

CHAPTER TWO: PROHIBITED ACTIVITIES

Subchapter 2.08: Smoking Control

2.08.010 Purpose.

This ordinance shall be construed and applied to promote its basic purposes and policies which are:

(a) To protect the public health and welfare by prohibiting or limiting smoking in public places, as hereinafter set forth.

(b) To strike a reasonable balance between the needs of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air should have priority.

[*History*: Ord. 782, 8/22/18]

2.08.020 Definitions.

For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section have the meanings given to them in this section.

(a) "Dining area" means any indoor or outdoor area which is available to, or customarily used by, the general public and which is designed, established or regularly used for consuming food or drink.

(b) "Electronic Cigarette" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, as an aerosol or vapor, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Cigarette" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vape pen or any other product name or descriptor. (c) "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 or other employer.

(c) "Employer" means any person, partnership, corporation, or non-profit entity, including a municipal corporation, who employs the services of one or more persons.

(d) "Enclosed" means closed in by a roof and four walls with appropriate openings for ingress, egress, and windows.

(e) "Multi-Family Unit" means any building with two or more residential dwelling units and such units have at least one or more shared or abutting walls, floors, or ceilings. Additionally, a building that has two or more residential dwelling units and such units have a shared ventilation system is considered a multi-family unit. A multi-family unit does not include the following:

(1) A single-family residence with an attached or detached in-law or accessory dwelling unit that is less than 50% of the floor area of the main residence; and

(2) A single-family residence.

(f) "Public place" means any area to which the public is invited or in which the public is permitted whether publicly or privately owned and regardless of any fee or age requirement. A private residence is not a public place, except when the residence is utilized as a health care facility, child care facility, family care home, foster care center, group home or senior care home.

(g) "Primary entrance" means an entryway prominently delineated with signage and used by members of the public as the main source of access for ingress/egress to a facility.

(h) "Service area" means any publicly or privately-owned area, including sidewalks, that is designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service or to make a transaction, whether or not such a service or transaction includes 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 mobile vendor lines.

(i) "Smoking" means possessing a lighted, heated or ignited tobacco, nicotine or marijuana product or paraphernalia; or engaging in an act that generates smoke (including, but not limited to, possessing a lighted, heated or ignited pipe, hookah pipe, cigar, electronic cigarette or cigarette of any kind); or lighting, heating or igniting a pipe, hookah pipe, cigar, electronic cigarette or a cigarette of any kind. Smoking includes the use of any product which emits smoke in the form of gases, particles, vapors or other byproducts released by electronic cigarettes, tobacco cigarettes, herbal cigarettes, marijuana cigarettes and any other type of cigarette, pipe or other implement for the purpose of inhalation of vapors, gases, particles or their byproducts released as a result of combustion or ignition.

(j) "Special Event" means any event or gathering to which the public is invited or in which the public is permitted, and for which a Special Event Permit is required by the Town of Colma. This includes any Town sponsored special event.

(k) "Tobacco product" means any substance containing tobacco leaf, including cigarettes, cigars, loose tobacco, snuff or any other preparation of tobacco which may be used for smoking, chewing, inhalation or other means of ingestion; and any electronic cigarette or other electronic device used to generate smoke or vapors; and any product or formulation or matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for the use in treating nicotine or tobacco dependence.

(l) "Unenclosed Area" means any area that is not an enclosed area.

[*History*: Ord. 782, 8/22/18; Ord. 790, 3/13/19]

2.08.030 Areas where smoking is prohibited.

The Town of Colma recognizes that the State of California regulates smoking in many

areas, including but not limited to, in enclosed places of employment (Labor Code §6404.5). The Town desires to supplement the smoking restrictions found in state law by prohibiting smoking in the areas listed below. Therefore, within the Town of Colma, smoking shall be prohibited:

(a) Within and around Town of Colma Structures. This includes any enclosed structure owned or leased by the Town of Colma wherever located; and within twenty (20) feet of an exit, entrance or operable window as prohibited by Government Code §7597;

(b) In unenclosed dining and service areas; and within twenty (20) feet of unenclosed dining and service areas.

(c) Within twenty (20) feet in any direction from the primary entrance or exit to any enclosed public place.

(d) Within twenty (20) feet in any direction from the primary entrance to any multi-family unit.

(e) At any special event. This includes any enclosed or unenclosed special event, whether held on public or private property, and within a distance of twenty (20) feet around the perimeter and primary entrance to the area occupied by event participants.

[*History*: Ord. 782, 8/22/18; Ord. 790, 3/13/19]

2.08.040 Private restrictions.

Notwithstanding any other provision of this chapter any owner, proprietor, manager or other person who controls any place described in this section may declare their entire property as nonsmoking.

[*History*: Ord. 782, 8/22/18]

2.08.050 Posting requirements.

Each owner, operator, manager or other person having control of public places within which smoking is regulated by this chapter shall conspicuously post "No Smoking" and/or "No Smoking within 20 feet of entrance" signs 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. At least one sign shall be placed at the entrances to every applicable facility or unenclosed area.

[*History*: Ord. 782, 8/22/18]

2.08.060 Enforcement.

(a) It is the responsibility of the City Manager or his/her designee to enforce the provisions of this chapter.

(b) Any owner, manager, operator or employer of any establishment or property subject to this chapter shall have the responsibility to inform any apparent violator, whether

public or employee, about any smoking restrictions in said establishment or on the property. In the case of public property, the City Manager or his/her designee shall have the responsibility to inform any apparent violator about any smoking restrictions on public property.

(c) Any citizen who wishes to register a complaint hereunder may do so in writing addressed to the City Manager or his/her designee.

(d) Notice of these requirements shall be given to every new business license applicant.

[*History*: Ord. 782, 8/22/18]

2.08.070 Violations and penalties.

(a) It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions.

(b) It is unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.

(c) It is unlawful for any person who owns or controls premises subject to the prohibitions of this chapter to fail to post sign(s) as required by this chapter.

(d) A violation of section 2.08.030 is a misdemeanor, punishable as set forth in subchapter 1.05 of the Colma Municipal Code.

(e) A violation of any other provision of this subchapter is an infraction, punishable as set forth in subchapter 1.05 of the Colma Municipal Code.

(f) A violation of this subchapter shall also be deemed to be a public nuisance under section 2.01.060 of the Colma Municipal Code, and may be abated pursuant to the procedures set forth in subchapter 2.01 of the Code. Notwithstanding any other provision in subchapter 2.01: the authority granted the Code Enforcement Officer in subchapter 2.01 may also be exercised by a Colma peace officer.

[*History*: Ord. 782, 8/22/18]

2.08.080 Public education

The City Manager or his/her designee shall engage in a continuing program to explain and clarify the purposes of this chapter to citizens affected by it and guide owners, operators and managers in their compliance with it.

[*History*: Ord. 782, 8/22/18]