

Chapter 7.20

Smoking Prohibitions and Regulations

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

1. "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.
2. "Business" means any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes including but not limited to retail establishments where goods and services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
3. "City" shall mean the City of Mill Valley.
4. "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 non-profit entity.
5. "Employer" means any person, partnership, corporation, including a municipal corporation, public agency or non-profit entity who employs the services of one or more individual persons.
6. "Enclosed Area" means surrounded by a ceiling, floor, and solid walls which, except for doors, passageways, and/or windows, extend from floor to ceiling on all sides. If an enclosed area is divided by partial walls or proposed "office landscaping", it is still, in its entirety, enclosed.
7. "Non-Profit Entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social or other political 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 "non-profit entity" within the meaning of this section.
8. "Person" shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
9. "Place of Employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms,

employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care or health care facility.

10. "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, retail food production and marketing establishments, retail service establishments, retail stores, hotels and motels, theaters and waiting rooms. A private residence is not a "public place".
11. "Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria and any other eating establishment (including a bar or cocktail lounge located therein) 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. "Restaurant" shall not include any outdoor eating area.
12. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
13. "Self Service Merchandising" means open display of tobacco products and point-of-sale tobacco promotional products that the public has access to without the intervention of an employee.
14. "Service Line" means any line in an enclosed area 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.
15. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed or plant or any other combustible substance whose smoke is intended to be inhaled.
16. "Sports Arena" means enclosed 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 either to engage in physical exercise, participate in athletic competition or witness sports events.
17. "Tobacco Product" means any tobacco cigarette, cigar or pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or any other manner of ingestion.
18. "Tobacco Vending Machine" means any electronic or mechanical device or appliance the operation of which depends the insertion of money whether coin or paper currency or other things representative of value which dispenses or releases a tobacco product.
19. "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.

7.20.020 Application of chapter to City-owned vehicles and facilities. All City-owned vehicles and all enclosed facilities owned and controlled by the City and any board, council, commission and agency of the City shall be subject to the provisions of this ordinance.

7.20.030 Prohibition of smoking in public places.

A. Except as otherwise provided, smoking shall be prohibited in all enclosed public places within the City of Mill Valley including but not limited to the following places:

1. Elevators
2. Buses, taxicabs, other means of public transit subject to the jurisdiction of City of Mill Valley and ticket, boarding and waiting areas of public transit depots.
3. Restrooms
4. Service lines
5. Retail stores
6. All areas available to and customarily used by the general public in all business and non-profit entities patronized by the public, including, but not limited to, attorneys' offices and other offices, banks, laundromats, malls, hotels and motels.
7. Restaurants, including any bar or cocktail lounge associated therewith unless the bar or cocktail lounge is an enclosed area separate from the restaurant dining area and is not the sole waiting area or access to the dining area.
8. Public areas of aquariums, galleries, libraries and museums when open to the public.
9. Any facility which is primarily used for exhibiting motion pictures, stage productions, lectures, musical recitals or other similar performances, except when smoking is part of such productions.
10. Sports arenas and convention halls.
11. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, commission, committee including joint committees, or agencies of the City 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 City.
12. Waiting rooms, hallways, wards and rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy, mental health, drug and alcohol treatment facilities, doctors and dentist offices.
13. Lobbies, hallways, and other common areas in apartment buildings, condominiums, senior citizen residences, nursing homes and other multiple unit residential facilities.
14. Lobbies, hallways and other commons areas in multiple commercial facilities.
15. 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 non-smoking establishment.

7.20.040 Prohibition of smoking in places of employment.

A. Within 30 days of the effective date of this Chapter, each employer having a place of employment within enclosed areas located within the City shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be 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, vehicles and all other enclosed facilities.

Provided, however, that an employee-owned vehicle used by the employee in the course of employment shall be exempt from this prohibition.

B. The smoking policy shall be communicated to all employees within three weeks of its adoption, and at least annually thereafter.

C. All employers shall comply with these non-smoking 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 of smoking in other sections of this chapter shall also be exempt from this Section 7.20.040.

7.20.050 Smoking optional areas.

A. Notwithstanding any other provision of this chapter to the contrary, 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 health care facility.
2. Retail tobacco stores.
3. A maximum of 50% of hotel/motel rooms.
4. Restaurant, hotel or motel conference or meeting rooms and public and private assembly rooms, which are equipped with a ventilation system which conducts air to the outside, while these places are being used for private functions. However, 50% of these areas shall be designated non-smoking.
5. Any place of employment which employs only the owner and no other employee, 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.
6. Bars - Provided, however, that bars associated with a restaurant shall be subject to the smoking restrictions of this chapter if the bar is not an enclosed area separate from the dining area or if the bar constitutes the sole waiting area for, or access to, the dining area.

B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section declare that entire establishment as a non-smoking establishment.

7.20.060 Posting of signs.

A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every building, as well as on entrances at eye level or other place where smoking is regulated by this article, by the owner, operator, manager or other person having control of such building or other place.

B. Every restaurant and mall shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

7.20.070 Regulating the sale of tobacco products.

A. Any person, business, tobacco retailer or other establishment subject to this chapter shall post plainly visible signs at the point of purchase of tobacco products which state "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. PHOTO ID REQUIRED TO PURCHASE TOBACCO". The letters of said signs shall be at least one-quarter inch (1/4") high.

B. No person, business, tobacco retailer, or owner, manager, or operator of any establishment subject to this ordinance 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 at eighteen years or greater unless the seller has some reasonable basis for determining the buyer's age.

C. It shall be unlawful for any person, business or tobacco retailer to sell, permit to be sold, offer for sale or display for sale by means of self-service merchandising or by means other than vendor-assisted sales any tobacco products other than cartons of cigarettes, multi-container packages of smokeless tobacco and cigars and pipe tobacco. Cartons of cigarettes, multi-container packages of smokeless tobacco and cigars and pipe tobacco may be sold by means of self-service merchandising only when these tobacco products are under direct sight surveillance of a store employee. Tobacco products shall be deemed to be under direct sight surveillance of an employee only if the tobacco products themselves (and not just the racks, shelves, kiosks, etc. where the products are displayed) are in plain and full view of a store employee.

D. No person, business or tobacco retailer shall locate, install, keep, maintain or use, or permit the location, installation keeping, maintenance or use on his or her or its premises any vending machine for the purposes of selling or distributing any tobacco product. Any tobacco vending machine in use on the effective date of this ordinance shall be removed within six (6) months after the effective date of this ordinance.

7.20.080 Violation and penalties.

A. It shall be unlawful for any firm who owns, manages, operates or otherwise controls the use of any premises subject to regulation under Section 7.20.030 of this chapter to fail to comply with any of its provisions.

B. It shall be unlawful for any person to smoke in any area where smoking is prohibited under Section 7.20.030 of this Chapter.

C. Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this chapter who violates any provision of this Chapter shall be deemed guilty of an infraction punishable by:

1. A fine, not exceeding one hundred dollars (\$100.00) for the first violation.
2. A fine, not exceeding two hundred dollars (\$200.00) for a second violation of this Chapter within one (1) year.

3. A fine, not exceeding five hundred dollars (\$500.00) for a third violation and any subsequent violation of this Chapter within one (1) year.

7.20.090 Non-retaliation. 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.

7.20.100 Other applicable laws. This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Ord. 1117, Sec. 1, December 21, 1992.)