

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES AMENDING THE HERCULES MUNICIPAL CODE, ARTICLE 5, CHAPTER 6, KNOWN AS THE CITY OF HERCULES SMOKEFREE ORDINANCE, TO ADD ADDITIONAL RESTRICTIONS TO LIMIT SMOKING IN COMMON AREAS OF MULTI-UNIT RESIDENCES, AND PROHIBIT SMOKING INSIDE DWELLING UNITS IN ANY MULTI-UNIT RESIDENCE COMPRISED OF TEN (10) OR MORE UNITS

Whereas, exposure to Secondhand Smoke (SHS) is linked to many illnesses, including lung cancer and heart disease; and

Whereas, among children, SHS is also associated with serious respiratory problems, including asthma, pneumonia and bronchitis, sudden infant death syndrome, and low-birth weight; and

Whereas scientific studies from CAL-EPA (California Environmental Protection Agency, 2006) and the Surgeon General's Reports (2006 and 2010) clearly show that secondhand smoke is a health risk.

Now, therefore, be it ordained by the City Council of the City of Hercules that the Hercules Municipal Code, Article 5, Chapter 6, is amended to read as follows:

Chapter 6. Ordinance Prohibiting Smoking in All Workplaces and Public Places

Sec. 5-6.101. Title.

This Chapter shall be known as the City of Hercules Smokefree Ordinance. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.102 Findings and Intent.

The City of Hercules does hereby find that:

(a) According to the 2010 U.S. Surgeon General's Report, How Tobacco Smoke Causes Disease, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke.

(b) According to the 2014 U.S. Surgeon General's Report, The Health Consequences of Smoking—50 Years of Progress, secondhand smoke exposure causes stroke in nonsmokers. The report also found that since the 1964 Surgeon General's Report on Smoking and Health, two

million five hundred thousand (2,500,000) nonsmokers have died from diseases caused by tobacco smoke.

(c) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately fifty-three thousand (53,000) Americans annually.

(d) Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death.

(e) A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a twenty-five percent (25%) to fifty percent (50%) higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.

(f) During periods of active smoking, peak and average outdoor tobacco smoke (OTS) levels measured in outdoor cafes and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations. Nonsmokers who spend six (6) hour periods in outdoor smoking sections of bars and restaurants experience a significant increase in levels of cotinine when compared to the cotinine levels in a smokefree outdoor area.

(g) The dangers of residual tobacco contamination are present in hotels, even in nonsmoking rooms. Compared with hotels that are completely smokefree, surface nicotine and smoke is elevated in nonsmoking rooms of hotels that allow smoking. Hallway surfaces outside of smoking rooms also show higher levels of nicotine than those outside of nonsmoking rooms. Partial smoking restrictions in hotels do not protect non-smoking guests from exposure to tobacco smoke and tobacco-specific carcinogens.

(h) Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or “e-cigarettes,” closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. Electronic

cigarettes produce an aerosol or vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. The World Health Organization (WHO) recommends that electronic smoking devices not be used indoors, especially in smokefree environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smokefree laws.

(i) Hookah smoke exposes users to many of the same toxicants found in cigarette smoke.

(j) The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly ten billion dollars (\$10,000,000,000) a year: five billion dollars (\$5,000,000,000) in estimated medical costs associated with secondhand smoke exposure and four billion, six hundred million dollars (\$4,600,000,000) in lost productivity.

(k) Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree.

(l) Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety.

(m) On June 9, 2016, California became the second state to change its tobacco minimum-age sales law to twenty-one (21) years old for tobacco, e-cigarettes and vaping products. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.103 Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

(a) “Bar” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(b) “Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

(c) “Electronic smoking device” means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

(d) “Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a nonprofit entity.

(e) “Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or nonprofit entity that employs the services of one (1) or more individual persons.

(f) “Enclosed area” means all space between a floor and a ceiling that is bounded on at least two (2) sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

(g) “Health care facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

(h) “Hookah” means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.

(i) "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 is not a multi-unit residence for purposes of this Chapter.

(j) "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.

(~~k~~) "Place of employment" means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

(~~j~~) "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City grounds.

(~~k~~~~m~~) "Private club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under [26](#) U.S.C. Section [501](#).

(~~l~~~~n~~) "Public event" means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

(~~m~~~~o~~) "Public place" means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

(**ap**) “Recreational area” means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, amusement parks, athletic fields, beaches, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.

(**eq**) “Restaurant” means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar area within the restaurant.

(**pr**) “Service line” means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

(**qs**) “Shopping mall” means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.

(**ft**) “Smoke shop and tobacco store” means any premises dedicated to the display, sale, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, or tobacco paraphernalia; provided, however, that any grocery store, supermarket, convenience store or similar retail use that only sells conventional cigars, cigarettes or tobacco as an ancillary sale shall not be defined as a “smoke shop and tobacco store” and shall not be subject to the restrictions in this Chapter. It is unlawful for a smoke shop and tobacco store to knowingly allow or permit a person under the age of twenty-one (21) to enter or remain within any smoke shop and tobacco store or to make the purchase of tobacco products or tobacco related products, unless that person is U.S. active duty military personnel over the age of eighteen (18) and is exempt under state law.

(**su**) “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. “Smoking” also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Chapter. “Smoking” of hookahs as defined herein may be allowed by permit on a limited basis in outdoor areas of restaurant and bar

establishments when the activity occurs twenty-five (25) feet or more from other patrons, residences, schools, offices, businesses, or other public places, unless such use creates a nuisance or otherwise results in creation of a disturbance.

(tv) “Sports facility” means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.104 Application of Chapter to City-Owned Facilities and Property.

All enclosed areas, including buildings and vehicles owned, leased, or operated by the City, as well as all outdoor property adjacent to such buildings and under the control of the City, shall be subject to the provisions of this Chapter. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.105 Prohibition of Smoking in Enclosed Public Places.

Smoking shall be prohibited in all enclosed public places within the City of Hercules, including but not limited to, the following places:

(a) Galleries, libraries, and museums.

Areas available to the general public in businesses and nonprofit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.

(b) Bars.

(c) Bingo facilities.

(d) Child care and adult day care facilities.

(e) Convention facilities.

(f) Educational facilities, both public and private.

(g) Elevators.

(h) Gambling facilities.

(i) Health care facilities.

(j) Hotels and motels.

(k) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

(l) Parking structures.

(m) Polling places.

(n) Public transportation vehicles, including buses and taxicabs, under the authority of the City, and ticket, boarding, and waiting areas of public transportation facilities, including bus, carpool, ferry, and train facilities.

(o) Restaurants.

(p) Restrooms, lobbies, reception areas, hallways, and other common-use areas.

(q) Retail stores.

(r) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.

(s) Service lines.

(t) Shopping malls.

(u) Sports facilities, including enclosed places in outdoor arenas.

(v) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.106 Prohibition of Smoking in Enclosed Places of Employment.

(a) Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, without limitation, 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) This prohibition on smoking shall be communicated to all existing employees by the effective date of the ordinance codified in this Chapter and to all prospective employees upon their application for employment. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.107 Prohibition of Smoking in Private Clubs.

Smoking shall be prohibited in all private clubs. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.108 Prohibition of Smoking in Enclosed Residential Facilities.

Smoking shall be prohibited in the following enclosed residential facilities:

(a) All private and semi-private rooms in nursing homes.

(b) All hotel and motel guest rooms. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.109 Prohibition of Smoking in Outdoor Public Places.

Smoking shall be prohibited in the following outdoor places:

(a) Within a reasonable distance of twenty-five (25) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent smoke from entering those areas.

(b) On all outdoor property that is adjacent to buildings owned, leased, or operated by the City and that is under the control of the City.

(c) In, and within twenty-five (25) feet of, outdoor seating or serving areas of restaurants and bars.

(d) In outdoor shopping malls, including parking structures.

(e) In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within twenty-five (25) feet of, bleachers and grandstands for use by spectators at sporting and other public events.

(f) In outdoor recreational areas, including parking lots.

(g) In, and within twenty-five (25) feet of, all outdoor playgrounds.

(h) In, and within twenty-five (25) feet of, all outdoor public events.

(i) In, and within twenty-five (25) feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City.

(j) In all outdoor service lines, including lines in which service is obtained by persons in vehicles, such as service that is provided by bank tellers, parking lot attendants, and toll takers. In lines in which service is obtained by persons in vehicles, smoking is prohibited by both pedestrians and persons in vehicles, but only within twenty-five (25) feet of the point of service.

(k) In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least twenty-five (25) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited. A designated smoking area of an outdoor common area of a multi-unit residence must not include areas used primarily by children; must have a clearly marked perimeter; and must be identified by conspicuous signs.

(l) All dwelling units in any multi-unit residence comprised of ten (10) or more units except as otherwise provided in Section 5-6.105.

Sec. 5-6.105 Exceptions.

(a) Smoking is permitted at any location within the city unless otherwise prohibited by this code or by state or federal law.

(b) If a dwelling unit in a multi-unit residence comprised of ten (10) or more units 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 5-6.114——.

(c) If a dwelling unit in a multi-unit residence comprised of ten (10) or more units is owner-occupied, smoking is permitted in the owner-occupied dwelling unit until July 1, 2020.

Sec. 5-6.110 Prohibition of Smoking in Outdoor Places of Employment.

(a) Smoking shall be prohibited in all outdoor places of employment where two (2) or more employees are required to be in the course of their employment. This includes, without limitation, work areas, construction sites, and temporary offices such as trailers, restroom facilities, and vehicles.

(b) This prohibition on smoking shall be communicated to all existing City employees by the effective date of the ordinance codified in this Chapter and to all prospective City employees upon their application for employment. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.111 Regulation of Smoke Shops and Tobacco Stores.

(a) Smoke shops and tobacco stores wishing to operate within the City after the effective date of the ordinance codified in this Chapter must obtain a conditional use permit (CUP). Smoke shops and tobacco stores that are legally existing on the effective date of the ordinance codified in this Chapter may continue to operate as legal nonconforming uses and shall not be required to obtain a conditional use permit. However, any change or expansion of the legal nonconforming use may require compliance with this Chapter and a conditional use permit.

(b) Smoke shops and tobacco stores shall not be located within three hundred (300) feet, measured property line to property line, from a school (public or private), family day care home, child care facility, youth center, community center, recreational facility, park, church, hospital, or other similar uses where children regularly gather.

(c) Smoke shops and tobacco stores shall not be located within five hundred (500) feet, measured property line to property line, from another smoke shop and tobacco store.

(d) It is unlawful for a smoke shop and tobacco store to knowingly allow or permit a person under the age of twenty-one (21) to enter or remain within any smoke shop and tobacco store or to make the purchase of tobacco products or tobacco related products, unless that person is U.S. active duty military personnel over the age of eighteen (18) and is exempt under state law.

(e) Smoke shops and tobacco stores shall post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under twenty-one (21) years of age is illegal and subject to penalties. The notice shall also state that the law requires that all persons selling tobacco products check the identification of a purchaser of tobacco products who reasonably appears to be under twenty-one (21) years of age. The warning signs shall include a toll-free telephone number to the State Department of Public Health for persons to report unlawful sales of tobacco products to any person under twenty-one (21) years of age. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.112 Where Smoking Not Regulated.

Notwithstanding any other provision of this Chapter to the contrary, smoking shall not be prohibited in private residences, unless used as a childcare, adult day care, or health care facility. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.113 Posting of Signs, Disclosure of Complaint Policy, and Removal of Ashtrays.

Upon being provided notice pursuant to Section 5-6.115(b), the owner, operator, manager, or other person in control of a place of employment, public place, private club, or residential facility where smoking is prohibited by this Chapter shall:

- (a) Clearly and conspicuously post “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) in that place.
- (b) Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited or, in the case of outdoor places, clearly and conspicuously post “No Smoking” signs in appropriate locations as determined by the City Manager or an authorized designee.
- (c) Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Chapter at least one (1) sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- (d) Remove all ashtrays from any area where smoking is prohibited by this Chapter, except for ashtrays displayed for sale and not for use on the premises. (Ord. 508 § 1 (part), 2018)
- (e) 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.
- (f) In a multi-unit residence where units are rented or leased to tenants, the owner and manager of the residence shall disclose whether a policy for handling smoking complaints is in effect at the multi-unit residence, and if so, shall provide a copy of that policy to each tenant along with every new lease or rental agreement for the occupancy of a unit in the multi-unit residence.

Sec. 5-6.114 Required Lease Terms.

- (a) Commencing July 1, 2019, every lease and other rental agreement for the occupancy of a dwelling unit in a multi-unit residence comprised of ten (10) or more units that is

entered into, renewed, or continued month-to-month must include the terms specified in subsection (b) on the earliest possible date allowed by law after providing any required legal notice.

(b) Required Terms.

(1) A clause stating that smoking is prohibited in all dwelling units in a multi-unit residence comprised of ten (10) or more units must be included in the written agreements specified in subsection (a).

(2) A clause stating that it is a material breach of the lease or rental agreement to:

(i) Violate any law regarding smoking while on the premises;

(ii) Smoke in any dwelling unit in a multi-unit residence comprised of ten (10) or more units; or

(iii) Smoke in any multi-unit residence common area where smoking is prohibited, must be included in the written agreements specified in subsection (a).

(c) The California Apartment Association's Form 34.0, as amended from time to time, may be used to comply with this Section.

(d) A landlord's failure to enforce any smoking regulation of a lease or rental agreement on one or more occasions does not constitute a waiver of the lease or rental agreement provisions required by this Section and does not prevent 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.

Sec. 5-6.11~~45~~ Nonretaliation; Nonwaiver of Rights.

(a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Chapter or reports or attempts to prosecute a violation of this Chapter.

(b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.11~~56~~ Enforcement.

(a) This Chapter shall be enforced by the City Manager or an authorized designee.

(b) Notice of the provisions of this Chapter shall be given to all applicants for a business license in the City.

(c) Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the City Manager or an authorized designee. Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the City Manager or an authorized designee.

(d) The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Chapter.

(e) An owner, manager, operator, or employee of an area regulated by this Chapter shall direct a person who is smoking in violation of this Chapter to extinguish or turn off the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.

(f) Notwithstanding any other provision of this Chapter, an employee or private citizen may bring legal action to enforce this Chapter.

(g) In addition to the remedies provided by the provisions of this Section, the City Manager or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.1167 Violations and Penalties.

(a) A person who smokes in an area where smoking is prohibited by the provisions of this Chapter shall be subject to the penalty provisions of this Code, including but not limited to administrative citations and/or infractions as specified in Chapter 1-4.

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Chapter shall be subject to the penalty provisions of this Code, including but not limited to administrative citations and/or infractions as specified in Chapter 1-4.

(c) In addition to the fines established by this Section, violation of this Chapter by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(d) Violation of this Chapter is hereby declared to be a public nuisance, which may be abated by the City Attorney by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.

(e) Each day on which a violation of this Chapter occurs shall be considered a separate and distinct violation. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.1178 Public Education.

The City Manager 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. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this Chapter. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.1189 Other Applicable Laws.

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.11920 Construction.

This Chapter shall be broadly construed so as to further its purposes. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.1201 Severability.

If any provision, clause, sentence, or paragraph of this Chapter or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.12~~12~~ Declaration of Establishment or Outdoor Area as Nonsmoking.

Notwithstanding any other provision of this Chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section [5-6.113](#) is posted. (Ord. 508 § 1 (part), 2018)