



REPORT TO THE CITY COUNCIL

DATE: Meeting of May 14, 2019

TO: Members of the City Council

SUBMITTED BY: J. Patrick Tang, City Attorney
David Biggs, City Manager

SUBJECT: Consider Adopting Additional Restrictions To Limit Smoking In Common Areas Of Multi-Unit Residences, And to Prohibit Smoking Inside Dwelling Units In Any Multi-Unit Residence Comprised Of Ten (10) Or More Units

RECOMMENDED ACTION:

Waive the second reading, and adopt an ordinance to establish additional restrictions on smoking in common areas of multi-unit residences, and to prohibit smoking inside dwelling units in any multi-unit residence comprised of ten (10) or more units.

BACKGROUND:

On July 24, 2018, the City Council had a preliminary discussion about the desirability of restricting smoking in multi-family units. In a follow up meeting on March 26, 2019, after hearing public comment and after discussion of the proposal, the Council directed staff and the City Attorney to prepare a draft ordinance for the Council's consideration that would prohibit smoking within multi-family housing units when there are ten or more units in the development. The prior staff reports are provided as Attachment 1, and the draft Ordinance is provided as Attachment 2.

The City contracts with the County for animal control services, plan check and building inspection services, and some limited code enforcement. If adopted, smoking enforcement would not be part of the contract services currently provided by the County. The County's Health Services has expressed a willingness to serve as a resource, but would not be able to provide actual enforcement services unless contracted to do so with the City required to reimburse the County for services provided. As such, City staff has expressed concern that the adoption of a non-smoking ordinance for multi-family units

would create expectations for enforcement which the City would not be able to fulfill. In response to this concern, the Council at its March 26, 2019 meeting directed staff to draft an ordinance that would restrict smoking in multi-unit housing when there are ten or more units.

DISCUSSION:

Prohibition on Smoking in Multi-unit Housing with ten or more units. Exposure to Secondhand Smoke (SHS) is linked to many illnesses, including lung cancer and heart disease. Among children, SHS is also associated with serious respiratory problems, including asthma, pneumonia and bronchitis, sudden infant death syndrome, and low-birth weight. A number of jurisdictions have enacted legislation in an attempt to limit the effects of second hand smoke in public, the workplace, and in residential settings.

The proposed changes to the City's existing Smokefree Ordinance are modelled after the restrictions adopted by the Contra Costa County Board of Supervisors in 2018 to address the effects of second hand smoke in residential settings within the County's jurisdiction. The pertinent provisions from the County's ordinance have been added to the City's existing ordinance, and are indicated by redline and strikeout in Attachment 2. The primary distinction is that the City's restrictions would apply only to residences in multi-unit complexes containing ten or more units.

The draft ordinance if adopted would require multi-unit housing of ten or more units to be smoke-free starting July 1, 2019. This will require that leases and rental agreements reflect the new requirements as follows:

- Every lease and other rental agreement for the occupancy of a dwelling unit in a multi-unit residence of ten or more units that is entered into, renewed, or continued month-to-month must include that smoking is prohibited within those dwelling units starting July 1, 2019.
- Every existing lease of a dwelling unit in multi-unit housing of ten or more units that specifically allows smoking must contain a clause stating that smoking is prohibited when the lease is renewed, or no later than July 1, 2019, whichever is earliest.

Additional Restrictions on Smoking in Common Areas. The City's Smokefree Ordinance already prohibits smoking in common areas of all multi-unit residences regardless of the number of units, as follows:

“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.” (HMC Section 5-6.109(k)).

The draft ordinance would amend Section 5-6.109(k) to incorporate additional County restrictions that prohibit designating a common area a “smoking area” when primarily used by children, and to require that the perimeter of a designated “smoking area” be marked clearly and identified with signage:

“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.**”

ATTACHMENTS:

- 1: March 26, 2019 and July 24, 2018 Staff Reports to Council.
- 2: Draft of Proposed Ordinance.

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.

(l) "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.

(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](#).

(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.

(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)



REPORT TO THE CITY COUNCIL

DATE: Meeting of April 23, 2019

TO: Members of the City Council

SUBMITTED BY: J. Patrick Tang, City Attorney
David Biggs, City Manager

SUBJECT: Consider Adopting Additional Restrictions To Limit Smoking In Common Areas Of Multi-Unit Residences, And to Prohibit Smoking Inside Dwelling Units In Any Multi-Unit Residence Comprised Of Ten (10) Or More Units

RECOMMENDED ACTION:

Conduct a public hearing, waive the first reading, and introduce an ordinance to adopt additional restrictions on smoking in common areas of multi-unit residences, and to prohibit smoking inside dwelling units in any multi-unit residence comprised of ten (10) or more units.

BACKGROUND:

On July 24, 2018, the City Council had a preliminary discussion about the desirability of restricting smoking in multi-family units. In a follow up meeting on March 26, 2019, after hearing public comment and after discussion of the proposal, the Council directed staff and the City Attorney to prepare a draft ordinance for the Council's consideration that would prohibit smoking within multi-family housing units when there are ten or more units in the development. The prior staff reports are provided as Attachment 1, and the draft Ordinance is provided as Attachment 2.

The City contracts with the County for animal control services, plan check and building inspection services, and some limited code enforcement. If adopted, smoking enforcement would not be part of the contract services currently provided by the County. The County's Health Services has expressed a willingness to serve as a resource, but would not be able to provide actual enforcement services unless contracted to do so with the City required to reimburse the County for services provided. As such, City staff has expressed concern that the adoption of a non-smoking ordinance for multi-family units

would create expectations for enforcement which the City would not be able to fulfill. In response to this concern, the Council at its March 26, 2019 meeting directed staff to draft an ordinance that would restrict smoking in multi-unit housing when there are ten or more units.

DISCUSSION:

Prohibition on Smoking in Multi-unit Housing with ten or more units. Exposure to Secondhand Smoke (SHS) is linked to many illnesses, including lung cancer and heart disease. Among children, SHS is also associated with serious respiratory problems, including asthma, pneumonia and bronchitis, sudden infant death syndrome, and low-birth weight. A number of jurisdictions have enacted legislation in an attempt to limit the effects of second hand smoke in public, the workplace, and in residential settings.

The proposed changes to the City's existing Smokefree Ordinance are modelled after the restrictions adopted by the Contra Costa County Board of Supervisors in 2018 to address the effects of second hand smoke in residential settings within the County's jurisdiction. The pertinent provisions from the County's ordinance have been added to the City's existing ordinance, and are indicated by redline and strikeout in Attachment 2. The primary distinction is that the City's restrictions would apply only to residences in multi-unit complexes containing ten or more units.

The draft ordinance if adopted would require multi-unit housing of ten or more units to be smoke-free starting July 1, 2019. This will require that leases and rental agreements reflect the new requirements as follows:

- Every lease and other rental agreement for the occupancy of a dwelling unit in a multi-unit residence of ten or more units that is entered into, renewed, or continued month-to-month must include that smoking is prohibited within those dwelling units starting July 1, 2019.
- Every existing lease of a dwelling unit in multi-unit housing of ten or more units that specifically allows smoking must contain a clause stating that smoking is prohibited when the lease is renewed, or no later than July 1, 2019, whichever is earliest.

Additional Restrictions on Smoking in Common Areas. The City's Smokefree Ordinance already prohibits smoking in common areas of all multi-unit residences regardless of the number of units, as follows:

“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.” (HMC Section 5-6.109(k)).

The draft ordinance would amend Section 5-6.109(k) to incorporate additional County restrictions that prohibit designating a common area a “smoking area” when primarily used by children, and to require that the perimeter of a designated “smoking area” be marked clearly and identified with signage:

“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.**”

ATTACHMENTS:

- 1: March 26, 2019 and July 24, 2018 Staff Reports to Council.
- 2: Draft of Proposed Ordinance.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 26, 2019

TO: Members of the City Council

SUBMITTED BY: Patrick Tang, City Attorney
David Biggs, City Manager

SUBJECT: Possible Multi-Family Smoking Ordinance

RECOMMENDED ACTION: Receive Update, Discuss, and Provide Direction, if any.

FISCAL IMPACT OF RECOMMENDATION: None as a result of this item, though, the adoption of restrictions on smoking in Multi-Family units may result in enforcement obligations and costs in the future.

DISCUSSION: On July 24, 2018, the City Council has a preliminary discussion about the desirability of restricting smoking in multi-family units. The staff report and attachments from that meeting are attached (Attachment 1). Since that time, the City Attorney has been further exploring the issues associated with the adoption of such a prohibition, including having reached out to the County of Contra Costa to discuss the possibility of the County enforcing such an ordinance should one be adopted either as a stand-alone ordinance or if the County's current restrictions were adopted by reference, as the City has done with animal control.

In the instance of animal control, the City contracts with the County for animal control services. While the City contracts with the County for plan check and building inspection services, and some limited code enforcement, smoking enforcement would not be part of these contract services. The County's Health Services has expressed a willingness to serve as a resource, but would not be able to provide actual enforcement services. As such, City staff is concerned that the adoption of a non-smoking ordinance for multi-family units would create expectations for enforcement which the City would not be able to fulfill.

This item is being presented to allow the City Council to determine if staff should bring back an ordinance for consideration which would implement Multi-Family Smoking Restrictions in the context of the limited ability to enforce here in Hercules. If the City Council would like to proceed, it is recommended that the City adopt by reference the County's code as to facilitate possible future involvement by the County in enforcement should that become an option at a later date.

ATTACHMENTS:

1. Staff Report from July 24, 2018 and attachments



REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of July 24, 2018

TO: Mayor Kelley and Members of the City Council

SUBMITTED BY: Patrick Tang, City Attorney
David Biggs, City Manager

SUBJECT: Discuss whether restrictions on smoking in multi-unit housing as adopted by Contra Costa County should be considered in Hercules

RECOMMENDED ACTION: Discuss and provide direction to staff.

FISCAL IMPACT OF RECOMMENDATION:

There would be some expense associated with providing notice to residents and affected businesses if additional restrictions were adopted. There would be an undetermined cost associated with code enforcement efforts in the event enforcement were required.

DISCUSSION:

Earlier this year, the City Council voted to adopt a revised smoking ordinance that amends and updates the City's outdated smoking restrictions. The new ordinance does not regulate smoking within private residences in multi-unit complexes. A copy of the ordinance as adopted by Council is attached for your reference.

During the discussion of the updated proposed ordinance, council was made aware of new legislation adopted by the County that has imposed additional restrictions to limit smoking in private residences within multi-unit developments. The County's ordinance does not apply within the city limits of Hercules. Council directed staff to include as a future agenda item a discussion of the County's ordinance, to determine whether it is desirable and/or feasible to adopt a similar ordinance that would limit smoking in residences within multi-unit properties within Hercules. This staff report is responsive to the Council's request; relevant information regarding the new restrictions is being provided as attachments to this report.

ATTACHMENTS:

1. [County Multi-Unit Smoking Ordinance.](#)
2. [County educational materials explaining the new policy.](#)
3. The Revised Hercules Smoking Ordinance.

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; Ords. 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).

Secondhand Smoke Protections Ordinance

Exposure to Secondhand Smoke (SHS) is linked to many illnesses, including lung cancer and heart disease. Among children, SHS is also associated with serious respiratory problems, including asthma, pneumonia and bronchitis, sudden infant death syndrome, and low-birth weight. Protecting workers and the public from the effects of Secondhand Smoke remains a high priority for the Tobacco Prevention Project and Tobacco Prevention Coalition.

In 2006, the Contra Costa County Secondhand Smoke Protections Ordinance for all of the unincorporated areas of the county was adopted by the County Board of Supervisors. The Board of Supervisors continues to strengthen this ordinance as new evidence demonstrates that additional protections are needed. This law was passed based on scientific studies from CAL-EPA (California Environmental Protection Agency, 2006) and the Surgeon General's Reports (2006 and 2010) that clearly show that secondhand smoke is a health risk.

NEW! Multi-unit housing in unincorporated areas Contra Costa is going smoke-free starting July 1, 2018.

- Every lease and other rental agreement for the occupancy of a dwelling unit in a multi-unit residence that is entered into, renewed, or continued month-to-month must include that smoking is prohibited in all dwelling units starting July 1, 2018.
*
- Existing leases that specifically allow smoking must contain a clause stating that smoking is prohibited in all dwelling units *when the lease is renewed or no later than July 1, 2019, whichever is earliest.* *
- **NEW!** Ordinance: Secondhand Smoke Protections Ordinance Contra Costa County Code Chapter 445

- Coming Soon! Brochure: A Guide to Contra Costa County's Secondhand Smoke Protections Ordinance

Smoking (including the use of a hookah pipe, medical marijuana or electronic smoking device such as an e-cigarette) is prohibited in the following outdoor areas:

- All areas within 20 feet of the doors, operable windows, air ducts and ventilation systems of any enclosed worksite or enclosed places open to the public, except while passing on the way to another destination;
- In outdoor dining areas at bars and restaurants (including outdoor dining areas at places of employment and in outdoor lounges);
- On public trails and in public parks;
- In service areas. (Service area means an area used to receive or wait for a service, enter a public place or make a transaction, including ATM's, bank teller windows, ticket lines, bus stops and taxi stands);
- In public event venues (such as stadiums, fairs, pavilions, farmers markets); and
- On the campus of all County-owned or leased properties.

In Multi-Unit Housing Residences, smoking is prohibited:

- NEW! In 100% of all dwelling units of multi-unit housing residences starting July 1, 2018 for new and renewing leases. All units, including owner-occupied, must be 100% smoke-free by July 1, 2019.
- In common indoor and outdoor areas of multi-unit housing residences of 4 or more unit; and
- On all balconies, patios, decks and carports for existing and new multi-unit housing.
- All areas within 20 feet of doors, windows, air ducts and ventilation systems of multi-unit housing residences, except while walking from one destination to another.

Landlord Responsibilities:

- NEW! Every lease and other rental agreement for the occupancy of a dwelling unit in a multi-unit residence that is entered into, renewed, or continued month-to-month must include that smoking is prohibited in all dwelling units starting July 1, 2018. *
- NEW! Existing leases that specifically allow smoking must contain a clause stating that smoking is prohibited in all

dwelling units when the lease is renewed or no later than July 1, 2019, whichever is earliest. *

- Disclose the policy for handling smoking complaints in effect at the multi-unit housing residence, and provide a copy of that policy to each tenant along with every new lease or rental agreement for the occupancy of a unit in a multi-unit housing residence.
- Post "No smoking" signs with letters of not less than one inch in height, or the international "No Smoking" symbol (consisting of a burning cigarette in a red circle with a red bar across it). The sign must be visibly posted in every building or other place where smoking is prohibited by law;
- Not allow ashtrays or other receptacles for disposing of smoking material where smoking is prohibited; and
- Not knowingly allow smoking in smoking prohibited areas.

Landlords may designate a common outdoor area of a multi-unit housing residence as a smoking area. For details contact Tobacco Prevention Project at tobaccopreventionproject@hsd.cccounty.us (<mailto:tobaccopreventionproject@hsd.cccounty.us>)

*The California Apartment Association's form 34.0 may be used.

Smoking is also prohibited:

- In any indoor workplace or indoor area open to the public, including tobacco shops, owner or volunteer operated businesses and hotel lobbies.

Smoking is permitted:

- In any location within the county unless otherwise prohibited by local, state or federal law; and
- In up to 20 percent of guests room in any hotel, unless the hotel has designated the entire hotel smoke-free.

Compliance Information

In every building or other place where smoking is prohibited by law, the owner, operator or manager must:

- Post "No smoking" signs with letters of not less than one inch in height, or the use of the international "No Smoking" symbol (consisting of a burning cigarette in a red circle with a red



bar across it), must be visibly posted in every building or other place where smoking is regulated by the owner, operator, manager.

- Not allow ashtrays or other receptacles for disposing of smoking material where smoking is prohibited.
- Not knowingly allow smoking in smoking prohibited areas. The owner, operator or manager must request that the person stop smoking and if the person fails to stop, ask them to leave the premises.

Posting Signage Is Required By The Law

Research shows that 80% of all smokers would like to quit and that smoke-free public places provide a more supportive environment. Information about cessation programs (to quit smoking) are available by calling the California Smoker's Helpline at 1-800-NO-BUTTS or visit www.californiasmokershelpline.org (<http://www.californiasmokershelpline.org/>)

Below are links to Contra Costa County Secondhand Smoke Protection Ordinance Signs for business owners, landlords and the general public to download:

1. ["No smoking" sign \(11" X 8.5"\)](#)
2. ["No smoking" sign \(7" X 5"\)](#)
3. ["No fumar" sign \(11" X 8.5"\)](#)
4. ["No smoking within 20 feet" sign \(11" X 8.5"\)](#)
5. ["No smoking within 20 feet" sign \(5" X 7"\)](#)
6. ["No Smoking within 20 feet" - Spanish sign \(11" X 8.5"\)](#)
7. ["No Smoking within 20 feet" - Spanish sign \(5" X 7"\)](#)
8. ["No Smoking" sign \(expanded language\) \(11" X 8.5"\)](#)
9. ["No smoking" sign \(expanded language\) \(7" X 5"\)](#)



While supplies last, signage is available through the [Tobacco Prevention Project \(/tobacco/\)](#).

[[help with](#) [PDF files](#)]

Contra Costa County smoking ordinance now in effect

June 27, 2018

Multifamily properties in unincorporated areas of Contra Costa County are smoke-free as of Sunday, July 1.

In March, the county Board of Supervisors unanimously adopted the Contra Costa County Secondhand Smoke Ordinance, which prohibits smoking inside multifamily properties with two or more units. Although the ordinance takes effect July 1, property owners and operators have until July 1, 2019, to amend house rules and make the necessary transition to smoke-free housing before fines can be imposed.

CAA Contra Costa does not oppose the efforts of local jurisdictions to promote smoke-free housing and protect residents from secondhand smoke.

CAA Contra Costa staff worked with the county to ensure that impacts on rental property owners are mitigated and to reduce administrative burdens on property owners and operators.

County staff and the Board of Supervisors were receptive to CAA Contra Costa's comments and allowed the final ordinance to have the following:

- A 12-month phase-in period to provide ample time for owners to amend house rules and post signage.
- Allow the use of CAA's Smoking Addendum for new leases and renewals.
- Allow property owners to designate a smoking area within the property.
- Not require "no smoking" signs individual housing units.

California Apartment Association

A full copy of the law, signage, as well as information about the harmful effects of secondhand smoke exposure are available through the Contra Costa Health Services Tobacco Prevention Project's [website](http://cchealth.org/tobacco/secondhand-smoke/)

[<http://cchealth.org/tobacco/secondhand-smoke/>].

Questions or concerns? Contact Rhovy Lyn Antonio, CAA's vice president of public affairs for Contra Costa County, at (408) 342-3506 or rantonio@caanet.org [<mailto:rantonio@caanet.org>]



[<https://caanet.org/contra-costa-county-smoking-ordinance-takes-effect-july-1/?share=facebook&nb=1>]



[<https://caanet.org/contra-costa-county-smoking-ordinance-takes-effect-july-1/?share=twitter&nb=1>]



[<https://caanet.org/contra-costa-county-smoking-ordinance-takes-effect-july-1/?share=linkedin&nb=1>]



[<https://caanet.org/contra-costa-county-smoking-ordinance-takes-effect-july-1/?share=email&nb=1>]

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Contra Costa [<https://caanet.org/news/?newsdivision=325>]

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[<http://portal.hud.gov/hudportal/HUD?>

ORDINANCE NO. 508

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES
REPEALING AND REPLACING ARTICLE 5, SECTION 6 OF THE HERCULES
MUNICIPAL CODE RELATED TO SMOKING IN WORKPLACES AND PUBLIC
PLACES , AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM CEQA**

WHEREAS, the City of Hercules in 1992 adopted by ordinance regulations regarding smoking in public places and in the workplace; and

WHEREAS, changes in State law regarding smoking render the City's 1992 Smoking Ordinance in conflict with state law; and

WHEREAS, the 1992 Smoking Ordinance does not address use of new and popular smoking technologies that were not in existence at the time the ordinance was passed; and

WHEREAS, the Council desires to enact more comprehensive smoking regulations to better protect the health and safety of the City's residents; and

WHEREAS, the Findings contained in the revised Section 5-6.102 are incorporated herein by reference and are made a part of these Recitals as if fully set forth herein; and

WHEREAS, the City Council has determined that the Amendment is categorically exempt from CEQA pursuant to section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that the Amendment will not have a significant effect on the environment. The City Council has also determined that the Zoning Text Amendment is categorically exempt from CEQA pursuant to section 15303(a) of the CEQA Guidelines because it governs smoking in public workplaces and public places.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HERCULES DOES
HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. Hercules Municipal Code Article 5, Section 6 shall be replaced in its entirety with a new Article 5, Section 6 as follows:

**“Title 5, Chapter 6 - Ordinance Prohibiting Smoking in
All Workplaces and Public Places**

Sec. 5-6.101. Title

This Article shall be known as the City of Hercules Smokefree Ordinance.

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, 2.5 million 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 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 25-50% 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.¹⁹ Nonsmokers who spend six-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 \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion 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 9th, 2016, California became the second state to change its tobacco minimum-age sales law to 21 years old for tobacco, e-cigarettes and vaping products.

Sec. 5-6.103. Definitions

The following words and phrases, whenever used in this Article, 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 non-profit entity.
- (e) “Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- (f) “Enclosed Area” means all space between a floor and a ceiling that is bounded on at least two 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) “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) "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) "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) "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.
- (n) "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.
- (o) "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.
- (p) "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.

- (q) "Shopping Mall" means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.
- (r) "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.**
- (s) "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 Article. "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 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.
- (t) "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.

Sec. 5-6.104. Application of Article 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 Article.

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 non-profit 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.

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 this Article and to all prospective employees upon their application for employment.

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

Smoking shall be prohibited in all private clubs.

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.

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 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 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 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 25 feet of, all outdoor playgrounds.
- (h) In, and within 25 feet of, all outdoor public events.
- (i) In, and within 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 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 25 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

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 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 this Article and to all prospective City employees upon their application for employment.

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 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 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 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 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 21 years of age.

Sec. 5-6.112. Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, smoking shall not be prohibited in private residences, unless used as a childcare, adult day care, or health care facility.

Sec. 5-6.113. Posting of Signs 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 Article 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 Article at least one 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 Article, except for ashtrays displayed for sale and not for use on the premises.

Sec. 5-6.114. 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 Article or reports or attempts to prosecute a violation of this Article.
- (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.

Sec. 5-6.115. Enforcement

- (a) This Article shall be enforced by the City Manager or an authorized designee.
- (b) Notice of the provisions of this Article shall be given to all applicants for a business license in the City.
- (c) Any citizen who desires to register a complaint under this Article may initiate enforcement with City Manager or an authorized designee. Any citizen who desires to register a complaint under this Article 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 Article.

- (e) An owner, manager, operator, or employee of an area regulated by this Article shall direct a person who is smoking in violation of this Article 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 Article, an employee or private citizen may bring legal action to enforce this Article.
- (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 Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 5-6.116. Violations and Penalties

- (a) A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be subject to the penalty provisions of this Code, including but not limited to administrative citations and/or infractions as specified in Article 1, Chapter 4 of this Code.
- (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 Article shall be subject to the penalty provisions of this Code, including but not limited to administrative citations and/or infractions as specified in Article 1, Chapter 4 of this Code.
- (c) In addition to the fines established by this Section, violation of this Article 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 Article 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 Article occurs shall be considered a separate and distinct violation.

Sec. 5-6.117. Public Education

The City Manager shall engage in a continuing program to explain and clarify the purposes and requirements of this Article 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 ordinance.

Sec. 5-6.118. Other Applicable Laws

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 5-6.119. Construction

This Article shall be broadly construed so as to further its purposes.

Sec. 5-7.120. Severability

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Sec. 5-7.121. Declaration of Establishment or Outdoor Area as Nonsmoking

Notwithstanding any other provision of this Article, 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.

SECTION 2. Publication and Effective Date.

a. This Ordinance shall be published in accordance with applicable law, by one or more of the following methods:

1. Posting the entire Ordinance in at least three (3) public places in the City of Hercules, within fifteen (15) days after its passage and adoption; or

2. Publishing the entire Ordinance at least once in the West County Times, a newspaper of general circulation published in the County of Contra Costa and circulated in the City of Hercules, within fifteen (15) days after its passage and adoption; or

3. Publishing a summary of the Ordinance in the West County Times and posting a certified copy of the entire Ordinance in the office of the City Clerk at least five (5) days prior to the passage and adoption, and a second time within fifteen (15) days after its passage and adoption, along with the names of those City Councilmembers voting for and against the Ordinance.

b. This Ordinance shall go into effect thirty (30) days after the date of its passage and adoption.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the Hercules City Council on the 24th day of April, 2018, and was passed and adopted at a regular meeting of the Hercules City Council on the 8th day of May, 2018, by the following vote:

AYES: Council Members: G. Boulanger, M. de Vera, R. Esquivias, Vice Mayor Romero, Mayor Kelley

NOES: None.

ABSENT: None.

ABSTAIN: None.




Chris Kelley, Mayor