

TITLE VI PUBLIC HEALTH, SAFETY AND WELFARE
Chapter 28 SMOKING AND TOBACCO REGULATIONS

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28-1 Findings and purpose.

(a) The town council of the Town of Tiburon does find 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.;

(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 heroine;

(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 public places and places of employment; and

(2) To guarantee the right of nonsmokers to breathe tobacco smoke-free air, and to recognize that the need to breathe tobacco smoke-free air 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. (Ord. No. 386 N.S., § 2 (part))

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. 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.

"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.

"Cocktail lounge" means a bar within a restaurant which is not the sole means of public access to the dining areas, is not the sole waiting area for dining patrons, prohibits minors, has a separate ventilation system and is enclosed.

"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.

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

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

"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" within the meaning of this section.

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

"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 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.

"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."

"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 the cocktail lounge or tavern is a "bar" as defined in this section.

"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.

"Self-service displays" 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.

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

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

"Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.

"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 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.

"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.

"Town" means the Town of Tiburon.

"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. No. 386 N.S., § 2 (part))

28-3 Application to town-owned vehicles and facilities.

All town-owned vehicles, including jitneys and buses and other means of public transit under the authority of the town, and all enclosed facilities owned and controlled by the town, including jails, and any council, board, commission and agency of the town shall be subject to the provisions of this chapter. (Ord. No. 386 N.S., § 2 (part))

28-4 Prohibition of smoking in public places.

- (a) Except as otherwise provided, smoking shall be prohibited in all enclosed public places within the Town of Tiburon, 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 of Tiburon 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 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;
 - (7) Restaurants, provided:
 - (A) Cocktail lounge areas within restaurants that sell alcoholic beverages shall be exempted. Within one year of the passage of this section, such areas must meet the standards of "cocktail lounge" as defined in this chapter,
 - (B) A maximum of fifty percent of contiguous seating in outdoor food area seating thirty or more persons, clearly posted, may be exempted;
 - (8) Bars;
 - (9) Public areas of aquariums, galleries, libraries or museums when open to the public;
 - (10) 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 production;
 - (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 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 apartment buildings, condominiums, senior citizen residences, nursing homes, and other multiple-unit residential facilities;
 - (15) Lobbies, hallways and other common areas in multiple-unit commercial facilities;
 - (16) 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. (Ord. No. 386 N.S., § 2 (part))

28-5 Regulation of smoking in places of employment.

(a) Within ninety days of the effective date of this chapter, each employer having an enclosed place of employment located within the town 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.

(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 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. (Ord. No. 386 N.S., § 2 (part))

28-6 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 fifty percent of hotel/motel rooms;

(4) Restaurants, hotel and 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, fifty percent of these areas will be designated nonsmoking.

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

(b) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment. (Ord. No. 386 N.S., § 2 (part))

28-7 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 in every building, as well as on entrances at eye level, or 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.

(b) Every restaurant shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. (Ord. No. 386 N.S., § 2 (part))

28-8 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 EIGHTEEN YEARS OF

AGE IS PROHIBITED BY LAW. PHOTO ID REQUIRED." The letters of such signs should be at least one-quarter inch high.

(b) No person, business, tobacco retailer, or owner, manager or operator of any 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 eighteen years or greater unless the seller has some reasonable basis for determining the buyer's age.

(c) It is 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 displays or by any other means other than vendor-assisted sales.

(d) No person, business, tobacco retailer 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. Any tobacco vending machine in use on the effective date of this chapter shall be removed within thirty days after the effective date of this chapter.

(e) Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this chapter who violates any provision of this section shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine as provided for in Penal Code section 308(a). (Ord. No. 386 N.S., § 2 (part))

28-9 Enforcement.

(a) Notice of these regulations shall be given to all applicants for a business license.

(b) Enforcement of this chapter shall be implemented by the town manager or his/her designee.

(c) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the town manager or his/her designee.

(d) The fire district or the county 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) 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 town manager where such violations occur.

(f) Notwithstanding any other provision of this chapter, a private citizen may bring legal action to enforce this chapter. (Ord. No. 386 N.S., § 2 (part))

28-10 Violations and penalties.

(a) It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under section 28-4 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 section 28-4 by the provisions 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, other than section 28-8, shall be deemed guilty of an infraction and upon conviction shall be subject to payment of a fine not to exceed the limits set forth in Government Code section 36900. (Ord. No. 386 N.S., § 2 (part))

28-11 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. (Ord. No. 386 N.S., § 2 (part))

28-12 Public education.

The town manager, in conjunction with the county department of health, shall engage in a continuing program to explain and clarify the purposes and requirements of this chapter 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 chapter. (Ord. No. 386 N.S., § 2 (part))

28-13 Governmental agency cooperation.

The town manager shall 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. (Ord. No. 386 N.S., § 2 (part))

28-14 Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Ord. No. 386 N.S., § 2 (part))