

Chapter 6. Smoking in Enclosed Public Places and Workplaces

Article 1. General Provisions

Sec. 5-6.101 Purpose and Findings.

The City Council of the City of Hercules, County of Contra Costa, does find that:

- (a) The U.S. Environmental Protection Agency has determined that tobacco smoke is the major contributor of particulate indoor air pollution; and
- (b) Reliable studies have shown that breathing sidestream or secondhand smoke is a significant health hazard for certain population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and
- (c) Health hazards induced by breathing sidestream or secondhand smoke include heart disease, lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm; and
- (d) Nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing sidestream or secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same; and
- (e) The smoking of tobacco, or any other weed or plant, is a proven danger to health; and
- (f) The health care costs and lost productivity incurred by smoking-related disease and death represent a heavy and avoidable financial drain on our community; and
- (g)
 - (1) The free distribution of cigarettes and other tobacco products encourages people to begin smoking and using tobacco products and thereby become addicted to the habit, discourages people from quitting smoking, and tempts those who had quit smoking to begin smoking again. Encouraging smoking and discouraging those who are currently smoking from overcoming the habit endangers the public health by leading more people into habits that cause illness and death; and
 - (2) Free distribution of cigarettes and other tobacco products promotes unsightly litter, thereby increasing the costs to the public in cleaning the streets; and also causes pedestrian traffic congestion.

The compelling purpose and intent of this Chapter is to generally promote the health, safety, and welfare of all people in the community against the health hazards and harmful effects of the use of addictive tobacco products. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.102 Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as hereafter set out, unless it shall be apparent from the context that they have a different meaning:

- (a) "Area open to the public" means any area available to and customarily used by the general public.
- (b) "Bar" means an area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages (Department of Alcoholic Beverage Control Type 61, 42, or 48 licenses). That area of a restaurant which is devoted to the serving of alcoholic beverages and in which the service of food may only be incidental to the consumption of such beverages, shall also be considered a bar. An area in which food service is only incidental shall (1) not exceed forty percent (40%) of a restaurant's total seating capacity, or (2) shall encompass only those areas in which gross receipts of the restaurant from food do not exceed forty percent (40%). The operator of each restaurant shall designate by which method it determines its bar area.
- (c) "Distribute" means to give, sell, deliver, dispense, issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue.
- (d) "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.
- (e) "Employer" means any person, partnership, corporation, including municipal corporation or public entities, who employs the services of two or more persons, or two or more people conduct business within the establishment.
- (f) "Enclosed" means closed in by a roof and walls with appropriate openings for ingress and egress.
- (g) "General public" means shoppers, customers, patrons, patients, students, clients and other similar invitees of a commercial enterprise or non-profit entity.
- (h) "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, conference rooms, and employee cafeterias. A private residence is not a place of employment unless it is used as a child care or a health care facility.
- (i) "Smoking" means the carrying or holding of a lighted pipe, cigar, or cigarette of any kind, or any other lighted smoking equipment, or the lighting or emitting or exhaling the smoke of a pipe, cigar, or cigarette of any kind.

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

(k) "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 bill, or other thing representative of value, which dispenses or releases a tobacco product and/or tobacco accessories.

(l) "Bowling lane" means the bowler's approach, the foul line and the lanes.

(m) "Bowlers' settee" means the area immediately behind the bowling lane in which score is kept and seating is provided for bowlers waiting their turn to bowl;

(n) "Visitors' settee" means seating provided immediately behind the bowlers' settee;

(o) "Bowling center concourse" means that area separated from the bowling lane, bowlers' settee, and visitors' settee by at least one step or a physical barrier. (Ord. 309 Div. 2 (part), 1992)

Article 2. Regulations

Sec. 5-6.201 Regulation of Smoking in City-owned Facilities.

Smoking is prohibited in all buildings, vehicles, or other enclosed areas occupied by City employees, owned or leased by the City of Hercules, or otherwise operated by the City. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.202 Prohibition of Smoking in Enclosed Places.

Smoking shall be prohibited in the following places within the City:

(a) All enclosed areas available to and customarily used by the general public and all businesses patronized by the public, including, but not limited to, retail stores, common areas of hotels and motels, pharmacies, banks, attorneys' offices, shopping malls, and other offices;

(b) All available customer seating in a restaurant shall be designated as nonsmoking except for those outdoor eating areas specified in Section 5-6.204(h). The owner, manager or operator of the restaurant shall post signs as prescribed by Section 5-6.301 and remove all ashtrays from tables;

(c) Waiting rooms, hallways, wards, and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices, except that health facilities shall also be subject to the provisions of Section 5-6.203 of this Chapter regulating smoking in places of employment;

(d) Elevators, public restrooms, indoor service lines, buses, taxicabs and other means of public transit under the authority of the City, while within the boundaries of the City, and in ticket, boarding, and waiting areas of public transit depots; provided, however, that this prohibition does not prevent (1) the

establishment of separate waiting areas for smokers and non-smokers, or (2) the establishment of at least sixty percent (60%) of a given waiting area as a non-smoking area;

(e) In public areas of museums, galleries;

(f) Theaters, auditoriums, concert facilities, and halls which are used for motion pictures, stage dramas and musical performances, ballets or other exhibitions, both indoor and outdoor, except when smoking is part of any such production; provided, however, in outdoor facilities, designated smoking areas may be provided which shall be segregated from non-smoking areas. Where seating area is provided in an outdoor facility, no more than forty percent (40%) of the total seats of the facility may be designated as smoking seats;

(g) Retail food marketing establishments, including grocery stores and supermarkets;

(h) Public schools and other public facilities under the control of another public agency, which are available to and are customarily used by the general public, to the extent that the same are subject to the jurisdiction of the City;

(i) Sports arenas, both indoor and outdoor, and convention halls, except in outdoor sports arenas, designated smoking areas may be provided which shall be segregated from non-smoking areas. Where spectator seating is provided at outdoor arenas, no more than forty percent (40%) of the seats shall be designated as smoking seats;

(j) Bowling centers, including, but not limited to, bowling lanes, settees, gamerooms, except seating provided on the concourse, a designated smoking area may be provided which shall be segregated from non-smoking areas. Where seating is provided on the concourse, no more than forty percent (40%) of the seating shall be designated as smoking seats. The owner, manager or operator of the bowling center shall post signs as prescribed by Section 5-6.301 and remove all ashtrays from non-smoking areas;

(k) Private residences when used as child care or health care facilities. Board and care facilities shall provide smoke-free living quarters for non-smoking boarders;

(l) Bingo parlors, except a separate enclosed room may be designated as a smoking room. The owner, manager or operator of the bingo parlor shall post signs as prescribed by Section 5-6.301 and remove all ashtrays from the nonsmoking room.

(m) 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 non-smoking establishment. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.203 Regulation of Smoking in Places of Employment.

(a) Smoking is prohibited in any place of employment, including, but not limited to, open office areas, shared offices, and private offices occupied by employees performing clerical, technical, administrative or

other business or work functions; and, conference and meeting rooms, classrooms, auditoriums, restrooms, medical facilities, hallways, and elevators.

(b) The provisions of this Section shall be communicated to all employees within three weeks of its adoption. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.204 Smoking—Optional Areas.

Notwithstanding any other provisions of this Chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this Article:

(a) Private residences, including one which may serve as a place of employment, except when covered by Section 5-6.202(k);

(b) Bars, except as provided otherwise in this Chapter,

(c) Cardrooms licensed by the Sheriff-Coroner;

(d) Hotel and motel rooms rented to guests; provided, however, that each hotel and motel designates not less than thirty percent (30%) of their guest rooms as non-smoking rooms and removes ashtrays from these rooms;

(e) Retail stores that deal exclusively in the sale of tobacco and smoking paraphernalia;

(f) Restaurants, hotel, and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions;

(g) Restaurants whose primary activity is entertainment during specified days and hours, which includes the serving of alcoholic beverages and in which the service of food may only be incidental to the consumption of such beverages. The owner, manager or operator of the restaurant shall submit to the City a written notice providing the specified days and hours of operation solely intended for such activity and prior approval must be secured from the City Manager;

(h) Outdoor eating areas of restaurants. A designated smoking area may be provided which shall be segregated from the non-smoking area and no more than forty percent (40%) of the seating shall be designated as smoking seats;

(i) In places of employment, employers may provide specific smoking areas for employees provided all of the following conditions are met:

(1) The smoking area shall be provided with a heating, ventilating and air-conditioning (HVAC) system designed such that none of the air from the smoking area will be recirculated into the other areas of the building;

(2) The smoking area shall be completely separated from the remainder of the building by solid partitions or glazing without openings other than doors, and all doors leading to the smoking area shall be self-closing. The door shall be provided with a gasket so installed as to provide a seal where the door meets the stop on both sides and across the top;

(3) The smoking areas shall maintain a minimum negative pressure of 0.005-inch water column relative to non-smoking areas;

(4) The employer shall submit written verification and test results to the City Manager or designees prepared by a licensed mechanical contractor or engineer that the HVAC system has been designed and tested and meets the requirements set forth in subsections (1) through (3) above;

(5) If the HVAC system is part of a smoke-removal system or pressurization system, any modifications to these systems to provide smoking areas will require approval from the Rodeo-Hercules Fire District. Written verification of this approval shall be provided to the City;

(6) If the specific smoking area is an employee break room, lunch room or other area which may be used by nonsmoking employees, then a separate nonsmoking break room, lunch room or other area shall be provided of equal or larger size and include at least equal facilities. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.205 Cigarette Vending Machines.

Coin-operated cigarette vending machines may be located only in those premises which have either a type 61, type 42, or type 48 license from the Department of Alcoholic Beverage Control. Cigarette vending machines must be located at least twenty-five (25) feet from any entry into the premises. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.206 Distribution of Free Samples and Coupons.

(a) No person, firm, association or corporation in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products for commercial purposes shall in the course of such business distribute, or direct, authorize, or permit any agent or employee to distribute (1) any cigarette or other tobacco or smoking product, including any smokeless tobacco product; or (2) coupons, certificates, or other written material which may be redeemed for tobacco products without charge, to any person on any public street or sidewalk or in any public park or playground or on any other public ground or in any public building.

(b) No agent or employee or any person, firm, association or corporation in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products for commercial purposes shall in the course of such business distribute (1) cigarette or product; or (2) coupons, certificates, or other written material which may be redeemed for tobacco products without charge, to any person on any public street or sidewalk or in any public park or playground or on any other public ground or in any public building.

(c) For purposes of this Section, "public ground" and "public building" include sports arenas as defined in Section 5-6.102(j) and any entertainment facility whether enclosed or not, except a bar, for which a charge is made for admission, whether publicly or privately owned. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.207 Out-of-package Sales.

No person shall sell or offer for sale cigarettes or smokeless tobacco not in the original packaging provided by the manufacturer. (Ord. 309 Div. 2 (part), 1992)

Article 3. Posting Requirements

Sec. 5-6.301 Posting Requirements.

(a) "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than 1" in height 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 or other place where smoking is controlled by this Chapter, by the owner, operator, manager or other person having control of such building or other place.

(b) Every hotel or motel regulated by this Chapter will have posted at its entrance a sign clearly stating that nonsmoking rooms are available, and every patron shall be asked as to his or her preference. (Ord. 309 Div. 2 (part), 1992)

Article 4. Enforcement

Sec. 5-6.401 Enforcement.

Enforcement shall be implemented by the City Manager or designees.

Any citizen who desires to register a complaint under this Chapter may initiate enforcement considerations with the City Manager, or designees.

Any owner, manager, operator or employer of any establishment controlled by this Chapter shall have the right to inform persons violating this Chapter of the appropriate provisions thereof. (Ord. 309 Div. 2 (part), 1992)

Article 5. Penalty

Sec. 5-6.501 Penalties.

(a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this Chapter to fail to:

- (1) Properly post signs required hereunder;
- (2) Adopt a smoking restriction policy;
- (3) Comply with any other requirements of this Chapter.

(b) It shall be unlawful for any person to smoke in any area restricted by the provisions of this Chapter.

(c) Any person/business who violates subsections (a) or (b) of this Section, or any other provisions of this Chapter, shall be guilty of an infraction, punishable by:

(1) A fine, not to exceed One Hundred Dollars (\$100), for first violation;

(2) A fine, not to exceed Two Hundred Dollars (\$200), for a second violation of this Chapter within one year;

(3) A fine, not to exceed Five Hundred Dollars (\$500), for each additional violation of this Chapter within one (1) year. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.502 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 rights afforded by this Chapter. (Ord. 309 Div. 2 (part), 1992)

Article 6. Other Laws

Sec. 5-6.601 Other Applicable Laws.

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Ord. 309 Div. 2 (part), 1992)