

ORDINANCE NO. 1274

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILL VALLEY
AMENDING CHAPTER 7.20 OF THE MILL VALLEY MUNICIPAL CODE**

SECTION 1. Findings

The City Council finds and declares as follows:

- A. Chapter 7.20 Smoking Prohibitions and Regulations of the City of Mill Valley Municipal Code currently regulates smoking in certain public places; and
- B. The City Council directed staff to develop a proposed ordinance to expand these smoking restrictions to multi-unit residences; and
- C. Tobacco use causes death and disease and continues to be an urgent public health challenge and secondhand smoke has been repeatedly identified as a health hazard; and
- D. Exposure to secondhand smoke causes death and disease and tobacco use and exposure to secondhand smoke impose great social and economic costs; and
- E. The U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found they contained carcinogens and toxic chemicals to which users and bystanders could potentially be exposed; and
- F. Electronic cigarettes have not been fully studied, so consumers currently have no way of knowing whether electronic cigarettes are safe for their intended use, what types or concentrations of potentially harmful chemicals the products contain, or the effects of secondhand exposure; and
- G. The City does not intend to interfere with patients' access to doctor-recommended medical marijuana, but rather to protect neighbors from unwanted secondhand exposure to marijuana smoke and vapors. Patients can ingest medical marijuana in other ways that do not impact surrounding nonsmokers; and
- H. Smoking is the primary cause of fire-related injuries and deaths in the home; and
- I. Nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke, and most Californians do not smoke and a majority favor limitations on smoking indoors, outdoors, and in multi-unit residences.

NOW THEREFORE, it is the intent of the City Council in enacting this ordinance,

- a. To provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-tobacco users, especially children; by protecting nonsmokers from exposure to secondhand smoke where they live, work, and play; and by affirming and promoting a healthy environment in the City.
- b. To encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit the sale or distribution of tobacco and nicotine products to minors;
- c. And to offset the costs associated with providing City personnel to inspect retail businesses that do not comply with the purposes of this Chapter.

SECTION 2. Chapter 7.20 Smoking Prohibitions and Regulations of the Municipal Code is replaced in its entirety with the following:

“CHAPTER 7.20 SMOKING PROHIBITIONS AND TOBACCO RETAILING REGULATIONS

- 7.20.010 Title.
- 7.20.020 Definitions.
- 7.20.030 Prohibition of Smoking.
- 7.20.040 Nonsmoking Buffer Zones.
- 7.20.050 Nonsmoking Designations for New and Existing Units of a Common Interest Complex.
- 7.20.060 Nonsmoking Designations for New and Existing Units of a Rental Complex
- 7.20.070 Required Lease Terms for All New and Existing Units in Multi-Unit Residences.
- 7.20.080 Procedures and Requirements for Mandated Submissions.
- 7.20.090 Other Requirements and Prohibitions.
- 7.20.100 Smoking Prohibitions Violations and Penalties.
- 7.20.110 Licensing of Tobacco Retailers
- 7.20.120 Tobacco Retailing Violations and Penalties.
- 7.20.130 Other Applicable Laws.
- 7.20.140 Construction with State Law.

7.20.010 Title.

This chapter shall be known as “Smoking Prohibitions and Tobacco Retailing Regulations.”

7.20.020 Definitions.

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

1. “Bar” means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term “bar” shall not include the restaurant dining area.
2. “Business” means any sole proprietorship, joint venture, corporation or other business entity formed for profit making purposes.
3. “City” shall mean the City of Mill Valley.
4. “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.
5. “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 4100.
6. “Department” means the Police Department of the City of Mill Valley and any agency or person designated by the Department to enforce or administer the provisions of this chapter.

7. "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.
8. "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
9. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons or utilizes volunteers.
10. "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.
11. "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.
12. "Licensee" means a tobacco retailer who has been issued a tobacco retailer's license.
13. "Minor" shall mean any individual who is less than 18 years old.
14. "Multi-Unit Residence" means a property containing two (2) or more units, 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;
 - b. mobile home park;
 - c. a campground;
 - d. a marina or port;
 - e. a single-family home;
 - f. a single-family home with an attached or detached residential second unit when permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections.
 - g. a property containing two (2) or more units, if the units are separated by a distance of 20 or more feet in any direction.
15. "New Unit" means a Unit that is issued a final inspection after November 18, 2015 and also means a Unit that is let for residential use for the first time after November 18, 2015.
16. "Non-profit entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social, religious 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 "non-profit entity" within the meaning of this section.
17. "No smoking sign" means a sign containing the words "No smoking" or the international "No smoking" symbol (consisting of a pictorial representation of a burning cigarette in a red circle or red heart with a red bar across it).
18. "Openings" shall include main entrances, exits, operable windows and ventilation intake systems.

19. "Parking lot" means any place, publicly or privately owned, which is open to the general public and used for the parking of motor vehicles.
20. "Person" shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
21. "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.
22. "Premises" means a piece of land and any improvements upon it 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.
23. "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a 10% or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.
24. "Public place" means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.
25. "Recreational area" means any area, permanent or temporary (as in special events), 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 and arenas, 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.
26. "Rental Complex" means a Multi-Unit Residence for which fifty percent (50%) or more of units are let by or on behalf of the same landlord.
27. "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.
28. "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, transit shelters, ferry terminals, mobile vendor lines or cab stands.
29. "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 or 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.

30. "Smoking" means engaging in an act that generates smoke, such as for example, but not limited to: possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, an operating electronic cigarette, a lighted cigarette of any kind or a lighted smoke inhalation device of any kind that generates smoke, or the act of lighting or igniting a pipe, a hookah pipe, a cigar, a cigarette or smoke inhalation device of any kind that generates smoke.
31. "Sports arena" means enclosed or unenclosed sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.
32. "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.
33. "Tobacco product" means:
 - a. Any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, blunts, clove cigarettes, or any other preparation of tobacco; and
 - b. 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 by inhalation; but does not include any cessation product specifically approved by the U. S. Food and Drug Administration for use in treating nicotine or tobacco dependence.
34. "Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia within City limits. "Tobacco retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.
35. "Unenclosed area" means any area that is not an enclosed area.
36. "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; or a mobile home.

7.20.030 Prohibition of Smoking.

- A. Smoking shall be prohibited in the following enclosed and unenclosed areas within the City of Mill Valley:
 1. Places of employment.
 2. Recreational area(s) such as sports arenas.
 3. Service area(s).
 4. Dining area(s) and bar(s).

5. Parking lot(s).
6. Facilities and properties owned and controlled by the City.
7. Public places when being used for a public event, including a farmers' market, parade, fair, festival, or any other event (i.e., special event) which may be attended by the general public, provided that smoking is permitted on streets and sidewalks being used in a traditional capacity as pedestrian or vehicular thoroughfares, unless otherwise prohibited by this chapter or other law.
8. All City-owned vehicles, including jitneys and buses and other means of public transit under the authority of the City.
9. All new and existing units of a Multi-Unit Residence as detailed in Sections 7.20.050 and 7.20.060.

B. Enclosed Areas.

1. Smoking shall be prohibited in all enclosed public places within the City of Mill Valley.
2. Smoking is prohibited in any enclosed area used as a child care or health care facility subject to licensing requirements.
3. Smoking shall be prohibited in all enclosed common areas.
4. Smoking shall be prohibited in all guestroom accommodations in a hotel, motel, bed and breakfast or similar transient lodging establishment and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio.
5. Unless otherwise prohibited by law, smoking is not prohibited in the following enclosed areas:
 - a. 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 cannot reasonably convey the idea of smoking in an effective way to a reasonable member of the anticipated audience.
 - b. Smoking inside a retail tobacco store is not prohibited if:
 - i. 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;
 - ii. The retail tobacco store prohibits minors from entering the store at all times; and
 - iii. The premises of the retail tobacco store is an independent freestanding building unattached to any other structure or use.

C. Unenclosed Areas.

1. Designated Smoking Areas: Smoking shall be prohibited in all Multi-Unit Residence common areas, provided that a person with legal control over a common area may designate a portion of an unenclosed area of a common area as a designated smoking area if the area meets ALL of the following criteria:

- a. The area must be located 20 feet in any direction from any 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 20 feet in any direction 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 (10%) 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.
2. Unless otherwise prohibited by law, smoking is not prohibited in a Multi-Unit Residence unenclosed parking lot if the designated smoking area meets all criteria listed above in Section 7.20.030(C).
 3. Notwithstanding the above, a written request may be made by a person in control of a common area to the Director of Planning and Building to approve a designated smoking area that does not meet all of the criteria set forth in Section 7.20.030C(1)(a)-(g) but is consistent with the purpose of this chapter. The Director's decision on the request may be appealed to the City Manager, whose decision shall be final. The process for hearing a request and an appeal will follow the procedures for a Zoning Administrator hearing except that the requirements for public notice shall be limited to all tenants and/or property owners of the subject building.

7.20.040 Nonsmoking Buffer Zones.

- A. Smoking shall be prohibited within 20 feet in any direction from any doorway, window, opening, or vent into an enclosed or unenclosed 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.

7.20.050 Nonsmoking Designations for New and Existing Units of a Common Interest Complex.

- A. All new units of a Common Interest Complex, 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.
- B. 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 November 18, 2016.
- C. Smoking in a designated nonsmoking unit is a violation of this chapter as provided in Section 7.20.100.

7.20.060 Nonsmoking Designations for New and Existing Units of a Rental Complex

- A. All new units of a Rental Complex, 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.
- B. All units of a Multi-Unit Residence 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 November 18, 2016.
- C. Smoking in a designated nonsmoking unit is a violation of chapter as provided in Section 7.20.100.

7.20.070 Required Lease Terms for All New and Existing Units in Multi-Unit Residences.

- A. Every lease or other rental agreement for the occupancy of a new or existing unit in a Multi-Unit Residence entered into or renewed after November 18, 2015, shall be amended to include the following provisions while providing the minimum legal notice:
 - 1. For existing and new units:
 - a. Existing: A clause providing that as of November 18, 2016, it is a material breach of the agreement to allow or engage in smoking in the unit. Such a clause shall substantially 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 November 18, 2016."
 - b. New: A clause providing that as of November 18, 2015, it is a material breach of the agreement to allow or engage in smoking in the unit. Such a clause shall substantially 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 November 18, 2015."
 - 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 shall substantially 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 shall substantially 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 to all tenants or any other person subject to the control of the tenant or present by invitation or permission of the tenant that nonconsensual exposure to smoke occurring on or drifting into residential property is a nuisance and a trespass, as indicated in Section 7.20.090(G). Such a clause shall substantially state, “Other occupants of the property may use nuisance abatement laws to address nonconsensual exposure to smoke occurring on or drifting into residential property, by any lawful means, including by bringing a civil action in a court of law.”
- B. 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 Multi-Unit Residence if the landlord has fully complied with this Section.
- C. 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.

7.20.080 Procedures and Requirements for Mandated Submissions.

- 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 City Manager or his/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 City Manager or his/her designee to access and review during regular business hours or upon 24 hours written notice. A person who does not voluntarily provide access to said documents may seek precompliance review before the City’s administrative hearing officer by filing a written request with the City Manager or his/her designee within 24 hours of the request to review records.

7.20.090 Other Requirements and Prohibitions.

- A. 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 20 feet in any direction 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.

- B. No person shall dispose of used smoking or tobacco product waste within the boundaries of any area within City limits, except in a designated waste receptacle. 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 “smoke-free” sign at each point of ingress to the area, and in at least one other conspicuous point within the area. 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 prohibition on smoking within 20 feet of the entrance to the building. At least one sign with a toll-free 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 City Manager or his/her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the City. 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.
- C. 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.
- D. Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of 18 years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- E. 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. 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.
- F. 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.
- G. 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 and a trespass. Any person

bringing a civil action to enforce the nuisance provision contained in this section need not prove an injury other than the presence of smoke illegally drifting into residential property to prove a violation of this chapter.

7.20.100 Smoking Prohibitions Violations and Penalties.

- A. It shall be unlawful for any person to smoke in any area where smoking is prohibited under this chapter. Each instance of smoking in violation of this chapter shall constitute a separate violation.
- B. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to refuse to comply with any of its provisions, or to permit any employee or patron to violate this chapter.
- C. It shall be unlawful to cause, permit, aid, abet, or conceal a violation of any provision of this chapter.
- D. Violations of Sections 7.20.010 through 7.20.100 are subject to an administrative citation issued by the City, punishable by an administrative citation by an enforcement officer as provided in this Code under Chapter 8.02 Administrative Code Enforcement Remedies.

7.20.110 Licensing of Tobacco Retailers

It is unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products within City limits without first obtaining and maintaining a valid tobacco retailer's license from the City of Mill Valley for each location where these sales are conducted. No tobacco retailer's license will be issued that authorizes tobacco retailing at any location other than a fixed location. Tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.

- A. Application, Issuance and Renewal Procedure.
 1. An application for a tobacco retailer's license shall be submitted to the City in the name of the retailer, individual, or entity proposing to conduct retail tobacco sales on the business premises. The application shall be signed by the retailer, individual or entity or agent with written authority to act for same. All applications shall be submitted on a form available from the City and shall contain the name, address, and telephone number of the applicant and the business name, address, and telephone number of each establishment where tobacco is to be sold. Existing tobacco retailers shall apply for a license within 90 days of the effective date of this chapter.
 2. All tobacco retailer's licenses will be issued and due for renewal effective July 1st and will expire on the subsequent June 30th. Licensees must apply for renewal before the tobacco retailer's license expires.
 3. A licensed Tobacco Retailer shall inform the City in writing of any change in the information submitted on an application for a Tobacco Retailer's license within ten (10) business days of a change.
 4. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 *et seq.*) or any other applicable law, subject to the laws' exemptions.

B. Issuance, Display, and Transfer of License

1. Upon receipt of a completed application for a tobacco retailer's license, the City will issue a tobacco retailer's license, unless any of the following grounds for denial exist:
 - a. The application is incomplete or inaccurate;
 - b. The application seeks authorization for tobacco retailing by a person or location for which a suspension is in effect;
 - c. The application seeks authorization for tobacco retailing that is an unlawful use of land, building or structure contrary to any provision of the Mill Valley Municipal Code.
 - d. Failure to pay an outstanding fine.
2. Each licensee must prominently display the tobacco retailer's license at the location where tobacco retail sales are conducted.
3. The tobacco retailer's license is nontransferable. If there is a change in location, a new tobacco retailer's license will be issued for the new address upon receipt of notification of change of location. The new tobacco retailer's license will retain the same expiration date as the previous one.

C. Business license

If a tobacco retailer's license is denied, revoked, or suspended, the holder of a valid business license may nevertheless carry on all lawful aspects of his or her business, other than the sale or offering for sale of tobacco products, unless otherwise prohibited.

D. Enforcement

1. Enforcement of this chapter shall be the responsibility of the Police Department. Additionally, any person may report violations of this Section to the Police Department. The City may rely upon reports from any law enforcement officer or persons acting on behalf of the City as to violations of this chapter.
2. The City may seek compliance with this chapter by any remedy allowed under this Code, including, but not limited to, revocation, suspension, civil fines and any other remedy allowed by law. Such remedies may be sought independent of one another or may be sought in addition to one another.

E. License revocation or suspension

1. A tobacco retailer's license may be revoked or suspended for any violation of this Section or any state or federal tobacco-related laws. A tobacco retailer's license may also be revoked or suspended on any of the following grounds:
 - a. One or more of the grounds for denial of a tobacco retailer's license existed either when a license application was made or before the tobacco retailer's license was issued;
 - b. The tobacco retailer's license has been transferred in violation of Section B; or
 - c. Two or more suspensions within a twelve (12) month period.
2. If any grounds for revocation exist, the City may issue a notice of revocation or suspension hearing. The notice of revocation or suspension hearing will include all of the following information:

- a. The address or a definite description of the location where the tobacco retailer's license is issued;
 - b. The grounds for revocation or suspension;
 - c. The date of the revocation or suspension hearing before the administrative hearing officer designated by the City Manager. The notice of revocation or suspension hearing will set the hearing date no sooner than twenty days and no later than forty-five days following the date the notice of revocation or suspension hearing is served.
3. A tobacco retailer's license may be revoked or suspended by the hearing officer after a tobacco retailer's license revocation or suspension hearing. At the hearing, the licensee will be given the opportunity to testify and to present evidence concerning the grounds set forth in the notice of revocation or suspension hearing. After considering the testimony and evidence submitted at the hearing, the hearing officer will issue a written decision to revoke or suspend or not revoke or suspend the license and will list in the decision the reason(s) for that decision. A revocation or suspension is without prejudice to the filing of a new application for a tobacco retailer's license.
4. The decision of the hearing officer to revoke or suspend a tobacco retailer's license shall be final and conclusive. Within 20 days after the administrative hearing officer's filing and service of the order, a responsible party held liable under the decision may seek judicial review by filing an appeal to be heard by the Superior Court pursuant to California Government Code Section 53069.4. A copy of the notice of appeal shall be served in person or by first-class mail upon the City by the appellant.
5. The tobacco retailer's license revocation or suspension becomes a final administrative order at one of the following times:
- a. On the date of the revocation or suspension hearing, if a tobacco retailer fails to appear at a scheduled revocation or suspension hearing;
 - b. On the date when the time for an appeal has expired without a written appeal on record.

7.20.120 Tobacco Retailing Violations and Penalties.

- A. Violations of Section 7.20.110 of this chapter are a misdemeanor and subject to an administrative citation issued by the City, punishable by an administrative fine not less than \$500.00 per violation.
- B. It is the specific intention of the City Council that the administrative fine may be assessed by the Chief of Police for violations even where the City seeks revocation or suspension of a tobacco retailer's license.
- C. . Each day that tobacco products are offered for sale by a tobacco retailer without a tobacco retailer's license is a separate violation. For violations other than for smoking or tobacco retail, each day of a continuing violation of this chapter shall constitute a separate violation. Thus, this administrative fine may be assessed at \$500.00 per violation and may be assessed \$500.00 for each day as a separate violation. The remedies provided by this chapter are cumulative and are in addition to any other remedies available at law or in equity.
- D. All fines and interest upon proceeds of fines shall be used to fund the cost of administration and enforcement of this chapter, as well as an educational program to explain and clarify the purposes and requirements of this chapter to citizens affected by

it, and to guide individuals, landlords, employers, and nonprofit entities in their compliance with it. Such program may include publication of a brochure for affected individuals, landlords, employers, and/or nonprofit entities explaining the provisions of this chapter.

7.20.130 Other Applicable Laws.

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

7.20.140 Construction with State Law.

To the extent that any provisions of this chapter are preempted by state law, including but not limited to, California Labor Code section 6404.5 or California Government Code 7596, then the applicable state law shall prevail and the provisions of this chapter shall not apply.

SECTION 3. Construction, Severability.

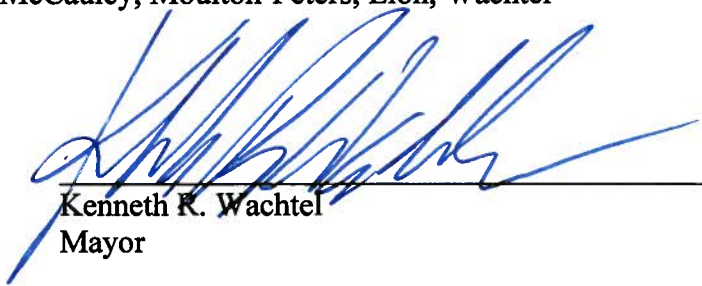
It is the intent of the City Council of the City of Mill Valley to supplement applicable state and federal law and not to duplicate or contradict such law and this Ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Mill Valley 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.

SECTION 4. Effective Date

This ordinance shall be in full force and effect thirty (30) days after the date of its adoption.

THE FOREGOING ORDINANCE was read at a regular meeting of the Mill Valley City Council on the 5th day of October, 2015, and was adopted at a regular meeting of the City Council on the 19th day of October, 2015 by the following vote:

AYES: Councilmembers: Sloan, McCauley, Moulton-Peters, Lion, Wachtel
NOES: None
ABSENT None
ABSTAIN: None



Kenneth R. Wachtel
Mayor

ATTEST:


Kelsey Rogers
City Clerk/Administrative Analyst