

# Chapter 4

## SMOKING REGULATIONS

### 5-4-1: DEFINITIONS:

**ELECTRONIC CIGARETTE:** An electronic and/or battery operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. The term includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an e-cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. The term does not include any inhaler prescribed by a licensed doctor.

**ENCLOSED:** Closed in by a roof and walls with appropriate openings for ingress and egress.

**HOTEL:** Shall have the same definition as that set forth in [title 10, chapter 3](#) of this code.

**NONENCLOSED:** A predominantly outdoor area that does not meet the definition of "enclosed", including, but not limited to, open air dining areas.

**OPEN AIR DINING AREA:** Any nonenclosed area located on private or public property made available to or customarily used by the general public that is designed, established or regularly used for consuming food and/or beverages or where food and/or beverages are served whether or not for compensation. This includes, but is not limited to, restaurants, hotels, bar standing and seating areas, patios, and coffee shops. An open air dining area does not include open air dining areas that are immediately adjacent to and accessory to a private smokers' lounge, as that term is defined in Labor Code section 6404.5 or its successor statute.

**SMOKE, SMOKING, VAPE OR VAPING:** The carrying, holding, or operating of a lighted pipe, cigar, cigarette, electronic cigarette, or other kind of smoking equipment. Smoke also means the lighting, operating, emitting, or exhaling of the smoke or vapor of a pipe, cigar, cigarette, electronic cigarette or other kind of smoking equipment. Smoke also means the gaseous or vaporous products and particles created by the use of a lighted or operated pipe, cigar, cigarette, electronic cigarette or other kind of smoking equipment. (Ord. 14-O-2657, eff. 6-1-2014)

### 5-4-2: SMOKING IN OPEN AIR DINING AREAS PROHIBITED:

Smoking is prohibited in all open air dining areas located on private or public property, including the public right of way. In addition, smoking is prohibited within five feet (5') of an open air dining area, except while actively passing on the way to another destination. Notwithstanding this prohibition, smoking shall be allowed in up to twenty five percent (25%) of contiguous deck space surrounding hotel swimming pools. (Ord. 07-O-2518, eff. 10-1-2007)

### 5-4-3: POSTING OR PLACING OF SIGNS:

Any business with an area subject to the prohibition set forth in section [5-4-2](#) of this chapter shall post or cause to be posted and shall maintain "no smoking" signs in conspicuous locations within said area. All such signs shall be prominently displayed, shall clearly recite the phrase "no smoking" and/or use the international no smoking symbol and shall cite section [5-4-2](#) of this chapter. Such signs shall be posted not less than five feet (5') nor more than eight feet (8') above floor level and shall be of sufficient number and location to cause the message of the signs to be clearly visible and readable and must be made of permanent, weather resistant materials. No person shall wilfully mutilate or destroy any sign required by this section. Signs required under this section are exempt from the sign requirements in [title 10, chapter 4](#) of this code. (Ord. 07-O-2518, eff. 10-1-2007)

#### **5-4-4: RIGHTS AND OBLIGATIONS OF OWNERS, OPERATORS AND EMPLOYERS:**

- A. Any person who owns, operates, manages, or controls any business regulated by this chapter may designate the entire business as a no smoking area.
  
- B. The provisions of this chapter shall not be construed to require the owner, operator or manager of any existing business to make any structural or other physical alterations, modifications, or improvements to such business, other than the posting or placing of signs required by section [5-4-3](#) of this chapter. (Ord. 07-O-2518, eff. 10-1-2007)

#### **5-4-5: PROHIBITION OF CIGARETTE OR ELECTRONIC CIGARETTE VENDING MACHINES:**

Unless otherwise prohibited by state or federal law, no person shall install, place, operate, or maintain within the city any cigarette vending machine. "Cigarette vending machine" shall mean any self-service device which, upon insertion of money or tokens, dispenses cigarettes or electronic cigarettes without the necessity of replenishing the device between each vending operation. (Ord. 14-O-2657, eff. 6-1-2014)

#### **5-4-6: PROHIBITION OF SMOKING ELECTRONIC CIGARETTES IN AND AROUND PUBLIC BUILDINGS:**

Smoking electronic cigarettes is prohibited in and around city public buildings in the city where smoking of tobacco products is prohibited by California Government Code section 7597 or any successor statute thereto. (Ord. 14-O-2657, eff. 6-1-2014)

#### **5-4-7: PROHIBITION OF SMOKING ELECTRONIC CIGARETTES IN ENCLOSED PLACES OF EMPLOYMENT:**

Smoking electronic cigarettes is prohibited in all enclosed places of employment where smoking of tobacco products is prohibited by California Labor Code section 6404.5 or any successor statute thereto. (Ord. 14-O-2657, eff. 6-1-2014)

#### **5-4-8: LANDLORD MAY PROHIBIT SMOKING ELECTRONIC CIGARETTES:**

A landlord may prohibit the smoking of electronic cigarettes in the same manner as the smoking of tobacco products as provided by California Civil Code section 1947.5 or any successor statute thereto. (Ord. 14-O-2657, eff. 6-1-2014)

#### **5-4-9: PROHIBITION OF SMOKING ELECTRONIC CIGARETTES IN AND AROUND PLAYGROUNDS AND TOT LOTS:**

Smoking electronic cigarettes is prohibited in and around playgrounds and tot lots where smoking of tobacco products is prohibited by California Health And Safety Code section 104495 or any successor statute thereto. (Ord. 14-O-2657, eff. 6-1-2014)

#### **5-4-10: PROHIBITION OF SMOKING ELECTRONIC CIGARETTES IN DAYCARE FACILITIES:**

Smoking electronic cigarettes is prohibited at all daycare facilities where smoking of tobacco products is prohibited by California Health And Safety Code sections 1596.795, 1596.890 or any successor statute thereto. (Ord. 14-O-2657, eff. 6-1-2014)

#### **5-4-11: PROHIBITION OF SMOKING ELECTRONIC CIGARETTES ON CITY PUBLIC TRANSIT SYSTEM AND IN CITY VEHICLES:**

Smoking electronic cigarettes is prohibited on the city's public transit system and in city vehicles where smoking of tobacco or any other plant product is prohibited by California Health And Safety Code sections 118925 through 118945 or any successor statute thereto. (Ord. 14-O-2657, eff. 6-1-2014)

#### **5-4-12: PROHIBITION OF SMOKING IN OUTDOOR SERVICE LINES:**

Smoking is prohibited in all outdoor service lines. For purposes of this section, an "outdoor service line" shall mean any outdoor area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction whether or not such service or transaction includes the exchange of money including, for example, ATMs, bank teller windows, telephones, ticket lines, information kiosks and takeout counters. (Ord. 14-O-2659, eff. 6-1-2014)

#### **5-4-13: PROHIBITION OF SMOKING IN FARMERS' MARKETS:**

Smoking is prohibited in all farmers' markets. For purposes of this section, a "farmers' market" shall mean any food market at which local farmers sell fruit and vegetables and other items such as meat, cheese, and bakery products directly to consumers, whether on public or private property. (Ord. 14-O-2659, eff. 6-1-2014)

#### **5-4-14: PROHIBITION OF SMOKING IN PUBLIC AND PRIVATE PLAZAS:**

Smoking is prohibited in all public and private plazas except in areas of private plazas that are specifically set aside for smoking and designated by posted signage, provided that such areas are not within twenty feet (20') of building entrances or exits or designated pathways. For purposes of this section, a "public and private plaza" shall mean any unenclosed place, other than a publicly owned sidewalk, that is paved and permanently set aside for pedestrian use, including, for example, a courtyard, plaza or promenade. (Ord. 15-O-2680, eff. 7-9-2015)

#### **5-4-15: PROHIBITION OF SMOKING AT OUTDOOR PUBLIC GATHERINGS:**

Smoking is prohibited at all outdoor public gatherings, except in areas specifically set aside for smoking and designated by posted signage. For purposes of this section, an outdoor public gathering shall mean an unenclosed area where members of the general public are attending, viewing or participating in a group activity, such as a special event, parade or fair. (Ord. 14-O-2659, eff. 6-1-2014)

#### **5-4-16: PENALTIES AND ENFORCEMENT:**

A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the regulation under this chapter to fail to comply with its provisions.

- B. It is unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.
  
- C. The city prosecutor, any peace officer and any city code enforcement officer shall have the authority to enforce the provisions of this chapter.
  
- D. Punishment under this code shall not preclude punishment pursuant to any provision of law pertaining to smoking or littering. Nothing in this chapter precludes any person from seeking any other remedies, penalties or procedures provided by law. The remedies provided in this code are cumulative and in addition to any other remedies available at law or in equity. (Ord. 14-O-2659, eff. 6-1-2014)