



EAST PALO ALTO CITY COUNCIL REGULAR MEETING AGENDA

March 3, 2020, 6:30 p.m.
EPA Government Center
2415 University Ave, First Floor
East Palo Alto, CA 94303

Members of the public have the right to address the City Council on any item on the Agenda, before or during its consideration [G.C. §54954.3(a)]. In order to speak, you must fill out a speaker card and submit it to the City Clerk. You will have no more than two (2) minutes to speak.

1. **CALL TO ORDER AND ROLL CALL**

2. **APPROVAL OF THE AGENDA**
(Government Code Section 54957.7(a))

3. **CLOSED SESSION**

I. **CONFERENCE WITH LEGAL COUNSEL-PENDING LITIGATION (Government Code Section 54956.9) CASE NAME: Young v. Cancilla, et al., United States District Court, Case No. 4:18-CV-01931**

A. **PUBLIC COMMENT ON CLOSED SESSION ITEMS**

B. **ADJOURNMENT INTO CLOSED SESSION**

C. **RECONVENE INTO OPEN SESSION**

D. **REPORT OUT OF CLOSED SESSION**

4. **COMMUNITY FORUM**

Notice to the Public: *Anyone wishing to address the City Council on any matter for which another opportunity to speak is not provided on the Agenda, and which is within the Council's purview, is requested to submit a completed Speaker Sheet to the City Clerk. When your name is called, step to the podium and address the Council. Each speaker is limited to 2 minutes. The Mayor has the discretion to lengthen or shorten allotted times.*

5. **COUNCIL PRESENTATIONS - NONE.**

6. **APPROVAL OF CONSENT CALENDAR**

1. **Minutes of the February 18 and 22, 2020 Meetings**

Recommendation: Adopt the minutes of the February 18, 2020 Regular Meeting and February 22, 2020 Strategic Planning Session Meeting.

2. **Actions Related to the Light Tree Affordable Housing Development Project**

Recommendation: 1. Adopt a resolution related to the Light Tree Affordable Housing Development Affordable Housing and Sustainable Communities (AHSC) Program application:

a. Authorizing the City Manager to enter into, execute, and deliver a State of California Standard Agreement in the amount not to exceed \$13,500,000 and any and all other documents required or deemed necessary or appropriate, and all amendments thereto (collectively, the "AHSC Loan Documents") as approved by the City Attorney.

b. Authorizing the City Manager to enter into, execute, and deliver a State of California Standard Agreement in the amount not to exceed \$6,500,000 and any and all other documents required or deemed necessary or appropriate, and all amendments thereto (collectively, the "AHSC Grant Documents") as approved by the City Attorney.

c. Stating that the City shall be subject to the terms and conditions as specified in the Standard Agreement(s).

d. Authorizing the City Manager to execute the AHSC Loan Documents and the AHSC Grant Documents, and any amendment or modifications thereto, on behalf of City.

e. Authorizing the City Manager to enter into, execute, and deliver the Implementation and Cooperation Agreement between the San Mateo County Transit District (SamTrans) as a non-applicant, the Developer, and the City for the purpose of acquiring and operating three electric buses as part of the new East Palo Alto-San Bruno route, subject to minor, non-substantive modifications as approved by the City Attorney.

2. Adopt a Resolution authorizing and directing the City Manager to waive the Affordable Housing, Parks and Trails, and Public Facilities impact fees, which will reduce the total project cost by \$713,440.

3. Extend Grant Term Agreement Dates

Recommendation: Adopt a Resolution authorizing the City Manager to provide the adequate extension for each of the following community grants to fully administer and properly close out: Catholic Charities; Greyhounds Collaborative; Able Works; Job Train Collaborative; MOP Collaborative; Renaissance Mid Pen; and Razorhawks Rugby Club.

4. Contract with Baird & Driskell Community Planning for Housing and Planning-Related Services

Recommendation: Adopt a resolution authorizing the City Manager to:

1. Execute an agreement with Baird & Driskell Community Planning, in a form approved by the City Attorney, for housing and planning related services in an amount not to exceed \$104,000 for a three-year term, with up to two (2) one-year extensions at the sole discretion of the City Manager; with funds allocated as follows:

a. \$54,000 from the General Fund, to be paid in semi-annual installments, for participation in "21 Elements +" over three years; and

b. \$50,000 in SB 2 Planning Grant funds for the development of an affordable housing overlay zone; and

2. Waive the City's bidding requirements pursuant to section 2.84.070(D) of the East Palo Alto Municipal Code.

5. Local Early Action Planning Grant (LEAP)

Recommendation: Adopt a resolution authorizing the City Manager to:

1. Apply for and submit to the Department of Housing and Community Development ("Department") a LEAP grant application package ("Application"), on the forms provided by the Department, for approval of grant funding for projects that assist in the preparation and adoption of planning documents and process improvements that accelerate housing production and facilitate compliance to implement the sixth cycle of the regional housing need assessment; and

2. If the Application is approved by the Department, to submit the Application, enter into, execute, and deliver on behalf of the City, a State of California Agreement ("Standard Agreement") for the amount of up to \$150,000 and any and all other documents required or deemed necessary or appropriate to evidence and secure the LEAP grant, the Applicant's obligations related thereto, and all amendments thereto, in a form approved by the City Attorney.

6. On-call traffic engineering contract with TJKM

Recommendation: Authorize the City Manager to waive normal bid procedures, and to execute a contract, in a form to be approved by the City Attorney, with TJKM in an amount not to exceed \$50,000 for on-call traffic engineering related services through December 31, 2023.

7. Agreement with EPACANDO to Expedite Review and Approval of Second Units

Recommendation: Adopt a resolution authorizing the City Manager to enter into a one-year contract with EPACANDO in an amount not to exceed \$30,000 to increase the City's capacity to process ADUs and related development proposals, with up to a one-year extension at the sole discretion of the City Manager, in a form approved by the City Attorney.

8. **Monthly Cash Treasury Report for January 2020**
Recommendation: Accept and File the Monthly Cash Treasury Report for the month of January 2020.
9. **Authorization to Waive Formal Bid Procedure for Purchases and Installation of Emergency Communication Equipment for Unmarked Police Vehicle in an Amount Not to Exceed \$ 4,871.48**
Recommendation: Adopt a Resolution authorizing City Manager to accept the informal bid from Telepath Communications to install emergency safety equipment for one 2019 Chevrolet Impala unmarked vehicles in an amount not to exceed \$4,871.48.

7. **ORAL REPORTS**

1. **Staff Reports**
2. **City Council Reports**

8. **INFORMATIONAL REPORTS - NONE.**

9. **SPECIAL PRESENTATIONS**

1. **San Mateo County Library Presentation**
Recommendation: Receive the presentation.

10. **PUBLIC HEARINGS**

1. **Ordinance Banning Electronic Nicotine Delivery Systems and Flavored Tobacco**
Recommendation: Waive the first reading and introduce an ordinance amending Chapters 5.80 and 8.56 of the East Palo Alto Municipal Code to ban the sale of flavored tobacco, including menthol tobacco products, electronic cigarettes, and prohibit the sale of any tobacco products by pharmacies located in City limits.
2. **Zoning Text Amendment (ZTA19-002) to add a new Section 18.48.230 of the East Palo Alto Municipal Code and amend sections 18.12.020 and 18.14.020 of the East Palo Alto Municipal Code and Ravenswood Specific Plan Table 6-1 to comply with newly adopted Assembly Bill (AB) 2162 pertaining to supportive housing**
Recommendation: Waive the first reading; and

Introduce an Ordinance approving Zoning Text Amendment, ZTA19-002 that:

- a. Amends sections 18.12.020 and 18.14.020 of the East Palo Alto Municipal Code to allow supportive housing to be a permitted or conditionally permitted use in non-residential zones where multi-family residential uses are allowed;
- b. Adds a new Section 18.48.230 regarding supportive housing standards to Chapter 18.48 of the East Palo Alto Municipal Code;
- c. Amends the Ravenswood Specific Plan Table 6-1 Allowed Uses in Land Use Districts to allow supportive housing to be a permitted or conditionally permitted use; and

Finds that the Text Amendment is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Statute and Guidelines.

11. **POLICY AND ACTION - NONE.**

12. **ADJOURNMENT**

This AGENDA is posted in accordance with Government Code Section 54954.2(a)

This Notice of Availability of Public Records: All public records relating to an open session item which are not exempt from disclosure pursuant to the Public Records Act, that are distributed to the majority of the City Council will be available for public inspection at the City Clerk's Office, 2415 University Avenue, East Palo Alto, CA at the same time that the public records are distributed or made available to the City Council. Such documents may also be available on the East Palo Alto website www.ci.east-palo-alto.ca.us subject to staff's ability to post the documents prior to the meeting. Information may be obtained by calling (650) 853-3100.

The City Council meeting packet may be reviewed by the public in the Library or the City Clerk's Office. Any writings or documents pertaining to an open session item provided to a majority of the City Council less than 72 hours prior to the meeting, shall be made available for public inspection at the front counter at the City Clerk's Office, 2ND Floor, City Hall, 2415 University Avenue, East Palo Alto, California 94303 during normal business hours. Information distributed to the Council at the Council meeting becomes part of the public record. A copy of written material, pictures, etc. should be provided for this purpose.

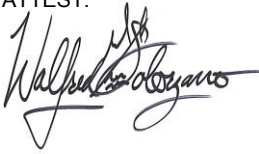
East Palo Alto City Council Chambers is ADA compliant. Requests for disability related modifications or accommodations, aids or services may be made by a person with a disability to the City Clerk's office at (650) 853-3127 no less than 72 hours prior to the meeting as required by Section 202 of the Americans with Disabilities Act of 1990 and the federal rules and regulations adopted in implementation thereof.

DECLARATION OF POSTING

This Notice is posted in accordance with Government Code §54954.2(a) or §54956. Members of the public can view electronic agendas and staff reports by accessing the City website. Under penalty of perjury, this Agenda was posted to the public at least 72 hours prior to the meeting.

POSTED: February 26, 2020

ATTEST:

A handwritten signature in black ink, appearing to read 'Walfred Solorzano', written over a horizontal line.

Walfred Solorzano
City Clerk



EAST PALO ALTO CITY COUNCIL STAFF REPORT

DATE: March 3, 2020

TO: Honorable Mayor and Members of the City Council

VIA: Jaime M. Fontes, City Manager *Jaime M. Fontes*

BY: Annie Lin, Deputy City Attorney

SUBJECT: Ordinance Banning Electronic Nicotine Delivery Systems and Flavored Tobacco

Recommendation

Waive the first reading and introduce an ordinance amending Chapters 5.80 and 8.56 of the East Palo Alto Municipal Code to ban the sale of flavored tobacco, including menthol tobacco products, electronic cigarettes, and prohibit the sale of any tobacco products by pharmacies located in City limits.

Alignment with City Council Strategic Plan

This recommendation is primarily aligned with:

Priority No. 6: Create a Healthy and Safe Community

Background

The City of East Palo Alto currently regulates smoking in public spaces and the sale of tobacco products. However, the City's smoking and tobacco retailer regulations do not specifically address the sale of flavored tobacco products or electronic cigarettes.

The City's Business License Regulations, codified in Chapter 5.80, currently require retailers that sell tobacco products to obtain a tobacco retailer's permit from the City for each location where such sales are conducted. The San Mateo County Department of Health is City's agent for acceptance of the applications for and issuance of such permits, and is authorized to take enforcement action.

The City's Smoking Regulations, codified in Chapter 8.56 of the East Palo Alto Municipal Code, prohibits or regulates smoking in certain places in order to protect the health and welfare of East Palo Alto residents. The Smoking Regulations make it unlawful to smoke in the following category of places within the City: Elevators; Public restrooms; Restaurants; Health care facilities; The location of city-sponsored events; City owned and leased properties; Parks, open space and facilities; Public meeting rooms; Public lobbies and hallways; Theaters

and auditoriums; Museums, libraries and galleries; Hotel and motels; Polling places; and Business establishments.

In order to restrict the sale of flavored tobacco products or electronic cigarettes in the City of East Palo Alto, the City Council will need to adopt an ordinance to amend existing local law.

Flavored Tobacco

In October 2009, Congress adopted “The Family Smoking Prevention and Tobacco Control Act” that bans cigarettes with flavors other than menthol or tobacco. Consequently, the Federal Drug Administration does not regulate menthol in tobacco products and menthol may be found in cigarettes, cigars, smokeless tobacco, and other tobacco products. Furthermore, the FDA also does not ban other flavored tobacco products, including cigars, cigarillos, hookahs, snuffs, chews, and liquid nicotine solution (e-liquids).

Mentholated cigarettes and tobacco products are a significant concern. Menthol is an anesthetic additive added to cigarettes and other tobacco products, which may provide a mint flavor that effectuates a cooling sensation and reduces the harsh taste of cigarette smoke. Studies have shown that the anesthetic effect of mentholated cigarettes allows for a deeper draw of cigarette smoke, masks early warning system of respiratory problems, and smokers of menthol cigarettes have been found with higher levels of cotinine and carbon monoxide in the bloodstream as non-menthol smokers.¹

In 2016, the California Medical Association identified the following key points in its white paper titled “Flavored and Mentholated Tobacco Products”:

- Consumption of flavored tobacco products such as cigars, smokeless tobacco, hookah tobacco, and liquid nicotine solution (used in electronic smoking devices) have increased among youth in recent years, while menthol cigarettes continue to corner a large part of the U.S. cigarette market.
- Flavorings used in tobacco products do not reduce the health impacts and risks associated with tobacco use, and are not safer than non-flavored tobacco products.
- Flavored and mentholated tobacco products are “starter” products that help new users establish daily habits and promote addiction to tobacco products, make it harder to quit, and may result in the concurrent use of multiple tobacco products.
- The tobacco industry has marketed these flavored and mentholated tobacco products to account for user preferences that skew younger, and reinforce sociocultural messages with priority populations.
- Strong evidence supports the finding that youth, certain racial/ethnic groups, and other targeted priority populations (i.e., LGBT and women) are particularly vulnerable to sweet flavors and menthol, and are largely driving this increased uptake and sustained use of flavored tobacco products.

Electronic Cigarettes

¹ [Flavored and Mentholated Tobacco Products: Enticing a New Generation of Users](#), May 2016.

The term “electronic cigarette” or “e-cigarette” is a term commonly used in conjunction with products that use “e-liquids.” These e-liquids are generally held in pods or cartridges, which are designed to send the e-liquid into the atomizer while sending vapor to the mouthpiece, and are the subject of the FDA’s priority enforcement.

The Federal Drug Administration categorizes what is commonly referred to as “e-cigarettes” or “electronic cigarettes” as Electronic Nicotine Delivery Systems (ENDS), which includes: Vaporizers, E-Cigarettes, Vapes, Vape Pens, Hookah Pens, and E-Pipes. These ENDS use an “e-liquid” which may contain nicotine and, in many instances, flavors. These liquids are then heated to create an aerosol that the user inhales.² These e-liquids would also be categorized under flavored tobacco.

In 2015, the California Department of Public Health issued a health advisory identifying e-cigarettes as a public health concern. E-cigarettes contain nicotine, flavoring agents, propylene glycol and toxic chemicals known to cause cancer, birth defects and other reproductive harm.³ E-cigarette aerosol have been found to contain at least ten chemicals that are on California’s Proposition 65 list of chemicals known to cause cancer, birth defects or other reproductive harm, including acetaldehyde, benzene, cadmium, formaldehyde, isoprene, lead, nickel, nicotine, n-nitrosornicotine, and toluene. Health advocates are concerned that e-cigarette use among youths and accidental poisonings among small children have been rapidly rising since 2012.

On November 19, 2019, the American Medical Association (AMA) called for a total ban on all e-cigarette and vaping products that do not meet Food and Drug Administration (FDA) approval as cessation tools (i.e., a tool to quit) in the wake of the recent lung illness outbreak linked to more than 2,000 illnesses and over 40 deaths across the country and a spike in youth e-cigarette use.⁴

On January 20, 2020, the Food and Drug Administration (FDA) expressed in a news release that it will prioritize the enforcement against illegally marketed Electronic Nicotine Delivery System (ENDS) products, specifically any flavored, cartridge-based ENDS products, which are defined as “a type of ENDS product that consists of, includes, or involves a cartridge or pod that holds liquid that is to be aerosolized when the product is used.”⁵

City Council Direction

On November 19, 2019, the East Palo Alto City Council discussed the sale of electronic cigarettes and flavored tobacco in the City. At this meeting, the City Council directed staff to draft a memorandum with information for a proposed ordinance regulating the sale of electronic cigarettes and flavor tobacco.

On January 21, 2020, City staff presented to City Council information about a potential ordinance banning the sale of electronic cigarettes and flavored tobacco, including information about similar ordinances adopted by the County of San Mateo and the City of Menlo Park.

² [Vaporizers, E-Cigarettes, and other Electronic Nicotine Delivery Systems \(ENDS\)](#)

³ [California Department of Public Health, Health Advisory](#), January 2015

⁴ [American Medical Association, Press Release](#), November 2019

⁵ [Federal Drug Administration, Press Release](#), January 2020

The City Council then instructed staff to draft an ordinance prohibiting the sale of flavored tobacco, including menthol flavored cigarettes and e-cigarettes.

Analysis

Currently, the City's smoking and tobacco retailer regulations do not specifically address the sale of flavored or electronic cigarettes. The City's current zoning codes prohibit hookah lounges from operating within City limits, but does not prohibit a shop which sells tobacco products and smoking accessories.

The draft ordinance, attached to this staff report, generally bans the sale of flavored tobacco, including menthol tobacco products, and electronic cigarettes within City limits. Consistent with Council direction, the ordinance includes elements to strengthen the general ban.

The draft ordinance prohibits:

- The sale of flavored tobacco product, including those with the characterizing flavor of menthol;
- The sale of electronic cigarettes;
- The sale of tobacco products to individuals under 21;
- The sale of tobacco products from a vending machine, appliances, self-service displays, or by any means other than vendor assisted sales;
- the sale of any tobacco products by pharmacies;
- Free samples/coupons for tobacco products; and
- Out of package samples of tobacco products.

If adopted, the City of East Palo Alto would join 59 other California cities and counties that have passed restrictions on the sale of flavored tobacco products including the sale of mentholated tobacco products.⁶ As written, the ordinance would become effective 30 days after adoption. The Council can delay the effective date of the ordinance to allow existing Tobacco Retailers to sell existing stock of products proposed to be banned.

If the Council adopts the draft ordinance as outlined in this report, staff will notify affected businesses and display relevant information on the City's website to ensure business owners are aware of the new regulation.

Fiscal Impact

If adopted, the ordinance would implement a prohibition on the sale of flavored tobacco and electronic cigarettes within City limits, and may create a fiscal impact upon tobacco retail establishments in the City.

Public Notice

If introduced, the ordinance will be published as required by law.

Environmental

⁶ [States & Localities That Have Restricted Flavored Tobacco Products](#), Tobacco Free Kids

The adoption of the proposed ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b) (3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that this Ordinance, by itself, may have a significant adverse effect on the environment.

Attachments

1. Ordinance
2. Current Tobacco Ordinance
3. Smoking Regulations

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO

AMENDING CHAPTER 5.80 (TOBACCO RETAILERS) AND CHAPTER 8.56 (SMOKING REGULATIONS) OF THE EAST PALO ALTO MUNICIPAL CODE TO BAN THE SALE OF FLAVORED TOBACCO PRODUCTS AND ELECTRONIC NICOTINE DELIVERY SYSTEMS

WHEREAS, the use of flavored tobacco products, whether through Electronic Nicotine Delivery Systems, or other more means, including cigars, cigarillos, smokeless, snuff, and chew, have been identified as a significant threat to public health; and

WHEREAS, the California Department of Public Health has issued a health advisory identifying e-cigarettes as a public health concern; and

WHEREAS, the California Medical Association issued a study indicating that the consumption of flavored tobacco products and liquid nicotine solution (used in electronic smoking devices) have increased among youth in recent years; menthol cigarettes continue to corner a large part of the U.S. cigarette market; such products are "starter" products that help new users establish daily habits and promote addiction to tobacco products; and that the tobacco industry has marketed these flavored and mentholated tobacco products to account for user preferences that skew younger, and reinforce sociocultural messages with priority populations; and

WHEREAS, the American Medical Association has called for a total ban on all e-cigarette and vaping products that do not meet Food and Drug Administration (FDA) approval as cessation tools in the wake of the recent lung illness outbreak linked to more than 2,000 illnesses and over 40 deaths across the country and a spike in youth e-cigarette use; and

WHEREAS, despite FDA's efforts, the current state and federal laws have failed to successfully regulate the sale of flavored tobacco products, including Electronic Nicotine Delivery Systems and flavored tobacco and liquids; and

WHEREAS, at the January 21, 2020 City Council Meeting, the Council directed staff to prepare a proposed ordinance prohibiting the sale of flavored tobacco, including menthol, and electronic cigarette products within City limits.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO DOES ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT TO CHAPTER 5.80 OF THE EAST PALO ALTO MUNICIPAL CODE

The City Council hereby amends and adds the following sections of Chapter 5.80 of the East Palo Alto Municipal Code to read as follows (with text in ~~strikeout~~ indicating deletion and double underlined text indicating addition). Sections that are not amended by this Ordinance are not included below, and shall remain in full force and effect.

5.80.010 - ~~Permit required.~~ Definitions.

~~It is unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products without~~

Attachment: Ordinance (1119) : E-Cigarette Ordinance

~~first obtaining and maintaining a valid tobacco retailer's permit from the city for each location where such sales are conducted. Permits are valid for one year and shall be renewed annually. The San Mateo County Department of Health, or any successor, is designated as the city's agent for acceptance of the application for and issuance of such permit and for other actions authorized in this chapter, including without limitation, actions to enforce, hold hearings, suspend permits and issue administrative fines.~~

For the purposes of this chapter, the following definitions shall govern unless the context clearly requires otherwise:

- A. "Characterizing flavor" means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a characterizing flavor.
- B. "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.
- C. "Director" shall mean the director of the San Mateo County Environmental Health Division or designee, the City Manager or designee or code enforcement officer.
- D. "Distinguishable" means perceivable by either the sense of smell or taste.
- E. "Electronic cigarette" means any of the following products:
 - (1.) Any device or delivery system that can be used to deliver nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.
 - (2.) Any component, part, or accessory of such a device or delivery system that is used during its operation.
 - (3.) Any flavored or unflavored liquid or substance containing nicotine, whether Sold separately or Sold in combination with any device or delivery system that could be used to deliver nicotine in aerosolized or vaporized form.
 - (4.) Any product for use in an electronic nicotine device or delivery system whether or not it contains nicotine or tobacco or is derived from nicotine or tobacco.
- F. "Flavored tobacco product" means any tobacco product that contains a constituent that imparts a characterizing flavor.
- G. "Person" means any individual, partnership, cooperative association, private corporation, or any other legal entity.
- H. "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.
- I. "Sell", "Sale" or "to Sell" means any transaction where, for any consideration, ownership is transferred from one Person or entity to another including, but not limited to any transfer of title

or possession for consideration, exchange, distribution or barter, in any manner or by any means.

J. "Tobacco Product" means:

1. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff;
2. Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
3. Notwithstanding any provision of subsections (1) and (2) to the contrary, "tobacco product" includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

K. "Tobacco retailer" or "retailer" means any store, stand, booth, concession or other enterprise that engages in the retail sale or exchange of tobacco products or electronic cigarettes.

5.80.015 Requirements and Prohibitions.

- A. Permit required. It is unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products, without first obtaining and maintaining a valid tobacco retailer's permit from the city for each location where such sales are conducted. Permits are valid for one year and shall be renewed annually. The San Mateo County Department of Health, or any successor, is designated as the city's agent for acceptance of the application for and issuance of such permit and for other actions authorized in this chapter, including without limitation, actions to enforce, hold hearings, suspend permits and issue administrative fines.
- B. Lawful business operation. It shall be a violation of this Chapter for any retailer to violate any local, state, or federal law applicable to tobacco products or the retailing of such tobacco products.
- C. Notice of minimum age for purchase of tobacco products. Retailers shall post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under 21 years of age is illegal and subject to penalties. Such notice shall be subject to the approval of the Environmental Health Division.
- D. Prohibition on sale of flavored tobacco products.
 1. The sale or offer for sale, by any person or tobacco retailer of any flavored tobacco product is prohibited and no person or tobacco retailer shall sell, or offer for sale, any flavored tobacco product.
 2. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

- E. Prohibition on sale of electronic cigarettes. No tobacco retailer or other person shall sell any electronic cigarette to a person.
- F. Prohibition on sale of tobacco products at pharmacy. No pharmacy or pharmacy employee or agent shall sell or offer for sale any tobacco product. No new tobacco retailer permit may be issued to a pharmacy under this Chapter. No existing tobacco retailer permit issued under this Chapter 4.98 may be renewed by a pharmacy.
- G. Prohibition on sale of tobacco products to individuals under 21. No retailer shall sell any tobacco product to any individual who is under 21 years of age.
- H. Vending machines prohibited. No tobacco product shall be sold to the public from a vending machine or appliance; or any other coin, token, credit card or debit card operated mechanical device designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.
- I. Distribution of free samples and coupons. No person, firm, association or corporation in the business of selling or otherwise distributing cigarettes or other tobacco, or smoking products for commercial purposes shall in the course of such business distribute, or direct, authorize or permit any agent or employee to distribute, (1) any cigarette, electronic cigarette or other tobacco or smoking product, or (2) coupons, certificates, or other written material which may be redeemed for tobacco products without charge, to any person.
- J. Out of package sales. No person shall sell or offer for sale cigarettes or smokeless tobacco not in the original packaging provided by the manufacturer.
- K. Self-service displays prohibited. No person, firm, association or corporation shall sell, permit to be sold or offer for sale any tobacco product by means of self-service displays, or by any means other than vendor assisted sales.

5.80.060 Enforcement of applicable law.

- A. If an agent or employee of the tobacco retailer violates any provisions of this chapter or any federal or state tobacco related law, the tobacco retailer shall immediately report the violation to the county and the City of East Palo Alto.
- B. Violation of the provisions of this Chapter is deemed to constitute a public nuisance and may be abated as such. The provisions of this Chapter may also be enforced through the mechanisms provided in Title 1 of this Code, and violations may be subject to administrative, civil, or criminal remedies as determined within the discretion of the City Attorney as prosecutor. Further, violation of this Section shall constitute grounds for revocation of a violator's business license under Section 5.80.070.

5.80.080 - Violation—Penalty.

- A. Grounds for Fine. A fine may be imposed upon findings made by the director or designee that any retailer, individual or entity who is an owner of a retail establishment:
 1. Does not have a valid tobacco retailer's permit; and
 2. Offers for sale any tobacco, flavored tobacco, electronic cigarette, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco or products prepared from tobacco.
- B. Amount of Fine. Upon findings made under subsection (A), the retailer, individual or entity who is an owner of a retail establishment shall be subject to an administrative fine as follows:

1. A fine not exceeding one hundred dollars (\$100.00) for a first violation;
2. A fine not exceeding two hundred dollars (\$200.00) for a second violation;
3. A fine not exceeding five hundred dollars (\$500.00) for the third and subsequent violations.

C. Separate Violations. Each day that tobacco products, flavored tobacco, electronic cigarette are offered for sale without a permit shall constitute a separate violation. A finding of "offering for sale" will be made if these tobacco products are actually sold and/or displayed in the retail establishment.

D. Fine Procedures. Notice of the fine shall be served on the retailer, individual, or entity who is the owner of the establishment by certified mail. The notice shall contain an advisement of the right to request a hearing before the director of health services or designee contesting the imposition of the fine. The hearing must be requested within ten days of the date appearing on the notice of the fine by filing a letter with the director. The decision of the director shall be a final administrative order, with no administrative right of appeal.

E. Failure to Pay Fine. If the fine is not paid within thirty (30) days from the date of mailing the notice of the fine or of the notice of determination of the health director or designee after hearing, the fine may be referred for collection. In addition, any outstanding fines must be paid prior to the issuance of any permit by the county or the city.

F. Penalty for Furnishing to Minors. A civil penalty may be imposed upon any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under 21 years of age, any tobacco, cigarette, flavored cigarette, electronic cigarette, cigarette papers, any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, tobacco products, or any controlled substance, pursuant to and in the amounts set for the in California Business & Professions Code section 22958(a), as may be amended from time to time.

SECTION 2. AMENDMENT TO CHAPTER 8.56 OF THE EAST PALO ALTO MUNICIPAL CODE

The City Council hereby amends the following sections of Chapter 8.56 of the East Palo Alto Municipal Code to read as follows (with text in ~~strikeout~~ indicating deletion and double underlined text indicating addition). Sections that are not amended by this Ordinance are not included below, and shall remain in full force and effect.

8.56.020 - Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section, unless the context or the provision clearly requires otherwise:

"Bar" means an area or a room utilized primarily for the sale or serving of alcoholic beverages for immediate consumption by guests on the premises and in which the sale or serving of food is merely incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term "bar" does not include the restaurant dining area.

"Business establishment" means any enterprise, trade, profession, occupation, vocation or means of livelihood, whether or not carried on for gain or profit, either on a continuous or occasional basis. The term includes, but is not limited to, retail establishments, service establishments, offices, financial institutions, warehouses and industrial facilities.

"Dining area" means an enclosed area containing tables or counters upon which meals are served for immediate consumption by guests on the premises.

"Enclosed" means closed in by a roof and by solid walls or windows on at least three sides.

"Open to the public" means an enclosed area, whether publicly or privately owned, which is available for use by or accessible to the general public during the normal course of business or activity conducted thereat.

"Restaurant" means any establishment which gives, sells or offers for sale to the public any food for immediate consumption on the premises. The term includes, but is not limited to, any coffee shop, cafeteria, short-order cafe, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, public or private lunchroom or dining room. A tavern or cocktail lounge which constitutes a "bar," as defined in this section, shall not be considered a restaurant.

"Retail tobacco store" means a retail establishment engaged primarily in the sale of tobacco products and tobacco accessories and the sale of other products is merely incidental.

"Smoke" or "smoking" means inhaling, exhaling, burning or carrying any lighted tobacco product or other combustible plant or substance. "Smoking or to smoke (verb)" means possessing a lighted or ignited tobacco or nicotine product or paraphernalia; or engaging in an act that generates smoke (including, but not limited to, possessing a lighted or ignited pipe, hookah pipe, cigar, or cigarette of any kind including but not limited to an electronic cigarette); or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind including but not limited to an electronic cigarette as defined in Section 5.80.010(E).

"Tobacco or nicotine product" means any substance containing tobacco leaf, including but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco; and any electronic cigarette as defined in Section 5.80.010(E) or other electronic device used to generate smoke; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

"Workplace" means an enclosed area of a structure or portion thereof which is utilized primarily for the operation of a business establishment.

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The adoption of the proposed ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b) (3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that this Ordinance, by itself, may have a significant adverse effect on the environment.

SECTION 4. SEVERABILITY

If any section, subsection, sentence, clause, phrase or word 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 hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect and be in full force thirty (30) days from and after the date of its adoption.

SECTION 6. PUBLICATION

The City Clerk is hereby directed to cause publication of this Ordinance as required by law.

Introduced at a regular City Council meeting held on March 3, 2020, and adopted at a regular City Council meeting held on _____2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Regina Wallace-Jones, Mayor

ATTEST:

APPROVED AS TO FORM:

Walfred Solorzano, City Clerk

Rafael E. Alvarado Jr., City Attorney

Attachment: Ordinance (1119 : E-Cigarette Ordinance)

Chapter 5.80 - TOBACCO RETAILER

Sections:

5.80.010 - Permit required.

It is unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products without first obtaining and maintaining a valid tobacco retailer's permit from the city for each location where such sales are conducted. Permits are valid for one year and shall be renewed annually. The San Mateo County Department of Health, or any successor, is designated as the city's agent for acceptance of the application for and issuance of such permit and for other actions authorized in this chapter, including without limitation, actions to enforce, hold hearings, suspend permits and issue administrative fines.

5.80.020 - Application, issuance and renewal procedure.

- A. Application for a tobacco retailer's permit shall be submitted in the name of the entity or person proposing to conduct retail tobacco sales on the business premises and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the San Mateo County Department of Health, or any successor, (hereafter referred to as health services agency) and contain the following information:
- (1) The name, address and telephone number of the applicant;
 - (2) The business name, address and telephone number of each location where tobacco is retailed; and
 - (3) Such other information as the director of the health services agency or designee determines is necessary to implement the provisions of this chapter.
- B. Applicants for renewal must follow the application procedures set forth in subsection A. A renewal for a tobacco retailer's permit will be denied if the application is for a person or location for which a suspension is in effect and/or if there are any outstanding fines issued by the county or city.

5.80.030 - Display of permit.

Upon receipt of an application for a tobacco retailer's permit, the director or designee shall issue a permit which must be prominently displayed at the location where tobacco retail sales are conducted.

5.80.040 - Application—Fee.

The fee for a tobacco retailer's permit shall reflect the county's costs of processing the permit and regulating compliance with this chapter and shall be as set forth in the San Mateo County Ordinance Code.

5.80.050 - Permit nontransferable.

Tobacco retailer's permits are nontransferable as between entities, retailers, individuals, locations or otherwise.

5.80.060 - Enforcement of applicable law.

If an agent or employee of the tobacco retailer violates any provisions of this chapter or any federal or state tobacco related law, the tobacco retailer shall immediately report the violation to the county.

5.80.070 - Suspension of permit.

- (A) A tobacco retailer's permit may be suspended, as set forth below, by the director of health services or designee upon a finding, after notice and opportunity to be heard, that either of the following occurred:
- (1) After the permit was issued it was determined that the application for the permit is incomplete or inaccurate
 - (2) The permittee or his or her agent has violated any provision of this chapter or any federal or state tobacco-related law.
- (B) Time Period of Suspension of Permit.
- (1) For the first time that the health director or designee makes the findings that either subsection (A)(1) or (A)(2) of this section has occurred, the permit to sell tobacco products shall be suspended for up to thirty (30) days.
 - (2) Upon the second time that the health director or designee makes the findings set forth in subsection (A)(1) or (A)(2) of this section within twenty-four (24) months of the first determination, the permit to sell tobacco products shall be suspended for not less than thirty (30) and up to ninety (90) days.
 - (3) Upon the third and each subsequent time that the health director or designee makes the findings set forth in subsections (A)(1) or (A)(2) of this section within twenty-four (24) months of the first determination, the permit to sell tobacco shall be suspended for no less than ninety (90) days and up to one year.
- (C) **Effective Date of Suspension.**
- (1) If the director or designee makes oral findings and issues an order of suspension at the hearing, the suspension will be effective ten days from the date of the hearing, unless a timely appeal is filed in accordance with subsection (D).
 - (2) If the director or designee makes written findings and issues an order of suspension by certified mail after the hearing, the suspension will be effective fifteen (15) days from the date appearing on the notice of that finding and order of suspension, unless a timely appeal is filed in accordance with subsection (D).
- (D) **Appeal of Suspension.**
- (1) The decision of the director or designee is appealable to the San Mateo County licensing board.
 - (2) An appeal must be in writing, be addressed to the director and be hand-delivered to the San Mateo County department of health.
 - (3) An appeal must be received by the county before the effective date of suspension as set forth in subsections (C)(1) or (C)(2) in order to be considered.
 - (4) The filing of a timely appeal will stay a suspension pending a decision on the appeal by the San Mateo County licensing board.
 - (5) The decision of the San Mateo County licensing board shall be a final administrative order, with no further administrative right of appeal.

5.80.080 - Violation—Penalty.

- (A) Grounds for Fine. A fine may be imposed upon findings made by the director or designee that any retailer, individual or entity who is an owner of a retail establishment:
- (1) Does not have a valid tobacco retailer's permit; and
 - (2) Offers for sale any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco or products prepared from tobacco.
- (B) Amount of Fine. Upon findings made under subsection (A), the retailer, individual or entity who is an owner of a retail establishment shall be subject to an administrative fine as follows:
- (1) A fine not exceeding one hundred dollars (\$100.00) for a first violation;
 - (2) A fine not exceeding two hundred dollars (\$200.00) for a second violation;
 - (3) A fine not exceeding five hundred dollars (\$500.00) for the third and subsequent violations.

Each day that tobacco products are offered for sale without a permit shall constitute a separate violation. A finding of "offering for sale" will be made if these tobacco products are actually sold and/or displayed in the retail establishment.

- (C) Fine Procedures. Notice of the fine shall be served on the retailer, individual, or entity who is the owner of the establishment by certified mail. The notice shall contain an advisement of the right to request a hearing before the director of health services or designee contesting the imposition of the fine. The hearing must be requested within ten days of the date appearing on the notice of the fine by filing a letter with the director. The decision of the director shall be a final administrative order, with no administrative right of appeal.
- (D) Failure to Pay Fine. If the fine is not paid within thirty (30) days from the date of mailing the notice of the fine or of the notice of determination of the health director or designee after hearing, the fine may be referred for collection. In addition, any outstanding fines must be paid prior to the issuance of any permit by the county or the city.

Chapter 8.56 - SMOKING REGULATIONS

Sections:

8.56.010 - Findings and purposes of chapter.

- A. The city council finds and determines that numerous studies have established that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke is a cause of disease in nonsmokers. At special risk are elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function, broncho-constriction and broncho-spasm.
- B. The city council further finds and determines that numerous studies have established electronic smoking devices are designed to be used in the similar manner to conventional lighted tobacco products with the user exhaling a smoke-like aerosol that mimics the exhaled smoke from lighted conventional tobacco products. Because electronic smoking devices may contain (and thus emit) nicotine, tobacco and/or other particulates; their use undermines the city's smoke-free air laws and hazardously exposes the public to secondhand aerosols that have not been scientifically proven as safe. It is an established fact that conventional tobacco smoke is a major contributor to air pollution and that breathing secondhand and third-hand smoke is a cause of disease in nonsmokers. At special risk from these exposures are those with weakened or compromised immune or respiratory systems: children, the elderly, individuals with cardiovascular disease, asthmatics and/or those with obstructive airway disease. Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function, bronchoconstriction and bronchospasm. Research suggests that the same rationale around smoke from traditional tobacco products can be applied to electronic smoking devices, as tests on the aerosols have found some of the same toxic contaminants found in secondhand smoke. While long term health impacts are not yet known, caution has been urged by federal, state, and local health officials. Moreover, city council recognizes that nicotine is highly addictive, possess a desire not to re-normalize smoking behaviors, understands the potential health risks of secondary exposure to electronic smoking device aerosols, and seeks to mitigate some consumer confusion about the safety of these unregulated products; thus deeming it necessary to take action.
- C. The purposes of the ordinance codified in this chapter are to protect the public health and welfare by prohibiting or regulating smoking in certain places; to guarantee the right of nonsmokers to breathe smoke-free air; and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

8.56.020 - Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section, unless the context or the provision clearly requires otherwise:

"Bar" means an area or a room utilized primarily for the sale or serving of alcoholic beverages for immediate consumption by guests on the premises and in which the sale or serving of food is merely incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term "bar" does not include the restaurant dining area.

"Business establishment" means any enterprise, trade, profession, occupation, vocation or means of livelihood, whether or not carried on for gain or profit, either on a continuous or occasional basis. The term includes, but is not limited to, retail establishments, service establishments, offices, financial institutions, warehouses and industrial facilities.

"Dining area" means an enclosed area containing tables or counters upon which meals are served for immediate consumption by guests on the premises.

"Enclosed" means closed in by a roof and by solid walls or windows on at least three sides.

"*Open to the public*" means an enclosed area, whether publicly or privately owned, which is available for use by or accessible to the general public during the normal course of business or activity conducted thereat.

"*Restaurant*" means any establishment which gives, sells or offers for sale to the public any food for immediate consumption on the premises. The term includes, but is not limited to, any coffee shop, cafeteria, short-order cafe, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, public or private lunchroom or dining room. A tavern or cocktail lounge which constitutes a "bar," as defined in this section, shall not be considered a restaurant.

"*Retail tobacco store*" means a retail establishment engaged primarily in the sale of tobacco products and tobacco accessories and the sale of other products is merely incidental.

"*Smoke*" or "*smoking*" means inhaling, exhaling, burning or carrying any lighted tobacco product or other combustible plant or substance. "Smoking or to smoke (verb)" means possessing a lighted or ignited tobacco or nicotine product or paraphernalia; or engaging in an act that generates smoke (including, but not limited to, possessing a lighted or ignited pipe, hookah pipe, cigar, or cigarette of any kind including but not limited to an electronic cigarette); or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind including but not limited to an electronic cigarette.

"*Tobacco or nicotine product*" means any substance containing tobacco leaf, including but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco; and any electronic cigarette or other electronic device used to generate smoke; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

"*Workplace*" means an enclosed area of a structure or portion thereof which is utilized primarily for the operation of a business establishment.

8.56.030 - Application to city facilities.

The provisions of this chapter shall apply to all buildings and other facilities owned, leased, or otherwise occupied by the city.

8.56.040 - Smoking prohibited in certain places.

It is unlawful to smoke in any of the following places within the city:

- A. *Elevators*. Smoking is prohibited in all elevators in buildings open to the public, including elevators in office, hotel and apartment buildings irrespective of the number of units within such buildings.
- B. *Public restrooms*. Smoking is prohibited in any restrooms open to the public.
- C. *Restaurants*.
- D. *Health care facilities*. Smoking is prohibited in all individual rooms and areas open to the public, including lobbies, waiting rooms and hallways, within any public or private hospital, clinic, medical or dental office, nursing or convalescent home or other health care facility; provided; however, such facility may designate separate, outdoor contained areas where smoking is permitted. If the facility contains a cafeteria or other form of restaurant, as defined in Section 8.56.020, such restaurant shall comply with the regulations set forth in subsection C of this section.
- F. *The location of city-sponsored events*.
- G. *City owned and leased properties*; and within thirty (30) feet in any direction from any enclosed structure owned or leased property

- H. *Parks, open space and facilities*, including but not limited to the following: Bell Street Park, Joel Davis Park, Jack Farrell Park, Cooley Landing Park, Martin Luther King Park, Pocket Park at East Bayshore, and Pocket Park at Newbridge.
- I. *Public meeting rooms*. Smoking is prohibited in meeting rooms, hearing rooms, conference rooms, chambers and other enclosed places of public assembly in which the business of the city, or any other public agency subject to the jurisdiction of the city, is conducted by any elected or appointed official, council, commission, committee, or board which requires or permits direct participation or observation by the general public.
- J. *Public lobbies and hallways*. Smoking is prohibited in lobbies, hallways, and other enclosed areas of city owned or occupied buildings which are open to the public.
- K. *Theaters and auditoriums*. Smoking is prohibited within any room, hall, auditorium or other facility used for exhibiting any motion picture, stage drama, dance, musical performance or other similar performance during the time that such room, hall, auditorium or facility is open to the public for such exhibition; provided, however, that smoking is permitted on a stage when such smoking is part of a stage production.
- L. *Museums, libraries and galleries*. Smoking is prohibited in all areas of museums, libraries, and galleries which are open to the public; provided, however, this prohibition does not prevent the designation of a separate room or area for smoking.
- M. *Hotel and motels*.
- N. *Polling places*. Smoking is prohibited in all official polling places while open to the public on election days during the designated hours for the casting of ballots.
- O. *Business establishments*. Smoking is prohibited within all enclosed areas open to the public in business establishments not otherwise mentioned in this section; provided, however, that this prohibition shall not apply to any business establishment listed in Section 8.56.060. Areas open to the public wherein smoking is prohibited under this subsection shall not include private offices of individual business persons to which clients or customers are admitted only by specific invitation or appointment.

8.56.050 - Reserved.

8.56.055 - Enforcement of Labor Code Section 6404.5.

- A. *Authority*. The provisions of Labor Code Section 6404.5, governing smoking in enclosed places of employment, will be enforced by police officers and authorized personnel employed by the city and by employees of the San Mateo County Health System, as designated by the chief of the health system; provided, however, that employees designated by the chief of the health system with the authority to enforce Labor Code Section 6404.5 may only issue citations to employers and not to patrons, customers, consumers or other guests.
- B. In the performance of their duties of monitoring and enforcing compliance with the provisions of Labor Code Section 6404.5, all persons authorized by the director of health services to engage in such enforcement activities shall have the power, authority and immunity of a public officer to issue citations.
- C. The director of health services, in coordination with the San Mateo County Sheriff, shall establish and cause to be administered an enforcement training program designed to instruct each employee so authorized by this section to exercise citation authority. Such training shall include guidance and instruction regarding the evidentiary prerequisites to proper prosecution of violation thereof, including the appropriate procedures for issuing citations.

8.56.060 - Places where smoking permitted.

- A. Smoking is not prohibited within any of the following places:
 1. Retail tobacco stores;
 2. An entire room or hall which is used exclusively for a private function which function is under the control of the sponsor of the function and not under the control of the owner or manager of the room or hall, but only while such room or hall is used for a private function. The fact that the owner or manager of the room or hall provides food or entertainment to the participants of a private function does not mean that such owner or manager has control of the function.
- B. Notwithstanding the foregoing, any owner, operator, manager or other person who controls the use of any public or private establishment or place described in subsection A of this section may voluntarily designate any portion or all of such establishment or place as a nonsmoking area.

8.56.070 - Posting of signs.

- A. "Smoking" or "No Smoking" signs, whichever may be applicable, with letters of not less than two inches in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed by a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every room, building or other place where smoking is regulated by this chapter. In addition, at every public entrance to a restaurant, a sign shall be posted indicating whether smoking has been prohibited or whether the dining area has been divided into smoking and nonsmoking sections.
- B. It shall be the responsibility of the owner, operator, manager or other person who controls the use of any place where smoking is regulated by this chapter to post the signs required by this section.

8.56.080 - Unlawful acts.

- A. It is unlawful for any person to smoke in a place where smoking is prohibited by the provisions of this chapter.
- B. It is unlawful for any person who owns, operates, manages or controls the use of any place where smoking is prohibited or regulated under this chapter to fail to properly set aside required no smoking areas, to properly post any signs required by Section 8.56.070, to provide signs for the use of employees in designating their area, to adopt a smoking restriction policy, or to comply with any other requirements of this chapter.

8.56.090 - Enforcement.

- A. The city manager, the chief of police, and every police and code enforcement officer performing law enforcement duties within the city shall have authority to enforce the provisions of this chapter. Any owner, operator, manager, employee, guest or customer of any establishment regulated by this chapter shall have the right to inform persons violating this chapter of the appropriate provisions contained in this chapter.
- B. In addition to the persons described in subsection A of this section, a private party may bring legal action to enforce the provisions of this chapter. If it is determined in such action that a violation of this chapter has occurred, then in addition to any other relief that may be granted, the court may award reasonable attorney's fees and costs to the party who brought and prosecuted the action.

8.56.100 - Violations.

The violation of any provision contained in this chapter shall constitute an infraction and a public nuisance, subject to a fine of one hundred dollars (\$100.00) for the first offense, a fine of two hundred dollars (\$200.00) for a second offense committed within one year, and a fine of five hundred dollars (\$500.00) for a third and each additional offense committed within one year.