

ORDINANCE NO. 1863 N.C. (2d)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VALLEJO AMENDING
CHAPTER 7.68 OF THE VALLEJO MUNICIPAL CODE RELATED TO THE
PROHIBITION OF SMOKING**

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

SECTION 1. Recitals.

- A. The World Health Organization (WHO) estimates that tobacco kills up to half of its users, amounting to more than 7 million deaths each year worldwide, including nearly half a million people who die prematurely from smoking in the United States alone.
- B. The U.S. Environmental Protection Agency (EPA) has classified environmental tobacco smoke (ETS) as a group A carcinogen, a category reserved for toxic substances known to cause cancer and for which there is no safe level of exposure.
- C. Numerous scientific and medical studies have found that ETS is a major contributor of indoor air pollution, and a significant health hazard to nonsmokers. ETS is the third leading cause of preventable disease and death in the U.S. Exposure to ETS is responsible for 87% of lung cancer deaths, 32% of coronary artery disease deaths, and 79% of all chronic obstructive pulmonary disease cases in the U.S.
- D. ETS purposes a serious health risk for children and infants. Exposure to ETS by children and infants is responsible for: 1) serious respiratory ailments, such as bronchitis and pneumonia; 2) onset and exacerbation of asthmatic symptoms; 3) increased frequency of cough and wheezing; 4) reduced lung function and lung growth; and 5) increased rates of chronic ear infections.
- E. The U.S. EPA estimates that exposure to ETS in the workplace is about four times that of typical household exposure. Tobacco smoke in the workplace is responsible for increased health risks to workers, higher employer costs for fire and health insurance premiums, and an increased threat of employer legal liability.
- F. The U.S. Surgeon General has found that nicotine in tobacco products is as addictive as cocaine and heroin. The majority of those Americans became addicted to nicotine in tobacco products as adolescents before the age of legal consent. Recent scientific studies have found that tobacco companies target children and teens with cigarette advertising and promotion.
- G. **WHEREAS**, significant disparities in tobacco use exist in California which create barriers to health equity, as evidenced by the following:
- African American (20%), Asian (15.6%), Hispanic (15.0%), and American Indian/Alaska Native (36.2%) males all report a higher smoking prevalence than White, Non-Hispanic males (14.8%).

- More than half of low socioeconomic status American Indian/Alaska Native Californians smoke, the highest smoking prevalence among all populations;
- Smoking prevalence increased among high school–age African American youth from 2002 to 2012 while rates decreased for high school–age youth overall, and for all other race/ethnicity groups.
- Californians with the highest levels of educational attainment and annual household income have the lowest smoking rates.
- Those who identify as bisexual, compared with heterosexual, gay/lesbian/homosexual, not sexual, celibate, or other, smoke at rates disproportional to their representation in California.
- Those who rent their homes, compared with those who own their homes or have other arrangements, smoke at rates disproportional to their representation in California.
- A 2014 report noted that those who reported they likely experienced psychological distress in the preceding year smoked at rates disproportional to their representation in California.

H. **WHEREAS**, secondhand smoke has repeatedly been identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke.
- The California Air Resources Board categorized secondhand smoke as a toxic air contaminant, along with most toxic automotive and industrial air pollutants, for which there is no safe level of exposure.
- The California Environmental Protection Agency (EPA) included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm.
- The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) recommends that multiunit housing be free from secondhand smoke, cannabis smoke, and aerosol from electronic smoking devices.
- The American Heart Association has recommended all adults and children be protected from smoking in multiunit housing.

I. **WHEREAS**, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke.
- Secondhand smoke was responsible for an estimated 34,000 heart disease–related and 7,300 lung cancer–related deaths among adult nonsmokers each year during 2005–2009 in the United States.
- Exposure to secondhand smoke increases the risk of coronary heart disease by about 25% to 30%ⁱ and increases the risk of stroke by 20% to 30%.
- Secondhand smoke kills more than 400 infants every year.

J. **WHEREAS**, electronic smoking device aerosol may be considered a health hazard, as evidenced by the following:

- Research has found electronic smoking device aerosol to contain at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm, such as formaldehyde, acetaldehyde, lead, nickel, and toluene.
- Electronic smoking device aerosol is not harmless water vapor as it contains varying concentrations of particles and chemicals with some studies finding particle sizes and nicotine concentrations similar to, or even exceeding, conventional cigarette smoke.
- Evidence continues to build that exposure to electronic smoking device aerosol, including secondhand exposure, has immediate impacts on the human respiratory and cardiovascular systems, and thus likely poses a risk to human health.
- Given the increasing prevalence of electronic smoking device use, especially among youth and young adults, widespread nicotine exposure resulting in addiction and other harmful consequences is a serious concern.
- Indoor air experts and health authorities, including the U.S. Surgeon General, American Society of Heating Refrigerating and Air-Conditioning Engineers, and State of California's Tobacco Education and Research Oversight Committee (TEROC), all support inclusion of electronic smoking devices in regulations of smoking and other tobacco product use.

SECTION 2. Chapter 7.68 of the Vallejo Municipal Code is hereby repealed in its entirety.

SECTION 3. There is hereby added a new Chapter 7.68 to the Vallejo Municipal Code which is adopted to read as follows:

Chapter 7.68 PROHIBITION OF SMOKING

7.68.010 Legislative findings and purposes.

7.68.020 Definitions.

7.68.030 Prohibition of smoking in City-owned vehicles and facilities.

7.68.040 Smoking restrictions in multi-unit residences.

7.68.050 Prohibition of smoking in enclosed areas.

7.68.060 Prohibition of smoking in unenclosed areas.

7.68.070 Smoking optional areas.

7.68.080 Reasonable smoking distance required.

7.68.090 Nonsmoking buffer zones.

7.68.100 Notice and posting of signs.

7.68.110 Required and implied lease terms.

7.68.120 Nuisance.

7.68.130 Other requirements and prohibitions.

7.68.140 Penalties and enforcement.

7.68.150 Other applicable laws.

7.68.010 – Findings and purposes.

The City council of the City of Vallejo finds and declares that the purposes of this chapter are:

A. To protect the public health, safety and general welfare; and

- B. To guarantee the right of nonsmokers, especially children, to breathe smoke-free air, and to recognize that the need to breathe smoke-free air has priority over the desire to smoke; and
- C. To reduce addiction to tobacco products by children and teenagers.
The City Council further finds it is within its basic police power to implement and enforce the provisions of this chapter.

7.68.020 – Definitions.

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

- A. **“Adjacent unenclosed property”** means any unenclosed area of property, publicly or privately owned, that abuts a multi-unit residence, but does not include property containing detached single-family homes.
- B. **"Business"** means any sole proprietorship, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, offered for sale, performed or delivered.
- C. **“Cannabis”** has the meaning set forth in California Business and Professions Code Section 26001(f), as that section may be amended from time to time.
- D. **“Common area”** means any enclosed or unenclosed area of a multi-unit residence or multiunit non-residential premises (such as hotels, motels, mobile home parks, shopping centers, and office buildings) accessible to and usable by more than one resident, tenant, owner, employee, employer, or member of the public, including but not limited to areas such as halls and paths, lobbies, elevators, stairs, laundry rooms, community rooms, cooking areas, dining areas, gym facilities, swimming pools, grassy or landscaped areas, walking/biking paths, seating areas, garages, and parking lots.
- E. **“Dining area”** means any area, including streets and sidewalks, that is available to or customarily used by the public or an employee, and that is designed, established, or regularly used for consuming food or drink, including but not limited to restaurants.
- F. **“Electronic smoking device”** means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.
- G. **"Employee"** means any person who is employed or retained as an independent contractor by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for an employer.
- H. **“Employer”** means any person, partnership, corporation or other business or nonprofit entity that retains the service of one or more employees.

- I. **"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 vertical constraint to airflow, including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or
 2. Four walls or other vertical constraints to airflow, including, but not limited to, vegetation, that exceed six feet in height, whether or not those boundaries include vents or other openings.
- J. **"Homeowners' association"** or **"HOA"** means an organization or entity established for the purpose of managing or maintaining a common interest development. A homeowners' association shall also mean "association" as defined in California Civil Code Section 4080, or any successor legislation.
- K. **"Landlord"** means any person or agent of a person who owns real property leased or rented or any person who manages premises including property managers, homeowners' associations, commercial property associations, condominium boards, etc., except that "landlord" does not include sublessors.
- L. **"Multi-unit residence"** means property containing two or more units that share a wall, including, but not limited to, apartments, condominiums, townhomes, duplexes, triplexes, quadruplexes, a single-family residence with a junior accessory dwelling unit or attached accessory dwelling unit, senior and assisted living facilities, drug and alcohol rehabilitation facilities, and long-term health care facilities, hospitals, a room in a single room occupancy ("SRO") facility. Includes all personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio. Multi-unit residences do not include the following:
1. A mobile home; and
 2. A single-family home, except if used as a health care facility subject to licensing requirements; and
 3. A single-family home with a detached 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 home or accessory dwelling unit is used as a health care facility subject to licensing requirements.
 4. A single-family home with a junior or attached accessory dwelling unit where neither unit is rented or leased to an individual or entity other than the occupant of the other unit or a member of the immediate family of the occupant of the other unit.

- M. **"Nonprofit entity"** means any entity that meets the requirements of California Corporations Code Section 5003 as well as any corporation, unincorporated association, or other entity created for charitable, religious, philanthropic, educational, political, social, or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a nonprofit entity within the meaning of this chapter.
- N. **"Nonsmoking area"** means 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.
- O. **"Person"** means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- P. **"Premises"** means a piece of land and any improvements thereon such as is usually described in a deed, deed of trust, or mortgage, and includes legally separate but contiguous pieces of land that are owned by the same natural person or by legal persons under common control.
- Q. **"Private smokers' lounge"** means any enclosed area in or attached to a retail tobacco shop or licensed retail cannabis business that is dedicated to the use of tobacco products or cannabis, including, but not limited to, cigars and pipes.
- R. **"Public place"** means any place, publicly or privately owned, which is open to the public regardless of any fee or age requirement.
- S. **"Reasonable Distance"** means a distance of at least 20 feet in any direction from an area in which smoking is prohibited.
- T. **"Recreational area"** means any area including streets and sidewalks publicly or privately owned and open to the public for recreational purposes, regardless of any fee or age requirement. The term "recreational area" includes, but is not limited to, parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, amusement parks, marinas, and beaches.
- U. **"Restaurant"** means any coffee shop, cafeteria, sandwich stand, private and public-school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

- V. **"Retail tobacco store"** means any business establishment utilized primarily for the sale of tobacco products, including but not limited to, cigars pipe tobacco, and smoking accessories, and in which the sale of other products is merely incidental.
- W. **"Service area"** means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term "service area" includes, but is not limited to, areas including or adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.
- X. **"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 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, vapors from an electronic device, and cannabis smoke.
- Y. **"Smoking"** means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed or plant or other combustible substance whose smoke is intended to be inhaled. Smoking, as defined in this chapter, does not include the use of traditional, sacred tobacco as part of an Indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- Z. **"Sports arena"** means enclosed or unenclosed sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.
- AA. **"Tobacco product"** means:
1. Any product 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, snuff; and
 2. Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.

The phrase "tobacco 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.

- BB. “Unit” means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio. “Unit” includes but is not limited to an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a room in a single room occupancy (“SRO”) facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit.

7.68.030 – Prohibition of smoking in City-owned vehicles and facilities.

Smoking shall be prohibited in all City-owned vehicles, including buses and other means of public transit under the authority of the City, and all enclosed facilities owned and controlled by the City.

7.68.040 – Smoking restrictions in multi-unit residences.

- A. Effective 90 days after the effective date of this ordinance, smoking is prohibited in all multi-unit residences.
- B. No person with legal control over any multi-unit residence shall permit smoking anywhere on the premises of the multi-unit residence except as permitted in subsection 7.68.060(A)(7).

7.68.050 – Prohibition of smoking in enclosed areas.

Smoking is prohibited in the enclosed areas of the following places within the City:

- A. Places of employment;
- B. Public places;
- C. Common areas of multi-unit residences;
- D. Retail tobacco shops; and
- E. Sports arenas.

7.68.060 – Prohibition of smoking in unenclosed areas.

- A. Except as otherwise provided in this chapter, smoking shall be prohibited in the unenclosed areas of the following places within the City:
 - 1. Recreational areas.
 - 2. Service areas.
 - 3. Dining Areas.
 - 4. Places of employment.
 - 5. Any private or public sidewalks.

6. Public places, except as permitted in subsection 7.68.060(B)(7).
7. Common areas of multi-unit residences, provided, however, that a person with legal control over a common area may designate a portion of the unenclosed area of the common area as a designated smoking area if the area:
 - a. Is located a reasonable distance from any unit or enclosed area where smoking is prohibited by this chapter or other law; by binding agreement relating to the ownership, occupancy, or use of real property; or by designation of a person with legal control over the property. A person with legal control over a designated smoking area may be obliged to modify, relocate, or eliminate it as laws change, as binding agreements are created, and as nonsmoking areas on neighboring property are established;
 - b. Does not include, and is a reasonable distance from, unenclosed areas primarily used by children and unenclosed areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, school campuses, and sandboxes;
 - c. Is no more than 10 percent of the total unenclosed area of the multi-unit residence for which it is designated;
 - d. Has a clearly marked perimeter;
 - e. Is identified by conspicuous signs;
 - f. Is completely within an unenclosed area; and
 - g. Does not overlap with any enclosed or unenclosed area in which smoking is otherwise prohibited by this chapter or other provisions of this code, state law, or federal law.
8. Common areas of commercial properties, provided, however, that a person with legal control over a common area may designate a portion of the unenclosed area of the common area as a designated smoking area if the area:
 - a. Is located a reasonable distance from any enclosed area where smoking is prohibited by this chapter or other law; by binding agreement relating to the ownership, occupancy, or use of real property; or by designation of a person with legal control over the property. A person with legal control over a designated smoking area may be obliged to modify, relocate, or eliminate it as laws change, as binding agreements are created, and as nonsmoking areas on neighboring property are established;
 - b. Does not include, and is a reasonable distance from, unenclosed areas primarily used by children and unenclosed areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, school campuses, and sandboxes;
 - c. Is no more than 10 percent of the total unenclosed area of the commercial property for which it is designated;
 - d. Has a clearly marked perimeter;
 - e. Is identified by conspicuous signs;
 - f. Is completely within an unenclosed area; and

- g. Does not overlap with any enclosed or unenclosed area in which smoking is otherwise prohibited by this chapter or other provisions of this code, state law, or federal law.
- B. Nothing in this chapter prohibits any person, employer, or nonprofit entity with legal control over any property from prohibiting smoking on any part of such property, even if smoking is not otherwise prohibited in that area.

7.68.070 – Smoking optional areas.

- A. Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:
 - 1. Private detached single-family residences, except when used as a family day care or health care facility.
 - 2. Private smokers' lounges.
 - 3. An enclosed place of employment which employs only the owner and no other employee, provided that:
 - (a) The place of employment is not a public place; and
 - (b) The place of employment does not share a ventilation system with any other enclosed place of employment or public place.

7.68.080 – Reasonable smoking distance required.

- A. Smoking in all unenclosed areas shall be prohibited within a reasonable distance from any doorway, window, opening, crack, or vent into an enclosed area in which smoking is prohibited.
- B. Smoking in unenclosed areas shall be prohibited within a reasonable distance from any unenclosed areas in which smoking is prohibited under Section 7.68.060.
- C. The prohibitions in subsections (A) and (B) of this section shall not apply to unenclosed areas of private residential properties that are not multi-unit residences.

7.68.090 – Nonsmoking buffer zones.

- A. Smoking is prohibited in adjacent unenclosed property located within 20 feet in any direction of any doorway, window, opening, or other vent into an enclosed area of a multi-unit residence.
- B. Subsection (A) of this section does not apply to a person who is smoking in the restricted buffer zone area while actively passing on the way to another destination.

7.68.100 Notice and posting of signs.

- A. Every landlord and homeowner association shall deliver the following, on or before the effective date of the ordinance codified in this chapter plus 90 days, to each unit of a multi-unit residence or multi-tenant non-residential premises:
1. A written notice clearly stating:
 - a. 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 the effective date of the ordinance plus 90 days; and
 - b. Smoking in all common areas, except for specifically designated smoking areas, is a violation of this chapter as of the effective date of the ordinance codified in this chapter.
 2. A copy of this chapter.
- B. As of the effective date of the ordinance codified in this chapter, 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, as of effective date of the ordinance codified in this chapter; and
 2. Smoking is prohibited in all common areas, except for specifically designated smoking areas, as of effective date of ordinance codified in this chapter.
- C. As of the effective date of the ordinance codified in this chapter, every seller of a unit in a multi-unit residence or non-residential premises 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, as of the effective date of the ordinance codified in this chapter; and
 2. Smoking is prohibited in all common areas, except for specifically designated smoking areas, as of the effective date of the ordinance codified in this chapter.
- D. The person or persons with legal control over common areas shall post clear and unambiguous “No smoking” signs in sufficient numbers and locations in common areas where smoking is prohibited by this chapter or other law. In addition, the person or persons with legal control over the multi-unit residence shall post signs in sufficient numbers and locations in the multi-unit residence to indicate that smoking is prohibited in all units. 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.

7.68.110 – Required and implied lease terms.

- A. Every lease or other rental agreement for the occupancy of a unit in a multi-unit residence or multi-tenant space in a non-residential premises, entered into, renewed, or continued month to month after the effective date of the ordinance codified in this chapter, shall include the provisions set forth in subsection (B) of this section on the earliest possible date allowable by law.
- B. Every lease or other rental agreement for the occupancy of a unit in a multi-unit residence or multi-tenant space in a non-residential premises, entered into, renewed, or continued month to month after the effective date of the ordinance codified in this chapter, shall be amended to include the following provisions:
 - 1. A clause providing that as of the effective date of the ordinance codified in this chapter, 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.
 - 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 multi-unit residence or multi-tenant space in a non-residential premises other than a designated smoking area.
 - 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 knowingly and intentionally allow any other person subject to the control of the tenant to engage in such behavior.
 - 4. A clause expressly conveying third-party beneficiary status to all occupants of the multi-unit residence or multi-tenant space in a non-residential premises as to the smoking provisions of the lease or other rental agreement.
- C. Whether or not a landlord complies with subsections (A) and (B) of this section, the clauses required by those subsections shall be implied and incorporated by law into every agreement to which subsection (A) or (B) of this section apply and shall become effective as of the earliest possible date on which the landlord could have made the insertions pursuant to subsection (A) or (B) of this section.
- D. 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 in a multi-unit residence or multi-tenant space in a non-residential premises shall be liable for the breach to (1) the landlord; and (2) any occupant of the multi-unit residence or multi-tenant space in a non-residential premises 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.

- E. 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.

7.68.120 – Nuisance.

- A. The provisions of this chapter are restrictive only and establish no new rights for a person who engages in smoking. Notwithstanding (1) any provision of this chapter or of this code, (2) any failure by any person to restrict smoking under this chapter or (3) 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.
- B. 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.
- C. Pursuant to California State law, Health and Safety Code Section 11362.3, smoking cannabis is prohibited wherever smoking tobacco is prohibited.
- D. Notwithstanding any provision to the contrary, nothing in this chapter 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.

7.68.130 – Other requirements and prohibitions.

- A. No person, employer, or nonprofit entity shall knowingly permit smoking in an area which is under the legal or de facto control of that person, employer, or nonprofit entity and in which smoking is prohibited by law.
- B. No person, employer, or nonprofit entity shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to a smoke-free environment afforded by this chapter.
- C. It shall be unlawful for any person to smoke in any area where smoking is prohibited under this chapter.

7.68.140 – Penalties and enforcement.

- A. The remedies provided by this chapter are cumulative and in addition to any other remedies available under this code, at law, and/or in equity.
- B. Enforcement of this chapter shall be implemented by the City Manager or his/her designee and may be enforced by any peace officer or code enforcement official.

Prohibition of smoking in multi-unit residences and private outdoor spaces shall be enforced by the landlord and/or tenant.

- C. Notwithstanding any other provision of this chapter, a private citizen may bring legal action to enforce this Chapter.
- D. Each incident of smoking in violation of this chapter is an infraction subject to
 - 1. A fine, not exceeding \$100.00 and/or 5 days of community service, for the first violation.
 - 2. A fine, not exceeding \$200.00 and/or 10 days of community service, for a second violation of this section within 1 year.
 - 3. A fine not exceeding \$500.00 and/or 15 days of community service, for a third violation or any subsequent violation of this section within one year.
- E. Each instance of smoking in violation of this chapter shall constitute a separate violation. For violations other than for smoking, each day of a continuing violation of this chapter shall constitute a separate violation.

7.68.150 – Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking when it is otherwise restricted or prohibited by other applicable laws.

SECTION 4. Severability

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact one or more provisions may be declared invalid.

SECTION 5. Effective Date.

This Ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage.

First read at a regular meeting of the Council of the City of Vallejo held on the 10th day of May, 2022 and finally adopted at a regular meeting of the Council of the City of Vallejo on the 24th day of May, 2022 by the following vote:

AYES: Vice Mayor Verder-Aliga, Councilmembers Arriola, Dew, Loera-Diaz and Miessner

NOES: None

ABSENT: None

ABSTAIN DUE TO CONFLICT OF INTEREST: Mayor McConnell and Councilmember Brown

DocuSigned by:

ROBERT H. MCCONNELL

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ROBERT H. MCCONNELL, MAYOR

ATTEST:

DocuSigned by:

Dawn G. Abrahamson

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DAWN G. ABRAHAMSON, CITY CLERK