

**ORDINANCE NO. XXX  
AN ORDINANCE OF THE COUNTY OF MARIN  
REGULATING SECOND-HAND SMOKE AND AMENDING  
THE MARIN COUNTY CODE**

THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN DOES ORDAIN AS FOLLOWS:

**SECTION 1. FINDINGS.**

The Marin County Board of Supervisors hereby finds and declares as follows:

**WHEREAS**, scientific studies have concluded that cigarette smoking causes chronic lung disease, coronary heart disease, stroke, cancer of the lungs, larynx, esophagus, mouth, and bladder, and contributes to cancer of the cervix, pancreas, and kidneys;<sup>1</sup> and

**WHEREAS**, the use of cigars is known to cause lung, larynx, esophageal, and oral cancer;<sup>2</sup> and

**WHEREAS**, 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 illness;<sup>3</sup> and

**WHEREAS**, the World Health Organization (WHO) estimates that by 2030, tobacco will account for 10 million deaths per year, making it the greatest cause of death worldwide;<sup>4</sup> and

**WHEREAS**, deaths from smoking around the world will soon outnumber those from AIDS, tuberculosis, traffic accidents, murder, and suicide combined;<sup>5</sup> and

**WHEREAS**, the United States Environmental Protection Agency (EPA) 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;<sup>6</sup> and

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<sup>1</sup> U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002*, 2 (2002), available at <http://www.cdc.gov/tobacco/overview/oshag.pdf> (last accessed August 15, 2003).

<sup>2</sup> U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Annual Smoking –Attributable Mortality, Years of Potential Life Lost, and Economic Costs – United States 1995-1999* (2002) MORBIDITY AND MORTALITY WEEKLY REPORT, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5114a2.htm> (last accessed August 15, 2003).

<sup>3</sup> U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Highlights Annual Smoking – Attributable Mortality, Years of Potential Life Lost, and Economic Costs – United States 1995-1999* (2002) MORBIDITY AND MORTALITY WEEKLY REPORT, available at [http://www.cdc.gov/tobacco/research\\_data/economics/mmwr5114.highlights.htm](http://www.cdc.gov/tobacco/research_data/economics/mmwr5114.highlights.htm) (last accessed August 15, 2003).

<sup>4</sup> U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Reducing Tobacco Use: A Report of the Surgeon General*, 437 (2001).

<sup>5</sup> Macksood Aftab, et. al., *International Cigarette Labeling Practices*, 8:4 TOBACCO CONTROL 368 (1999).

<sup>6</sup> U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Clean Indoor Air Regulations Fact Sheet* (2001), available at [http://www.cdc.gov/tobacco/sqr/sqr\\_2000/factsheets/factsheet\\_clean.htm](http://www.cdc.gov/tobacco/sqr/sqr_2000/factsheets/factsheet_clean.htm) (last accessed Apr. 23, 2003).

**WHEREAS**, exposure to secondhand smoke is the third leading cause of preventable death in this country, killing over 52,000 non-smokers each year,<sup>7</sup> including 3,000 deaths from lung cancer;<sup>8</sup> and

**WHEREAS**, between 4,200 and 7,440 nonsmokers die of ischemic heart disease from secondhand smoke each year in California;<sup>9</sup> and

**WHEREAS**, 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;<sup>10</sup> and

**WHEREAS**, secondhand smoke exposure adversely affects fetal growth, with elevated risk of low birth weight and increased risk of Sudden Infant Death Syndrome (SIDS) in infants of mothers who smoke;<sup>11</sup> and

**WHEREAS**, secondhand smoke exposure causes as many as 300,000 children in the United States to suffer from lower respiratory tract infections, such as pneumonia and bronchitis,<sup>12</sup> exacerbates childhood asthma, and increases the risk of acute, chronic, middle ear infection in children;<sup>13</sup> and

**WHEREAS**, thirdhand smoke harms indoor air quality and is a recognized public health concern, as evidenced by the following:

- Thirdhand smoke is residual tobacco smoke contamination after a cigarette has been extinguished<sup>14</sup> and takes the form of particulate matter that is deposited in a layer onto every indoor surface; in loose household dust; and as volatile organic compounds that “off gas” into the air over days, weeks and months,<sup>15</sup> and

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<sup>7</sup> S.A. Glantz & W. Parnley, *Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry*, 83(1) Circulation 1 (1991) and California Environmental Protection Agency, Office of Env'tl. Health Hazard Management, *Health Effects of Exposure to Environmental Tobacco Smoke: Final Report* (1997).

<sup>8</sup> U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002*, 2 (2002), available at <http://www.cdc.gov/tobacco/overview/oshaaq.pdf> (last accessed August 15, 2003).

<sup>9</sup> National Cancer Institute, *Health Effects of Exposure to Environmental Tobacco Smoke: The Report of the California Environmental Protection Agency*. Smoking and Tobacco Control Monograph No. 10. Bethesda, MD. U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 99-4645 (1999).

<sup>10</sup> Pirkle, et al., JOURNAL OF AMERICAN MEDICINE, 275: 1233-40 (1996).

<sup>11</sup> Cal. Env'tl. Prot. Agency, Office of Env'tl Health Hazard Assessment, *Health Effects of Exposure to Environmental Tobacco Smoke, Final Report ES-5* (1997).

<sup>12</sup> U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002*, 2 (2002), available at <http://www.cdc.gov/tobacco/overview/oshaaq.pdf> (last accessed August 15, 2003).

<sup>13</sup> U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Clean Indoor Air Regulations Fact Sheet* (2001), available at [http://www.cdc.gov/tobacco/sqr/sqr\\_2000/factsheets/factsheet\\_clean.htm](http://www.cdc.gov/tobacco/sqr/sqr_2000/factsheets/factsheet_clean.htm) (last accessed Apr. 23, 2003).

<sup>14</sup> Winickoff J, Friebely J, Tanski SE, et al. "Beliefs About the Health Effects of "Thirdhand" Smoke and Home Smoking Bans." *Pediatrics*;123:e74-e79, 2009. Available at: <http://pediatrics.aappublications.org/cgi/reprint/123/1/e74.pdf>.

<sup>15</sup> Winickoff J, Friebely J, Tanski SE, et al. "Beliefs About the Health Effects of "Thirdhand" Smoke and Home Smoking Bans." *Pediatrics*;123:e74-e79, 2009. Available at: <http://pediatrics.aappublications.org/cgi/reprint/123/1/e74.pdf>; See also Matt GE, Quintana PJ, Hovell MF, et al. Households Contaminated by Environmental Tobacco Smoke: Sources of Infant Exposures. *Tob Control*;13(1):29-37m, 2004. Available at: <http://tobaccocontrol.bmj.com/content/13/1/29.abstract>; Singer BC, Hodgson AT, Guevarra KS, Hawley EL, Nazaroff WW. Gas-phase organics in environmental tobacco smoke: 1—effects of smoking rate, ventilation, and furnishing level on emission factors. *Environ Sci Technol*;36(5):846-853, 2002. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/11918006>.

- Desorption of thirdhand smoke from indoor surfaces to air is recognized as a source of tobacco exposure;<sup>16</sup>
- A majority of adults in the United States agreed with the statement that breathing in air in a room today where people smoked yesterday can harm the health of children;<sup>17</sup> and

**WHEREAS**, third hand smoke exposure has negative health impacts, as evidenced by the following:

- Tobacco smoke constituents, even at low levels, have been proved toxic;<sup>18</sup> and
- Residual nicotine from tobacco smoke sorbed to indoor surfaces reacts with ambient nitrous acid, a common indoor air pollutant,<sup>19</sup> to form carcinogenic tobacco-specific nitrosamines;<sup>20</sup> and
- High levels of nicotine on indoor surfaces represents a health hazard through dermal exposure, dust inhalation, and ingestion;<sup>21</sup> and

**WHEREAS**, the total cost of smoking in California was estimated to be \$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;<sup>22</sup> and

**WHEREAS**, smoking-related health care costs in California in 1999 totaled \$8.6 billion, an estimated 43% of which is paid for by public sources;<sup>23</sup> and

**WHEREAS**, almost 90% of adult smokers started smoking at or before age 18;<sup>24</sup> and

<sup>16</sup> Sleiman M, Gundel A, Pankow J, et al. "Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential thirdhand smoke hazards." PNAS 107 (15) 6576-6581, 2010. Available at: <http://www.pnas.org/content/107/15/6576.full.pdf+html?sid=2c1f67b1-0857-4159-971f-9789fc9e73df>.

<sup>17</sup> Winickoff J, Friebely J, Tanski SE, et al. "Beliefs About the Health Effects of "Thirdhand" Smoke and Home Smoking Bans." *Pediatrics*;123:e74-e79, 2009. Available at: <http://pediatrics.aappublications.org/cgi/reprint/123/1/e74.pdf>.

<sup>18</sup> Winickoff J, Friebely J, Tanski SE, et al. "Beliefs About the Health Effects of "Thirdhand" Smoke and Home Smoking Bans." *Pediatrics*;123:e74-e79, 2009. Available at: <http://pediatrics.aappublications.org/cgi/reprint/123/1/e74.pdf>.

<sup>19</sup> Beckett WS, Russi MB, Haber AD, et al. "Effect of nitrous acid on lung function in asthmatics: a chamber study." *Environ Health Perspect.* 103(4): 372-375 1995. Available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1519093/pdf/envhper00353-0064.pdf>.

<sup>20</sup> Sleiman M, Gundel A, Pankow J, et al. "Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential thirdhand smoke hazards." PNAS 107 (15) 6576-6581, 2010. Available at: <http://www.pnas.org/content/107/15/6576.full.pdf+html?sid=2c1f67b1-0857-4159-971f-9789fc9e73df>.

<sup>21</sup> Sleiman M, Gundel A, Pankow J, et al. "Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential thirdhand smoke hazards." PNAS 107 (15) 6576-6581, 2010. Available at: <http://www.pnas.org/content/107/15/6576.full.pdf+html?sid=2c1f67b1-0857-4159-971f-9789fc9e73df>.

<sup>22</sup> Max W, Rice DP, Zhang X, Sung H-Y, Miller L., *The Cost of Smoking in California, 1999*; California Department of Health Services (2002).

<sup>23</sup> Max W, Rice DP, Zhang X, Sung H-Y, Miller L., *The Cost of Smoking in California, 1999*; California Department of Health Services, 2002 and Bartlett JS, Miller LS, Rice D, Max WB, *Medical care expenditures attributable to cigarette smoking - United States, 1993*; MORBIDITY AND MORTALITY WEEKLY REPORT (1994) 469-472.

<sup>24</sup> National Household Surveys on Drug Abuse, unpublished data, 1998. See also, U.S. Dep't of Health & Human Servs. et al., *Preventing Tobacco Use Among Young People: A Report of the Surgeon General*, 101 (1994).

**WHEREAS**, it is estimated that 5.9% of youth in California smoke<sup>25</sup> and smoking in front of children is likely to increase the likelihood that they will smoke; and

**WHEREAS**, state law acknowledges the harms of secondhand smoke by prohibiting the sale or furnishing of cigarettes, tobacco products or smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors;<sup>26</sup> and

**WHEREAS**, with certain exceptions, state law prohibits smoking inside an enclosed place of employment;<sup>27</sup> and

**WHEREAS**, state law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees;<sup>28</sup> and

**WHEREAS**, state law prohibits smoking in playgrounds and tot lots and within twenty feet of the main entrances and exits of public buildings and expressly authorizes local communities to enact additional restrictions;<sup>29</sup> and

**WHEREAS**, the California Air Resources Board has determined that second-hand smoke is a toxic air contaminant, finding that exposure to second-hand smoke has serious health effects including low birth-weight babies; Sudden Infant Death Syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung, sinus and breast cancer; heart disease; and death; and

**WHEREAS**, the California Air Resources Board's determination will lead to a rulemaking process that will take many months to complete and will likely mirror the requirements of this ordinance in order to protect public health in California; and

**WHEREAS**, On June 27<sup>th</sup> 2006, The United States Surgeon General issued a report concluding that there is no risk free level of exposure to Secondhand Smoke (the "Surgeon General Report");<sup>30</sup>

**NOW THEREFORE**, it is the intent of the Board of Supervisors in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of tobacco use near non-tobacco users; by protecting children from exposure to smoking and tobacco; by reducing the potential for children to associate smoking and tobacco with a healthy lifestyle; by protecting the public from smoking and tobacco-related litter and pollution; and by affirming and promoting the family-friendly atmosphere of the County's public places.

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<sup>25</sup> Tobacco Control Section, Cal. Dep't of Health Servs., *California Tobacco Control Update* (2003), at <http://www.dhs.ca.gov/tobacco/documents/TCSupdate.PDF> (last accessed April 25, 2003).

<sup>26</sup> Cal. Penal Code § 308 (West 2003).

<sup>27</sup> Cal. Lab. Code § 6404.5 (West 2003).

<sup>28</sup> Cal. Educ. Code § 48901(a) (West 2003).

<sup>29</sup> Cal. Health & Safety Code § 104495 (West 2003) and Cal. Gov't Code § 7596 (effective January 1, 2004).

<sup>30</sup> United States Dept of HHS, *The health consequences of involuntary exposure to tobacco smoke: a report of the surgeon general* (2006); p. 11

**SECTION 2. CODE AMENDMENT.** Chapter 7.70 of the Marin County Code is hereby amended to read as follows:

**Chapter 7.70 SMOKING REGULATIONS**

**Sections**

- 7.70.010 Title
- 7.70.020 Definitions
- 7.70.030 County-owned Vehicles and Enclosed Facilities
- 7.70.040 Prohibition of Smoking in Enclosed Public Places and Places of Employment
- 7.70.050 Prohibition of Smoking in Certain Unenclosed Public places
- 7.70.060 Prohibition of Smoking in Multi-Unit Residences
- 7.70.070 Smoking Optional Areas
- 7.70.080 Secondhand Smoke Exposure
- 7.70.090 Smoking Prohibited by Law in Units and Common Areas
- 7.70.100 Duty of Person, Employer, Business, or Nonprofit Entity
- 7.70.110 Posting of Signs
- 7.70.120 Enforcement
- 7.70.130 Violation – Penalty
- 7.70.140 Nonretaliation
- 7.70.150 Public Education
- 7.70.160 Governmental Agency Cooperation
- 7.70.170 Other Applicable Laws

**Section 7.70.010 Title.**

This chapter shall be known as the Marin County Smoke-Free Air and Health Protection Ordinance.

**Section 7.70.020 Definitions.**

The following words and phrases, whenever used in this article, shall have the following meanings to be interpreted in accord with state statute if a contradiction appears:

- A. "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a Bar, the term "Bar" shall not include the restaurant dining area.
- B. "Business" means any sole proprietorship, partnership, joint venture, corporation or other Business entity formed for profit-making purposes.
- C. "Employee" means any Person who is employed by any Employer in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for a Nonprofit entity.

D. "Employer" means any Person, partnership, corporation, including a municipal corporation, or Nonprofit entity, which employs the services of one or more individual Persons or accepts the services of volunteers.

E. "Enclosed" means:

1. any covered or partially covered space having more than 50% of its perimeter area walled in or otherwise closed to the outside such as, for example, a covered porch with more than two walls; or
2. any space open to the sky having more than 75% of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard;
3. except that an area open to the sky of three thousand (3000) square feet or more is not enclosed such as, for example, a field in an open-air arena.

F. "Landlord" means any person who owns real property leased as residential property, any person who lets residential property, or any person who manages such property, except that "landlord" does not include sublessors.

G. "Lease" means a written or oral agreement between a landlord and tenant conveying possession of a Unit. "Lease" includes both agreements set for a fixed period of time as well as month-to-month or week-to-week rental agreements.

H. "Minor" shall mean any individual who is less than eighteen years old.

I. "Multi-Unit Residence" means a building or portion thereof that contains two (2) or more Units that share a common floor, ceiling or wall except the following specifically excluded types of housing:

1. a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2);
2. a dormitory building;
3. a single-family home; and
4. a single-family home with an attached in-law or second unit when permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections.

J. "Multi-Unit Residence Common Area" means every Enclosed Area or Unenclosed Area of a Multi-Unit Residence that residents of more than one Unit of that Multi-Unit Residence are entitled to enter or use, including, for example, halls and paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities and swimming pools, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.

K. "New Unit" means a Unit that is issued a certificate of occupancy more than 180 days after the effective date of this ordinance and also means a Unit that is let for residential use for the first time more than 180 days after the effective date of this ordinance.

L. "Nonprofit entity" means any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the

operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a "Nonprofit entity" within the meaning of this section.

M. "No smoking Sign" means a sign containing the words "No smoking" or the international "No smoking" symbol (consisting of a pictorial representation of a burning cigarette in a red circle or red heart with a red bar across it).

N. "Openings" shall include entrances, exits, operable windows and ventilation intake systems.

O. "Person" means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, agent or any other legal entity.

P. "Place of employment" means any area under the legal or actual control of an Employer or sole proprietor that an Employee, contractor or member of the public may enter during the normal course of operations, but regardless of hours of operation, including, but not limited to, indoor and outdoor work areas, construction sites, vehicles used in employment or for Business purposes, taxis, Employee lounges and restrooms, conference and banquet rooms, classrooms, bingo and gaming facilities, long term health facilities, warehouses, and private residences used as child/elder care or health care facilities subject to licensing requirements.

Q. "Public place" means any place, public or private, open to members of the general public regardless of any fee or age requirement, including but not limited to, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, taxis, buses, bus shelters, public transportation facilities, hotels and motels, fairs, farmers' markets, and theaters. Public place does not mean within private vehicles in or on public places.

R. "Reasonable Distance" means a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty (20) feet.

S. "Recreation Area" means any area, public or private, open to the general public for recreational purposes, regardless of any fee requirement, including, but not limited to parks, public gardens, children's play areas, roller and ice rinks, sporting facilities, stadiums, and playgrounds.

T. "Service Area" means any area at which one or more Persons are waiting for a transaction, entry or service of any kind, whether or not such service involves the exchange of money, including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops and cab stands.

U. "Smoking" means engaging in an act that generates Smoke, such as, for example: possessing a lighted pipe, lighted cigar, or lighted cigarette or other device of any kind, or the lighting of a pipe, cigar or cigarette, or other device containing tobacco, weed, spices, herbal or other plant life.

V. "Sports Arena" means enclosed or unenclosed sports pavilions, gymnasiums, fitness studios, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, stadiums and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

W. "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of Smoking materials of all types, cigarette rolling machines, and any other item designed for the Smoking, preparation, storing, or consumption of Tobacco Products.

X. "Tobacco Product" means: (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, blunts, clove cigarettes, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body.

Y. "Unit" means: (1) a dwelling space consisting of essentially complete independent living facilities for one or more persons, including, for example, permanent provisions for living and sleeping, and any private outdoor spaces like balconies and patios; (2) senior citizen housing and single room occupancy hotels, as defined in California Health and Safety Code section 50519(b)(1), even where lacking private cooking facilities or private plumbing facilities. "Unit" includes but is not limited to an apartment; a common interest complex; a room in a long-term health care facility, senior citizen housing, public housing, assisted living facility, or hospital; a room in a single room occupancy ("SRO") facility; a room in a homeless shelter; and "Unit" does not include lodging in a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2).

#### **Section 7.70.030 County-Owned Vehicles and Enclosed Facilities.**

All county-owned vehicles, including jitneys and buses and other means of public transit under the authority of the county, and all Enclosed facilities owned or controlled by the county, including jails, the honor farm, county vehicles and Enclosed fairgrounds facilities, and/or any board, council, commission and agency of the county shall be subject to the provisions of this chapter.

#### **Section 7.70.040 Prohibition of Smoking in Enclosed Public Places and Places of Employment.**

A. Except as otherwise provided, Smoking shall be prohibited in all Enclosed Public places within the County of Marin jurisdiction, such as but not limited to:

1. Places of Employment;
2. Buses, taxicabs, and other means of public transit under the authority of the

- county and ticket, boarding, and waiting areas of public transit depots;
3. Public places;
  4. Service Areas;
  5. Any facility which is primarily used for exhibiting motion pictures, stage productions, lectures, musical recitals or other similar performances, except for smoking which is part of such production;
  6. Recreation Areas, Sports Arenas and convention halls;
  7. A minimum of eighty percent of guest rooms in every hotel, motel and bed-and-breakfast facility must be permanently designated as completely nonsmoking.

**Section 7.70.050 Prohibition of Smoking in Certain Unenclosed Public Places.**

A. Except as otherwise expressly authorized by state or federal law, Smoking shall be prohibited in the following unenclosed Public places and Places of employment:

1. Public Places;
2. Places of Employment;
3. Any place where food and/or drink is offered for sale, including outdoor dining areas of restaurants and farmers markets, except unenclosed areas of a stand-alone Bar. If Smoking is permitted in the unenclosed area of a stand-alone Bar, the entire Smoking section must be limited to one designated area clearly marked with signs, and must be located at least twenty (20) feet from any doorway or Opening into an Enclosed area. Smoking in an unenclosed area of a Bar may only take place if the smoke does not enter adjacent, Businesses, residences and areas in which Smoking is prohibited;
4. A Reasonable Distance from any entrance, Opening or exit of any Enclosed area within which Smoking is prohibited, except while passing on the way to another destination;
5. A Reasonable Distance of service lines;
6. Courtyards and other areas where air circulation may be impeded by architectural, landscaping or other barriers;
7. Within 20 feet of working road or building and construction crews;
8. Recreation Areas;
9. Service Areas; and
10. Public events including but not limited to, sports events, entertainment, speaking performances, ceremonies, pageants, fairs and farmer's markets.

B. No person shall place, cause to be placed, or permit to be placed any ashtray, or tobacco ash collector or receptacle in any area designated a non-smoking area by this section.

C. No Person shall dispose of Smoking waste or Tobacco Product waste within the boundaries of an area in which Smoking is prohibited, including inside the perimeter of any Reasonable Distance requirement.

**Section 7.70.060 Prohibition of Smoking in Certain Multi-Unit Residences.**

A. Smoking is prohibited in all Multi-Unit Residence Common Areas except that a landlord may designate a portion of the outdoor area of premises as a smoking area as provided in paragraph (B) below.

B. A designated smoking area:

1. Must be located a reasonable distance from any indoor area where smoking is prohibited;
2. Must not include, and must be a reasonable distance from, outdoor areas primarily used by children including, but not limited to, areas improved or designated for play or swimming;
3. Must be no more than 25% of the total outdoor area of the premises for which it is designated;
4. Must have a clearly marked perimeter;
5. Must be identified by conspicuous signs; and
6. Must not overlap with any area in which smoking is otherwise prohibited by this chapter or other provisions of this Code, state law, or federal law.

C. Smoke-Free Buffer Zones: Smoking is prohibited on the premises of a Multi-Unit Residence within a reasonable distance of any entrance, Opening, or other vent into an enclosed area of a Multi-Unit Residence in which smoking is prohibited by this chapter, other provisions of this Code, state law, or federal law. For example, and without limitation, Smoking on balconies, porches, or patios within a reasonable distance of a window or door of a non-smoking Unit is prohibited. This provision does not apply inside a designated smoking unit pursuant to Section 7.70.060(F).

D. Non-smoking units required in multi-unit residences

1. New 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.
  - (b) Smoking in a designated nonsmoking Unit is a violation of this chapter as provided in Section 7.70.080.
2. Existing multi-unit residences:
  - (a) In every multi-unit residence existing on the effective date of this chapter, not subject to subsection (a) above, and containing two (2) or more units, at least eighty percent (80%) of the units (including private outdoor spaces associated with such units, such as balconies, patios, and decks), must be designated as non-smoking units. All units may be designated non-smoking units. Non-smoking units must be grouped together (e.g., horizontally

and/or vertically) and physically separated from smoking units to the maximum extent practicable.

(b) Smoking in a designated nonsmoking Unit is a violation of this chapter as provided in Section 7.70.080.

E. Required Lease Terms:

1. Every new lease, renewal of a lease, lease extension or other agreement for the occupancy of a unit in a multi-unit residence shall include:
  - (a) A clause stating that smoking is prohibited in the unit if the unit has been designated as a non-smoking unit;
  - (b) A clause stating that it is a material breach of the lease or agreement to:
    - (i) violate any law regarding smoking while on the premises;
    - (ii) Smoke in a non-smoking unit; or
    - (iii) Smoke in any multi-unit residence common area in which smoking is prohibited by the landlord; and
  - (c) A clause stating that all lawful occupants of the multi-unit residence are express third-party beneficiaries of the above required clauses.
2. The lease or agreement terms required by subsection (a) are hereby incorporated by force of law into any lease or other agreement for the occupancy of a unit in a multi-unit residence made on or after the effective date of the ordinance which adopted this section and which does not fully comply with subsection (a).
3. A tenant who breaches the smoking regulations of a lease or knowingly allows another person to do so shall be liable to:
  - (i) the Landlord; and
  - (ii) to any lawful occupant of the multi-unit residence who is exposed to secondhand smoke as a result of that breach.A landlord shall not be liable to any person for a tenant's breach of smoking regulations if the landlord has fully complied with subsection (a).
4. Failure to enforce any smoking regulation of a lease or agreement on one or more occasions shall not constitute a waiver of the lease or agreement provisions required by this ordinance and shall not prevent future enforcement of any such smoking regulation on another occasion.

F. Disclosure of non-smoking Units by Landlord: Every landlord shall maintain a list of designated non-smoking Units and a floor plan identifying the relative position of smoking and non-smoking units. The floor plan also shall identify the location of any designated smoking areas. A copy of this list and floor plan shall accompany every new lease or other agreement for the occupancy of a Unit in a Multi-Unit

Residence. If a copy of the list and floor plan is not supplied, the unit subject to the lease shall be a non-smoking unit.

**G. Prohibitions and Duties Generally:**

1. No person shall smoke or knowingly permit smoking in an area of the premises under his or her legal or de facto control in which smoking is prohibited by a lease or agreement term, by this chapter, this Code, or any other state or federal law.
2. No person shall knowingly permit the presence or placement of ash trays, cans, or other receptacles within multi-unit residence common areas under his or her legal or de facto control in which smoking is prohibited by this chapter, this Code, or any other state or federal law, including, for example and without limitation, within a reasonable distance of any non-smoking area.
3. "No smoking" signs, with letters of no less than one inch in height or the international "No smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle or red heart crossed by a red bar) shall be clearly and conspicuously posted and maintained by the Landlord in every place on the premises in which smoking is prohibited by this chapter or by the landlord, except that signs are not required inside units. Signs must be sufficient to make areas where smoking is prohibited obvious to a reasonable person. The absence of signs shall not be a defense to a violation of any provision of this chapter.

**Section 7.70.070 Smoking Optional Areas.**

A. Except as otherwise prohibited by state or federal law, the following areas shall not be subject to the Smoking restrictions of this article:

1. Private residences, except when used as a child care or health care facility;
2. Retail tobacco stores, except where smoke from such stores enters an adjacent Enclosed area where Smoking is not permitted, or where such stores have a shared ventilation system with other stores.

B. Nothing in this chapter shall be construed to prevent any owner, operator, manager or other Person who controls any establishment or facility from declaring and enforcing a nonsmoking policy in the entire establishment or facility or from posting signs as described by Section 7.70.090.

**Section 7.70.080 Secondhand Smoke Exposure.**

The uninvited presence of secondhand smoke in or within a reasonable distance of any entrance opening or other vent into any of the following enclosed places of human habitation is a nuisance and a trespass.

- A. Residential Uses and Structures
- B. Assisted Living Facilities

- C. Board and Care Homes
- D. Child/Adult Daycare Facilities
- E. Congregate Care Facilities
- F. Convalescent Hospitals
- G. Dwellings, Dwelling Units or Housing Units
- H. Group Care Facilities
- I. Group Homes
- J. Medical services – Hospitals
- K. Medical services – Extended Care Facilities
- L. Residential Care Facilities for the Elderly
- M. Residential Care Homes
- N. Rooming and Boarding Houses
- O. Skilled Nursing Facilities

**7.70.090 Smoking Prohibited by Law in Residential Units and Common Areas.**

- A. Smoking in a Multi-Unit Residence Common Area on or after the effective date of this ordinance, other than in a designated Smoking area established pursuant to Section 7.70.060(B), is a violation of this chapter.
- B. Smoking in a New Unit, on or after the effective date of this ordinance, is a violation of this chapter.
- C. Smoking in a designated nonsmoking Unit, on or after the effective date of this ordinance + 1 year, is a violation of this chapter.

**Section 7.70.100 Duty of Person, Employer, Business, or Nonprofit Entity.**

- A. No Person, Employer, Business, or Nonprofit Entity shall knowingly permit the Smoking of Tobacco Products in an area which is under the legal or actual control of the Person, Employer, Business, or Nonprofit Entity and in which Smoking is prohibited by law.
- B. No Person, Employer, Business, or Nonprofit Entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ashtrays or ash cans, within an area which is under the legal or actual of the Person, Employer, Business, or Nonprofit Entity and in which Smoking is prohibited.

**Section 7.70.110 Posting of Signs.**

- A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle or red heart with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building, as well as on entrances, or other places where Smoking is

regulated by this chapter, by the Person, Employer, Business or non-profit entity with legal or actual control of such building or other place.

B. Template signs may be available from the various county departments responsible for inspections, the Tobacco-Related Disease Control Program of the Health and Human Services Department, or the Marin County website.

#### **Section 7.70.120 Enforcement.**

A. Notice of this chapter will be provided to all applicants for a Business license or renewal thereof. However, lack of such notice shall be no defense to a violation of this chapter.

B. Enforcement of this chapter shall be the responsibility of the Director of the Department of Health and Human Services, or designee of the Director of Health and Human Services, who shall have the powers enumerated in this chapter as well as the powers to seek nuisance abatement in accordance with section 1.04.180 of the Marin County Code and to issue citations for violation of the chapter in accordance with Section 853.6 of the California Penal Code and Sections 1.04.210, 1.04.220, 1.04.230, 1.04.240, 1.04.250 and 1.04.260 of the Marin County Code.

C. The staff of the Marin County Fire Department, Health and Human Services Department, Environmental Health Department, Parks Department, or any other county department with jurisdiction over the subject matter of this ordinance, shall, in connection with their regular inspections of Businesses and restaurants located in the unincorporated areas of the county, require that the owner, manager, operator or other Person who controls such establishments certify compliance with applicable requirements of this chapter.

D. Any citizen may make a complaint under this chapter to the county department with jurisdiction of the area in which the violation is alleged to have occurred; or, with the Department of Health and Human Services Tobacco-Related Disease Control Program.

E. Notwithstanding any other provision of this chapter, a private citizen may bring legal action to enforce this chapter.

#### **Section 7.70.130 Violation -- Penalty.**

A. The remedies provided by this chapter are cumulative and in addition to any other remedy available at law or in equity.

B. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance shall also constitute a violation.

C. It shall be unlawful for any Person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to refuse

to comply with any of its provisions, or to permit any Employee or patron to violate this chapter.

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

E. Any Person, Employer, Business or Non-profit Entity, or owner, manager or operator of any establishment subject to this chapter who violates any provision of this chapter shall be deemed guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars and/or five days of community service, for the first violation;
2. A fine, not exceeding three hundred dollars and/or ten days of community service, for a second violation of this chapter within one year;
3. A fine not exceeding seven hundred dollars and/or fifteen days of community service, for a third violation of this chapter within one year.

F. In addition, Any Person, Business, or owner, manager or operator of any establishment subject to this chapter who violates any provision of this chapter may be responsible for reimbursement to County of any additional costs incurred for administration, re-inspection, citation, or other action necessitated by the violation as authorized in the applicable sections of the Marin County Code and/or under state law.

#### **Section 7.70.140 Nonretaliation.**

No Person or Employer shall discharge or in any manner retaliate against any Employee or patron because such Employee or patron exercises any right to a smoke-free environment afforded by this chapter. No Person or Landlord shall evict or in any manner retaliate against any tenant or lessee because such tenant or lessee exercises any right to a smoke-free environment afforded by this chapter.

#### **Section 7.70.150 Public Education.**

The Tobacco-Related Disease Control Program of the Marin County Department of Health and Human Services will engage in a continuing educational program to explain and clarify the purposes and requirements of this chapter, as well as a guide to owners, operators and managers with compliance. However, lack of such education shall be no defense to a violation of this chapter.

#### **Section 7.70.160 Governmental Agency Cooperation.**

The Marin County Department of Health and Human Services may annually request other governmental and educational agencies having facilities within the county to establish local operating procedures in cooperation and compliance with this chapter. This includes urging all federal, state, county, city, town and school district agencies to update their existing Smoking control regulations to be consistent with current health findings regarding environmental tobacco smoke.

**Section 7.70.170 Other Applicable Laws.**

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

**SECTION III: EFFECTIVE DATE AND PUBLICATION.**

This Ordinance shall be and is hereby declared to be in full force and effect as of ninety (90) days from and after the date of its passage and shall be published once before the expiration of fifteen (15) days after its passage, with the names of the Supervisors voting for and against the same, in the Marin Independent Journal, a newspaper of general circulation published in the County of Marin.

**SECTION IV: VOTE.**

**PASSED AND ADOPTED** at a regular meeting of the Board of Supervisors of the County of Marin held on this \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

\_\_\_\_\_  
PRESIDENT, Board of Supervisors

\_\_\_\_\_  
CLERK