

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

ORDINANCE NO. 1207

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAUSALITO
ESTABLISHING REGULATIONS FOR SMOKING IN MULTI-FAMILY RESIDENCES,
PUBLIC STREETS AND PARKS, OUTDOOR DINING AREAS AND RECREATION OR
SPECIAL EVENTS**

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

D. There is no Constitutional right to smoke; and

- 1 E. State law prohibits smoking in virtually all indoor places of employment reflecting the
2 state policy to protect against the dangers of exposure to secondhand smoke; and
3
- 4 F. A local ordinance that authorizes residential rental agreements to include a prohibition on
5 smoking of tobacco products within the common areas of multi-unit residences is not
6 prohibited by state law; and
7
- 8 G. California law declares that anything which is injurious to health or obstructs the free use
9 of property, so as to interfere with the comfortable enjoyment of life or property, is a
10 nuisance; and
11
- 12 H. Local governments have broad latitude to declare nuisances and are not constrained by
13 prior definitions of nuisance; and
14

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

23 **SECTION 2.** Chapter 12.28 of the Municipal Code is replaced in its entirety with the following:
24
25

26 **CHAPTER 12 28. CLEAN INDOOR AIR AND HEALTH PROTECTION**
27

- 28 12.28.010 Title
- 29 12.28.020 Definitions
- 30 12.28.030 City-owned Vehicles and Facilities
- 31 12.28.040 Prohibition of Smoking in Public Places, Places of Employment, and Certain Other
32 Areas
- 33 12.28.050 Nonsmoking Buffer Zones
- 34 12.28.060 Smoking Restrictions in New Units of Multi-Unit Residences
- 35 12.28.070 Nonsmoking Designations for Existing Units of a Common Interest Complex.
- 36 12.28.080 Nonsmoking Designations for Existing Units of a Rental Complex.
- 37 12.28.090 Required and Implied Lease Terms for All New and Existing Units in Rental
38 Complexes
- 39 12.28.100 Additional Duties of a Landlord of a Rental Complex with Less Than One Hundred
40 Percent Nonsmoking Units.
- 41 12.28.110 Procedures and Requirements for Mandated Submissions.
- 42 12.28.120 Smoking Prohibited by Law in Units and Common Areas.
- 43 12.28.130. Smoking and Smoke Generally.
- 44 12.28.140. Other Requirements and Prohibitions.
- 45 12.28.150 Violations and Penalties
- 46 12.28.160 Other Applicable Laws

47
48 **12.28 010 Title**

49 This chapter shall be known as Indoor Air and Health Protection Regulations.
50
51

1 **12.28.020 Definitions**

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

- 4
- 5 1. “Bar” means an area which is devoted to the serving of alcoholic beverages for
6 consumption by patrons on the premises and in which the serving of food is incidental to
7 the consumption of such beverages. Although a restaurant may contain a bar, the term
8 “bar” shall not include the restaurant dining area.
 - 9 2. “Business” means any sole proprietorship, joint venture, corporation or other business
10 entity formed for profit making purposes.
 - 11 3. “City” shall mean the City of Sausalito
 - 12 4. “Common Area” means every area of a Multi-Unit Residence that residents of more than
13 one Unit of that Multi-Unit Residence are entitled to enter or use, including, for example,
14 halls and paths, lobbies and courtyards, elevators and stairs, community rooms and
15 playgrounds, gym facilities and swimming pools, parking garages and parking lots,
16 shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.
 - 17 5. “Common Interest Complex” means a Multi-Unit Residence that is a condominium
18 project, a community apartment project, a stock cooperative, or a planned development as
19 defined by California Civil Code section 1351.
 - 20 6. “Dining Area” means any area, including streets and sidewalks, which is available to or
21 customarily used by the general public or an Employee, and which is designed,
22 established, or regularly used for consuming food or drink.
 - 23 7. “Employee” means any person who is employed by any employer in consideration for
24 direct or indirect monetary wages or profit, and any person who volunteers his or her
25 services for a non-profit entity.
 - 26 8. “Employer” means any person, partnership, corporation, including a municipal
27 corporation, or non-profit entity, which employs the services of one or more individual
28 persons or utilizes volunteers.
 - 29 9. “Enclosed Area” means all space between a floor and ceiling which is enclosed on all
30 sides by solid walls or windows (exclusive of door or passage ways) which extend from
31 the floor to the ceiling, including all space therein screened by portions which do not
32 extend to the ceiling or are not solid, such as “office landscaping” or similar structures.
 - 33 10. “Landlord” means any Person who owns property let for residential use, any Person who
34 lets residential property, and any Person who manages such property, except that
35 “Landlord” does not include a master tenant who sublets a Unit as long as the master
36 tenant sublets only a single Unit of a Multi-Unit Residence.
 - 37 11. “Marina” means any area used for the docking of boats or other floating vessels. This
38 includes all docks, piers and docked boats, vessels and house boats.
 - 39 12. “Minor” shall mean any individual who is less than eighteen years old.
 - 40 13. “Multi-Unit Common Area” means any indoor or outdoor area of a multi-unit residence,
41 Multi-unit commercial facilities, senior citizen residences and nursing homes accessible
42 to and usable by residents of different small units and/or members of the public,
43 including but not limited to halls and paths, lobbies, laundry rooms, common areas,
44 outdoor eating areas, play areas and swimming pools.
 - 45 14. “Multi-Unit Residence” means property containing two (2) or more Units, including for
46 example, Rental Complexes, Common Interest Complexes, senior citizen residences,
47 nursing homes, and marinas or ports. “Multi-Unit Residence does not include the
48 following specifically excluded types of housing:
49 (a) a hotel or motel that meets the requirements set forth in California Civil Code section
50 1940(b)(2);
51 (b) a mobile home park;

- 1 (c) a campground;
2 (d) a single-family home; and
3 (e) a single-family home with a detached or attached in-law or second unit when
4 permitted pursuant to California Government Code sections 65852.1, 65852.150, and
5 65852
- 6 15. "New Unit" means a Unit that is issued a certificate of occupancy / final inspection more
7 than 180 days after August 30, 2012 and also means a Unit that is let for residential use
8 for the first time more than 180 days after August 30, 2012.
- 9 16. "Non-profit Entity" means any corporation, unincorporated association or other entity
10 created for charitable, philanthropic, educational, character-building, political, social,
11 religious or other similar purposes, the net proceeds from the operations of which are
12 committed to the promotion of the objectives or purposes of the entity and not to private
13 gain. A public agency is not a "non-profit entity" within the meaning of this section.
- 14 17. "No Smoking Sign" means a sign containing the words "No smoking" or the international
15 "No smoking" symbol (consisting of a pictorial representation of a burning cigarette in a
16 red circle or red heart with a red bar across it).
- 17 18. "Openings" shall include main entrances, exits, operable windows and ventilation intake
18 systems.
- 19 19. "Person" shall mean any individual, partnership, cooperative association, Private
20 Corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- 21 20. "Place of employment" means any area under the legal or de facto control of an
22 Employer that an Employee or the general public may have cause to enter in the normal
23 course of operation, regardless of the hours of operation, including, but not limited to,
24 indoor and outdoor work areas, construction sites, vehicles used in employment or for
25 business purposes, taxis, employee lounges and restrooms, conference and banquet
26 rooms, Employee cafeterias, warehouses, long-term health care facilities, and lobbies and
27 hallways. A private residence is not a "Place of Employment" unless it is used as a child
28 care or health care facility.
- 29 21. "Premises" means a piece of land and any improvements upon it such as is usually
30 described in a deed, deed of trust or mortgage, and includes legally separate but
31 contiguous pieces of land that are owned by the same natural person or by legal persons
32 under common control.
- 33 22. "Public Place" means any place, publicly or privately owned, which is open to the
34 general public regardless of any fee or age requirement.
- 35 23. "Reasonable Distance" means a distance of twenty (20) feet in any direction from an area
36 in which Smoking is prohibited.
- 37 24. "Recreational Area" means any area that is publicly or privately owned and open to the
38 general public for recreational purposes, regardless of any fee or age requirement. The
39 term "Recreational Area" includes but is not limited to parks, picnic areas, playgrounds,
40 sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, horseback
41 riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, amusement
42 parks, and beaches.
- 43 25. "Rental Complex" means a Multi-Unit Residence for which fifty percent (50%) or more
44 of Units are let by or on behalf of the same Landlord.
- 45 26. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco
46 products and accessories and in which the sale of other products is merely incidental.
- 47 27. "Self-service merchandising" means open display of tobacco products and point-of-sale
48 tobacco promotional products to which the public has access without the intervention of
49 an employee.
- 50 28. "Service Area" means any publicly or privately owned area, including streets and
51 sidewalks, that is designed to be used or is regularly used by one or more Persons to wait

- 1 for or receive a service or make a transaction, whether or not such service or transaction
2 involves the exchange of money. The term “Service Area” includes but is not limited to
3 information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters,
4 transit shelters, ferry terminals, mobile vendor lines or cab stands.
- 5 29. “Smoke” means the gases and particles released into the air by combustion when the
6 apparent or usual purpose of the combustion is human inhalation of the resulting
7 combustion products, such as, for example, tobacco smoke, and marijuana smoke, except
8 when the combusting material contains no tobacco and the purpose of inhalation is solely
9 olfactory, such as, for example, smoke from incense.
- 10 30. “Smoking” means engaging in an act that generates Smoke, such as, for example:
11 possessing a lighted cigar, a lighted cigarette or any kind, a lighted pipe, or a lighted
12 hookah pipe; or lighting a pipe, a hookah pipe, a cigar, or a cigarette of any kind .
- 13 31. “Sports Arena” means enclosed or unenclosed sports pavilions, gymnasiums, health spas,
14 swimming pools, roller and ice rinks, bowling alleys and other similar places where
15 members of the general public assemble either to engage in physical exercise, participate
16 in athletic competition, or witness sports events.
- 17 32. “Tobacco Paraphernalia “ means cigarette papers or wrappers, pipes, holders of smoking
18 materials of all types, cigarette rolling machines, and any other item designed for the
19 smoking, preparation, storing, or consumption of tobacco products.
- 20 33. “Tobacco Product” means
- 21 A. Any substance containing tobacco leaf, including but not limited to cigarettes,
22 cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco,
23 bidis, blunts, clove cigarettes, or any other preparation of tobacco; and
- 24 B. Any product or formulation of matter containing biologically active amounts of
25 nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the
26 expectation that the product or matter will be introduced into the human body by
27 inhalation; but does not include any cessation product specifically approved by the
28 U. S. Food and Drug Administration for use in treating nicotine or tobacco
29 dependence.
- 30 34. “Tobacco Vending Machine” means any machine, appliance, or other mechanical device
31 operated by currency, token, debit card, credit card, or any other form of payment that is
32 designed or used for vending purposes, including, but not limited to, machines or devices
33 that use remote control locking mechanisms.
- 34 35. “Unenclosed Area” means any area that is not an Enclosed Area.
- 35 36. “Unit” means a personal dwelling space, even where lacking cooking facilities or private
36 plumbing facilities, and includes any associated exclusive-use Enclosed Area or
37 Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio. “Unit”
38 includes but is not limited to an apartment; a condominium; a townhouse; a room in a
39 long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a
40 room in a single room occupancy (“SRO”) facility; a room in a homeless shelter; a
41 mobile home; a camper vehicle or tent; a boat, vessel or houseboat; a single-family home;
42 and an in-law, second unit or accessory dwelling unit.
- 43 37. “Vendor-assisted” means only a store employee has access to the tobacco product and
44 assists the customer to supplying the product. The customer does not take possession of
45 the product until it is purchased.

47 **12.28.030 City-owned Vehicles and Facilities**

48 All City-owned vehicles, including jitneys and buses and other means of public transit under the
49 authority of the City, and all enclosed facilities owned and controlled by the City, including jails
50 or holding facilities, and any board, council, commission and agency of the City shall be subject
51 to the provisions of this Chapter.

1 **12.28.040 Prohibition of Smoking in Public Places, Places of Employment, and Certain**
2 **Other Areas**

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

- 7 1. Places of Employment.
- 8 2. Public Places.
- 9 3. Recreational Areas.
- 10 4. Common Areas

11
12 B. Unenclosed Areas. Smoking shall be prohibited in the following Unenclosed Areas within
13 the City of Sausalito except in such places in which Smoking is already prohibited by state
14 or federal law in which case the state or federal law applies:

- 15 1. Places of Employment.
- 16 2. Recreational Areas.
- 17 3. Service Areas.
- 18 4. Dining Areas.
- 19 5. Common Areas, provided that a Person with legal control over a Common Area may
20 designate a portion of the Unenclosed Area of the Common Area as a designated
21 Smoking area if the area meets all of the following criteria:
 - 22 a. The area must be located a Reasonable Distance from any Unit or Enclosed Area
23 where Smoking is prohibited by this chapter or other law; by binding agreement
24 relating to the ownership, occupancy, or use of real property; or by designation of
25 a Person with legal control over the property. In the case of a nonsmoking area
26 created by agreement or designation, this provision does not apply unless the
27 Person designating the Smoking area has actual knowledge of, or has been given
28 notice of, the agreement or designation. A designated Smoking area may require
29 modification or elimination as laws change, as binding agreements are created,
30 and as nonsmoking areas on neighboring property are established.
 - 31 b. The area must not include, and must be a Reasonable Distance from, Unenclosed
32 Areas primarily used by children and Unenclosed Areas with improvements that
33 facilitate physical activity including, for example, playgrounds, tennis courts,
34 swimming pools, and school campuses;
 - 35 c. The area must be no more than ten percent (10%) of the total Unenclosed Area of
36 the Multi-Unit Residence for which it is designated;
 - 37 d. The area must have a clearly marked perimeter;
 - 38 e. The area must be identified by conspicuous signs;
 - 39 f. The area must be completely within an Unenclosed Area; and
 - 40 g. The area must not overlap with any Enclosed or Unenclosed Area in which
41 Smoking is otherwise prohibited by this chapter or other provisions of this Code,
42 state law, or federal law.
- 43 6. Other Public Places when being used for a public event, including a farmers' market,
44 parade, craft fair, festival, or any other event which may be attended by the general
45 public, provided that Smoking is permitted on streets and sidewalks being used in a
46 traditional capacity as pedestrian or vehicular thoroughfares, unless otherwise
47 prohibited by this chapter or other law.

48
49 C. Unless otherwise prohibited by law, Smoking is not prohibited in the following Enclosed
50 Areas:

- 1 1. Smoking is not prohibited in up to twenty percent (20%) of guestroom
2 accommodations in a hotel, motel, bed and breakfast or similar transient lodging
3 establishment if the hotel or motel permanently designates particular guestrooms as
4 nonsmoking rooms such that eighty percent (80%) or more of guestrooms are
5 permanently nonsmoking and ashtrays and matches are permanently removed from
6 such nonsmoking rooms. Permanent No Smoking signage shall be posted in
7 nonsmoking guestrooms.
- 8 2. Smoking at theatrical production sites is not prohibited by this subsection if Smoking is
9 an integral part of the story and the use of a fake, prop, or special effect can not
10 reasonably convey the idea of Smoking in an effective way to a reasonable member of
11 the anticipated audience.
- 12 3. Smoking inside a Retail Tobacco Store is not prohibited if:
13 a. The Retail Tobacco Store does not sell edible products, including, for example,
14 food, water, or drinks, or allow such products to be consumed on the business
15 premises;
16 b. The Retail Tobacco Store prohibits minors from entering the store at all times; and
17 c. The premises of the Retail Tobacco Store are an independent freestanding
18 building unattached to any other structure or use.
- 19 4. Smoking inside a detached, single-family home is not prohibited, except those used as
20 a child care or health care facility subject to licensing requirements;
- 21
- 22 D. Notwithstanding any other provisions of this section, nothing in this chapter prohibits any
23 Person, Landlord, Employer, or Nonprofit Entity with legal control over any property or
24 facility from declaring the entire property or facility as nonsmoking and prohibiting
25 Smoking on any part of such property or facility, even if Smoking is not otherwise
26 prohibited in that area.
- 27

28 **12.28.050 Nonsmoking Buffer Zones**

- 29 A. Smoking in all Unenclosed Areas shall be prohibited within a Reasonable Distance from
30 any doorway, window, opening, crack, or vent into an Enclosed Area in which Smoking is
31 prohibited, except while actively passing on the way to another destination and provided
32 Smoke does not enter any Enclosed Area in which Smoking is prohibited.
- 33
- 34 B. Smoking in Unenclosed Areas shall be prohibited within a Reasonable Distance from any
35 Unenclosed Areas in which Smoking is prohibited under Section 12.28.040.B of this
36 chapter, except while actively passing on the way to another destination and provided
37 Smoke does not enter any Unenclosed Area in which Smoking is prohibited.
- 38
- 39 C. The prohibitions in subdivisions A and B shall not apply to Unenclosed Areas of private
40 residential properties that are not Multi-Unit Residences.
- 41
- 42 D. Smoking is prohibited in Unenclosed Areas of a Multi-Unit Residence, including
43 balconies, porches, decks, and patios, within a Reasonable Distance from any doorway,
44 window, opening, or other vent into an Enclosed Area where Smoking is prohibited by
45 this chapter or other law; by binding agreement relating to the ownership, occupancy, or
46 use of real property; or by designation of a Person with legal control over the property.
- 47

48 **12.28.060 Smoking Restrictions in New Units of Multi-Unit Residences**

- 49 A. All New Units of a Multi-Unit Residence are hereby designated nonsmoking Units,
50 including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for

1 example, a private balcony, porch, deck, or patio; and including without limitation New
2 Units in a Rental Complex and New Units in a Common Interest Complex.

3
4 B. Smoking in a designated nonsmoking Unit is a violation of chapter.

5
6 **12.28.070 Nonsmoking Designations for Existing Units of a Common Interest Complex**

7 A. All Units of a Common Interest Complex that are not New Units, including any associated
8 exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private
9 balcony, porch, deck, or patio, are hereby designated nonsmoking Units as of August 30,
10 2013; provided, however, that a lesser percentage of Units may be designated nonsmoking
11 Units if a Common Interest Complex fully complies with subsection C below.

12
13 B. Smoking in a designated nonsmoking Unit is a violation of this chapter.

14
15 C. By a vote of the membership as provided in subsection 1 below, a Common Interest
16 Complex may choose to designate fewer than one-hundred percent (100%) of existing
17 Units as nonsmoking Units by fully complying with the requirements stated in subsections
18 1 - 4 below. Otherwise subsection A above shall apply.

- 19 1. A vote by the membership on the threshold question of allowing less than one hundred
20 percent (100%) of Units to be designated nonsmoking Units must take place before
21 May 27, 2013.
- 22 2. Up to one hundred percent (100%), but no less than eighty percent (80%), of Units that
23 are not New Units, including, for example, any associated exclusive-use Enclosed
24 Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or
25 patio, shall be permanently designated as nonsmoking Units.
- 26 3. Where possible, best efforts shall be made to group nonsmoking Units together, both
27 horizontally and vertically, and physically separate them from Units where Smoking
28 may be allowed.
- 29 4. No later than August 30, 2013 the final designations must be made and the following
30 must be submitted:
 - 31 a. A description of each designated nonsmoking Unit sufficient to readily identify
32 the Unit; and
 - 33 b. A diagram depicting the location of the designated nonsmoking Units in relation
34 to all other Units.

35
36 **12.28.080 Nonsmoking Designations for Existing Units of a Rental Complex**

37 A. All Units of a Rental Complex that are not New Units, including any associated exclusive-
38 use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch,
39 deck, or patio, are hereby designated nonsmoking Units as of August 30, 2013; provided,
40 however, that a lesser percentage of Units may be designated nonsmoking Units if a
41 Landlord fully complies with subsection D below.

42
43 B. Smoking in a designated nonsmoking Unit is a violation of this chapter.

44
45 C. Except if a Landlord fully complies with subsection D below, at least sixty (60) days before
46 August 30, 2013, the Landlord shall provide each tenant with:

- 47 1. A written notice clearly stating that all Units, including the tenant's Unit, are
48 designated nonsmoking Units and that Smoking in a Unit will be illegal as of August
49 30, 2013 as specified in this Section and
 - 50 2. A copy of this chapter.
- 51

1 D. A Landlord may choose to designate fewer than one-hundred percent (100%) of existing
2 Units that are not New Units of a Rental Complex as nonsmoking Units by fully complying
3 with the requirements stated in subsections 1 - 7 below. However, subsection A above shall
4 apply whenever a Landlord takes no action or only partially complies with the requirements
5 of this subsection.
6

- 7 1. The Landlord shall permanently designate up to one hundred percent (100%) of Units,
8 but no less than eighty percent (80%) of Units, including, for example, any associated
9 exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private
10 balcony, porch, deck, or patio, as nonsmoking Units.
- 11 2. To the maximum extent practicable, nonsmoking Units must be grouped together both
12 horizontally and vertically and physically separated from Units where Smoking may be
13 allowed. Where possible all Units where Smoking may be allowed shall be in a single
14 building of a multi-building Multi-Unit Residence.
- 15 3. No later than December 28, 2013 a Landlord who chooses to designate fewer than
16 100% of the Units of a Multi-Unit Residences as nonsmoking shall submit the
17 following:
 - 18 a. A description of each designated nonsmoking Unit sufficient to identify the Unit;
19 and
 - 20 b. A diagram depicting the location of the designated nonsmoking Units in relation
21 to all other Units.
- 22 4. At least sixty (60) days before submitting the nonsmoking Unit designations required
23 by subsection 3 above, the Landlord shall provide each tenant with:
 - 24 a. A written notice of the proposed designations, clearly stating that Smoking in a
25 Unit which is designated as a nonsmoking Unit will be illegal as of August 30,
26 2013, and inviting comments on the proposed designations of nonsmoking Units
27 within the requisite timeline;
 - 28 b. A diagram depicting the location of the designated nonsmoking Units in relation
29 to all other Units; and
 - 30 c. A copy of this chapter.
- 31 5. A Landlord may modify the proposed designations based upon comments received
32 from tenants.
- 33 6. At least thirty (30) days before submitting the final designations of nonsmoking Units
34 required by subsection 3 above, the Landlord shall provide all tenants written notice of
35 the final designations clearly stating that Smoking in a designated nonsmoking Unit
36 will be illegal as of August 30, 2013 as specified in Section 12.28.120, and a copy of
37 the final documents that will be submitted. These final designations may differ from the
38 proposed designations on which tenants were invited to comment.
- 39 7. A Unit in a Rental Complex for which a Landlord is required to submit information
40 pursuant to this Section but for which such information, for any reason, is not fully and
41 timely submitted is hereby designated as a nonsmoking Unit as of December 28, 2012.
42

43 **12.28.090 Required and Implied Lease Terms for All New and Existing Units in Rental**
44 **Complexes**

45 A. Every lease or other rental agreement for the occupancy of a Unit in a Rental Complex,
46 including, for example, New Units and existing Units, entered into, renewed, or continued
47 month-to-month after August 30, 2012, shall include the provisions set forth in subsection
48 B below on the earliest possible date when such an amendment is allowable by law when
49 providing the minimum legal notice.
50

- 1 B. Every lease or other rental agreement for the occupancy of a Unit in a Rental Complex,
2 including, for example, New Units and existing Units, entered into, renewed, or continued
3 month-to-month after August 30, 2012, shall be amended to include the following
4 provisions:
- 5 1. A clause providing that as of August 30, 2013, it is a material breach of the agreement
6 to allow or engage in Smoking in the Unit unless the Landlord has supplied written
7 notice that the Unit has not been designated a nonsmoking Unit and no other
8 prohibition against Smoking applies. Such a clause might state, "It is a material breach
9 of this agreement for tenant or any other person subject to the control of the tenant or
10 present by invitation or permission of the tenant to engage in smoking in the unit as of
11 August 30, 2013 unless landlord has provided written notice that the unit has not been
12 designated a nonsmoking unit and smoking in the unit is not otherwise prohibited by
13 this agreement, other agreements, or by law."
 - 14 2. A clause providing that it is a material breach of the agreement for tenant or any other
15 Person subject to the control of the tenant or present by invitation or permission of the
16 tenant to engage in Smoking in any Common Area of the property other than a
17 designated Smoking area. Such a clause might state, "It is a material breach of this
18 agreement for tenant or any other person subject to the control of the tenant or present
19 by invitation or permission of the tenant to engage in smoking in any common area of
20 the property, except in an outdoor designated smoking area, if one exists."
 - 21 3. A clause providing that it is a material breach of the agreement for tenant or any other
22 Person subject to the control of the tenant or present by invitation or permission of the
23 tenant to violate any law regulating Smoking while anywhere on the property. Such a
24 clause might state, "It is a material breach of this agreement for tenant or any other
25 person subject to the control of the tenant or present by invitation or permission of the
26 tenant to violate any law regulating smoking while anywhere on the property."
 - 27 4. A clause expressly conveying third-party beneficiary status to all occupants of the
28 Rental Complex as to the Smoking provisions of the agreement. Such a clause might
29 state, "Other occupants of the property are express third-party beneficiaries of those
30 provisions in this agreement that concern smoking. As such, other occupants of the
31 property may seek to enforce such provisions by any lawful means, including by
32 bringing a civil action in a court of law."
- 33
- 34 C. Whether or not a Landlord complies with subsections A and B above, the clauses required
35 by those subsections shall be implied and incorporated by law into every agreement to
36 which subsections A or B apply and shall become effective as of the earliest possible date
37 on which the Landlord could have made the insertions pursuant to subsections A or B.
- 38
- 39 D. A tenant who breaches a Smoking provision of a lease or other rental agreement for the
40 occupancy of a Unit in a Rental Complex, or who knowingly permits any other Person
41 subject to the control of the tenant or present by invitation or permission of the tenant, shall
42 be liable for the breach to:
- 43 1. The Landlord; and
 - 44 2. Any occupant of the Rental Complex who is exposed to Smoke or who suffers damages
45 as a result of the breach.
- 46
- 47 E. This chapter shall not create additional liability in a Landlord to any Person for a tenant's
48 breach of any Smoking provision in a lease or other rental agreement for the occupancy of
49 a Unit in a Rental Complex if the Landlord has fully complied with this Section and
50 Section 12.28.080.
- 51

- 1 F. Failure to enforce any Smoking provision required by this chapter shall not affect the right
2 to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver
3 of any subsequent breach or a waiver of the provision itself.
4

5 **12.28.100 Additional Duties of a Landlord of a Rental Complex with Less Than One**
6 **Hundred Percent Nonsmoking Units.**

7 A Landlord of a Rental Complex with less than one hundred percent (100%) nonsmoking Units
8 shall provide to every prospective tenant, prior to entering into a new lease or other rental
9 agreement for the occupancy of a Unit in a Rental Complex, a copy of the designation documents
10 required pursuant to Section 12.28.080 describing each designated nonsmoking Unit with an
11 accompanying diagram depicting the location of nonsmoking Units in relation to all other Units
12 and any designated Smoking areas.
13

14 **12.28.110 Procedures and Requirements for Mandated Submissions**

- 15 A. Documents maintained pursuant to this chapter must include all material and information
16 required by this chapter as well as other materials and information as the City Manager or
17 his or her designee deems necessary for the administration and enforcement of this
18 chapter.
19
20 B. All documents maintained pursuant to this chapter shall be available for the City Manager
21 or his or her designee to access and review during regular business hours or upon twenty-
22 four (24) hours written notice.
23
24 C. All materials and information maintained pursuant to this chapter and requested by the
25 City Manger or his or her designee shall constitute disclosable public records and are not
26 private or confidential.
27

28 **12.28.120 Smoking Prohibited by Law in Units and Common Areas**

- 29 A. Smoking in a Common Area, on or after August 30, 2012, other than in a designated
30 Smoking area established pursuant to Section 12.28.040.B.5, is a violation of this chapter.
31
32 B. Smoking in a New Unit, on or after August 30, 2012, is a violation of this chapter.
33
34 C. Smoking in a designated nonsmoking Unit, on or after August 30, 2013, is a violation of
35 this chapter.
36

37 **12.28.130 Smoking and Smoke Generally**

- 38 A. The provisions of this chapter are restrictive only and establish no new rights for a Person
39 who engages in Smoking. Notwithstanding (1) any provision of this chapter or other
40 provisions of this Code, (2) any failure by any Person to restrict Smoking under this
41 chapter, or (3) any explicit or implicit provision of this Code that allows Smoking in any
42 place, nothing in this Code shall be interpreted to limit any Person's legal rights under
43 other laws with regard to Smoking, including, for example, rights in nuisance, trespass,
44 property damage, and personal injury or other legal or equitable principles.
45
46 B. Notwithstanding any other provision of this chapter, Smoking marijuana for medical
47 purposes as permitted by California Health and Safety Code sections 11362.7 et seq in any
48 Unit of a Multi-Unit Residence is not prohibited by this chapter, provided that the
49 marijuana smoke is not reasonably detectable. The City shall only enforce this section if:
50 1. A complaint is made by a resident of the Multi-Unit building that the marijuana smoke
51 is detectable to him or her; and

1 2. The marijuana smoke is also detectable to law or code enforcement personnel. If the
2 marijuana smoke is not detectable by the law or code enforcement personnel, this
3 subsection does not preclude the resident from taking private enforcement action as
4 provided in Section 12.28.130.C.
5

6 Notwithstanding the forgoing, such use of marijuana may be prohibited by other provisions
7 of this Code, state law, or federal law.
8

9 C. For all purposes within the jurisdiction of the City, nonconsensual exposure to Smoke
10 occurring on or drifting into residential property is a nuisance, and the uninvited presence
11 of Smoke on residential property is a nuisance and a trespass. Any Person bringing a civil
12 action to enforce the nuisance provision contained in this section need not prove an injury
13 different in kind or in degree from injury to others to prove a violation of this chapter.
14

15 **12.28.140 Other Requirements and Prohibitions**

16 A. No Person, Landlord, Employer, or Nonprofit Entity shall knowingly permit Smoking in
17 an area which is under the legal or de facto control of the Person, Employer or Nonprofit
18 Entity and in which Smoking is prohibited by this chapter, unless otherwise required by
19 state or federal law.
20

21 B. No Person, Landlord, Employer, or Nonprofit Entity shall knowingly or intentionally
22 permit the presence or placement of ash receptacles, such as, for example, ash trays or ash
23 cans, within an area under the legal or de facto control of the Person, Landlord, Employer
24 or Nonprofit Entity and in which Smoking is prohibited by law, including, without
25 limitation, within a Reasonable Distance required by this chapter from any area in which
26 Smoking is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in
27 violation of this subsection shall not be a defense to a charge of Smoking in violation of
28 any provision of this chapter.
29

30 C. No Person shall dispose of used Smoking or Tobacco Product waste within the boundaries
31 of an area in which Smoking is prohibited, including inside the perimeter of any
32 Reasonable Distance required by this chapter.
33

34 D. A Person, Landlord, Employer, or Nonprofit Entity that has legal or de facto control of an
35 area in which Smoking is prohibited by this chapter shall post a clear, conspicuous and
36 unambiguous “No Smoking” or “Smoke-free” sign at each point of ingress to the area, and
37 in at least one other conspicuous point within the area. No Smoking signs are not required
38 inside or at doorways of designated nonsmoking Units. The signs shall have letters of no
39 less than one inch in height and shall include the international “No Smoking” symbol
40 (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with
41 a red bar across it). Signs posted on the exterior of buildings to comply with this section
42 shall include the Reasonable Distance requirement set forth in Section 12.28.040. At least
43 one sign with a toll-free phone number where complaints can be directed must be
44 conspicuously posted in each place in which Smoking is prohibited. For purposes of this
45 section, the City Manager or his/her designee shall be responsible for the posting of signs
46 in regulated facilities owned or leased in whole or in part by the City. Notwithstanding this
47 provision, the presence or absence of signs shall not be a defense to a charge of Smoking
48 in violation of any other provision of this chapter.
49

50 E. No Person, Landlord, Employer, or Nonprofit Entity shall intimidate, threaten any reprisal,
51 or effect any reprisal, for the purpose of retaliating against another Person who seeks to

1 attain compliance with this chapter. Moreover, no Person shall intentionally or recklessly
2 expose another Person to Smoke in response to that Person's effort to achieve compliance
3 with this chapter.
4

- 5 F. Each instance of Smoking in violation of this chapter shall constitute a separate violation.
6 For violations other than for Smoking, each day of a continuing violation of this chapter
7 shall constitute a separate violation.
8

9 **12.28.150 Violations and Penalties**

- 10 A. The remedies provided by this chapter are not intended to preclude any other remedy
11 available at law or inequity.
12
13 B. It is unlawful to cause, permit, aid, abet, or conceal a violation of any provision of this
14 chapter.
15
16 C. It is unlawful for any Person who owns, manages, operates or otherwise controls the use
17 of any Premises subject to regulation under this chapter to refuse to comply with any of
18 its provisions, or to permit any Employee or patron to violate this chapter.
19
20 D. It shall be unlawful for any Person to smoke in any area where Smoking is prohibited
21 under this chapter.
22
23 E. It shall be unlawful for any Person who owns, manages, operates or otherwise controls
24 the use of any Premises subject to regulation under this chapter to fail to comply with any
25 of its provisions.
26
27 E. Any Person, Business, tobacco retailer, or owner who violates any provision of this
28 chapter shall be deemed guilty of an infraction, punishable by the Administrative
29 Penalties as regulated in Chapter 1.10 of the Sausalito Municipal Code.
30

31 **12.28.160 Other Applicable Laws**

32 This chapter shall not be interpreted or construed to permit Smoking where it is otherwise
33 restricted by other applicable laws.
34

35 **SECTION 3.**

36 The City of Sausalito shall engage in a continuing program to explain and clarify the purposes
37 and requirements of this ordinance to citizens affected by it, and to guide individuals, Landlords,
38 Employers, and Nonprofit Entities in their compliance with it. Such program may include
39 publication of a brochure for affected individuals, Landlords, Employers, and/or Nonprofit
40 Entities explaining the provisions of this ordinance.
41

42 **SECTION 4.**

43 The City of Sausalito shall annually request other governmental and educational agencies having
44 facilities within the City to establish local operating procedures in cooperation and compliance
45 with this ordinance. This includes urging all federal, state, county and school district agencies to
46 update their existing tobacco control regulations to be consistent with current health findings
47 regarding environmental tobacco smoke.
48

49 **SECTION 5. Construction, Severability**

50 It is the intent of the City Council of the City of Sausalito to supplement applicable state and
51 federal law and not to duplicate or contradict such law and this Ordinance shall be construed

1 consistently with that intention. If any section, subsection, subdivision, paragraph, sentence,
2 clause or phrase of this Ordinance, or its application to any person or circumstance, is for any
3 reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the
4 validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs,
5 sentences, clauses or phrases of this Ordinance, or its application to any other person or
6 circumstance. The City Council of the City of Sausalito hereby declares that it would have
7 adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof,
8 irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs,
9 sentences, clauses or phrases hereof be declared invalid or unenforceable.

10
11 **SECTION 6.** Effective date

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

13
14 **THE FOREGOING ORDINANCE** was read at a regular meeting of the Sausalito City Council
15 on the __ day of ____, 2012, and was adopted at a regular meeting of the City Council on the ____
16 day of ____, 2012 by the following vote:

17
18 AYES: Councilmembers:
19 NOES: Councilmembers:
20 ABSENT: Councilmembers:
21 ABSTAIN: Councilmembers:

22
23
24 _____
MIKE KELLY
25 MAYOR OF THE CITY OF SAUSALITO

26 ATTEST:

27 _____
28 DEBBIE PAGLIARO
29 CITY CLERK

30
31
32
33 I:\CDD\PROJECTS - NON-ADDRESS\ZOA\2011\11-346 Smoking Regs\CCORD 07.31.2012