

SMOKING POLICIES AND RESTRICTIONS

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7.92.10 - Definitions.

- A. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from Cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "Cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the California Health and Safety Code.
- B. “County” shall mean the County of Mono.
- C. “County Building” shall mean any County-owned building including, but not limited to, the Bridgeport courthouse, Bridgeport annexes I and II, the Bridgeport sheriff and probation department buildings, the County road shops and all community and senior centers.
- D. “Business” means any sole proprietorship, partnership, joint venture, corporation, association, or any other entity formed for profit-making purposes or that has an Employee, as defined in this section.
- E. “Characterizing Flavor” means a distinguishable taste or aroma, other than the taste or aroma of Tobacco or Cannabis, imparted by Tobacco or Cannabis, either prior to or during use of the Tobacco Product or Cannabis or any byproduct produced by the Tobacco Product or Cannabis, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, nut or spice; provided, however, that a Tobacco Product or Cannabis shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.

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- F. "Dining Area" means any area available to or customarily used by the general public, that is designed, established, or regularly used for consuming food or drink.
- G. "Electronic Smoking Device" means an electronic device that can be used to deliver an inhaled dose of nicotine, Tobacco, Cannabis, or any other substances, including any component, part or accessory of such a device, whether or not sold separately.
- H. "Employee" means any Person who is employed; retained as an independent contractor by any Employer, as defined in this section; or any Person who volunteers his or her services for an Employer, association, nonprofit, or volunteer entity.
- I. "Employer" means any Person, partnership, corporation, association, nonprofit or other entity which employs or retains the service of one or more Persons, or supervises volunteers.
- J. "Enclosed Area" means:
 - 1. an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:
 - a. any type of overhead cover whether or not that cover includes vents or other openings and at least three walls or other vertical constraints to airflow including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or
 - b. four walls or other vertical constraints to airflow including, but not limited to, vegetation that exceeds six feet in height, whether or not those boundaries include vents or other openings.
- K. "Flavored Tobacco Product" means any Tobacco Product that imparts a Characterizing Flavor.
- L. "Flavored Cannabis Product" means Cannabis that imparts a Characterizing Flavor when smoked.
- M. "Labeling" means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.
- N. "Manufacturer" means any Person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a Tobacco Product; or imports a finished Tobacco Product for sale or distribution into the United States.
- O. "Multi-Unit Residence" means any residential structure with two (2) or more Units and has at least one or more shared walls, floors, or ceilings. Additionally, a residential structure that has two (2) or more Units and has a shared ventilation system is considered a Multi-Unit Residence.

A Multi-Unit Residence **does not** include the following:

- 1. a single-family residence with a detached in-law or secondary dwelling unit;

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2. a single, contiguous residence in which rent is shared by the residents; and
 3. A hotel or motel that meets the requirements of California Civil Code section 1940, subdivision (b) (2).
- P. "Multi-Unit Residence Common Area" means any indoor or outdoor common area of a Multi-Unit Residence accessible to and usable by more than one residence, including but not limited to halls, lobbies, laundry rooms, outdoor eating areas, play areas, swimming pools and recreation areas.
- Q. "Nonprofit Entity" means any entity that meets the requirements of California Corporations Code Section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a Nonprofit Entity within the meaning of this section.
- R. "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold or offered for sale to a consumer.
- S. "Place of Employment" means any area under the legal or de facto control of an Employer, Business or Nonprofit Entity that an Employee or the general public may have cause to enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, construction sites, vehicles used in employment or for Business purposes, taxis, Employee lounges, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses, and private residences that are used as childcare or health care facilities subject to licensing requirements.
- T. "Person" means any natural Person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- U. "Playground" means any park or Recreational Area designated in part to be used by children that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on County property.
- V. "Public Place" means any place, public or private, open to the general public regardless of any fee or age requirement, including, for example, bars, restaurants, clubs, stores, stadiums, parks, Playgrounds, taxis and buses.
- W. "Reasonable Distance" means a distance of at least twenty (20) feet to ensure that occupants of a building and those entering or existing the building are not exposed to secondhand smoke created by smokers outside of the building.
- X. "Recreational Area" means any area, public or private, open to the public for recreational purposes regardless of any fee requirement, including, for example, parks, gardens, sporting facilities, stadiums, and Playgrounds, but excluding those areas

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where the County lacks jurisdictional authority to regulate.

- Y. "Service Area" means any area designed to be or regularly used by one or more Persons to receive or wait to receive a service, enter a Public Place, or make a transaction whether or not such service includes the exchange of money, including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops, and cab stands.
- Z. "Smoke" or "Smoking" means to inhale, exhale, burn, or carry any lighted or heated device or pipe, or any other lighted or heated Tobacco Product or Cannabis intended for inhalation, whether natural or synthetic, in any manner or in any form including but not limited to a cigar, cigarette, cigarillo, vaporizer, joint, pipe, hookah or Electronic Smoking Device. "Smoke" includes the use of an Electronic Smoking Device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in a place.
- AA. "Smoking Product" means any substance or product containing nicotine, Tobacco or Cannabis that is meant to be used in conjunction with an e-cigarette or any other type of smoking or vaporizing contraption including but not limited to joints, cigarettes, cigars, bongs or pipes. "Smoking Product" also means, Indian cigarettes called "bidis", and cartridges and liquid solutions for e-cigarettes, which may be utilized for smoking, chewing, inhaling or other manner of ingestion.
- BB. "Tobacco Paraphernalia" means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.
- CC. "Tobacco" or "Tobacco Product" means:
1. Any product containing, made, or derived from tobacco leaf or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff.
 2. Any electronic device that delivers nicotine or other similar substances to the Person inhaling from the device, including, but not limited to an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
 3. Notwithstanding any provision of subsections (a) and (b) to the contrary, "Tobacco Product" includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. "Tobacco Product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.
- DD. "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

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Paraphernalia. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

EE. "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, without limitation, an apartment; a condominium; a townhouse; a room in a motel or hotel; a dormitory room.

7.92.020 – Prohibitions – locations where smoking is prohibited.

A. Except as otherwise provided in this Chapter, Smoking is prohibited in the following enclosed and unenclosed locations in the County:

1. All areas where smoking is prohibited by state or federal law, including, but not limited to, indoor workplaces, bars and restaurants (California Labor Code Section 6404.5); state, County, and city buildings (California Government Code Sections 7596 through 7598); tot lots and Playgrounds (California Health and Safety Code Section 104495); and pursuant to (California Health and Safety Code Section 11362.3).
2. County vehicles.
3. Public parks.
4. Recreational Areas.
5. Service Areas.
6. Dining Areas.
7. Public Places, when being used for a public event, including a sporting event, farmer's market, parade, craft fair, or any event which may be open to or 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. Multi-Unit Residences in accordance with section 7.92.040.

B. Nothing in this Chapter prohibits any Person or Employer with legal control over any property from prohibiting Smoking on any part of such property.

7.92.030 – Reasonable smoking distance required – 20 Feet.

Smoking shall occur at a Reasonable Distance of at least twenty (20) feet outside any Enclosed Area and from entrances, operable windows, and ventilation systems of Enclosed Areas where Smoking is prohibited, including in or around Multi-Unit Housing or portions thereof where smoking is prohibited as provided in section 7.92.040 of this Chapter, to ensure that secondhand smoke does not enter the area through entrances, windows, ventilation systems or any other means to ensure that those indoors and those entering or leaving the building are not involuntarily exposed to secondhand smoke or Electronic Smoking Device or vapor.

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7.92.040 – Multi-Unit Housing.

- A. If adopted rules of the Homeowners' Association; Codes, Covenants & Restrictions (CC&Rs), or any individual lease for a Multi-Unit Residence contain legally enforceable provisions prohibiting Smoking in all or in any portion of the Multi-Unit Residence ("Enforceable Restrictions"), then the following provisions shall apply, as applicable, to those areas within the Multi-Unit Residence where Smoking is so prohibited:
1. No Person with legal control over a Multi-Unit Residence Common Area or other area in which Smoking is prohibited shall knowingly permit Smoking in any nonsmoking area that is under the Person's control or knowingly permit the presence of ash trays, ash cans, or other receptacles designed for or primarily used for disposal of Smoking waste within the area. Such Person with legal control over a common or other area in which Smoking is prohibited shall maintain such area free of Tobacco litter and waste.
 2. Additional Smoking-related prohibitions for Multi-Unit Residences:
 - a. No Person shall Smoke in any nonsmoking area.
 - b. No Person shall intimidate or harass any Person who seeks compliance with an Enforceable Restriction or with this Chapter. Moreover, no Person shall intentionally or recklessly expose another Person to secondhand smoke in response to that Person's effort to achieve compliance with an Enforceable Restriction or this Chapter. Violation of this subsection shall constitute a misdemeanor.
 - c. Causing, permitting, aiding, or abetting a violation of any provision of an Enforceable Restriction, or this Chapter, shall also constitute a violation of this Chapter.
 3. Notwithstanding subsection (1) a Person with legal control over a Multi-Unit Residence Common Area, or Authorized Representative of such Person may designate a portion of said area as a Smoking area provided that at all times the designated Smoking area complies with subsection (4) below.
 4. A designated Smoking area:
 - a. Shall be an unenclosed and clearly delineated area, as described in this subsection;
 - b. Shall be located at least 20 feet in any direction from any operable doorway, window, opening or other vent into an Enclosed Area that is located at the Multi-Unit Residence;
 - c. Shall comply with section 7.92.030 and shall not include, and shall be at least 20 feet in any direction from, the following areas at a Multi-Unit Residence or portion thereof, where smoking is prohibited:
 - i. Playground or similar area where primarily children play; and

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- ii. Areas with improvements that facilitate physical activity including Playgrounds and swimming pools;
5. Signage at Multi-Unit Residences, or those portions of Multi-Unit Residences where smoking is prohibited, shall comply with section 7.92.050.
6. Required terms in a lease and a purchase and sale agreement for Units covered by this section:
 - a. Every lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Residence entered into after the date this Chapter takes effect, and which has been designated as nonsmoking pursuant to subdivision A of this section, shall include the following:
 - i. A provision stating in substance that it is a material breach of the lease/rental agreement for the tenant, or any other Person subject to the control of the tenant or present by invitation or permission of the tenant, to: (i) Smoke in any existing Unit or in any common area of the property other than a designated Smoking area; and (ii) violate any law, rule or regulation prohibiting Smoking anywhere on the property;
 - ii. A clear description of all areas on the property where Smoking is allowed or prohibited and a clear statement indicating that Smoking is prohibited at least 20-feet from any Enclosed Area, window or ventilation.
 - iii. A clause expressly conveying third-party beneficiary status to all tenants and lawful occupants of the Multi-Unit Residence as to the Smoking provisions of the agreement.
 - b. Every agreement for the purchase and sale of any Multi-Unit Residence or any new or existing Unit in a Multi-Unit Residence entered into after the date this Chapter takes effect, and which has been designated as nonsmoking pursuant to subdivision A of this section, shall include the following:
 - i. A provision stating in substance that it is a material breach of the agreement for any resident of the Multi-Unit Residence or Unit, or any other Person subject to the control of a resident or present by invitation or permission of a resident, to: (i) Smoke in an existing Unit or in any common area of the property other than a designated Smoking area unless the property has any existing Units; and (ii) violate any law, rule or regulation prohibiting Smoking anywhere on the property;
 - ii. A clear description of all areas on the property where Smoking is allowed or prohibited and a clear statement indicating that

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Smoking is prohibited at least 20-feet from any Enclosed Area, window or ventilation.

- iii. A provision expressly conveying third-party beneficiary status to all property owners and lawful occupants of the Multi-Unit Residence as to the Smoking provisions of the agreement.
- c. This Chapter shall not create liability in a landlord, property manager, property owner, or homeowners' association for a breach of any Smoking provision in a lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Residence, or in an agreement for the purchase and sale agreement of a Multi-Unit Residence or any Unit therein.
- d. 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.

7.92.050 – Posting of signs.

Posting of signs shall be the responsibility of the owner, operator, manager or other Person having control of the place where Smoking is prohibited by this Chapter in cooperation with the Mono County Public Health Department. Except in facilities owned or leased by County, state, or federal governmental entities, "No Smoking" signs with letters of not less than one-half inch 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 posted where Smoking is prohibited in accordance with this Chapter. Where applicable, all signs shall clearly state that Smoking is prohibited within 20 feet of any Enclosed Area as defined in subsection I of section 7.92.010 and within 20 feet of entrances, operable windows and ventilation systems. The requirement to post signs pursuant to this section shall not apply to the inside of Units of Multi-Unit Residences. Any owner, manager, operator, Employer or Employee or other Person having control of a place where Smoking is prohibited by this Chapter shall not be deemed to be in violation of this Chapter if signs have been posted in a manner consistent with the requirements of this section. For purposes of this Chapter, the Mono County Public Health Department shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the County.

7.92.060 - Duty of person, employer, business or nonprofit entity.

Notwithstanding any other provision of this Chapter, any owner, landlord, Employer, Business, Nonprofit Entity, or any other Person who controls any property, establishment, or Place of Employment regulated by this chapter may declare any part of such area in which Smoking would otherwise be permitted to be a nonsmoking area.

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7.92.070 - Sale of flavored tobacco products prohibited.

- A. Except as provided in subsection D, it shall be a violation of this Chapter for any Tobacco Retailer or any of the Tobacco Retailer's agents or Employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any Flavored Tobacco Product.
- B. There shall be a rebuttable presumption that a Tobacco Retailer in possession of Flavored Tobacco Products, including but not limited to individual Flavored Tobacco Products, packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with the intent to sell or offer them for sale.
- C. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, Manufacturer, or any Employee or agent of a Tobacco Retailer or Manufacturer has:
 - 1. Made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;
 - 2. Used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor; or
 - 3. Taken action directed to consumers that would be reasonably expected to cause consumers to believe the Tobacco Product imparts a Characterizing Flavor.
- D. Any Tobacco Retailer whose inventory includes Flavored Tobacco Products at the time this Chapter becomes effective may continue to sell the Flavored Tobacco Product(s) until the supply is exhausted but shall not thereafter order new supplies.

7.92.080 – Penalties and enforcement.

- A. Unless the applicable section of this Chapter provides that violation is a misdemeanor, any Person or Business violating any provision of this Chapter, upon conviction thereof, shall be guilty of an infraction and subject to a fine (not including court-imposed mandatory penalties) of \$100.00 for the first violation, \$200.00 for the second violation, and \$500.00 for any subsequent violation. For purposes of this Chapter, each day of noncompliance shall be considered a separate violation.
- B. The provisions of this Chapter may be enforced through civil and/or criminal proceedings including, but not limited to, action for nuisance abatement pursuant to Mono County Code Chapter 7.20, administrative citation pursuant to Mono County Code Chapter 1.12, following the procedures set forth in subsection D, and/or injunctive relief. In any enforcement action, the County may seek reimbursement for the costs of investigation, inspection or monitoring leading to the establishment of the violation, and for the reasonable costs of preparing and bringing the enforcement action. The remedies provided by this section 7.92.080 are nonexclusive, cumulative and in addition to any other remedy the County may have at law or in equity.

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- C. The Mono County Public Health Director or his/her designee (“Director”) is authorized to enforce, on behalf of the County, the provisions of this Chapter, and to refer such enforcement to the Mono County Code Compliance Division as provided in subsection D below. Any Person may request that the Director investigate a violation of this Chapter by filing a written complaint with the Public Health Department.
- D. The following procedures may be followed by the Director upon receipt of a written complaint and shall be followed prior to referring enforcement to Mono County Code Compliance:
1. The Director shall contact the owner, operator or manager of the establishment, Multi-Unit Residence or facility (the “establishment”) or Person that is the subject of the complaint to investigate the nature and extent of the violation and may conduct such additional investigation as may be necessary, to determine whether the violation occurred.
 2. If the Director concludes that a violation occurred, he or she shall provide to the owner, operator or manager of the establishment or Person committing the violation a copy of the provisions of this Chapter and such advisory assistance to avoid future violations as may be necessary to achieve compliance.
 3. Upon receipt of a second written complaint involving the same Person or establishment, the Director shall attempt to meet with the owner, operator or manager or Person alleged to have violated this Chapter to further investigate the matter and shall conduct such additional investigation as may be necessary. If it is determined that a subsequent violation has occurred, the Director shall mail, certified mail, postage prepaid, return receipt requested, a written directive to the owner, operator, manager or other Person, explaining in detail the steps required in order to achieve future compliance and advising that the County may initiate enforcement proceedings pursuant to Chapters 1.12 or 7.20, or pursue such other enforcement as is authorized by law, in the event of a subsequent violation.
 4. Upon receipt of a third written complaint regarding the same Person or establishment, the Director may refer the matter to Mono County Code Compliance for further investigation and enforcement pursuant to Chapters 1.12 and/or 7.20, provided that the Code Compliance Division confirms that it has sufficient resources available to process the complaint.
 5. Any violation determined by the Code Compliance Division to have occurred following issuance of a Notice of Violation in accordance with Chapter 1.12, shall constitute cause for issuance of an Administrative Citation under that Chapter, except that the amount of the penalty imposed for each violation shall be as set forth in subsection 7.92.080.A. and the hearing officer for any administrative appeal shall be a member of the Board of Supervisors or its designee.
- E. The Director, and Code Compliance Specialist if applicable, shall maintain clear and thorough records and logs of all investigations and communications made in relation to every written complaint filed with the Public Health Department pursuant to this section.