



CITY OF PALO ALTO OFFICE OF THE CITY CLERK

January 25, 2016

The Honorable City Council
Palo Alto, California

SECOND READING: Adoption of an Ordinance Amending Chapter 9.14 (Smoking and Tobacco Regulations) of the Palo Alto Municipal Code to Include E-Cigarettes, Change Signage Language, and Include Additional Enforcement Options (FIRST READING: January 11, 2016 PASSED: 9-0)

This Ordinance was heard by the City Council on Monday, January 11, 2016 and was adopted without change, with a vote of 9-0.

ATTACHMENTS:

- Attachment A: Smoking Ord (PDF)

Department Head: Beth Minor, City Clerk

ATTACHMENT A

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Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Amending Chapter 9.14 (Smoking and Tobacco Regulations) of the Palo Alto Municipal Code to Establish New Smoking Restrictions to Include E-Cigarettes, Change Signage Language, and Include Additional Enforcement Options

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

(a) That the adoption of this Ordinance is necessary to protect the public health, safety and welfare for the reasons set forth in amended section 9.14.005. The purposes of this Ordinance are to ban smoking in commercial areas, all dining areas, and worksite in order to reduce the risks of second hand smoke and vapor, reduce litter, and enhance enjoyment of these areas.

SECTION 2. Chapter 9.14 of the Palo Alto Municipal Code is hereby amended to read as follows:

Palo Alto Municipal Code Chapter 9.14: Smoking and Tobacco Regulations

9.14.005 Purpose.

The purpose of this Chapter is to:

(a) Protect the public health, safety and general welfare by prohibiting smoking and use of electronic smoking devices in public parks, public places, service locations, city pool cars, child day care facilities, and unenclosed eating establishments.

(b) Ensure a cleaner and more hygienic environment within the city, reduce litter, and protect the City's natural resources, including creeks and streams.

(c) Enhance the welfare of residents, workers, and visitors by reducing exposure to second hand smoke, which studies confirm can cause negative health effects in non-smokers.

(d) Balance the needs of persons who smoke with the needs of nonsmokers, including children and youth, to be free from the discomforts and health threats created by exposure to second-hand smoke and vapor.

9.14.010 Definitions.

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

ATTACHMENT A

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(a) "Bar" means an area which is devoted to serving alcoholic beverages and in which serving food is only incidental to the consumption of such beverages. "Bar" shall include bar areas within eating establishments which are devoted to serving alcoholic beverages and in which serving food is only incidental to the consumption of such beverages.

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

(c) "Commercial Area" means an area, including all publicly owned sidewalks, alleys, parking areas, public places, outdoor dining areas, service areas, etc. within areas zoned in the City's Comprehensive Plan as regional/community commercial (including Downtown, California Avenue Business District, Town and Country, and Stanford Shopping Center) and Neighborhood Commercial.

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

(e) "Electronic smoking device" means an electronic and/or battery-operated device that can deliver an inhalable dose of nicotine to the user. "Electronic smoking device" includes any product meeting this definition, regardless of whether it is manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, electronic vape, vaporizer or any other product name or descriptor.

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

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

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

(~~hi~~) "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.

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

(~~ki~~) "Public Event" means events open to the general public, including but not limited to a farmers' market, parade, craft fair, festival, or any other such event.

(~~kl~~) "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

ATTACHMENT A

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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.

(~~m~~) "Service locations" means those enclosed or unenclosed areas open to, used by, or accessible to the general public that are listed below:

- (1) Bus, train and taxi shelters;
- (2) Service waiting areas including, but not limited to, ticket or service lines, public transportation waiting areas, and public telephones;
- (3) Areas within twenty-five feet of the entrance or exit to an enclosed public place, where smoking is prohibited;
- (4) Areas in dedicated parks or other publicly accessible areas that are within twenty-five feet of bleachers, backstops, or play structures.

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

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

(~~p~~) "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.

(~~q~~) "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.

(r) "Vapor" means aerosol produced from use of an electronic smoking device.

(~~s~~) "Workplace" means any enclosed area of a structure or portion thereof used as a place of employment as well as unenclosed workplaces, such as outdoor construction sites.

9.14.020 Smoking prohibited - Enclosed Places.

ATTACHMENT A

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Smoking and the use of electronic smoking devices is prohibited in the Enclosed Areas of the following places within the City of Palo Alto, except in places subject to prohibition on smoking contained in Labor Code section 6404.5, in which case that law applies

- (1) Workplaces;
- (2) Public places;

Any places exempted by the California smoke free workplace law (Labor Code Section 6404.5(d)) are not exempt under this chapter. Smoking is prohibited by this chapter in all places exempted by that State law, except as provided in 9.14.070.

9.14.025 Smoking prohibited - Unenclosed Areas.

(a) Smoking and the use of electronic smoking devices in all unenclosed areas defined as Service Locations shall be prohibited, including a buffer zone within 25 feet from any doorway, window, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited, except while the Person Smoking is actively passing on the way to another destination and provided Smoke does not enter any Enclosed Area in which Smoking is prohibited.

(b) Smoking and the use of electronic smoking devices is prohibited in unenclosed eating establishments and bars.

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

Smoking and the use of electronic smoking devices is prohibited in all city ~~pool~~ cars.

9.14.035 Smoking Prohibited - Public Parks and Public Events.

Smoking and the use of electronic smoking devices is prohibited in all parks, including at public events.

9.14.040 Smoking prohibited - Child day care facilities.

Smoking is prohibited in a private residence which is licensed as a child day care facility within the meaning of Health and Safety Code Section 1596.750 and Section 1596.795 and amendments.

9.14.050 Smoking prohibited – Commercial Areas and Public Events.

Smoking and the use of electronic smoking devices is prohibited in commercial areas, except places where smoking is already prohibited by state or federal law, in which case those laws apply. This prohibition includes public events held on public streets. A shopping center or commercial areas may establish a designated smoking area that is at least 25 feet away from any openings and includes receptacles to control litter.

9.14.060 Reserved.*

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* Editor's Note: Former Section 9.14.060, Regulation of Smoking in the Workplace, previously codified herein and containing portions of Ordinance Nos. 4056 and 4164 was repealed in its entirety by Ordinance No. 4294.

9.14.070 Exemptions.

The following places and workplaces are exempt from Section 9.14.020:

(a) Smoking at theatrical production sites is not prohibited by this subsection if the theater general manager certifies that smoking is an essential part of the story and the use of a fake, prop, or special effect cannot reasonably convey the idea of smoking in an effective way to a reasonable member of the anticipated audience. This exception will not apply if minors are performers within the production.

(b) Bingo games, consistent with prohibition on smoking contained in Labor Code section 6404.5 and licensed pursuant to the Palo Alto Municipal Code, which do not permit access by minors under eighteen years of age

(c) 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, and except for sixty-five percent of the guest rooms in a hotel, motel, or similar transient lodging establishment;

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

9.14.80 Location of tobacco vending machines.

(a) No person shall locate, install, keep or maintain a tobacco vending machine except in a place which under state law is not lawfully accessible to minors.

(b) This section shall become effective ninety days after its enactment. Any tobacco vending machine not in conformance with this section upon its effective date shall be removed.

9.14.090 Display of tobacco products for sale.

No person shall display or offer tobacco products for sale except in an area, or from within an enclosure, which physically precludes the removal of the tobacco products without the assistance of the person authorizing such display or offer, or an employee of such person.

(Ord. 4056 § 4 (part), 1991)

9.14.100 Posting of signs required.

ATTACHMENT A

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With the exception of service locations, wherever this ordinance prohibits smoking and the use of electronic smoking devices, 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 and electronic smoking device 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 and the use of electronic smoking devices is prohibited. Signs placed at each entrance of buildings in which smoking is totally prohibited shall be sufficient. The absence of signs shall not be a defense to a violation of any provision of this chapter.

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9.14.110 Enforcement.

Pursuant to Section 6 of Article IV of the Palo Alto City Charter, the city manager is hereby granted authority to enforce the provisions of this chapter and Labor Code Section 6404.5.

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.

9.14.130 Violations ~~to be misdemeanors~~.

Violation of any provision of this chapter shall be ~~a misdemeanor~~ punishable as provided in this code. Violations shall be punishable by any of the following: warning, administrative citation, infraction, or misdemeanor. Violations shall also be punishable by the following fines:

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

SECTION 3. Severability. If any provision, clause, sentence or paragraph of this ordinance, or the application to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable.

SECTION 4. The Council finds that this project is exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to Section 15061 of the CEQA Guidelines, because it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

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SECTION 5. This ordinance shall be effective on the thirty-first day after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Public Works