



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Councilmember Ash Kalra  
Councilmember Nora Campos

**SUBJECT:** SEE BELOW

**DATE:** June 9, 2010

Approved

Date

*Ash Kalra*

6/9/10

*Nora Campos*

## REPLACEMENT

**SUBJECT:** UPDATE OF SAN JOSÉ MUNICIPAL CODE 9.44.030 AND 9.44.040

### RECOMMENDATION

1. Direct staff to prepare a draft ordinance amending San José Municipal Code section 9.44.040, to only permit smoking in outdoor areas of restaurants from 9 pm to closing.
2. Direct staff to prepare a draft ordinance amending San José Municipal Code section 9.44.030 to:
  - a) Prohibit smoking in public service lines; and
  - b) Extend the prohibition of smoking to include unenclosed areas of public and common areas of multi-family residential areas.

### BACKGROUND

It has long been known that smoking cigarettes has extremely negative effects on a person's health. It has become increasingly known that secondhand smoke has similar negative impacts on those who are subjected to it. In a report issued in 2006 the Surgeon General stated, "Scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke." According to the Surgeon General, approximately 60 percent of US children ages 3 to 11 years old are exposed to secondhand smoke; that equates to 22 million children. The U.S. Surgeon General Report further stated, "Nonsmokers exposed to secondhand smoke at home or work increase their risk of developing heart disease by 25 to 30 percent and lung cancer by 20 to 30 percent...Even brief exposure to secondhand smoke has immediate adverse effects on the

cardiovascular system and increases risk for heart disease and lung cancer.” According to the U.S. Department of Health and Human Services’ Centers for Disease and Prevention, more than 440,000 people die in the United States from tobacco-related diseases every year. Tobacco related death is the leading cause of preventable death in the United States.

The Centers for Disease Control and Prevention states secondhand smoke, also known as Environmental Tobacco Smoke (ETS), contains over 250 chemicals known to be toxic. According to The National Cancer Institute, 50 of the chemicals are known to cause cancer. Secondhand smoke causes about 3,000 lung cancer deaths and 35,000 heart disease deaths in adult non-smokers in the United States each year, in addition to the harm it creates upon young children. Secondhand smoke exposure causes approximately 38,000 deaths among non-smokers annually in the U.S. Secondhand smoke is known to cause prenatal manifestation of development toxicity, postnatal manifestations of development toxicity, female and male toxicity, adverse respiratory effects, carcinogenic effects and cardiovascular effects.

With knowledge of the deleterious effects of tobacco smoke, the State of California has been a global pioneer in taking drastic steps to reduce the rate of smoking in the population. In the late 1980’s, California started an aggressive anti-smoking education campaign. Soon after, San Luis Obispo became the first city in the world to ban smoking in all buildings open to the public. The entire state followed suit later in the decade. The results of these efforts saw the smoking rate in the state tumble from 22.7% in 1988 to 13.3% in 2006. California’s adult smoking rate was at 14% percent in 2006. California has the second lowest adult smoking rate in the nation after Utah, and among children 12 and under, California has the lowest smoking rate in the nation.

## ANALYSIS

The above recommendations would help create a healthier and family friendly environment throughout the City of San José, while helping with the City’s economic prosperity. Other Municipalities in California, such as San Francisco, Calabasas, and Oakland, have taken the steps to protect residents from unnecessary exposure to harmful secondhand smoke.

According to California Department of Public Health research, 75.8% of Californians agree that smoking should be prohibited in outdoor dining areas at restaurants. Smoke free outdoor dining before 9 pm will allow families to enjoy outdoor dining establishments under safe conditions but also enable restaurants to have the flexibility to allow for limited outdoor availability for smoking patrons.

Although some may suggest smoke-free dining would cause sales to decline, studies have shown that when the California Smoke-Free Workplace Law was extended to restaurants and bars, sales increased in those establishments. According to the California Board of Equalization data, sales increased an additional \$879,816,000 in 1998 in those establishments which sold alcohol, the year the California Smoke-Free Workplace Law went into effect in restaurants. In a phone survey conducted by Breathe California of local eating establishments, 83% of those establishments surveyed said they would not oppose a smoke-free dining ordinance.

The City of San José does not have regulations to protect residents who may be waiting in a service line from the dangers and inconvenience of secondhand smoke. Service lines include areas where people commonly have to wait outdoors, such as ATM and movie theater lines.

Families should not have to be exposed to secondhand smoke while waiting to buy a ticket to a movie or while dining at a restaurant.

Currently, San José Municipal Code section 9.44.030b prohibits smoking in "*Public and common areas of multifamily residential areas*: All enclosed areas of apartments, condominiums and mobile home parks which are open to public access or to unrestricted common access by the residents of such places." Smoking regulations should be extended to unenclosed areas of apartments, condominiums and mobile home parks which are open to public access or to unrestricted common access by residents to prevent secondhand smoke exposure to residents. So, this change would simply require the removal of the word "enclosed" from the current Code.