

**ORDINANCE NO. next in line**

**ORDINANCE OF THE CITY OF SAN RAMON REPEALING AND REPLACING  
CHAPTER IV SMOKING REGULATIONS OF DIVISION B6  
OF THE SAN RAMON MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF SAN RAMON DOES ORDAIN as follows:

**SECTION 1:** CHAPTER IV SMOKING REGULATIONS OF DIVISION B6 of the San Ramon Municipal Code is hereby repealed in their entirety and replaced as follows:

**B6-70. - Findings.**

- A. Smoking related illness is the leading cause of preventable death in the United States, causing about 480,000 thousand deaths each year including more than 41,000 resulting from secondhand smoke exposure.
- B. Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease, stroke, and stomach, liver, uterine, cervix and kidney cancer.
- C. According to the Center for Disease Control, there is no risk-free level of exposure to secondhand smoke. Secondhand smoke causes numerous health problems including severe asthma attacks, respiratory infections, stroke, heart disease and lung cancer. In addition, the United States Environmental Protection Agency has determined that secondhand smoke is a Class A carcinogen for which there is no safe exposure level.
- D. Secondhand smoke is responsible for seventy-three thousand lung cancer deaths and thirty-four thousand heart disease deaths between 2005-2009 among adult nonsmokers in the United States.
- E. Each day in the United States, approximately three thousand two hundred young people under eighteen years of age smoke their first cigarette. Tobacco advertising plays a significant role in encouraging use of tobacco products by minors.
- F. Tobacco use is a major source of litter because cigarette butts can take up to fifteen years to decompose, leaking chemicals into the soil and posing harm to small children and pets if ingested.
- G. According to the 2008 "Benefits of Smoke-Free Regulations in Outdoor Settings" study by the University of Sydney, to be completely free from exposure to secondhand smoke in outdoor places, a person must move approximately twenty-five feet away from the source of the smoke, about the width of a two lane road.
- H. According to the California Department of Public Health publication "California Tobacco Facts & Figures 2016," 88.4 percent of Contra Costa County residents are nonsmokers.
- I. According to the Center for Tobacco Policy and Organizing, ninety-seven percent of California voters believe that secondhand smoke is harmful to those who inhale it.
- J. Most electronic smoking devices (including e-cigarettes) contain nicotine, which is addictive and toxic to developing fetuses. Nicotine exposure can also harm adolescent brain

development, which continues into the early to mid-20s.<sup>1</sup> E-cigarette aerosol can contain chemicals that are harmful to the lungs and youth e-cigarette use is associated with the use of other tobacco products, including cigarettes. E-cigarette aerosol can contain harmful and potentially harmful substances, including nicotine, heavy metals like lead, volatile organic compounds, and cancer-causing agents.

- K. Electronic smoking devices are now the most commonly used tobacco product among youth. In 2016, more than 2 million U.S. middle and high school students used e-cigarettes in the past 30 days, including 4.3% of middle school students and 11.3% of high school students.
- L. In 2016, 3.2% of U.S. adults were current users of electronic smoking devices.
- M. The secondhand aerosol emitted from electronic smoking devices has been found to be a potential health hazard, containing at least ten chemicals known to the State of California to cause cancer, birth defects or other reproductive harm. The State of California's Tobacco Education and Research Oversight Committee (TEROC) "opposes the use of e-cigarettes in all areas where other tobacco products are banned."
- N. Secondhand marijuana smoke has been identified as a potential health hazard, as evidenced by the California EPA including marijuana smoke on the Proposition 65 list of chemicals known to cause cancer.

**B6-71. - Purpose.**

The city of San Ramon has a compelling interest in enacting this chapter to restrict smoking in public places to protect those who live, work and play in San Ramon from the risks of secondhand smoke and vapor.

Numerous studies have found smoking and other forms of tobacco use, including vaping, to be an indoor and outdoor health hazard. The smoking any other weed or plant, or any product or derivative thereof, is similarly a proven danger to health. The city of San Ramon desires to revise the existing ordinance of smoking regulations to address (1) the hazards of the use of e-cigarettes and other tobacco delivery systems that are harmful to persons other than the intended user; and (2) the similar hazards associated with the smoking of other non-tobacco weeds or plants or any derivative of weeds or plants. Restricting the use of tobacco and other substances in public places protects and enhances public health and welfare. Through this chapter, city recognizes the dangers of smoking and desires to reduce exposure to secondhand smoke and vapor by creating smoke-free and vapor-free environments for its citizens, while striking a reasonable balance between the needs of persons who smoke and the need of nonsmokers to breathe smoke-free air.

**B6-72. - Definitions.**

The following words and phrases as used in this chapter are defined as follows:

"Advertising display sign" means any sign, billboard, signboard, poster, placard, pennant, banner, graphic display, mural, or similar device that is used to advertise or promote a product.

"Electronic smoking device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances. An "electronic smoking device" includes a device that is manufactured, distributed, marketed, or sold as an electronic cigarette or e-cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, or a vapor pen.

"Employer" means any person, partnership or corporation, including political subdivisions of the state that employs the services of one or more individual persons.

"Flavored tobacco product" means any tobacco product, other than cigarettes as defined by federal law, that contains a constituent that imparts a characterizing flavor. A tobacco product whose labeling or packaging contains text or an image indicating that the product imparts a characterizing flavor is presumed to be a flavored tobacco product.

"Enclosed" means closed in by roof and four walls with appropriate openings for ingress and egress and includes all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.

"Little cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three pounds per thousand. "Little cigar" includes, but is not limited to, any tobacco product known or labeled as "small cigar" or "little cigar."

"Menthol cigarettes" means cigarettes as defined by federal law, that have a characterizing flavor of menthol, mint, or wintergreen, including cigarettes advertised, labeled, or described by the manufacturer as possessing a menthol characterizing flavor.

"Mobile billboard" means any sign, billboard, signboard, poster, placard, or other advertising display upon or affixed to a vehicle which display is used to advertise a product illegal to sell to minors, when the supporting vehicle or trailer is parked within a public right-of-way or on private property visible to the public for a duration of time and in a manner which clearly indicates that the sign is for advertising products illegal to sell to minors or which carry a specific brand name, logo, or indicia or a product illegal to sell to minors. For the purposes of this chapter a mobile billboard shall not include any advertisements on the side of a van, truck, or other vehicle which is primarily used for the transportation of goods or products.

"Multi-family housing unit" means a structure containing two or more dwelling units such as duplexes, triplexes, fourplexes, apartments, townhouses, and condominiums.

"Outdoor community event" means an event including but not limited to farmer's markets, parades, craft fairs, festivals, concerts, performances or other exhibitions which is conducted outdoors in unenclosed space and which is open to and may be attended by the general public.

"Package" or "packaging" means a pack, box, carton, or container of any kind, or any wrapping, in which a tobacco product is sold or offered for sale to a consumer.

"Park" means an outdoor recreation facility that may provide a variety of recreational opportunities including playground equipment, open space areas for passive recreation and picnicking, and sport and active recreation facilities.

"Place of employment" or "workplace" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to, work areas, employee lounges, conference rooms and employee cafeterias.

"Self-service display" means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer. A vending machine is a form of self-service display.

"Single-family dwelling unit" means an unattached structure designed to be occupied as a home by one family.

"Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine or illegal substances, and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "smoke" includes, but is not limited to, tobacco smoke, electronic smoking device vapors, marijuana smoke, and smoke from any illegal substance.

"Smoke delivery system" means any cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any device or implement intended to facilitate human inhalation of smoke from any plant or plant product or derivative.

"Smoking" means inhaling or exhaling smoke from, or carrying, any lighted, heated, burning, or ignited smoke delivery system.

"Tobacco product" means any substance containing any tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and smokeless tobacco.

"Tobacco retailer" means any individual or entity who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia. "Tobacco retailing" means 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.

"Unenclosed" means any area that is not enclosed.

"Vending machine" means any electronic or mechanical device or appliance, the operation of which depends upon insertion of money, whether in coin or in paper bill, or other thing representative of value, which dispenses or releases a tobacco product and/or tobacco accessories.

### **B6-73. - Prohibitions.**

- A. Smoking indoors or outdoors, in enclosed or unenclosed spaces and on all property — public or private — within the city of San Ramon is prohibited except as provided in [Section] B6-74 below. Additionally, smoking is prohibited at outdoor community events open to the public such as farmer's markets, even if the event is held on property or at a location where smoking would otherwise be allowed under this chapter.
- B. Advertising of tobacco products on an advertising display sign in a store front window or in any manner, including mobile billboards, within one thousand six hundred feet of the perimeter of an elementary, middle or high school, public park, or public playground is prohibited. Exceptions to this prohibition are established for advertising:
  1. Located inside a commercial establishment, unless such advertising display sign or promotion is attached to, affixed to, leaning against, or otherwise in contact with any window or door in such a manner that it is visible from a street, sidewalk, or other public thoroughfare.
  2. On vehicles, other than mobile billboards.

3. On any sign located inside or immediately outside a commercial establishment if the sign provides notice that the establishment sells tobacco products, so long as the sign does not promote any brand of tobacco product.
  4. On tobacco product packaging.
- C. No person shall knowingly distribute or furnish without charge, or cause to be furnished without charge to the general public, cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products except in retail tobacco stores where the primary business purpose of the store is the sale of tobacco products.
- D. No tobacco product may be sold, offered for sale, or distributed by or from a vending machine or other appliance, or any other devices designated or used as vending purposes. All tobacco products shall be offered for sale exclusively by means of vendor assistance, with tobacco products kept in a locked case or in an area not accessible to the public, and requiring employee assistance to retrieve the tobacco products.

**B6-74. - Exemptions.**

The prohibition in Section B6-73A against smoking shall not apply to the following:

- A. Smoking inside a single-family dwelling unit which is not licensed as a family day care facility and in the yard of such unit so long as any outside smoking is not within twenty-five feet from any entrance, exit, operable window or air intake of a neighboring single-family dwelling unit.
- B. Smoking inside a multi-family housing unit and in an unenclosed area designated for smoking by the owner or person/entity in control of the property but not on patios or balconies accessed from an individual unit or in common areas open to public access or to unrestricted common areas such as hallways. The unenclosed designated smoking area must be at least twenty-five feet from any individual unit and at least twenty-five feet from unenclosed areas used by children or for physical activity such as swimming or tennis. It must have a clearly marked perimeter and be identified by conspicuous signs.
- C. Smoking inside a personal vehicle not used for hire such as a taxi but only when there are no minors in the vehicle.
- D. Smoking on public sidewalks at locations not adjacent to a public or private park or school and not within twenty-five feet from any entrance, exit, operable window or air intake opening of any building used for residential or commercial purposes.
- E. Smoking in privately owned unenclosed parking lots open to the public but not within twenty-five feet of any commercial building served by the parking lot or within twenty-five feet of buildings on adjacent properties.
- F. Smoking in workplace designated smoking areas but only to the extent preempted by and allowed under state law (California Labor Code section 6404.5).
- G. Smoking in privately owned enclosed facilities at private social events not open to the public such as wedding receptions but only to the extent allowed by the owner or person/entity in control of the property or facility and only in designated smoking areas conforming to the standards set forth in section 6404.5 of the California Labor Code.

- H. Smoking in designated rooms rented to guests in hotels and motels so long as the number of such rooms does not exceed twenty-five percent of the total rooms in the hotel or motel.
- I. Smoking on any outdoor area of golf courses.

An owner or person/entity in control of a property or facility for which an exemption is available under this section nonetheless may prohibit smoking on the property or in the facility for any reason.

**B6-75. - Preparation of informational handout.**

The city manager shall prepare a brief synopsis of Sections B6-73 and B6-74 explaining that smoking is prohibited throughout the city of San Ramon with certain exceptions and describing the areas and circumstances under which smoking is allowed. Copies of the statement shall be displayed and made available to the public at all city owned buildings regularly visited by the general public. The statement shall also be posted on the city website and included at least once a year in any city newsletter mailed to all residents.

**B6-76. - Posting of signs.**

- A. Buildings and other enclosed spaces: For buildings and other enclosed spaces open to the public or to which members of the public are invited and in which smoking is not allowed, at least one "No Smoking" or "Smoke Free" sign with letters not less than one 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 posted in a conspicuous location by the owner or person having control of such building or other enclosed space. The sign may be in the form of a decal.
- B. Outdoor unenclosed space: A sign as described above in subparagraph A shall be posted at or in close vicinity to primary access points to all parks and public trails. The sign may be in the form of a decal.
- C. Notwithstanding this section, the presence or absence of "No Smoking" signs shall not be a defense to a charge of smoking in violation of any other provision of this chapter.

**B6-77. - License required.**

It shall be unlawful to sell or offer for sale any tobacco product without possession of a tobacco sale endorsed business license. The procedures and requirements for obtaining a tobacco sale endorsement are set forth in Sections B3-17 through B3-19 of this code. This requirement shall apply to all new business licenses issued following the effective date of this ordinance and to all existing licenses at the first renewal following the effective date of this ordinance. Following the initial issuance or renewal of a business license with a tobacco sale endorsement, such license may not be renewed with a tobacco sale endorsement for a period of two years if (a) the licensee or any of licensee's agents or employees have been convicted on more than one occasion during the expiring period of the license of violating this chapter or any state or federal law governing the sale and distribution of tobacco products and (b) the events upon which the conviction was based occurred at licensee's business premises in the city of San Ramon.

**B6-78. - Violation—Penalty.**

Acts in violation of this chapter which continue, exist or occur on more than one day constitute separate violations and offenses on each such day and are punishable as infractions pursuant to section A1-32 of this code.

**B6-79. - Civil penalties.**

In addition to any other remedy available to the city, this chapter may be enforced pursuant to the administrative citation provisions of this code.

**B6-80. Tobacco Sales.**

**A Self-service displays.**

1. It is unlawful for any person or tobacco retailer to sell, permit to be sold, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by means of self-service display, vending machine, rack, counter-top or shelf that allows self-service sales for any tobacco product or tobacco paraphernalia.
2. All tobacco products and tobacco paraphernalia shall be offered for sale exclusively by means of vendor or employee assistance. Tobacco products and tobacco paraphernalia shall be kept in a locked case that requires employee assistance to retrieve the tobacco products or tobacco paraphernalia.

**B. Distribution of free samples and coupons.** It is unlawful for any person, agent, or employee of a person in the business of selling or distributing cigarettes or other tobacco or smoking products to distribute, or direct, authorize, or permit any agent or employee to distribute, any of the following to any person on any public street or sidewalk or in any public park or playground or on any other public ground or in any public building:

1. Any tobacco product;
2. Coupons, certificates, or other written material that may be redeemed for tobacco products without charge.

**C. Flavored tobacco products and menthol cigarettes.** It is a violation of this division for any tobacco retailer to sell or offer for sale any flavored tobacco product or menthol cigarettes within five hundred feet of any parcel occupied by a public or private school, public playground or park, or library. For the purposes of this section, distance is measured by the shortest line connecting the entry door of the tobacco retailing business to any point on the property line of the other parcel.

**D. Packaging and labeling.** No tobacco retailer may sell any tobacco product to any consumer unless that product is sold in the original manufacturer's packaging intended for sale to consumers and conforms to all applicable federal labeling requirements.

**E. Minimum package size for little cigars and cigars.** No tobacco retailer may sell to a consumer any of the following:

1. Any little cigar unless it is sold in a package of at least ten little cigars.
2. Any cigar unless it is sold in a package of at least ten cigars. This subsection does not apply to a cigar that has a price of at least five dollars per cigar, including all applicable taxes and fees.

**F. Identification required.** No tobacco retailer may sell or transfer a tobacco product or tobacco paraphernalia to a person who reasonably appears to be under the age of twenty-seven years without first examining the identification of the recipient to confirm that the

recipient is at least the minimum age under state law to purchase the tobacco product or tobacco paraphernalia.

**SECTION 2: Severability**

If any part of this Ordinance is held invalid for any reason by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed the remainder of the Ordinance if such invalid portion thereof had been deleted.

**SECTION 3: Effective Date**

This ordinance shall take effect thirty (30) days from the date of its passage. Before the expiration of fifteen (15) days after its passage, this ordinance shall be posted in three (3) places within the City of San Ramon along with the names of the members of the City Council voting for and against the same.

The foregoing ordinance was introduced at the meeting of the City Council of the City of San Ramon on July 24, 2018 and after public hearing, was adopted on \_\_\_\_\_ by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
Bill Clarkson, Mayor

**ATTEST:**

\_\_\_\_\_  
Renée Beck, City Clerk