

**ORDINANCE NO. \_\_\_\_\_ (N.C.S.)**

**AN ORDINANCE RESTRICTING THE USE OF ELECTRONIC CIGARETTES AND  
MAKING OTHER MINOR AMENDMENTS TO ARTICLE XI OF CHAPTER 16 OF  
THE SALINAS MUNICIPAL CODE**

*City Attorney's Impartial Analysis*

*This Ordinance updates and modernizes the City's regulations on smoking. If adopted, based on numerous reports and studies on the negative health effects of electronic cigarette products and the attractiveness of electronic cigarette products among youth, this Ordinance would treat and would regulate smoking an electronic cigarette product in the same manner as a traditional tobacco product. A violation of the prohibition is a nuisance subject to abatement and may be charged as an infraction or subject the violation to an administrative penalty. This Ordinance also provides minor amendments to existing Municipal Code provisions related to smoking and smoking prevention to modernize the Municipal Code and to consistently incorporate the newly imposed prohibitions.*

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution, the City of Salinas (City) has broad authority to maintain the public peace, health, and safety of its community and to preserve the quality of life for its residents and may make and enforce all regulations and ordinances using its police powers in order to do so; and

WHEREAS, "vaping" is inhaling aerosol from an electronic cigarette (e-cigarette) or other device that heats a liquid that can contain nicotine, marijuana (THC), cannabidiol, or other substances. E-cigarettes work by heating a liquid to produce an aerosol that users inhale into their lungs. The shapes and sizes of these devices vary and include colorful vape pens, modified tank systems, and pod-based devices that can look like USB flash drives, cell phones, credit card holders, and highlighters. These devices are frequently referred to as e-cigarettes, e-cigs, vapes, vape pens, electronic vaporizers, pod mods, or pod systems; and

WHEREAS, on September 24, 2019, the California Department of Public Health (CDPH) issued a health advisory to inform the public about the imminent public health risks posed by vaping any product, including the use of electronic cigarettes (e-cigarettes). The CDPH reports that since June 2019, 178 people in California who have a history of vaping were hospitalized for severe breathing problems ad lung damage, and four people have died.<sup>1</sup>; and

WHEREAS, in its Health Advisory, the CDPH reported that lung damage can happen very suddenly to people who vape, including young healthy people who do not have lung disease or other health problems. Almost all people with lung damage from vaping say they vaped or "dabbed" the cannabis products THC and CBD in cartridges, waxes, oils, and other forms. Some

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<sup>1</sup><https://www.cdph.ca.gov/Programs/CCDPHP/CDPH%20Document%20Library/California%20Department%20of%20Public%20Health%20-%20Health%20Advisory%20September%202024,%202019.pdf>

people report vaping only nicotine. Many people report vaping a combination of both nicotine and cannabis products<sup>2</sup>; and

WHEREAS, the State of California does not ensure the safety of vaping devices through regulation. In California, licensed cannabis retailers are required to sell products obtained from a licensed cannabis manufacturer that have been tested by a licensed laboratory. Cannabis products sold by licensed sources are tested for a variety of chemicals, pesticides, microbial impurities, and heavy metals. Illegal cannabis dispensaries sell unregulated and untested cannabis products and, according to CDPH, should not be used<sup>3</sup>; and

WHEREAS, the Centers for Disease Control and Prevention (the “CDC”) reports that as of January 7, 2020, a total of 2,602 hospitalized e-cigarette, or vaping, product use-associated lung injury (EVALI) cases or deaths have been reported to CDC from all 50 states, the District of Columbia, and Puerto Rico and the U.S. Virgin Islands, with the average age of the patients being 27 years old. Fifty-seven (57) deaths have been confirmed in 27 states and the District of Columbia. In California, there were reports of over 150 EVALI cases or deaths reported to CDC<sup>4</sup>; and

WHEREAS, public health officials have identified vitamin E acetate, a sticky compound found in some THC vaping products, as a “potential toxin of concern” after it was detected in 29 out of 29 lung tissue samples tested for lung injury. As a consequence, the CDC has recommended that consumers stop vaping, particularly THC, and more-particularly anything purchased off the street<sup>5</sup>; and

WHEREAS, the United States Food and Drug Administration is banning most fruit- and mint-flavored nicotine vaping products in an effort to curb teen use, with the exception of tobacco and menthol. The flavor ban applies to e-cigarettes, which use disposable cartridges filled with liquid nicotine; and

WHEREAS, the 2019 National Youth Tobacco Survey results on e-cigarette use show that more than 5 million United States middle and high school students are current e-cigarette users (having used within the last 30 days) with a majority reporting cartridge-based products as their usual brand<sup>6</sup>

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<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/severe-lung-disease.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html)

<sup>5</sup> Lovelace, Jr., Berkeley. “People Are Still Dying From Mysterious Vaping Illness, Even as Outbreak Slows.” CNBC, January 9, 2020. <https://www.cnbc.com/2020/01/09/people-are-still-dying-from-mysterious-vaping-illness-as-outbreak-slows.html>

<sup>6</sup> e-Cigarette Use Among Youth in the United States, 2019. Karen E. Cullen, PhD;; Andrea S. Gentzke, PhD; Michael D. Sawdey, PhD, et al. November 5, 2019. <https://jamanetwork.com/journals/jama/article-abstract/2755265?guestAccessKey=54b2dc7d-3855-4728-a522->

WHEREAS, in a report based on an annual survey of drug, alcohol, and cigarette use and related attitudes among eighth, tenth, and twelfth graders in the United States, which includes 42,531 students from 396 public and private schools nationwide, the University of Michigan’s Institute for Social Research, found that while opioid misuse, tobacco cigarette smoking, and alcohol use have declined among teens, the use of e-cigarettes continues to climb. The survey results showed that 20.8% of twelfth graders reported vaping marijuana in the past year, as well as 19.4% of tenth graders, and 7% of eighth graders. The survey also measured daily vaping of marijuana and found that 3.5% of twelfth graders, 3% of tenth graders, and 0.8% of eighth graders reported vaping marijuana daily<sup>7</sup>; and

WHEREAS, according to a 2016 report from the United States Surgeon General, e-cigarette use among youth and young adults has increased considerably in recent years, growing 900% among high school students from 2011 to 2015. These products have become the most commonly used form of tobacco among youth in the United States. Ingestion of e-cigarette liquids containing nicotine can cause acute toxicity and possibly death if the contents of refill cartridges or bottles containing nicotine are consumed<sup>8</sup>; and

WHEREAS, e-cigarettes are marketed by promoting flavors and using a wide variety of media channels and approaches that have been used in the past for marketing conventional tobacco products to youth and young adults<sup>9</sup>; and

WHEREAS, the CDC and the American Journal of Preventative Medicine state that “[d]uring 2017-2018, current e-cigarette use increased 78%” among high school students<sup>10</sup>; and

WHEREAS, e-cigarettes have severe adverse health effects for both youth and adults.

a. According to the Surgeon General, “[m]ost e-cigarettes contain nicotine—the addictive drug in regular cigarettes, cigars, and other tobacco products. Nicotine exposure during adolescence can harm the developing brain—which continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves

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[573083a5d2cd&utm\\_source=For\\_The\\_Media&utm\\_medium=referral&utm\\_campaign=ftm\\_links&utm\\_content=tfli&utm\\_term=110519](https://www.cdc.gov/mmwr/volumes/67/wr/mm6745a5.htm)

<sup>7</sup> [monitoringthefuture.org/pubs.html](https://monitoringthefuture.org/pubs.html)

<sup>8</sup> E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General, 2016. U.S. Department of Health and Human Services. [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Full\\_Report\\_non-508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_non-508.pdf)

<sup>9</sup> Id.

<sup>10</sup> Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students—United States, 2011-2018. Karen A. Cullen, PhD; Bridget K. Ambrose, PhD; Andrea S. Gentzke, PhD; Benjamin J. Apelberg, PhD; Ahmed Jamal, MBBS; Brian A. King, PhD <https://www.cdc.gov/mmwr/volumes/67/wr/mm6745a5.htm>

and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs.”<sup>11</sup>

b. E-cigarette use can also play a role in adolescent social maladjustment, including poor learning and academic performance, increased aggressive and impulsive behavior, poor sleep quality, attention deficits, impaired memory, cognition, and increased depression and suicidal ideation.<sup>12</sup>

c. Daily e-cigarette use is associated with increased risk of irreversible cardiovascular and lung disease through the inhalation of harmful chemicals.<sup>13</sup>

d. Secondhand emissions from e-cigarettes are also dangerous because they contain “nicotine; ultrafine particles; flavorings such as diacetyl, a chemical linked to serious lung disease; volatile organic compounds such as benzene, which is found in car exhaust; and heavy metals, such as nickel, tin, and lead.”<sup>14</sup>

e. E-cigarette use is dangerous for pregnant women and is a fetal risk factor. It is associated with an increased risk of smallness-for-gestational-age<sup>15</sup>; and

WHEREAS, other risks and injuries are attributable to the proliferation of e-cigarettes: e-cigarettes present a risk of burns and other injuries, usually from malfunctioning batteries. From 2015 to 2017, there were an estimated 2,035 e-cigarette explosion and burn injuries reported in U.S. hospital emergency rooms<sup>16</sup>; and

WHEREAS, on September 16, 2019, Governor Gavin Newsom signed Executive Order N-18-19 making various findings regarding e-cigarettes including vaping devices are the most commonly used tobacco products in California; more than 80% of high school students who consume tobacco use a vaping device; from 2016-2018 vaping among California high school students rose 27%; I 2018, 10.9% of California high school students reported using e-cigarettes and 14.7% reported using cannabis; 86.4% of California teenagers who consume tobacco products report using a flavored tobacco product; dramatic increases in youth vaping have been attributed to the appeal of flavored vapor and alternative nicotine products as well as advertising and promotional activities by companies targeted at youth; there are no manufacturing standards for non-cannabis vape products; there are over 15,000 e-liquid flavors for vaping devices, some which create an inflammatory response, some of which are cytotoxic to lung cells, and some of which may play a role in addiction; since August 2019, a clinical syndrome has emerged of respiratory failure in previously healthy individuals who had recently vaped illegally-obtained and produced cannabis

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<sup>11</sup> Surgeon General’s Advisory on E-Cigarette Use Among Youth (2008).

[https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/surgeon-general-advisory/index.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/surgeon-general-advisory/index.html)

<sup>12</sup> Tobore TO. On the potential harmful effects of E-cigarettes (EC) on the developing brain: The relationship between vaping-induced oxidative stress and adolescent/young adults social maladjustment.

<https://www.ncbi.nlm.nih.gov/pubmed/31574388>

<sup>13</sup> American Lung Association. The Impact of E-Cigarettes on the Lung (2011) <https://www.lung.org/stop-smoking/smoking-facts/impact-of-e-cigarettes-on-lung.html>

<sup>14</sup> Id.

<sup>15</sup> Cardenas V., Cen R, Clemens M, et al. Use of Electronic Nicotine Delivery Systems (ENDS) by Pregnant Women I: Risk of Small-For-Gestational-Age Birth. <http://www.tobaccoinduceddiseases.org/Use-of-Electronic-Nicotine-Delivery-Systems-ENDS-by-npregnant-women-I-Risk-of-small,106089,0,2.html>

<sup>16</sup> Rossheim, ME, Livingston MD, Soule EK, Zeraye HA, Thombs DL. Electronic Cigarette Explosion and Burn Injuries, US Emergency Departments 2015-2017. <https://tobaccocontrol.bmj.com/content/28/4/472>

products, and the cause of the syndrome is not yet known; as of September 10, 2019, 63 cases of this syndrome had been reported in California, in patients aged 14-70; and Californians suffering from this syndrome have experienced grievous harms to their health, including 28 patients requiring admission to an Intensive Care Unit, 19 patients requiring mechanical ventilation, and one death<sup>17</sup>; and

WHEREAS, information provided by the Monterey County Health Department shows there are direct costs to the community associated with smoking including an estimated \$2,999 as a direct cost per smoker (for hospital care, ambulatory care, nursing home care, prescriptions, and home health), in addition to costs associated with lost productivity. Smoking related deaths in Monterey County have totaled as many as 2,255 individuals<sup>18</sup>; and

WHEREAS, Salinas was recently chosen as a “Blue Zone” and the Blue Zones Project Monterey County was established as a part of a national health initiative. The Blue Zones Project is focused on helping communities live a healthier lifestyle by developing community environments and through education on healthier choices; and

WHEREAS, the Salinas City Council finds and determines that the negative health effects associated with e-cigarettes among youth, primarily, are not consistent with the City’s participation in and commitment to the Blue Zones Project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF SALINAS as follows:

SECTION 1. Recitals. The above recitals are true and correct and are by this reference incorporated herein in their entirety.

SECTION 2. Article XI of Chapter 16 of the Salinas Municipal Code is hereby amended in its entirety to read as follows:

Article XI. - Smoking Pollution Control.

Sec. 16-11.010. - Findings and purpose.

The city council hereby finds as follows: The Environmental Protection Agency has designated secondhand smoke a Class A carcinogen. Tobacco smoke is a major contributor to indoor air pollution. The smoke generated by smokers is a significant health hazard for several populations who are subjected to the smoke, including pregnant women and their unborn children, infants, elderly persons, individuals with cardiovascular disease, individuals with impaired respiratory function including asthmatics, those with obstructive airway disease, and those who are allergic to smoke. The health hazards induced by involuntary smoking include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, broncho-constriction, and

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<sup>17</sup> Executive Order N-18-19. <https://www.gov.ca.gov/wp-content/uploads/2019/09/9.16.19-EO-N-18-19.pdf>

<sup>18</sup> Max W, Sung H-Y, Shi Y, and Stak B. The Cost of Smoking in California, 2009. San Francisco, California: Institute for Health and Aging, University of California, San Francisco.

bronchospasm. The health care costs produced by the ailments and diseases resulting from smoking are enormous, and redound to the detriment of both innocent individuals and the public. The air pollution caused by smoking is an offensive annoyance and irritant to, and results in serious and significant physical discomfort of non-smokers, and constitutes a public nuisance in public places and workplaces. Smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause losses to businesses.

This article is enacted pursuant to California law for the purpose of restricting smoking and regulating in public places in order to reduce the hazards which smoking cause to those who involuntarily exposed thereto, to restrict and otherwise regulate smoking within work places for the protection of employees who are involuntarily exposed thereto.

#### Sec. 16-11.020. - Definitions.

For the purpose of this article, the following definitions shall apply:

(a) "Bar" means an alcohol sales establishment where the primary use is for the same and on-site consumption of alcoholic beverages and where secondary uses may include food service. The premises may contain a counter upon and over which alcoholic beverages, such as beer, wine, and distilled spirits are served.

(b) "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit making purposes or for non-profit purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities under which professional services are delivered.

(c) "Dining area" means any area, including streets and sidewalks, which is available to or which is customarily used by the general public or an employee and which is designed, established, or regularly used for consuming food or drink.

(d) "Electronic Smoking Device" means an electronic and/or battery-operated device which can be used to deliver an inhaled dose of nicotine or other substance, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar or cigarillo, electronic pipe, electronic hookah, or any other product name or descriptor. "Electronic Smoking Device" does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

(d) "Employee" means any person who is employed or retained as an independent contractor by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

(e) "Employer" means any person, partnership, corporation, including a nonprofit entity, who employs the services of one or more individual persons.

(f) "Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or similar structures.

(g) "Members of the general public" means shoppers, customers, patrons, patients, students, clients and other similar invitees of a business, nonprofit entity, or the city.

(h) "Nonprofit entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character building political, social or other similar purposes, the net proceeds from operations of which are committed to promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a "nonprofit entity" with the meaning of this section.

(i) "Person" means any natural person, partnership, corporation, unincorporated association, joint venture, business trust, joint stock company, club, or other organization of any kind, except the city or any other public agency.

(j) "Place of employment" means an area enclosed by four walls under the control of a public or private employer, containing a desk, table or similar furnishings for clerical, administrative or supervisory work, a complex of such enclosures and a building containing such enclosures, whether or not the building is utilized primarily for other purposes such as retailing, wholesaling or storage, or manufacturing, including but not limited to all hallways, stairways, elevators, employee cafeterias, escalators, restrooms, lobbies, waiting rooms, reception areas, entry areas, conference and classrooms within or associated with the complex of such enclosures. A private residence is not a "place of employment" unless used as a child care or health care facility.

(k) "Public place" means any area to which the public is invited or in which the public is admitted, including but not limited to banks, educational facilities, health facilities, public transportation facilities, recreation areas, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a "public place," unless it is used as a health care facility or is a child care facility that is not required to be licensed by the state or is subject to state smoking regulations because it is used as a state licensed child care facility.

(l) "Restaurant" means a commercial establishment, with kitchen facilities, which is regularly, and in a bona fide manner, used principally for the preparation, cooking, or serving of food to customers or compensation and where seating or other physical accommodation (whether indoors or outdoors) is provided for on-site dining.

(m) "Service Area" means any outdoor area where one (1) or more persons are waiting for or receiving service of any kind, including, but not limited to, automatic teller machines (ATMs), ticket lines, bus stops, and boarding and waiting areas of public transit depots.

(m) "Smoking" means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited "tobacco product" or "electronic smoking device" or any plant intended for human inhalation. "Smoking" includes smoking marijuana for medical purposes or recreational purposes.

(n) "Retail tobacco store" means a place utilized primarily for the sale to members of the general public at retail of tobacco products and accessories, and in which the sale of other products is merely incidental.

(o) "Motion picture theater" means any theater engaged in the business of exhibiting motion pictures.

(p) "Service line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

(q) "Sports arena" means enclosed or open sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to either engage in physical exercise, participate in athletic competition, or witness sports events.

(r) "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, cigarillos, chewing tobacco, pipe, or hookah tobacco, or snuff;

(2) Any "electronic smoking device" that delivers nicotine to the person inhaling from the device, including but not limited to an electronic cigarette, cigar, pipe, or hookah; and

(3) Any component, part, or accessory of a "tobacco product" whether or not sold separately.

(4) "Tobacco Product" does not include any cessation product approved by the United States Food and Drug Administration for use as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

(r) "Tobacco vending machine" means any machine or device designated for use for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, bills, trade checks, or slugs.

#### Sec. 16-11.030. - Smoking prohibitions—Public places.

Except as provided in this article, smoking is prohibited in the following places located in the city of Salinas:

(a) Buildings. All enclosed areas of buildings which are open to the public.

(b) Covered public parking lots and parking areas, including stairwells.

(c) Buses, taxicabs, shuttles, or other means of transportation operating in the city of Salinas.

(d) Service areas.

(e) City-owned vehicles.

(f) Where any person or entity that either owns or exercises management and control over the property and has declared the area, where smoking would otherwise be allowed, to be a non-smoking area and posts "No Smoking" signs as described in this article.

(g) Enclosed places of employment.

#### Sec. 16-11.140. - Exceptions—Employee breakrooms.

Notwithstanding what is otherwise provided in this article, breakrooms designated by employers for smoking, provided that all of the following conditions are met:



(a) Air from the smoking room shall be exhausted directly to the outside by an exhaust fan. Air from the smoking room shall not be recirculated to other parts of the building, and meet all applicable state and federal ventilation standards.

(b) The smoking room shall be located in a nonwork area where no one, as part of his or her work responsibilities, is required to enter. For purposes of this section, "work responsibilities" does not include any custodial or maintenance work carried out in the breakroom when it is unoccupied.

(c) There are sufficient nonsmoking breakrooms to accommodate nonsmokers.

This section shall not be construed to require employers to provide reasonable accommodation to smokers or to provide breakrooms for smokers or nonsmokers.

It shall not constitute a violation of this article for a person to smoke in a location where smoking has been authorized in the manner prescribed by this section.

Sec. 16-11.150. - Exceptions—Locations.

The prohibitions set forth in this article shall not be applicable to or be deemed to prohibit smoking in any of the following places:

(a) A private residence, including an attached or detached garage except when used as a childcare facility that does not require a state license, health care, board and care or community foster care facility;

(b) Within any facility described in this article which is operated by the United States of America, the state of California, any municipal corporation other than the city, any political subdivision of the state of California, or any special district formed under the laws of the state of California for the local performance of governmental or other functions;

(c) Bars to the extent excepted by Labor Code Section 6404.5(f);

(d) Gaming clubs as defined in Business and Professions Code Section 19802 or bingo facilities as defined in Penal Code Section 326.5, if all of the following conditions are met:

(1) The facility is excepted by Labor Code Section 6404.5,

(2) The facility permits only adults eighteen years of age or older to enter, and

(3) Signs are posted in the manner prescribed by this article authorizing smoking in any room which is fully enclosed by walls from floor to ceiling made available for the use and convenience of smokers, provided that such rooms shall not include an area greater than twenty-five percent of the total floor space committed to the primary activity, purpose or function of the facility and that the smoking permitted and smoking prohibited rooms are separately ventilated;

(e) Patient smoking areas in long-term health care facilities, as defined in Health and Safety Code Section 1418, provided that:

(1) Signs are posted in the manner prescribed by this article authorizing smoking in the patient smoking areas,

(2) The patient smoking areas are fully enclosed by walls from floor to ceiling,

(3) The smoking permitted and smoking prohibited rooms are separately ventilated, and

- (4) The patient smoking rooms shall not include an area greater than twenty-five percent of the total floor space committed to the primary activity, purpose or function of the facility.

(f) Twenty percent of the guestroom accommodations in a hotel, motel, or similar transient lodging establishment per California Labor Code section 6404.5(e)(1).

(g) It shall not constitute a violation of this article for a person to smoke in a location where smoking has been authorized in the manner prescribed by this section.

Sec. 16-11.160. - Posting.

(a) Each owner, operator, manager or other persons having control of an establishment or facility within which smoking is regulated by this article shall conspicuously post clear and prominent signs in every building or structure, as follows:

(1) Where smoking is prohibited throughout the building, structure or premises, a sign stating "No smoking" shall be posted at each entrance to the building, structure or premises;

(2) Where smoking is permitted in designated areas of a building or structure, a sign stating "Smoking is prohibited except in designated areas" shall be posted at each entrance to the building, structure or premises.

(b) Every hotel and motel shall have signs posted conspicuously in the registration and lobby areas which state that nonsmoking rooms are maintained and may be available; rooms designed as being nonsmoking shall have signs designating such restriction conspicuously placed within the room.

(c) The rule of this article is that smoking within areas described in this article is prohibited unless expressly authorized by "Smoking Permitted" signs. All persons are presumed to know the law in general, and to be aware of the prohibitions contained in this article respecting smoking, in particular. Therefore, the absence of any "No Smoking" sign required by this article shall not excuse a violation of this article perpetrated by smoking or otherwise constitute a defense to any criminal or other proceeding commenced for the purpose of enforcing the provisions of this article against prohibited smoking.

Sec. 16-11.170. - Regulation of the sale and distribution of tobacco products.

(a) Any person, business, tobacco retailer or other establishment subject to this article shall post at the point of purchase of tobacco products plainly visible signs which state "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN (18) YEARS OF AGE IS PROHIBITED BY LAW." The letters of said signs shall be at least one-quarter inch high.

(b) It shall be unlawful for any person, business, tobacco retailer or other establishment subject to this article to sell, permit to be sold, or offer for sale any tobacco product by any means other than vendor-assisted sales.

(c) Vending machines prohibited. No tobacco product shall be sold or distributed 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 devices.

(d) Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this article who violates any provision of this section shall be deemed guilty of a misdemeanor.

Sec. 16-11.180. - Violation.

(a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the regulations of this article to fail to comply with its provisions.

(b) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.

(c) Any violation of this article is punishable as an infraction unless specifically designated as a misdemeanor. For any violation punishable as an infraction, penalties shall be imposed as follows:

(1) a fine not exceeding one hundred dollars for the first violation;

(2) a fine not exceeding two hundred dollars for a second violation within twelve months;  
and

(3) a fine not exceeding five hundred dollars for a third violation within twelve months.

(d) Any violation of the provisions of this article is also subject to administrative fines are provided in Article V of Chapter 1 of this Code.

(e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this article shall also constitute a violation of this article.

(f) Any person smoking where smoking is prohibited by this article shall constitute a public nuisance.

Sec. 16-11.190. - Effect on prior exemptions by health officer.

All exemptions from the prohibitions of this article granted by the health officer under previously enacted ordinances shall have no further force and effect upon the effective date of the ordinance codified in this article.

Sec. 16-11.200. - Enforcement.

(a) The County Health Officer or his/her designee shall enforce and implement this article.

(b) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the health officer, or his or her designee.

(c) The fire department or the health department may require, while an establishment is undergoing otherwise mandated inspections, permits or other approvals, a certification from the owner, manager, operator or other person having control of such establishment that all requirements of this chapter have been complied with.

(d) Any owner, operator or employee of any establishment regulated by this article may inform persons violating this article of the appropriate provisions thereof.

The health officer shall affirmatively seek the support and cooperation of other local public agencies to provide information, assistance and advice in the enforcement of the provisions of this

article, during the conduct by any of such agencies of on-site inspections of establishments or facilities the smoking upon which is regulated by the provisions of this article.

Sec. 16-11.210. - Voluntary nonsmoking establishments.

Notwithstanding any other provision of this article to the contrary, any owner, operator, manager or other person who controls any establishment described in this article may declare that entire establishment as a nonsmoking establishment. Violation of such voluntary nonsmoking policy or enforceable only by the owner, operator, manager, or other person who controls the establishment.

Sec. 16-11.220. - Other applicable laws.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**SECTION 2. California Environmental Quality Act (CEQA).** The Salinas City Council hereby finds and determines that the adoption of this ordinance is not a project pursuant to CEQA Guidelines Section 15378(b)(2) which provides that a project does not include general policy and procedure making. The adoption of this ordinance is also not a project pursuant to CEQA Guidelines Section 153778(b)(5) which provides that a project does not include organizational and administrative action of government which will not result in direct or indirect physical changes in the environment.

In the alternative, the Salinas City Council finds and determines that if the adoption of this ordinance is considered a project, it is subject to exemption. It can be seen with certainty that there is no possibility that the adoption of this ordinance may have a significant effect on the environment and therefore the adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) because CEQA applies only to projects which have the potential for causing a significant effect on the environment [CEQA Guidelines Section 15061(b)(3)]. Staff is directed to file a Notice of Exemption with the Monterey County Clerk.

**SECTION 3. Severability.** If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Salinas City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, clause, and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 4. Publication.** The City Clerk shall cause this ordinance to be published in a newspaper of general circulation, published and circulated in the city within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code.

**SECTION 5. Effective Date.** This ordinance shall be effective thirty (30) days from and after the date of its adoption.

PASSED AND ADOPTED this \_\_\_\_ day of June, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

\_\_\_\_\_  
Kimbley Craig, Mayor

ATTEST:

\_\_\_\_\_  
Patricia M. Barajas, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher A. Callihan, City Attorney