

CITY OF SONOMA

ORDINANCE # 15-2016

**AN ORDINANCE OF THE CITY OF SONOMA
AMENDING CHAPTER 7.24 TO THE MUNICIPAL CODE TO
REGULATE SMOKING AND TOBACCO PRODUCT USE**

The People of the City of Sonoma do ordain as follows:

SECTION I. FINDINGS.

The People of the City of Sonoma hereby find that:

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

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke; and
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure; and
- The California Environmental Protection Agency (EPA) included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm; and

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

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

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

- Research has found at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm, such as formaldehyde, acetaldehyde, lead, nickel, and toluene are present in the products used in and/or generated by said devices; and
- More than one study has concluded that exposure to vapor from electronic smoking devices may cause passive or secondhand vaping; and
- The use of electronic smoking devices in smokefree locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment; and

- The State of California's Tobacco Education and Research Oversight Committee (TEROC) "opposes the use of e-cigarettes in all areas where other tobacco products are banned;" and

Smokeless tobacco is not a safe alternative to smoking and causes its own share of death and disease, as evidenced by the following:

- Smokeless tobacco use is associated with oral, esophageal, and pancreatic cancers; and
- Smokeless tobacco is associated with increased risk for heart disease and stroke, stillbirth and preterm delivery, and Parkinson's disease; and

State law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions; and

As of January 2015, there are at least 348 California cities and counties with local laws restricting smoking in recreational areas, and 48 with local laws restricting smoking on sidewalks in commercial areas; and

There is no Constitutional right to smoke;

NOW THEREFORE, it is the intent of the People of the City, in enacting this ordinance, to provide for the public health, safety, and welfare: by discouraging the inherently dangerous behavior of smoking and tobacco use around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke where they live and play; by reducing the potential for children to wrongly associate smoking and tobacco use with a healthy lifestyle; and by affirming and promoting a healthy environment in the City.

SECTION II. Chapter 7.24 of the Municipal Code of the City of Sonoma is hereby amended in its entirety to read as follows:

Sec. 7.24.010 DEFINITIONS. The following words and phrases, whenever used in this chapter shall have the meanings defined in this section unless the context clearly requires otherwise:

- (a) "City" means the City of Sonoma, State of California.
- (b) "Child Care Facilities" means any family day care regulated by Sections 1597.30 through 1597.621 of the California Health & Safety Code and any day care center for children regulated by Section 1596.90 et seq. of the California Health & Safety Code. It does not include foster homes or residential care facilities.
- (c) "Common Area" means every Enclosed Area and Unenclosed Area of a Multi-Unit Residence that residents of more than one Unit of that Multi-Unit Residence are entitled to enter or use, including, for example, halls, paths, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, restrooms, laundry rooms, cooking areas, and eating areas.
- (d) "Dining Area" means any area, including streets and sidewalks, which is available to or customarily used by the general public, and which is designed, established, or regularly used for consuming food or drink.
- (e) "Electronic Smoking Device" means an electronic and/or battery-operated device that can be used to deliver an inhaled dose of nicotine, or other substances, including any

component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

- (f) "Enclosed Area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has
 - (1) any type of overhead cover whether or not that cover includes vents or other openings and at least three (3) walls or other vertical constraint to airflow including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or
 - (2) four (4) walls or other vertical constraints to airflow including, but not limited to, vegetation that exceed six (6) feet in height, whether or not those boundaries include vents or other openings.
- (g) "Multi-Unit Residence" means property containing two (2) or more Units except the following specifically excluded types of housing:
 - (1) mobile home park units;
 - (2) a single-family residence; and
 - (3) detached or attached in-law or second Unit to single family residence.
- (h) "Nonprofit Entity" means any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association, or other entity created for charitable, religious, philanthropic, educational, political, social, or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a Nonprofit Entity within the meaning of this chapter.
- (i) "Person" means any natural person, cooperative association, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.
- (j) "Public Place" means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.
- (k) "Reasonable Distance" means a distance of 25 feet in any direction from an area in which Smoking is prohibited.
- (l) "Recreational Area" means any area that is publicly or privately owned, controlled or used by the City and open to the general public for recreational purposes, regardless of any fee or age requirement. The term "Recreational Area" includes but is not limited to parks, picnic areas, playgrounds, sports fields, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, skateboard parks and amusement parks.
- (m) "Service Area" means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more Persons to receive a service, wait to receive a service, or to make a transaction, whether or not

such service or transaction includes the exchange of money. The term "Service Area" includes but is not limited to areas including or adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.

- (n) "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine *and* the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "Smoke" includes, but is not limited to, tobacco smoke, Electronic Smoking Device vapors, marijuana smoke, and crack cocaine smoke.
- (o) "Smoking" means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation.
- (p) "Tobacco Product" means:
 - (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether Smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
 - (2) Any Electronic Smoking Device.
 - (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, "Tobacco Product" includes any component, part, or accessory of a Tobacco Product, whether or not sold separately. "Tobacco Product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.
- (q) "Unenclosed Area" means any area that is not an Enclosed Area.
- (r) "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes but is not limited to an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room occupancy ("SRO") facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit.

Sec. 7.24.020 PROHIBITION OF SMOKING AND TOBACCO PRODUCT USE IN ENCLOSED PLACES

- (a) Smoking and the use of Tobacco Products is prohibited in the Enclosed Areas of the following places within the City of Sonoma:
 - (1) Public Places; and
 - (2) Multi-Unit Residences and Common Areas; and

- (3) Dining Areas.
- (b) Smoking and the use of Tobacco Products is prohibited by this chapter in all Enclosed Areas except as provided below.
 - (1) Inside private vehicles.
 - (2) Inside single family residences except private residences licensed as Child Care Facilities.
 - (3) In-law or second Units attached or detached to single family residence.

Sec. 7.24.030 PROHIBITION OF SMOKING AND TOBACCO PRODUCT USE IN UNENCLOSED AREAS

- (a) Smoking and the use of Tobacco Products is prohibited in the Unenclosed Areas of the following places within the City:
 - (1) Recreational Areas;
 - (2) Service Areas;
 - (3) Public Places;
 - (4) Dining Areas;
 - (5) Common Areas of Multi-Unit Residences, provided, however, that a Person with legal control over a Common Area may designate a portion of the Unenclosed Area of the Common Area as a designated Smoking area if the area meets all of the following criteria:
 - (i) the area must be located a Reasonable Distance from any Unit or Enclosed Area where Smoking is prohibited by this chapter or other law; by binding agreement relating to the ownership, occupancy, or use of real property; or by designation of a Person with legal control over the property. In the case of a nonsmoking area created by agreement or designation, this provision does not apply unless the Person designating the Smoking area has actual knowledge of, or has been given notice of, the agreement or designation. A Person with legal control over a designated Smoking area may be obliged to modify, relocate, or eliminate that as laws change, as binding agreements are created, and as nonsmoking areas on neighboring property are established;
 - (ii) the area must not include, and must be a Reasonable Distance from, Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, school campuses, and sandboxes;
 - (iii) the area must be no more than ten percent (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated;
 - (iv) the area must have a clearly marked perimeter;

- (v) the area must be identified by conspicuous signs;
 - (vi) the area must be completely within an Unenclosed Area; and
 - (vii) the area must not overlap with any Enclosed or Unenclosed Area in which Smoking is otherwise prohibited by this chapter or other provisions of this Code, state law, or federal law; and
- (6) Other Public Places, including but not limited to streets and sidewalks located within the City's rights of way or maintained by the City.
- (b) Nothing in this chapter prohibits any Person or Nonprofit Entity with legal control over any property from prohibiting Smoking and Tobacco Product use on any part of such property, even if Smoking or the use of Tobacco Products is not otherwise prohibited in that area.

Sec. 7.24.040 REASONABLE SMOKING DISTANCE REQUIRED

- (a) Smoking in all Unenclosed Areas shall be prohibited within a Reasonable Distance from any doorway, window, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited.
- (b) Smoking in Unenclosed Areas shall be prohibited within a Reasonable Distance from any Unenclosed Areas in which Smoking is prohibited under Sec. 7.24.030 of this chapter.
- (c) The prohibitions in subdivisions (a) and (b) shall not apply to Unenclosed Areas of private residential properties that are not Multi-Unit Residences.

Sec. 7.24.050 OTHER REQUIREMENTS AND PROHIBITIONS

- (a) No Person or Nonprofit Entity shall knowingly permit Smoking or the use of Tobacco Products in an area which is under the legal or de facto control of that Person or Nonprofit Entity and in which Smoking or the use of Tobacco Products is prohibited by law.
- (b) No Person or Nonprofit Entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or de facto control of that Person or Nonprofit Entity and in which Smoking or the use of Tobacco Products is prohibited by law, including, without limitation, within a Reasonable Distance required by this chapter from any area in which Smoking or the use of Tobacco Products is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of Smoking or the use of Tobacco Products in violation of any provision of this chapter.
- (c) No Person shall dispose of used Smoking or Tobacco Product waste within the boundaries of an area in which Smoking or Tobacco Product use is prohibited, including within any Reasonable Distance required by this chapter.
- (d) A Person or Nonprofit Entity that has legal or de facto control of an area in which Smoking and the use of Tobacco Products is prohibited by this chapter shall post a

clear, conspicuous and unambiguous "No Smoking" and "No Use of Tobacco Products" or "Smokefree" and "Tobacco-Free" sign at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs shall have letters of no less than one inch in height and shall include 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). Signs posted on the exterior of buildings to comply with this section shall include the Reasonable Distance requirement set forth in Sec. 7.24.040. At least one sign with the County phone number to which complaints can be directed must be placed conspicuously in each place in which Smoking is prohibited. For purposes of this section, the City Manager or his / her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the City. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of Smoking or the use of Tobacco Products in violation of any other provision of this chapter.

- (e) No Person or Nonprofit Entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another Person who seeks to attain compliance with this chapter.
- (f) Each instance of Smoking or Tobacco Product use in violation of this chapter shall constitute a separate violation. For violations other than for Smoking, each day of a continuing violation of this chapter shall constitute a separate violation.

Sec. 7.24.060 PENALTIES AND ENFORCEMENT.

- (a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- (b) Each incident of Smoking or use of Tobacco Products in violation of this chapter is an infraction subject to a one hundred dollars (\$100) fine or otherwise punishable pursuant to Section 1.12.010 of this code. Other violations of this chapter may, at the discretion of the City Manager, be prosecuted as infractions or misdemeanors when the interests of justice so require. Enforcement of this chapter shall be the responsibility of the City Manager. In addition, any peace officer or code enforcement official also may enforce this chapter.
- (c) Violations of this chapter are subject to a civil action brought by the City of Sonoma, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.
- (d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- (e) Any violation of this chapter is hereby declared to be a nuisance.
- (f) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the City Attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.
- (g) Any Person acting for the interests of itself, its members, or the general public (hereinafter "Private Enforcer") may bring a civil action in any court of competent

jurisdiction, including small claims court, to enforce this chapter against any Person who has violated this chapter two or more times. Upon proof of the violations, a court shall grant all appropriate relief, including: (1) awarding damages; and (2) issuing an injunction or a conditional judgment.

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

Sec. 7.24.070 PUBLIC EDUCATION.

The City Manager or his or her designee shall coordinate with the County of Sonoma Health and Human Services Department to ensure that the citizens and community of Sonoma may participate in the County's existing tobacco education program. The program will explain and clarify the purposes and requirements of this chapter to citizens affected by it, and to guide Persons, Landlords, Employers, and Nonprofit Entities in their compliance with it. However, lack of such education shall not provide a defense to a violation of this chapter.

Sec. 7.24.080 OTHER LAWS.

It is not the intention of this chapter to regulate any conduct where the regulation of such conduct has been preempted by the State of California.

Sec. 7.24.090 AMENDMENTS BY CITY COUNCIL.

The Sonoma City Council shall have the authority to amend this Chapter.

SECTION III. STATUTORY CONSTRUCTION & SEVERABILITY

It is the intent of the People of the City of Sonoma to supplement applicable state and federal law and not to duplicate or contradict such law and this Ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any Person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this ordinance, or its application to any other Person or circumstance. The People of the City of Sonoma hereby declare that they would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof independently, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

SECTION IV. SEVERABILITY.

If any section, subsection, sentences, clause phrase or word of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The People of the City of Sonoma hereby declare that they would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to any such decision or

preemptive legislation.

SECTION V. CEQA FINDINGS.

This Ordinance is exempt from the California Environmental Quality Act ("CEQA") under 14 Cal. Code Regs. Section 15061(b)(3) because it can be seen with certainty that there is no possibility that its adoption will have a significant adverse effect on the environment. It is also categorically exempt under 14 Cal. Code Regs. Section 15308 because the Ordinance constitutes a regulatory activity whose purpose is to protect air quality and prevent the adverse health effects of air pollutants caused by smoking.

SECTION VI. EFFECTIVE DATE.

This Ordinance shall take effect at the time prescribed by and pursuant to applicable law.

Upon approval by a majority of the voters of the City, and upon adoption of a resolution declaring the election results, the Mayor shall hereby be authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated below.

THE FOREGOING ORDINANCE was adopted by Declaration of the vote of the Sonoma City Council on the 12th day of December 2016, at a regular meeting of the Sonoma City Council by the following vote, to wit:

AYES: Edwards, Hundley, Cook, Agrimonti, Gallian
NOES:
ABSTAIN:
ABSENT:


Rachel Hundley, Mayor

ATTEST:

Rebekah Barr, MMC, City Clerk