

## **ORDINANCE NO. 1996**

### **AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTER 8.35 ("SMOKING AND TOBACCO REGULATIONS") OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA" TO EXPAND SMOKING RESTRICTIONS**

**BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, Chapter 8.35 of the Code of the City of Santa Clara ("SCCC") addresses the regulations of smoking and tobacco;

**WHEREAS**, smoking remains the single largest cause of preventable disease and death in the United States; and,

**WHEREAS**, while smoking and exposure to secondhand smoke have decreased since 1965, both remain public health issues as there is no safe level of exposure and many continue to be affected by their adverse impacts; and,

**WHEREAS**, the City has very limited local regulations restricting smoking beyond what is already prohibited by State law; and,

**WHEREAS**, by adopting the stricter smoking regulations, the City will reduce the public's exposure to secondhand smoke.

**NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA, AS FOLLOWS:**

**SECTION 1**: That Chapter 8.35 (entitled "Smoking and Tobacco Regulations") of Title 8 (entitled "Health and Safety") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

#### **Chapter 8.35**

#### **SMOKING AND TOBACCO REGULATIONS**

Sections:

- 8.35.010 Purpose.
- 8.35.020 Definitions.
- 8.35.030 Application to City-owned facilities.
- 8.35.040 Prohibition of smoking in enclosed public places and places of employment.
- 8.35.045 Prohibition of smoking in open air dining areas.
- 8.35.048 Prohibition of smoking in unenclosed areas.
- 8.35.050 Smoking policy in places of employment.
- 8.35.060 Smoking-optional areas.
- 8.35.070 Placement of signs.
- 8.35.080 Enforcement.
- 8.35.090 Nonretaliation.
- 8.35.110 Other applicable laws.
- 8.35.120 Multi-unit residences.
- 8.35.130 Possession of tobacco and cannabis by persons under 21 years of age.
- 8.35.140 Smoking of cannabis.

**8.35.010 Purpose.**

The purposes of this chapter are:

- (a) To protect public health, safety, and general welfare by prohibiting smoking in various specific locations, as set forth in this chapter;
- (b) To reduce litter, wastes and pollution; and
- (c) To reduce exposure to second-hand smoke, which has been shown to cause negative health effects.

The provisions of this Chapter shall not apply to any establishment regulated under SCCC Chapter 8.37 ("Smoking Lounges") or to those areas designated under SCCC 9.05.160(o).

**8.35.020 Definitions.**

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

(a) "Employee" means any natural person who is employed by any employer in consideration for direct or indirect monetary wages or profits, including but not limited to temporary, permanent, part-time, and full-time employees and independent contractors, as defined under applicable law.

(b) "Employer" means any person, as defined in this section, who employs the services of one or more persons.

(c) "Enclosed" means closed in by a permanent roof and the exterior walls with appropriate openings for ingress, egress, and ventilation.

(d) "Hotel" means hotel, motel, motor inn, bed and breakfast, boarding house, and other similar establishments in which the operator has the status of an innkeeper.

(e) "Multi-unit residence" means property containing two or more attached units, except the following, which are specifically excluded:

- (1) A campground;
- (2) A hotel or motel satisfying the requirements of State and local law;
- (3) A single-family home; and
- (4) A single-family home with a detached or attached in-law or second unit.

(f) "Open air dining area" means any portion of an eating establishment that contains seating for members of the public, including streets and sidewalks, to consume food or drink in an area which is out-of-doors, covered, or otherwise outside the confines of the interior premises.

(g) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, municipal corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(h) "Place of employment" means any area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, offices, work areas, hallways, lobbies, employee lounges, conference rooms, employee cafeterias, locker rooms, dressing areas, or eating places. A private residence is not a place of employment for purposes of this chapter, unless it is used as a child care facility, health care facility, or community care facility.

(i) "Public parks" means any park, playground, swimming pool, recreation center or any other area in the City, owned and used by the City, and devoted to active or passive recreation.

(j) "Reasonable distance" means a distance of thirty (30) feet in any direction.

(k) "Smoking" means the carrying or holding of a lighted pipe, cigar, or cigarette of any kind, including any type of electronic and/or battery operated cigarette or vaporizer device (regardless of product name or descriptor), the use of which may resemble smoking, which can be used to deliver an inhaled dose of tobacco, nicotine or other substances.

(l) "Sports arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, pool halls, and other similar places where members of the public assemble indoors to engage in physical exercise,

participate in athletic competition, or witness sports events. (Ord. 1938 § 1, 2-10-15; Ord. 1654 § 2, 3-8-94; Ord. 1672 § 1, 6-20-95. Formerly § 23A-2).

(m) "Service area" means any publicly or privately owned enclosed or unenclosed area, including streets and sidewalks, that is designed to be used by one or more persons to receive a service, wait to receive a service, or to make a transaction, whether or not the service or transaction includes the exchange of money. The term "service area" includes, but is not limited to, areas including or within reasonable distance of information kiosks, automatic teller machines (ATMs), ticket lines, transit stops or shelters, mobile vendor lines, and taxi lines.

(n) "Unenclosed" means any area that is not an enclosed area.

(o) "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes, but is not limited to, an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room occupancy ("SRO") facility; or a room in a homeless shelter.

#### **8.35.030 Application to City-owned facilities.**

All facilities owned and controlled by the City, including but not limited to jails, cafeterias, libraries, public parks, offices, and any council, board, commission, and agency meeting area shall be subject to the provisions of this chapter.

#### **8.35.040 Prohibition of smoking in enclosed public places and places of employment.**

Except as otherwise provided in SCCC 8.35.060, smoking shall be prohibited in all enclosed public places and places of employment within the City of Santa Clara, including but not limited to, the following places. The use of the phrase "public place" in this chapter is intended to be expansive. The following examples are illustrative of places deemed public for purposes of this chapter. The prohibition in this chapter is not limited to the list of examples.

- (a) Elevators.
- (b) Restrooms.
- (c) Service lines.
- (d) Laundromats.
- (e) Retail stores and all areas in shopping malls inside and outside of retail stores, restaurants, bars, restrooms, and offices.
- (f) Areas available to or open to and customarily used by the general public in all business and nonprofit entities, including, but not limited to, offices (such as the offices of attorneys, doctors, accountants, other professionals, and service providers) and banks.
- (g) Restaurants.
- (h) Hotels.
- (i) Aquariums, amusement parks, galleries, libraries, arcades, or museums when open to the public.
- (j) Facilities that are primarily used as theaters, auditoriums, or halls; or that are used for exhibiting motion pictures, stage dramas, musical performances, ballets,

lectures, debates, or other similar performances, except when smoking is part of any such performance.

(k) Waiting rooms, hallways, wards, and rooms and offices of health facilities, including but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.

(l) Sports arenas, convention halls, banquet rooms, and meeting rooms.

(m) Retail food marketing establishments, including grocery stores, convenience stores, warehouse stores, and supermarkets.

(n) Rooms, chambers, places of meeting or public assembly, including, but not limited to, school buildings under the control of any board, council, commission, committee (including joint committees), or agencies of the City, or any political subdivision of the State during such time as a public meeting is in progress, to the extent that such place is subject to the jurisdiction of the City.

(o) Lobbies, hallways, and other common areas in apartment buildings, condominiums, senior citizen residences, nursing homes, and other multiple-unit residential facilities.

(p) Lobbies, hallways, and other common areas in multiple-unit commercial facilities.

(q) Polling places.

(r) Private clubs.

#### **8.35.045 Prohibition of smoking in open air dining areas.**

Smoking is prohibited in all open air dining areas located on private or public property, including the public right-of-way. In addition, smoking is prohibited within

reasonable distance of an open air dining area, except while actively passing on the way to another destination.

#### **8.35.048 Prohibition of smoking in unenclosed public areas.**

Except as otherwise provided in SCCC 8.35.060, smoking shall be prohibited in all unenclosed public places within the City of Santa Clara, including but not limited to, the following places. The use of the phrase “public place” in this chapter is intended to be expansive. The following examples are illustrative of places deemed public for purposes of this chapter. The prohibition in this chapter is not limited to the list of examples.

- (a) Public parks.
- (b) Service areas.
- (c) Public places, when being used for a public event, including a farmer’s market, parade, craft fair, concert, or any event which may be open to or attended by the general public, except that smoking is permitted on streets and sidewalks being used in a traditional capacity as pedestrian or vehicular thoroughfares, unless otherwise prohibited by law.
- (d) Reasonable distance from any operable doorway, window opening, 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.
- (e) Reasonable distance from any unenclosed areas in which smoking is prohibited, except while the person smoking is actively passing on the way to another



destination and provided smoke does not enter any unenclosed area in which smoking is prohibited.

**8.35.050 Smoking policy in places of employment.**

(a) Within ninety (90) days of the effective date of the ordinance codified in this chapter, each employer located within the City of Santa Clara shall adopt, implement, make known, and maintain a written smoking policy that shall contain the following requirements:

Except as set forth in SCCC 8.35.060, smoking shall be prohibited in all enclosed facilities within a place of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, locker rooms, dressing areas, and all other enclosed facilities. In addition, smoking shall be prohibited in unenclosed areas of employment, such as open area air dining areas, public parks, service areas, and public places when being used for a public event.

(b) The smoking policy shall be communicated to all employees within three weeks of its adoption.

(c) All employers shall comply with the provisions of this section and shall be responsible for implementation of its provisions in their place(s) of employment.

(d) "No Smoking" signs shall be conspicuously posted at building entrances and in employee lounges, restrooms, locker rooms, dressing areas, cafeterias, and

lunchrooms. The minimum size of signs posted under this section shall be six inches by four inches.

(e) All employers shall supply a written copy of the smoking policy to all employees.

(f) Places of employment exempt from the prohibition on smoking in SCCC 8.35.060 shall also be exempt from this section.

**8.35.060 Smoking-optional areas.**

(a) Notwithstanding any other provision of this chapter, the following areas shall not be subject to the smoking restrictions of this chapter, unless smoking or the use of combustible materials is otherwise regulated by the City Code or any other provision of law or regulation:

(1) Private residences, except when used as a child care facility, health care facility, or community care facility. If the private residence is within a multi-unit residence, then the residence is subject to the provisions of 8.35.120.

(2) Smoking-optional hotel rooms rented to guests, which shall not include meeting and banquet facilities. Hotels shall reserve and maintain no less than eighty percent (80%) of the enclosed areas of guest rooms as smoke-free rooms.

(3) Retail or wholesale stores that deal exclusively in the sale of tobacco and smoking paraphernalia. (Insignificant sales of non-tobacco items shall not disqualify a retail store under this provision.)

(4) Vehicles, except as otherwise limited under applicable law.

(5) Enclosed areas, while bingo games are being conducted pursuant to Penal Code Section 326.5 and with a valid conditional use permit; provided, that: (i)

no person under the age of twenty-one (21) years is present on the premises; (ii) physically separate smoke-free room(s) are provided to patrons, and (iii) a separate ventilation system is provided for the smoke-free room(s), and (iv) the location and operation do not constitute a “place of employment” under applicable state law. The operator of a bingo game shall comply with the requirements of this chapter within six months of the effective date of the ordinance codified in this chapter.

(b) Notwithstanding any other provision of this chapter, any owner, operator, manager, or other person who controls any property may prohibit smoking within the entire property or a portion of the property.

#### **8.35.070 Placement of signs.**

“No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently, and conspicuously posted in every building, as well as on entrances at eye level, or other places where smoking is prohibited by this chapter, by the owner, operator, manager, or other person having control of such building or other place. The minimum size of signs posted under this section shall be six inches by four inches.

#### **8.35.080 Enforcement.**

(a) Notice of these regulations shall be given to all applicants for a business license.

(b) The City Manager or his/her designee shall require, while a premises or establishment is undergoing otherwise mandated inspections or certification from the owner, manager, operator, or other person having control of such establishment, that all

requirements of this chapter have been complied with, including but not limited to the requirements of SCCC 8.35.050 and 8.35.070.

(c) Owners, operators, property managers, and officers of homeowners' associations for residential properties, whether rental or owner-occupied, are required to post signs, provide notice to residents or tenants or their guests of the requirements of the law prohibiting smoking, and give written notice to violator(s) of this chapter that the violator(s) actions are in violation of the law prohibiting smoking. If the owners, operators, property managers, and officers of homeowners' associations for residential properties have satisfied these requirements, they shall not be responsible for violations of the requirements of this chapter by tenants or residents, or guests of tenants or residents.

(d) Owners, operators, and property managers of commercial rental properties shall not be responsible for violations of the requirements of this chapter by tenants, or the guests of tenants, if they have posted signs in accordance with the provisions of this section and have given written notice to violator(s) of this chapter that the violator(s)' actions are in violation of the law prohibiting smoking. (e) An owner, operator, or manager ("owner") of a commercial establishment shall not be responsible for violations of this chapter within an area under owner's control, by a patron or other member of the public ("patron"); provided, that the owner:

- (1) has posted signs in accordance with this chapter;
- (2) has verbally asked the patron not to smoke; and
- (3) has warned the patron that his/her actions may be a violation of the law prohibiting smoking.

This limitation shall not limit the liability of an employer for the actions of employees in places of employment, or any other violation of this chapter by the employer.

(f) A private citizen may bring a civil action to enforce the provisions of this chapter.

(1) In the event a third party beneficiary to a lease agreement described in Section 8.35.120 wishes to avail him or herself of the private right of action provided thereunder, he or she must first provide written notice of the violation to both the violating party and the property owner or manager, by certified mail, and provide them with 60 days within which to cure the violation (i.e. cease the violating behavior, terminate the violating tenant, etc.). Satisfaction of this notice requirement shall be a prerequisite to initiation of the civil action. Presentation of proof that the violation has been fully cured shall be sufficient to except the recipient of such a notice from liability.

(2) Proof of satisfaction of paragraph (c) or (d) of this Section is sufficient to except the property owner, operator or manager from liability, except as otherwise allowed by applicable state law.

(g) Enforcement of this chapter may be accomplished by the City, in the exercise of its prosecutorial discretion, in any manner authorized by the chapter or by any other law, including but not limited to issuance of criminal citations, civil penalties or administrative penalties, as under SCCC 1.05.070.

#### **8.35.090 Nonretaliation.**

No person or employer shall discharge, refuse to hire on, or in any manner retaliate against any employee or applicant for employment because such employee or applicant makes a complaint regarding violation of this Chapter or exercises any rights

granted to him or her under this Chapter. No person or landlord shall terminate a tenancy, or modify the terms of a tenancy, or in any manner retaliate against any tenant because such tenant makes a complaint regarding violation of this Chapter or exercises any rights granted to him or her under this Chapter.

**8.35.100      Reserved.**

**8.35.110      Other applicable laws.**

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable laws.

**8.35.120      Multi-unit residences.**

(a) Beginning August 1, 2019, smoking is prohibited and no person shall smoke inside any new or existing unit of a multi-unit residence, in any enclosed or unenclosed common area of a multi-unit residence, or within a reasonable distance of any operable doorway, window, opening, or vent of a multi-unit residence.

(b) Smoking is prohibited in multi-unit residences as provided in subsection (a), except that a person with legal control over a common area, or authorized representative, may designate a portion of the common area as a designated smoking area provided that at all times the designated smoking area complies with subsection (c) below.

(c) Designated Smoking Areas in Multi-Unit Residences. A designated smoking area shall:

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

(2) Be located at least a reasonable distance away from any operable doorway, window, opening, or other vent into an enclosed area. This requirement is not limited to the doors, windows, openings or other vents in the same multi-unit residence. Rather, it is intended to apply to any doors, windows, openings, or other vents within the reasonable distance radius, whether on the same property or otherwise;

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

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

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

(e) Signage. No smoking signs shall be posted as required by Section 8.35.070 of this chapter, but are not required inside any unit of a multi-unit residence. Signs shall be maintained by the person or persons with legal control over the common areas or the authorized representative of such person.

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

- (1) A true and correct copy of the full text of this Chapter.
- (2) A description of and/or image depicting the location(s) of any designated smoking area(s) on the property, if any.
- (3) A clause expressly conveying third-party beneficiary status to all occupants of residences or residence units within reasonable distance, as to the smoking provisions of the lease or other rental agreement, such that an aggrieved third party beneficiary may institute a private civil action as against violator(s) to enforce the provisions of this Chapter.

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

(h) This chapter shall not create additional liability for a landlord to any person for a tenant's breach of any smoking provision in a lease or other rental agreement for the occupancy of a unit in a multi-unit residence if the landlord has fully complied with the provisions of this Chapter, except as otherwise allowed by applicable state law.

(i) The prohibitions contained in this Section do not apply to a person who is smoking while actively passing on the way to another destination.

#### **8.35.130 Possession of Tobacco by Persons Under 21 Years of Age**

It shall be unlawful for persons under the age of twenty-one (21) years to possess tobacco or tobacco products (including electronic smoking devices and e-liquids whether or not they contain nicotine or tobacco), as defined in Penal Code §308



and Business and Professions Code §22950.5, in the City of Santa Clara. This section shall not apply to active duty military personnel of at least 18 years of age.

#### **8.35.140      Smoking of Cannabis**

It shall be unlawful for persons to smoke cannabis wherever the smoking of tobacco is prohibited under this Chapter and/or State Law.

**SECTION 2: Ordinances repealed.** Ordinance Nos. 1938, 1672, and 1654, creating Chapter 8.35 (“Smoking and Tobacco Regulations”) of Title 8 (“Health and Safety”) of “The Code of the City of Santa Clara, California” (“SCCC”), and all ordinances amendatory thereto, and, with exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

**SECTION 3: Savings clause.** The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

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**SECTION 4: Effective date.** This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 15<sup>TH</sup> day of January, 2019, by the following vote:

AYES: COUNCILORS: Chahal, Davis, Hardy, Mahan, O'Neill, and Watanabe, and Mayor Gillmor

NOES: COUNCILORS: None

ABSENT: COUNCILORS: None

ABSTAINED: COUNCILORS: None

ATTEST:

*For* 

NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA