

## Chapter 28 - SMOKING AND TOBACCO REGULATIONS

### Sections:

#### 28-1 - Findings and purpose.

##### (a) The town council finds that:

- (1) Numerous scientific studies have found that tobacco smoke is a major contributor to indoor air pollution;
- (2) Reliable scientific studies, including studies by the Surgeon General of the United States and studies commissioned and assessed by the U.S. Environmental Protection Agency, have shown that breathing sidestream or secondhand smoke is a significant health hazard to nonsmokers; particularly to children and teens, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease;
- (3) Health hazards induced by exposure to environmental tobacco smoke include lung and other forms of cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, broncho-constriction and broncho-spasm, and that the most common cause of premature death from environmental tobacco smoke is heart disease;
- (4) Reliable scientific studies assessed by the U.S. Environmental Protection Agency have found that sidestream and secondhand tobacco smoke causes the death of at least fifty-three thousand nonsmokers annually and is a leading cause of premature death and disability among nonsmokers;
- (5) Nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing sidestream or secondhand tobacco smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same;
- (6) Persons, particularly employees, have a right to a smoke-free environment if they desire;
- (7) Tobacco smoking is a leading cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic losses to businesses;
- (8) Substantial scientific evidence exists that the direct use of tobacco products causes cancer, heart disease, and various other medical diseases. The Surgeon General of the U.S. has found that tobacco-caused diseases are the leading cause of premature, preventable death and disability in the U.S.;

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(9) The National Centers for Disease Control have found that at least four hundred thirty-four thousand Americans die each year from tobacco-caused diseases. The Surgeon General of the U.S. and 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 adolescents before the age of legal consent;

(10) The National Institute on Drug Abuse has concluded that the nicotine in tobacco products is a powerful addictive drug and identifies nicotine addiction as the most widespread example of drug dependence in the U.S.;

(11) The Surgeon General of the U.S. has found that nicotine in tobacco products is as addictive as cocaine and heroin;

(12) 87.9 percent of nonsmokers showed detectable levels of cotinine (a metabolite of nicotine) in their blood, the most likely source of which is secondhand smoke exposure;

(13) There is no Constitutional right to smoke;

(14) Secondhand smoke can seep under doorways and through wall cracks and through ventilation systems;

(15) State law prohibits smoking in virtually all indoor places of employment reflecting the state policy to protect against the dangers of exposure to secondhand smoke;

(16) A local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within the common areas of multi-unit residences is not prohibited by state law;

(17) California law declares that anything which is injurious to health or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance.

(b) Accordingly, the town council finds and declares that the purposes of this chapter are:

(1) To protect public health, safety and general welfare by prohibiting tobacco smoking in certain public places and in places of employment; and

(2) To guarantee the right of nonsmokers to breathe air free of toxins from combustion of tobacco, tobacco product, tobacco-like product, spices or any other plant or herbal materials to the extent that local regulation of sources of combustion of those materials is allowed by law and to recognize that the need to breathe air free of the toxins produced by smoking has priority over the desire to smoke.

(c) The town council further finds it is within its basic police power to implement and enforce the provisions of this chapter.

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## 28-2 - Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

"Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages.

"Business" means any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

"Child care facility" means any family day care regulated by Sections 1597.30 through 1597.621 of the California Health and Safety Code (or successor sections thereto) and any day care center for children regulated by Section 1596.90 et seq. of the California Health and Safety Code (or any successor section thereto). It does not include foster homes or residential care facilities.

"Common area" means every enclosed area and unenclosed area of a multi-unit residence that residents of more than one unit of that multi-unit residence are entitled to enter or use, including, for example, halls, paths, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, restrooms, laundry rooms, cooking areas, and eating areas.

"Common interest complex" means a multi-unit residence that is a condominium project, a community apartment project, a stock cooperative, or a planned development as defined by California Civil Code section 4100, or successor sections thereto.

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

"Electronic smoking device" means an electronic or battery-operated device that delivers vapors for inhalation. This term shall include every variation and type of such devices whether they are manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, and electronic cigarillo, an electronic pipe, an electronic hookah or any other product name or descriptor.

"Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

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"Employer" means any person, partnership, corporation, including a municipal corporation, or nonprofit entity, which employs the services of one or more individual persons.

"Enclosed area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

(1) Any type of overhead cover, whether or not that cover includes vents or other openings, and at least three walls or other vertical constraint to airflow including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or

(2) Four walls or other vertical constraints to airflow including, but not limited to, vegetation that exceeds six feet in height, whether or not those constraints include vents or other openings.

~~"Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) that extend from the floor to the ceiling, including all space within said walls or windows that may be screened or divided by partitions or other materials or devices that do not extend to the ceiling or are not solid.~~

"Health department" means the County of Marin Health Department.

"Landlord" means any person who owns real property leased as residential property, any person who lets residential property, or any person who manages such property, except that "landlord" does not include sublessors.

"Minor" means any individual who is less than eighteen years old.

"Multi-unit residence" means, for purposes of this chapter, a premises containing two or more units, including, but not limited to, a common interest complex, except the following specifically excluded types of housing as defined in Chapter 16 of this Code:

(1) A single-family dwelling, including enclosed areas and unenclosed areas on its premises;

(2) A detached two-family dwelling, including enclosed areas and unenclosed areas on its premises;

(3) A mobile home park unit, including enclosed and unenclosed areas on its premises.

~~"Multi-unit residence" means premises containing four or more units, except that individual units on separate parcels within a common interest complex are exempt from provisions of this chapter.~~

~~"Multi-unit common area" means any indoor or outdoor area of multi-unit residence premises accessible to and usable by residents of different units and/or members of the public, including, but not limited to, halls and paths, lobbies, laundry rooms, common areas, outdoor eating areas,~~

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~~play areas and swimming pools; except that "multi-unit common area" does not include outdoor, nonenclosed common area facilities located within a common interest complex.~~

"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 the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a "nonprofit entity" for purposes of this chapter.

"No smoking sign" means a sign containing the words "No smoking" or the international "No smoking" symbol (consisting of a pictorial representation of a burning cigarette in a red circle or red heart with a red bar across it).

"Opening" means and shall include any main entrances, exits, operable windows, and ventilation intake systems.

~~"Outdoor eating area" means an outdoor area, whether covered or uncovered, under the control of a restaurant or bar or other food and/or drink serving business or establishment, where the consumption of food and/or drink occurs.~~

"Person" means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

"Place of employment" means any area under the legal or actual control of an employer that an employee or the general public may have cause to enter in the normal course of operation, regardless of the hours of operation, including, but not limited to, indoor and outdoor work areas, construction sites, vehicles used in employment or for business purposes, taxis, employee lounges and restrooms, conference and banquet rooms, employee cafeterias, warehouses, long-term care facilities, and lobbies and hallways. A private residence is not a place of employment unless it is used as a child care or residential health care facility.

"Premises" means a piece of land and any improvements upon it such as is usually described in a deed, deed of trust or mortgage; including legally separate but contiguous pieces of land that are owned by the same natural person or by legal persons under common control.

"Public event" means an event open to the public, including, but not limited to, sports events, entertainment, speaking performances, ceremonies, pageants, parades, fairs and farmers' markets.

"Public park" means any parkland open to the public that is owned by the town and is designated "parks and recreation" on the zoning map of the town.

"Public place" means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement, including, but not limited to: bars, restaurants, clubs, stores, stadiums, parks, playgrounds, taxis, buses, bus shelters, public transportation facilities,

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hotels and motels, bed and breakfast facilities, fairs, farmers' markets, theaters, sidewalks and streets. "Public place" does not mean within private vehicles in or on public places.

~~"Public place" means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, educational facilities, health facilities, shopping malls, laundromats, public transportation facilities, reception areas, restaurants, bars, retail food production and marketing establishments, retail service establishments, retail stores, hotels and motels and the individual rooms therein, theaters and waiting rooms. A private residence is not a "public place."~~

"Reasonable distance" means a distance of at least ~~twenty five feet~~ twenty-five (25) feet in any direction from an area in which smoking is prohibited.

"Recreational area" means any area that is publicly or privately owned and open to the general public for recreational purposes, regardless of any fee or age requirement. The term "recreational area" includes, but is not limited to, parks, open spaces, picnic areas, playgrounds, sports fields, tennis courts, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, marinas, and amusement parks.

"Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, including any associated outdoor eating area, and any other eating establishment which gives or offers for sale food to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

"Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products, tobacco paraphernalia, or smoking products, and in which the sale of other products is merely incidental.

"Self-service merchandising" means 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. This includes point-of-sale tobacco promotional products (such as tobacco industry tee shirts, caps, key chains, give-aways), to which the public has access without the assistance of an employee. A vending machine is a form of self-service displays.

~~"Separate ventilation system" means a system that is exhausted to the outside and negatively pressurized.~~

"Service area" means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more persons to wait for or receive a service or make a transaction, whether or not such service or transaction involves the exchange of money. The term "service area" includes but is not limited to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, transit shelters, ferry terminals, mobile vendor lines, or taxi cab stands.

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"Smoking" means engaging in an act that produces gas, particles, vapor or smoke by means of combustion, electrical ignition or vaporization, where the apparent or usual purpose of said act is the human inhalation of the byproducts. "Smoking" does not include acts where (a) the combustion or vaporization material contains no tobacco or nicotine and (b) the purpose is solely olfactory, such as producing smoke from incense. "Smoking" does include the use of a lighted pipe, lighted cigar or lighted cigarette, lighted hookah, electronic smoking device or other device of any kind containing tobacco, tobacco product, tobacco-like product, marijuana, spices, or any other plant or herbal materials to the extent that local regulation of such lighted device, product or material is allowed by law.

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

"Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco, marijuana, or other similar products.

"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, little cigars, chewing tobacco, pipe tobacco, snuff; and
- (2) any electronic smoking device.
- (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, "tobacco product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

~~(a) Any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, blunts, clove cigarettes, or any other preparation of tobacco; and~~

~~(b) Any product or formulation of matter 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 by inhalation; but does not include any cessation product specifically approved by the U.S. Food and Drug Administration for use in treating nicotine or tobacco dependence.~~

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"Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, tobacco paraphernalia, or smoking products within the corporate limits of the Town of Tiburon. "Tobacco retailing" shall mean the doing of any of the above. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

"Tobacco vending machine" means any machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

"Town" means the Town of Tiburon.

"Town manager" means the Town Manager of the Town of Tiburon, or his or her designee.

"Town open space" means any open space land or easement owned by the town and designated as "open space" on the zoning map of the town.

"Unenclosed area" means any area that is not an 'enclosed area', as that term is defined in this section.

"Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes, but is not limited to, an apartment; an attached two-family dwelling; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single-room occupancy (SRO) facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family dwelling; and an accessory dwelling unit or guest house appurtenant to a single-family dwelling.

"Unit" means:

~~(a) A dwelling space consisting of essentially complete independent living facilities for one or more persons, including, for example, permanent provisions for living and sleeping, and any private outdoor spaces like balconies and patios; and~~

~~(b) Senior citizen housing and single room occupancy hotels, as defined in California Health and Safety Code section 50519(b)(1) or successor sections thereto, even where lacking private cooking facilities or private plumbing facilities. "Unit" does not include lodging in a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2).~~

"Vendor-assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.

28-3 Smoking and Tobacco Product Use Prohibited in Town-owned Facilities and Town Vehicles.

Smoking and use of tobacco products is prohibited in all Town-owned, Town-leased, and Town-operated vehicles, including jitneys and buses and other means of public transit under the authority of the Town, and in all enclosed residential and non-residential facilities, buildings, or structures owned, leased, occupied and/or controlled by the Town.

~~28-3—Smoking prohibited in town-owned vehicles and facilities.~~

~~Smoking is prohibited in all town-owned vehicles, including jitneys and buses and other means of public transit under the authority of the town, and in all enclosed residential and non-residential facilities, buildings, or structures owned, leased, occupied and/or controlled by the town.~~

28-4 Prohibition of Smoking and Tobacco Product Use in Enclosed Areas.

(a) Smoking and the use of tobacco products are prohibited in the enclosed areas of the following places within the Town:

- (1) Public places; and
- (2) Multi-unit residences and common areas; and
- (3) Dining areas; and
- (4) Service areas.

(b) Smoking and the use of tobacco products are prohibited in all other enclosed areas except as provided below:

(1) Inside private vehicles when no minors are present;

(2) Inside private single-family dwellings, except when used as a child care facility or a health care facility;

(3) Inside detached accessory structures appurtenant to private single-family dwellings, including accessory dwelling units;

(4) Inside private detached two-family dwellings and accessory structures appurtenant thereto;

(5) Inside retail tobacco stores, only if:

(A) The retail tobacco store does not sell edible products, including, for example, food, water, or drinks, and does not allow such products to be consumed on the premises; and

(B) The retail tobacco store prohibits minors from entering the store at all times.

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(6) Inside an enclosed place of employment that employs only the owner and no other employees or any other independent contractors routinely spending time performing work in the enclosed areas, provided that:

(A) The place of employment is not a public place, and

(B) The enclosed area containing the place of employment does not share a ventilation system with any other enclosed place of employment or public place.

~~28-4— Smoking prohibited in public parks and town open spaces.~~

~~(a) Smoking is prohibited in all public parks, whether in an enclosed area or an unenclosed area.~~

~~(b) Smoking is prohibited in all town open spaces, whether in an enclosed area or an unenclosed area.~~

## Section 28-5. Prohibition of Smoking and Tobacco Use in Unenclosed Areas; Exception for Designated Smoking Areas.

(a) Smoking and the use of tobacco products are prohibited in the unenclosed areas of the following places within the Town:

- (1) Recreational areas;
- (2) Service areas;
- (3) Public places, including streets and sidewalks open to the public;
- (4) Dining areas;
- (5) Bars;
- (6) Common areas of multi-unit residences;

(b) Notwithstanding subsection (a) above, multi-unit residences, places of employment, town-owned or controlled public places, and public events may designate an unenclosed area where smoking or use of tobacco products is permitted if the area meets all of the following criteria:

- (1) The area is located a reasonable distance of at least twenty-five (25) feet from any unit or enclosed area where smoking is prohibited by this chapter or other law; by binding agreement relating to the ownership, occupancy, or use of real property; or by designation of a person with legal control over the premises. A designated smoking area may require modification or elimination as laws change, as binding agreements are created, and as nonsmoking areas on nearby premises are established;
- (2) The area does not include, and is at least one hundred (100) feet from, unenclosed areas primarily used by children and unenclosed areas with improvements that facilitate physical activity including, for example, playgrounds, swimming pools, and school campuses;

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- (3) The area includes no more than twenty-five percent (25%) of the total unenclosed area of a multi-unit residence if located within the premises of a multi-unit residence;
  - (4) The area has a clearly marked perimeter;
  - (5) The area is identified by conspicuous signs;
  - (6) The area is completely within an unenclosed area; and
  - (7) The area does not overlap with any enclosed or unenclosed area in which smoking is otherwise prohibited by this chapter or other provisions of this Code, state law, or federal law.
- (c) Nothing in this section prohibits any person or nonprofit entity with legal control over any property from prohibiting smoking and tobacco product use on any part of such property, even if smoking or the use of tobacco products is not otherwise prohibited in that area.

## ~~28-5—Smoking prohibited in certain public places.~~

~~(a) Smoking is prohibited in all outdoor eating areas, as defined herein.~~

~~(b) Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment, building, structure, or facility may declare that entire establishment, building, structure, or facility as a non-smoking establishment, building, or structure.~~

~~(c) Smoking is prohibited in all public events, and at events or functions for which a special event permit has been issued by the town.~~

~~(d) Smoking is prohibited in all enclosed public places within the town, including, but not limited to, the following places:~~

~~(1) Elevators;~~

~~(2) Buses, taxicabs, and other means of public transit under the authority of the town and ticket, boarding, and waiting areas of public transit depots;~~

~~(3) Restrooms;~~

~~(4) Service areas;~~

~~(5) Retail stores;~~

~~(6) All areas available to and customarily used by the general public in all business and nonprofit entities patronized by the public, including, but not limited to, offices (such as attorneys', doctors', and other professionals'), banks, laundromats, malls, hotels and motels and the individual rooms therein;~~

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~~(7) Restaurants;~~

~~(8) Bars;~~

~~(9) Public areas of aquariums, galleries, libraries or museums when open to the public;~~

~~(10) Any facility that is primarily used for exhibiting motion pictures, stage productions, lectures, musical recitals or other similar performances;~~

~~(11) Sports arenas and convention halls;~~

~~(12) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the town or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the town;~~

~~(13) Waiting rooms, hallways, wards and rooms of health care facilities, including, but not limited to, hospitals, clinics, physical therapy, mental health, and drug and alcohol treatment facilities, doctors' and dentists' offices;~~

~~(14) Lobbies, hallways and other common areas in senior citizen residences, nursing homes, and child-care facilities;~~

~~(15) Multi-unit common areas;~~

~~(16) Lobbies, hallways and other common areas in multiple-unit commercial facilities;~~

~~(17) Polling places.~~

~~(b) Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.~~

28-6 - Smoking regulated in places of employment.

(a) Each employer having an enclosed place of employment located within the Town shall adopt, implement, make known and maintain a written smoking policy that shall contain the following requirements:

Smoking is 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, nonpersonal vehicles and all other enclosed facilities.

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- (b) The smoking policy shall be communicated to all employees within thirty days of its adoption, and at least annually thereafter.
- (c) All employers shall comply with these nonsmoking provisions and shall be responsible for their implementation in their places of employment.
- (d) "No Smoking" signs shall be conspicuously posted at building entrances and in employee lounges, cafeterias and lunchrooms.
- (e) All employers shall supply a written copy of the smoking policy to any existing or prospective employee.
- (f) Places of employment exempt from the prohibition on smoking in other sections of this chapter shall also be exempt from this section.

## 28-7 Smoking Restrictions for New and Existing Units of Multi-unit Residences; Responsibilities of Homeowner Association in Common Interest Complexes.

(a) With respect to all existing units of multi-unit residences in which smoking was not prohibited by this chapter prior to *{insert effective date of this Ordinance}*, said units shall become subject to the provisions of this chapter sixty (60) days following *{insert effective date of this Ordinance}*.

(b) Notwithstanding subsection (a) above to the contrary, each and every unit of a multi-unit residence, the occupancy of which becomes available for the first time on or after *{insert effective date of this Ordinance}*, shall be subject to and controlled by this chapter.

(c) The homeowners association, or its duly-appointed management agent, for each common interest complex subject to this chapter shall, within sixty (60) days of *{insert effective date of this Ordinance}*:

- (1) Establish a written smoke-free policy that meets or exceeds the applicable provisions of this chapter with respect to the indoor or outdoor areas of the entire premises;
- (2) Notify all owners and residents within the common interest complex of the new smoke-free policy, including a provision that explains that violations will be treated in the same way as noise pollution or other rules;
- (3) Post signs at the parking lot entrances that notify owners, residents, their visitors and contractors about the new smoke-free policy; and
- (4) Establish a process for addressing complaints, similar to that used for violations of other homeowner association policies.

~~28-7—Smoking prohibited in multi-unit common areas and in multi-unit residences.~~

~~(a) Smoking is prohibited in all multi-unit common areas except that a landlord may designate a portion of the outdoor area of the premises as a smoking area as provided in paragraph (b) below.~~

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~~(b) A designated smoking area:~~

~~(1) Must be located at least twenty-five (25) feet from any indoor area where smoking is prohibited;~~

~~(2) Must not include, and must be at least twenty-five feet from, outdoor areas primarily used by children including, but not limited to, areas improved or designated for play or swimming;~~

~~(3) Must be no more than twenty-five percent of the total outdoor area of the premises for which it is designated;~~

~~(4) Must have a clearly marked perimeter;~~

~~(5) Must be identified by conspicuous signs; and~~

~~(6) Must not overlap with any area in which smoking is otherwise prohibited by this chapter or other provisions of this Code, state law, or federal law.~~

~~(c) Nonsmoking units required in multi-unit residences:~~

~~(1) New multi-unit residences. In every multi-unit residence that receives a certificate of occupancy after August 19, 2011, one hundred percent of the units (including private outdoor spaces associated with such units, such as balconies, patios and decks), shall be nonsmoking units by law.~~

~~(A) Required lease terms. Every lease or other agreement for the occupancy of a unit in a new multi-unit residence shall include:~~

~~(i) A clause stating that smoking is prohibited in the unit;~~

~~(ii) A clause stating that it is a material breach of the lease or agreement to violate any law regulating smoking while on the premises, smoke in any unit, or smoke on any multi-unit common area in which smoking is prohibited; and~~

~~(iii) A clause stating that all lawful occupants of the multi-unit residence are express third-party beneficiaries of the above required clauses.~~

~~(B) The California Apartment Association's Form 34.0, revised January 2007, meets the requirements for lease terms as outlined and is an option for use to comply with this subsection.~~

~~(2) Existing multi-unit residences. In every multi-unit residence already existing on August 19, 2011, one hundred percent of the units (including private outdoor spaces associated with such units, such as balconies, patios and decks), shall by law be nonsmoking units by July 1, 2014. A landlord may make units nonsmoking prior to July 1, 2014.~~

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~~(A) Landlords shall, by October 18, 2011, notify each existing and new tenant as of August 19, 2011, of the lease terms required by this chapter.~~

~~(B) Required lease terms. Every new lease, lease renewal, lease extension, or other agreement for the occupancy of a unit in a multi-unit residence made on or after August 19, 2011, shall include:~~

~~(i) A clause stating that smoking is prohibited in the unit;~~

~~(ii) A clause stating that it is a material breach of the lease or agreement to violate any law regulating smoking while on the premises, smoke in any unit, or smoke on any multi-unit common area in which smoking is prohibited; and~~

~~(iii) A clause stating that all lawful occupants of the multi-unit residence are express third-party beneficiaries of the above required clauses.~~

~~(iv) Prior to July 1, 2014, this subsection 28-7(e)(2)(B) shall not apply to renewal of a lease or other agreement for occupancy with a person lawfully occupying the unit on August 19, 2011. On July 1, 2014, this exception shall expire and all leases, lease renewals, lease extensions, and other agreements for occupancy shall comply with this subsection 28-7(e)(2)(B).~~

~~(C) The California Apartment Association's Form 34.0, revised January 2007, meets the requirements for lease terms as outlined and is an option for use to comply with this subsection.~~

~~(D) Grace Period for Electronic Smoking Devices. This subsection 28-7(e)(2) shall not apply to the use of an electronic smoking device until October 17, 2015.~~

~~(d) The lease or agreement terms required by subsection (c)(1) or (c)(2) of this section are hereby incorporated by force of law into any lease or other agreement for the occupancy of a unit in a multi-unit residence made on or after August 19, 2011, that does not comply fully with subsection (c)(1) or (c)(2) of this section.~~

~~(e) A tenant who breaches the smoking regulations of a lease or knowingly allows another person to do so shall be liable to:~~

~~(1) The landlord, and~~

~~(2) To any lawful occupant of the multi-unit residence who is exposed to secondhand smoke as a result of that breach. A landlord shall not be liable to any person for a tenant's breach of smoking regulations if the landlord has fully complied with the requirements of this chapter.~~

~~(f) Failure to enforce any smoking regulation of a lease or agreement on one or more occasions shall not constitute a waiver of the lease or agreement provisions required by this section and shall not prevent future enforcement of any such smoking regulation on another occasion.~~

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~~(g) Disclosure of dedicated smoking area. Every landlord shall maintain a diagram that illustrates the precise location and configuration of any designated smoking area. This diagram shall accompany every new lease, lease renewal, lease extension, or other agreement for the occupancy of a unit in a multi-unit residence after August 19, 2011.~~

~~(h) Prohibitions and duties generally.~~

~~(1) No person shall smoke or knowingly permit smoking in an area of the premises under his or her legal or de facto control in which smoking is prohibited by a lease or agreement term, by this chapter, this Code, or any other state or federal law, provided, however, that this prohibition does not apply to a person who is already compelled to act under state or federal law.~~

~~(2) No person shall knowingly permit the presence or placement of ash trays, cans, or other receptacles within multi-unit common areas under his or her legal or de facto control in which smoking is prohibited by this chapter, this Code, or any other state or federal law, including, for example and without limitation, within at least twenty-five feet of any nonsmoking area.~~

~~(3) "No smoking" signs, with letters of no less than one inch in height or the international "No smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar) shall be clearly and conspicuously posted in the multi-unit common areas, at every entrance and exit, and on every floor near an elevator or common stairwell. Such signs shall be maintained by the landlord. Signs must be posted in sufficient numbers and locations in the multi-unit common areas and at entrances and exits to make areas where smoking is prohibited obvious to a reasonable person. The absence of signs shall not be a defense to a violation of any provision of this section.~~

~~(4) This chapter shall not create additional liability for a landlord for a person's violation of this chapter provided that the landlord has fully complied with the required disclosure, sign posting, and other provisions of this chapter.~~

~~(5) The provisions of this chapter are restrictive only and establish no new rights for a smoker.~~

~~(6) Notwithstanding any provision of this chapter or other provisions of this Code or failure to restrict smoking under this chapter, including any explicit or implicit provision that allows smoking, nothing in this chapter shall operate to limit a person's legal rights under other laws with regard to smoking, including, for example, claims of nuisance, trespass, property damage, and personal injury.~~

## 28-8 Required and Implied Lease Terms for Units in Multi-unit Residences, Signage, Etc.

(a) Required lease terms. Every lease or other agreement for the occupancy of a unit in a new or existing multi-unit residence shall, consistent with provisions of Section 28-7, include all of the following:

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(A) A clause stating that smoking is prohibited in the unit;

(B) A clause stating that it is a material breach of the lease or agreement to 1) violate any law regulating smoking while on the premises; 2) smoke in any unit; 3) smoke in a common area of the premises except in an unenclosed designated smoking area, provided that one lawfully exists pursuant to Section 28-5(b);

(C) A clause stating that all lawful occupants of the multi-unit residence are express third-party beneficiaries of the above-required clauses.

(b) Whether or not a landlord complies with subsection (a) above, the clauses required by that subsection shall be implied and incorporated by law into every agreement to which subsection (a) above applies.

(c) A tenant who breaches a smoking or tobacco product use provision of a lease or other agreement or knowingly allows another person to do so shall be liable to:

(1) The landlord; and

(2) To any lawful occupant of the multi-unit residence who is exposed to secondhand smoke as a result of that breach. A landlord shall not be liable to any person for a tenant's breach of smoking or tobacco product use provisions if the landlord has fully complied with the requirements of this chapter.

(d) Failure to enforce any smoking or tobacco product use provision of a lease or other agreement on one or more occasions shall not constitute a waiver of the lease or agreement provisions required by this section and shall not prevent future enforcement of any such smoking regulation on another occasion.

(e) Disclosure of designated smoking area. Every landlord shall maintain a diagram that illustrates the precise location and configuration of any designated smoking area. This diagram shall accompany every new lease, lease renewal, lease extension, or other agreement for the occupancy of a unit in a multi-unit residence.

(f) "No smoking" signs, with letters of no less than one inch in height or the international "No smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar) shall be clearly and conspicuously posted in the common areas of multi-unit residences, at every entrance and exit, and on every floor near an elevator or common stairwell. Such signs shall be maintained by the landlord. The absence of signs shall not be a defense to a violation of any provision of this chapter.

(g) This section shall not create additional liability for a landlord for a person's violation of this chapter provided that the landlord has fully complied with the required disclosure, sign posting, and other provisions of this section and section 28-5(b).

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(h) Failure to enforce any smoking provision required by this section shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

~~28-8 – Smoking not prohibited; owner option to prohibit.~~

~~(a) Except as otherwise prohibited by applicable county, state or federal law, the following areas shall not be subject to the smoking restrictions of this chapter:~~

~~(1) Private residences, except when used as a child care or residential health care facility, or except as set forth in section 28-7;~~

~~(2) Private vehicles not located in a multi-unit common area;~~

~~(3) Retail tobacco stores, only if:~~

~~(A) The retail tobacco store does not sell edible products, including, for example, food, water, or drinks, and does not allow such products to be consumed on the premises; and~~

~~(B) The retail tobacco store prohibits minors from entering the store at all times.~~

~~(4) Unenclosed areas where smoking is not otherwise prohibited by law;~~

~~(5) An enclosed place of employment that employs only the owner and no other employee or employees, provided that:~~

~~(A) The place of employment is not a public place, and~~

~~(B) The enclosed area containing the place of employment does not share a ventilation system with any other enclosed place of employment or public place.~~

~~(b) Nothing in this section shall be construed to prevent an owner, operator, manager or other person who controls any business, establishment or facility from declaring that entire business, establishment or facility as non-smoking.~~

28-9 Other Requirements and Prohibitions.

(a) No person or nonprofit entity shall knowingly permit smoking or the use of tobacco products in an area which is under the legal or de facto control of that person or nonprofit entity and in which smoking or the use of tobacco products is prohibited by law.

(b) No person or nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or de facto control of that person or nonprofit entity and in which smoking or the use of tobacco products is prohibited by law, including, without limitation, within a reasonable distance as defined in this chapter from any area in which smoking or the use

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of tobacco products is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this chapter shall not be a defense to a charge of smoking or the use of tobacco products in violation of any provision of this chapter.

(c) No person shall dispose of used smoking or tobacco product waste within the boundaries of an area in which smoking or tobacco product use is prohibited, including within a reasonable distance as defined in this chapter.

(d) Each instance of smoking or tobacco product use in violation of this chapter shall constitute a separate violation. For violations other than for smoking or the use of tobacco products in violation of this chapter, each day of a continuing violation of this chapter shall constitute a separate violation.

~~28-9 – Duty of person, employer, business or nonprofit entity.~~

~~(a) No person, employer, business, or nonprofit entity shall knowingly permit the smoking of tobacco products in an area which is under the legal or actual control of the person, employer, business, or nonprofit entity and in which smoking is prohibited by law and the person, employer, business or nonprofit entity is not otherwise compelled to act under state or federal law.~~

~~(b) No person, employer, business, or nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ashtrays or ash cans, within an area that is under the legal or actual of the person, employer, business, or nonprofit entity and in which smoking is prohibited.~~

28-10 - Posting of signs.

(a) The person, employer, business or non-profit entity with legal or actual control of a building or area where smoking is prohibited by this chapter shall clearly and conspicuously post "No Smoking" signs at the entrances of every building, as well as in other areas under their control where smoking is prohibited under this chapter. However, where an entire building or premises is non-smoking, only entrances need be signed, provided that they are signed to that effect.

(b) Every tobacco retailer, retail tobacco store, and every vendor of tobacco products shall visibly post signage pursuant to California Business and Professions Code Section 22952, or successor sections thereto, which signage shall expressly reference California Penal Code Section 308, or successor sections thereto, at the entrances of any premises subject to regulation under section 28-11 of this chapter and applicable county, state and/or federal law.

(c) The absence of signs shall not be a defense to a violation of any provision of this chapter.

28-11 - Sale of tobacco products regulated.

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(a) Any person, business, tobacco retailer, retail tobacco store, or other establishment subject to this chapter shall post plainly visible signs at each point of purchase of tobacco products that state "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 21 EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW. PHOTO ID REQUIRED. THE FINE FOR BUYING TOBACCO FOR ANYONE UNDER 21 IS \$200". The letters on said signs shall be at least one-half inch tall. These signs shall be updated as necessary to conform to any subsequent state or federal requirements or amendments to Business and Professions Code section 22952 and/or Penal Code section 308(a) or successor sections thereto.

(b) No person, business, tobacco retailer, or other establishment subject to this chapter shall sell, offer to sell, or permit to be sold any tobacco product to an individual without requesting and examining identification establishing the purchaser's age as twenty-one years or greater unless the seller has some clear and convincing basis for knowing the buyer's age.

(c) Sale of tobacco products at pharmacies is prohibited. All other vendor-assisted sales of tobacco products in the Town shall require prior issuance of a conditional use permit pursuant to Title IV, Chapter 16 (Zoning) of this Code. It shall be unlawful for any person, business, tobacco retailer, or retail tobacco store to sell, permit to be sold, or offer for sale any tobacco product by means of self-service merchandising, or by any means other than vendor-assisted sales.

~~(c) It shall be unlawful for any person, business, tobacco retailer, or retail tobacco store to sell, permit to be sold, or offer for sale any tobacco product by means of self-service merchandising, or by any means other than vendor-assisted sales.~~

(d) No person, business, tobacco retailer, retail tobacco store, or other establishment subject to this chapter shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises any vending machine for the purpose of selling or distributing any tobacco product.

(e) Any person, business, tobacco retailer, retail tobacco store, owner, manager, or operator of any establishment subject to this chapter that violates any provision of this section shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine as set forth in Penal Code section 308(a) or successor sections thereto.

28-12 - Enforcement.

(a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

(b) Each incident of smoking or use of tobacco products or other conduct in violation of this chapter shall be subject to enforcement pursuant to Chapter 31 of this Code.

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(c) The health department officer shall require, while an establishment is undergoing otherwise mandatory inspections, 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) Violations of this chapter are subject to a civil action brought by the Town, punishable by a civil fine not less than two hundred fifty dollars (\$250.00) and not exceeding one thousand dollars (\$1,000.00) per violation.

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

(f) Any violation of this chapter is hereby declared to be a nuisance.

(g) In addition to other remedies provided by this chapter, this code, or by other law, any violation of this chapter may be remedied by a civil action brought by the town attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

(h) Any person acting for the interests of itself, its members, or the general public (hereinafter "private enforcer") may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this chapter against any person who has violated this chapter two or more times. Upon proof of the violations, a court shall grant all appropriate relief, including awarding damages and/or issuing an injunction or a conditional judgment.

(i) Except as otherwise provided, enforcement of this chapter is at the sole discretion of the Town. Nothing in this chapter shall create a right of action in any person against the Town or its agents to compel public enforcement of this chapter against private parties.

(j) The purposes of this chapter are to restrict and/or prohibit smoking and use of tobacco products for the benefit of the public health, safety and welfare. This chapter establishes no new rights for a person who engages in smoking or the use of tobacco products. Notwithstanding (1) any provision of this chapter or other provisions of this code; (2) any failure by any person to restrict smoking or use of tobacco products under this chapter; or (3) any explicit or implicit provision of this chapter that allows smoking or use of tobacco products in any place; nothing in this chapter shall be interpreted to limit any person's legal rights to seek redress or recovery of damages under other laws as a result of smoking or use of tobacco products, including, for example, rights in nuisance, trespass, property damage, and personal injury or other legal or equitable principles.

~~(a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.~~

~~(b) Notice of these regulations shall be given to all applicants for a business license or renewal thereof. However, lack of such notice shall be no defense to a violation of this chapter.~~

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~~(c) Enforcement of this chapter shall be the responsibility of the town manager, who shall have the powers enumerated in this chapter and in chapter 31 of the Tiburon Municipal Code as well as the power to issue citations for violation of the chapter in accordance with section 853.6 of the California Penal Code, or successor sections thereto.~~

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

~~(e) Health department inspectors, on their regular restaurant inspections, shall check for compliance with sign posting requirements. Restaurants shall be notified in writing of any violations on the standard health inspection report. Further, such violations shall be reported in writing by the health department, on a quarterly basis, to the administrative authority in the jurisdiction where such violations occur.~~

~~(f) Notwithstanding any other provision of this chapter, a private citizen may bring legal action to enforce this chapter.~~

## 28-13 - Violations and penalties.

(a) It is unlawful for any person or non-profit entity who owns, manages, operates or otherwise controls the use of any premises or areas subject to regulation under sections 28-3, 28-4, 28-5, 28-6, 28-7, 28-8, 28-9, 28-10, 28-11, or 28-14 of this chapter to fail to comply with any of its provisions.

(b) It is unlawful for any person to smoke or use tobacco products in any area where smoking or use of tobacco products is prohibited under provisions of this chapter.

(c) Any person, non-profit entity, business, retail tobacco store, or owner, manager or operator of any establishment subject to this chapter who violates any provision of this chapter, other than section 28-11, shall be deemed guilty of an infraction and upon conviction shall be subject to payment of a fine not less than two hundred fifty dollars (\$250.00) and not exceeding one thousand dollars (\$1,000.00) per violation.

(d) Violations of section 28-11 shall be a misdemeanor.

~~(a) It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises or areas subject to regulation under sections 28-3, 28-4, 28-5, 28-6, 28-7, 28-9, 28-10, or 28-11 of this chapter to fail to comply with any of its provisions.~~

~~(b) It is unlawful for any person to smoke in any area where smoking is prohibited under provisions of this chapter.~~

~~(c) Any person, business, retail tobacco store, or owner, manager or operator of any establishment subject to this chapter who violates any provision of this chapter, other than~~

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~~section 28-11, shall be deemed guilty of an infraction and upon conviction shall be subject to payment of a fine not to exceed one hundred dollars or the limits set forth in Government Code section 36900, as may be amended from time to time, whichever is lower.~~

~~(d) Violations of section 28-11 shall be a misdemeanor.~~

28-14 - 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 right to a smoke-free environment afforded by this chapter.

28-15 - Public education.

The town manager or his/her designee will engage in a continuing educational program to explain and clarify the purposes and requirements of this chapter, as well as a guide to owners, operators and managers with compliance. However, lack of such education shall be no defense to a violation of this chapter.

28-16 - Governmental cooperation.

The town manager or his/her designee may annually request other governmental and educational agencies having facilities within the town to establish local operating procedures in cooperation and compliance with this chapter. This includes urging all federal, state, county and school district agencies to update their existing smoking control regulations to be consistent with current health findings regarding environmental tobacco smoke.

28-17 - Other applicable laws.

It is the intent of the town to supplement applicable state and federal law and not to duplicate or contradict such law, and this chapter shall be construed in a manner consistent with that intention. This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.