DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 9.44.022, 9.44.030, AND 9.44.040 OF CHAPTER 9.44 OF TITLE 9 OF THE SAN JOSE MUNICIPAL CODE TO PROHIBIT SMOKING IN PARKS, COMMUNITY CENTERS AND LIBRARIES

WHEREAS, on _____, this Ordinance was found to be categorically exempt from environmental review per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970, as amended, under File No. PP_____;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 9.44.022 of Chapter 9.44 of Title 9 of the San José Municipal Code is amended to read as follows:

9.44.022 Smoke or Smoking

"Smoke" or "smoking" means and includes the combustion or subsequent disposal of any lighted pipe, or lighted cigar or lighted cigarette of any kind or the lighting of a pipe, cigar or a cigarette of any kind, or any similar article or any other similar combustible substance in any manner or in any form.

SECTION 2. Section 9.44.030 of Chapter 9.44 of Title 9 of the San José Municipal Code is amended to read as follows:

9.44.030 General Prohibition

Smoking is prohibited in the following places located within the City of San José except as provided in Section 9.44.040:

A. Buildings: All enclosed areas of buildings which are open to the public or which are places of employment.

B. Public and common areas of multifamily residential areas: All enclosed areas of apartments, condominiums and mobilehome parks which are open to public access or to unrestricted common access by the residents of such places.

C. Motor vehicles used in work: In motor vehicles which meet one of the following conditions:

1. Common carriers for public transit;

2. Vehicles for hire, such as taxicabs;

3. Vehicles which are operated in the course of employment for the use of more than one person at a time during the time of employment.

D. Hotel and motel guest rooms: The enclosed areas of at least fifty percent (50%) of the guest rooms located in a hotel or motel. To the greatest extent feasible the smoke free rooms shall be grouped together to each other and separated from rooms where smoking is permitted.

E. Stadium and sports arenas: The seating and eating areas of any outdoor stadium or sports arena. Smoking may be permitted only in specifically designated areas which are not located in close proximity to seating or eating areas.

F. City Parks: Park is defined in Chapter 13.44 of Title 13 of the San José Municipal Code, as it may be amended. Without limitation of any other provision of this Code, the definition of "Park" for purposes of this Section includes sidewalks, trails and pathways in or around park facilities, park strips and other grounds of any Park.

G. In any outdoor area within twenty-five (25) feet horizontally or vertically of any entrances, exits, operable windows, or air intake openings of any community center or library owned, leased or occupied by the City.

SECTION 3. Section 9.44.040 of Chapter 9.44 of Title 9 of the San José Municipal Code is amended to read as follows:

9.44.040 Exceptions

Smoking may be permitted in the following locations:

A. Private residences, except where state law prohibits smoking.

B. Retail tobacco stores which sell primarily tobacco products.

C. Meeting and banquet rooms which meet the standards set forth in Section 6404.5(d)(3) of the California Labor Code.

D. Outdoor areas of restaurants.

E. At such areas of the San José International Airport as provided for in Section 9.44.045 of this Chapter.

F. On a stage in a theater during a theatrical performance where a performer is smoking when smoking is part of the performance.

G. Any property owned or leased by other governmental agencies and used for governmental purposes.

H. Upon any outdoor area of any golf course owned or operated by the City that is more than twenty-five (25) feet from any entrance, exit, operable window or air intake opening of any building.

PASSED FOR PUBLICATION of title this _____ day of _____, 2007, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk