

## ORDINANCE NO. 18-

### **An Ordinance Of The City Council Of The City Of Emeryville Repealing And Replacing Chapter 29 Of Title 5 Of The Emeryville Municipal Code, “Smoking Pollution Control”; CEQA Determination: Exempt Pursuant To Section 15061(B)(3) Of The California CEQA Guidelines**

**WHEREAS**, the State of California finds that smoking in the workplace is matter of statewide concern and interest and has codified Labor Code section 6404.5 to create a uniform statewide standard to restrict and prohibit smoking of tobacco products in enclosed places of employment; and

**WHEREAS**, Business and Professions Code section 22950.5 defines smoking broadly to include the smoking of any heated tobacco or plant product and to include the use of an electronic smoking device; and

**WHEREAS**, *City of San Jose v. Department of Health Services* (1998) 66 Cal.App.35, 44 held that local governments may adopt and enforce local smoking restrictions if they do not apply to areas not covered by state law; and

**WHEREAS**, the dangers of secondhand tobacco smoke to human health, which can lead to diseases such as heart disease and lung cancer, and premature death, are well-documented; and

**WHEREAS**, the secondhand smoke from the use of electronic smoking devices also poses a danger to human health by emitting the same dangerous toxins such as heavy metals and carcinogens as tobacco smoke from cigarettes; and

**WHEREAS**, the secondhand smoke from cannabis poses some of the same threats to human health as the secondhand smoke from tobacco and electronic smoking devices; and

**WHEREAS**, California Health and Safety Code sections 11362.3 and 11362.79 prohibits the smoking of cannabis or cannabis products in areas where tobacco smoke is prohibited and in all public places; and

**WHEREAS**, the City Council of the City of Emeryville adopted Ordinance No. 80-07, restricting smoking in certain enclosed places, such as hotel lobbies, retail stores, pharmacies, banks and other offices, waiting rooms, health facilities, schools and enclosed theatres; and

**WHEREAS**, in light of recent state law changes with the enactments of Assembly Bill (“AB”) 13, AB 846 and AB 2067, in 2006 the City Council adopted Ordinance No. 06-021, which was codified as Chapter 29 of Title 5 of the Emeryville Municipal Code; and

**WHEREAS**, in 2010, the City Council amended section 5-29.03 of the Emeryville Municipal Code to clarify that the Chapter did not apply to open air barbeques; and

**WHEREAS**, on September 20, 2016, the City Council held a study session to consider modifying Chapter 29, of Title 5 of the Emeryville Municipal Code, “Smoking Pollution

Control Ordinance”, and directed staff to work with the Housing Committee to conduct surveys and outreach within the community to determine community preferences; and

**WHEREAS**, City staff partnered with the Alameda County Public Health Department Tobacco Control Program (ACPHD-TCP) to obtain assistance with the community survey and outreach, and with input from cities across Alameda County (including Emeryville), the ACPHD-TCP conducted an online survey for all cities in Alameda County to obtain community input on issues related to smoking; and

**WHEREAS**, the Housing Committee believes that the data collected indicates a community preference to have housing that is free of all smoke regardless of type, and regardless of the type of housing (rental vs. condo); and therefore, the Committee recommended that the City's ordinance reflect those preferences; provided, however, for multi-unit residences, the Committee requested that staff investigate options for allowing owners to create space where smoking could occur without impacting residents; and

**WHEREAS**, the community survey indicates that community members prefer to live in housing that is free from all smoke, regardless of the type of smoke; and now, therefore

**THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION ONE. REPEALING AND REPLACING CHAPTER 29 OF TITLE 5 TO THE EMERYVILLE MUNICIPAL CODE IN ITS ENTIRETY**

Chapter 29 of Title 5 of the Emeryville Municipal Code, entitled “Smoking Pollution Control”, is hereby repealed in its entirety, and replaced with the following:

**CHAPTER 29.**

**SMOKING POLLUTION CONTROL**

Sections:

- 5-29.01 Title
- 5-29.02 Definitions
- 5-29.03 Application to City Facilities, Areas and Vehicles
- 5-29.04 Prohibition of Smoking in Public Places
- 5-29.05 Prohibition of Smoking in Places of Employment
- 5-29.06 Duty of Employer, Business, or Nonprofit Entity
- 5-29.07 Areas Not Subject to Smoking Regulations
- 5-29.08 Tobacco Vending Machines Prohibited
- 5-29.09 Smoking Lounges, including Hookah and Cigar Bars Prohibited
- 5-29.10 Restriction on Proximity of Tobacco Shops
- 5-29.11 Reasonable Smoking Distance Required – 25 feet
- 5-29.12 Posting of Signs

- 5-29.13 Interpretation
- 5-29.14 Secondhand Smoke – Declaration of Nuisance
- 5-29.15 Enforcement – Administrative Officer Designated
- 5-29.16 Violation – Penalty
- 5-29.17 Appeal Process

**5-29.01 Title.**

This Chapter shall be known as the “Smoking Pollution Control Ordinance.”

**5-29.02 Definitions.**

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this section:

(a) “Cannabis.” See Section 5-28.03(b) of the Emeryville Municipal Code or its successor section of the Emeryville Municipal Code.

(b) “Common Area,” means every Enclosed Area and every Unenclosed Area of a Multi-Unit Residence that residents of more than one Unit are entitled to enter or use, including without limitation, halls, pathways, lobbies, courtyards, elevators, stairs community rooms, playgrounds, gym facilities, swimming pools, parking garages, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

(c) “Electronic Smoking Device” means 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, or any other product name or descriptor.

(d) “Enclosed Area” means 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 walls or other physical boundaries of any height, whether or not those boundaries include vents or other openings; or 2) four walls or other vertical boundaries that exceed six feet in height, whether or not those boundaries include vents or other openings.

(e) “Multi-Unit Residence” means residential property containing two or more units, with one or more shared wall, floor, ceiling or ventilation system, including apartments, condominiums, duplexes or townhomes and their patios and balconies. A Multi-Unit Residence does not include: a residential care facility or assisted living facility where Smoking is governed by federal or state community care licensing regulations; or a single-family residence, including one which has a detached permitted accessory dwelling unit on the same lot, unless the single-family residence is used as a day care center.

(f) “Public Place” means any place, public or private, open to the general public regardless of any fee or age requirement, including for example, businesses, bars, restaurants, clubs, dining areas, outdoor recreational facilities, sports arena, stores, stadiums, parks, greenways, playgrounds (including tot lots), retail stores, theaters and waiting rooms. Excludes a place that has a Cannabis Sales conditional use permit pursuant to Title 9 of the Emeryville Municipal Code and Dispensary/Retailer Operator’s permit pursuant to Chapter 28 of Title 5 of the Emeryville Municipal Code.

(g) “Reasonable Distance” means a distance of twenty-five feet (25') from any Smoke-free area that ensures that occupants of an area in which Smoking is prohibited are not exposed to Secondhand Smoke created by smokers outside the area.

(h) “Retail or Wholesale Tobacco Shop” means any business establishment that derives fifty percent (50%) or more of gross receipts from the sale or exchange of Tobacco Products or any other weed, plant or combustible substance, including Smoking paraphernalia.

(i) “Secondhand Smoke” means the Smoke created by burning or carrying any lighted pipe, cigar, hookah, narghile, sheesha, cigarette, or Tobacco Product of any kind, or any other weed, plant or combustible substance, and the Smoke exhaled by an individual who engages in Smoking as defined in this section.

(j) “Service Lines” means any place where people are using or waiting for a service, entry, or a transaction whether or not such service includes the exchange of money including, but not limited to, ATMs, bank teller windows, telephones, ticket lines, and waiting areas of public transit or taxicab depots.

(k) “Smoke” means 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, except when the combusting or vaporizing material contains no tobacco, Tobacco Product, or nicotine, and the purpose of inhalation is solely olfactory, such as for example, Smoke from incense. The term “Smoke” includes, but is not limited to, tobacco Smoke, Electronic Smoking Device vapors, Cannabis Smoke, and crack cocaine Smoke.

(l) “Smoking” means inhaling, exhaling, burning or carrying any lighted, heated, or ignited pipe, cigar, hookah, narghile, sheesha, cigarette, cigarillo, Electronic Smoking Device or any plant product, including tobacco or Tobacco Product intended for human inhalation.

(m) “Smoking Lounges” means a business establishment that is dedicated, in whole or part, to the Smoking of Tobacco Products of any kind, or any other weed, plant or combustible substance, including Cannabis, including but not limited to establishments known variously as cigar, hookah, narghile, sheesha or tobacco lounges, clubs, bars or cafes, whether private or public. For purposes of this Chapter “Smoking lounges”

include such establishments where the sale of beverages or food for consumption occurs on such premises, even where incidental to stated purpose. Excludes a place that has a Cannabis Sales conditional use permit pursuant to Title 9 of the Emeryville Municipal Code that allows for Smoking.

(n) “Smoking Paraphernalia” means cigarette papers or wrappers, pipes, holders of Smoking materials of all types, hookahs, cigarette rolling machines, electronic cigarettes and any other item designed for the Smoking or ingestion of Tobacco Products or any other weed, plant or combustible substance.

(o) “Tobacco Product” means any product, whether natural or synthetic, containing, made, or derived from tobacco or nicotine that is intended 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, and snuff. Also includes any component, part, or accessory of a Tobacco Product, whether or not sold separately. Excludes any 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 such product is marketed and sold solely for such an approved purpose.

(p) “Unenclosed Area” means any area that is not an Enclosed Area.

(q) “Vending Machine” means any electronic or mechanical device or appliance, the operation of which depends upon insertion of money, whether in coin or in paper bill, or other thing representative of value, which dispenses or releases Tobacco Products, Cannabis and/or Smoking paraphernalia.

#### **5-29.03 Application to City Facilities, Areas and Vehicles.**

Smoking shall be prohibited in all facilities, areas, and vehicles owned, leased, operated or controlled by the City of Emeryville, and all such areas shall be subject to the provisions of this Chapter.

#### **5-29.04 Prohibition of Smoking in Public Places.**

(a) Smoking shall be prohibited in any and all Public Places within the City of Emeryville whether Enclosed or Unenclosed Areas, including the enclosed places identified in California Labor Code Section 6404.5(e), or its successor, unless an exception exists elsewhere in either State law or this Chapter.

(b) To the extent not prohibited by subsection (a) of this section, Smoking shall be prohibited in the following places:

- (1) In all areas, including Common Areas, and all units of a Multi-Unit Residence, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio.

- (2) All areas of a hotel, motel, or other similar transient lodging establishment, including guest rooms, meeting and banquet rooms, and all lobby areas. For purposes of this paragraph, “lobby” means the common public area of an establishment in which registration and other similar or related transactions, or both, are conducted and in which the establishment’s guests and members of the public typically congregate.
  - (3) Meeting and banquet rooms in a restaurant, or public convention center, including while food or beverage functions are taking place, setup, service, and cleanup activities, or when the room is being used for exhibit purposes.
  - (4) Retail, or wholesale tobacco shops and Smoking Lounges as defined herein and by California Labor Code § 6404.5(e)(2)(A).
  - (5) Buses, taxicabs and other means of public transit offered within the City, and Service Lines.
  - (6) Retail stores.
  - (7) All Enclosed Areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including, but not limited to, business offices and banks.
  - (8) Restaurants, dining areas and bars whether enclosed or unenclosed.
  - (9) Sports arenas and convention halls, except in designated Smoking areas approved by the City and which protect non-smokers from Secondhand Smoke.
  - (10) Every room, chamber, and place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.
  - (11) Parks, playgrounds, and greenways.
  - (12) Family care, childcare, and health care facilities and single-family residences used as a family care, childcare or health care facility.
  - (13) Public events, including those events occurring in the public right of way.
  - (14) Service lines, including Alameda County Transit bus stops, Emery-Go-Round shuttle stops and within a Reasonable Distance from Emery-Go-Round shuttle stops and Alameda County Transit Bus Stops.
- (c) Pursuant to state law, Smoking of Cannabis or any product, whether natural or synthetic, containing, made or derived from Cannabis is prohibited in all areas where

Smoking of tobacco or Tobacco Products is prohibited and in public places, as that term is interpreted under state law, except in a designated area at a Cannabis Retail Sales site, provided the site has obtained a conditional use permit pursuant to Title 9 of the Emeryville Municipal Code that allows for Smoking of Cannabis, and the designated Smoking Cannabis area complies with California Business and Professions Code section 26200(g).

(d) Notwithstanding any other provision of this section, any person, business, nonprofit entity, owner, operator, manager or employer who controls any premises described in this section may declare that entire establishment as a non-Smoking establishment.

(e) No person, business, nonprofit entity, owner, operator, manager or employer who controls any premises described in this section shall provide or place ash receptacles such as, without limitation, ashtrays or ash cans, within an area in which Smoking is prohibited, including, without limitation, inside the perimeter of any Reasonable Distance required by this Chapter.

#### **5-29.05 Prohibition of Smoking in Places of Employment.**

Except as provided for in Section 5-29.07, Smoking shall be prohibited in all places of employment.

#### **5-29.06 Duty of Owner, Employer, Business, or Nonprofit Entity.**

(a) No person, business, nonprofit entity, owner, manager, operator or employer shall knowingly or intentionally permit Smoking in an area which is under their control and in which Smoking is prohibited pursuant to this Chapter.

(b) No person, business, nonprofit entity, owner, manager, operator or employer shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, without limitation, ash trays or ash cans, within an area which is under their control and in which Smoking is prohibited, including, without limitation, inside the perimeter of any Reasonable Distance required by this Chapter.

(c) It shall be the responsibility of employers to provide Smoke-free working areas for all employees, but employers are not required to incur any expense to make structural or other physical modifications. Employers shall post "No Smoking" or "Smoke Free" signs in accordance with Section 5-29.12. Smoking outside of the work building shall occur only at the Reasonable Distance from the building to minimize any Smoke entering the building from operable doors, windows, or vents.

(d) For purposes of this section, a person, business, nonprofit entity, owner, manager, operator or employer who permits any person access to an area under their control has not "knowingly" or "intentionally" permitted Smoking in the area if the following reasonable steps have been taken to prevent Smoking:

- (1) "Smoking" or "No Smoking" signs, whichever are appropriate, have been posted in accordance with Section 5-29.12; and
- (2) Has requested, when appropriate, that a person who is Smoking in violation of this Chapter refrain from Smoking; and
- (3) Has registered a complaint pursuant to Section 5-29.15(b) with the City Manager or his or her designee when the person who is Smoking in violation of this Chapter refuses to refrain from Smoking.

For purposes of this subsection, "reasonable steps" does not include any obligation on the part of the person, business, nonprofit entity, owner, manager, operator or employer who is in control of an area in which Smoking is prohibited to: (A) effect the physical ejection of the person who is Smoking from the area; or (B) make a request of a person to refrain from Smoking under circumstances involving a risk of physical harm to any person.

(e) Every lease or other rental agreement for the occupancy of a unit in a Multi-Unit Residence, entered into, renewed, or continued month-to-month after January 1, 2019, shall include the provisions set forth in this subsection on the earliest date when such an amendment is allowable by law when providing the minimum legal notice.

- (1) Every lease or other rental agreement for the occupancy of a unit in a Multi-Unit Residence, entered into, renewed, or continued month-to-month after January 1, 2019, shall be amended to include the following provisions:
  - a. A clause providing that as of January 1, 2019, it is a material breach of the agreement to allow or engage in Smoking in the unit of a Multi-Unit Residence, including exclusive-use areas such as balconies, porches, or patios. Such a clause might state, "It is a material breach of this agreement for tenant or 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 as of January 1, 2019."
  - b. A clause providing that it is a material breach of the agreement for tenant or any other person subject to the control of the tenant to engage in Smoking in any Common Area of the Multi-Unit Residence other than a designated Smoking area. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any common area of the property, except in an outdoor designated smoking area, if one exists."



- c. A clause providing that it is a material breach of the agreement for tenant or any other Person subject to the control of the tenant to violate any law regulating Smoking while anywhere on the property. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property."
    - d. A clause expressly conveying third-party beneficiary status to all occupants of the Multi-Unit Residence as to the Smoking provisions of the lease or other rental agreement. Such a clause might state, "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."
  - (2) Whether or not an owner complies with subsection (e)(1) of this section, the clauses required by the subsection shall be implied and incorporated by law into every agreement to which subsection (e)(1) applies and shall become effective as of the earliest possible date on which the owner could have made the insertions pursuant to subsection (e)(1).
  - (3) This section shall not create additional liability for owner to any person for a tenant's breach of any Smoking provision in a lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Residence if the owner has fully complied with this Section.
- (f) Every owner of a unit(s) of a Multi-Unit Residence shall deliver the following, on or before January 1, 2019, to any tenant:
- (1) A written notice clearly stating:
    - a. All units in a Multi-Unit Residence are designated nonsmoking units and Smoking will be illegal in a unit, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio as of July 1, 2019.
    - b. Smoking in all Common Areas, except for specifically designated Smoking areas, will be a violation of this Chapter as of July 1, 2019.
  - (2) A copy of this Chapter.
- (g) As of January 1, 2019, every owner shall provide to prospective tenants of a unit in a Multi-Unit Residence the following written notice:

- (1) Smoking is prohibited in units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, a private balcony, porch, deck, or patio as of July 1, 2019.
  - (2) Smoking is prohibited in all Common Areas, except for specifically Smoking areas as of July 1, 2019.
- (h) As of January 1, 2019, every seller of a unit in a Multi-Unit 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, a private balcony, porch, deck, or patio as of January 1, 2019.
  - (2) Smoking is prohibited in all Common Areas, except for specifically Smoking areas as of January 1, 2019.

#### **5-29.07 Areas Not Subject to Smoking Regulations.**

Notwithstanding any other provisions of this Chapter to the contrary, the following areas shall not be subject to the restrictions of this Chapter:

- (a) Unenclosed Areas outside of the Reasonable Distance, as defined in this Chapter, from any operable entry way, window, or vent into any area in which Smoking is prohibited by this Chapter.
- (b) Single family residences, except where used as a family care, childcare or health care facility, or where an attached accessory dwelling unit exists.
- (c) Medical research or treatment sites if Smoking is integral to the research and treatment being conducted.
- (d) A designated Smoking area in a Common Area that meets all of the following requirements: (1) located in an Unenclosed Area, (2) at least a Reasonable Distance from any Unenclosed Areas that are primarily used by children, and any Unenclosed Areas with improvements that facilitate physical activity, such as playgrounds, tennis courts, swimming pools, and school campuses, and (3) oriented so that Smoke does not drift into an area where Smoking is prohibited.
- (e) The public right of way, provided the Smoking is in compliance with all other provisions of this Chapter.

#### **5-29.08 Tobacco Vending Machines Prohibited.**

No cigarette or other Tobacco Product may be sold, offered for sale, or distributed by or from a Vending Machine or other appliance, or any other device designed or used for vending purposes, except from Vending Machines located on premises which have either a type 61, type 42 or type 48 license or their equivalent from the Department of

Alcoholic Beverage Control, or other premises which persons younger than twenty-one (21) years of age are at all times excluded, including card rooms that are licensed to operate within the City of Emeryville in accordance with Chapter 5 of Title 5 of the Emeryville Municipal Code.

**5-29.09 Smoking Lounges Prohibited.**

Smoking shall be prohibited in any Smoking Lounge within the City of Emeryville including such lounges that are owner-operated and would fall under either the Retail Tobacco Shop Exemption of California Labor Code Section 6404.5(e)(2)(b) or owner-operated business exemption Section 6404.5 and such successors as may follow.

**5-29.10 Restriction on Proximity of Tobacco Shops.**

Retail or wholesale tobacco shops are prohibited from being located within one thousand feet (1,000') of public or private schools and parks, greenways and playgrounds.

**5-29.11 Reasonable Distance Required – 25 feet.**

(a) Smoking shall be prohibited within a Reasonable Distance, as defined in this Chapter, from any operable entry way, window, or vent into an Enclosed Area of any area in which Smoking is prohibited by this Chapter, except while actively passing on the way to another destination and without entering or crossing any area in which Smoking is prohibited.

(b) Smoking shall be prohibited within a Reasonable Distance, as defined in this Chapter, from any area in which Smoking is prohibited by this Chapter, except while actively passing on the way to another destination and without entering or crossing any area in which Smoking is prohibited.

**5-29.12 Posting of Signs.**

(a) "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch (1") 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 bar across it) shall be clearly, sufficiently and conspicuously posted inside and outside of buildings and other general areas where Smoking is controlled by this Chapter, by the owner, operator, manager or other person having control of such buildings or areas. When a sign is posted on the exterior of a building to indicate no Smoking, it shall include the Reasonable Distance limitations contained in this Chapter.

(b) Every theater and hotel or motel owner, manager, or operator shall conspicuously post signs in the lobby, meeting and banquet rooms and other general areas stating that Smoking is prohibited within the hotel, motel, theater or auditorium.

**5-29.13 Interpretation.**

This Chapter shall not be interpreted or construed to permit Smoking where it is otherwise restricted by other applicable laws. Further, to the extent Smoking is already

prohibited by provisions of State or Federal law, then such State or Federal laws shall apply.

**5-29.14 Secondhand Smoke – Declaration of Nuisance.**

Secondhand Smoke in violation of this Chapter constitutes a nuisance.

**5-29.15 Enforcement – Administrative Officer Designated.**

(a) Enforcement shall be implemented by the City Manager, or his or her designee.

(b) Any citizen may initiate enforcement of this Chapter by registering a complaint with the City Manager, or his or her designee.

(c) Any person, business, nonprofit entity, owner, manager, operator or employer who owns, manages, operates or otherwise controls the use of any premises subject to this Chapter shall have the right to inform persons violating this Chapter of the appropriate provisions hereof.

(d) Notwithstanding any other provisions of this Chapter, a private citizen may bring legal action to enforce this Chapter or to abate Secondhand Smoke as a nuisance. However, the City is not a proper party nor shall a private citizen or any party otherwise bring legal action against the City for nonenforcement of the Smoking Pollution Control Ordinance.

(e) 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) 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 he or she may prove.

**5-29.16 Violation – Penalty.**

(a) It is unlawful for any person, business, nonprofit entity, owner, manager, operator or employer who owns, manages, operates or otherwise controls the use of any premises subject to the regulation under this Chapter to fail to comply with its provisions.

(b) It is unlawful for any person to Smoke in any area restricted by the provisions of this Chapter.

(c) Any person, business, nonprofit entity, owner, manager, operator or employer who violates any provision of this Chapter shall be guilty of an infraction, punishable in accordance with Section 1-2.01.

(d) Where the City finds that this Chapter has been violated, the City may issue an administrative citation pursuant to Chapter 7 of Title 1 of this Code.

(e) A tenant who breaches a Smoking provision of a lease or other rental agreement for the occupancy of a unit in a Multi-Unit Residence, or who knowingly permits any other person subject to the control of the tenant or present by invitation or permission of the tenant, shall be liable for the breach to (i) the owner; and (ii) any occupant of the Multi-Unit Residence who is exposed to Smoke or who suffers damages as a result of the breach.

#### **5-29.17 Appeal Process.**

Any enforcement action taken by the City Manager relating to this Chapter may be appealed to a hearing officer in accordance with Chapter 7 of Title 1.

#### **5-29-18 Regulations**

The City Manager is authorized to promulgate regulations to implement and enforce this Chapter.

#### **SECTION TWO. CEQA DETERMINATION**

The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

#### **SECTION THREE. SEVERABILITY**

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses or phrases.

#### **SECTION FOUR. EFFECTIVE DATE**

This Ordinance shall take effect on December 1, 2018. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

#### **SECTION FIVE. CODIFICATION**

Section One of this Ordinance shall be codified in the Emeryville Municipal Code. Sections Two, Three, Four, and Five shall NOT be so codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting on Tuesday, July 10, 2018, and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, July 24, 2018 by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY