

ORDINANCE NO. 14-2121

AN ORDINANCE OF THE CITY OF CUPERTINO AMENDING SECTIONS 10.90.010 AND 10.90.020 OF CHAPTER 10.90 AND ADDING SECTION 10.90.045 OF CHAPTER 10.90 AND AMENDING SECTION 10.56.020 OF CHAPTER 10.56 OF TITLE 10 OF THE CUPERTINO MUNICIPAL CODE TO REGULATE OUTDOOR SMOKING

WHEREAS, tobacco use causes death and disease and continues to be an urgent health challenge; and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to second hand smoke occurs at significant levels outdoors;

WHEREAS, in 2006, the California Air Resources Board classified secondhand smoke as a "Toxic Air Contaminant";

WHEREAS, The United States Surgeon General reports that there is no safe level of exposure to secondhand smoke; and

WHEREAS, this Ordinance was found to be categorically exempt from environmental review per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970, as amended;

WHEREAS, it is the intent of the City Council, in enacting this ordinance, to provide for the public health, safety, and welfare, by discouraging the inherently dangerous behavior of smoking around non-tobacco users, by protecting the public from secondhand smoke where they eat; and by affirming and promoting a healthy environment in and around dining areas.

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

SECTION 1. The Title of Chapter 10.90 of Title 10 of the Cupertino Municipal Code is hereby amended to read as follows:

CHAPTER 10.90: REGULATION OF SMOKING

SECTION 2. Section 10.90.010 of Chapter 10.90 of Title 10 of the Cupertino Municipal Code is hereby amended to read as follows:

Section 10.90.010 Definitions

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

- A. "Outdoor Dining Area" means any privately owned or publicly owned area, street, or sidewalk, which is available or customarily used by the general public and which is designed, established, or regularly used for consuming food or drink.
- B. "Reasonable distance" means a distance of 25 feet in any direction from an area in which smoking is prohibited.
- C. "Recreational Area" means any outdoor area, including streets and sidewalks adjacent to Recreational areas, owned or operated by the City of Cupertino 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, golf courses, walking paths, gardens, hiking trails, bike paths, horseback riding trails, swimming pools, roller-skating rinks, skateboard parks, and parking lot or other area designated or primarily used for parking vehicles of persons accessing a Recreational Area.
- D. "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, or vaporization, when the apparent or usual purpose of the combustion, 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, and marijuana smoke.
- E. "Smoking" means engaging in an act that generates Smoke, such as for example: possessing a lighted pipe, lighted hookah pipe, a lighted cigar, or a lighted cigarette of any kind; or; or lighting or igniting of a pipe, cigar, hookah pipe, or cigarette of any kind.

SECTION 3. Section 10.90.020 of Chapter 10.90 of Title 10 of the Cupertino Municipal Code is hereby amended to read as follows:

Section 10.90.020 Smoking Prohibited.

- A. Smoking is prohibited:
 - 1. In Recreational Areas;
 - 2. In Outdoor Dining Areas; and
 - 3. At entrances, exits, operable windows, or air intake openings of any building area which is available or customarily used by the general public and which is designed, established, or regularly used for selling or consuming food or drink.

- B. Reasonable Smoking Distance Required.
 - 1. Smoking in all unenclosed areas is prohibited within a reasonable distance from any unenclosed areas in which smoking is prohibited under Section 10.90.020.A, except while actively passing on the way to another destination and provided smoke does not enter any area in which smoking is prohibited;
 - 2. The smoking prohibitions in Section 10.90.020.B.1. shall not apply to unenclosed areas of private residential properties.

- C. Nothing in this chapter shall be construed to prohibit smoking in any area in which such smoking is already prohibited by state or federal law unless the applicable state or federal law does not preempt additional local regulation.

- D. No Person shall dispose of used smoking waste within the boundaries of an area in which smoking is prohibited by this chapter.

- E. Each instance of smoking in violation of this chapter shall constitute a separate violation. For violations other than smoking, each day of a continuing violation of this chapter shall constitute a separate violation.

SECTION 4. Chapter 10.90 of Title 10 of the Cupertino Municipal Code is hereby amended to add Section 10.90.045 to read as follows:

Section 10.90.045 Posting of Signs.

Where smoking is prohibited by this chapter, a clear conspicuous ~~and unambiguous "No Smoking in and around 25 feet of this Area"~~ sign shall be posted ~~outside of each point of ingress to the area, and~~ at ~~one other~~ a conspicuous point within the area. The signs shall have letters of no less than one inch in height and shall include, either 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) or "No Smoking" in words. ~~The sign shall also contain a reference to Section 10.90.020 of the CMC (Cupertino Municipal Code).~~ Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of smoking in violation of any other provision of this chapter.

SECTION 5. Section 10.90.050 of Chapter 10.90 of Title 10 of the Cupertino Municipal Code is hereby amended to read as follows:

10.90.050 Violation - Penalty.

- A. The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity. Except as otherwise provided, enforcement of this chapter is at the sole discretion of the City of Cupertino. Nothing in this chapter shall create a right of action in any person against the City of Cupertino or its agents to compel public enforcement of this article against any party.
- B. Any person who violates any of the provisions of this chapter shall be guilty of an infraction and upon conviction thereof shall be punished as provided in Chapter 1.12 or, in the alternative, subject to enforcement action pursuant to Chapter 1.10: Administrative Citations, Fines, and Penalties.

SECTION 6. The Title of Chapter 10.56 of Title 10 of the Cupertino Municipal Code is hereby amended to read as follows:

CHAPTER 10.56 TRESPASSING UPON PARKING LOTS, SHOPPING CENTER PROPERTY AND OTHER PROPERTY OPEN TO THE PUBLIC

SECTION 7. Section 10.56.020 of Chapter 10.56 of Title 10 of the Cupertino Municipal Code is hereby amended to read as follows:

10.56.020 Unlawful.

A. It is unlawful for any person, other than a public officer or employee acting within the scope of his or her employment, to enter or remain on any shopping center property, or any other private property open to the public within the City, after the owner, lessee or other person in charge of the property has, for good cause, demanded that such person remove themselves from the property.

B. Good cause for removing someone from the property is limited to the following instances:

1. Where the person participates in, or engages in conduct which urges a riot, acts of force or violence, or the burning or destroying of property within the meaning of Penal Code Sections 404 and 404.6;
2. Where the person participates in an unlawful assembly as deemed in Penal Code Section 407;
3. Where the person engages in conduct which constitutes a disturbance of the peace as deemed in Penal Code Section 415;
4. Where the person intentionally interferes with the lawful conduct of business on the premises by obstructing or intimidating those attempting to carry on business, or by obstructing or intimidating their customers within the meaning of Penal Code Section 602.1;
5. Where the person engages in disorderly conduct within the meaning of Penal Code Section 647, including loitering, accosting other persons for the purpose of begging, and being under the influence of any drug or liquor;
6. Where the person willfully and maliciously obstructs the free flow of pedestrian movement within the meaning of Penal Code Section 647c;
7. Where the person causes a noise disturbance in violation of Chapter 10.48 of this Code;
or;

8. Where the person smokes in violation of federal or state law, any provision of this Code or in violation of smoking rules established by any shopping center within the City.

SECTION 8. This Ordinance shall become effective January 1, 2015.

SECTION 9. The City Clerk shall certify the adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

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INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 19th day of August 2014 and ADOPTED at a regular meeting of the City Council of the City of Cupertino the 2nd day of September 2014, by the following vote:

PASSED:

Vote: Members of the City Council

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Gilbert Wong, Mayor