smoking and Tobacco Regulations PAMC 9.14  (PDF)
- Attachment B Illegal Tobacco Sales Rate Data – Santa Clara County  (PDF)
- Attachment C Tobacco Prevention Policies by Santa Clara County Jurisdictions  (PDF)
- Attachment D Communities Putting Prevention to Work Tobacco – Cities  (PDF)
- Attachment E Santa Clara County Anti-Smoking Ordinance Overview  (PDF)
- Attachment F Licensed Tobacco Retailers in Palo Alto  (PDF)
- Attachment G City of San Jose Tobacco Retailers License Ordinance  (PDF)
- Attachment H Tobacco Report Card Results for 2007-2010  (PDF)
Chapter 9.14
SMOKING AND TOBACCO REGULATIONS*

Sections:

9.14.100 Posting of signs required.
9.14.120 Public nuisance.
9.14.130 Violation to be misdemeanors.

* Editor's Note: Prior ordinance history: Ordinance Nos. 2657, 2842, 3185, 3476, 3503, 3618 and 3768.


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

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

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

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

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

(i) "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.

(j) "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 feet of the entrance or exit to an enclosed public place, 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 feet of bleachers, backstops, or play structures.

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

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

(m) "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.

(n) "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.

(o) "Workplace" means any enclosed area of a structure or portion thereof used as a place of employment.


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

(Ord. 4056 § 4 (part), 1991)


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

(Ord. 4164 § 3, 1993)


Smoking is prohibited in all city pool cars.

(Ord. 4056 § 4 (part), 1991)


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 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)


(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)


* 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.


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;

(b) Bingo games, 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.


(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)


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.


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.

(Ord. 4056 § 4 (part), 1991)

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### Illegal Tobacco Sales Rate Data – Santa Clara County

Data provided in the table below was compiled from local enforcement departments and California Department of Public Health Food & Drug Branch STAKE (Stop Tobacco Access to Kids Enforcement) Unit.

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<th>Jurisdiction</th>
<th>Date</th>
<th>Illegal Sales Rate</th>
<th>Source</th>
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<td>Santa Clara County (rate is countywide)</td>
<td>July 2008 – June 2009</td>
<td>16.7%</td>
<td>California Department of Public Health Food &amp; Drug Branch</td>
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<td>Campbell</td>
<td>May 27, 2010</td>
<td>62.5%</td>
<td>Campbell Police Department</td>
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<td>September 2009</td>
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<td>July 2006</td>
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<td>Cupertino</td>
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<td>November 2007</td>
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<td>California Department of Public Health Food &amp; Drug Branch</td>
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<td>Gilroy</td>
<td>December 2009</td>
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<td>Los Altos</td>
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</tr>
<tr>
<td></td>
<td>January 2007</td>
<td>23.5%</td>
<td>California Department of Public Health Food &amp; Drug Branch</td>
</tr>
<tr>
<td>Los Gatos</td>
<td>March 2010</td>
<td>27.3%</td>
<td>Los Gatos Police Department</td>
</tr>
<tr>
<td></td>
<td>November 2007</td>
<td>25%</td>
<td>California Department of Public Health Food &amp; Drug Branch</td>
</tr>
<tr>
<td>Milpitas</td>
<td>February 2008</td>
<td>10%</td>
<td>California Department of Public Health Food &amp; Drug Branch</td>
</tr>
<tr>
<td>Morgan Hill</td>
<td>January 2009</td>
<td>32%</td>
<td>California Department of Public Health Food &amp; Drug Branch</td>
</tr>
<tr>
<td>Mountain View</td>
<td>February 2010</td>
<td>5.1%</td>
<td>Mountain View Police Department</td>
</tr>
<tr>
<td></td>
<td>August 2008</td>
<td>9.5%</td>
<td>California Department of Public Health Food &amp; Drug Branch</td>
</tr>
<tr>
<td></td>
<td>May 2008</td>
<td>0%</td>
<td>California Department of Public Health Food &amp; Drug Branch</td>
</tr>
<tr>
<td>Palo Alto</td>
<td>May 2010</td>
<td>46.2%</td>
<td>Palo Alto Police Department</td>
</tr>
<tr>
<td></td>
<td>January 2008</td>
<td>4.2%</td>
<td>California Department of Public Health Food &amp; Drug Branch</td>
</tr>
<tr>
<td></td>
<td>August 2006</td>
<td>21.9%</td>
<td>California Department of Public Health Food &amp; Drug Branch</td>
</tr>
<tr>
<td>San Jose</td>
<td>July 2008</td>
<td>16%</td>
<td>California Department of Public Health Food &amp; Drug Branch</td>
</tr>
<tr>
<td></td>
<td>April 2008</td>
<td>10%</td>
<td>California Department of Public Health Food &amp; Drug Branch</td>
</tr>
<tr>
<td></td>
<td>July 2005</td>
<td>17.7%</td>
<td>California Department of Public Health Food &amp; Drug Branch</td>
</tr>
<tr>
<td></td>
<td>July 2004 – June 2005*</td>
<td>1st Quarter: 6%</td>
<td>San Jose Police Department (Healthy Neighborhood Venture Fund Reports)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2nd Quarter: 4%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>3rd Quarter: 5%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>4th Quarter: 3%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saratoga</td>
<td>April 2010</td>
<td>0%</td>
<td>Santa Clara County Sheriff's Office</td>
</tr>
<tr>
<td></td>
<td>July 2008</td>
<td>10%</td>
<td>California Department of Public Health Food &amp; Drug Branch</td>
</tr>
<tr>
<td>Sunnyvale</td>
<td>March 2010</td>
<td>6.3%</td>
<td>Sunnyvale Department of Public Safety</td>
</tr>
<tr>
<td></td>
<td>February 2009</td>
<td>4.5%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>March 2007</td>
<td>3.1%</td>
<td>California Department of Public Health Food &amp; Drug Branch</td>
</tr>
<tr>
<td></td>
<td>February 2007</td>
<td>19%</td>
<td>California Department of Public Health Food &amp; Drug Branch</td>
</tr>
<tr>
<td>Unincorporated (Santa Clara County)</td>
<td>No data.</td>
<td>No data.</td>
<td>(In process of obtaining data from Santa Clara County Sheriff's Office)</td>
</tr>
</tbody>
</table>
# Tobacco Prevention Policies by Santa Clara County Jurisdiction

The chart below outlines what tobacco prevention policies each jurisdiction in Santa Clara County has adopted. The chart outlines local policies that include stronger restrictions than what is already imposed by Federal and State policies.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Smoke-free Indoor Air Policies</th>
<th>Smoke-free Outdoor Air Policies</th>
<th>Tobacco Retail Policies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Worksites*</td>
<td>Parks &amp; Trails</td>
<td>Worksites</td>
</tr>
<tr>
<td></td>
<td>Multi-Unit Housing</td>
<td>Dining Areas</td>
<td>Service Areas</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Entryways</td>
<td>Worksites</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Tobacco Retail Permit</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Limit Sales Near Schools</td>
</tr>
<tr>
<td>Campbell</td>
<td>x*</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>County of Santa Clara</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Cupertino</td>
<td>x*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gilroy</td>
<td>x*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Altos</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Altos Hills</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Gatos</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Milpitas</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monte Sereno</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Morgan Hill</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mountain View</td>
<td>x*</td>
<td>x*</td>
<td></td>
</tr>
<tr>
<td>Palo Alto</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>San Jose</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Santa Clara</td>
<td>x*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saratoga</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sunnyvale</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Worksites – Refers to jurisdictions that have adopted policies with provisions that are stronger than the State Smoke-free Workplace Law (Labor Code 6404.5).

* Campbell – Adopted a policy prohibiting smoking in tobacco-only shops ("smoking lounges"). Additional State workplace exemptions still exist
* Cupertino – Includes stronger restrictions than State Smoke-free Workplace law but still allows smoking in hotel rooms
* Gilroy – 50% of outdoor dining areas must be smoke-free
* Mountain View - Includes stronger restrictions than State Smoke-free Workplace law but still allows smoking in hotel rooms; Outdoor Dining policy applies to only sidewalk/cafes in Downtown Mountain View
* Palo Alto – 50% of outdoor dining areas must be smoke-free; Smoke-free parks restriction ONLY applies to Foothills Park trails
* San Jose – Includes stronger restrictions than State Smoke-free Workplace law but still allows smoking in hotel rooms, and tobacco retailer shops
* Santa Clara - Adopted a policy prohibiting smoking in tobacco-only shops ("smoking lounges"), current businesses were grandfathered in. Additional State workplace exemptions still exist
* Saratoga - Includes stronger restrictions than State Smoke-free Workplace law but still allows smoking in hotel areas, designated rooms of health facilities
* Sunnyvale – 60% of outdoor dining areas must be smoke-free

*Draft – Created by SCC Public Health Department, last updated 05/18/2013*
<table>
<thead>
<tr>
<th>CPPW Funded City</th>
<th>Policy Goals Under the CPPW Grant</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Campbell</strong></td>
<td>Smoke-free Outdoor Dining &amp; Parks; Tobacco Retail Permitting</td>
</tr>
<tr>
<td>Population 40,161</td>
<td></td>
</tr>
<tr>
<td><strong>Cupertino</strong></td>
<td>Smoke-free Parks &amp; Recreational Areas; Tobacco Retail Permitting</td>
</tr>
<tr>
<td>Population 55,551</td>
<td></td>
</tr>
<tr>
<td><strong>Gilroy</strong></td>
<td>Tobacco Retail Permitting &amp; Limiting Tobacco Sales Near Schools; Smoke-free Parks</td>
</tr>
<tr>
<td>Population 51,173</td>
<td></td>
</tr>
<tr>
<td><strong>Los Gatos</strong></td>
<td>*Smoke-free Indoor Worksites; Smoke-free Public Areas (Parks)</td>
</tr>
<tr>
<td>Population 30,296</td>
<td></td>
</tr>
<tr>
<td><strong>Milpitas</strong></td>
<td>*Smoke-free Indoor Worksites &amp; Outdoor Areas; Tobacco Retail Permitting</td>
</tr>
<tr>
<td>Population 69,419</td>
<td></td>
</tr>
<tr>
<td><strong>Monte Sereno</strong></td>
<td>Smoke-free Events</td>
</tr>
<tr>
<td>Population 3,579</td>
<td></td>
</tr>
<tr>
<td><strong>Morgan Hill</strong></td>
<td>*Smoke-free Outdoor Areas (Parks, Dining, Service Lines/Areas)</td>
</tr>
<tr>
<td>Population 39,218</td>
<td></td>
</tr>
<tr>
<td><strong>Mountain View</strong></td>
<td>Smoke-free Outdoor Dining, Parks &amp; Reasonable Distance around Entryways</td>
</tr>
<tr>
<td>Population 73,932</td>
<td></td>
</tr>
<tr>
<td><strong>Palo Alto</strong></td>
<td>*Smoke-free Indoor Worksites &amp; Outdoor Areas Policies; Tobacco Retail Licensing</td>
</tr>
<tr>
<td>Population 63,367</td>
<td></td>
</tr>
<tr>
<td><strong>San Jose</strong></td>
<td>*Tobacco Retail Licensing; Smokfree-Outdoor Air Policy (Dining, Service Lines/Areas)</td>
</tr>
<tr>
<td>Population 989,496</td>
<td></td>
</tr>
<tr>
<td><strong>Saratoga</strong></td>
<td>Smoke-free Outdoor Air Policy (Dining, Workplace, Other Outdoor Areas)</td>
</tr>
<tr>
<td>Population 31,592</td>
<td></td>
</tr>
<tr>
<td><strong>Sunnyvale</strong></td>
<td>*Smoke-free Outdoor Air Policies (Parks, Reasonable Distance Around Entryways)</td>
</tr>
<tr>
<td>Population 137,538</td>
<td></td>
</tr>
</tbody>
</table>

*Contract Not Yet Executed*  

_Last updated: 5.19.2011_
What's in the County of Santa Clara's Proposed Anti-Smoking Ordinances?

<table>
<thead>
<tr>
<th>Major Provisions of the Ordinances</th>
<th>Timeline &amp; Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ordinance No. NS-625.5 (Smoking Pollution Control Ordinance)</strong></td>
<td>Effective Date: 30 days after final approval</td>
</tr>
<tr>
<td>1. Prohibits smoking in the following unincorporated areas of the County:</td>
<td>Penalties</td>
</tr>
<tr>
<td>a. In, or within 30 feet of, outdoor service areas</td>
<td>1st violation w/in 1 yr: up to $100 fine</td>
</tr>
<tr>
<td>b. County Fairgrounds</td>
<td>2nd violation w/in 1 yr: up to $200 fine</td>
</tr>
<tr>
<td>c. Unenclosed areas located within 30 feet of a doorway, window, opening or other vent into an enclosed area where smoking is prohibited</td>
<td>Each additional violation w/in 1 yr: up to $500 fine</td>
</tr>
<tr>
<td>d. Rooms rented to guests &amp; outdoor areas at hotels, motels, &amp; other similar establishments</td>
<td>Each violation after the 3rd violation w/in 1 yr may also be prosecuted as a misdemeanor.</td>
</tr>
<tr>
<td>e. Outdoor shopping malls</td>
<td></td>
</tr>
<tr>
<td>f. Retail stores dealing exclusively in sales of tobacco &amp; smoking paraphernalia</td>
<td></td>
</tr>
<tr>
<td>2. Requires new lease agreements to include:</td>
<td></td>
</tr>
<tr>
<td>a. Clause establishing material breach of the agreement for tenant (or person subject to tenant's control or present by invitation or permission of tenant) to smoke in violation of laws regulating smoking on the property</td>
<td></td>
</tr>
<tr>
<td>b. Clear description of areas where smoking is allowed or prohibited</td>
<td></td>
</tr>
<tr>
<td>c. Clause allowing any tenant to enforce agreement’s non-smoking provisions</td>
<td></td>
</tr>
<tr>
<td>3. Requires employers to adopt non-smoking policy within 90 days of effective date of ordinance &amp; communicate policy within 1 week of adoption</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Ordinance No. NS-625.6 (Multi-Unit Residences Ordinance)</strong></th>
<th>Effective Date: 30 days after final approval, but the smoking prohibition for existing units goes into effect 14 months after the ordinance becomes effective.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. For multi-unit residences (e.g., duplexes, condo/townhouse complexes, &amp; apartment complexes) in the unincorporated areas of the County, prohibits smoking in:</td>
<td>Penalties</td>
</tr>
<tr>
<td>a. Common areas, except designated smoking areas</td>
<td>Same as penalties for Ordinance No. NS-625.5 (Smoking Pollution Control Ordinance)</td>
</tr>
<tr>
<td>b. New &amp; existing units</td>
<td></td>
</tr>
<tr>
<td>2. Requires new lease agreements to include:</td>
<td></td>
</tr>
<tr>
<td>a. Clause establishing material breach of the agreement for tenant (or person subject to tenant's control or present by invitation or permission of tenant) to smoke in violation of laws regulating smoking on the property</td>
<td></td>
</tr>
<tr>
<td>b. Clear description of areas where smoking is allowed or prohibited</td>
<td></td>
</tr>
<tr>
<td>c. Clause allowing any tenant to enforce agreement’s non-smoking provisions</td>
<td></td>
</tr>
<tr>
<td>3. Prohibits smoking in:</td>
<td></td>
</tr>
<tr>
<td>a. In ,or within 30 feet of, outdoor service areas</td>
<td></td>
</tr>
<tr>
<td>b. County Fairgrounds</td>
<td></td>
</tr>
<tr>
<td>c. Unenclosed areas located within 30 feet of a doorway, window, opening or other vent into an enclosed area where smoking is prohibited</td>
<td></td>
</tr>
<tr>
<td>d. Rooms rented to guests &amp; outdoor areas at hotels, motels, &amp; other similar establishments</td>
<td></td>
</tr>
<tr>
<td>e. Outdoor shopping malls</td>
<td></td>
</tr>
<tr>
<td>f. Retail stores dealing exclusively in sales of tobacco &amp; smoking paraphernalia</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Ordinance No. NS-300.832 (Tobacco Retailer Permit Ordinance)</strong></th>
<th>Effective Date: 60 days after final approval, but flavored tobacco provision will not be enforced until 90 days after final approval.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Requires retailers to obtain &amp; maintain permit to sell tobacco products in County's unincorporated areas (one-time application fee: $340; annual permit fee: $425)</td>
<td>Penalties</td>
</tr>
<tr>
<td>2. Prohibits issuance of permits to:</td>
<td>For tobacco retailers with a permit:</td>
</tr>
<tr>
<td>a. Mobile retailers</td>
<td>1. Fine (see Ordinance No. NS-625.5) and</td>
</tr>
<tr>
<td>b. Retailers operating at temporary events</td>
<td>2. Permit suspension:</td>
</tr>
<tr>
<td>c. Retailers with pharmacies*</td>
<td>- Up to 30 days for 1st violation w/in 2 yrs</td>
</tr>
<tr>
<td>d. Retailers located w/in 1,000 feet of a school*</td>
<td>- Up to 90 days for 2nd violation w/in 2 yrs</td>
</tr>
<tr>
<td>e. Retailers located w/in 500 feet of another tobacco retailer*</td>
<td>- Up to 1 yr for 3rd violation w/in 2 yrs</td>
</tr>
<tr>
<td>3. Prohibits retailers from:</td>
<td>(Note: Retailer may be allowed correction period, and if violation is cured within that time, then no penalties apply.)</td>
</tr>
<tr>
<td>a. Violating any law regarding tobacco products or tobacco retailing</td>
<td></td>
</tr>
<tr>
<td>b. Employing minors to sell tobacco products</td>
<td>For tobacco retailers without a permit:</td>
</tr>
<tr>
<td>c. Displaying tobacco products &amp; ads, if retailer doesn't have valid permit</td>
<td>1. Fine (see Ordinance No. NS-625.5) and</td>
</tr>
<tr>
<td>d. Covering more than 15% of windows &amp; clear doors with any type of ads or signs</td>
<td>2. Permit ineligibility:</td>
</tr>
<tr>
<td>e. Selling flavored tobacco products (except tobacco- or menthol-flavored products)</td>
<td>- Up to 30 days for 1st violation w/in 2 yrs</td>
</tr>
<tr>
<td>4. Requires retailers to:</td>
<td>- Up to 90 days for 2nd violation w/in 2 yrs</td>
</tr>
<tr>
<td>a. Display permit</td>
<td>- Up to 1 yr for 3rd violation w/in 2 yrs</td>
</tr>
<tr>
<td>b. Check ID for any purchaser who appears to be under 30 years of age</td>
<td>Penalties for 1st violation may be waived unless violation involves sale to minor.</td>
</tr>
<tr>
<td>5. Requires that retailers be checked twice per year to ensure no sales to youth &amp; once per year for compliance with all other components of the ordinance</td>
<td>Violations may also be prosecuted as infractions or misdemeanors.</td>
</tr>
</tbody>
</table>
ORDINANCE NO. 28875

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 6 OF THE SAN JOSE MUNICIPAL CODE BY ADDING A NEW CHAPTER 6.87 TO REQUIRE TOBACCO RETAILERS TO BE LICENSED PRIOR TO ENGAGING IN THE SALE OF TOBACCO PRODUCTS OR TOBACCO PARAPHERNALIA

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Title 6 of the San José Municipal Code is amended to add a new chapter, to be numbered, entitled and to read as follows:

CHAPTER 6.87
TOBACCO RETAIL LICENSE

Part 1
Purpose and Definitions

6.87.010 Purpose of Ordinance

The failure of tobacco retailers to comply with all tobacco control laws, particularly the sale of tobacco products to minors, presents an imminent threat to the public health, safety and welfare. A local licensing program for tobacco retailers is intended to ensure that tobacco retailers comply with tobacco control laws and business standards of the City and to protect the health, safety and welfare of those persons who reside in, work in and visit this City. State law explicitly permits cities to enact local tobacco retail licensing ordinances and allows for the suspension or revocation of a local license for a violation of any state tobacco control law. A requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute tobacco products to adults but will allow the City to regulate the operation of lawful businesses to discourage violations of federal, state and local tobacco-related laws. The City has a substantial interest in promoting compliance with federal, state and local
laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of tobacco products to minors; and in protecting children from being lured into illegal activity through the misconduct of adults. This Chapter is adopted to encourage responsible tobacco retailing and to discourage violation of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors. This Chapter does not expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or alter the penalties provided by such laws.

6.87.020 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

6.87.030 City Manager

"City Manager" shall mean the manager of the City as appointed by the City Council in accordance with the City's Charter, or the City Manager's designee.

6.87.040 Department

"Department" means the City's Department of Planning, Building and Code Enforcement.

6.87.050 Director

"Director" means the Director of the Department of Planning, Building and Code Enforcement, the Director's designee, or such other Director as may be designated by the City Manager to administer the provisions of this Chapter.
6.87.060 Licensee

“Licensee” means and includes the holder of a Tobacco Retail License and any Person required to have a Tobacco Retail License under this Chapter, whether or not such Person is actually so licensed.

6.87.070 Person

“Person” shall have the definition given in Section 1.04.020 of this Code.

6.87.080 Premises

“Premises” means any building or portion of any building where Tobacco Retailing is occurring.

6.87.090 Self-Service Display

“Self-Service Display” means the open display or storage of Tobacco Products or Tobacco Paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the Tobacco Retailer or the Tobacco Retailer’s agent or employee and without a direct person-to-person transfer between the purchaser and the Tobacco Retailer or Tobacco Retailer’s agent or employee. A vending machine is a form of Self-Service Display.

6.87.100 Smoking

“Smoking” means possessing a lighted Tobacco Product, lighted Tobacco Paraphernalia, or any other lighted weed or plant (including a lighted pipe, cigar, hookah pipe, or cigarette of any kind) and means the lighting of a Tobacco Product, Tobacco Paraphernalia, or any other weed or plant (including a pipe, cigar, hookah pipe, or cigarette of any kind).
6.87.110 Tobacco Paraphernalia

"Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of Smoking materials of all types, cigarette rolling machines, and any other product designed and used for the Smoking, preparation, storing, or consumption of Tobacco Products.

6.87.120 Tobacco Product

"Tobacco Product" means any product containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis or beedies, or any other preparation of tobacco that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body. Tobacco Product does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

6.87.130 Tobacco Retailer

"Tobacco Retailer" means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration Tobacco Products or Tobacco Paraphernalia. This definition shall be without regard to the quantity of tobacco, Tobacco Products, or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

6.87.140 Tobacco Retailing

"Tobacco Retailing" means engaging in any of those activities of a Tobacco Retailer. This definition shall be without regard to the quantity of tobacco, Tobacco Products, or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.
Part 2
General Provisions

6.87.200 Tobacco Retail License Required

It shall be unlawful for any Tobacco Retailer to engage in Tobacco Retailing in the City without first obtaining and maintaining a valid Tobacco Retail License from the Director pursuant to the provisions of this Chapter for each location at which Tobacco Retailing is to occur.

6.87.210 Tobacco Retail License Exemption

A. A Tobacco Retailer shall not be subject to the requirements of Section 6.87.200 and may submit a request for an exemption from Section 6.87.200 to the Director if the Tobacco Retailer can provide evidence satisfactory to the Director that Persons under the age of eighteen (18) years are prohibited from entering the Premises where Tobacco Retailing is occurring unaccompanied by a parent or legal guardian and the Premises is properly posted with signs that comply with the following conditions:

1. A sign shall be posted at each entrance to the Premises;

2. Each sign shall be clearly legible from at least ten feet (10’) away from the entrance to the Premises;

3. Each sign shall state that no one under the age of eighteen (18) is allowed to enter the Premises unless accompanied by a parent or legal guardian;

4. Each sign shall state that selling Tobacco Products or Tobacco Paraphernalia to anyone under eighteen (18) years of age is illegal and subject to penalties; and
5. Each sign shall state that the law requires that all persons selling Tobacco Products or Tobacco Paraphernalia check the identification of each purchaser of Tobacco Products and Tobacco Paraphernalia.

B. A Tobacco Retailer requesting an exemption from Section 6.87.200, as provided for in Subsection A., shall submit a written request to the Director. The request for exemption shall not be deemed complete until the Tobacco Retailer has submitted all information required by the Director to support the existence of the conditions listed in Subsection A., and has submitted a signed Indemnification Agreement as required by Section 6.87.405.

C. Within a reasonable period of time after a Tobacco Retailer submits a complete request for exemption, the Director shall send a notice to the Tobacco Retailer of the Director's decision to either grant or deny the request for exemption.

D. A request for exemption may be denied by the Director upon any of the grounds set forth in Section 6.87.455.

E. A notice denying a request for exemption shall state all the grounds upon which the denial is based and shall advise that the denial of the request for exemption shall become final unless the Tobacco Retailer files a written request for hearing before the Director within the time period specified in Section 6.87.510.

F. The Tobacco Retailer may appeal the Director's decision to deny a request for exemption by following the procedures set forth in Sections 6.87.510 through 6.87.530.
G. A Tobacco Retailer operating under an exemption granted pursuant to this Section shall inform the Director in writing of any change in the information submitted in the request for an exemption within ten (10) business days of the change so that the Director may determine whether there has been a substantial change in the information originally submitted such that a new request for an exemption must be submitted.

H. Unless otherwise provided in this Chapter, a Tobacco Retailer who is exempt from the requirements of Section 6.87.200 shall nevertheless be responsible for complying with the remaining provisions of this Chapter.

Part 3
Operating Regulations And Conditions

6.87.300 Operating Regulations And Conditions

A. The provisions of this Part shall constitute terms and conditions applicable to each Tobacco Retail License issued by the Director.

B. The provisions of this Part shall also constitute operating regulations that are applicable to each holder of a Tobacco Retail License issued pursuant to this Chapter.

C. It shall be unlawful for any Tobacco Retailer licensed under this Chapter, required to be licensed under this Chapter, or exempted from being licensed under this Chapter, whether or not such Tobacco Retailer is actually so licensed or exempted from being licensed under this Chapter, to violate any of the provisions of this Chapter.
D. The provisions of this Chapter are intended to provide a minimum level of public health, safety and welfare protection at businesses engaging in Tobacco Retailing. Nothing in this Chapter is intended nor shall prevent the City from imposing more stringent, site-specific operating requirements and conditions through other applicable permitting and approval processes, including, without limitation, environmental or land use approvals or permits. In the event of a conflict between an operating regulation set forth in this Chapter and a requirement or condition contained in any other applicable permit or approval, the more stringent or restrictive requirement or condition shall apply.

6.87.305 Lawful Business Operation

In the course of Tobacco Retailing or in the operation of the business or maintenance of the Premises for which a Tobacco Retail License is issued, it shall be a violation of this Chapter for any Tobacco Retailer to violate any federal, state, or local law applicable to Tobacco Products, Tobacco Paraphernalia or Tobacco Retailing.

6.87.310 Posting Of License

Unless exempted from obtaining a Tobacco Retail License under this Chapter, each Tobacco Retailer shall post the Tobacco Retail License issued to the Tobacco Retailer pursuant to this Chapter in compliance with Section 6.02.100 of this Code.

6.87.320 Compliance Inspection

A. The Director, the Chief of Police and any City Official charged with enforcing the provisions of this Code shall have the power and authority to enter any business engaging in Tobacco Retailing during regular business hours to inspect the Premises and to determine compliance with the provisions of this Chapter.
B. Should any inspection reveal noncompliance with any of the provisions of this Chapter and should reinspection be needed to determine compliance, the cost of any such reinspection shall be billed to the owner of the Premises or the operator of the business engaging in Tobacco Retailing in the amount set forth in the Schedule of Fees established by resolution of the City Council.

6.87.330 **Positive Identification Required**

No Tobacco Retailer shall sell or transfer a Tobacco Product or Tobacco Paraphernalia to any Person without first examining the identification of that Person to confirm that Person is at least the minimum age under state law to purchase and possess the Tobacco Product or Tobacco Paraphernalia.

6.87.340 **Minimum Age for Persons Selling Tobacco Products and Paraphernalia**

No Person who is younger than the minimum age established by state law for the purchase or possession of Tobacco Products or Tobacco Paraphernalia shall engage in Tobacco Retailing.

6.87.350 **Self-Service Displays Prohibited.**

No Tobacco Retailer shall engage in Tobacco Retailing by means of a Self-Service Display unless the Tobacco Retailer is granted an exemption from obtaining a Tobacco Retail License pursuant to Section 6.87.210.

6.87.360 **False and Misleading Advertising Prohibited.**

A. Except for a Tobacco Retailer who is exempt from obtaining a Tobacco Retail License under this Chapter, a Tobacco Retailer who does not have a valid Tobacco Retailer License or whose Tobacco Retailer License has been suspended or revoked:
1. Shall keep all Tobacco Products and Tobacco Paraphernalia out of public view; and

2. Shall not display any advertisement relating to Tobacco Products or Tobacco Paraphernalia that promotes the sale or distribution of such products or paraphernalia from the Premises or that could lead a reasonable consumer to believe that Tobacco Products or Tobacco Paraphernalia can be obtained at that Premises.

B. The public display of Tobacco Products or Tobacco Paraphernalia in violation of subsection A. shall constitute Tobacco Retailing without a Tobacco Retail License in violation of Section 6.87.200.

6.87.370 Limits on Eligibility and Location.

A. No Tobacco Retail License or exemption from such license under this Chapter may be issued to authorize Tobacco Retailing at other than a fixed location. For example, Tobacco Retailing by Persons on foot or from vehicles is prohibited.

B. No Tobacco Retail License or exemption from such license under this Chapter may be issued to authorize Tobacco Retailing at a temporary or recurring temporary event. For example, Tobacco Retailing at flea markets and farmers’ markets is prohibited.

6.87.380 Other Legal Duties

A. Each Tobacco Retailer shall:

1. Comply with all applicable laws and ordinances governing the sale of any Tobacco Products or Tobacco Paraphernalia;
2. Comply with all conditions imposed by the Director as part of the Tobacco Retail License; and

3. Comply with all conditions imposed by any other permit or license required for the business engaging in Tobacco Retailing.

B. Each Tobacco Retailer, and any other Person(s) responsible for the operation of the business engaging in Tobacco Retailing, excluding the City, its agents, officers and employees, shall be jointly and severally liable for:

1. Any violation of this Chapter;

2. Any violation of the terms of the Tobacco Retail License or of the exemption issued to the Tobacco Retailer under this Chapter;

3. Any violation of any other license or permit required for the business engaging in Tobacco Retailing; and

4. Any violation of any other applicable law that arises out of the sale of Tobacco Products or Tobacco Paraphernalia.

6.87.390 Rules And Regulations

A. The City Manager is hereby authorized to make and promulgate any rules and regulations necessary to implement the requirements of this Chapter. The rules and regulations shall be in addition to the requirements set forth in this Chapter. In the event of a conflict between a provision set forth in this Chapter and a rule or regulation promulgated by the City Manager pursuant to this Section, the more stringent or restrictive requirement or condition shall apply.
B. No rules or regulations shall be adopted by the City Manager as final prior to the City Manager meeting all the following requirements:

1. Any proposed rules and regulations shall be made available for inspection and copying by the public at the Office of the City Clerk during normal business hours.

2. A copy of any proposed rules and regulations shall be mailed to each holder of a Tobacco Retail License and to each holder of an exemption.

3. A thirty (30) day public comment period shall be provided which shall commence on the date of service of the proposed rules and regulations on the Tobacco Retailers. During this period, any Person may submit written comments to the City Manager.

4. At the close of the public comment period, the City Manager shall consider all the public comments on the proposed rules and regulations.

5. Once the City Manager has considered all public comments, the City Manager shall finalize the rules and regulations.

6. The finalized rules and regulations shall be accompanied by a brief written statement from the City Manager that references all the reasonable written comments on the proposed rules and regulation and explains why the comments were accepted, rejected, or modified by the City Manager.

7. The City Manager may adopt the rules and regulations as final upon service of the finalized rules and regulations on the licensed Tobacco Retailers and the Tobacco Retailers who are exempted from obtaining a Tobacco Retail License.
C. Any rules and regulations adopted by the City Manager may be amended by following the procedure outlined in Subsection B.

D. No Person licensed under this Chapter, required to be licensed under this Chapter, or exempted from being licensed under this Chapter, whether or not such Person is actually so licensed or exempted from being licensed under this Chapter, shall violate the provisions of the rules and regulations authorized under this Section.

Part 4
Limitations On License

6.87.400 Procedures And Determinations

A. The procedures set forth in Part 1.5 of Chapter 6.02 for summary suspension shall govern the summary suspension of any Tobacco Retail License issued pursuant to this Chapter.

B. Any other actions taken by the City regarding an application for a new Tobacco Retail License or an existing Tobacco Retail License shall be governed by the provisions set forth in Sections 6.87.405 through 6.87.530.

6.87.405 Indemnification Agreement Required

Any Tobacco Retailer applying for a Tobacco Retail License under Section 6.87.440 or requesting an exemption under Section 6.87.210 shall agree to fully indemnify, defend and hold harmless the City, its officers, employees and agents for all claims, losses, or liabilities that arise out of the issuance or use of the Tobacco Retail License or exemption, or that arise out of any sale, distribution, transfer or use of Tobacco Products or Tobacco Paraphernalia, in a form approved by the City Attorney's Office.
6.87.410 License and Exemption Nontransferrable

No Tobacco Retailer shall assign or transfer any Tobacco Retail License or any exemption issued under this Chapter, and any attempt to assign or transfer any such license or exemption shall render the license or exemption null and void.

6.87.415 License and Exemption Convey a Limited, Conditional Privilege

Nothing in the Chapter shall be construed to grant any Tobacco Retailer obtaining and maintaining a Tobacco Retail License or an exemption under this Chapter any status or right other than the limited conditional privilege to act as a Tobacco Retailer at the location in the City identified on the face of the Tobacco Retail License issued by the Director or on the exemption granted by the Director. Nothing in this Chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5. Obtaining a Tobacco Retail License or exemption under this Chapter does not make the Person engaged in Tobacco Retailing a “retail or wholesale tobacco shop” for the purposes of California Labor Code Section 6404.5.

6.87.420 Term Of License

A. Each Tobacco Retail License issued under this Chapter shall expire one (1) year after the date of issuance, subject to suspension or revocation as provided for in this Chapter.

B. The expiration date of each Tobacco Retail License shall be shown on the license itself and each Tobacco Retail License shall expire at midnight on the expiration date.
6.87.425 License Fees

A. Each Tobacco Retailer who applies for or holds a Tobacco Retail License shall pay all associated fees in the amounts established by resolution of the City Council.

B. The Director shall not issue or renew a Tobacco Retail License prior to full payment of any applicable fees.

6.87.430 Application - Form

An application for any Tobacco Retail License required by this Chapter must be filed on the form provided by the Director.

6.87.435 One License or Exemption and Separate License and Exemption

A. Only one (1) Tobacco Retail License or exemption is required per Tobacco Retailing establishment.

B. Every Tobacco Retailer shall be required to secure a separate Tobacco Retail License or exemption in accordance with the requirements of this Chapter for each and every separate place of business conducted by such Tobacco Retailer.

6.87.440 License Application

A. Applications for a new Tobacco Retail License shall contain or be accompanied by the following:

1. If the Tobacco Retailer is:
a. An individual, the individual shall state his or her legal name and any aliases and shall submit satisfactory proof that he or she is eighteen (18) years of age;

b. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

c. A closely held corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the state and date of incorporation and the names and residence addresses of each of its current officers and directors and of each stockholder, and the name and address of the registered corporate agent for service of process;

d. A corporation, other than a closely held corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the state and date of incorporation, evidence that the corporation is in good standing and authorized to do business in the state of California, the names and capacity of all officers, directors and principal owners, and the name and address of the registered corporate agent for service of process;

e. A limited liability company, the company shall state its complete name, the date of filing of the articles of organization and operating agreement, and the names of all managers and members;

2. The legal name under which the business engaging in Tobacco Retailing is or will be conducted;
3. The physical address and all telephone numbers of the business engaging in Tobacco Retailing;

4. Proof of the Tobacco Retailer’s right to possess the Premises where the Tobacco Retailing is to occur and proof that engaging in Tobacco Retailing from the Premises does not violate the terms of any contract or lease regarding the Premises;

5. The following personal information concerning the Tobacco Retailer, if an individual; and concerning each stockholder, each officer and each director, if the Tobacco Retailer is a closely held corporation; and concerning each partner, including limited partners, having an ownership interest in the business of more than ten percent (10%), if the Tobacco Retailer is a partnership:
   a. Complete legal name, and any aliases;
   b. Date of birth;
   c. Current residence address (post office boxes will not be deemed to satisfy this requirement);
   d. If the Person has resided at the current residence address for less than three (3) years, the previous addresses immediately prior to the present address for the last three (3) years;
   e. A copy of a valid government issued photo identification card or valid government issued driver’s license;
   f. The business history experience, including but not limited to, whether or not the Person previously operating in this City or
anywhere in the United States under any permit or license issued to a business engaging in Tobacco Retailing, has had such a permit or license denied, revoked or suspended and the reasons therefor, and the business activities or occupations subsequent to such action of denial, suspension or revocation;

6. A signed indemnification agreement as required by Section 6.87.405;

7. Proof of payment of any applicable business tax for the business engaging in Tobacco Retailing which is due to the City pursuant to Chapter 4.76 of the Code;

8. A copy of all current and valid permits, licenses or other authorization(s) required by the City or any other federal, state or local agency for the Premises and for the operation of the business engaging in Tobacco Retailing, including but not limited to any and all permits, licenses and authorization(s) required by the California Department of Alcoholic Beverage Control, the California Board of Equalization, County Department of Health, the City's Department of Planning, Building and Code Enforcement, and the Fire Marshal;

9. The name, telephone number and address of the Person authorized to accept service of process on behalf of the business engaging in Tobacco Retailing and all of the business owners;

10. Authorization for the Director to seek other information the Director considers necessary for a complete investigation and to conduct an investigation into the truth of the statements set forth in the application;

11. A dated statement agreeing and certifying under penalty of perjury the following:
a. That the information provided in the application is true and correct.

b. That for purposes of this Chapter all persons signing and required to sign the application shall be deemed the Tobacco Retailer applying for the Tobacco Retail License and shall be deemed the Licensee under the Tobacco Retail License as a result of the submission of the application.

c. That all persons signing and required to sign the application are and shall be bound by the terms of any Tobacco Retail License issued as a result of the submission of the application and shall be liable for any violation of said license.

B. The application shall be signed by the Tobacco Retailer as follows:

1. For an individual, the application shall be signed by that individual.

2. For a partnership, the application shall be signed by each of the partners.

3. For a limited liability company that has elected to be managed by its members, the application shall be signed by each member or by an officer authorized by the articles of organization or the operating agreement to bind the company. In the case of a limited liability company that has elected to be managed by a manager or managers, the application shall be signed by the manager or managers or by an officer authorized by the articles of organization or the operating agreement to bind the company.

4. For a corporation, the application shall be signed by two (2) officers of the corporation, one from each of the following categories:
a. The chairperson of the board, the president, or a vice president.

b. The secretary, assistant secretary, chief financial officer, or assistant treasurer.

C. An application shall not be deemed complete until all the information required in Subsections A. and B. has been provided to the Director and the required fees and any applicable business tax required pursuant to Chapter 4.76 of the Code have been paid.

6.87.445 Updated Information

A licensed Tobacco Retailer shall inform the Director in writing of any change in the information submitted on an application for a Tobacco Retail License within ten (10) business days of the change so that the Director may determine whether there has been a substantial change in the information originally submitted such that a new application must be submitted.

6.87.450 Investigation and Determination

A. Upon receiving a completed application for a Tobacco Retail License, the Director shall investigate the information required by Section 6.87.440.

B. The Director shall also coordinate the investigation of the Premises for the purpose of assuring that the Premises complies with the requirements of this Chapter and applicable public health, safety, welfare and zoning laws set forth in this Code and in federal, state and local laws.

C. The Director shall make a determination to approve or deny the application within a reasonable period of time after the applicant has submitted a complete application.
6.87.455 **Denial, Suspension or Revocation**

An application for a Tobacco Retail License or a request for an exemption may be denied, and a Tobacco Retail License issued or an exemption granted pursuant to this Chapter may be suspended or revoked by the Director upon any of the following grounds:

A. The Tobacco Retailer has knowingly made a false statement of fact or omitted a fact required to be revealed in an application for the Tobacco Retail License or a request for an exemption, or in any amendment or report or other information required to be made thereunder;

B. The Premises in which the Tobacco Retailing will occur is in violation of any building, zoning, health, safety, fire, police or other provision of this Code or of federal, state or local law which substantially affects the public health, safety or welfare;

C. The Tobacco Retailer has violated the terms and conditions of the Licensee's Tobacco Retail License or other requirements of this Chapter within the past five (5) years;

D. The Tobacco Retailer has owned or leased a premises that has been the subject of an administrative, civil or criminal nuisance abatement action and court judgment or administrative determination finding the premises to be a nuisance within the past five (5) years;

E. Failure to pay any disturbance response fee imposed pursuant to Section 6.02.310;

F. Failure to pay any reinspection fee authorized by Section 6.87.320B;
G. A prior application for a license or permit to operate a business engaged in Tobacco Retailing in the City or anywhere in the United States has been denied by the City or any federal, state, or local agency on one or more of the grounds provided in this Section within five (5) years prior to the date of the current application;

H. A permit or license issued by the City or any federal, state or local agency to operate or manage a business engaged in Tobacco Retailing anywhere in the United States has been revoked or suspended within the past five (5) years;

I. The Tobacco Retailer has conducted the business engaging in Tobacco Retailing in a manner that creates or results in a public nuisance, as defined in Section 1.13.050 of this Code or Sections 3479 and 3480 of the California Civil Code, on or within one hundred fifty (150) feet of the Premises;

J. If the Tobacco Retailer is a corporation, the corporation is not in good standing in the state of California or is not authorized to do business in the state of California;

K. Engaging in Tobacco Retailing, or allowing or offering Tobacco Products or Tobacco Paraphernalia for sale at the Premises for which the Tobacco Retail License or exemption is sought or was issued or granted is prohibited under the terms of any contract or lease for that Premises.

L. If the Tobacco Retailer is requesting an exemption or operating under an exemption, the conditions required under Section 6.87.210 do not exist or have ceased to exist.
6.87.460 Renewal of License

A. A Licensee may renew its Tobacco Retail License by complying with the following:

1. An application to renew must be filed on the form provided by the Director;

2. The application to renew must be filed with the Director no later than sixty (60) days prior to the expiration date of the current Tobacco Retail License; and

3. The application shall contain or be accompanied by the information required by Section 6.87.440 above.

B. An application to renew shall not be deemed complete until all the information required in Subsection A. has been provided to the Director and the required fees and any applicable business tax required pursuant to Chapter 4.76 of the Code have been paid.

C. If an application to renew a Tobacco Retail License is not filed, or the renewal fees are not paid, prior to the expiration date of the current Tobacco Retail License, the Tobacco Retail License shall be deemed to have expired on the date of expiration noted on the Tobacco Retail License.

6.87.465 Penalty for Late Renewal

Any Person who fails for more than thirty (30) calendar days after the expiration of any Tobacco Retail License issued to apply for a new Tobacco Retail License and who continues to engage in Tobacco Retailing shall pay to the City a penalty of ten percent (10%) of the amount of a Tobacco Retail License fee. Such penalty shall be paid at the
D. In instances where a Tobacco Retail License is being revoked or suspended, the notice of intended decision shall specify the effective date of the revocation or suspension of such license.

6.87.510 Procedure for Hearing Before the Director

With regard to a request for hearing before the Director to appeal any denial of a request for exemption under Section 6.87.210 or any notice of intended decision issued pursuant to Section 6.87.500, the following rules shall apply:

A. The written request for a hearing before the Director must be received by the Director within ten (10) calendar days of the date of service of the denial of request for exemption or of the notice of intended decision to deny, suspend or revoke the Tobacco Retail License.

B. Upon receipt of a timely written request for hearing, the Director shall schedule a hearing which shall be held no later than thirty (30) calendar days after receipt of the request, unless that time is waived by the Tobacco Retailer.

C. The Director shall serve a notice of hearing on the Tobacco Retailer no later than ten (10) calendar days prior to the scheduled date of the hearing.

D. At the hearing before the Director, the Tobacco Retailer shall be given the opportunity to present witnesses and documentary evidence.

E. The hearing will be conducted informally and the technical rules of evidence shall not apply. Any and all evidence which the Director deems reliable, relevant and not unduly repetitious shall be considered.
6.87.520 Decision of the Director

A. Within thirty (30) calendar days after the close of the hearing held pursuant to Section 6.87.510, the Director shall serve on the Tobacco Retailer a written decision sustaining, reversing or modifying his or her denial of a request for exemption or his or her notice of intended decision. If the Director sustains or modifies the denial of a request for exemption or his or her notice of intended decision, the Director may impose additional conditions upon the exemption or upon the Tobacco Retail License if those conditions were reviewed at the hearing and the conditions are intended to protect the health, safety or welfare of the public or prevent the conduct or condition that led to the issuance of the denial of the request for exemption or the notice of intended decision from reoccurring.

B. The decision by the Director after hearing shall become final unless the Tobacco Retailer files an appeal before the San José Appeals Hearing Board within the time period specified in Section 6.87.530.

6.87.530 Appeal to Board

A. If the Tobacco Retailer is dissatisfied with the written decision issued by the Director pursuant to Section 6.87.520, he or she may file an appeal to the San José Appeals Hearing Board.

B. The appeal must be in writing on a form provided by the San José Appeals Hearing Board and received by the secretary of the San José Appeals Hearing Board within ten (10) calendar days of the date the Director's decision is served upon the Tobacco Retailer.

C. The appeal hearing before the San José Appeals Hearing Board shall be conducted in accordance with the rules and regulations of the San José Appeals
Hearing Board, but shall be heard no later than sixty (60) calendar days after the receipt of the appeal, or within the next two (2) regularly-scheduled meetings of the San José Appeals Hearing Board, whichever is later in time.

D. Within twenty (20) calendar days after the hearing before the San José Appeals Hearing Board, the San José Appeals Hearing Board shall serve upon the Tobacco Retailer a written decision sustaining, reversing or modifying the Director’s decision.

E. The decision by the San José Appeals Hearing Board after hearing shall be final for purposes of judicial review pursuant to Section 1094.6 of the Code of Civil Procedure of the State of California.

PASSED FOR PUBLICATION of title this 14th day of December, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, HERRERA, KALRA, LICCARDO, NGUYEN, PYLE; REED.

NOES: CONSTANT, OLIVERIO.

ABSENT: NONE.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

LEE PRICE, MMC
City Clerk
# Tobacco Report Card Results for 2007-2010

## Table 1. Outcome survey results that led to an increase in city’s Tobacco Report Card Grade.

<table>
<thead>
<tr>
<th>Key Tobacco Report Card Criteria Area Addressed</th>
<th>2008 Baseline Data Results (activities conducted 2007-2008)</th>
<th>2010 Final Data Results (activities conducted 2009-2010)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance with local window coverage restrictions</td>
<td>69.3% (208/300)</td>
<td>75.3% (226/300)</td>
</tr>
<tr>
<td>Stores surveyed with <strong>ZERO</strong> tobacco advertising on poles, buildings, gas pumps, portable signs, banners</td>
<td>83.3% (250/300)</td>
<td>90.3% (271/300)</td>
</tr>
<tr>
<td>Stores surveyed with <strong>ZERO</strong> tobacco advertising below 4 feet or within 3 feet of candy</td>
<td>69.0% (207/300)</td>
<td>83.0% (249/300)</td>
</tr>
<tr>
<td>Compliance with tobacco self-service display ban</td>
<td>97% (291/300)</td>
<td>100% (300/300)</td>
</tr>
<tr>
<td>Compliance with STAKE signage posting requirement</td>
<td>84% (252/300)</td>
<td>93.7% (281/300)</td>
</tr>
<tr>
<td>Conducted enforcement of illegal sales to minors laws</td>
<td>30.8% (4/13 cities conducted enforcement)</td>
<td>92.3% (12/13 cities conducted enforcement)</td>
</tr>
<tr>
<td>Adopted new policies restricting youth access to tobacco</td>
<td>15.4% (2/13 cities had existing conditional use permit policies)</td>
<td>23.1% (3/13 cities now had conditional use permit policies)</td>
</tr>
</tbody>
</table>

## Table 2. Report Card Grade Comparison by City, listed in order of highest 2010 grade earned.

<table>
<thead>
<tr>
<th>City</th>
<th>Progress Grade 01/2009</th>
<th>Final Grade 03/2009</th>
<th>Progress Grade 03/2010</th>
<th>Final Grade 06/2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mountain View</td>
<td>B (83 points)</td>
<td>B (83 points)</td>
<td>A (98 points)</td>
<td>A (103 points)</td>
</tr>
<tr>
<td>Saratoga</td>
<td>B (85 points)</td>
<td>B (85 points)</td>
<td>B (80 points)</td>
<td>A (103 points)</td>
</tr>
<tr>
<td>Milpitas</td>
<td>F (38 points)</td>
<td>F (53 points)</td>
<td>C (71 points)</td>
<td>A (91 points)</td>
</tr>
<tr>
<td>Los Altos</td>
<td>F (31 points)</td>
<td>F (31 points)</td>
<td>B (84 points)</td>
<td>B (84 points)</td>
</tr>
<tr>
<td>Sunnyvale</td>
<td>B (81 points)</td>
<td>B (81 points)</td>
<td>B (84 points)</td>
<td>B (84 points)</td>
</tr>
<tr>
<td>Gilroy</td>
<td>F (33 points)</td>
<td>F (33 points)</td>
<td>D (64 points)</td>
<td>B (84 points)</td>
</tr>
<tr>
<td>Los Gatos</td>
<td>D (64 points)</td>
<td>D (64 points)</td>
<td>D (64 points)</td>
<td>B (84 points)</td>
</tr>
<tr>
<td>Santa Clara</td>
<td>F (55 points)</td>
<td>F (58 points)</td>
<td>B (83 points)</td>
<td>B (83 points)</td>
</tr>
<tr>
<td>Campbell</td>
<td>F (48 points)</td>
<td>F (48 points)</td>
<td>B (82 points)</td>
<td>B (82 points)</td>
</tr>
<tr>
<td>Palo Alto</td>
<td>F (49 points)</td>
<td>F (49 points)</td>
<td>D (61 points)</td>
<td>B (81 points)</td>
</tr>
<tr>
<td>Cupertino</td>
<td>D (67 points)</td>
<td>D (67 points)</td>
<td>C (73 points)</td>
<td>B (81 points)</td>
</tr>
<tr>
<td>Morgan Hill</td>
<td>C (75 points)</td>
<td>C (75 points)</td>
<td>D (60 points)</td>
<td>B (80 points)</td>
</tr>
<tr>
<td>San Jose</td>
<td>F (53 points)</td>
<td>F (53 points)</td>
<td>F (53 points)</td>
<td>F (53 points)</td>
</tr>
</tbody>
</table>