

5-28.04. Medical Marijuana Dispensaries Prohibited; Penalties.

(a) It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City of Emeryville, the operation of a medical marijuana dispensary.

(b) Violations of this section are punishable as misdemeanors. Each day of operation of a medical marijuana dispensary in violation of this section constitutes a separate offense. (Sec. 3 (part), Ord. 06-007, eff. Aug. 17, 2006)

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.” (Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

5-29.02. Definitions.

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

(a) “Bar” means an area that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the service of food is incidental to the consumption of beverages and in which persons younger than twenty-one (21) years of age are at all times excluded.

(b) “Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes or that has an employee.

(c) “Children” means any persons or individuals under eighteen (18) years of age.

(d) “Common area,” “common interest development,” “community apartment project,” “condominium project,” “exclusive use common area,” “planned development,” “separate interest,” and “stock cooperative” shall have the same meaning as set forth in California Civil Code Section 1351 of the Davis-Sterling Common Interest Development Act, and as said provisions may be amended.

(e) “Dining area” means any area containing a counter or table upon which food or beverages are served or any area designed, established, or regularly used for consuming food or beverages.

(f) “Employee” means any person who is employed by any employer or hired as an independent contractor in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for an employer or a nonprofit entity.

(g) “Employer” means any person, partnership, corporation or nonprofit entity, including a municipal corporation, who employs the services of one or more employees.

(h) “Enclosed” means any covered or partially covered space having more than fifty percent (50%) of its perimeter area walled, covered, or otherwise closed to the outside except for appropriate openings for ingress and egress such as, for example, a covered porch with more than two (2) walls. Hence, “unenclosed” means any space open to the sky having less than fifty percent (50%) of its perimeter area walled, covered, or otherwise closed to the outside.

(i) “Nonprofit entity” means any corporation, unincorporated association or other entity created for managing a common interest development or for charitable, educational, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a “non-profit entity” within the meaning of this section.

(j) “Outdoor recreational facility” means any swimming pool, tennis court or basketball court and adjacent seating areas located in the unenclosed common area of a common interest development.

(k) “Park” and “greenway” mean any area designed and designated or landscaped, in part to be used for passive or active recreational activities.

(l) “Place of employment” means any area under the control of a public or private employer that employees may have cause to enter during the normal course of employment, including, but not limited to, work areas, vehicles, employee lounges and restrooms, conference rooms and classrooms, cafeterias and hallways, except that a private residence is not a place of employment unless it is used as a family care, childcare or health care facility.

(m) “Playground” means any park or recreational area designed in part for use as a passive or active play area, or any similar facility located on public or private school grounds or on grounds owned, leased, operated or controlled by the City of Emeryville or the Emeryville Re-

development Agency. Playgrounds includes children’s play areas and tot lots.

(n) “Public place” means any place, public or private, open to the general public regardless of any fee or age requirement, including for example, business, bars, restaurants, clubs, stores, stadiums, parks, greenways, playgrounds, retail stores, theaters and waiting rooms.

(o) “Reasonable distance” means a distance of twenty-five feet (25') that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area.

(p) “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 medicinal marijuana, or tobacco paraphernalia.

(q) “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, including medicinal marijuana, and the smoke exhaled by an individual who engages in smoking.

(r) “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 cab depots.

(s) “Smoking” means inhaling, exhaling, 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, including medicinal marijuana.

(t) “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 medicinal marijuana, 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.

(u) “Sports arena” means sports stadium, pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.

(v) “Tobacco paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, hookahs, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products or any other weed, plant or combustible substance, including medicinal marijuana.

(w) “Tobacco product” means: (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, hookah tobacco, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body but does not include any product specifically approved by the Federal Food and Drug Administration for use in treating nicotine or tobacco product dependence.

(x) “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 and/or tobacco paraphernalia.

(Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

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 or the Emeryville Redevelopment Agency, and all such areas shall be subject to the provisions of this chapter.

(Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

5-29.04. Prohibition of Smoking in Public Places.

(a) Smoking shall be prohibited in any and all public place, business, bar, or restaurant within the City of Emeryville whether enclosed or unenclosed, including the enclosed places identified in California Labor Code Section 6404.5(d), or its successor, unless an exception exist elsewhere in either State law or this chapter.

(b) To the extent not prohibited by Section 5-29.04(a), smoking shall be prohibited in the following places:

(1) Enclosed and unenclosed common areas of multi-unit, multi-residence, or multi-family buildings including, but not limited to, common interest developments, apartments, retirement facilities, and nursing homes.

(2) Areas of the lobby in a hotel, motel, or other similar transient lodging establishment. 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) Hotel and motel rooms rented to guests designated as non-smoking rooms. Hotels and motels must designate not less than sixty percent (60%) of their guest rooms as non-smoking rooms and remove ashtrays from these rooms.

(4) Meeting and banquet rooms in a hotel, motel, other transient lodging establishment similar to a hotel or motel, 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.

(5) Retail, or wholesale tobacco shops and smoking lounges as defined herein and by California Labor Code §6404.5(d)(4).

(6) Buses, taxicabs and other means of public transit offered within the City, and service lines.

(7) Retail stores.

(8) 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.

(9) Restaurants, dining areas and bars whether enclosed or unenclosed.

(10) Sports arenas and convention halls, except in designated smoking areas approved by the City and which protect non-smokers from secondhand smoke.

(11) 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.

(12) Parks, playgrounds, and greenways.

(13) Family care, childcare, and health care facilities and separate interests and exclusive use common areas of a common interest development and private residences used as a family care, childcare or health care facility.

(c) 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.

(d) 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, includ-

ing, without limitation, inside the perimeter of any reasonable smoking distance required by this chapter.

(Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

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

Smoking shall be prohibited in all places of employment with fewer than six (6) employees within the City of Emeryville.

(Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

5-29.06. Duty of 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 smoking 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 acted "knowingly" or "intentionally" if the following reasonable steps have been taken to prevent smoking:

(i) “Smoking” or “No Smoking” signs, whichever are appropriate, have been posted in accordance with Section 5-29.12; and

(ii) Has requested, when appropriate, that a person who is smoking in violation of this chapter to refrain from smoking; and

(iii) Has registered a complaint, when appropriate, to initiate enforcement with the City 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.

(Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

5-29.07. Areas Not Subject to Smoking Regulations.

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

(a) Unenclosed areas outside of the 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.

(b) Hotel and motel rooms rented to guests, provided however, that each hotel and motel designates not more than forty percent (40%) of their guest rooms as smoking rooms and removes ashtrays from all other rooms designated as non-smoking rooms.

(c) Separate interests and exclusive use common areas of a common interest development and private residences, except where used as a family care, childcare or health care facility.

(d) Medical research or treatment sites if smoking is integral to the research and treatment being conducted.

(e) Unenclosed common areas of a common interest development which complies with the following requirements: (i) a “smoking allowed” area is designated by appropriate action of the person, business, nonprofit entity, owner, manager, operator or employer responsible for managing the common interest development; (ii) the designated “smoking allowed” area is not otherwise prohibited by state or federal law; (iii) the designated “smoking allowed” area is located a reasonable distance from enclosed common areas, separate interests and exclusive use common areas of the common interest development; (iv) the designated “smoking allowed” area shall not include areas primarily used by children or outdoor recreational facilities; and (v) the designated “smoking allowed” area shall not be more than twenty five percent (25%) of the unenclosed common area, shall have a clearly marked perimeter, and shall be signed in accordance with Section 5-29.12.

(Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

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 which are licensed to operate within the City of Emeryville in accordance with Chapter 5 of Title 5 of the Emeryville Municipal Code.

(Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

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 §6404.5(d)(4)(b) or Small Business Exemption §6404.5 and such successors as may follow. (Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

5-29.10. Restriction on Proximity of Tobacco Shops.

Retail or wholesale tobacco shops are prohibited from being located within one thousand (1000) feet of public or private schools and parks, greenways and playgrounds. (Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

5-29.11. Reasonable Smoking 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.

(Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

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.

(Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

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.

(Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

5-29.14. Secondhand Smoke – Declaration of Nuisance.

Secondhand smoke constitutes a nuisance.

(Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

5-29.15. Enforcement – Administrative Officer Designated.

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

(b) Any citizen who desires to register a complaint hereunder may initiate enforcement 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 controlled by this chapter shall have the right to inform persons violating this chapter of the appropriate provisions thereof.

(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) Notwithstanding any other provision of this chapter, no person, business, nonprofit entity, owner, manager, operator or employer who owns, manages, operates or otherwise controls the use of any premises controlled by this chapter shall be cited, fined, subject to an enforcement action brought either by the City or private citizen, or be held guilty or liable for a violation of this chapter, specifically including maintaining a nuisance, as a result of smoking or permitting smoking within an area set forth in and in accordance with the requirements of Section 5-29.07.
(Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

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 Chapter 2 of Title 1 of the Emeryville Municipal Code, Subsection 1-2.01.
(Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

5-29.17. Appeal Process.

Decisions made by the City Manager relating to this chapter may be appealed to the City Council in accordance with Chapter 4 of Title 1 of the Emeryville Municipal Code.
(Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

**CHAPTER 30.
(Reserved)**

**CHAPTER 31.
LIVING WAGE ORDINANCE**

Sections:

- 5-31.01 Title and Purpose
- 5-31.02 Findings
- 5-31.03 Definitions
- 5-31.04 Persons and Entities Subject to the Requirements of this Chapter
- 5-31.05 Living Wage Rate
- 5-31.06 Waivers
- 5-31.07 Required Contract Provisions
- 5-31.08 Exemptions
- 5-31.09 Retaliation and Discrimination Prohibited.
- 5-31.10 Employee Complaints to the City
- 5-31.11 Enforcement
- 5-31.12 Effective Date

5-31.01. Title and Purpose.

The purpose of this chapter is to assure that City employees, employees of City service contractors, subcontractors, and employees and contractors of City financial assistance earn an hourly wage that is sufficient to live with dignity and to achieve economic self-sufficiency. The City contracts with many businesses and organizations to provide services to the public, and provides financial assistance to developers and businesses for the purpose of promoting economic development and job growth. Such public expenditures should also be spent to set a community economic standard that permits workers to live out of poverty. The City Council finds that the use of City funds to provide living wage jobs will decrease poverty, increase consumer income, invigorate neighborhood businesses and reduce the need for taxpayer funded social service programs.

This chapter shall be known and may be cited as the “Living Wage Ordinance.” The purpose of this chapter is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees