

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLES 4-90 AND 7-35 OF THE CITY CODE TO MODIFY TOBACCO RETAILER LICENSING REGULATIONS AND INCREASE SMOKE-FREE ENVIRONMENTS IN THE CITY OF SARATOGA

THE CITY COUNCIL OF THE CITY OF SARATOGA HEREBY ORDAINS AS FOLLOWS:

Findings

1. Approximately 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the nation's leading cause of preventable death.
2. Secondhand smoke has been identified as a health hazard numerous times and the U.S. Surgeon General's has concluded that there is no risk-free level of exposure to secondhand smoke.
3. Exposure to secondhand smoke has negative impacts and exposure to secondhand smoke can occur at significant levels both indoors and outdoors, depending on direction and amount of wind and number and proximity of smokers.
4. The City Council of the City of Saratoga wishes to increase the number of smoke-free environments in Saratoga and encourage responsible retailing of tobacco products, paraphernalia, and electronic smoking devices.
5. The ordinance furthers efforts to promote responsible retailing of tobacco products and limit the exposure of sensitive populations to those products by adding location requirements for new tobacco retailers.
6. This ordinance creates additional smoke-free environments by establishing regulations for common areas of multifamily housing complexes, new apartment complexes, outdoor events attended by children, entryways, outdoor dining areas, service areas, and outdoor worksites.
7. The City Council of the City of Saratoga held a duly noticed public hearing on July 6, 2016, and after considering all testimony and written materials provided in connection with that hearing introduced this ordinance and waived the reading thereof.

Therefore, the City Council hereby ordains as follows:

Section 1. Adoption.

The Saratoga City Code is hereby amended as set forth in Attachment A. Text to be added is indicated in bold double underlined font (e.g., **underlined**) and text to be deleted is indicated in strikeout font (e.g., ~~strikeout~~). Text in standard font is readopted by this Ordinance.

Section 2. Severance Clause.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of the portion held invalid, and

further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated.

Section 3. California Environmental Quality Act

The proposed amendments and additions to the City Code are Categorical Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline section 15061(b)(3). CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance the amendments to the existing City Code and related sections and additions of provisions and reference appendices to the existing Code; the amendments and additions would have a de minimis impact on the environment.

Section 4. Publication.

A summary of this ordinance shall be published in a newspaper of general circulation of the City of Saratoga within fifteen days after its adoption.

Following a duly notice public hearing the foregoing ordinance was introduced at the regular meeting of the City Council of the City of Saratoga held on the 6th day of July 2016 and was adopted by the following vote on August 17, 2016.

COUNCIL MEMBERS:

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:

E. Manny Cappello
MAYOR, CITY OF SARATOGA, CALIFORNIA

ATTEST:

Crystal Bothelio, CITY CLERK

DATE: _____

APPROVED AS TO FORM:

Richard Taylor, CITY ATTORNEY

DATE: _____

ATTACHMENT A

Article 4-90 - TOBACCO RETAILER LICENSE

4-90.010 - Purpose.

This Article is intended to set forth a local licensing process for tobacco retailers to ensure compliance with City business standards and practices; encourage responsible retailing of tobacco products and electronic smoking devices; discourage violations of laws related to tobacco products and electronic smoking devices, especially those laws that prohibit or discourage sale or distribution of tobacco products or electronic smoking devices to minors; and, protect the public health, safety, and welfare. This Article does not expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or alter the penalties provided by such laws.

4-90.020 - Definitions.

- (a) Electronic smoking device means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of vapors including nicotine or other substances. "Electronic smoking device" includes any such device, whether it is manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, electronic vape, vaporizer or any other product name or description. "Electronic smoking device" does not include any product specifically approved by the United States Food and Drug Administration for the use in the mitigation, treatment, or prevention of disease.
- (b) Paraphernalia means cigarette papers or wrappers, pipes, holders of smoking materials of all types, rolling machines, and any other item designed for smoking or for ingestion of tobacco products.
- (c) Person means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (d) Retailer means any person who sells, exchanges, or offers to sell or exchange, for any form of consideration, tobacco products, paraphernalia, or electronic smoking devices. "Retailing" shall mean the doing of any of these things whether exclusively or in conjunction with any other use. The definition of a retailer is without regard to the quantity of tobacco products, paraphernalia, or electronic smoking devices sold, exchanged, or offered for sale or exchange.
- (e) Self-service display means the open display or storage of tobacco products, paraphernalia, or electronic smoking devices in a manner that is physically accessible in any way to the direct general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer.
- ~~(f) Smoking means engaging in an act that generates smoke from any substance, including, but not limited to: possessing a lighted pipe, lighted hookah pipe, an operating electronic smoking device, a lighted cigar, or a lighted cigarette or any kind; or lighting or igniting of a pipe, cigar, hookah pipe, or cigarette or any kind.~~
- ~~(g)~~ Tobacco product means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco (such as flavored tobacco); and any product or formulation of product 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.

(hg) Tobacco retailer license is a license issued pursuant to this Article.

4-90.030 - License required.

It shall be unlawful for any person to act as a retailer in the City of Saratoga ~~after September 30, 2015,~~ without first obtaining and maintaining a valid tobacco retailer license pursuant to this Article for each location at which the activity is to occur.

4-90.040 - Regulations and prohibitions.

- (a) Lawful business operation. It shall be a violation of this Article for any retailer to violate any local, state, or federal law applicable to tobacco products, electronic smoking devices, or the retailing of such products.
- (b) Location. Retailing activities shall be conducted at a fixed location and within an enclosed area of a commercial premises accessible to the general public during the hours of business operation. **No tobacco retailers established after September 16, 2016 shall be granted a Tobacco Retailer License for a location which is: within five hundred feet of a site occupied by another tobacco retailer; within one thousand feet of a site occupied by a public or private elementary, middle, or high school; or within one thousand feet of a site occupied by a City Park. All distances shall be measured in a straight line from the point on the parcel boundary of the proposed tobacco retailer location nearest to the subject use (i.e. existing tobacco retailer, school, or park) to the nearest point on the parcel boundary of the subject use. Notwithstanding the foregoing, a tobacco retailer license may be issued for use of a location for which a tobacco retailer license was in effect prior to September 16, 2016 and within ninety (90) days of the date of the application for the new tobacco retailer license.**
- (c) Display of license. Each tobacco retailer license shall be prominently displayed in a publicly visible place at the licensed location.
- (d) License nontransferable. A tobacco retailer license may not be transferred from one person to another or from one location to another. Whenever a new person obtains possession of a ten percent or greater interest in the stock, assets, or income of a business (other than a security interest for the repayment of debt) for which a tobacco retailer license has been issued, a new license shall be required.
- (e) False and misleading advertising prohibited. A retailer either without a valid tobacco retailer license or with a suspended license shall not display any tobacco products, paraphernalia, or electronic smoking devices nor display any advertisement that promotes the sale or distribution of such products from the retailer's location or that could lead a reasonable consumer to believe that tobacco products, paraphernalia, or electronic smoking devices can be obtained at that location.
- (f) Minimum age for purchase. No retailer shall sell, give, or otherwise transfer tobacco product, paraphernalia, or electronic smoking devices to a person under ~~eighteen years of age~~ **the minimum age for purchase as set by State law**.
- (g) Positive identification required. No retailer shall sell, give, or otherwise transfer tobacco product, paraphernalia, or electronic smoking devices to another person who appears to be under thirty years of age without first examining the customer's identification to confirm that

the customer is at least ~~eighteen years of age~~ **the minimum age for purchase as set by State law**.

- (h) Minimum age for engaging in tobacco sales. No retailer may ~~employ or otherwise~~ allow a person under ~~eighteen years of age~~ **the minimum age for purchase as set by State law** of tobacco products to sell, give, or otherwise transfer to customers tobacco product, paraphernalia, or electronic smoking devices.
- (i) Limitation on storefront advertising. Storefront advertising shall comply with Article 15-30 of this Code and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the establishment. However, this shall not apply to an establishment where there are no windows or where existing windows are located at a height that preclude view of the interior of the premises by a person standing outside the premises.
- (j) Vending machines prohibited. No tobacco product, paraphernalia, or electronic smoking device shall be sold, offered for sale, or distributed to the public from a vending machine or appliance, or any other coin- or token-operated mechanical device designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.
- (k) Self-service displays prohibited. No tobacco product, paraphernalia, or electronic smoking device shall be sold, offered for sale, or distributed to the public from a self-service display.
- (l) Limited, conditional privilege. Nothing in this Article shall be construed to grant any person obtaining and maintaining a tobacco retailer license any status or right other than the limited, conditional privilege to act as a retailer at the location in the City identified on the face of the license.

4-90.045 - Application procedure.

- (a) All applications for a tobacco retailer license shall be submitted on a form supplied by the City of Saratoga.
- (b) Any person holding a tobacco retailer license shall inform the City in writing of any change in the information submitted on an application for such license within fourteen calendar days of a change.
- (c) All information specified in an application shall be subject to disclosure under the California Public Records Act or any other applicable law.
- (d) It is the responsibility of each retailer to be informed of all laws applicable to retailing, including those laws affecting the issuance of a tobacco retailer license. No retailer may rely on the issuance of a tobacco retailer license as a determination by the City that the retailer has complied with all laws applicable to retailing. A tobacco retailer license issued contrary to this Article, to any other law, or on the basis of false or misleading information supplied by a retailer shall be revoked.

4-90.050 - Issuance of license.

- (a) Upon receipt of a complete application for a tobacco retailer license and the application and license fees, the City shall issue a license, unless substantial evidence demonstrates that one or more of the following ~~basis~~ **bases** for denial exist:
 - (1) The information presented in the application is inaccurate or false.

- (2) The application seeks authorization for retailing by a person to whom this Article prohibits issuance of a tobacco retailer license.
 - (3) The application seeks authorization for retailing **at a location or in some other manner** that is prohibited pursuant to this Article or that is unlawful pursuant to any other law.
- (b) A tobacco retailer license shall be revoked if the City finds that one or more of the bases for denial of a license under this section existed at the time the application was made or at any time before the license was issued. Such a revocation shall be without prejudice to the filing of a new license application.
 - (c) A decision to deny issuance of a tobacco retailer license or to revoke such a license that has been wrongly issued may be appealed pursuant to Section 4-90.100 of this Article.

4-90.060 - License term, renewal, expiration, and fees.

- (a) Term of license. The term of a tobacco retailer license is one year. A license is invalid thirty days after the expiration date of the license.
- (b) Renewal of license. The City shall renew a valid tobacco retailer license upon timely payment of the annual license fee. A license may not be renewed more than ~~three months~~ **ninety days** after its expiration.
- (c) Issuance of license after revocation or expiration of license. To apply for a new tobacco retailer license more than ~~three months~~ **ninety days** after expiration of a tobacco retailer license or following revocation of a tobacco retailer license that was wrongly issued, a retailer must submit a complete application for a license, along with the application fee and annual license fee.
- (d) Fee for new licenses and renewals. The fees to apply for and issue or renew a tobacco retailer license shall be established from time to time by resolution of the City Council. The fees shall be calculated so as to recover any amount up to the cost of administration of this Article, including, for example, issuing a license, administering the program, and monitoring compliance. Fees shall not exceed the cost of the program authorized by this Article. Fees are nonrefundable except as may be required by law. A retailer license may not be issued or renewed until full payment of any applicable fees is made.

4-90.070 - Enforcement.

- (a) Any peace officer may enforce the penal provisions of this Article. The City Manager may designate any number of additional persons to monitor compliance with this Article.
- (b) The City shall not enforce any law establishing a minimum age for tobacco product, paraphernalia, or electronic smoking device purchases ~~or possession~~ against a person who otherwise might be in violation of such law because of the person's age if the violation occurs when:
 - (1) The purchaser (hereinafter referred to as "youth decoy") is participating in a compliance check supervised by a peace officer or designated official of the City;
 - (2) The youth decoy is acting as an agent of a person designated by the City to monitor compliance with this Article; or
 - (3) The youth decoy is participating in a compliance check funded in part, either directly or independently through subcontracting, by the County or the State of California.
- (c) Any violation of this Article is hereby declared to be a public nuisance.
- (d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Article shall also constitute a violation of this Article.

- (e) For purpose of this Article, each day on which a tobacco product, paraphernalia, or electronic smoking device is offered for sale in violation of this Article constitutes a separate violation.
- (f) Violations of this Article shall be subject to issuance of administrative citations pursuant to Article 3-30 and suspended from holding or receiving a tobacco retailer license as follows:
 - (1) First citation within one year. For up to thirty calendar days from the date of violation, no tobacco retailer license shall be issued and any existing license shall be suspended.
 - (2) Second or subsequent citations within one year. For up to one year from the date of violation, no tobacco retailer license shall be issued and any existing license shall be revoked.
- (g) Notwithstanding any other provisions of this Article, prior violations of this Article at a location shall continue to be counted against a location and license ineligibility and suspension periods shall continue to apply to a location unless:
 - (1) One hundred percent of the interest in the stock, assets, or income of the business, other than security interest for the repayment of debt, has been transferred to one or more new owners; and
 - (2) The City is provided clear and convincing evidence that the transfer was pursuant to an arm's length transaction in good faith between two or more informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is to avoid the effect of the violations of this Article is not an arm's length transaction.

4-90.100 - Appeals.

- (a) Request for hearing. A decision to deny issuance of a tobacco retailer license or to revoke a tobacco retailer license that has been wrongly issued may be appealed to the City Manager, subject to the following requirements and procedures.
 - (1) All appeals must be submitted in writing to the City Clerk no later than fifteen calendar days after receipt of notice of the appealed action. If such an appeal is made, it shall stay enforcement of the appealed action.
 - (2) No later than fifteen calendar days after receipt of the appeal, the City Manager shall set an appeal hearing at the earliest practicable time. The City Clerk shall give notice of the hearing to the parties at least ten calendar days before the date of the hearing.
- (b) Conduct of hearing. Hearings pursuant to this Article shall be conducted pursuant to procedures adopted by the City Manager. Strict rules of evidence shall not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs.
- (c) City Manager's decision. All parties shall be given written notice of the City Manager's decision within fifteen business days of the hearing. The decision of the City Manager shall be supported by the weight of the evidence. The decision of the City Manager shall be final and shall not be subject to appeal to the City Council.
- (d) Appellant's failure to appear at hearing. Failure of the appellant to appear at a hearing shall be considered a withdrawal of the request for a hearing and the decision being appealed shall remain in effect.

Article 7-35 - REGULATION OF SMOKING IN CERTAIN PLACES

7-35.010 - Findings and purposes of Article.

- (a) The City Council finds and determines that there is an overwhelming body of evidence indicating the adverse effects of tobacco smoke on the health and physical comfort of people. The purposes of this Article are to protect the public health and welfare by prohibiting or regulating smoking in certain places and to strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers to breathe smoke-free air, and to recognize that where these needs conflict, the need to breathe smoke-free air shall have priority.
- (b) The City recognizes that smoking is regulated by the State. Nothing herein is intended to conflict with State law. Where there is a conflict between this Code and State law, the more restrictive of the two shall apply.**

7-35.020 - Definitions.

For the purposes of this Article, 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:

- ~~(a) 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" shall not include the restaurant dining area.~~
- ~~(ab) Dining area means an enclosed-area containing tables or counters upon which meals are served for immediate consumption by guests on the premises.~~ **open to the public and designed, established, or regularly used for consuming food or drink regardless if located on public or private property.**
- ~~(c) Enclosed means closed in by a roof and by walls on at least three sides.~~
- (b) Multifamily Development means two or more units with one or more shared or abutting walls, floors, ceilings, or shared ventilation systems, including but not limited to condominiums, duplexes, triplexes, or larger structures whether owner occupied or rental.**
- (c) Multifamily Residence Common Area means every area of a multifamily developments that residents of that development are entitled to enter or use, including, but not limited to, halls and paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities and swimming pool areas, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.**
- (d) Multifamily Apartment Complex means a multifamily development with four or more units on the same parcel and owned and let by or on behalf of the same owner, not including a hotel.**
- ~~(d) Open to the public means an enclosed-area which is available for use by or accessible to the general public during normal course of business conducted by either public or private entities.~~
- ~~(e) 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, bar, 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 subsection (a) of this Section, shall not be considered a restaurant.~~

- (f) 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.
- (g) Service area means any area open to the public, whether publicly or privately owned area, designed or regularly used by one or more person(s) to receive or wait to receive goods, services, enter a public place, or make a transaction, whether or not such service includes exchange of money. Service areas include, but are not limited to information kiosks, bus stops, lines of automated teller machines, public telephones, and ticket purchase kiosks.**
- ~~(g) Smoke or smoking means inhaling, exhaling, burning or carrying any lighted tobacco product or other combustible weed, plant or substance.~~
- (h) Smoke means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing of materials contains no tobacco or nicotine and the purpose of the inhalation is solely olfactory, such as, for example, smoke from incense. The term "smoke" includes, but is not limited to, tobacco smoke, electronic cigarette vapors, and marijuana smoke.**
- (i) Smoking means engaging in an act that generates smoke, such as for example: possessing a lighted pipe, lighted hookah pipe, an operating electronic cigarette, a lighted cigar, or a lighted cigarette of any kind; or lighting or igniting of a pipe, cigar, hookah pipe, or cigarette of any kind.**
- ~~(h) Workplace means an enclosed area of a structure or portion thereof which is utilized primarily for the conduct of a business or other enterprise **including, but not limited to outdoor workplaces such as construction sites.**~~

7-35.030 - Smoking prohibited.

It shall be unlawful to smoke in any of the following places within the City:

- (a) Restaurants. Smoking is prohibited in all ~~interior~~ restaurant spaces **and dining areas.** ~~Smoking in outdoor seating areas is not prohibited by this Section.~~
- (b) 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.
- (c) Health care facilities. Smoking is prohibited in all areas open to the public, including lobbies, waiting rooms and hallways, within any public or private hospital, clinic, medical office, nursing or convalescent home or other health care facility. If the facility contains a cafeteria or other form of restaurant, as defined in Section 7-35.020(e), such restaurant shall comply with the regulations set forth in subsection (a) of this Section. Smoking is further prohibited in any room occupied by two or more patients of a health care facility described herein, unless all patients within the room are smokers and request in writing upon the health care facility's admission forms to be placed in a room where smoking is permitted.
- (d) 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 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.

- (e) Public lobbies and hallways. Smoking is prohibited in lobbies, hallways and other ~~enclosed~~ areas of City owned or controlled buildings which are open to the public.
- (f) Theaters and auditoriums. Smoking is prohibited within all parts of any building which is used ~~primarily~~ for exhibiting any motion picture, stage drama, performance or other similar performance, which parts are open to the public, ~~and within any room, hall or auditorium that is occasionally used for exhibiting any motion picture, stage drama, dance, musical performance, or other similar performance during the time that said room, hall or auditorium 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.
- (g) Museums, libraries and galleries. Smoking is prohibited in all areas of museums, libraries, and galleries which are open to the public.
- (h) Hotel and motel lobbies **common areas**. Smoking is prohibited in all areas except **Except as permitted in Section 7-35.050 smoking is prohibited in all areas of a hotel or motel that guests are entitled to enter or use, including, but not limited to, halls and paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities and swimming pool areas, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.**
- (i) Public restrooms. Smoking is prohibited in ~~public~~ restrooms **open to the public**.
- (j) Business establishments. Smoking is prohibited within all ~~enclosed~~ **workplaces and other** areas open to the public in business establishments providing goods or services to the general public and not otherwise mentioned in this Section, including, but not limited to, retail service establishments as ~~defined in Section 15-06.560 of this Code~~, personal service establishments as ~~defined in Section 15-06.500 of this Code~~, financial institutions as ~~defined in Section 15-06.270 of this Code~~, and offices **all** as defined in **Section Article 15-06.480 of this Code**; ~~provided, however, that smoking shall be permitted in enclosed walkways, corridors, malls and other areas between individual business establishments unless otherwise posted as "no smoking" by the operators of such areas; and provided further, that this prohibition shall not apply to any business establishment listed in Section 7-35.050 of this Article. Areas "open to the public" wherein smoking is prohibited under this subsection shall not include private offices of individual businesspersons to which clients or customers are admitted only by specific invitation or appointment.~~
- (k) Designated nonsmoking areas. Notwithstanding any other provision of this Section, any owner, operator, manager or other person who controls the use of any establishment described in this Section may declare that entire establishment as a nonsmoking area. In addition, any owner, operator, manager or other person who controls the use of any public or private establishment which is not described in this Section may declare any portion or all of such establishment as a nonsmoking area and upon the posting of appropriate signs, smoking shall be prohibited in such areas.
- (l) Public events. All special event permits shall prohibit smoking at events requiring such permits unless the organizer certifies that the event is for adults only and will not be promoted to attract children under the age of 18 years.**
- (m) Service areas. Smoking is prohibited in all service areas.**

- (n) Entrances. Smoking is prohibited within 20 feet horizontally or vertically of any entrances, exits, operable windows, or air intake openings into an enclosed area in which smoking is prohibited, except while the person is actively passing on the way to another destination.
- (o) Multifamily Housing Common Areas. Smoking is prohibited in Multifamily Residence Common Areas.
- (p) Multifamily Apartment Complexes. Smoking is prohibited in Multifamily Apartment Complexes constructed or converted to rental use after September 16, 2016 and all leases shall include a clause prohibiting smoking in all areas of the complex, including inside individual units and on private balconies or patios.
- (q) City-Owned Vehicles. Smoking is prohibited in City-owned vehicles.
- (r) Smoking Prohibited Where Prohibited by State Law. Wherever smoking is prohibited by State law, smoking shall be prohibited in Saratoga.

7-35.040 – Employee Notification Requirements Regulation of smoking in the workplace.

- (a) ~~Within ninety days of July 15, 1994, each Any employer having a workplace an enclosed place of employment located within the City of Saratoga **shall inform employees of work place smoking restrictions pursuant to the City Code.** shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:
Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, locker rooms, dressing areas, and all other enclosed facilities.~~
- (b) ~~All employers shall supply a written copy of the smoking policy to all employees.~~
- (e) ~~Places of employment exempt from the prohibition of smoking in Section 7-35.050 shall also be exempt from this Section.~~

7-35.050 - Smoking permitted.

- (a) Smoking is not prohibited within any of the following places:
 - ~~(1) Bars which are physically separated from other uses and which have a separate heating, ventilation and air conditioning system regardless of whether they also serve as a place of employment.~~
 - ~~(2) Retail tobacco stores regardless of whether they also serve as a place of employment.~~
 - ~~(3) An entire room or hall which is owned and operated as a private club regardless of whether it also serves as a place of employment.~~
 - (4) **Twenty percent of guestroom accommodations in a h**Hotel andor motel rooms rented to guests.
 - ~~(5) Any areas not generally open to the public, except as otherwise provided in Section 7-35.040 which includes, for example, a private office that serves as a place of employment for individuals other than the owner.~~
 - (6) Private residences except **(1) multifamily apartment complexes constructed or converted to rental use after September 16, 2016, and (2)** where State law prohibits smoking as, for example, during the provision of child care.
 - ~~(7) Any portion of a place of employment that is not enclosed.~~

(85) Vehicles except for city-owned vehicles, state-owned passenger vehicles, vehicles in which a minor is present, vehicles in which a non-smoking employee is present, vehicles regularly used to transport a child in residential foster care, youth buses as defined in California Vehicle Code Section 12523, and buses, taxicabs, and rideshare vehicles in which a passenger is present.

~~(9) An enclosed 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.~~

(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 Paragraph (a) of this Section may voluntarily designate any portion or all of such establishment or place as a non-smoking area.

(c) Notwithstanding the foregoing, smoking is not allowed in any location where it is prohibited by State law.

7-35.060 - Tobacco samples and vending machines prohibited.

(a) No cigarette or other tobacco product may be sold, offered for sale, or distributed by or from a vending machine or other appliance, or any other device designed or used for vending purposes.

(b) No person shall knowingly distribute or furnish without charge, or cause to be furnished without charge to the general public, cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products, at any event open to the public, or in any public place including but not limited to, any right-of-way, mall or shopping center, park, playground, and any other property owned by the City, any school district, or any park district.,~~except in retail tobacco stores.~~

7-35.070 - Posting of signs.

(a) ~~"Smoking" or~~ **Where smoking is prohibited throughout a building or structure, "No Smoking" signs shall be clearly posted at each entrance to the building or structure,** 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 Article.

(b) **Where smoking is permitted in designated areas of a building or structure, signs stating that "Smoking is prohibited except in designated areas" shall be clearly posted at each entrance of the building or structure, and signs stating "Smoking permitted" shall be clearly posted in all designated smoking areas of the building or structure.**

(c) Any ashtray located in a nonsmoking area must have a sign conspicuously posted ~~within one foot of~~ **in close proximity to** the ashtray ~~with letters of not less than two inches in height~~ stating "Smoking Prohibited—Extinguish Here," or language with equivalent meaning.

(ed) 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 Article to post the signs required by this Section.

7-35.080 - Unlawful acts.

- (a) It shall be unlawful for any person to smoke in a place where smoking is prohibited pursuant to this Article.
- (b) It shall be unlawful for any person who owns, operates, manages or controls the use of any place where smoking is prohibited or regulated under this Article to fail to properly set aside required "no smoking" areas, to properly post any signs required by Section 7-35.070, to adopt a smoking restriction policy, or to comply with any other requirement of this Article.

7-35.090 - Enforcement.

The City Manager, or ~~his~~ designee, is authorized to enforce the provisions of this Article. Any owner, operator, manager, employee, guest or customer of any establishment regulated by this Article shall have the right to inform persons violating this Article of the appropriate provisions contained herein.

7-35.100 - Violations.

The violation of any provision contained in this Article shall constitute an infraction and a public nuisance, subject to enforcement and the penalties, civil fines, and other remedies as set forth in Chapter 3 of this Code.

7-35.110 – Smoking and Tobacco Regulations. The list below provides a reference to Sections of the City of Saratoga Municipal Code that regulate smoking or tobacco products.

- (a) 4-90 Tobacco Retailer License. Requires tobacco retailers to obtain a tobacco retailer license to ensure compliance with City business standards, encourage responsible retailing of tobacco products, discourage violations of laws related to tobacco products, and protect public health, safety, and welfare.**
- (b) 11-15 Tobacco-Free Recreation Areas. Establishes restrictions on smoking and use of tobacco products in City recreational areas.**
- (c) 15-80.130 Requiring tobacco retailers to obtain conditional use permits and setting standards for the issuance of such permits.**