

Division 445 - SECONDHAND SMOKE AND TOBACCO PRODUCT CONTROL^[10]

Chapter 445-2 - GENERAL PROVISIONS

Sections:

445-2.002 - Title.

This division is known as the secondhand smoke and tobacco product control ordinance of Contra Costa County.

(Ords. 2006-66 § 4, 98-43 § 2, 91-44 § 2)

445-2.004 - Purpose.

The purposes of this division are to protect the public health, safety and welfare against the health hazards and harmful effects of the use of addictive tobacco products; and further to maintain a balance between the desires of persons who smoke and the need of nonsmokers to breathe smoke-free air, while recognizing that where these conflict, the need to breathe smoke-free air shall have priority.

(Ords. 2006-66 § 4, 98-43 § 2, 91-44 § 2)

445-2.006 - Definitions.

For the purposes of this division, the following words and phrases have the following meanings:

- (a) "Characterizing flavor" means a distinguishable taste or aroma imparted by a tobacco product or any byproduct produced by the tobacco product that is perceivable by an ordinary consumer by either the sense of taste or smell, other than the taste or aroma of tobacco. A "characterizing flavor" includes, but is not limited to, a taste or aroma relating to a fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice.
- (b) "Cigar" means any roll of tobacco other than a cigarette wrapped entirely

- (j) "Menthol cigarettes" means cigarettes as defined by federal law, that have a flavor of menthol, mint, or wintergreen, including cigarettes advertised, label by the manufacturer as possessing a menthol characterizing flavor.
- (k) "Multi-unit residence" means a building that contains two or more dwelling units, including but not limited to apartments, condominiums, senior citizen housing, nursing homes, and single room occupancy hotels. A primary residence with an attached or detached accessory dwelling unit permitted pursuant to Chapter 82-24 is not a multi-unit residence for purposes of this division.
- (l) "Multi-unit residence common area" means any indoor or outdoor area of a multi-unit residence accessible to and usable by residents of different dwelling units, including but not limited to halls, lobbies, laundry rooms, common cooking areas, stairwells, outdoor eating areas, play areas, swimming pools, and carports.
- (m) "Place of employment" means any area under the control of an employer, business, or nonprofit entity that an employee, volunteer, or the public may have cause to enter in the normal course of operations, regardless of the hours of operation. Places of employment include, but are not limited to: indoor work areas; bars; restaurants; hotels and motels, including all guest rooms; vehicles used for business purposes; taxis; employee lounges and breakrooms; conference and banquet rooms; bingo and gaming facilities; long-term health care facilities; warehouses; retail or wholesale tobacco shops; and private residences used as licensed child-care or health-care facilities when employees, children, or patients are present and during business hours. The places specified in subdivisions (e) (1), (2), (6), and (7) of Labor Code section 6404.5 are places of employment for the purposes of this division and are regulated as specified in this division. The places specified in subdivisions (e)(3), (4), and (5) of Labor Code section 6404.5 are not places of employment for the purposes of this division.
- (n) "Public place" means any area to which the public is invited or in which the public is permitted. A private residence is not a public place.
- (o) "Self-service display" means the open display or storage of tobacco

(4) "Tobacco product" does not include any product that has been approved by the Food and Drug Administration for sale as a tobacco cessation product for therapeutic purposes where the product is marketed and sold solely for that purpose.

(u) "Tobacco retailer" means any individual or entity who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia. "Tobacco retailing" means the doing of any of these things. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

(Ord. No. 2018-07, § VII, 3-13-18; Ord. No. 2017-01, § II, 7-18-17; Ord. No. 2013-10, § II, 4-9-13; Ord. No. 2010-10, § II, 10-12-10; Ord. No. 2006-66 § 4; Ord. No. 98-43 § 2; Ord. No. 91-44 § 2)

Chapter 445-4 - SECONDHAND SMOKE

Sections:

445-4.002 - County facilities.

- (a) Smoking is prohibited in all buildings, vehicles, and other enclosed areas occupied by county employees, owned or leased by the county, or otherwise operated by the county.
- (b) Smoking is prohibited in all outdoor areas owned or leased by the county, including parking lots, the grounds of the county's hospital and health clinics, and the grounds of all other buildings owned or leased by the county.
- (c) Smoking is prohibited on the grounds of the county's jails and county juvenile system facilities to the extent allowed by law.

(Ord. No. 2014-06, § II, 6-17-14; Ord. No. 2006-66 § 5, 91-44 § 2)

Editor's note— Ord. No. 2014-06, § II, adopted June 17, 2014, amended the title of § 445-4.002 to read as set out herein. Previously § 445-4.002 was titled county-owned facilities.

445-4.004 - Prohibition of smoking.

provided in Section 445-4.006.

(Ord. No. 2018-07, § II, 3-13-18; Ord. No. 2010-10, § III, 10-12-10; Ords. 2006-66 § 5, 91-44 § 2)

445-4.006 - Exceptions.

- (a) Smoking is permitted at any location within the county unless otherwise prohibited by this code or by state or federal law.
- (b) If a dwelling unit in a multi-unit residence is subject to a lease or other rental agreement and smoking is authorized under the lease or rental agreement, smoking is permitted in the dwelling unit until the lease or rental agreement is modified to prohibit smoking in accordance with Section 445-4.014.
- (c) If a dwelling unit in a multi-unit residence is owner-occupied, smoking is permitted in the owner-occupied dwelling unit until July 1, 2019.

(Ord. No. 2018-07, § III, 3-13-18; Ord. No. 2010-10, § IV, 10-12-10; Ords. 2006-66 § 5, 91-44 § 2)

445-4.008 - Posting requirements.

"Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not 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 with a red bar across it), shall be conspicuously posted in every building or other place where smoking is regulated by this division by the owner, operator, manager or other person having control of the building or other place. This section does not require the posting of "No Smoking" signs inside or on the doorway of any dwelling unit in a multi-unit residence.

(Ord. No. 2018-07, § IV, 3-13-18; Ords. 2006-66 § 5, 91-44 § 2)

445-4.010 - Ashtray placement.

No ashtray or other receptacle used for disposing of smoking materials may be placed at any location where smoking is prohibited by this division or otherwise prohibited by law.

(Ord. No. 2009-26, § II, 10-20-09)

445-4.012 - Disclosure of smoking complaint policy.

future enforcement of the lease or rental agreement provisions required by this section.

(e) A landlord is not liable under this chapter to any person for a tenant's breach of smoking regulations if:

- (1) The landlord has fully complied with all provisions of this chapter; and
- (2) Upon receiving a signed, written complaint regarding prohibited smoking, the landlord provides a warning to the offending tenant, stating that the tenant may be evicted if another complaint is received. Upon receiving a second signed, written complaint against the offending tenant, the landlord may evict the tenant, but is not liable for the failure to do so.

(Ord. No. 2018-07, § VI, 3-13-18; Ord. No. 2010-10, § V, 10-12-10)

Chapter 445-6 - TOBACCO SALES^[11]

Sections:

445-6.002 - Self-service displays.

- (a) It is unlawful for any person or tobacco retailer to sell, permit to be sold, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by means of self-service display, vending machine, rack, counter-top or shelf that allows self-service sales for any tobacco product or tobacco paraphernalia.
- (b) All tobacco products and tobacco paraphernalia shall be offered for sale exclusively by means of vendor or employee assistance. Tobacco products and tobacco paraphernalia shall be kept in a locked case that requires employee assistance to retrieve the tobacco products or tobacco paraphernalia.

(Ords. 2006-66 § 6, 98-43 § 2).

445-6.004 - Distribution of free samples and coupons.

It is unlawful for any person, agent, or employee of a person in the business of selling or distributing cigarettes or other tobacco or smoking products to distribute, or direct, authorize, or permit any agent or employee to distribute, any of the following to any person on any

(Ord. No. 2017-01, § VI, 7-18-17)

445-6.012 - Identification required.

No tobacco retailer may sell or transfer a tobacco product or tobacco paraphernalia to a person who reasonably appears to be under the age of twenty-seven years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase the tobacco product or tobacco paraphernalia.

(Ord. No. 2017-01, § VII, 7-18-17)

Chapter 445-8 - ENFORCEMENT

Sections:

445-8.002 - Compliance.

- (a) A person may not smoke in any place where smoking is prohibited by this division.
- (b) A person who owns, manages, operates or otherwise controls the use of any place where smoking is prohibited by this division may not knowingly or intentionally permit smoking in those places. For purposes of this subsection, a person has acted knowingly or intentionally if he or she has not taken the following actions to prevent smoking by another person: (1) requested that a person who is smoking refrain from smoking; and (2) requested that a person who is smoking leave the place if the person refuses to stop smoking after being asked to stop. This section does not require physically ejecting a person from a place or taking steps to prevent smoking under circumstances that would involve risk of physical harm.
- (c) The presence or absence of the signs required by Section 445-4.008 is not a defense to the violation of any other provision of this division.

(Ord. No. 2009-26, § IV, 10-20-09; Ords. 2006-66 § 7, 91-44 § 2)

445-8.004 - Remedies.

445-10.002 - License requirement.

- (a) It is unlawful for any retailer, individual, or entity to conduct tobacco retailing in the unincorporated area of the county without first obtaining and maintaining a valid tobacco retailer's license from Contra Costa County for each location where tobacco retailing is conducted.
- (b) No tobacco retailer's license will be issued that:
 - (1) Authorizes tobacco retailing at any location other than a fixed location. Tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.
 - (2) Authorizes tobacco retailing in a pharmacy.
 - (3) Results in the total number of tobacco retailer's licenses in the unincorporated area of the county exceeding ninety.
- (c) Each day that tobacco products are offered for sale by a tobacco retailer without a tobacco retailer's license is a separate violation.

(Ord. No. 2017-01, § VIII, 7-18-17; Ord. No. 2003-01 § 3; Ord. No. 98-50 § 2)

445-10.004 - Enforcement of state law.

If a clerk or employee sells a tobacco product or tobacco paraphernalia to any person under the age of twenty-one, the retailer shall immediately notify the appropriate local law enforcement agency of the violation of Penal Code section 308 for enforcement under that statute.

(Ord. No. 2017-01, § IX, 7-18-17; Ord. No. 2003-01 § 3; Ord. No. 98-50 § 2)

445-10.006 - Definitions.

For purposes of this chapter, the following words and phrases have the following meanings:

- (a) "Director" means the director of Contra Costa health services or his or her designee.
- (b) "Drug paraphernalia" has the meaning set forth in California Health and

- (a) Upon receipt of a completed application for a tobacco retailer's license, including payment of a fee pursuant to Section 445-10.012, the tax collector will issue a tobacco retailer's license, unless any of the following grounds for denial exist:
- (1) The application is incomplete or inaccurate;
 - (2) The application seeks authorization for tobacco retailing by a person or location for which a suspension is in effect under Section 445-10.018;
 - (3) The application seeks authorization for tobacco retailing that is an unlawful use of land, building or structure contrary to Divisions 82 or 84 of this code.
 - (4) Failure to pay an outstanding fine.
- (b) Each licensee must prominently display the tobacco retailer's license at the location where tobacco retail sales are conducted.
- (c) The tobacco retailer's license is nontransferable. If there is a change in location, a new tobacco retailer's license will be issued for the new address upon receipt of an application for change of location. The new tobacco retailer's license will retain the same expiration date as the previous one.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.012 - License fee.

A tobacco retailer's license will not be issued unless a fee is paid. The fee for a tobacco retailer's license shall reflect the reasonable cost of providing services necessary to the licensing activities of this chapter. The fees prescribed by this section are regulatory permit fees and do not constitute a tax for revenue purposes. The fee shall be in the amount established annually by the board of supervisors in the Contra Costa County health services department's fee schedule.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.014 - Business license.

public health director will issue a written decision to revoke or not revoke the license and will list in the decision the reason or reasons for that decision. The written decision will be served as specified in Section 445-10.022. A revocation is without prejudice to the filing of a new application for a tobacco retailer's license.

- (d) Revocation Appeal. The decision of the public health director to revoke a tobacco retailer's license is appealable to the board of supervisors and will be heard at a noticed public hearing as provided in Chapter 14-4 of this code.
- (e) Final Order. The tobacco retailer's license revocation becomes a final administrative order at one of the following times:
 - (1) On the date of the revocation hearing, if a tobacco retailer fails to appear at a scheduled revocation hearing;
 - (2) On the date the public health director's decision is served, if a tobacco retailer fails to file a written appeal to the board of supervisors within the time specified;
 - (3) On the date of the appeal hearing, if a tobacco retailer fails to appear at a scheduled appeal hearing before the board of supervisors;
 - (4) On the date of the decision by the board of supervisors, if a tobacco retailer appears at a scheduled appeal hearing before the board of supervisors.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.018 - License suspension.

- (a) Grounds for Suspension. A tobacco retailer's license may be suspended for any violation of this division, any state or federal tobacco-related laws, any state or federal law regulating controlled substances or drug paraphernalia, or any state or local law regulating advertising and signage on retailer's window space.
- (b) Notice of Suspension Hearing. If any grounds for suspension exist, the director may issue a notice of suspension hearing. The notice of suspension hearing will be served to a tobacco retailer as specified in Section 445-10.022 and will include all of the following information:
 - (1) The date of the violation.

- (2) On the date the public health director's decision is served, if a tobacco retailer written appeal to the board of supervisors within the time specified.
- (3) On the date of the appeal hearing, if a tobacco retailer fails to appear at a scheduled appeal hearing before the board of supervisors.
- (4) On the date of the decision by the board of supervisors, if a tobacco retailer appears at a scheduled appeal hearing before the board of supervisors.

(Ord. No. 2017-01, § XI, 7-18-17; Ord. No. 2003-01 § 3; Ord. No. 98-50 § 2)

445-10.020 - Enforcement.

The county may seek compliance with this chapter by any remedy allowed under this code, including, but not limited to, revocation (Section 445-10.016), suspension (Section 445-10.018), administrative fines (Chapter 14-12), criminal citations (Section 14-8.008), and any other remedy allowed by law.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.022 - Service.

All notices or decisions required to be served by this chapter will be served either by the method specified in subsection (a) or by the method specified in subsection (b). The failure of a person to receive a properly addressed service shall not affect the validity of the proceedings.

- (a) Certified mail. Certified mail will be addressed to the tobacco retailer at the address shown on the license application. Service is deemed complete upon the deposit of the notice or decision, postage pre-paid, in the United States mail. Simultaneously, the same notice or decision may be sent by regular mail. If a notice or decision sent by certified mail is returned unsigned, then service is deemed effective pursuant to regular mail on the date mailed.
- (b) Personal service. Personal service is deemed complete on the date the notice or decision is personally served.

(Ords. 2003-01 § 3, 98-50 § 2).