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ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAUSALITO AMENDING
CHAPTER 12.28 OF THE SAUSALITO MUNICIPAL CODE**

SECTION 1. Findings

A. Tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs, as evidenced by the following:

- more than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death; and
- the World Health Organization estimates that by 2030, tobacco will account for 10 million deaths per year, making it the greatest cause of death worldwide; and
- the United States Environmental Protection Agency has found secondhand smoke to be a risk to public health and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen; and
- secondhand smoke is responsible for an estimated 38,000 deaths among non-smokers each year in the United States, which includes 3,000 lung cancer deaths and 35,000 deaths due to heart disease; and
- 87.9% of non-smokers showed detectable levels of cotinine (a metabolite of nicotine) in their blood, the most likely source of which is secondhand smoke exposure; and
- secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight and increased risk of Sudden Infant Death Syndrome in infants of mothers who smoke; and
- secondhand smoke exposure causes as many as 300,000 children in the United States under the age of 18 months to suffer lower respiratory tract infections, such as pneumonia and bronchitis; exacerbates childhood asthma; and increases the risk of acute, chronic, middle-ear infections in children; and
- the total cost of smoking in California was estimated as \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone; and
- cigarettes, cigars, pipes and other smoking materials are the leading cause of fire deaths in the United States, causing an estimated 31,200 structure fires and 830 deaths in 2001; and

B. Most Californians do not smoke and a majority favors limitations on smoking in multi-unit residences, as evidenced by the following:

- 84% of Californians are non-smokers; and
- 70% of Californians surveyed approve of apartment complexes requiring at least half of rental units be non-smoking; and
- 67% of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings; and

C. Secondhand smoke can seep under doorways and through wall cracks; and

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- 1
2 D. There is no Constitutional right to smoke; and
3
4 E. State law prohibits smoking in virtually all indoor places of employment reflecting
5 the state policy to protect against the dangers of exposure to secondhand
6 smoke; and
7
8 F. A local ordinance that authorizes residential rental agreements to include a
9 prohibition on smoking of tobacco products within the common areas of multi-unit
10 residences is not prohibited by state law; and
11
12 G. California law declares that anything which is injurious to health or obstructs the
13 free use of property, so as to interfere with the comfortable enjoyment of life or
14 property, is a nuisance; and
15
16 H. Local governments have broad latitude to declare nuisances and are not
17 constrained by prior definitions of nuisance; and
18

19 NOW THEREFORE, it is the intent of the City Council in enacting this ordinance, to
20 provide for the public health, safety, and welfare by discouraging the inherently
21 dangerous behavior of smoking around non-tobacco users; by protecting children from
22 exposure to smoking and tobacco; by reducing the potential for children to associate
23 smoking and tobacco with a healthy lifestyle; by protecting the public from
24 nonconsensual exposure to secondhand smoke and tobacco-related litter and pollution
25 and by affirming the family-friendly atmosphere of the City's public places.
26

27 **SECTION 2.** Chapter 12.28 is replaced in its entirety with the following:
28
29

30 CHAPTER 12 28. CLEAN INDOOR AIR AND HEALTH PROTECTION

- 31
32 12.28.010 Title
33 12.28.020 Definitions
34 12.28.030 City-owned Vehicles and Facilities
35 12.28.040 Prohibition of Smoking in Public Places, Places of Employment, and Certain
36 Other Areas
37 12.28.050 Nonsmoking Buffer Zones
38 12.28.060 Smoking Restrictions in New Units of Multi-Unit Residences
39 12.28.070 Nonsmoking Designations for Existing Units of a Common Interest Complex.
40 12.28.080 Nonsmoking Designations for Existing Units of a Rental Complex.
41 12.28.090 Required and Implied Lease Terms for All New and Existing Units in Rental
42 Complexes
43 12.28.100 Additional Duties of a Landlord of a Rental Complex with Less Than One
44 Hundred Percent Nonsmoking Units.
45 12.28.110 Procedures and Requirements for Mandated Submissions.
46 12.28.120 Smoking Prohibited by Law in Units and Common Areas.
47 12.28.130. Smoking and Smoke Generally.
48 12.28.140. Other Requirements and Prohibitions.
49 12.28.150 Regulating the Sale of Tobacco Products to Protect Minors.
50 12.28.160 Violations and Penalties
51 12.28.170 Public Education.

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- 1 12.28.180 Governmental Agency Cooperation.
- 2 12.28.190 Other Applicable Laws.
- 3 12.28.200 Construction, Severability.
- 4 12.28.210 Effective date

7 **12.28 010 Title**

8 This chapter shall be known as Indoor Air and Health Protection Regulations.

10 **12.28.020 Definitions**

11 The following words and phrases, whenever used in this chapter, shall be construed as
12 defined in this section;

- 13
- 14 1. "Bar" means an area which is devoted to the serving of alcoholic beverages for
15 consumption by patrons on the premises and in which the serving of food is
16 incidental to the consumption of such beverages. Although a restaurant may
17 contain a bar, the term "bar" shall not include the restaurant dining area.
- 18 2. "Business" means any sole proprietorship, joint venture, corporation or other
19 business entity formed for profit making purposes.
- 20 3. "City" shall mean the City of Sausalito
- 21 4. "Common Area" means every area of a Multi-Unit Residence that residents of
22 more than one Unit of that Multi-Unit Residence are entitled to enter or use,
23 including, for example, halls and paths, lobbies and courtyards, elevators and
24 stairs, community rooms and playgrounds, gym facilities and swimming pools,
25 parking garages and parking lots, shared restrooms, shared laundry rooms,
26 shared cooking areas, and shared eating areas.
- 27 5. "Common Interest Complex" means a Multi-Unit Residence that is a
28 condominium project, a community apartment project, a stock cooperative, or a
29 planned development as defined by California Civil Code section 1351.
- 30 6. "Dining Area" means any area, including streets and sidewalks, which is
31 available to or customarily used by the general public or an Employee, and which
32 is designed, established, or regularly used for consuming food or drink.
- 33 7. "Employee" means any person who is employed by any employer in
34 consideration for direct or indirect monetary wages or profit, and any person who
35 volunteers his or her services for a non-profit entity.
- 36 8. "Employer" means any person, partnership, corporation, including a municipal
37 corporation, or non-profit entity, which employs the services of one or more
38 individual persons or utilizes volunteers.
- 39 9. "Enclosed Area" means all space between a floor and ceiling which is enclosed
40 on all sides by solid walls or windows (exclusive of door or passage ways) which
41 extend from the floor to the ceiling, including all space therein screened by
42 portions which do not extend to the ceiling or are not solid, such as "office
43 landscaping" or similar structures.
- 44 10. "Landlord" means any Person who owns property let for residential use, any
45 Person who lets residential property, and any Person who manages such
46 property, except that "Landlord" does not include a master tenant who sublets a
47 Unit as long as the master tenant sublets only a single Unit of a Multi-Unit
48 Residence.
- 49 11. "Minor" shall mean any individual who is less than eighteen years old.
- 50 12. "Multi-Unit Common Area" means any indoor or outdoor area of a multi-unit
51 residence, Multi-unit commercial facilities, senior citizen residences and nursing

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1 homes accessible to and usable by residents of different small units and/or
2 members of the public, including but not limited to halls and paths, lobbies,
3 laundry rooms, common areas, outdoor eating areas, play areas and swimming
4 pools.

- 5 13. "Multi-Unit Residence" means property containing two (2) or more Units,
6 including for example, Rental Complexes, Common Interest Complexes, senior
7 citizen residences, and nursing homes. "Multi-Unit Residence does not include
8 the following specifically excluded types of housing:
9 (a) a hotel or motel that meets the requirements set forth in California Civil Code
10 section 1940(b)(2);
11 (b) a mobile home park;
12 (c) a campground;
13 (d) a marina or port;
14 (e) a single-family home; and
15 (f) a single-family home with a detached or attached in-law or second unit when
16 permitted pursuant to California Government Code sections 65852.1, 65852.150,
17 65852
- 18 14. "New Unit" means a Unit that is issued a certificate of occupancy / final
19 inspection more than 180 days after (insert effective date of ordinance) and also
20 means a Unit that is let for residential use for the first time more than 180 days
21 (after insert effective date of ordinance).
- 22 15. "Non-profit Entity" means any corporation, unincorporated association or other
23 entity created for charitable, philanthropic, educational, character-building,
24 political, social, religious or other similar purposes, the net proceeds from the
25 operations of which are committed to the promotion of the objectives or purposes
26 of the entity and not to private gain. A public agency is not a "non-profit entity"
27 within the meaning of this section.
- 28 16. "No Smoking Sign" means a sign containing the words "No smoking" or the
29 international "No smoking" symbol (consisting of a pictorial representation of a
30 burning cigarette in a red circle or red heart with a red bar across it).
- 31 17. "Openings" shall include main entrances, exits, operable windows and ventilation
32 intake systems.
- 33 18. "Person" shall mean any individual, partnership, cooperative association, Private
34 Corporation, personal representative, receiver, trustee, assignee, or any other
35 legal entity.
- 36 19. "Place of employment" means any area under the legal or de facto control of an
37 Employer that an Employee or the general public may have cause to enter in the
38 normal course of operation, regardless of the hours of operation, including, but
39 not limited to, indoor and outdoor work areas, construction sites, vehicles used in
40 employment or for business purposes, taxis, employee lounges and restrooms,
41 conference and banquet rooms, Employee cafeterias, warehouses, long-term
42 health care facilities, and lobbies and hallways. A private residence is not a
43 "Place of Employment" unless it is used as a child care or health care facility.
- 44 20. "Premises" means a piece of land and any improvements upon it such as is
45 usually described in a deed, deed of trust or mortgage, and includes legally
46 separate but contiguous pieces of land that are owned by the same natural
47 person or by legal persons under common control.
- 48 21. "Public Place" means any place, publicly or privately owned, which is open to the
49 general public regardless of any fee or age requirement.
- 50 22. "Reasonable Distance" means a distance of twenty (20) feet in any direction from
51 an area in which Smoking is prohibited.

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- 1 23. "Recreational Area" means any area that is publicly or privately owned and open
2 to the general public for recreational purposes, regardless of any fee or age
3 requirement. The term "Recreational Area" includes but is not limited to parks,
4 picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens,
5 hiking trails, bike paths, horseback riding trails, swimming pools, roller- and ice-
6 skating rinks, skateboard parks, amusement parks, and beaches.
- 7 24. "Rental Complex" means a Multi-Unit Residence for which fifty percent (50%) or
8 more of Units are let by or on behalf of the same Landlord.
- 9 25. "Retail Tobacco Store" means a retail store utilized primarily for the sale of
10 tobacco products and accessories and in which the sale of other products is
11 merely incidental.
- 12 26. "Self-service merchandising" means open display of tobacco products and point-
13 of-sale tobacco promotional products to which the public has access without the
14 intervention of an employee.
- 15 27. "Service Area" means any publicly or privately owned area, including streets and
16 sidewalks, that is designed to be used or is regularly used by one or more
17 Persons to wait for or receive a service or make a transaction, whether or not
18 such service or transaction involves the exchange of money. The term "Service
19 Area" includes but is not limited to information kiosks, automatic teller machines
20 (ATMs), ticket lines, bus stops or shelters, mobile vendor lines or cab stands.
- 21 28. "Smoke" means the gases and particles released into the air by combustion
22 when the apparent or usual purpose of the combustion is human inhalation of the
23 resulting combustion products, such as, for example, tobacco smoke, and
24 marijuana smoke, except when the combusting material contains no tobacco and
25 the purpose of inhalation is solely olfactory, such as, for example, smoke from
26 incense.
- 27 29. "Smoking" means engaging in an act that generates Smoke, such as, for
28 example: possessing a lighted cigar, a lighted cigarette or any kind, a lighted
29 pipe, or a lighted hookah pipe; or lighting a pipe, a hookah pipe, a cigar, or a
30 cigarette of any kind .
- 31 30. "Sports Arena" means enclosed or unenclosed sports pavilions, gymnasiums,
32 health spas, swimming pools, roller and ice rinks, bowling alleys and other similar
33 places where members of the general public assemble either to engage in
34 physical exercise, participate in athletic competition, or witness sports events.
- 35 31. "Tobacco Paraphernalia " means cigarette papers or wrappers, pipes, holders of
36 smoking materials of all types, cigarette rolling machines, and any other item
37 designed for the smoking, preparation, storing, or consumption of tobacco
38 products.
- 39 32. "Tobacco Product" means
40 A. any substance containing tobacco leaf, including but not limited to
41 cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco,
42 dipping tobacco, bidis, blunts, clove cigarettes, or any other preparation
43 of tobacco; and
44
45 B. any product or formulation of matter containing biologically active
46 amounts of nicotine that is manufactured, sold, offered for sale, or
47 otherwise distributed with the expectation that the product or matter will
48 be introduced into the human body by inhalation; but does not include
49 any cessation product specifically approved by the U. S. Food and Drug
50 Administration for use in treating nicotine or tobacco dependence.

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1 33. "Tobacco Vending Machine" means any machine, appliance, or other mechanical
2 device operated by currency, token, debit card, credit card, or any other form of
3 payment that is designed or used for vending purposes, including, but not limited
4 to, machines or devices that use remote control locking mechanisms.

5 34. "Unenclosed Area" means any area that is not an Enclosed Area.

6 35. "Unit" means a personal dwelling space, even where lacking cooking facilities or
7 private plumbing facilities, and includes any associated exclusive-use Enclosed
8 Area or Unenclosed Area, such as, for example, a private balcony, porch, deck,
9 or patio. "Unit" includes but is not limited to an apartment; a condominium; a
10 townhouse; a room in a long-term health care facility, assisted living facility, or
11 hospital; a hotel or motel room; a room in a single room occupancy ("SRO")
12 facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a
13 single-family home; and an in-law or second unit.

14 36. "Vendor-assisted" means only a store employee has access to the tobacco
15 product and assists the customer to supplying the product. The customer does
16 not take possession of the product until it is purchased.

17 18 **12.28.030 City-owned Vehicles and Facilities**

19 All City-owned vehicles, including jitneys and buses and other means of public transit
20 under the authority of the City, and all enclosed facilities owned and controlled by the
21 City, including jails, and any board, council, commission and agency of the City shall be
22 subject to the provisions of this Chapter.

23 24 **12.28.040 Prohibition of Smoking in Public Places, Places of Employment, and 25 Certain Other Areas**

26 A. Enclosed Areas. Smoking shall be prohibited in the following Enclosed Areas within
27 the City of Sausalito except in places listed in subsection C below, and except in such
28 places in which smoking is already prohibited by state or federal law in which case the
29 state or federal law applies:

- 30 1. Places of Employment.
- 31 2. Public Places.
- 32 3. Recreational Areas.
- 33 4. Common Areas

34
35 B. Unenclosed Areas. Smoking shall be prohibited in the following Unenclosed Areas
36 within the City of Sausalito except in such places in which Smoking is already prohibited
37 by state or federal law in which case the state or federal law applies:

- 38 1. Places of Employment.
- 39 2. Recreational Areas.
- 40 3. Service Areas.
- 41 4. Dining Areas.
- 42 5. Common Areas, provided that a Person with legal control over a Common Area
43 may designate a portion of the Unenclosed Area of the Common Area as a
44 designated Smoking area if the area meets all of the following criteria:
 - 45 a. the area must be located a Reasonable Distance from any Unit or Enclosed
46 Area where Smoking is prohibited by this chapter or other law; by binding
47 agreement relating to the ownership, occupancy, or use of real property; or by
48 designation of a Person with legal control over the property. In the case of a
49 nonsmoking area created by agreement or designation, this provision does not
50 apply unless the Person designating the Smoking area has actual knowledge of, or
51 has been given notice of, the agreement or designation. A designated Smoking

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1 area may require modification or elimination as laws change, as binding
2 agreements are created, and as nonsmoking areas on neighboring property are
3 established.

4 b. the area must not include, and must be a Reasonable Distance from,
5 Unenclosed Areas primarily used by children and Unenclosed Areas with
6 improvements that facilitate physical activity including, for example, playgrounds,
7 tennis courts, swimming pools, and school campuses;

8 c. the area must be no more than ten percent (10%) of the total Unenclosed Area
9 of the Multi-Unit Residence for which it is designated;

10 d. the area must have a clearly marked perimeter;

11 e. the area must be identified by conspicuous signs;

12 f. the area must be completely within an Unenclosed Area; and

13 g. the area must not overlap with any Enclosed or Unenclosed Area in which
14 Smoking is otherwise prohibited by this chapter or other provisions of this Code,
15 state law, or federal law.

16 6. Other Public Places when being used for a public event, including a farmers'
17 market, parade, craft fair, festival, or any other event which may be attended by the
18 general public, provided that Smoking is permitted on streets and sidewalks being
19 used in a traditional capacity as pedestrian or vehicular thoroughfares, unless
20 otherwise prohibited by this chapter or other law.

21
22 C. Unless otherwise prohibited by law, Smoking is not prohibited in the following
23 Enclosed Areas:

24 1. Smoking is not prohibited in up to twenty percent (20%) of guestroom
25 accommodations in a hotel, motel, or similar transient lodging establishment if the
26 hotel or motel permanently designates particular guestrooms as nonsmoking rooms
27 such that eighty percent (80%) or more of guestrooms are permanently nonsmoking
28 and ashtrays and matches are permanently removed from such nonsmoking rooms.
29 Permanent No Smoking signage shall be posted in nonsmoking guestrooms.

30 2. Smoking at theatrical production sites is not prohibited by this subsection if
31 Smoking is an integral part of the story and the use of a fake, prop, or special effect
32 can not reasonably convey the idea of Smoking in an effective way to a reasonable
33 member of the anticipated audience.

34 3. Smoking inside a Retail Tobacco Store is not prohibited if:

35 a. the Retail Tobacco Store does not sell edible products, including, for example,
36 food, water, or drinks, or allow such products to be consumed on the business
37 premises;

38 b. the Retail Tobacco Store prohibits minors from entering the store at all times;
39 and

40 c. the premises of the Retail Tobacco Store is an independent freestanding
41 building unattached to any other structure or use.

42 4. Smoking inside a detached, single-family home is not prohibited, except those
43 used as a child care or health care facility subject to licensing requirements;

44
45 D. Notwithstanding any other provisions of this section, nothing in this chapter
46 prohibits any Person, Landlord, Employer, or Nonprofit Entity with legal control over any
47 property or facility from declaring the entire property or facility as nonsmoking and
48 prohibiting Smoking on any part of such property or facility, even if Smoking is not
49 otherwise prohibited in that area.
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12.28.050 Nonsmoking Buffer Zones

A. Smoking in all Unenclosed Areas shall be prohibited within a Reasonable Distance from any doorway, window, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited, except while actively passing on the way to another destination and provided Smoke does not enter any Enclosed Area in which Smoking is prohibited.

B. Smoking in Unenclosed Areas shall be prohibited within a Reasonable Distance from any Unenclosed Areas in which Smoking is prohibited under Section 12.28.040(B) of this chapter, except while actively passing on the way to another destination and provided Smoke does not enter any Unenclosed Area in which Smoking is prohibited.

C. The prohibitions in subdivisions A and B shall not apply to Unenclosed Areas of private residential properties that are not Multi-Unit Residences.

D. Smoking is prohibited in Unenclosed Areas of a Multi-Unit Residence, including balconies, porches, decks, and patios, within a Reasonable Distance from any doorway, window, opening, or other vent into an Enclosed Area where Smoking is prohibited by this chapter or other law; by binding agreement relating to the ownership, occupancy, or use of real property; or by designation of a Person with legal control over the property.

12.28.060 Smoking Restrictions in New Units of Multi-Unit Residences

A. All New Units of a Multi-Unit Residence are hereby designated nonsmoking Units, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio; and including without limitation New Units in a Rental Complex and New Units in a Common Interest Complex.

B. Smoking in a designated nonsmoking Unit is a violation of chapter as provided in Section 12.28.120.

12.28.070 Nonsmoking Designations for Existing Units of a Common Interest Complex

A. All Units of a Common Interest Complex that are not New Units, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio, are hereby designated nonsmoking Units as of insert effective date of ordinance + 1 year; provided, however, that a lesser percentage of Units may be designated nonsmoking Units if a Common Interest Complex fully complies with subsection C below.

B. Smoking in a designated nonsmoking Unit is a violation of this chapter as provided in Section 12.28.120.

C. By a vote of the membership as provided in subsection 1 below, a Common Interest Complex may choose to designate fewer than one-hundred percent (100%) of existing Units as nonsmoking Units by fully complying with the requirements stated in subsections 1 - 4 below. Otherwise subsection A above shall apply.

1. A vote by the membership on the threshold question of allowing less than one hundred percent (100%) of Units to be designated nonsmoking Units must take place before insert effective date of ordinance + 270 days.

2. Up to one hundred percent (100%), but no less than eighty percent (80%), of Units that are not New Units, including, for example, any associated exclusive-use

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1 Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch,
2 deck, or patio, shall be permanently designated as nonsmoking Units.

3 3. Where possible, best efforts shall be made to group nonsmoking Units together,
4 both horizontally and vertically, and physically separate them from Units where
5 Smoking may be allowed.

6 4. No later than insert effective date of ordinance + 1 year the final designations
7 must be made and the following must be submitted in accordance with Section
8 12.28.070:

9 a. a description of each designated nonsmoking Unit sufficient to readily identify
10 the Unit; and

11 b. a diagram depicting the location of the designated nonsmoking Units in
12 relation to all other Units.

13 14 **12.28.080 Nonsmoking Designations for Existing Units of a Rental Complex**

15 A. All Units of a Rental Complex that are not New Units, including any associated
16 exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private
17 balcony, porch, deck, or patio, are hereby designated nonsmoking Units as of insert
18 effective date of ordinance + 120 days; provided, however, that a lesser percentage of
19 Units may be designated nonsmoking Units if a Landlord fully complies with subsection
20 D below.

21
22 B. Smoking in a designated nonsmoking Unit is a violation of this chapter as provided
23 in Section 12.28.120.

24
25 C. Except if a Landlord fully complies with subsection D below, at least sixty (60) days
26 before insert effective date of ordinance + 120 days, the Landlord shall provide each
27 tenant with:

28 1. a written notice clearly stating that all Units, including the tenant's Unit, are
29 designated nonsmoking Units and that Smoking in a Unit will be illegal as of insert
30 date specified in Section 12.28.120(c) and

31 2. a copy of this chapter .

32
33 D. A Landlord may choose to designate fewer than one-hundred percent (100%) of
34 existing Units that are not New Units of a Rental Complex as nonsmoking Units by fully
35 complying with the requirements stated in subsections 1 - 7 below. However, subsection
36 A above shall apply whenever a Landlord takes no action or only partially complies with
37 the requirements of this subsection.

38
39 1. The Landlord shall permanently designate up to one hundred percent (100%) of
40 Units, but no less than eighty percent (80%) of Units, including, for example, any
41 associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example,
42 a private balcony, porch, deck, or patio, as nonsmoking Units.

43 2. To the maximum extent practicable, nonsmoking Units must be grouped
44 together both horizontally and vertically and physically separated from Units where
45 Smoking may be allowed. Where possible all Units where Smoking may be allowed
46 shall be in a single building of a multi-building Multi-Unit Residence.

47 3. No later than insert effective date of ordinance + 120 days a Landlord who
48 chooses to designate fewer than 100% of the Units of a Multi-Unit Residences as
49 nonsmoking shall submit the following in accordance with Section 12.28.080:

50 a. a description of each designated nonsmoking Unit sufficient to identify the
51 Unit; and

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1 b. a diagram depicting the location of the designated nonsmoking Units in
2 relation to all other Units.

3 4. At least sixty (60) days before submitting the nonsmoking Unit designations
4 required by subsection 3 above, the Landlord shall provide each tenant with:

5 a. a written notice of the proposed designations, clearly stating that Smoking in a
6 Unit which is designated as a nonsmoking Unit will be illegal as of insert date
7 specified in Section 12.28.120(c), and inviting comments on the proposed
8 designations of nonsmoking Units within the requisite timeline;

9 b. a diagram depicting the location of the designated nonsmoking Units in
10 relation to all other Units; and

11 c. a copy of this chapter.

12 5. A Landlord may modify the proposed designations based upon comments
13 received from tenants.

14 6. At least thirty (30) days before submitting the final designations of nonsmoking
15 Units required by subsection 3 above, the Landlord shall provide all tenants written
16 notice of the final designations clearly stating that Smoking in a designated
17 nonsmoking Unit will be illegal as of insert date specified in Section 12.28.120, and a
18 copy of the final documents that will be submitted pursuant to Section 12.28.080 of
19 this chapter. These final designations may differ from the proposed designations on
20 which tenants were invited to comment.

21 7. A Unit in a Rental Complex for which a Landlord is required to submit information
22 pursuant to Section 12.28.080 of this chapter but for which such information, for any
23 reason, is not fully and timely submitted is hereby designated as a nonsmoking Unit
24 as of insert effective date of ordinance + 120 days.

25 26 **12.28.090 Required and Implied Lease Terms for All New and Existing Units in** 27 **Rental Complexes**

28 A. Every lease or other rental agreement for the occupancy of a Unit in a Rental
29 Complex, including, for example, New Units and existing Units, entered into, renewed, or
30 continued month-to-month after insert effective date of ordinance, shall include the
31 provisions set forth in subsection B below on the earliest possible date when such an
32 amendment is allowable by law when providing the minimum legal notice.

33 B. Every lease or other rental agreement for the occupancy of a Unit in a Rental
34 Complex, including, for example, New Units and existing Units, entered into, renewed, or
35 continued month-to-month after insert effective date of ordinance, shall be amended to
36 include the following provisions:

37 1. A clause providing that as of insert effective date of ordinance + one year, it is a
38 material breach of the agreement to allow or engage in Smoking in the Unit unless the
39 Landlord has supplied written notice that the Unit has not been designated a
40 nonsmoking Unit and no other prohibition against Smoking applies. Such a clause
41 might state, "It is a material breach of this agreement for tenant or any other person
42 subject to the control of the tenant or present by invitation or permission of the tenant
43 to engage in smoking in the unit as of insert effective date of ordinance + one year
44 unless landlord has provided written notice that the unit has not been designated a
45 nonsmoking unit and smoking in the unit is not otherwise prohibited by this
46 agreement, other agreements, or by law."

47 2. A clause providing that it is a material breach of the agreement for tenant or any
48 other Person subject to the control of the tenant or present by invitation or permission
49 of the tenant to engage in Smoking in any Common Area of the property other than a
50 designated Smoking area. Such a clause might state, "It is a material breach of this
51 agreement for tenant or any other person subject to the control of the tenant or

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1 present by invitation or permission of the tenant to engage in smoking in any common
2 area of the property, except in an outdoor designated smoking area, if one exists.”

3 3. A clause providing that it is a material breach of the agreement for tenant or any
4 other Person subject to the control of the tenant or present by invitation or permission
5 of the tenant to violate any law regulating Smoking while anywhere on the property.
6 Such a clause might state, “It is a material breach of this agreement for tenant or any
7 other person subject to the control of the tenant or present by invitation or permission
8 of the tenant to violate any law regulating smoking while anywhere on the property.”

9 4. A clause expressly conveying third-party beneficiary status to all occupants of
10 the Rental Complex as to the Smoking provisions of the agreement. Such a clause
11 might state, “Other occupants of the property are express third-party beneficiaries of
12 those provisions in this agreement that concern smoking. As such, other occupants of
13 the property may seek to enforce such provisions by any lawful means, including by
14 bringing a civil action in a court of law.”

15 C. Whether or not a Landlord complies with subsections A and B above, the clauses
16 required by those subsections shall be implied and incorporated by law into every
17 agreement to which subsections A or B apply and shall become effective as of the
18 earliest possible date on which the Landlord could have made the insertions pursuant to
19 subsections A or B.

20 D. A tenant who breaches a Smoking provision of a lease or other rental agreement
21 for the occupancy of a Unit in a Rental Complex, or who knowingly permits any other
22 Person subject to the control of the tenant or present by invitation or permission of the
23 tenant, shall be liable for the breach to:

24 1. the Landlord; and

25 2. any occupant of the Rental Complex who is exposed to Smoke or who suffers
26 damages as a result of the breach.

27 E. This chapter shall not create additional liability in a Landlord to any Person for a
28 tenant’s breach of any Smoking provision in a lease or other rental agreement for the
29 occupancy of a Unit in a Rental Complex if the Landlord has fully complied with this
30 Section and Section 12.28.080.

31 F. Failure to enforce any Smoking provision required by this chapter shall not affect
32 the right to enforce such provision in the future, nor shall a waiver of any breach
33 constitute a waiver of any subsequent breach or a waiver of the provision itself.
34

35 **12.28.100. Additional Duties of a Landlord of a Rental Complex with Less Than** 36 **One Hundred Percent Nonsmoking Units.**

37 A Landlord of a Rental Complex with less than one hundred percent (100%)
38 nonsmoking Units shall provide to every prospective tenant, prior to entering into a new
39 lease or other rental agreement for the occupancy of a Unit in a Rental Complex, a copy
40 of the designation documents required pursuant to Section 12.28.080 describing each
41 designated nonsmoking Unit with an accompanying diagram depicting the location of
42 nonsmoking Units in relation to all other Units and any designated Smoking areas.
43

44 **12.28.110 Procedures and Requirements for Mandated Submissions**

45 A. Documents maintained pursuant to this chapter must include all material and
46 information required by this chapter as well as other materials and information as the
47 City Manager or his or her designee deems necessary for the administration and
48 enforcement of this chapter.
49

50 B. All documents maintained pursuant to this chapter shall be available for the City
51 Manager or his or her designee to access and review during regular business hours or

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1 upon twenty-four (24) hours written notice.
2

3 C. All materials and information maintained pursuant to this chapter and requested
4 by the City Manger or his or her designee shall constitute disclosable public records and
5 are not private or confidential.
6

7 **12.28.120 Smoking Prohibited by Law in Units and Common Areas**

8 A. Smoking in a Common Area, on or after insert effective date of ordinance, other
9 than in a designated Smoking area established pursuant to Section 12.28.040(B)(5), is a
10 violation of this chapter.

11 B. Smoking in a New Unit, on or after insert effective date of ordinance, is a violation
12 of this chapter.

13 C. Smoking in a designated nonsmoking Unit, on or after insert effective date of
14 ordinance + 1 year, is a violation of this chapter.
15

16 **12.28.130 Smoking and Smoke Generally**

17 A. The provisions of this chapter are restrictive only and establish no new rights for a
18 Person who engages in Smoking. Notwithstanding (1) any provision of this chapter or
19 other provisions of this Code, (2) any failure by any Person to restrict Smoking under this
20 chapter, or (3) any explicit or implicit provision of this Code that allows Smoking in any
21 place, nothing in this Code shall be interpreted to limit any Person's legal rights under
22 other laws with regard to Smoking, including, for example, rights in nuisance, trespass,
23 property damage, and personal injury or other legal or equitable principles.

24 B. Notwithstanding any other provision of this chapter, Smoking marijuana for
25 medical purposes as permitted by California Health and Safety Code sections 11362.7
26 et seq. is not prohibited by this chapter.

27 C. For all purposes within the jurisdiction of the City, nonconsensual exposure to
28 Smoke occurring on or drifting into residential property is a nuisance, and the uninvited
29 presence of Smoke on residential property is a nuisance and a trespass. Any Person
30 bringing a civil action to enforce the nuisance provision contained in this section need
31 not prove an injury different in kind or in degree from injury to others to prove a violation
32 of this chapter.
33

34 **12.28.140 Other Requirements and Prohibitions**

35 A. No Person, Landlord, Employer, or Nonprofit Entity shall knowingly permit
36 Smoking in an area which is under the legal or de facto control of the Person, Employer
37 or Nonprofit Entity and in which Smoking is prohibited by this chapter, unless otherwise
38 required by state or federal law.

39 B. No Person, Landlord, Employer, or Nonprofit Entity shall knowingly or
40 intentionally permit the presence or placement of ash receptacles, such as, for example,
41 ash trays or ash cans, within an area under the legal or de facto control of the Person,
42 Landlord, Employer or Nonprofit Entity and in which Smoking is prohibited by law,
43 including, without limitation, within a Reasonable Distance required by this chapter from
44 any area in which Smoking is prohibited. Notwithstanding the foregoing, the presence of
45 ash receptacles in violation of this subsection shall not be a defense to a charge of
46 Smoking in violation of any provision of this chapter.

47 C. No Person shall dispose of used Smoking or Tobacco Product waste within the
48 boundaries of an area in which Smoking is prohibited, including inside the perimeter of
49 any Reasonable Distance required by this chapter.

50 D. A Person, Landlord, Employer, or Nonprofit Entity that has legal or de facto
51 control of an area in which Smoking is prohibited by this chapter shall post a clear,

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1 conspicuous and unambiguous “No Smoking” or “Smoke-free” sign at each point of
2 ingress to the area, and in at least one other conspicuous point within the area. No
3 Smoking signs are not required inside or at doorways of designated nonsmoking Units.
4 The signs shall have letters of no less than one inch in height and shall include the
5 international “No Smoking” symbol (consisting of a pictorial representation of a burning
6 cigarette enclosed in a red circle with a red bar across it). Signs posted on the exterior of
7 buildings to comply with this section shall include the Reasonable Distance requirement
8 set forth in Section 12.28.040. At least one sign with a toll-free phone number where
9 complaints can be directed must be conspicuously posted in each place in which
10 Smoking is prohibited. For purposes of this section, the City Manager or his/her
11 designee shall be responsible for the posting of signs in regulated facilities owned or
12 leased in whole or in part by the City. Notwithstanding this provision, the presence or
13 absence of signs shall not be a defense to a charge of Smoking in violation of any other
14 provision of this chapter.

15 E. No Person, Landlord, Employer, or Nonprofit Entity shall intimidate, threaten any
16 reprisal, or effect any reprisal, for the purpose of retaliating against another Person who
17 seeks to attain compliance with this chapter. Moreover, no Person shall intentionally or
18 recklessly expose another Person to Smoke in response to that Person’s effort to
19 achieve compliance with this chapter.

20 F. Each instance of Smoking in violation of this chapter shall constitute a separate
21 violation. For violations other than for Smoking, each day of a continuing violation of this
22 chapter shall constitute a separate violation.

23 24 **12.28.150 Regulating the Sale of Tobacco Products to Protect Minors**

25 The City manager will engage in a continuing educational program to explain and clarify
26 the purposes and requirements of this chapter, as well as a guide to owners, operators
27 and managers with compliance. However, lack of such education shall be no defense to
28 a violation of this chapter.

29 30 **12.28.160 Violations and Penalties**

31 A. The remedies provided by this chapter are not intended to preclude any other
32 remedy available at law or inequity.

33 B. It is unlawful to cause, permit, aid, abet, or conceal a violation of any provision of
34 this chapter.

35 C. It is unlawful for any Person who owns, manages, operates or otherwise controls
36 the use of any Premises subject to regulation under this chapter to refuse to comply
37 with any of its provisions, or to permit any Employee or patron to violate this chapter.

38 D. It shall be unlawful for any Person to smoke in any area where Smoking is
39 prohibited under this chapter.

40 E. It shall be unlawful for any Person who owns, manages, operates or otherwise
41 controls the use of any Premises subject to regulation under this chapter to fail to comply
42 with any of its provisions.

43 F. Any Person, Business, tobacco retailer, or owner who violates any provision of
44 this chapter shall be deemed guilty of an infraction, punishable by: **[Administrative
45 Citations per Section 1.10.110]**

46 1. a fine, not exceeding one hundred (\$100.00) dollars and/or five days of
47 community service, for the first violation.

48 2. a fine, not exceeding two hundred (\$200.00) dollars and/or ten days of
49 community service, for a second violation of this section within a twelve-month
50 period.

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1 3. A fine not exceeding five hundred (\$500.00) dollars and/or 15 days of
2 community service, for a third violation or any subsequent violation of this section
3 within a twelve-month period.
4

5 **12.28.170 Public Education**

6 The City Manager shall engage in a continuing program to explain and clarify the
7 purposes and requirements of this chapter to citizens affected by it, and to guide
8 individuals, Landlords, Employers, and Nonprofit Entities in their compliance with it.
9 Such program may include publication of a brochure for affected individuals, Landlords,
10 Employers, and/or Nonprofit Entities explaining the provisions of this chapter.
11

12 **12.28.180 Governmental Agency Cooperation**

13 The City Manager shall annually request other governmental and educational
14 agencies having facilities within the City to establish local operating procedures in
15 cooperation and compliance with this chapter. This includes urging all federal, state,
16 county and school district agencies to update their existing tobacco control regulations to
17 be consistent with current health findings regarding environmental tobacco smoke.
18

19 **12.28.190 Other Applicable Laws**

20 This chapter shall not be interpreted or construed to permit Smoking where it is
21 otherwise restricted by other applicable laws.
22

23 **SECTION 3. Construction, Severability**

24 It is the intent of the City Council of the City of Sausalito to supplement applicable
25 state and federal law and not to duplicate or contradict such law and this Chapter shall
26 be construed consistently with that intention. If any section, subsection, subdivision,
27 paragraph, sentence, clause or phrase of this Chapter, or its application to any person or
28 circumstance, is for any reason held to be invalid or unenforceable, such invalidity or
29 unenforceability shall not affect the validity or enforceability of the remaining sections,
30 subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or
31 its application to any other person or circumstance. The City Council of the City of
32 Sausalito hereby declares that it would have adopted each section, subsection,
33 subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that
34 any one or more other sections, subsections, subdivisions, paragraphs, sentences,
35 clauses or phrases hereof be declared invalid or unenforceable.
36

37 **SECTION 4. Effective date**

38 This ordinance shall be in full force and effect thirty (30) days after the date of its
39 adoption.
40

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