

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 9.44 OF TITLE 9 OF THE SAN JOSE MUNICIPAL CODE TO PROHIBIT SMOKING INSIDE MULTIPLE FAMILY HOUSING UNITS, REDUCE THE EXPOSURE TO SECONDHAND SMOKE, AND IMPLEMENT CITY COUNCIL POLICY PRIORITY #18: SMOKE FREE HOUSING

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure & Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 9.44.022 of Chapter 9.44 of Title 9 of the San José Municipal Code is amended to read as follows:

9.44.022 Smoke or smoking.

"Smoke" or "smoking" means and includes either (1) the inhaling or exhaling upon combustion or subsequent burning, disposal or carrying of any lighted pipe, hookah, or lighted cigar, cigarillos, or lighted cigarette- or smoking equipment of any kind for tobacco, nicotine, or other weed or plant material including Cannabis or (2) the lighting of a pipe, cigar or a cigarette of any kind, or any similar article or any other similar combustible substance in any manner or in any form inhaling or exhaling upon vaporizing, or otherwise using any electronic smoking or nicotine delivery device including e-cigarettes and vape pens.

SECTION 2. A new Section is added to Chapter 9.44 of Title 9 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

9.44.024 Multi-Unit Residence.

"Multi-unit residence" means a building or portion thereof that contains three or more units and is required to maintain a Residential Occupancy Permit pursuant to Section 17.20.520.

SECTION 3. Section 9.44.030 of Chapter 9.44 of Title 9 of the San José Municipal Code is amended to read as follows:

9.44.030 General Prohibition.

Smoking is prohibited in the following places located within the City of San José except as provided in Section 9.44.040:

- A. Buildings: All enclosed areas of buildings which are open to the public or which are places of employment.

- B. Public and common areas of ~~multifamily~~ multi-unit residential ~~areas~~ areas: All enclosed areas of apartments, condominiums and mobilehome parks which are open to public access or to unrestricted common access by the residents of such places.

- C. Motor vehicles used in work: In motor vehicles which meet one of the following conditions:
 - 1. Common carriers for public transit;
 - 2. Vehicles for hire, such as taxicabs;
 - 3. Vehicles which are operated in the course of employment for the use of more than one person at a time during the time of employment.

- D. Hotel and motel guest rooms: The enclosed areas of at least fifty percent of the guest rooms located in a hotel or motel. To the greatest extent feasible the smoke free rooms shall be grouped together to each other and separated from rooms where smoking is permitted.

- E. Stadium and sports arenas: The seating and eating areas of any outdoor stadium or sports arena. Smoking may be permitted only in specifically designated areas which are not located in close proximity to seating or eating areas.

- F. City parks: "Park" is defined in Chapter 13.44 of Title 13 of the San José Municipal Code, as it may be amended. Without limitation of any other provision

of this Code, the definition of "park" for purposes of this section includes sidewalks, trails and pathways in or around park facilities, park strips and other grounds of any park.

G. In the following outdoor areas:

1. Areas within twenty-five feet horizontally or vertically of any entrances, exits, operable windows, or air intake openings of any community center or library owned, leased or occupied by the city;
2. All unenclosed common areas of apartments, condominiums and mobilehome parks which are open to public access or to unrestricted common access by the residents of such places, except for areas that have been designated as a designated smoking area by the owner of the property;
3. Outdoor dining areas;
4. Service lines.

SECTION 4. A new Section is added to Chapter 9.44 of Title 9 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

9.44.035 Smoking Prohibited in Multi-Unit Residences.

A. Smoking is prohibited inside all units of multi-unit residences, including private and shared balconies, patios, courtyards and all common areas of multi-unit residences except in designated smoking areas pursuant to 9.44.021.

- B. All common areas of multi-unit residences shall have signage indicating that smoking is prohibited consistent with the signposting requirements of Section 9.44.060.
- C. If the City receives a verified complaint of a violation of subsection A, it may issue a notice to the person(s) responsible, informing them of the requirements of this Section. The tenant(s) of a unit, or owner-occupant(s) of an owner-occupied unit, shall be deemed the person(s) responsible for the violation where the violation was caused by the tenant(s) or owner-occupant(s) of the unit, or one or more persons subject to the control of, or present by invitation or permission of, the tenant(s) or owner-occupant(s).
- D. If within a twelve month period following issuance of a notice under subsection C, the City receives at least two verified complaints from residents of at least two separate units of the same multi-unit residence, of a violation of subsection A by the same person(s) provided notice under subsection C, the person(s) responsible for the violation shall be guilty of an infraction pursuant to Title 1. In addition, the City may employ any other remedies permitted by law. In order for the City to initiate enforcement under this Section, each person who makes a claim of a violation of this Section must lodge the complaint on a form specified by the City.
- E. Required Lease Term for New Leases
1. Every lease or other rental agreement for the initial occupancy of a new or existing unit in a multi-unit residence entered into on or after June 30, 2022, shall include a clause providing that it is a material breach of the lease or other rental agreement for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the

tenant, to engage in smoking in any unit of the multi-unit residence, including private and shared balconies, patios, courtyards, or any common area of the multi-unit residence.

2. Landlords shall provide all current tenants a lease addendum by June 30, 2022 stating that it is a material breach of the lease or other rental agreement for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, to engage in smoking in any unit of the multi-unit residence, including private and shared balconies, patios, courtyards, or any common area of the multi-unit residence.

3. Applications for tenancy shall include information from the landlord regarding Sections 9.44.035 , 9.44.040, and 9.44.050.

SECTION 5. Section 9.44.040 of Chapter 9.44 of Title 9 of the San José Municipal Code is amended to read as follows:

9.44.040 Exceptions.

Smoking may be permitted in the following locations:

- A. ~~Private residences, except where state law prohibits smoking~~Designated smoking areas pursuant to Section 9.44.021.
- B. Retail tobacco stores which sell primarily tobacco products.
- ~~C. Meeting and banquet rooms which meet the standards set forth in Section 6404.5(d)(3) of the California Labor Code.~~

- DC.** At such areas of the San José International Airport as provided for in Section 9.44.045 of this chapter.
- ED.** On a stage in a theater during a theatrical performance where a performer is smoking when smoking is part of the performance.
- FE.** Any property owned or leased by other governmental agencies and used for governmental purposes.
- GE.** Upon any outdoor area of any golf course owned or operated by the city that is more than twenty-five feet from any entrance, exit, operable window or air intake opening of any building.

SECTION 6. Section 9.44.055 of Chapter 9.44 of Title 9 of the San José Municipal Code is amended to read as follows:

9.44.055 Enforcement.

- A. To the extent that these provisions are duplicative of Labor Code Section ~~6404.5~~, any enforcement shall be pursuant to the Labor Code.
- B. The following provisions of this chapter shall be enforced directly:
 - 1. Subsection A. of Section 9.44.030 in those areas where there is no exception under this chapter corresponding to an exception to the definition of "place of employment" as set forth in Labor Code Section 6404.5.

2. Subsections B., C., D., E., F. and G. of Section 9.44.030.
 3. Section 9.44.035
- C. The provisions of this Code which are duplicative or less stringent than Labor Code 640~~4~~5.5 are hereby suspended and should Labor Code 6404.5 ever be repealed or modified, those suspended sections of this chapter shall then be enforced.

PASSED FOR PUBLICATION of title this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk