ORDINANCE NO. 19-7

AN ORDINANCE AMENDING CHAPTER 8.35 OF THE CONCORD MUNICIPAL CODE (SMOKING IN PUBLIC PLACES AND WORKPLACES) FOR COMPLIANCE WITH EXISTING LAWS AND TO PROHIBIT SMOKING IN AND AROUND MULTIUNIT RESIDENCES WITH THE EXCEPTION OF DESIGNATED SMOKING AREAS, AND IN CITY PARKS

RECITALS

WHEREAS, Section 118910 of the California Health and Safety Code and Section 26200 of the Business and Professions Code expressly authorizes local governments to regulate smoking and cannabis in any manner not inconsistent with state law; and

WHEREAS, there is no Constitutional right to smoke; and

WHEREAS, the U.S. Environmental Protection Agency has determined tobacco smoke is the major contributor to particulate indoor air pollution; and

WHEREAS, Center for Disease Control and Prevention has determined tobacco use is the number one cause of preventable death in California and continues to be an urgent public health issue; and

WHEREAS, secondhand smoke has repeatedly been identified by the U.S. Surgeon General, the California Environmental Protection agency, and the California Air Resources Board as a health hazard; and

WHEREAS, reliable studies have shown that breathing side stream or secondhand smoke is a significant health hazard, in particular for elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function; including asthmatics and those with obstructive airway disease; and

WHEREAS, nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing side stream or secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to the same; and

WHEREAS, the smoking of tobacco, or any other weed or plant, is danger to health; and

WHEREAS, the American Heart Association has recommended all adults and children be protected from smoking in multiunit housing; and

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WHEREAS, the purpose of the City’s smoking restrictions is to serve the public health, safety, and welfare due to the known dangers to health posed by smoking and secondhand smoke; and

WHEREAS, the health care costs and lost productivity incurred by smoking-related disease and death represent a heavy and avoidable financial drain on our community; and

WHEREAS, electronic smoking devices, commonly known as “electronic cigarettes,” “e-cigarettes,” “e-cigars,” “e-cigarillos,” “e-pipes,” “e-hookahs,” “electronic nicotine delivery systems,” “vape pens,” etc., are battery operated devices designed to deliver nicotine, flavor, cannabis, and/or other substances through a vapor inhaled by users; and

WHEREAS, the use of electronic smoking devices has grown in popularity in recent years, even as traditional tobacco use has declined; and

WHEREAS, the U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found they have contained carcinogens and toxic chemicals to which users and bystanders could be exposed; and

WHEREAS, electronic smoking devices’ vapor emissions and cartridge contents have been found to contain a number of dangerous substances include chemicals known to the State of California to cause cancer such as formaldehyde, acetaldehyde, lead, nickel, and chromium; and

WHEREAS, exposure to vapor from electronic smoking devices may cause passive or secondhand vaping; and

WHEREAS, electronic smoking devices may have the capacity to ‘renormalize’ tobacco use and often mimic conventional tobacco products with the user exhaling a smoke-like vapor similar in appearance to exhaled smoke from cigarettes; and

WHEREAS, the use of electronic smoking devices emit vapor and other substances that may be inhaled by bystanders, who may include children and youth, the elderly, among others, and the effect of such substances on the user and bystanders has not been shown to be safe; and

WHEREAS, creating smoke-free areas helps protect the health of 86.9% of Californians who are nonsmokers; and

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WHEREAS, the use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment; and

WHEREAS, these findings are equally applicable to the smoking of cannabis, and
WHEREAS, the City desires to clarify its local smoking regulations consistent with the Adult Use of Marijuana Act of 2016 (commonly known as AUMA or Proposition 64) that cannabis smoking is prohibited anywhere smoking tobacco is prohibited; and
WHEREAS, California Health and Safety Code, Section 11362.3, provides that smoking and ingesting cannabis or cannabis products is not permitted in any public place and smoking is prohibited in places where smoking tobacco is prohibited, among other places; and
WHEREAS, the City’s smoking regulations have not been comprehensively updated since 1993; and
WHEREAS, on March 23, 2019, the City Council identified a multiunit housing smoking ban as a Tier II priority; and
WHEREAS, on September 14, 2009, the City Council administratively implemented a management strategy to prohibit smoking in City of Concord parks; and
WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions, and state law prohibits smoking within 20 feet of entryways and operable windows of government buildings; and
WHEREAS, the City Council desires to codify the prohibition of smoking in City parks; and
WHEREAS, the adoption of this Ordinance and the attached text amendments (Exhibit “A”) to the Concord Municipal Code is necessary to further regulate smoking to more fully protect City citizens against unwanted secondhand smoke in public places, parks, multiunit dwellings, and to clarify and confirm that smoking cannabis and the use of electronic smoking devices is prohibited and subject to the same enforcement and penalties as other smoking restrictions; and

WHEREAS, pursuant to the California Environmental Quality Act of 1970, Public Resources Code §21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of Ord. No. 19-7
the California Code of Regulations (collectively, “CEQA”), the Ordinance does not constitute a “project” within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and pursuant to Section 15378 because the Ordinance has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, even if the Ordinance does comprise a project for CEQA analysis, it falls within the “common sense” CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.”; and

WHEREAS, the City Council, after giving all public notices required by State Law and the Concord Municipal Code, held a duly noticed public hearing on December 10, 2019, on the proposed Ordinance, considered testimony and information received at the public hearing and the oral and written reports from City staff dated December 10, 2019, as well as other documents contained in the record of proceedings relating to the proposed project, which are maintained at the offices of the City of Concord City Clerk’s Office, 1950 Parkside Drive, Concord, CA and declared their intent to approve and adopt the Ordinance.

THE CITY COUNCIL OF THE CITY OF CONCORD DOES ORDAIN AS FOLLOWS:

Section 1. All of the facts set forth in the Recitals are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

Section 2. Pursuant to the California Environmental Quality Act of 1970, Public Resources Code §21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively, “CEQA”), the Ordinance does not constitute a “project” within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and pursuant to Section 15378 because the Ordinance has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, even if the Ordinance does comprise a project for CEQA analysis, it falls within the “common sense” CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding
projects where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” None of the exceptions identified in CEQA Guidelines Section 15300.2 are present. No unusual circumstances are present. This determination reflects the City’s independent judgment and analysis.

Section 3. The Ordinance would not be detrimental to the public interest, health, safety, convenience, or welfare of the City, as the proposed Ordinance establishes stricter regulations regarding smoking in public, prohibiting smoking in and around multiunit residences, and City parks.

Section 4. The City Council has reviewed, considered, and evaluated all of the information prior to acting upon Ordinance.

Section 5. The documents and other materials that constitute the record of proceedings upon which the City Council has based its recommendation are located in and may be obtained from the City of Concord Clerk’s Office, 1950 Parkside Drive, Concord, CA 94519.

Section 6. The Concord Municipal Code is hereby amended as outlined in Exhibit A, attached hereto and made a part hereof.

Section 7. This Ordinance No. 19-7 shall become effective thirty (30) days following its passage and adoption. In the event a summary of said Ordinance is published in lieu of the entire Ordinance, a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to its adoption and within fifteen (15) days after its adoption, including the vote of the Councilmembers. Additionally, a summary prepared by the City Attorney’s Office shall be published once at least five (5) days prior to the date of adoption of this Ordinance and once within fifteen (15) days after its passage and adoption, including the vote of the Councilmembers, in the East Bay Times, a newspaper of general circulation in the City of Concord.
ATTEST:

Joelle Fockler, MMC
City Clerk

(Seal)

Ordinance No. 19-7 was duly and regularly introduced at a regular meeting of the City Council of the City of Concord held on December 10, 2019, and was thereafter duly and regularly passed and adopted at a regular meeting of the City Council of the City of Concord on January 7, 2020, by the following vote:

AYES: Councilmembers - D. Aliano, E. Birsan, L. Hoffmeister, C. Obringer, T. McGallian

NOES: Councilmembers - None

ABSTAIN: Councilmembers - None

ABSENT: Councilmembers - None

I HEREBY CERTIFY that the foregoing is a true and correct copy of an ordinance duly and regularly introduced, passed, and adopted by the City Council of the City of Concord, California.

Joelle Fockler, MMC
City Clerk

Attachment: Exhibit A: Concord Municipal Code Chapter 8.35 Amendments
Chapter 8.35
SMOKING IN PUBLIC PLACES AND WORKPLACES

Sections: Article I. Interpretation, Construction and Severability, and Definitions
8.35.010 Interpretation, construction and severability Findings; purpose.
8.35.020 Definitions.

Article II. Smoking in Public Places and Places of Employment
8.35.030 Prohibition of smoking in city-owned facilities.
8.35.040 Prohibition of smoking in downtown Concord.
8.35.050 Regulation of smoking in enclosed and unenclosed areas-places.
8.35.060 Regulation of smoking in places of employment.
8.35.070 Optional permissible smoking areas.
8.35.080 Posting requirements.
8.35.090 Vending machines.
8.35.100 Distribution of free samples and coupons; out-of-package sales.

8.35.110 Enforcement; penalties.

Article III. Prohibiting Smoking in and Around Multiunit Residences
8.35.100 No smoking permitted in common areas except in designated smoking areas.
8.35.110 Nonsmoking buffer zones.
8.35.120 Required and implied lease terms for all new and existing units in multiunit residences.
8.35.130 Notice and signage requirements.

Article IV. Cannabis
8.35.140 Cannabis

Article V. Nuisance and Enforcement
8.35.150 Nuisance.
8.35.160 Enforcement.

Cross references: Streets, sidewalks, and other public places, Title 12.

Article I. Interpretation, Construction and Severability, and Definitions
8.35.010 Findings; purpose Interpretation, Construction and Severability.
(a) Findings. The City Council finds that:
(1) The U.S. Environmental Protection Agency has determined that tobacco smoke is the major contributor of particulate indoor air pollution;
(2) Reliable studies have shown that breathing sidestream or secondhand smoke is a significant health hazard, in particular for elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease;
(3) Health hazards induced by breathing sidestream or secondhand smoke include heart disease, lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm;
(4) Nonsmokers with allergies, respiratory diseases, and those who suffer other ill effects of breathing sidestream or secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same;

(5) The smoking of tobacco, or any other weed or plant, is a danger to health;
(6) The health care costs and lost productivity incurred by smoking-related disease and death represent a heavy and avoidable financial drain on our community;
(7) The free distribution of cigarettes and other tobacco products is aimed at encouraging people to begin smoking and using tobacco products and tempts those who quit smoking to begin smoking again.
(b)  Purpose. The compelling purpose and intent of this article includes, but is not limited to, promoting the health, safety, and welfare of all people in the community against the health hazards and harmful effects of the use of addictive tobacco products:

(a) Interpretation.

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

(2) Notwithstanding any provision to the contrary, nothing in this Ordinance shall be interpreted to restrict or otherwise regulate the use of a drug, device, or combination product authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(3) Nothing in this chapter is intended to preclude a Person or entity that owns or controls a Multiunit Residence from prohibiting Smoking under its control.

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

(b) Construction and Severability. It is the intent of the City Council to supplement applicable state and federal law and not to duplicate or contradict such law and this Ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any Person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this Ordinance, or its application to any other Person or circumstance. The City Council hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

(CODE 1965, § 4940; CODE 2002, § 38-31. ORD. NO. 85-52; ORD. NO. 93-4)

8.35.020 Definitions.
The following words and phrases, whenever used in this article, shall be construed as hereinafter set forth, unless it is apparent from the context that they have a different meaning:

Area open to the public. Any area available to and customarily used by the general public.

Adjacent Unenclosed Property. Any Unenclosed Area of property, publicly or privately owned, that abuts a Multiunit Residence, but does not include property containing single-family detached dwelling units.

Bar. An area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages (Department of Alcoholic Beverage Control type 61, 42, or 48 licenses). That area of a restaurant which is devoted to the serving of alcoholic beverages and in which the service of food may be only incidental to the consumption of such beverages shall also be considered a bar. An area in which food service is only incidental shall: (1) not exceed 40 percent of a restaurant's total seating capacity; or (2) shall encompass only those areas in which gross receipts of the restaurant from food do not exceed 40 percent. The operator of each restaurant shall designate by which method it determines its bar area.
Bowlers' settee. The area immediately behind the bowling lane in which score is kept and seating is provided for bowlers waiting their turn to bowl.

Bowling center concourse. That area separated from the bowling lane, bowlers' settee, and visitors' settee by at least one step or a physical barrier.

Bowling lane. The bowler's approach, the foul line, and the lanes.

Cannabis. Defined as set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.

Common Area. Every Enclosed Area and every Unenclosed Area of a Multiunit Residence that residents of more than one Unit are entitled to enter or use, including, but not limited to, halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

Distribute. To give, sell, deliver, dispense, issue, or cause or hire any person to give, sell, deliver, dispense, issue, or offer to give, sell, deliver, dispense, or issue.

Effective Date. [Clerk's Office: Insert date of effectiveness].

Electronic Smoking Device. An electronic device that can be used to deliver an inhaled dose of nicotine or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such device whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vaporizer or vape pen, or any other product name or descriptor.

Employee. 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 service for an Employer.

Employer. Any person, partnership, or corporation, including a municipal corporation or public entity, who employs the services of two or more persons or [where] two or more persons conduct business within the establishment.

Enclosed or Enclosed Area. An area in which outside air cannot circulate freely to all parts of the area, and includes an area that has (1) any type of overhead cover, whether or not that cover includes vents or other openings, and at least three (3) walls or other vertical constraints to airflow, including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or (2) four (4) walls or other vertical constraints to airflow, regardless of composition, including, but not limited to, vegetation, that exceeds six (6) feet in height, whether or not those boundaries include vents or other openings. Closed in by a roof and walls, with appropriate openings for ingress and egress.

Existing Unit. Any Unit which is not a New Unit.

General Public. Shoppers, customers, patrons, patients, students, clients, and other invitees of a commercial enterprise or nonprofit entity.

Landlord. Any Person or agent of a Person who owns, manages, or is otherwise legally responsible for a Unit in a Multiunit Residence that is leased to a residential tenant. For purposes of this chapter, a tenant who sublets their Unit (e.g., a sublessor) is not a Landlord.

Multiunit Residence. Property containing two (2) or more Residences, or any Residences sharing common walls or otherwise attached. Multiunit Residences do not include the following:

(1) A hotel or motel that meets the requirements of California Civil Code Section 1904(b)(2);

(2) A recreational vehicle, mobile home, or manufactured home not located in a mobile home park;
(3) A single-family detached dwelling unit, except if used as a family day care home or health facility, subject to licensing requirements;

(4) A single-family detached dwelling unit with a detached or attached Accessory Dwelling Unit permitted pursuant to California Government Code Sections 65852.1, 65852.150, 65852.2, or an ordinance of the City adopted pursuant to those sections, except if the single-family detached dwelling unit or Accessory Dwelling Unit is used as a family day care home or a health care facility, subject to licensing requirements.

(5) Long-term health care facilities, as defined in Section 1418 of the Health and Safety Code.

New Unit. A Unit that has been issued a certificate of occupancy on or after the Effective Date and any Unit that is let for residential use for the first time after the Effective Date.

Nonsmoking Area. Any Enclosed Area or Unenclosed Area in which Smoking is prohibited by:

(1) this chapter or other law;

(2) binding agreement relating to the ownership, occupancy, or use of real property; or

(3) a Person with legal control over the area.

Non-enclosed. A predominantly outdoor area that does not meet the definition of “enclosed,” including but not limited to patios, outdoor dining areas, and outdoor service areas.

Park. Public park or recreation area as defined in Concord Municipal Code Section 18.20.030.

Person. Any natural person, partnership, cooperative association, corporation, personal representative, receiver, trust, trustee, assignee, or any other legal entity, including government agencies.

Public Place. Any area, whether publicly or privately owned, to which the public has access by right or invitation, express or implied, whether by payment of money or not, and regardless of any age requirement.

Place of Employment. Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges, conference rooms, and employee cafeterias. A private residence, single-family detached dwelling unit is not a place of employment, unless it is used as a child care or health care facility.

Residence. A personal dwelling space, even one lacking cooking facilities or private plumbing facilities, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as a private balcony, porch, deck, or patio. “Residence” includes, without limitation, a Dwelling, Dwelling Unit, or Housing Unit, a personal dwelling space in a Residential Facility (including, but not limited to, Group Housing, Residential Care Facilities, Residential Facilities for Seniors, Assisted Living, Supportive Housing, Transitional Housing), Emergency, Homeless Shelter, and a recreational vehicle, mobile home, or manufactured home.

Smoke. The gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization when the apparent or usual purpose of the combustion electrical ignition, or vaporization is human inhalation of the byproducts. The term “Smoke” includes, but is not limited to, tobacco smoke, vapors from an Electronic Smoking Device, and Cannabis smoke.

Smoking. Inhalation, exhaling, burning, lighting, operating, holding, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, Cannabis, Electronic Smoking Device, or any other device that delivers nicotine, Cannabis, or other substances, whether natural or synthetic, to a person. The carrying or holding of a lighted pipe, a lighted hookah pipe, an operating electronic cigarette, a lighted cigar or cigarette of any kind, or any other lighted smoking equipment, or the lighting, emitting, or exhaling the smoke of a pipe, cigar, or cigarette, or electronic cigarette of any kind.

Smoking Product. Any of the following are considered to be a Smoking Product:

1) Any product that is intended or used for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to,
cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, Cannabis, or other synthetic or organic materials.

2) Any Electronic Smoking Device.

3) Any component, part, or accessory of a Smoking Product, whether or not sold separately.

Smoking Product does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

Sports and Entertainment, Assembly, arena. A facility as defined in Concord Municipal Code Section 18.20.020. Sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling centers, halls, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sporting events.


Unenclosed or Unenclosed Area. Any area that is not Enclosed or is not an Enclosed Area.

Unit. Any Residence in a Multiunit Residence. Unit includes, without limitation, an Existing Unit and a New Unit.

Vending Machine. Any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin, paper bill, or other thing representative of value, which dispenses or releases a Smoking Product and/or tobacco-Smoking accessories.

Visitors’ settee. Seating provided immediately behind the bowlers’ settee.


Cross references: Definitions generally, § 1.05.100.

Article II. Smoking in Public Places and Places of Employment

8.35.030 Prohibition of Smoking in city-owned facilities.
(a) Smoking is prohibited in all buildings, including within 25 feet of any exit, entrance, or operable window of a building, vehicles, and other enclosed areas occupied by city employees, owned or leased by the city, or otherwise operated by the city.

(b) Smoking is prohibited in any Unenclosed Area owned or leased by the City, including Parks, parking lots, corporation yards, and the grounds of any building owned or leased by the City. The City Manager or designee may designate a smoking area.


8.35.040 Prohibition of Smoking in Downtown Concord.
(a) Findings. The City Council finds that exposure to secondhand smoke has been proven to cause adverse health effects including but not limited to cancer, cardiovascular disease, respiratory infections, asthma, and ear and nasal problems.

(ab) Purpose. The intent and purpose of prohibiting Smoking at the identified locations includes, but is not limited to, protecting the public health, safety, and welfare by reducing the number of locations in the Downtown Business Core-Concord where exposure to secondhand Smoke can occur.

(be) Smoking is prohibited in the following places:

(1) All areas of Downtown Concord accessible to the general public, except within smoking areas designated pursuant to subsection (cd) below.

a. For the purposes of this section, Downtown Concord means that portion of downtown within Parking Assessment District No. 60, as established by Ordinance No. 81-1211, adopted by the City Council on July 27, 1981, as generally shown on the map in Exhibit A and being generally bounded on the west by the alley which lies between Adobe Street and Concord Avenue, on the north side of Pacheco Street by those properties zoned DB, on the east by East Street, and on the south by Willow Pass Road; and south of Willow Pass Road, the blocks bounded by Galindo Street, Clayton Road, and East Street, together with the Downtown Pedestrian (DP) District as shown on the City of Concord Zoning Map as established by Ordinance No. 12-4 adopted by the City Council on July 24, 2012, and generally consisting of the ten-block downtown area surrounding Todos Santos Plaza and the blocks connecting the plaza and the Concord-BART station.

EXHIBIT A. PROHIBITION OF SMOKING IN DOWNTOWN CONCORD

b. This prohibition applies to the sidewalks along public and private streets within and around the perimeter of the area defined in subsection (eb)(1) above, pedestrian alleys, pedestrian paseos and plazas, walkways providing access from parking lots and structures to stores or sidewalks, and all other pedestrian paths or areas that are accessible to the general public.

c. Smoking is further prohibited in any all non-enclosed Areas within twenty-five (25) feet of
any pedestrian path or area identified in subsection (eb)(1)b. of this section.

(2) Transit vehicles and stations: Smoking is prohibited in all transit vehicles and at all transit stations, except
within smoking areas designated pursuant to this article.

a. For the purposes of this section, transit vehicles include all buses, shuttles, and similar transit vehicles.

b. For the purposes of this section, transit stations means all enclosed and non-enclosed multi-modal
platforms, sidewalks, shelters, benches, and areas where people wait for trains, buses, taxis, or other public
transit, and ancillary areas such as restrooms, vending machine or kiosk areas, bicycle parking areas, and
pedestrian paths and walkways.

(c) Locations within Downtown Concord where Smoking is permitted, even when Smoking would otherwise be
prohibited per this section:

(1) Private residences Single-family detached dwelling unit. To the extent not otherwise prohibited by law,
Smoking is permitted inside attached single-family detached private dwelling units residences and in any
private non-enclosed Areas associated with the single-family detached dwelling unit that is not accessible to
other residents, including balconies and patios and yard areas, except when a residence single-family detached
dwelling unit is being used for child care or as a health care facility, subject to applicable licensing
requirements. This does not preclude a person or entity that owns or controls private residential property,
including but not limited to a condominium association or an apartment complex owner, from prohibiting
smoking within private residences under its control.

(2) Private vehicles. Smoking is permitted inside a private vehicle, unless otherwise prohibited by this Code or
state law.

(3) Designated smoking areas. The owner or operator with control over any privately-owned property may
designate an area where Smoking is permitted in a location where Smoking would otherwise be prohibited
under this article, provided that:

a. The smoking area is as small as is practicable to accommodate the number of smokers that are expected
to use the area. Notwithstanding this criteria, an Owner may not designate a smoking area that would be
smaller than fifty (50) square feet, or with a dimension on any side less than five (5) feet.

b. Designated smoking areas within outdoor dining areas shall not exceed forty percent (40%) of the total
floor area utilized for outdoor dining. Within outdoor dining areas, designated smoking areas must be
separated from non-smoking areas with a physical barrier that prevents secondhand Smoking from passing
between the two areas. The physical barrier shall be the lesser of (a) at least seven (7) feet in height, or (b)
extend to the ceiling or covering of the outdoor dining area. The Owner may use a ventilation system in
place of a physical barrier, provided such Owner demonstrates to the satisfaction of the City Manager, or
his or her designee, that the proposed ventilation system will be at least as effective as a physical barrier in
preventing secondhand Smoking from passing between designated smoking areas and non-smoking areas.
In addition, any such designated smoking area shall not be visible from the property frontage.

c. The smoking area is not located within five (5) feet of any entrance or exit, or walkway to such entrance
or exit, of any building or facility open to the public.

d. The smoking area is posted with one (1) or more conspicuously displayed signs that identify the area as
a designated smoking area.

e. The City Manager or his or her designee may require that any designated smoking area be modified or
removed if, in the sole and absolute discretion of the City Manager or his or her designee, it does not
satisfy the criteria of subsection (d)(3) of this section.

(de) Posting of Signs.
Concord Municipal Code
Chapter 8.35 SMOKING IN PUBLIC PLACES AND WORKPLACES

(1) **Time of Posting**. Every business or property subject to this Ordinance shall post the signs required by this section within thirty (30) days of the Ordinance’s effective date. Every business or property which becomes subject to the provisions of this section after the effective date shall post the required signs immediately upon commencing operations.

(2) **Sign locations**.

a. Every outdoor dining area, outdoor shopping area, and outdoor shopping center where smoking is prohibited by this section must have one or more conspicuously displayed signs stating that smoking is prohibited within Downtown Concord. Multiple signs must be provided as appropriate for larger areas to ensure that signs are readily visible to all users of the area.

b. Every entrance to a building or other enclosed space that is open to the general public must have at least one conspicuously displayed sign stating that smoking is prohibited within Downtown Concord per this section.

c. The City Manager will cause the installation of conspicuously displayed signs indicating that smoking is prohibited at appropriate locations in all non-enclosed City facilities and transit facilities and at the entrance to all enclosed City facilities and transit facilities where smoking is prohibited under this section.

d. The City Manager will cause the installation of conspicuously displayed signs indicating that smoking is prohibited at appropriate locations on public sidewalks and other public pedestrian areas in the Downtown Concord Business Core.

e. Signs required under this section are exempt from the sign requirements in Title 18 (‘Zoning’) of the Development Code.

(3) **Sign content and materials**.

a. The signs required herein must have text and/or graphics to clearly indicate that smoking is prohibited in the area and include an appropriate Municipal Code citation.

b. Any text must be clearly contrasted with the background and must be a minimum of one inch tall. The text must state “No Smoking,” “Smoke Free Area,” or another phrase to clearly indicate that smoking is prohibited.

c. Any graphics must be substantially similar to the international “No Smoking” symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.

d. All signs located in non-enclosed areas must be made of permanent, weather-resistant materials.

(f) **Public nuisance**. The City Council hereby declares that exposing other persons to secondhand smoke through a violation of this section constitutes a public nuisance and may be corrected pursuant to the remedies provided in Article II of Chapter 8.25 of this Code.


8.35.050 **Regulation of Smoking in Enclosed and Unenclosed Areas/Places.**

(a) Smoking is prohibited in the following places within the city:

(1) Enclosed places of employment, in accordance with California Labor Code, Section 6404.5.

(2) Enclosed Public Places.

(3) Parks.

(4) Within 25 feet of a playground or tot lot sandbox area, including the disposal of tobacco-related waste, such as cigarette butts, in accordance with California Health and Safety Code Section 104495.

(5) All Enclosed and Unenclosed Common Area, on or after the Effective Date, other than in a designated smoking area established pursuant to Section 8.35.100, is a violation of this chapter.

(6) A New Unit, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as a private balcony, porch, deck, garages, carports areas or patio on or after the Effective Date, is a violation of this chapter.

(7) An Existing Unit, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as a private balcony, porch, deck, garages, carports areas or patio, on or after January 1, 2021, is a violation of this chapter.

(8) A recreational vehicle, mobile home, or manufactured home located in a mobile home park.

(9) Sports and Entertainment, Assembly and Sports and Recreation Facility, except a designated smoking area may be provided, which shall be segregated from Non-smoking Areas. In all enclosed areas available to and customarily used by the general public and all businesses patronized by the public, including but not limited to retail stores, the common areas of hotels and motels, pharmacies, banks, shopping malls, and other offices.

(2) Restaurants:

a. Restaurants shall provide 80 percent of a flexible contiguous floor area as nonsmoking on or before the effective date of this article and shall be 100 percent nonsmoking by July 1, 1993. The owner, manager, or operator shall post signs as required by section 8.35.080 and shall remove all ashtrays from tables and counter(s) in the nonsmoking area.

b. On or after October 1, 1993, restaurants may apply for a hardship exemption for up to 20 percent of their restaurant seating area. The applicant shall have the burden of proof in establishing that this article has created an unreasonable economic effect on his business and threatens the survival of the restaurant. The application shall be made to the City Manager and be reviewed and acted upon pursuant to administrative regulations adopted by Council resolution. The decision of the City Manager shall be final and nonappealable.

(3) Health facilities:

a. Waiting rooms, hallways, wards, and semi-private rooms of health facilities, including but not limited to hospitals, clinics, physical therapy facilities, and doctors' offices, except that health facilities shall also be subject to the provisions of section 8.35.060 regulating smoking in places of employment.

b. A hospital patient may be authorized to smoke by the treating physician while in inpatient status, subject to such restrictions as the hospital may impose.

(4) Elevators, public restrooms, indoor service lines, buses, taxicabs, and other means of public transit under the authority of public entities, and in ticket, boarding, and waiting areas of public transit facilities; provided, however, this prohibition does not prevent the establishment of separate waiting areas for smokers and non-smokers, provided at least 60 percent of a given waiting area shall be designated as a nonsmoking area.

(5) In the public area(s) of museums and galleries.

(6) Theaters, auditoriums, concert facilities, and halls which are used for motion pictures, stage dramas, musical performances, ballets, or other exhibitions, both indoor and outdoor, except when smoking is part of any such production; provided, however, in outdoor facilities, designated smoking areas may be provided which shall be segregated from nonsmoking areas.

(7) Retail food marketing establishments, including grocery stores and supermarkets.
(8) Public schools and other public facilities under the control of another public agency, which are available to and customarily used by the general public, to the extent that the same are subject to the jurisdiction of the city.

(9) Sports arenas, both indoor and outdoor, and convention halls, except in outdoor sports arenas, designated smoking areas may be provided which shall be segregated from nonsmoking areas.

(10) Bowling centers, including but not limited to bowling lanes, bowlers' settees, visitors' settees, and game rooms; provided, however, that a designated smoking area may be provided on the bowling center concourse. The owner, manager, or operator of the bowling center shall post signs as required by section 8.35.080 and remove all ashtrays from nonsmoking areas.

(11) Private residences Single-family detached dwelling unit, when used as child care or health care facilities. Board and care facilities shall provide smoke-free living quarters for nonsmoking boarders.

(b) Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

(Cod. 1965, § 4944; Cod. 2002, § 38-35. Ord. No. 85-52; Ord. No. 93-4; Ord. No. 11-5)

8.35.060 Regulation of smoking in places of employment.
(a) Smoking is prohibited in any place of employment, including but not limited to open office areas, shared offices, and private offices occupied by employees performing clerical, technical, administrative, or other business or work functions; and conference and meeting rooms, classrooms, auditoriums, restrooms, medical facilities, hallways, and elevators.

(b) The provisions of this section shall be communicated to all employees within three weeks of its adoption; and at least annually thereafter.

(Cod. 1965, § 4945; Cod. 2002, § 38-36. Ord. No. 85-52; Ord. No. 93-4; Ord. No. 11-5)

8.35.0670 Optional Permissible Smoking areas.
Notwithstanding any provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

(1) A single-family detached dwelling unit private residence, including one which may serve as a place of employment, except when covered by section 8.35.050(a)(11) used as a family day care home or health care facility, subject to licensing requirements.

(2) Inside an Accessory Dwelling Unit, attached to or detached from, a single-family dwelling unit permitted pursuant to California Government Code 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections, except if the single-family detached dwelling unit or Accessory Dwelling Unit is used as a family day care or health care facility, subject to licensing requirements.

(3) A recreational vehicle, mobile home, or manufactured home not located in a mobile home park.

(2) Bars, except as provided otherwise in this article.

(3) Licensed card rooms.

(4) Hotel and motel rooms rented to guests; provided, however, that each hotel and motel designates not less than 840 percent of its guest rooms as nonsmoking rooms and removes ashtrays from these rooms.

(5) Rooms in restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms while these rooms are being used for private functions.
(65) Retail or wholesale tobacco shops and private smokers’ lounges, stores that deal exclusively in the sale of tobacco and smoking paraphernalia.

(7) In places of employment, employers may provide specific smoking areas for employees, provided all of the following conditions are met:

a. The smoking area shall be provided with a heating, ventilating and air conditioning (HVAC) system designed such that none of the air from the smoking area will be recirculated into the other areas of the building;

b. The smoking area shall be completely separated from the remainder of the building by solid partitions or glazing without openings other than doors, and all doors leading to the smoking area shall be self-closing. The doors shall be provided with a gasket so installed as to provide a seal where the door meets the stop on both sides and across the top;

c. The smoking areas shall maintain a minimum negative pressure of 0.005-inch water column relative to nonsmoking areas;

d. The employer shall submit written verification and test results to the City Manager or his designee, prepared by a licensed mechanical contractor or engineer, that the HVAC system has been designed and tested and meets the requirements set forth in subsections a through e above;

e. If the HVAC system is part of a smoke removal system or pressurization system, any modifications to these systems to provide smoking areas will require approval from the Contra Costa Fire Department. Written verification of this approval shall be provided to the City Manager;

f. If the specific smoking area is an employee breakroom, lunchroom, or other area which may be used by nonsmoking employees, then a separate nonsmoking breakroom, lunchroom, or other area shall be provided of equal or larger size and include at least equal facilities.


8.35.0870 Posting requirements.
(a) “Smoking” or “No Smoking” signs, whichever are appropriate, with letters of not less than one inch in height, or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red diagonal bar across it) shall be clearly, sufficiently, and conspicuously posted in every building or other place where smoking is controlled by this article, by the owner, operator, manager, or other person having control of such building or other place.

(b) Every hotel or motel regulated by this article will have posted at its entrance a sign clearly stating that nonsmoking rooms are available, and every patron shall be asked as to his preference.


8.35.0980 Vending machines. Vending machines as defined in Section 8.35.020 may be located only on those premises which have either a Type 61, Type 42, or Type 48 license from the Department of Alcoholic Beverage Control. Vending machines must be located at least 25 feet from any entry into the premises.


8.35.1090 Distribution of free samples and coupons; out-of-package sales.
(a) Distribution of free samples and coupons.

(1) No person, firm, association, or corporation in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products for commercial purposes shall, in the course of such business, distribute, direct, authorize, or permit any agent or employee to distribute: (1) any cigarette or other tobacco or smoking products, including any smokeless tobacco products; or (2) coupons, certificates, or other written

material which may be redeemed for tobacco Smoking Products without charge, to any person on any public street or sidewalk; in any public park, playground, or on any other public ground; or in any public building.

(2) No agent or Employee of any Person, firm, association, or corporation in the business of selling or otherwise distributing cigarettes or other tobacco or Smoking Products for commercial purposes shall, in the course of such business, distribute: (1) any cigarette or other tobacco or Smoking Products, including any smokeless tobacco products; or (2) coupons, certificates, or other written material which may be redeemed for tobacco Smoking Products without charge, to any person on any public street or sidewalk; in any public park, playground, or on any other public ground; or in any public building.

(3) For purposes of this section, “public ground” and “public building” include sports arenasSports and Entertainment, Assemblies and Sports and Recreation Facilities as defined in Section 8.35.020 and any entertainment facility, except a Bar, whether Enclosed or not Unenclosed, for which a charge is made for admission, whether publicly or privately owned.

(b) Out-of-package sales. No person shall sell, or offer for sale, cigarettes, Smoking Products, or smokeless tobacco not in the original packaging provided by the manufacturer.


8.35.110—— Enforcement; penalties.
(a) Enforcement.

(1) Administration of this article shall be by the City Manager or his designee.

(2) Any citizen who desires to register a complaint hereunder may initiate enforcement consideration with the City Manager or his designee.

(3) Any owner, manager, operator, or employer of any establishment subject to this article may inform persons violating this article of the appropriate provisions hereof.

(b) Penalties.

(1) It is unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to the restrictions of this article to fail to properly post signs required hereunder.

(2) It shall be unlawful for any person to smoke in any area restricted to nonsmoking by the provisions of this article.

(3) Any person or business who violates any provision of this article shall be guilty of an infraction, punishable by:

a. A fine, not exceeding $100.00, for the first violation;

b. A fine, not exceeding $200.00, for a second violation within one year;

c. A fine, not exceeding $500.00, for each additional violation of this article within one year.

(c) Nonretaliation. No person or employer shall discharge, refuse to hire, or in any manner retaliate against any person, employee, or applicant for employment because such person exercises any rights afforded by this article.

(d) Other applicable laws. This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(Code 2002, § 38-41. Ord. No. 11-5)

Article III. Prohibiting Smoking in and Around Multiunit Residences
8.35.100 No Smoking Permitted in Common Areas Except in Designated Smoking Areas.

Smoking in a Common Area other than in a designated smoking area established pursuant to this chapter is a violation of this chapter.

(a) A Person with legal control over a Common Area, such as a Landlord or homeowners’ association, may designate a portion of the Common Area as a designated smoking area provided the designated smoking area complies with paragraph (b) below at all times.

(b) A designated smoking area:

(1) Must be an Unenclosed Area;

(2) Must be at least twenty-five (25) feet from Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, and school campuses;

(3) Must be located at least twenty-five (25) feet from any Nonsmoking Area. The location of Nonsmoking Areas may change due to the new enactment of a law, execution of an agreement, or other event that affects the area’s nonsmoking designation. If an event occurs that changes a Nonsmoking Area, a Person with legal control over a designated smoking area located less than twenty-five (25) feet from that Nonsmoking Area must modify, relocate, or eliminate that designated smoking area so as to maintain compliance with the requirements of this subsection (b). In the case of a Nonsmoking Area on a neighboring property established by private agreement or designation and not by this chapter or other law, it shall not be a violation of this chapter for a Person with legal control over the property to designate a smoking area within twenty-five (25) feet of the Nonsmoking Area unless that Person has actual knowledge of, or a reasonable person would know of, the private agreement or designation;

(4) Must be no more than ten percent (10%) of the total Unenclosed Area of the Multiunit Residence for which it is designated;

(5) Must have a clearly marked perimeter;

(6) Must be identified by conspicuous signs; and

(7) Must not overlap with any Enclosed or Unenclosed Area where Smoking is prohibited by this chapter or other law.

(c) No Person with legal control over a Common Area in which Smoking is prohibited by this chapter or other law shall knowingly permit the presence of ashtrays, ashcans, or other receptacles designed for or primarily used for disposal of Smoking waste within any area that is not a designated smoking area.

8.35.110 Nonsmoking Buffer Zones.

(a) Smoking is prohibited in Adjacent Unenclosed Property located within twenty-five (25) feet in any direction of any doorway, window, opening, or other vent into an Enclosed Area of a Unit.

(b) Subsection (a) above does not apply to a Person who is Smoking in the restricted buffer zone area while actively passing on the way to another destination.

8.35.120 Required And Implied Lease Terms For All New And Existing Units In Multiunit Residences.

(a) Existing Units. Every lease or other rental agreement for the occupancy of any Existing Unit entered into, renewed, or continued month to month on or after January 1, 2021, shall include the provisions set forth in subsection (c) below on the earliest possible date allowable by law.

(b) New Units. Every lease or other rental agreement for the occupancy of any New Unit entered into, renewed, or continued month to month on or after the Effective Date, shall include the provisions set forth in subsection (c)
(c) Lease provisions.

(1) A clause providing that it is a material breach of the agreement to knowingly or intentionally allow, or engage in, Smoking in the unit, including exclusive-use areas such as balconies, porches, or patios, substantially similar to the following:

“It is a material breach of this agreement for tenant to engage in smoking in the unit or exclusive use areas such as balconies, porches, or patios. Moreover, it is a material breach of this agreement for tenant to knowingly or intentionally allow any other person subject to the control of the tenant to engage in smoking in the unit or exclusive use areas such as balconies, porches, or patios.”

(2) A clause providing that it is a material breach of the agreement for tenant to knowingly and intentionally allow, or engage in, Smoking in any Common Area of the Multiunit Residence other than a designated smoking area, substantially similar to the following:

“It is a material breach of this agreement for tenant to engage in smoking in any common area of the property, except in an outdoor designated smoking area, if one exists. In addition, it is a material breach of this agreement for tenant to knowingly or intentionally allow any other person subject to the control of the tenant to engage in smoking in any common area of the property, except in an outdoor designated smoking area, if one exists.”

(3) A clause providing that it is a material breach of the agreement for tenant to violate any law regulating Smoking while anywhere on the property, or to knowingly and intentionally allow any other Person subject to the control of the tenant to engage in such behavior, substantially similar to the following:

“It is a material breach of this agreement for tenant to violate any law regulating smoking while anywhere on the property. Moreover, it is a material breach of this agreement for tenant to knowingly or intentionally allow any other person subject to the control of the tenant to violate any law regulating smoking while anywhere on the property.”

(4) A clause expressly conveying third-party beneficiary status to all occupants of the Multiunit Residence as to the Smoking provisions of the lease or other rental agreement, substantially similar to the following:

“Other occupants of the property are express third-party beneficiaries of those provisions in this agreement regarding smoking. As such, other occupants of the property may enforce such provisions by any lawful means, including by bringing a civil action in a court of law.”

(d) Whether or not a Landlord complies with subsections (a) and (b) above, the clauses required by those subsections shall be implied and incorporated by law into every agreement to which subsections (a) or (b) apply and shall become effective as of the earliest possible date on which the Landlord could have made the insertions pursuant to subsections (a) or (b).

(e) A tenant who breaches, or knowingly and intentionally allows any other Person subject to the control of the tenant to breach, a Smoking provision of a lease or other rental agreement for the occupancy of a Unit shall be liable for the breach to (i) the Landlord; and (ii) any occupant of the Unit who is exposed to Smoke or who suffers damages as a result of the 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 this section.

(f) Failure to enforce any Smoking provision required by this chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

8.35.130 Notice and Signage Requirements.
(a) Every Landlord shall deliver the following notices to (i) to each Existing Unit on or before July 1, 2020, and (ii)
any New Unit as of the Effective Date:

(1) A written notice clearly stating:

   (i) All Units are designated nonsmoking Units and Smoking is illegal in a Unit, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as a private balcony, porch, deck, or patio, as of January 1, 2021 for any Existing Unit and as of the Effective Date for any New Unit; and

   (ii) Smoking in all Common Areas is a violation of this chapter.

(2) A copy of this chapter or a web address to this chapter on the City’s Internet Website.

(b) As of July 1, 2020, every Landlord shall provide prospective tenants with written notice clearly stating that:

   (1) Smoking is prohibited in Units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio; and

   (2) Smoking is prohibited in all Enclosed and Unenclosed Common Areas, other than in a designated Smoking area.

(c) As of January 1, 2021 for any Existing Unit and as of the Effective Date for any New Unit, every seller of a Unit in a Multifamily Residence shall provide prospective buyers with written notice clearly stating that:

   (1) Smoking is prohibited in Units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio; and

   (2) Smoking is prohibited all Enclosed and Unenclosed Common Areas, other than in a designated Smoking area.

(d) The Person or Persons with legal control over Common Areas shall post clear and unambiguous “No Smoking/No Vaping” signs in sufficient numbers and locations in Common Areas where Smoking is prohibited by this chapter or other law. The Person or Persons with legal control over the Common Areas shall maintain such signs. The absence of signs shall not be a defense to a violation of any provision of this chapter. “No Smoking/No Vaping” signs are not required inside or on doorways of Units.

(e) No Person with legal control over any Nonsmoking Area shall permit Smoking in the Nonsmoking Area, except as provided in Section 8.35.100 (No Smoking Permitted in Common Areas Except in Designated Smoking Areas).

Article IV. Cannabis

8.35.140 Cannabis. Pursuant to California state law, Health and Safety Code Sections 11362.3 and 11362.79, Smoking Cannabis is prohibited wherever Smoking tobacco is prohibited. In addition, Smoking Cannabis is prohibited in the following places:

(a) In or upon all property owned, leased, or operated by the City, expressly including any Park, street, sidewalk, trail, bike path, alley, highway, parking lot or parking structure, or in any other Public Place as defined in this chapter and by state law. (See, Cal. Health and Safety Code § 11362.3(a)(1).)

(b) Within one thousand (1,000) feet of a school, day care center, or youth center while children are present at such school, day care center, or youth center, except in or upon the grounds of a single-family detached dwelling unit if such Smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present.

(c) In or upon the grounds of school, day care center, or youth center, regardless of whether children are present. (See Cal. Health and Safety Code § 104559; Labor Code § 6404.5.)
(d) While driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation. (See, Cal. Health and Safety Code § 11362.3; Vehicle Code § 23152.)

(e) Smoking or ingesting Cannabis is prohibited in any Public Place, as defined herein.

8.35.150 Nuisance.
(a) Any violation of this chapter is hereby declared to be a public nuisance pursuant to Chapter 8.25 (Neighborhood Preservation) Article 1 (Public Nuisances).
(b) Causing, permitting, aiding, or abetting a violation of any provision of this chapter shall constitute a violation of this chapter.

(c) For all purposes within the jurisdiction of the City, nonconsensual exposure to Smoke occurring on or drifting into residential property is a nuisance, and the uninvited presence of Smoke on residential property is a nuisance.

(d) No Person shall intimidate, harass, or otherwise retaliate against any Person who seeks compliance with this chapter. Moreover, no Person shall intentionally or recklessly expose another Person to Smoke in response to that Person’s effort to achieve compliance with this chapter.

(f) No Person or Employer shall discharge, refuse to hire, or in any manner retaliate against any person, Employee, or applicant for employment because such person exercises any rights afforded by this article.

8.35.160 Enforcement.
(a) Private Right of Enforcement. Any Person, including a legal entity or organization acting for the interests of itself, its members, or the General Public, may bring a civil action to enforce this chapter by way of a conditional judgment or an injunction to prevent future such violations and may sue to recover such actual or statutory damages as they may prove. In any such action, administrative proceeding, or special proceeding to abate a nuisance, the prevailing party may recover attorneys’ fees.

(b) City Discretion. In addition to the civil, criminal, and administrative remedies available, the City Attorney or Chief of Police, in their sole discretion, may abate the violation including under the procedure set forth in Section 8.25.080 of this Code, may issue citations and fines under Section 8.25.07, and may pursue any and all legal and equitable remedies for the recovery of fines, costs, and/or associated charges owed to the city as set forth in Section Chapter 8.25 (Neighborhood Preservation) Article 1 (Public Nuisances). Pursuit of one remedy does not preclude the pursuit of any other remedies until the total fines and abatement charges have been recovered.

(c) Nothing in this chapter shall create a right of action in any Person against the City or its agents to compel city or other public entity enforcement of this chapter against private parties. Neither the city, any member of the city, or any other officer, official, Employee, or agent of the city shall be liable for any Person’s breach of this chapter, any other breach of this chapter, or the city’s failure to enforce all or any portion of this chapter.