

**ORDINANCE NO. NS-625.5**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA AMENDING TITLE B OF THE COUNTY OF SANTA CLARA ORDINANCE CODE RELATING TO SMOKING POLLUTION CONTROL**

**Summary**

This ordinance amends Chapter V of Division B13 and amends Article 1 of Chapter II of Division B14 of the County of Santa Clara Ordinance Code to reduce exposure to secondhand smoke by prohibiting smoking at County parks and trails and within the following unincorporated areas of the County: in or within 30 feet of unenclosed service areas, at the County Fairgrounds, within 30 feet of enclosed areas where smoking is prohibited, in hotel rooms, in unenclosed portions of hotels, in outdoor shopping malls, and in retail stores dealing exclusively in the sale of tobacco and smoking paraphernalia.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ORDAINS AS FOLLOWS:**

SECTION 1: Section B13-79 of Chapter V of Division B13 in Title B of the County of Santa Clara Ordinance Code is amended as follows:

**Section B13-79. Findings and intent.**

The Board of Supervisors of the County of Santa Clara does hereby find the following:

(a) Studies have shown tobacco smoke is a major contributor to air pollution and is detrimental to nonsmokers' health, welfare and comfort, especially to elderly people, children, individuals with cardiovascular disease, impaired respiratory function, or allergies, and those who suffer ill effects of breathing secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of reactions to secondhand smoke.

(b) Scientific studies have concluded that tobacco use causes chronic lung disease, coronary heart disease, stroke, cancer of the lungs, larynx, esophagus and mouth.

(c) In 2007, the World Health Organization estimated that, by 2030, tobacco will account for 8.3 million deaths per year, will kill 50 percent more people in 2015 than HIV/AIDS, and will be responsible for 10 percent of all deaths worldwide.

(d) In 2010, the Centers for Disease Control and Prevention reported that more than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death.

(e) The United States Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke and neither separating smokers from nonsmokers nor installing ventilation systems eliminates exposure to secondhand smoke.

(f) The United States Environmental Protection Agency (EPA) has found secondhand smoke to be a risk to public health, and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen.

(g) The California Air Resources Board has identified secondhand smoke as a toxic air contaminant.

(h) The California Office of Environmental Health Hazard Assessment has included secondhand tobacco smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm.

(i) Each year, primarily because of exposure to secondhand smoke, approximately 3,000 non-smokers in the United States die of lung cancer and more than 46,000 die of heart disease.

(j) Exposure to secondhand smoke increases the risk of coronary heart disease by approximately 30 percent.

(k) Secondhand smoke exposure elevates the risks of low birth weight and Sudden Infant Death Syndrome for infants of mothers who smoke.

(l) Secondhand smoke exposure causes as many as 300,000 children in the United States to suffer from lower respiratory tract infections each year, exacerbates childhood asthma, and increases the prevalence of fluid in the middle ear, a sign of chronic middle ear disease.

(m) In 2008, the Centers for Disease Control and Prevention estimated that the total annual economic burden of smoking in the United States was approximately \$193 billion.

(n) From 2001 to 2004, average annual health care expenditures attributable to smoking in the United States were approximately \$96 billion.

(o) In 2004, the estimated medical and economic costs to nonsmokers suffering from lung cancer or heart disease caused by secondhand smoke totaled approximately \$6 billion in the United States.

(p) In 2004 alone, the total adult health-related cost of smoking in California was estimated to be \$500 per resident or \$3,400 per smoker, for a total of nearly \$18.1 billion in smoking-related costs for the year.

(q) According to one study, California's Tobacco Control Program has saved the state and its residents approximately \$86 billion in health care expenditures between the program's inception in 1989 and 2004, with savings growing over time.

(r) A survey conducted by the County's Public Health Department in 2009 found that approximately one in 10 adults in the County smoke.

(s) With certain exceptions, state law prohibits smoking inside an enclosed place of employment.

(t) State law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees.

(u) State law prohibits smoking in playgrounds and tot lots and within 20 feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions.

This chapter is adopted (1) to protect the public health and welfare by prohibiting or limiting smoking in public places as hereinafter set forth and (2) to strike a reasonable balance between the need of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air has priority.

SECTION 2: Section B13-81 of Chapter V of Division B13 in Title B of the County of Santa Clara Ordinance Code is amended as follows:

**Section B13-81. Definitions.**

The definitions set forth in this section shall govern the application and interpretation of this chapter:

(a) *Bar* means an area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.

(b) *Bingo* is as defined in Section B3-76 of Division B3 of this Code.

(c) *Employee* means any 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 or dependent contractors.

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

(e) *Enclosed* means closed in by a roof and four or more walls with appropriate openings for ingress and egress.

(f) *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."

(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, entity 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) *Service area* means any public area designed to be or regularly used by one or more persons to receive or wait to receive goods or services, enter a public place, or make a transaction, whether or not such service includes the exchange of money. Service areas include, but are not limited to, bars, restaurants, information kiosks, bus stops, taxi stands, and lines for automated teller machines, public telephones, and ticket purchase.

(j) *Smoke* means the gases or particles released into the air as a result of combustion or electrical ignition, when the apparent or usual purpose of the combustion or electrical ignition is human inhalation of the byproducts, except when the combusting material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense.

(k) *Smoke free area* means any location in which smoking is prohibited by this chapter.

(l) *Smoking* means engaging in an act that generates Smoke, including, but not limited to, possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, or a lighted cigarette of any kind; or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind.

(m) *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.

SECTION 3: Section B13-82 of Chapter V of Division B13 in Title B of the County of Santa Clara Ordinance Code is amended as follows:

**Section B13-82. General prohibition.**

(a) Smoking shall be prohibited within any enclosed structure owned or leased by the County, wherever located, and in all enclosed public places within the unincorporated areas of the County as follows:

- (1) Elevators.
- (2) Restrooms.
- (3) Service areas.
- (4) Laundromats.
- (5) Retail stores and all areas in shopping malls inside and outside of retail stores, restaurants, bars, restrooms, and offices.
- (6) 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), banks, and churches.
- (7) Restaurants.
- (8) Bars.
- (9) Hotels.
- (10) Aquariums, amusement parks, galleries, libraries, arcades, or museums when open to the public.

(11) Facilities primarily used as theaters, auditoriums, or halls; or which are used for exhibiting motion pictures, stage dramas, musical performances, ballets, lectures, debates or other similar performances.

(12) 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.

(13) Sports arenas, convention halls, halls used to host bingo, banquet rooms, and meeting rooms.

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

(15) 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 County during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the County.

(16) Polling places.

(17) Private clubs.

(b) Smoking shall be prohibited at all unenclosed places within the unincorporated areas of the County as follows:

(1) In, or within 30 feet of, service areas.

(2) County Fairgrounds.

(3) Any public or private area located within 30 feet, in any direction, of any operable doorway, window, opening, or other vent into an enclosed area where smoking is prohibited, provided, however, that this prohibition shall not apply to any person who is smoking in the restricted area while actively traveling to another destination.

(4) Hotels.

(5) Shopping malls.

(c) Smoking shall be prohibited at all parkland and trails owned, maintained or leased by or from the County, wherever located. This prohibition, however, shall not apply during the current term of any commercial lease, in existence as of the effective date of the amendment of this chapter, for any County-owned parkland.

(d) Except as otherwise provided in Section B13-84, smoking shall be prohibited in all enclosed places of employment within the unincorporated areas of the County.

SECTION 4: Section B13-84 of Chapter V of Division B13 in Title B of the County of Santa Clara Ordinance Code is amended as follows:

**Section B13-84. Exceptions.**

(a) Notwithstanding any other provision of this chapter to the contrary, 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 any other provision of law or regulation.

(1) Any private property with a detached, single family residence, that is not used as a child care facility, health care facility, or community care facility.

(2) An enclosed, detached place of employment that is not accessible to the public, which employs only the owner and no other employee, provided that the enclosed place of employment does not share a ventilation system with any other enclosed place of employment or public place.

(3) Property owned by the state or federal government.

(b) Any owner, operator, manager or other person who controls any property may prohibit smoking within the entire property or any portion of the property not otherwise subject to the smoking prohibitions of this chapter.

SECTION 5: Section B13-85 of Chapter V of Division B13 in Title B of the County of Santa Clara Ordinance Code is amended as follows:

**Section B13-85. Smoking policy in places of employment.**

(a) Within 90 days of the effective date of the amendment of this chapter, each employer having a place of employment located within the unincorporated areas of the County shall adopt, implement, make known and maintain a written policy that smoking shall be prohibited in all enclosed facilities within the place of employment, as well as any outdoor areas of the place of employment in which this chapter or any other law prohibits smoking.

(b) Within one week of the smoking policy's adoption, all employees shall receive a written copy of the smoking policy.

(c) All employers shall comply with these nonsmoking provisions and shall be responsible for implementation 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.

(e) Places of employment exempt from the prohibition on smoking in Section B13-84 of this chapter shall also be exempt from this section.

SECTION 6: Section B13-87 of Chapter V of Division B13 in Title B of the County of Santa Clara Ordinance Code is amended as follows:

**Section B13-87. Posting of signs.**

(a) "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 at every enclosed building and unenclosed area, where smoking is prohibited pursuant to this chapter, by the owner, operator, manager or other person having control of such room, building, or other place.

(b) Every enclosed restaurant and bar shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) Owners, operators, property managers and officers of homeowners' associations for residential properties will be deemed to not be in violation of the requirements of this section, and of their obligation to enforce the prohibition in Section B13-82, 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 this Code.

(d) If an employer owns, manages, operates or otherwise controls a contiguous campus or property that (i) has more than 25 buildings and (ii) is located, in whole or in part, in an unincorporated area of the County, that employer may comply with the signage requirements of this chapter for that campus or property if the employer meets the following requirements:

(1) The employer has a written non-smoking policy that prohibits smoking in all places where smoking is prohibited by this chapter or any other law;



- (2) The employer provides a copy of the non-smoking policy to all employees;
- (3) The employer posts "no smoking" signs at all major entrances to the campus or property, all unenclosed areas of the campus or property where smoking is prohibited, and all areas of the campus or property where an individual has violated the employer's non-smoking policy in the past year.

SECTION 7: Section B13-88 of Chapter V of Division B13 in Title B of the County of Santa Clara Ordinance Code is amended as follows:

**Section B13-88. Enforcement.**

(a) Enforcement of this chapter shall be implemented by the County Executive or designees. The Fire Marshal or designee or the Public Health Department or designee shall have the right, in connection with any regular annual inspection of a business located in the unincorporated area of the County, to require that the owner, manager, operator or other person having control of such establishment certify that all applicable requirements of this chapter have been complied with.

(b) Any citizen may initiate enforcement of this chapter by notifying the County Executive or designee of an alleged violation.

(c) Any owner, manager, operator or employee of any establishment controlled by this chapter shall have the right to inform persons violating this chapter of the requirements of the provisions being violated and the consequences of such violation.

SECTION 8: Section B13-89 of Chapter V of Division B13 in Title B of the County of Santa Clara Ordinance Code is amended as follows:

**Section B13-89. Violations.**

(a) Any violation of this chapter is declared to be a public nuisance.

(b) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this chapter to fail to comply with its provisions.

(c) It shall be unlawful for any person to smoke in any area restricted by the provisions of this chapter.

(d) Infraction(s). Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by:

- (1) A fine not exceeding \$100.00 for a first violation.
- (2) A fine not exceeding \$200.00 for a second violation.
- (3) A fine not exceeding \$500.00 for each additional violation within one year.

(e) Misdemeanor(s). Any person, or owner, operator, employer or manager of any establishment, subject to this chapter, who violates any provision of this chapter, in excess of three violations within one year, shall be deemed guilty of a misdemeanor.

(f) Each day that a violation of Section B13-85 and B13-87 continues shall constitute a separate violation of this chapter.

(g) The County Executive or designee is authorized to institute and pursue, in the name of the County, pursuant to the provisions of Government Code Section 25132, civil actions for the recovery of fines for violations of this chapter.

(h) 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 County, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

//

//

//

//

//

//

//

//

//

//

SECTION 9: Section B14-21.5 of Article 1 of Chapter II of Division B14 in Title B of the County of Santa Clara Ordinance Code is amended as follows:

**Section B14-21.5. Smoking.**

Smoking shall be regulated as provided in Chapter V of Division B13 in Title B of this Code.


PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, this 9<sup>th</sup> day of November, 2010, by the following vote:

**AYES:** CORTESI, GAGE, KNISS, SHIRAKAWA, YEAGER,

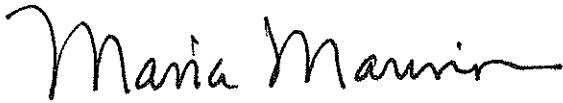
**NOES:** NONE

**ABSENT:** NONE

**ABSTAIN:** NONE

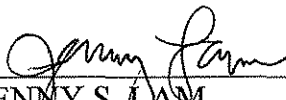
  
KEN YEAGER, President  
Board of Supervisors

Signed and certified that a copy of  
this document has been delivered  
by electronic or other means to  
the President, Board of  
Supervisors.  
ATTEST:



MARIA MARINOS  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

  
JENNY S. LAM  
Deputy County Counsel