

ORDINANCE NO. 813

AN ORDINANCE OF THE CITY OF ROHNERT PARK AMENDING THE MUNICIPAL CODE CHAPTER 8.32 (USE OF TOBACCO IN PUBLIC PLACES); SECTION 17.06.060 (ZONING ORDINANCE – PERMITTED USES) AND ADDING CHAPTER 8.33 (PROHIBITION OF HEAD SHOPS, HOOKAH BARS, TOBACCO VENDING MACHINES AND SELF SERVICE DISPLAYS); FILE NO.: 2008-026MC

WHEREAS, scientific studies have concluded that cigarette smoking causes chronic lung disease, coronary heart disease, stroke, cancer of the lungs, larynx, esophagus, mouth, and bladder, and contributes to cancer of the cervix, pancreas, and kidneys;¹ and

WHEREAS, more than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death;² and

WHEREAS, the World Health Organization (WHO) estimates that by 2030, tobacco will account for 10 million deaths per year, making it the greatest cause of death worldwide;³ and

WHEREAS, the U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke and neither separating smokers from nonsmokers nor installing ventilation systems effectively eliminates secondhand smoke;⁴ and

WHEREAS, the United States Environmental Protection Agency (EPA) has found secondhand smoke to be a risk to public health, and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen;⁵ and

WHEREAS, the California Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant;⁶ and

WHEREAS, the California Office of Environmental Health Hazard Assessment has included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm;⁷ and

WHEREAS, exposure to secondhand smoke is the sixth leading cause of preventable death in this country, killing over 53,000 non-smokers each year,⁸ and smoking is the number one cause of lung cancer

¹ U.S. Dep't of Health and Human Services, Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002*.

² U.S. Dep't of Health and Human Services, Centers for Disease Control and Prevention, *Highlights Annual Smoking – Attributable Mortality, Years of Potential Life Lost, and Economic Costs – United States 1995-1999 (2002) MORBIDITY AND MORTALITY WEEKLY REPORT*.

³ U.S. Dep't of Health and Human Services, Centers for Disease Control and Prevention, *Reducing Tobacco Use: A Report of the Surgeon General*, 437 (2001).

⁴ U.S. Dep't of Health and Human Services, Centers for Disease Control and Prevention, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* 11 (2006).

⁵ U.S. Dep't of Health and Human Services, Centers for Disease Control and Prevention, *Clean Indoor Air Regulations Fact Sheet* (2001).

⁶ Cal. Air Resources Bd., Resolution 06-01, at 5 (Jan. 26, 2006).

⁷ Cal. Envtl. Prot. Agency, Office of Envtl. Health Hazard Assessment, *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity* 17, (Aug. 11, 2006).

⁸ S.A. Glantz & W. Parmley, *Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry*, 83(1) *Circulation* 1 (1991) and *California Environmental Protection Agency, Office of Envtl. Health Hazard Management, Health Effects of Exposure to Environmental Tobacco Smoke: Final Report* (1997).

deaths;⁹ and

WHEREAS, secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight, and increased risk of Sudden Infant Death Syndrome (SIDS) in infants of mothers who smoke;¹⁰ and

WHEREAS, secondhand smoke exposure causes as many as 300,000 children in the United States to suffer from lower respiratory tract infections, such as pneumonia and bronchitis,¹¹ exacerbates childhood asthma, and increases the risk of acute chronic middle ear infection in children;¹² and

WHEREAS, the total cost of smoking in California was estimated to be \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone;¹³ and

WHEREAS, the medical and economic costs to nonsmokers suffering from lung cancer or heart disease caused by secondhand and third hand smoke are nearly \$6 billion per year in the United States;¹⁴

WHEREAS, almost 90% of adult smokers started smoking at or before age 18;¹⁵ and

WHEREAS, with certain exceptions, state law prohibits smoking inside an enclosed place of employment;¹⁶ and

WHEREAS, in 2004 13.2% of California high school students smoke¹⁷; however, in 2006 the rate increased to 15.4%; and

WHEREAS, state law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees;¹⁸ and

WHEREAS, state law prohibits smoking in playgrounds and tot lots and also prohibits smoking within twenty feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions.¹⁹

WHEREAS, on March 12, 2009, the Planning Commission conducted a public hearing, reviewed the reports and testimony and recommended to the City Council adoption of the Ordinance.

⁹ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002*, 2 (2002).

¹⁰ Cal. Envtl. Prot. Agency, Office of Envtl Health Hazard Assessment, *Health Effects of Exposure to Environmental Tobacco Smoke, Final Report ES-5* (1997).

¹¹ U.S. Dep't of Health and Human Services., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002*, 2 (2002).

¹² U.S. Dep't of Health and Human Services. Centers for Disease Control and Prevention, *Clean Indoor Air Regulations Fact Sheet* (2001).

¹³ Max W, Rice DP, Zhang X, Sung H-Y, Miller L., *The Cost of Smoking in California, 1999*; California Department of Health Services (2002).

¹⁴ American Academy of Actuaries, *Costs Associated with Secondhand Smoke*, October, 2006.

¹⁵ National Household Surveys on Drug Abuse, unpublished data, 1998. See also, U.S. Dep't of Health & Human Services. et al., *Preventing Tobacco Use Among Young People: A Report of the Surgeon General*, 101 (1994).

¹⁶ Cal. Lab. Code § 6404.5.

¹⁷ Tobacco Control Section, Cal. Dep't of Health Services, *Youth Smoking* (July 2008).

¹⁸ Cal. Educ. Code § 48901(a).

¹⁹ Cal. Health & Safety Code § 104495 and Cal. Gov't Code § 7597.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ROHNERT PARK, CALIFORNIA, does hereby ordain as follows:

SECTION 1. Recitation. That the above recitations are true and correct.

SECTION 2. Findings. The City Council makes the following findings per Rohnert Park Municipal Code, Section 17.25.073, to wit:

- A. That the proposed amendments are consistent with the General Plan land use goal LU-H which encourages land use patterns that maximize residents' accessibility to parks, open space, and neighborhood shopping centers; and
- B. That the proposed amendments are beneficial, and not detrimental to, the public health, safety and welfare in that a decrease in second and third hand smoke will assure that fewer individuals are subjected to dangerous chemicals and toxic air.

SECTION 3. The City Council of the City of Rohnert Park does repeal Ordinance No.: 808 entitled, *"An Urgency Ordinance of the City of Rohnert Park Adopting a Moratorium on Private Smokers' Lounges and Tobacco Shops"* as adopted by the City Council on October 28th, 2008; and extended by Ordinance No. 809 entitled, *"An Ordinance of the City of Rohnert Park Adopting a 10 month 15 day Extension of Time on the Previously Adopted Moratorium on Private Smokers' Lounges and Tobacco Shops,"* that was set to expire on October 27, 2009.

SECTION 4. The City Council of the City of Rohnert Park does ordain the following amendments and additions to the Municipal Code and particularly Chapters 8.32 and 8.33 and Section 17.06.060 as follows:

- A. **Rohnert Park Municipal Code Chapter 8.32 (*Use of Tobacco*) shall be amended to read as follows:**

**Chapter 8.32
Use of Tobacco**

8.32.010 Purpose.

The purpose of this Chapter is to provide for the health, safety, and welfare of individuals residing, working or visiting in the City of Rohnert Park by regulating the location and use of tobacco and tobacco products and their effects on individuals.

8.32.020 Findings.

- A. Numerous studies have determined that tobacco smoke is a major contributor to indoor air pollution.
- B. The Surgeon General of the United States has documented that breathing secondhand smoke is a significant health hazard, particularly to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function.
- C. Breathing secondhand smoke has been determined to be a health hazard by increasing the incidence of lung cancer, bronchitis, and respiratory infection while decreasing exercise tolerance and respiratory function.

- D. Non-smokers who suffer from allergies, respiratory diseases, or the negative effects of breathing secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions.
- E. Persons, particularly employees, have a right to a smoke free environment if they desire.
- F. Secondhand smoke exposure causes as many as 300,000 children in the United State to suffer from lower respiratory tract infections, exacerbates childhood asthma, and increases the risk of acute chronic, middle ear infections.

8.32.030 Definitions.

- A. "Business" means the sole proprietorship, partnership, joint venture, corporation, association, nonprofit or other entity formed for public interest or profit-making purposes or that has an employee as defined in this section.
- B. "Employee" means any person who is employed; retained as an independent contractor by an employer, as defined in this section; or any person who volunteers his or her services for any employer, association, business, nonprofit or volunteer entity.
- C. "Employer" means any person, partnership, corporation, association, nonprofit, or other entity who employs or retains the services of one or more persons or supervises volunteers.
- D. "Enclosed" means closed in by a roof and four walls (with the appropriate openings for egress and ingress). This would include but not be limited to lobbies, lounges, waiting areas, elevators, hallways, restrooms, stairwells, common areas (e.g., laundry and recreation rooms within a multi unit residential development), that are a structural part of the building.
- E. "Food" means any raw or processed substance, beverage (including frozen or liquid water) or ingredient intended to be used as food, drink, confection, or condiment for human consumption.
- F. "Head Shop" means a retail outlet that receives 90% or more of its gross revenues from the sale of paraphernalia related to the consumption of cannabis, other recreational drugs and/or new age herbs. Products typically include but are not limited to, water pipes, bongos, roach clips, pipes, rolling papers, rolling machines, and whipped cream chargers containing nitrous oxide.
- G. "Hookah Bar" means a business location that provides for the ingestion, inhalation or consumption of tobacco or tobacco products by way of an apparatus which includes, but is not limited to the following parts: a water vessel, a bowl for holding combustible tobacco or tobacco products and an inhalation hose or tube.
- H. "Multi Unit Residential Development" means a development consisting of residential condominiums, townhouses, rowhouses or apartments, represented by one common property management group or Home Owners Association and providing for-sale, for-lease or for-rent units with complete and independent living facilities for one or more persons.
- I. "Place of Employment" means any area under the control of an employer or business where an employee can be found to frequent during the course of a work day. For example, cafeterias, conference rooms, lobbies, lounges (break rooms), elevators, hallways, restrooms, stairwells, vehicles and work areas.
- J. "Private Smokers' Lounge" means an area that is attached to and incidental to a tobacco store that may be occupied by persons eighteen (18) years of age or older who intend to ingest or inhale any smoking tobacco or tobacco product by means of a pipe, cigar, cigarette or any other method. Private smokers' lounges do not include hookah bars which are prohibited in the City of Rohnert Park pursuant to Municipal Code, Chapter 8.33 (*Prohibition of Head Shops, Hookah Bars, Tobacco Vending Machines and Self-Service Displays*).
- K. "Smoking" means possessing a lighted pipe, cigar or cigarette of any kind, or the lighting of a pipe, cigar or cigarette of any kind, including but not limited to tobacco or tobacco products.

- L. "Tobacco Paraphernalia" means cigarette papers or wrappers, blunt wraps, pipes, holders, cigarette rolling machines or other instruments or things designed for the smoking or ingestion of tobacco or tobacco products.
- M. "Tobacco Product" means any product containing tobacco leaf, including but not limited to, bidis, chewing tobacco, cigarettes, cigars, dipping tobacco, pipe tobacco, snuff, or any other preparation of tobacco.
- N. "Tobacco Store" means a retail or wholesale business, with or without an attached private smokers' lounge, that meets all of the following requirements:
 - 1. Primarily sells tobacco, tobacco products and tobacco paraphernalia. Does not include merchandise that is generally associated with a head shop which is prohibited in the City of Rohnert Park;
 - 2. Generates more than sixty percent (60%) of its gross revenues annually from the sale of tobacco, tobacco products and tobacco paraphernalia;
 - 3. Prohibits any person who is under the age of eighteen (18) years of age from being present or entering the premises unless accompanied by the minor's parent or legal guardian; and
 - 4. Does not sell food (including alcoholic beverages) for consumption on the premises.

8.32.040 Prohibition on Smoking in Enclosed Areas.

- A. Smoking shall be prohibited in the following enclosed areas unless specifically exempted pursuant to section 8.32.060 of this Chapter (*Exceptions*).
 - 1. Any place of employment.
 - 2. Multi unit residential developments as follows:
 - a. Enclosed common areas, including but not limited to a laundry room, lobby or community center;
 - b. At least 75% of the units constructed after June 1, 2009, including private outdoor spaces associated with the units, such as balconies, patios and decks, shall be designated and maintained as non-smoking. Non-smoking units shall be grouped together to the maximum extent practical;
 - c. At least 50% of any units constructed before June 1., 2009, including private outdoor spaces associated with the units, such as balconies, patios and decks, shall be designated and maintained as non-smoking. Non-smoking units shall be grouped together to the maximum extent practical;
 - i. Any existing multi unit residential development has until June 1, 2011 to comply with the provisions herein;
 - ii. Any unit which has been designated non-smoking shall not be subject to the restrictions of this Chapter as long as the unit is occupied continually by the same resident who occupied the unit on June 1, 2009 and until such time the resident voluntarily vacates the unit; and
 - d. Every landlord/property manager shall maintain a list of designated non-smoking units and a site plan identifying the relative position of smoking and non-smoking units. The site plan shall also identify the location of any designated smoking areas. A copy of this list and site plan shall accompany every new lease or agreement for occupancy of a unit within a multi unit residential development. If a copy of the list and site plan do not accompany the lease or agreement then the unit shall be a non-smoking unit.
 - 3. Any elevator, public restroom, service line (i.e. ATM), bus, limousine, taxi cab, train, or other public transportation vehicle.
 - 4. Any vehicle that is occupied by a minor (person under the age of 18 years of age).
 - 5. On the premises of a licensed day care center and in a licensed family day care home.
 - 6. On the premises of a licensed, long-term, health care facility.

8.32.050 Prohibition on Smoking in Unenclosed Areas.

- A. Smoking shall be prohibited in the following unenclosed areas unless regulated by more restrictive state or federal law, in which case the state or Federal law applies; or specifically exempted under section 8.32.060 of this Chapter.
1. The strip of land which is located approximately one hundred (100) feet south of the boundary of University Park Subdivision, immediately adjacent to the north boundary of Rancho Cotati High School, and within the strip from between the eastern most curb of Snyder Lane to the western most property line of Sonoma State University and better known by the Sonoma County Assessor's Office as: APN's 158-230-065; -066, -069 and 158-220-074 and -075.
 2. Multi unit residential development common areas, including but not limited to: pools, walkways, gardens, play areas.
 3. Any service line (i.e., ATM), bus stop, taxi stand or phone booth.
 4. Within twenty (20) feet of the exit, entrance, or operable window of any City owned building, except while actively passing on the way to another destination.
 5. Within twenty (20) feet of the exit, entrance, or operable window of any private building or structure that is posted as nonsmoking, except while actively passing on the way to another destination, except while actively passing on the way to another destination.
 6. Within twenty-five (25) feet of a public playground or tot lot (sandbox) areas.
 7. Any business or place of employment in which food is being consumed or where setup, service, and cleanup functions are occurring, including but not limited to: dining areas, farmers markets, concerts, fairs and other such events.
 8. On the premises of a licensed day care center or licensed family day care home.

8.32.060 Exceptions.

- A. The following are exceptions to the smoking prohibitions in enclosed and unenclosed areas.
1. A private smokers' lounge attached to a tobacco store, subject to the following:
 - i. The tobacco store must have a conditional use permit and be located on a site that is zoned for "C-R" - Regional Commercial land uses;
 - ii. The Tobacco Store shall have a minimum separation of five hundred (500) feet between the use and a school, religious assembly, public facility, multi unit residential development or another Tobacco Store; and
 - iii. The Tobacco Store shall not include a head shop or hookah bar. The City of Rohnert Park prohibits head shops and hookah bars pursuant to Municipal Code, Chapter 8.33 (*Prohibition of Head Shops, Hookah Bars, Tobacco Vending Machines and Self-Service Displays*).
 2. Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.
 3. A private residence, unless expressly prohibited by sections 8.32.040 (*Prohibition on Smoking in Enclosed Areas*) and 8.32.050 (*Prohibition on Smoking in Unenclosed Areas*) e.g., licensed day care facility, licensed health care facility or multi unit residential development.
 4. A portion of the outdoor area of a multi unit residential development may be designated as a smoking area subject to the following provisions:
 - i. Must be located at least 20 feet from any indoor area where smoking is prohibited;
 - ii. Must not include, and must be at least 20 feet from any outdoor area primarily used by children including, but not limited to, areas improved or designated for play or swimming;

- iii. Must have a clearly marked perimeter;
 - iv. Must be identified by conspicuous signs; and
 - v. Must not overlap with any area in which smoking is otherwise prohibited by this Chapter
5. Public sidewalks unless otherwise prohibited.

8.32.070 Duty of Employers and Businesses

- A. No employer or business entity shall knowingly or intentionally permit or engage in the smoking of tobacco or tobacco products in an area that is under the employer's or business entity's control and in which smoking is prohibited.
- B. No employer or business entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as without limitation, ash trays or cans within an area which is under the control of the employer or business entity and in which smoking is prohibited.
- C. Any employer or business entity that permits a nonemployee access to its place of employment or business on a regular basis has not acted knowingly or intentionally if it has taken the following reasonable steps to prevent smoking by a nonemployee:
 - 1. Posted clear and prominent signs, as follows:
 - a. Where smoking is prohibited throughout the building or structure, a sign stating "No Smoking" shall be posted. The "No Smoking" sign shall be of letters that are a minimum of one inch in height or the international "no smoking" symbol. The sign shall be clearly and conspicuously posted on the exterior of every building or other place where smoking is controlled by this Chapter, by the owner, operator, manager, or other person having control of such building or other place. The sign shall include the distance limitations contained in sections 8.32.050 (A) (4) and (5) of this Chapter as applicable; and
 - b. Where smoking is permitted in designated areas of the building or structure, a sign stating "Smoking Is Prohibited Except in Designated Areas" shall be posted at each entrance to the building or structure.
 - 2. Has requested, when appropriate, that a nonemployee who is smoking refrain from smoking.
- D. Any business, person, or other establishment which sells tobacco products for consumption shall post plainly visible signs at each point of purchase of tobacco products in compliance with the requirements of state law.
- E. It is unlawful for any business, person, or other establishment to sell, offer to sell, or permit to be sold any tobacco product to a minor individual eighteen (18) years of age or younger. Identification shall be requested unless there is reasonable basis to determine that the buyer is not a minor.
- F. Notwithstanding any other provision of this Chapter, any employer, business entity or person who controls any area may declare that any part of such area in which smoking would otherwise be permitted to be a nonsmoking area.

8.32.080 Nonretaliation.

No person or employer shall discharge, refuse to hire, or in any manner, retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this Chapter.

8.32.090 Violations and Penalties.

- A. Any violation of any prohibition of this Chapter is an infraction, punishable by a fine not to exceed that which is set by Municipal Code Chapter 1.16 (*General Provisions*).

- B. Smoking in any area where smoking is prohibited by this Chapter constitutes a public nuisance and may be abated as such including the application of any of the enforcement remedies provided in the City of Rohnert Park's Municipal Code or under any applicable state or federal statute or pursuant to any other lawful power the City may possess.
- C. Any private person who claims violation of this Chapter may bring a civil action for damages or for injunctive relief in accordance with applicable laws governing such civil actions.

8.32.100 Interpretation.

This Chapter shall not be interpreted or construed to permit smoking where is it otherwise restricted by state or federal law.

8.32.110 Effective Date.

The provisions of this Chapter shall be effective thirty days (30) from and after the date of its adoption and publication or posting as required by law.

8.32.120 Statutory Severability.

If any section, subsection, sentence or clause or phrase of this Chapter is, for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter.

- B. **Rohnert Park Municipal Code Title 17 (Zoning) section 17.06.060 (*Permitted Uses-Commercial Zoning Districts*) shall be amended to add the following permitted land use to the "C-R" zoning district:**

17.06.060 Permitted Uses

Land Use Category	C-O	C-N	C-R
Tobacco store (retail or wholesale) and private smoker's lounges when attached to a tobacco store (Regulated by Municipal Code Chapters: 8.32, 8.33).	--	--	C

- C. **Rohnert Park Municipal Code Chapter 8.33 (*Prohibition of Head Shops, Hookah Bars, Tobacco Vending Machines and Self Service Displays*) shall be added to read as follows:**

**Chapter 8.33
Prohibition of Head Shops, Hookah Bars, Tobacco Vending Machines and
Self Service Displays**

8.33.010 Purpose.

The purpose of this Chapter is to detail the prohibition of head shops, hookah bars, tobacco vending machines and tobacco self-service displays within the City of Rohnert Park.

8.33.020 Findings.

- A. The Surgeon General of the United States and local public health agencies and private health organizations have found that cigarettes and other tobacco products are easily available to minors from vending machines, tobacco retailers, and shoplifting.

- B. The U.S. Centers for Disease Control have found that at least 434,000 Americans die each year from tobacco-caused diseases. The Surgeon General of the United States and the U.S. Department of Health and Human Services have found that a majority of those Americans who die of tobacco caused diseases became addicted to nicotine in tobacco products as minors.
- C. The National Institute on Drug Abuse has concluded that there is a strong correlation between drug use and violence and that head shops promote the use of illegal or illicit drugs.
- D. Strong legislative action is needed to curtail the wide availability of all types of paraphernalia, tobacco and tobacco products.

8.33.030 Definitions.

- A. "Head Shop" means a retail outlet that receives 90% or more of its gross revenues from the sale of paraphernalia related to the consumption of cannabis, other recreational drugs and/or new age herbs. Products typically include but are not limited to, water pipes, bongs, roach clips, pipes, rolling papers, rolling machines, and whipped cream chargers containing nitrous oxide.
- B. "Hookah Bar" means a business location that provides for the ingestion, inhalation or consumption of tobacco or tobacco products by way of an apparatus which includes, but is not limited to the following parts: a water vessel, a bowl for holding combustible tobacco or tobacco products and an inhalation hose or tube. Hookah bar does not include a private smokers' lounge attached to a tobacco shop.
- C. "Self-Service Display" means the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer.
- D. "Tobacco Paraphernalia" means cigarette papers or wrappers, blunt wrap, pipes, holders of smoking materials of all types, cigarette rolling machines or other instruments or things designed for the smoking or ingestion of tobacco products.
- E. "Tobacco Product" means any product containing tobacco leaf, including but not limited to, bidis, chewing tobacco, cigarettes, cigars, dipping tobacco, pipe tobacco, snuff, or any other preparation of tobacco.
- F. "Vending Machine" means a machine, appliance, or other mechanical device operated by currency, token, debt card, credit card, or any other form of payment that is designed or used for vending purposes.

8.33.040 Distribution and Uses.

- A. It is unlawful for any person, business or other entity to operate a head shop or hookah bar.
- B. It is unlawful for any person, business or other entity to sell, offer to sell, or permit to be sold any cigarette or other tobacco product or paraphernalia from a vending machine.
- C. It is unlawful for any person, business, or other entity to display tobacco products or tobacco paraphernalia by means of a self-service display or to engage in tobacco retailing by means of a self-service display.

8.33.050 Violations and Penalties.

- A. Every act prohibited or declared unlawful by the provisions of this Chapter shall constitute an infraction, and each day or portion thereof that such violation is in existence shall be a new and separate offense as set forth in Chapter 1.25. The fourth and any additional violations within any twelve consecutive month period may be charged as a misdemeanor pursuant to Chapter 1.16 of the Rohnert Park Municipal Code.

- B. Any violation of any provision of this Chapter shall be punished by administrative penalties as prescribed in Chapter 1.25 of the Rohnert Park Municipal Code.
- C. In addition to any other remedy provided by the Rohnert Park Municipal Code or by state law or any other law, the City may commence action or proceedings for the abatement, removal and enjoinder of any violation of this Chapter in the manner provided by law.
- D. In addition to the penalties and remedies set forth above, anyone violating a provision(s) of this Chapter shall be subject to having any other related permits or licenses revoked by the City of Rohnert Park for said violation.

8.33.060 Nonretaliation.

No person or employer shall discharge, refuse to hire, or in any manner, retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this Chapter.

8.33.070 Interpretation.

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by state or federal law.

8.33.080 Effective Date.

The provisions of this Chapter shall be effective thirty days (30) from and after the date of its adoption and publication or posting as required by law.

8.33.090 Statutory Severability.

If any section, subsection, sentence or clause or phrase of this Chapter is, for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter.

SECTION 5. Environmental Clearance. In accordance with CEQA general rule, Section 15061(b)(3), “[C]EQA applies only to projects, which have the potential for 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.” There is no possibility that amendment of the Municipal Code to prohibit smoking in certain areas would have a significant effect on the environment, and thus the adoption of the Ordinance has been determined to be exempt from CEQA review.

SECTION 6. Severability. The City Council hereby declares that every section, paragraph, sentence, clause and phrase of this Ordinance is severable. If any section, paragraph, sentence, clause or phrase of this Ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 7. Effective Date. This ordinance shall be in full force and effective 30 days after its adoption, and shall be published and posted as required by law. Development applications that have been deemed complete pursuant to Government Code Section 65944 shall be processed in accordance with the laws and ordinances which were in effect at the time the application was deemed complete.

This ordinance was introduced on the 14th day of April, 2009, and **DULY AND REGULARLY ADOPTED** this 28th day of April, 2009, by the following vote:


AYES: Three (3) Council Members Mackenzie, Stafford, and Mayor Breeze

NOES: Two (2) Council Members Belforte and Callinan

ABSENT: None (0)

ABSTAIN: None (0)

CITY OF ROHNERT PARK



Mayor Amie Breeze

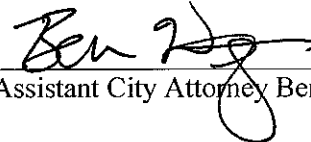


ATTEST:

 4/29/09

City Clerk Judy Hauff

APPROVED AS TO FORM:



Assistant City Attorney Ben Winig