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**ORDINANCE NO. XXX N. S.**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF TIBURON REPEALING MUNICIPAL CODE TITLE VI, CHAPTER 28 (SMOKING AND TOBACCO REGULATIONS) AND ADOPTING A NEW MUNICIPAL CODE TITLE VI, CHAPTER 28 (SMOKING AND TOBACCO REGULATIONS)**

**SECTION 1. FINDINGS.**

WHEREAS, the Town Council adopted its current municipal code regulations regarding smoking and tobacco in October 1992, codified as Title VI, Chapter 28 of the Tiburon Municipal Code; and

WHEREAS, since that time there have been changes in the law and increased interest by citizens in the regulation of smoking, and the Town Council desires to update its smoking and tobacco-related regulations; and

WHEREAS, the Town Council finds that the magnitude of the proposed amendments to Title VI, Chapter 28 are such that repeal of the entire chapter and adoption of a new chapter is warranted and appropriate; and

WHEREAS, the Town Council finds that the regulations contained herein are consistent with goals and policies of the Tiburon General Plan, and specifically with the goals of the Safety Element of the Tiburon General Plan, and are adopted to promote the health, safety and general welfare of the community by further regulating tobacco smoke and tobacco-smoke-related hazards; and

WHEREAS, the Town Council held a public hearing on \_\_\_\_\_, 2010 and has heard and considered all testimony and timely correspondence on the proposed Municipal Code amendments; and

WHEREAS, the Town Council finds that that these amendments are covered by the general rule that the California Environmental Quality Act (CEQA) applies only to projects that have the potential for causing a significant effect on the environment pursuant to CEQA Guidelines Section 15061(b)(3), and further finds that if the amendments were not covered by the above section, the amendments would be categorically exempt pursuant to Sections 15305, 15307 and/or 15308 of the CEQA Guidelines.

## **SECTION 2. REPEAL OF TITLE VI, CHAPTER 28.**

NOW, THEREFORE, BE IT ORDAINED that the Town Council of the Town of Tiburon hereby repeals Title VI, Chapter 28 (Smoking and Tobacco Regulations) of the Tiburon Municipal Code.

## **SECTION 3. ADOPTION OF TITLE VI, CHAPTER 28.**

NOW, THEREFORE, BE IT FURTHER ORDAINED that the Town Council of the Town of Tiburon hereby adopts a new Title VI, Chapter 28 (Smoking and Tobacco Regulations) of the Tiburon Municipal Code to read as follows:

### **28-1 Findings and Purpose.**

(a) The town council finds that:

- (1) Numerous scientific studies have found that tobacco smoke is a major contributor to indoor air pollution;
- (2) Reliable scientific studies, including studies by the Surgeon General of the United States and studies commissioned and assessed by the U.S. Environmental Protection Agency, have shown that breathing sidestream or secondhand smoke is a significant health hazard to nonsmokers; particularly to children and teens, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease;
- (3) Health hazards induced by exposure to environmental tobacco smoke include lung and other forms of cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, broncho-constriction and broncho-spasm, and that the most common cause of premature death from environmental tobacco smoke is heart disease;
- (4) Reliable scientific studies assessed by the U.S. Environmental Protection Agency have found that sidestream and secondhand tobacco smoke causes the death of at least fifty-three thousand nonsmokers annually and is a leading cause of premature death and disability among nonsmokers;
- (5) Nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing sidestream or secondhand tobacco smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same;
- (6) Persons, particularly employees, have a right to a smoke-free environment if they desire;
- (7) Tobacco smoking is a leading cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic losses to businesses;
- (8) Substantial scientific evidence exists that the direct use of tobacco products causes cancer, heart disease, and various other medical diseases. The Surgeon General of the U.S. has found that tobacco-caused diseases are the leading cause of premature, preventable death and disability in the U.S.;
- (9) The National Centers for Disease Control have found that at least four hundred thirty-four thousand Americans die each year from tobacco-caused diseases. The Surgeon General of the U.S. and U.S. Department of Health and Human Services have

found that a majority of those Americans who die of tobacco-caused diseases became addicted to nicotine in tobacco products as adolescents before the age of legal consent;

(10) The National Institute on Drug Abuse has concluded that the nicotine in tobacco products is a powerful addictive drug and identifies nicotine addiction as the most widespread example of drug dependence in the U.S.;

(11) The Surgeon General of the U.S. has found that nicotine in tobacco products is as addictive as cocaine and heroin;

(12) There is no Constitutional right to smoke;

(13) Secondhand smoke can seep under doorways and through wall cracks; and

(14) State law prohibits smoking in virtually all indoor places of employment reflecting the state policy to protect against the dangers of exposure to secondhand smoke;

(15) A local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within the common areas of multi-unit residences is not prohibited by state law;

(16) California law declares that anything which is injurious to health or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance.

(b) Accordingly, the town council finds and declares that the purposes of this chapter are:

(1) To protect public health, safety and general welfare by prohibiting tobacco smoking in public places and places of employment; and

(2) To guarantee the right of nonsmokers to breathe tobacco smoke-free air and to recognize that the need to breathe tobacco smoke-free air has priority over the desire to smoke;

(c) The town council further finds it is within its basic police power to implement and enforce the provisions of this chapter.

## **28-2 Definitions.**

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

“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 only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term “bar” shall not include the restaurant dining area. A “bar” for the purpose of this definition does not include any bar where smoke can filter into a restaurant through a passageway, ventilation system or any other means.

“Business” means any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

“Cocktail lounge” means a bar within a restaurant which is not the sole means of public access to the dining areas, is not the sole waiting area for dining patrons, prohibits minors, has a separate ventilation system and is enclosed.

“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 nonprofit entity.

“Employer” means any person, partnership, corporation, including a municipal corporation, or nonprofit entity, which employs the services of one or more individual persons.

“Enclosed area” means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) that extend from the floor to the ceiling, including all space therein screened by portions that do not extend to the ceiling or are not solid, such as “office landscaping” or similar structures.

“Health department” means the County of Marin Health Department.

“Landlord” means any person who owns real property leased as residential property, any person who lets residential property, or any person who manages such property, except that “landlord” does not include sublessors.

“Minor” means any individual who is less than 18 years old.

“Multi-unit residence” means premises containing four (4) or more Units, except that individual Units on separate parcels within a condominium or common-interest subdivision are exempt from provisions of this chapter.

“Multi-unit common area” means any indoor or outdoor area of multi-unit residence premises accessible to and usable by residents of different units and/or members of the public, including but not limited to halls and paths, lobbies, laundry rooms, common areas, outdoor eating areas, play areas and swimming pools. Multi-unit common area does not include common area facilities located within condominium or common-interest subdivisions.

“Nonprofit entity” means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a “nonprofit entity” for purposes of this chapter.

“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).

“Opening” means and shall include any main entrances, exits, operable windows, and ventilation intake systems.

“Person” means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Premises” means a piece of land and any improvements upon it such as is usually described in a deed, deed of trust or mortgage; including legally separate but contiguous pieces of land that are owned by the same natural person or by legal persons under common control.

“Public park” means any parkland open to the public that is owned by the town and so designated on its zoning map.

“Public place” means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, shopping malls, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, hotels and motels, theaters and waiting rooms. A private residence is not a “public place.”

“Reasonable distance” means a distance of at least twenty (20) feet.

“Restaurant” means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, including any associated outdoor eating area, and any other eating establishment which gives or offers for sale food to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term “restaurant” shall not include a cocktail lounge or tavern if the cocktail lounge or tavern is a “bar” as defined in this section.

“Retail tobacco store” means a retail store in which the primary merchandise for sale consists of tobacco products and accessories, and in which the sale of other products is merely incidental, and which does not provide any entertainment, or any food or beverage for consumption on the premises.

“Self-service merchandising” means open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. This includes point-of-sale tobacco promotional products (such as tobacco industry tee shirts, caps, key chains, give-aways), to which the public has access without the assistance of an employee. A vending machine is a form of self service displays.

“Separate ventilation system” means a system that is exhausted to the outside and negatively pressurized.

“Service line” means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

“Smoking” means possessing a lighted pipe, lighted cigar, or lighted cigarette, lighted hookah, or other device of any kind, or the lighting of a pipe, hookah, cigar or cigarette, or other device containing tobacco, tobacco product, tobacco-like product, spices, or any other plant or herbal materials.

“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.

“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.

“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, bidis, 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.

“Tobacco vending machine” means any machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

“Town” means the Town of Tiburon.

“Town manager” means the Town Manager of the Town of Tiburon, or his or her designee.

“Town open space” means any open space land owned by the town and so designated on its zoning map.

“Unit” means:

- (a) a dwelling space consisting of essentially complete independent living facilities for one or more persons, including, for example, permanent provisions for living and sleeping, and any private outdoor spaces like balconies and patios; and
- (b) senior citizen housing and single room occupancy hotels, as defined in California Health and Safety Code section 50519(b)(1), even where lacking private cooking

facilities or private plumbing facilities. “Unit” does not include lodging in a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2).

“Vendor-assisted” means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.

### **28-3 Application to town-owned vehicles and facilities.**

All town-owned vehicles, including jitneys and buses and other means of public transit under the authority of the town, and all enclosed facilities owned and/or controlled by the town, shall be subject to the provisions of this chapter.

### **28-4 Prohibition of Smoking in Public Places.**

(a) Except as otherwise provided, smoking shall be prohibited in all enclosed public places within the town, including, but not limited to, the following places:

- (1) Elevators;
- (2) Buses, taxicabs, and other means of public transit under the authority of the town and ticket, boarding, and waiting areas of public transit depots;
- (3) Restrooms;
- (4) Service lines;
- (5) Retail stores;
- (6) All areas available to and customarily used by the general public in all business and nonprofit entities patronized by the public, including but not limited to offices (such as attorneys, doctors, and other professionals), banks, laundromats, malls, hotels and motels;
- (7) Restaurants, provided:
  - (A) Cocktail lounge areas within restaurants that sell alcoholic beverages shall be exempted. Within one year of the passage of this section, such areas must meet the standards of “cocktail lounge” as defined in this chapter,
  - (B) A maximum of fifty percent of contiguous seating in outdoor food area seating thirty or more persons, clearly posted, may be exempted;
- (8) Bars;
- (9) Public areas of aquariums, galleries, libraries or museums when open to the public;
- (10) Any facility that is primarily used for exhibiting motion pictures, stage productions, lectures, musical recitals or other similar performances, except when smoking is part of such production;
- (11) Sports arenas and convention halls;
- (12) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee including joint committees, or agencies of the town or any political subdivision of the state during such

time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the town;

(13) Waiting rooms, hallways, wards and rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy, mental health, and drug and alcohol treatment facilities, doctors' and dentists' offices;

(14) Lobbies, hallways and other common areas in apartment buildings, condominiums, senior citizen residences, nursing homes, and other multiple-unit residential facilities;

(15) Lobbies, hallways and other common areas in multiple-unit commercial facilities;

(16) Polling places.

(b) Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

### **28-5 Regulation of Smoking in Places of Employment.**

(a) Each employer having an enclosed place of employment located within the town shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles and all other enclosed facilities.

(b) The smoking policy shall be communicated to all employees within three weeks of its adoption, and at least annually thereafter.

(c) All employers shall comply with these nonsmoking provisions and shall be responsible for their implementation in their places of employment.

(d) "No Smoking" signs shall be conspicuously posted at building entrances and in employee lounges, cafeterias and lunchrooms.

(e) All employers shall supply a written copy of the smoking policy to any existing or prospective employee.

(f) Places of employment exempt from the prohibition on smoking in other sections of this chapter shall also be exempt from this section.

### **28-6 Prohibition of Smoking in Public Parks and Town Open Spaces.**

(a) Smoking is prohibited in all public parks, whether in an enclosed area or not.

(b) Smoking is prohibited in all town open spaces, whether in an enclosed area or not.

### **28-7 Smoking Areas Optional.**

(a) Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

- (1) Private residences, except when used as a child care or health care facility;
- (2) Retail tobacco stores;
- (3) A maximum of fifty percent of hotel/motel rooms;
- (4) Restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms, which are equipped with a ventilation system which conducts air to the outside, while these places are being used for private functions. However, fifty percent of these areas shall be designated nonsmoking.
- (5) An enclosed place of employment that employs only the owner and no other employee or employees, provided that:
  - (A) The place of employment is not a public place, and
  - (B) The enclosed area containing the place of employment does not share a ventilation system with any other enclosed place of employment or public place.
- (b) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a non-smoking establishment.

**28-8 Prohibition of Smoking in Certain Multi-unit Residences and in Multi-unit Common Areas**

- (a) Smoking is prohibited in all multi-unit common areas except that a landlord may designate a portion of the outdoor area of the premises as a smoking area as provided in paragraph (b) below.
- (b) A designated smoking area:
  - (1) Must be located a reasonable distance from any indoor area where smoking is prohibited;
  - (2) Must not include, and must be a reasonable distance from, outdoor areas primarily used by children including, but not limited to, areas improved or designated for play or swimming;
  - (3) Must be no more than 25% of the total outdoor area of the premises for which it is designated;
  - (4) Must have a clearly marked perimeter;
  - (5) Must be identified by conspicuous signs; and
  - (6) Must not overlap with any area in which smoking is otherwise prohibited by this chapter or other provisions of this Code, state law, or federal law.
- (c) Smoke-Free Buffer Zones: Smoking is prohibited on the premises of a multi-unit residence within a reasonable distance of any entrance, vent, or other opening into an enclosed area of a multi-unit residence in which smoking is prohibited by this chapter, other provisions of this Code, state law, or federal law. For example, and without limitation, smoking on balconies, porches, or patios within a reasonable distance of a window or door of a non-smoking unit is prohibited. This provision does not apply inside a designated smoking unit pursuant to Section 28-8(f).
- (d) Non-smoking units required in multi-unit residences:
  - (1) New multi-unit residences: In every multi-unit residence substantially completed after *[insert effective date of this ordinance]*, at least seventy-five percent (75%) of the units (including private outdoor spaces associated with such units, such as balconies, patios and decks), shall be designated as non-smoking units. All units may be designated non-smoking. Non-smoking units must be grouped together (e.g., horizontally and/or vertically) and physically separated from smoking units to the

maximum extent practicable, including but not limited to provision of separate heating, ventilation and air conditioning (HVAC) systems.

(2) Existing multi-unit residences:

a. In every multi-unit residence already existing on *[insert the effective date of this ordinance]*, and therefore not subject to preceding subsection (d)(1), at least fifty percent (50%) of the units (including private outdoor spaces associated with such units, such as balconies, patios, and decks), must be designated as non-smoking units by *[insert effective date of this ordinance]*. All units may be designated non-smoking units. Non-smoking units must be grouped together (e.g., horizontally and/or vertically) and physically separated from smoking units to the maximum extent practicable.

b. A unit designated non-smoking by action of the landlord or by the force of this chapter shall not be subject to the smoking restrictions of this section while the legal tenant(s) in occupancy on *[insert the effective date of this ordinance]* continuously lease the unit.

(e) Required Lease Terms:

(1) Except as provided in Section 28-8(d)(2)b, every new lease, renewal of a lease, lease extension or other agreement for the occupancy of a unit in a multi-unit residence shall include:

a. A clause stating that smoking is prohibited in the unit if the unit has been designated as a non-smoking unit;

b. A clause stating that it is a material breach of the lease or agreement to:

(i) violate any law regarding smoking while on the premises;

(ii) Smoke in a non-smoking unit; or

(iii) Smoke in any multi-unit common area in which smoking is prohibited by the landlord; and

c. A clause stating that all lawful occupants of the multi-unit residence are express third-party beneficiaries of the above required clauses.

(2) The lease or agreement terms required by subsection (e)(1) are hereby incorporated by force of law into any lease or other agreement for the occupancy of a unit in a multi-unit residence made on or after *[the effective date of this ordinance]* which does not fully comply with subsection (e)(1).

(3) A tenant who breaches the smoking regulations of a lease or knowingly allows another person to do so shall be liable to:

a. the landlord; and

b. to any lawful occupant of the multi-unit residence who is exposed to secondhand smoke as a result of that breach. A landlord shall not be liable to any person for a tenant's breach of smoking regulations if the landlord has fully complied with subsection (e)(1).

(4) Failure to enforce any smoking regulation of a lease or agreement on one or more occasions shall not constitute a waiver of the lease or agreement provisions required by this ordinance and shall not prevent future enforcement of any such smoking regulation on another occasion.

(f) Disclosure of non-smoking units by landlord: Every landlord shall maintain a list of designated non-smoking units and a floor plan identifying the relative position of smoking and non-smoking units. The floor plan also shall identify the location of any designated smoking areas. A copy of this list and floor plan shall accompany every new lease or other agreement for the occupancy of a unit in a multi-unit residence. If a copy

of the list and floor plan is not supplied, the unit subject to the lease shall be a non-smoking unit.

(g) Prohibitions and Duties Generally:

(1) No person shall smoke or knowingly permit smoking in an area of the premises under his or her legal or de facto control in which smoking is prohibited by a lease or agreement term, by this chapter, this Code, or any other state or federal law, provided, however, that this prohibition does not apply to a person who is already compelled to act under state or federal law.

(2) No person shall knowingly permit the presence or placement of ash trays, cans, or other receptacles within multi-unit common areas under his or her legal or de facto control in which smoking is prohibited by this chapter, this Code, or any other state or federal law, including, for example and without limitation, with a reasonable distance of any non-smoking area.

(3) “No smoking” signs, with letters of no 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 crossed by a red bar) shall be clearly and conspicuously posted and maintained by the landlord in every place on the premises in which smoking is prohibited by this chapter or by the landlord, except that signs are not required inside units. Signs must be sufficient to make areas where smoking is prohibited obvious to a reasonable person. The absence of signs shall not be a defense to a violation of any provision of this chapter.

**28-9 Duty of Person, Employer, Business or Non-profit Entity.**

(a) No person, employer, business, or nonprofit entity shall knowingly permit the smoking of tobacco products in an area which is under the legal or actual control of the person, employer, business, or nonprofit entity and in which smoking is prohibited by law and the person, employer, business or nonprofit entity is not otherwise compelled to act under state or federal law.

(b) No person, employer, business, or nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ashtrays or ash cans, within an area which is under the legal or actual of the person, employer, business, or nonprofit entity and in which smoking is prohibited.

**28-10 Posting of Signs.**

(a) The person, employer, business or non-profit entity with legal or actual control of a building subject to this Chapter shall clearly and conspicuously post “No Smoking” signs at the entrances of every building, as well as at every other place where smoking is prohibited under this chapter.

(b) “No Smoking” signs shall be clearly and conspicuously posted at every entrance to any building or other place where smoking is prohibited under this chapter.

(c) Every retail tobacco store and every vendor of tobacco products shall visibly post signage pursuant to California Business and Professions Code section 22952, which signage shall expressly reference California Penal Code section 308, at the entrance of any premises subject to regulation under section 28-11 of this chapter and applicable state and/or federal law.

## **28-11 Regulating the Sale of Tobacco Products.**

(a) It shall be unlawful for any person, business, or retail tobacco store to sell, permit to be sold, or offer for sale any tobacco product by means of self-service merchandising, or by any means other than vendor-assisted sales.

(b) It shall be unlawful for any person, business, or retail tobacco store to locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises any vending machine for the purpose of selling or distributing any tobacco product.

(c) No person, business, retail tobacco store, or owner, manager or operator of any establishment subject to provisions of this section shall sell, offer to sell or permit to be sold any tobacco product to an individual without requesting and examining identification establishing the purchaser's age as eighteen years or greater unless the seller has some other clear and convincing basis for knowing the buyer's age.

(d) Any person, business, retail tobacco store or other establishment subject to provisions of this section shall post plainly visible signs at the point of purchase of tobacco products which comply with the signage requirements of California Business and Professions Code section 22952. These signs shall be updated to conform to any subsequent state or federal requirements and/or amendments to California Business and Professions Code section 308(a).

(e) Any person, business, retail tobacco store or other establishment subject to provisions of this section shall post signs at each entrance to any premises on which any tobacco product is offered for sale. Such signs shall be plainly visible from outside the premises, shall state, "Warning: The fine for buying tobacco for anyone under 18 is \$200" in letters at least one-half tall, and shall cite California Penal Code 308(a) or successor sections thereto. These signs shall be updated to conform to any subsequent state or federal requirements and/or amendments to Penal Code section 308(a).

(f) Any person, business, retail tobacco store, or owner, manager or operator of any establishment subject to provisions of this section who violates any provision of this section shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine as set forth in Penal Code section 308(a), or successor sections thereto.

## **28-12 Enforcement.**

(a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

(b) Notice of these regulations shall be given to all applicants for a business license or renewal thereof. However, lack of such notice shall be no defense to a violation of this chapter.

(c) Enforcement of this chapter shall be the responsibility of the town manager, who shall have the powers enumerated in this chapter and in chapter 31 of the Tiburon Municipal Code as well as the power to issue citations for violation of the chapter in accordance with section 853.6 of the California Penal Code.

(d) The health department shall require, while an establishment is undergoing otherwise mandated inspections, certification from the owner, manager, operator or other person having control of such establishment that all requirements of this chapter have been complied with.

(e) Health department inspectors, on their regular restaurant inspections, shall check for compliance with sign posting requirements. Restaurants shall be notified in writing of any violations on the standard health inspection report. Further, such violations shall be reported in writing by the health department, on a quarterly basis, to the administrative authority in the jurisdiction where such violations occur.

(f) Notwithstanding any other provision of this chapter, a private citizen may bring legal action to enforce this chapter.

### **28-13 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 sections 28-3, 28-4, 28-5, 28-6 or 28-8 of 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 under provisions of this chapter.

(c) Any person, business, retail tobacco store, or owner, manager or operator of any establishment subject to this chapter who violates any provision of this chapter, other than section 28-11, shall be deemed guilty of an infraction and upon conviction shall be subject to payment of a fine not to exceed \$100 or the limits set forth in Government Code section 36900, whichever is lower.

(d) Violations of section 28-11 shall be a misdemeanor.

### **28-14 Non-retaliation.**

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to a smoke-free environment afforded by this chapter.

### **28-15 Public Education.**

The town manager or his/her designee will engage in a continuing educational program to explain and clarify the purposes and requirements of this chapter, as well as a guide to owners, operators and managers with compliance. However, lack of such education shall be no defense to a violation of this chapter.

### **28-16 Governmental Cooperation.**

The town manager or his/her designee may annually request other governmental and educational agencies having facilities within the town to establish local operating procedures in cooperation and compliance with this chapter. This includes urging all federal, state, county and school district agencies to update their existing smoking control regulations to be consistent with current health findings regarding environmental tobacco smoke.

### **28-17 Other Applicable Laws.**

It is the intent of the town to supplement applicable state and federal law and not to duplicate or contradict such law, and this chapter shall be construed in a manner consistent with that intention. This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**SECTION 4. SEVERABILITY.**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The Town Council of the Town of Tiburon 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 5. EFFECTIVE DATE.**

This Ordinance shall take effect and be in force one hundred-eighty (180) days after the date of passage, and before the expiration of fifteen (15) days after passage by the Town Council, a copy of the ordinance shall be published with the names of the members voting for and against it at least once in a newspaper of general circulation in the Town of Tiburon.

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Tiburon on \_\_\_\_\_, 2010, and was adopted at a regular meeting of the Town Council of the Town of Tiburon on \_\_\_\_\_, 2010, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

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RICHARD COLLINS, MAYOR  
TOWN OF TIBURON

ATTEST:

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DIANE CRANE IACOPI, TOWN CLERK

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