

Chapter 12 28

CLEAN INDOOR AIR AND HEALTH PROTECTION

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12.28 001 Title This chapter shall be known as the Indoor Air and Health Protection Ordinance. (Ord. 1085 S2, 1994).

12 28.010 Findings. The city council does hereby find that Health and Safety Code S25946 provides in part that "a local governing body may ban completely the smoking of tobacco, or may regulate such smoking in any manner not inconsistent with this chapter or any other provision of state law." The city council finds that this ordinance is consistent with the provisions of state law, and that it is otherwise within its basic police power to implement and enforce the provisions of this ordinance. (Ord. 1085 S2, 1994).

12.28.020 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 incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area. A "bar" for the purpose of this definition does not include any bar where smoke can filter into a restaurant through a passageway, ventilation system, or any other means.

2. "Bar area" means a portion of a restaurant which is primarily used for the dispensation, service, and/or consumption of alcoholic beverages and where food service is incidental to the consumption of such beverages. The dining room of a restaurant is not a bar area.

3. "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.

4. "City" shall mean the City of Sausalito

5. "Cocktail lounge" means a bar, within a restaurant, which is not the sole means of public access to the dining area, is not the sole waiting area for dining patrons, prohibits minors unless passing through, in which the service of food is only incidental to the consumption of beverages, has a separate ventilation system, and is enclosed. In this connection a written determination by the enforcement officer designated pursuant to Section 12.28.090B hereof that a cocktail lounge is enclosed shall be presumptive evidence of compliance with the enclosure requirement of this section in the absence of fraud or mistake.

6. "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

7 "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons



8. "Enclosed" 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 internal partial walls or other "office landscaping", it is still, in its entirety, enclosed. A retractable roof, whether open or closed, shall be considered a ceiling for the purpose of this definition.
9. "Minor" shall mean any individual who is less than eighteen years old.
10. "Non-profit Entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social, religious 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 "non-profit entity" within the meaning of this section.
11. "Person" shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
12. "Place of employment" means any 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 class rooms, 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.
13. "Public place" means an area to which the public is invited or in which the public is permitted.  
The following are examples of, and are included within the definition of, "public place": 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, common areas of hotels and motels, theaters and waiting rooms, elevators, buses, taxicabs, and other means of public transit under the authority of the City of Sausalito and ticket, boarding, and waiting areas of public transit depots, restrooms, service lines, retail stores, 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, common areas of hotels and motels, restaurants, bars, public areas of aquariums, galleries, libraries, museums when open to the public, any facility which is primarily

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used for exhibiting motion pictures, stage productions, lectures, musical recitals or other similar performances excluding smoking that is a part of such production, sports arenas and convention halls, 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 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, waiting rooms, hallways, wards and rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy, mental health, and drug and alcohol treatment facilities, doctors' and dentists' offices, lobbies, hallways, and other common areas in apartment buildings, condominiums, senior citizen residences, nursing homes, and other multiple-unit residential facilities, lobbies, hallways, and other common areas in multiple-unit commercial facilities, polling places. A private residence is not a "public place". A hotel room is not a "public place."

14. "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, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in Section 12.28.020.(1)
15. "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.
16. "Self-service Merchandising" means open display of tobacco products and point-of-sale tobacco promotional products to which the public has access without the intervention of an employee.
17. "Separate ventilation system" means a system which is exhausted to the outside and negatively pressurized.
18. "Service Line" means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
19. "Smoke; Smoking; to smoke" means the act of inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed or plant or other combustible substance whose smoke is intended to be inhaled.

20. "Sports Arena" means 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.
21. "Tobacco Product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.
22. "Tobacco Vending Machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a tobacco product.
23. "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. (Ord. 1085 §2, 1994).

12.28.030. Application of Chapter to City-Owned Vehicles and Facilities. All city-owned vehicles, including jitneys and buses and other means of public transit under the authority of the city, and all enclosed facilities owned and controlled by the city, including jails, and any board, council, commission and agency of the city shall be subject to the provisions of this ordinance. (Ord. 1085 §2, 1994).

12.28.040. Prohibition of Smoking in Public Places.

- A. Except as otherwise provided in this chapter, smoking is prohibited in all enclosed public places within the city of Sausalito, and in outdoor areas immediately adjacent to any entrance or exit of any building within which smoking is prohibited. Smoking is permitted in outdoor dining areas of restaurants. For purpose of this section, "entrance or exit" shall mean an opening into a building from a contiguous street, sidewalk, walkway or parking area. Any person who smokes in a public place in the City of Sausalito is guilty of an infraction, and is subject to the penalties provided for in section 12.28.100.
- B. Any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment by notifying the City Clerk of such declaration. Smoking is prohibited in an establishment or facility which has been declared a non-smoking establishment or facility by its

owner, operator, manager or other person in control of the facility or establishment, and at which signs have been properly posted in accordance with the provisions of section 12.28.070. Any person who smokes at an establishment or facility that has been declared a non-smoking establishment or facility is guilty of an infraction, and is subject to the penalties provided for in section 12.28.100. (Ord. 1085 §2, 1994).

12.28.050. Prohibition of Smoking in Places of Employment.

- A. No person may smoke in an enclosed place of employment or portion thereof in the City of Sausalito unless that enclosed place of employment or portion thereof is a place listed in section 12.28.060 as a place where smoking is optional. Any person who smokes in an enclosed place of employment in violation of this section is guilty of an infraction, and is subject to the penalties set forth in section 12.18.100.
- B. Within 90 days of the effective date of this Chapter, each employer having an enclosed place of employment located within the city shall adopt, implement, make known and maintain a written smoking policy which shall provide that smoking shall be prohibited in places where smoking is prohibited by this section.
- C. The smoking policy shall be communicated to all employees within three weeks of its adoption, and at least annually thereafter.
- D. All employers shall comply with these non-smoking provisions and shall be responsible for their implementation in their places of employment.
- E. "No Smoking" signs shall be conspicuously posted at building entrances and in employee lounges, cafeterias and lunchrooms.
- F. All employers shall supply a written copy of the smoking policy to any existing or prospective employee. (Ord. 1085 §2, 1994).

12.28.060. Smoking Optional Areas.

The following areas shall not be subject to the provisions of sections 12.28.040(A) and 12.28.050 of this Chapter unless the owner, operator, manager or other person who controls any establishment described in this section has declared that entire establishment as a nonsmoking establishment by notifying the City Clerk of such declaration and by posting the signs required in section 12.28.070:

1. Private residences, except when used as a state licensed child care or health care facility.
2. Retail tobacco stores.
3. Existing Bar Areas within restaurants whether or not the sole means of public access to the dining area, whether or not the sole waiting area for dining patrons and whether enclosed or not.
4. Enclosed restaurant, hotel and motel conference or meeting rooms and public and private assembly rooms, which are equipped with a separate ventilation system, while these places are being used for private functions, provided that 50% of these areas are designated nonsmoking, and hotel and motel guest rooms.
5. An enclosed 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 place of employment does not share a ventilation system with any other enclosed place of employment or public place.
6. Bars and cocktail lounges as defined herein. (Ord. 1085 §2, 1994).

12.28.070. 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, sufficiently and conspicuously posted at eye level in every building, as well as on entrances, and other place where smoking is regulated by this Chapter, by the owner, operator, manager or other person having control of such building or other place. Whenever smoking is prohibited in every space and area of a building, the requirements of this section shall be satisfied so long as "No Smoking" signs indicating that smoking is prohibited in the entire building are prominently posted at the entrances and exits of the building, and at the elevator lobby or other access way to the remainder of the building.
- B. Every restaurant and mall shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. (Ord. 1085 §2, 1994).

12.28.080. Regulating the Sale of Tobacco Products.

- A. Any person, business, tobacco retailer or other establishment subject to this ordinance shall post plainly

visible signs at the point of purchase of tobacco products which state "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW. PHOTO ID REQUIRED". The letters of said signs should 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 as 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, 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, or tobacco retailer 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. Any tobacco vending machine in use on the effective date of this ordinance shall be removed within thirty (30) days after the effective date of this ordinance. (Ord. 1085 §2, 1994).

12.28.090. Enforcement.

- A. Notice of these regulations shall be given to all applicants for a business license.
- B. Enforcement of this ordinance shall be implemented by the City Manager or his/her designee.
- C. Any citizen who desires to register a complaint under this ordinance may initiate enforcement with the City Manager or his/her designee.
- D. County Health 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 County Health Department, on a quarterly basis, to the administrative authority in the jurisdiction where such violations occur.
- E. The provisions of this section shall become effective ninety days after the adoption of this ordinance, and this section shall have no effect until such time. No action to enforce this ordinance shall be commenced until ninety days after the date of its adoption. (Ord. 1085 §2, 1994).

12.28.100. Violations and Penalties.

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under Sections 12.28.040, 12.28.050 and 12.28.080 of this ordinance 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 Sections 12.28.040 and 12.28.050 of this ordinance.
- C. Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this ordinance who violates any provision of this ordinance shall be deemed guilty of an infraction, punishable by:
  1. A fine, not exceeding one hundred dollars (\$100) and/or five (5) days of community service, for the first violation.
  2. A fine, not exceeding two hundred dollars (\$200) and/or ten (10) days of community service, for a second violation of this ordinance within one (1) year.
  3. A fine not exceeding five hundred dollars (\$500) and/or fifteen (15) days of community service, for a third violation of this ordinance within one (1) year.
- D. Any person who smokes in the City of Sausalito in violation of this Ordinance is deemed to be creating a hazard to the health of the general public. As such, smoking in violation of this Ordinance is a nuisance, which is subject to abatement and injunction by legal action brought by the City or by any private person.
- E. The provisions of this section shall become effective ninety days after the adoption of this ordinance, and this section shall have no effect until such time. No action to enforce this ordinance shall be commenced until ninety days after the date of its adoption. (Ord. 1085 §2, 1994).

12.28.110. 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 smokefree environment afforded by this Chapter. This Chapter does not afford any right to a smokefree environment in places exempt from this Chapter, such as bars and cocktail lounges. (Ord. 1085 §2, 1994).

12.28.120. Public Education. The City Manager shall engage in a continuing program to explain and clarify the

purposes and requirements of this ordinance to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such program may include publication of a brochure for affected business and individuals explaining the provisions of this ordinance. (Ord. 1085 §2, 1994).

12.28.130. Governmental Agency Cooperation. The City Manager shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this ordinance. 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. (Ord. 1085 §2, 1994).

12.28.140. Other Applicable laws. This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Ord. 1085 §2, 1994).