

## ORDINANCE NO. 2968-12

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO AMEND CERTAIN SECTIONS OF TITLE 9 (PUBLIC PEACE, SAFETY OR WELFARE) OF THE SUNNYVALE MUNICIPAL CODE RELATED TO REGULATION OF SMOKING

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. SECTION 9.28.010 AMENDED. Section 9.28.010 of Chapter 9.28 (Regulation of Smoking) of Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code is hereby amended to read as follows:

#### **9.28.010. Definitions.**

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

(a) “Bar” or “tavern” means any facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises in which the serving of food is incidental. “Bar or tavern” includes those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located within a building in conjunction with another use, including a restaurant, “bar” or “tavern” includes only those areas used primarily for the sale and service of alcoholic beverages. “Bar or tavern” does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

~~(b) “Dining Area” means any area containing a counter or tables where meals are served.~~

~~(e)~~ “Gaming club” means any gaming club, as defined in Section 19802 of the Business and Professions Code, or bingo facility, as defined in Section 326.5 of the Penal Code, that restricts access to minors under eighteen years of age.

~~(d)~~(c) “Public park” means any park, reservation, playground, swimming pool, recreation center or any other area in the city, owned or used by the city and devoted to active or passive recreation.

~~(e)~~(d) “Retail or wholesale tobacco store” means a store utilized primarily for the sale of tobacco products and smoking accessories and in which the sale of other products is merely incidental.

~~(e)~~(e) “Smoke” or “smoking” means and includes inhaling or exhaling upon, burning or carrying any lighted smoking equipment for tobacco, or any other plant or product used for the personal habit commonly known as smoking.

SECTION 2. SECTION 9.28.020 AMENDED. Section 9.28.020 of Chapter 9.28 (Regulation of Smoking) of Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code is hereby amended to read as follows:

#### **9.28.020. Locations where smoking is prohibited.**

Except as otherwise provided in Section 9.28.030, smoking is prohibited in the following locations in the city:

- (a) All areas where smoking is prohibited by state or federal law, including but not limited to indoor workplaces, bars and restaurants (California Labor Code Section 6404.5); state, county, and city buildings (California Government Code Sections 7596-7598); and tot lots and playgrounds (California Health & Safety Code Section 104495).
- (b) Elevators.
- (c) Outdoor ~~dining~~Eating Areas. Sixty percent of outdoor dining areas for all eating establishments shall be reserved for nonsmokers. Smoking is prohibited and unlawful in such areas.
- (d) ~~Within twenty (20) feet of any outdoor dining area where smoking is prohibited by this section.~~
- ~~(e)~~—Gymnasiums, fieldhouses, stadiums and outdoor theaters.
- ~~(f)~~(e) Public parks, except that smoking shall be permitted on golf courses where not otherwise prohibited by law.
- ~~(g)~~(f) Any ~~other~~—location on city property, other than public streets and sidewalks, where smoking is not otherwise prohibited by law may be designated by the city manager as a “no smoking” area. Such areas shall be posted with appropriate signage.

SECTION 3. SECTION 9.28.030 AMENDED. Section 9.28.030 of Chapter 9.28 (Regulation of Smoking) of Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**9.28.030. Smoking optional areas.**

Subject to any applicable provisions of state and federal law, in which case those laws apply, the following areas are not subject to the smoking restrictions in this chapter:

- (a) Private residences, except when used as places of business for child or elder care, or as a home business employing one or more employees other than residents, during the hours the residence is used for business.
- (b) Designated guest rooms in hotels and motels, in conformance with state law.
- (c) Lobbies, meeting and banquet rooms in hotels and motels, in conformance with state law.
- (d) Theatrical production sites, if smoking is an integral part of the story in the theatrical production.
- (e) Employee breakrooms designated for smoking, in conformance with state law.
- (f) Patient smoking areas in long-term health care facilities, as defined in Section 1418 of the Health and Safety Code.
- (g) Retail or wholesale tobacco stores, in conformance with state law.
- (h) Owner-occupied bars, taverns, and gaming clubs that meet the following conditions:
  - (1) No one is paid to assist, on a temporary or regular basis, in the in-house operation of the business, whether serving customers or performing other duties or services on the premises, including but not limited to janitorial or bookkeeping services.

(2) No salaried or contract employees shall be employed on the premises by the business. "Employees" of the bar, tavern or gaming club shall be deemed to include independent contractors or their employees who perform any type of work including, but not limited to bartending, janitorial services, catering, bookkeeping or accounting services. Any person who performs any sort of entertainment or other type of service on the premises and receives any sort of compensation, including but not limited to tips from the businesses owner, customers, or other persons, shall also be deemed an "employee" for purposes of this section.

(3) The bar, tavern or gaming club facility shall not be used or rented by anyone else who hires or uses others to work there as employees.

(4) Any bar, tavern, or gaming club which claims to be an "owner-operated" business pursuant to this section, shall provide to the director of community development a written application under oath, signed by each owner of the business, and certifying that the business has no employees within the meaning of this section, is totally "owner operated" as defined herein, and will not engage or employ any employees on the premises without prior notice to the director of community development and a written request to have such certification revoked. Such application shall be made upon a form to be provided by city, and shall include such information as the director of community development reasonably requires to determine if the bar, tavern, or gaming club is exempt from the prohibition against permitting or allowing smoking within such business by reason of being owner-operated.

(5) Upon receipt of the application for certification as an "owner-operated" bar, tavern, or gaming club, the director of community development shall investigate the application. If the director determines that the business is "owner-operated," the director shall issue a certification of such status to the business which shall be valid for one year, or such earlier time as the business requests a withdrawal of the certification. The owner of such business shall apply within sixty days of the expiration of the certification for a renewed certificate of owner operation and shall similarly provide information under oath to the director.

(6) A copy of each certificate of "owner-operated" status shall be posted in a prominent place in the public area of each such bar, tavern or gaming room.

(7) Unless a current and valid "owner-operated" certificate is posted in accordance with this section, it shall be presumed that the business is not "owner-operated," and smoking or permitting smoking in such business by any person shall be unlawful. This presumption is rebuttable. In any judicial or administrative proceeding, the owner of the business has the burden of establishing that the business is owner-occupied.

(8) Notwithstanding the foregoing, in the event that any state statute or regulation adopts a different definition of "owner-operated" as to bars, taverns, or gaming clubs, for purposes of the definition of "place of employment" pursuant to Labor Code Section 6404.5, that definition shall superseded and govern over the definition contained herein.

(i) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls a business may declare that entire business, or designated sections thereof, as a nonsmoking establishment.

SECTION 4. SECTION 9.28.043 DELETED. Section 9.28.043 of Chapter 9.28 (Regulation of Smoking) of Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code is hereby deleted in its entirety.

SECTION 5. SECTION 9.28.050 AMENDED. Section 9.28.050 of Chapter 9.28 (Regulation of Smoking) of Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**9.28.050. Unlawful acts designated.**

- (a) It is unlawful for any person to smoke in a place within the city where smoking is prohibited.
- (b) No employer or other person with responsibility for management or control of a place where smoking is prohibited shall knowingly and intentionally allow smoking in violation of this chapter.

SECTION 6. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 7. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

SECTION 8. EFFECTIVE DATE. This ordinance shall be in full force and effect 30 days from and after the date of its adoption.

SECTION 9. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in *The Sun*, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within 15 days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on \_\_\_\_\_, 2012, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on \_\_\_\_\_, 2012, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
Date of Attestation: \_\_\_\_\_

\_\_\_\_\_  
Mayor

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
David E. Kahn, City Attorney