

Chapter 6.14 - PROHIBITING SMOKING IN PUBLIC PLACES, PLACES OF EMPLOYMENT, OTHER AREAS,  
AND MULTI-UNIT HOUSING

Sections:

FOOTNOTE(S):

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**Editor's note**—Ord. No. 940, § 1, adopted May 6, 2014, repealed the former Ch. 6.14, §§ 6.14.010—6.14.100, and enacted a new Ch. 6.14 as set out herein. The former Ch. 6.14 pertained to similar subject matter and derived from [Ord. 705, § 1 (part), 1981] and the title Smoking Prohibited in Certain Public Areas has been changed to Prohibiting Smoking in Public Places, Places of Employment, Other Areas, and Multi-Unit Housing.

6.14.010 - Definitions.

- A. The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:
1. "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes.
  2. "Town" shall mean the town of Corte Madera.
  3. "Common area" means every area of a multi-unit residence that residents of more than one unit of that multi-unit residence are entitled to enter or use, including, for example, halls and paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities and swimming pools, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.
  4. "Common interest complex" means a multi-unit residence that is a condominium project, a community apartment project, a stock cooperative, or a planned development as defined by California Civil Code section 1351.
  5. "Dining area" means any area, including streets and sidewalks, which is available to or customarily used by the general public or an employee, and which is designed, established, or regularly used for consuming food or drink.
  6. "Electronic smoking device" shall mean an electronic or battery operated device that delivers vapors for inhalation. This term shall include every variation and type of such devices whether they are 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.
  7. "Employee" means any person who is employed or retained as an independent contractor by any employer or nonprofit entity in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer or nonprofit entity.
  8. "Employer" means any business, the town, or nonprofit entity that retains the services of one or more employees.
  9. "Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by portions which do not extend to the ceiling or are not solid, such as "office landscaping" or similar structures.
  10. "Landlord" means any person who owns property let for residential use, any person who lets residential property, and any person who manages such property, except that "landlord" does

not include a master tenant who sublets a unit as long as the master tenant sublets only a single unit of a multi-unit residence.

11. "Multi-unit residence" means property containing two or more units with a shared wall, including for example, rental complexes, common interest complexes, senior citizen residences, and nursing homes. "multi-unit residence does not include the following specifically excluded types of housing:
  - (a) a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2);
  - (b) A mobile home park;
  - (c) A campground;
  - (d) A marina or port;
  - (e) A single-family home; and
  - (f) A single-family home with a detached or attached in-law or second unit when permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or Chapter 18.31 of this Code.
12. "New unit" means a unit that is issued a certificate of occupancy more than one hundred eighty days after June 5, 2014 and also means a unit that is let for residential use for the first time more than one hundred eighty days after June 5, 2014.
13. "Nonprofit entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a "nonprofit entity" within the meaning of this section.
14. "Person" means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
15. "Place of employment" means any area under the legal or de facto control of an employer that an employee or the general public may have cause to enter in the normal course of operation, regardless of the hours of operation, including, but not limited to, indoor and outdoor work areas, construction sites, vehicles used in employment or for business purposes, taxis, employee lounges and restrooms, conference and banquet rooms, employee cafeterias, warehouses, long-term health care facilities, and lobbies and hallways. A private residence is not a "place of employment" unless it is used as a child care or health care facility.
16. "Public place" means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.
17. "Reasonable distance" means a distance of twenty feet in any direction from an area in which smoking is prohibited.
18. "Recreational area" means any area that is publicly or privately owned and open to the general 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, horseback riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, amusement parks, and beaches.
19. "Rental complex" means a multi-unit residence for which fifty percent or more of units are let by or on behalf of the same landlord.
20. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
21. "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 wait for or receive a

service or make a transaction, whether or not such service or transaction involves the exchange of money. The term "service area" includes, but is not limited to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines or cab stands.

22. "Smoke" means the gases and particles released into the air by combustion, electrical ignition or vaporization, including from an electronic smoking device, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the resulting gases, particles or vapors combustion products, such as, for example, tobacco smoke, and marijuana smoke, except when the combusting material contains no tobacco and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense.
23. "Smoking" means engaging in an act that generates smoke, such as, for example: possessing a lighted cigar, a lighted cigarette of any kind, a lighted pipe, or a lighted hookah pipe; or lighting a pipe, a hookah pipe, a cigar, or a cigarette of any kind; or operating an electronic smoking device.
24. "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.
25. "Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco or This definition is without regard to the quantity of tobacco or tobacco products.
26. "Unenclosed area" means any area that is not an enclosed area.
27. "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 hotel or motel room; 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.

(Ord. No. 940, § 1, 5-6-2014)

6.14.020 - Prohibition of smoking in public places, places of employment, and certain other areas.

- A. Enclosed areas. Smoking shall be prohibited in the following enclosed areas within the town of Corte Madera except in places listed in subsection C below, and except in such places in which smoking is already prohibited by state or federal law in which case the state or federal law applies:
  1. Places of employment.
  2. Public places.
  3. Recreational areas.
  4. Common areas.
- B. Unenclosed areas. Smoking shall be prohibited in the following unenclosed areas within the town of Corte Madera except in such places in which smoking is already prohibited by county, state, or federal law in which case that law applies:
  1. Places of employment.
  2. Recreational areas.
  3. Service areas.
  4. Dining areas.

5. Common areas, provided 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 meets all of the following criteria:
    - a. The area must be 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. In the case of a nonsmoking area created by agreement or designation, this provision does not apply unless the person designating the smoking area has actual knowledge of, or has been given notice of, the agreement or designation. A designated smoking area may require modification or elimination as laws change, as binding agreements are created, and as nonsmoking areas on neighboring property are established.
    - b. The area must not include, and must be 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, and school campuses;
    - c. The area must be no more than ten percent of the total unenclosed area of the multi-unit residence for which it is designated;
    - d. The area must have a clearly marked perimeter;
    - e. The area must be identified by conspicuous signs;
    - f. The area must be completely within an unenclosed area; and
    - g. The area must 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.
  6. Public events including, but not limited to, sports events, entertainment, speaking performances, ceremonies, pageants, fairs and farmer's markets.
- C. Unless otherwise prohibited by law, smoking is not prohibited in the following enclosed areas:
1. Smoking is not prohibited in up to twenty percent of guestroom accommodations in a hotel, motel, or similar transient lodging establishment if the hotel or motel permanently designates particular guestrooms as nonsmoking rooms such that eighty percent or more of guestrooms are permanently nonsmoking, and ashtrays and matches are permanently removed from such nonsmoking rooms. Permanent no smoking signage shall be posted in nonsmoking guestrooms.
  2. Smoking at theatrical production sites is not prohibited by this subsection if smoking is an integral part of the story and the use of a fake, prop, or special effect can not reasonably convey the idea of smoking in an effective way to a reasonable member of the anticipated audience.
  3. Smoking inside a retail tobacco store is not prohibited if:
    - a. The retail tobacco store does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the business premises;
    - b. The retail tobacco store prohibits minors from entering the store at all times; and
    - c. The premises of the retail tobacco store is an independent freestanding building unattached to any other structure or use.
  4. Smoking inside a detached, single-family home is not prohibited, except those used as a child care or health care facility subject to licensing requirements;
- D. Notwithstanding any other provisions of this section, nothing in this chapter prohibits any person, landlord, employer, or nonprofit entity with legal control over any property or facility from declaring

the entire property or facility as nonsmoking and prohibiting smoking on any part of such property or facility, even if smoking is not otherwise prohibited in that area.

(Ord. No. 940, § 1, 5-6-2014)

6.14.030 - Nonsmoking buffer zones.

- 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, except while actively passing on the way to another destination and provided smoke does not enter any 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 6.14.020(B) of this chapter, except while actively passing on the way to another destination and provided smoke does not enter any unenclosed area in which smoking is prohibited.
- C. The prohibitions in subdivisions A and B shall not apply to unenclosed areas of private residential properties that are not multi-unit residences.
- D. Smoking is prohibited in unenclosed areas of a multi-unit residence, including balconies, porches, decks, and patios, within a reasonable distance from any doorway, window, opening, or other vent into an 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.

(Ord. No. 940, § 1, 5-6-2014)

6.14.040 - Smoking restrictions in new units of multi-unit residences.

- A. All new units of a multi-unit residence are hereby designated nonsmoking units, including any associated exclusive-use enclosed areas or unenclosed areas, such as, for example, a private balcony, porch, deck, or patio.
- B. Smoking in a designated nonsmoking unit is a violation of chapter as provided in Section 6.14.100

(Ord. No. 940, § 1, 5-6-2014)

6.14.050 - Nonsmoking designations for existing units of a common interest complex.

- A. All units of a common interest complex that are not new units, including any associated exclusive-use enclosed areas or unenclosed areas, such as, for example, a private balcony, porch, deck, or patio, are hereby designated nonsmoking units as of June 5, 2015; provided, however, that a lesser percentage of units may be designated nonsmoking units if a common interest complex fully complies with subsection C below.
- B. Smoking in a designated nonsmoking unit is a violation of this chapter as provided in Section 6.14.100
- C. By a vote of the membership as provided in subsection 1 below, a common interest complex may choose to designate fewer than one hundred percent of existing units as nonsmoking units by fully complying with the requirements stated in subsections 1—4 below. Otherwise subsection A above shall apply.
  - 1. A vote by the membership on the threshold question of allowing less than one hundred percent of units to be designated nonsmoking units must take place before March 5, 2015.

2. Up to one hundred percent, but no less than eighty percent, of units that are not new units, including, for example, any associated exclusive-use enclosed areas or unenclosed areas, such as, for example, a private balcony, porch, deck, or patio, shall be permanently designated as nonsmoking units.
3. Where possible, best efforts shall be made to group nonsmoking units together, both horizontally and vertically, and physically separate them from units where smoking may be allowed.
4. No later than June 5, 2015 the final designations must be made and the following must be maintained in accordance with Section 6.14.090
  - a. A description of each designated nonsmoking unit sufficient to readily identify the unit; and
  - b. A diagram depicting the location of the designated nonsmoking units in relation to all other units.

(Ord. No. 940, § 1, 5-6-2014)

6.14.060 - Nonsmoking designations for existing units of a rental complex.

- A. All units of a rental complex that are not new units, including any associated exclusive-use enclosed areas or unenclosed areas, such as, for example, a private balcony, porch, deck, or patio, are hereby designated nonsmoking units as of June 5, 2015, however, that a lesser percentage of units may be designated nonsmoking units if a landlord fully complies with subsection D below.
- B. Smoking in a designated nonsmoking unit is a violation of this chapter as provided in Section 6.14.100
- C. Except if a landlord fully complies with subsection D below, at least one hundred and twenty days before June 5, 2015, the landlord shall provide each tenant with:
  1. A written notice clearly stating that all units, including the tenant's unit, are designated nonsmoking units and that smoking in a unit will be illegal as of June 5, 2015; and
  2. A copy of this chapter.
- D. A landlord may choose to designate fewer than one hundred percent of existing units that are not new units of a rental complex as nonsmoking units by fully complying with the requirements stated in subsections 1—7 below. However, subsection A above shall apply whenever a landlord takes no action or only partially complies with the requirements of this subsection.
  1. The landlord shall permanently designate up to one hundred percent of units, but no less than eighty percent of units, including, for example, any associated exclusive-use enclosed areas or unenclosed areas, such as, for example, a private balcony, porch, deck, or patio, as nonsmoking units.
  2. To the maximum extent practicable, nonsmoking units must be grouped together both horizontally and vertically and physically separated from units where smoking may be allowed. Where possible all units where smoking may be allowed shall be in a single building of a multi-building multi-unit residence.
  3. No later than October 5, 2014, a landlord who chooses to designate fewer than one hundred percent of the units of a multi-unit residences as nonsmoking shall maintain the following in accordance with Section 6.14.090
    - a. A description of each designated nonsmoking unit sufficient to identify the unit; and
    - b. A diagram depicting the location of the designated nonsmoking units in relation to all other units.

4. At least sixty days before maintaining the nonsmoking unit designations required by subsection 3 above, the landlord shall provide each tenant with:
  - a. A written notice of the proposed designations, clearly stating that smoking in a unit which is designated as a nonsmoking unit will be illegal as of June 5, 2015, and inviting comments on the proposed designations of nonsmoking units within the requisite timeline;
  - b. A diagram depicting the location of the designated nonsmoking units in relation to all other units; and
  - c. A copy of this chapter.
5. A landlord may modify the proposed designations based upon comments received from tenants.
6. At least thirty days before maintaining the final designations of nonsmoking units required by subsection 3 above, the landlord shall provide all tenants written notice of the final designations clearly stating that smoking in a designated nonsmoking unit will be illegal as of June 5, 2015 and a copy of the final documents that will be maintained pursuant to Section 6.14.090 of this chapter. These final designations may differ from the proposed designations on which tenants were invited to comment.
7. A unit in a rental complex for which a landlord is required to maintain information pursuant to Section 6.14.090 of this chapter but for which such information, for any reason, is not fully and timely maintained is hereby designated as a nonsmoking unit as of October 5, 2014.

(Ord. No. 940, § 1, 5-6-2014)

6.14.070 - Required and implied lease terms for all new and existing units in rental complexes.

- A. Every lease or other rental agreement for the occupancy of a unit in a rental complex, including, for example, new units and existing units, entered into, renewed, or continued month-to-month after June 5, 2014, shall include the provisions set forth in subsection B below on the earliest possible date when such an amendment is allowable by law when providing the minimum legal notice.
- B. Every lease or other rental agreement for the occupancy of a unit in a rental complex, including, for example, new units and existing units, entered into, renewed, or continued month-to-month after June 5, 2014 shall be amended to include the following provisions:
  1. A clause providing that as of June 5, 2014, it is a material breach of the agreement to allow or engage in smoking in the unit unless the landlord has supplied written notice that the unit has not been designated a nonsmoking unit and no other prohibition against smoking applies. 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 the unit as of June 5, 2014 unless landlord has provided written notice that the unit has not been designated a nonsmoking unit and smoking in the unit is not otherwise prohibited by this agreement, other agreements, or by law."
  2. 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 or present by invitation or permission of the tenant to engage in smoking in any common area of the property 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."
  3. 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 or present by invitation or permission 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.

4. A clause expressly conveying third-party beneficiary status to all occupants of the rental complex as to the smoking provisions of the agreement. Such a clause might state, "Other occupants of the property are express third-party beneficiaries of those provisions in this agreement that concern smoking. As such, other occupants of the property may seek to enforce such provisions by any lawful means, including by bringing a civil action in a court of law."
- C. Whether or not a landlord complies with subsections A and B above, the clauses required by those subsections shall be implied and incorporated by law into every agreement to which subsections A or B apply and shall become effective as of the earliest possible date on which the landlord could have made the insertions pursuant to subsections A or B.
- D. A tenant who breaches a smoking provision of a lease or other rental agreement for the occupancy of a unit in a rental complex, 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:
  1. The landlord; and
  2. Any occupant of the rental complex who is exposed to smoke or who suffers damages as a result of the breach.
- E. This chapter shall not create additional liability in a landlord 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 rental complex if the landlord has fully complied with this section and Section 6.14.060
- F. Failure to enforce any smoking provision required by this chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

(Ord. No. 940, § 1, 5-6-2014)

6.14.080 - Additional duties of a landlord of a rental complex with less than one hundred percent nonsmoking units.

A landlord of a rental complex with less than one hundred percent nonsmoking units shall provide to every prospective tenant, prior to entering into a new lease or other rental agreement for the occupancy of a unit in a rental complex, a copy of the designation documents required pursuant to Section 6.14.060 describing each designated nonsmoking unit with an accompanying diagram depicting the location of nonsmoking units in relation to all other units and any designated smoking areas.

(Ord. No. 940, § 1, 5-6-2014)

6.14.090 - Procedures and requirements for document maintenance.

- A. Documents maintained pursuant to this chapter must include all material and information required by this chapter as well as other materials and information as the town manager or his or her designee deems necessary for the administration and enforcement of this chapter.
- B. All documents maintained pursuant to this chapter shall be available for the town manager or his or her designee to access and review during regular business hours or upon twenty-four hours' written notice.
- C. All material and information maintained pursuant to this chapter and requested by the town manager or his or her designee shall constitute disclosable public records and are not private or confidential.

(Ord. No. 940, § 1, 5-6-2014)



6.14.100 - Smoking prohibited by law in units and common areas.

- A. Smoking in a common area, on or after June 5, 2014, other than in a designated smoking area established pursuant to Section 6.14.020(B)(5), is a violation of this chapter.
- B. Smoking in a new unit, on or after June 5, 2014, is a violation of this chapter.
- C. Smoking in a designated nonsmoking unit, on or after June 5, 2015, is a violation of this chapter.

6.14.110 - Smoking and smoke generally.

- 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 other provisions 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. Notwithstanding any other provision of this chapter, smoking marijuana for medical purposes as permitted by California Health and Safety Code sections 11362.7 et seq. is not prohibited by this chapter.
- C. For all purposes within the jurisdiction of the town, 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 and a trespass. Any person bringing a civil action to enforce the nuisance provision contained in this section need not prove an injury different in kind or in degree from injury to others to prove a violation of this chapter.

(Ord. No. 940, § 1, 5-6-2014)

6.14.120 - Other requirements and prohibitions.

- A. No person, landlord, employer, or nonprofit entity shall knowingly permit smoking in an area which is under the legal or de facto control of the person, employer or nonprofit entity and in which smoking is prohibited by this chapter, unless otherwise required by state or federal law.
- B. No person, landlord, employer, or nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or de facto control of the person, landlord, employer or nonprofit entity and in which smoking is prohibited by law, including, without limitation, within a reasonable distance required by this chapter from any area in which smoking is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of smoking in violation of any provision of this chapter.
- C. No person shall dispose of used smoking or tobacco product waste within the boundaries of an area in which smoking is prohibited, including inside the perimeter of any reasonable distance required by this chapter.
- D. A person, landlord, employer, or nonprofit entity that has legal or de facto control of an area in which smoking is prohibited by this chapter shall post a clear, conspicuous and unambiguous "No Smoking" or "Smokefree" sign at each point of ingress to the area, and in at least one other conspicuous point within the area. No Smoking signs are not required inside or at doorways of designated nonsmoking units. The signs shall have letters of no less than one inch in height and shall include 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). Signs posted on the exterior of buildings to comply with this section shall include the reasonable distance requirement set forth in Section 6.14.030

At least one sign with the town or county phone number where complaints can be directed must be conspicuously posted in each place in which smoking is prohibited. For purposes of this section, the town manager or his or her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the town.

Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of smoking in violation of any other provision of this chapter.

- E. No person, landlord, employer, or nonprofit entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain 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. 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.

(Ord. No. 940, § 1, 5-6-2014)

#### 6.14.130 - Penalties and enforcement.

- A. Criminal prosecution. Every instance of smoking in violation of this chapter is an infraction subject to a one-hundred dollar fine or otherwise punishable pursuant to Section 1.04.010 of this Code. Other violations of this chapter may, in the discretion of the town manager, be prosecuted as infractions punishable pursuant to Section 1.04.010 or misdemeanors when the interests of justice so require. The town manager is authorized to enforce this chapter, but may also work with the county of Marin or the Twin Cities Police Authority to coordinate enforcement by those entities. In addition, any peace officer or code enforcement official may also enforce this chapter.
- B. Civil enforcement by the town.
  - 1. Fines. Violations of this chapter are subject to a civil action brought by the town, punishable by a civil fine not less than two hundred fifty dollars and not exceeding one thousand dollars per violation.
  - 2. Injunctions, nuisance abatement, and code enforcement. In addition to other remedies provided by this chapter or otherwise available at law or in equity, any violation of this chapter may be remedied by a civil action brought by the town attorney, including, without limitation, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.
  - C. Civil enforcement by private citizens. 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 for injunctive relief to prevent future such violations or sue to recover such actual or statutory damages as he or she may prove.
- D. General provisions.
  - 1. Cumulative remedies. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
  - 2. Violations. Causing, permitting, aiding, or abetting a violation of any provision of this chapter shall also constitute a violation of this chapter.
  - 3. Nuisances. Any violation of this chapter is hereby declared to be a public nuisance.
  - 4. Town discretion. Except as otherwise provided, enforcement of this chapter is at the sole discretion of the town. Nothing in this chapter shall create a right of action in any person against the town or its agents to compel public enforcement of this chapter against private parties.

(Ord. No. 940, § 1, 5-6-2014)

6.14.140 - Public education.

The town manager or his or her designee shall coordinate with the county of Marin Health and Human Services Department to ensure that the citizens and community of Corte Madera may participate in the county's existing tobacco education program. The program will explain and clarify the purposes and requirements of this chapter to citizens affected by it, and to guide persons, landlords, employers, and nonprofit entities in their compliance with it. However, lack of such education shall not provide a defense to a violation of this chapter.

(Ord. No. 940, § 1, 5-6-2014)

6.14.150 - Other applicable laws.

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

(Ord. No. 940, § 1, 5-6-2014)

6.14.160 - Construction, severability.

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

(Ord. No. 940, § 1, 5-6-2014)

Chapter 6.16 - TOBACCO PRODUCTS SALES PROHIBITED FROM VENDING MACHINES

Sections:

6.16.010 - Title.

This chapter shall be known as the "Corte Madera Tobacco Ordinance."

(Ord. 794 § 1 (part), 1995)

6.16.020 - Findings and purpose.

The town council does find that it is deleterious to human life and society at large to allow the sale of tobacco products to minors and it is within the council's basic police power to implement and enforce the provisions of this chapter.

(Ord. 794 § 1 (part), 1995)

#### 6.16.030 - Definitions.

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

- (1) "Business" means any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where tobacco products are sold.
- (2) "Retail tobacco store" or "tobacco retailer" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- (3) "Self-service merchandising" means open display of tobacco products and point-of-sale tobacco promotional products to which the public has access without the intervention of an employee.
- (4) "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.
- (5) "Tobacco vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a tobacco product.
- (6) "Vendor-assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.

(Ord. 794 § 1 (part), 1995)

#### 6.16.040 - Regulating the sale of tobacco products.

- (a) Any person, business, tobacco retailer or other establishment which sells tobacco products shall post at least one plainly visible sign at or in the immediate vicinity of the point of purchase of tobacco products which states that the sale of tobacco products to persons under eighteen years of age is prohibited by law and that photo identification is required for purchase. Said sign shall use the wording adopted by the state of California Department of Health Services. The letters of said sign shall be at least one-quarter-inch high.
- (b) No person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this chapter shall sell, offer to sell or permit to be sold any tobacco product to an individual without requesting and examining identification establishing the purchaser's age as eighteen years or greater unless the seller has some reasonable basis for determining the buyer's age.
- (c) It is unlawful for any person, business or tobacco retailer to sell, permit to be sold or offer for sale any tobacco product by means of self-service merchandising, or by any means other than vendor-assisted sales.
- (d) No person, business or tobacco retailer shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises any tobacco vending machine. Any tobacco vending machine in use on the effective date of the ordinance codified in this chapter shall be removed within thirty days after the effective date of the ordinance codified in this chapter.

(Ord. 794 § 1 (part), 1995)

6.16.050 - Enforcement.

- (a) Notice of these regulations shall be given to all applicants for a business license.
- (b) Enforcement of this chapter shall be implemented by the town manager or his/her designee.
- (c) Any citizen who desires to register a complaint under this chapter may make said complaint known to and thereby initiate enforcement with the town manager or his/her designee.
- (d) Notwithstanding any other provision of this chapter, a private citizen may bring legal action to enforce this chapter.

(Ord. 794 § 1 (part), 1995)

6.16.060 - Violation and penalty.

- (a) It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation of this chapter to fail to comply with any of its provisions.
- (b) Any person, business, tobacco retailer or owner, manager or operator of any establishment subject to this chapter who violates any provision of this chapter shall be deemed guilty of an infraction, punishable by:
  - (1) A fine, not exceeding one hundred dollars and/or five days of community service, for the first violation.
  - (2) A fine, not exceeding two hundred dollars and/or ten days of community service, for a second violation of this chapter within one year.
  - (3) A fine not exceeding five hundred dollars and/or fifteen days of community service, for a third violation of this chapter within one year.

(Ord. 794 § 1 (part), 1995)