

## Ordinance No. 753-C.S.

### AN ORDINANCE OF THE CITY OF EUREKA AMENDING SECTION 11, CHAPTER 97.01 – 97.99 OF THE EUREKA MUNICIPAL CODE TO REGULATE SMOKING IN INDOOR AND OUTDOOR PLACES

The City Council of the City of Eureka does ordain as follows:

#### SECTION I. FINDINGS.

The City Council of the City of Eureka hereby finds and declares as follows:

**WHEREAS**, tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- Tobacco-related illness is the leading cause of preventable death in the United States,<sup>1</sup> accounting for about 443,000 deaths each year;<sup>2</sup> and
- Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth;<sup>3</sup> and
- Some of the most common types of cancers including stomach, liver, uterine cervix, and kidney are related to tobacco use;<sup>4</sup> and

**WHEREAS**, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;<sup>5</sup> and

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<sup>1</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death*. 2008, p. 2. Available at: [www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf](http://www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf).

<sup>2</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. "Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses --- United States, 2000-2004." *Morbidity and Mortality Weekly Report*, 57(45): 1226-1228, 2008. Available at: [www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm).

<sup>3</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death*. 2008, p. 2. Available at: [www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf](http://www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf).

<sup>4</sup> Leistikow B, Zubair K, et al. "Male Tobacco Smoke Load and Non-Lung Cancer Mortality Associations in Massachusetts." *BMC Cancer*, 8:341, 2008. Available at: [www.biomedcentral.com/1471-2407/8/341](http://www.biomedcentral.com/1471-2407/8/341).

<sup>5</sup> US Department of Health and Human Services, Office of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. 2007. Report highlights available at: [www.surgeongeneral.gov/library/secondhandsmoke/factsheets/factsheet7.html](http://www.surgeongeneral.gov/library/secondhandsmoke/factsheets/factsheet7.html).

pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;<sup>6</sup> and

- The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;<sup>7</sup> and

**Whereas** exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for as many as 73,000 deaths among nonsmokers each year in the United States;<sup>8</sup> and
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty percent;<sup>9</sup> and
- Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis in as many as 300,000 children in the United States under the age of 18 months each year;<sup>10</sup> and exacerbates childhood asthma;<sup>11</sup> and

**WHEREAS**, tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- The total annual economic burden of smoking in the United States is \$193 billion;<sup>12</sup> and
- From 2001-2004, the average annual health care expenditures attributable to smoking were approximately \$96 billion;<sup>13</sup> and

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<sup>6</sup> Resolution 06-01, Cal. Air Resources Bd. (2006) at 5. Available at: [www.arb.ca.gov/regact/ets2006/res0601.pdf](http://www.arb.ca.gov/regact/ets2006/res0601.pdf); See California Environmental Protection Agency, Air Resources Board. *News Release, California Identifies Secondhand Smoke as a "Toxic Air Contaminant."* Jan. 26, 2006. Available at: [www.arb.ca.gov/newsrel/nr012606.htm](http://www.arb.ca.gov/newsrel/nr012606.htm).

<sup>7</sup> California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity*. 2006, p. 8 & 17. Available at: [www.oehha.ca.gov/prop65/prop65\\_list/files/P65single081106.pdf](http://www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf).

<sup>8</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Secondhand Smoke*. 2006. Available at: [www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm).

<sup>9</sup> Barnoya J and Glantz S. "Cardiovascular Effects of Secondhand Smoke: Nearly as Large as Smoking." *Circulation*, 111: 2684-2698, 2005. Available at: [www.circ.ahajournals.org/cgi/content/full/111/20/2684](http://www.circ.ahajournals.org/cgi/content/full/111/20/2684).

<sup>10</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death*. 2008, p. 2. Available at: [www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf](http://www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf).

<sup>11</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Secondhand Smoke*. 2006. Available at: [www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm).

<sup>12</sup> Centers for Disease Control and Prevention. *News Release, Slightly Lower Adult Smoking Rates*. 2008. Available at: [www.cdc.gov/media/pressrel/2008/r081113.htm](http://www.cdc.gov/media/pressrel/2008/r081113.htm).

<sup>13</sup> Centers for Disease Control and Prevention. *News Release, Slightly Lower Adult Smoking Rates*. 2008.

- The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over \$10 billion per year in the United States in 2005;<sup>14</sup> and
- The total annual cost of smoking in California was estimated at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone,<sup>15</sup> and
- California's Tobacco Control Program saved the state and its residents \$86 billion in health care expenditures between the year of its inception, 1989, and 2004, with savings growing yearly;<sup>16</sup> and

**WHEREAS**, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does occur at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind and number and proximity of smokers;<sup>17</sup> and
- Irritation from secondhand smoke begins at levels as low as 4 micrograms per cubic meter, and in some outdoor situations this level can be found as far away as 13 feet from the burning cigarette,<sup>18</sup> and
- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 25 feet away from the source of the smoke, about the width of a two lane road;<sup>19</sup> and

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Available at: [www.cdc.gov/media/pressrel/2008/r081113.htm](http://www.cdc.gov/media/pressrel/2008/r081113.htm).

<sup>14</sup> Behan DF, Eriksen MP and Lin, Y. *Economic Effects of Environmental Tobacco Smoke*. Schaumburg, IL: Society of Actuaries, 2005, p. 2. Available at: [www.soa.org/files/pdf/ETSReportFinalDraft\(Final%203\).pdf](http://www.soa.org/files/pdf/ETSReportFinalDraft(Final%203).pdf).

<sup>15</sup> Max W, Rice DP, Zhang X, et al. *The Cost of Smoking in California, 1999*. Sacramento, CA: Tobacco Control Section, California Department of Health Services, 2002, p. 74. Available at: <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1026&context=ctcre>.

<sup>16</sup> Lightwood JM, Dinno A and Glantz SA. "Effect of the California Tobacco Control Program on Personal Health Care Expenditures." *PLoS Med*, 5(8): e178, 2008. Available at: [www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050178](http://www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050178).

<sup>17</sup> Klepeis NE, Ott WR, and Switzer P. *Real-Time Monitoring of Outdoor Environmental Tobacco Smoke Concentrations: A Pilot Study*. San Francisco: University of California, San Francisco and Stanford University, 2004, p. 34, 80. Available at: [http://exposurescience.org/pub/reports/Outdoor\\_ETS\\_Final.pdf](http://exposurescience.org/pub/reports/Outdoor_ETS_Final.pdf); See also Klepeis NE, Ott WR and Switzer P. "Real-Time Measurement of Outdoor Tobacco Smoke Particles." *Journal of Air and Waste Management Association*, 57: 522-534, 2007. Available at: [www.ashaust.org.au/pdfs/OutdoorSHS0705.pdf](http://www.ashaust.org.au/pdfs/OutdoorSHS0705.pdf).

<sup>18</sup> Junker MH, Danuser B, Monn C, et al. "Acute Sensory Responses of Nonsmokers at Very Low Environmental Tobacco Smoke Concentrations in Controlled Laboratory Settings." *Environmental Health Perspectives*, 109(10): 1046-1052, 2001. Available at: [www.pubmedcentral.nih.gov/picrender.fcgi?artid=1242082&blobtype=pdf](http://www.pubmedcentral.nih.gov/picrender.fcgi?artid=1242082&blobtype=pdf); Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review*, 34(4): 1621-1638, 2008. Available at: <http://tobacco.health.usyd.edu.au/site/supersite/contact/pdfs/WilliamMitchellRepace.pdf>.

<sup>19</sup> Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks,

- Studies on a cruise ship have found that even while cruising at 20 knots and with unlimited air volume, outdoor smoking areas contained carcinogens in nearly the same amounts as inside the ship's casino where smoking was allowed;<sup>20</sup> and

**WHEREAS**, cigarette butts pose a health threat to young children, as evidenced by the following:

- In 2004, American poison control centers received nearly 8,000 reports of children poisoned by the ingestion of cigarettes, cigarette butts, and other tobacco products;<sup>21</sup> and
- Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;<sup>22</sup> and

**WHEREAS**, cigarette butts are a major and persistent source of litter, as evidenced by the following:

- It is estimated that over two billion cigarette butts are discarded every day worldwide, and that Americans alone discard more than 175 million pounds of cigarette butts every year;<sup>23</sup> and
- Cigarette butts are often cast onto sidewalks and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons and ultimately the ocean;<sup>24</sup> and
- Cigarette filters and the plastic wrap from cigarette packages are not biodegradable. Cigarette butts are composed of cellulose acetate, a form of plastic, which can take as many as 25 years to decompose,<sup>25</sup> and

**WHEREAS**, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs, as evidenced by the following:

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Patios, and in Motor Vehicles.” *William Mitchell Law Review*, 34(4): 1621-1638, 2008. Available at: <http://tobacco.health.usyd.edu.au/site/supersite/contact/pdfs/WilliamMitchellRepace.pdf>.

<sup>20</sup> Repace JL. “Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles.” *William Mitchell Law Review*, 34(4): 1621-1638, 2008. Available at: <http://tobacco.health.usyd.edu.au/site/supersite/contact/pdfs/WilliamMitchellRepace.pdf>.

<sup>21</sup> American Association of Poison Control Centers. *2004 Annual Report of the American Association of Poison Control Centers Toxic Exposure Surveillance System*. Elsevier Inc., 2004, p. 645. Available at: [www.poisson.org/prevent/documents/TESS%20Annual%20Report%202004.pdf](http://www.poisson.org/prevent/documents/TESS%20Annual%20Report%202004.pdf).

<sup>22</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. “Ingestion of Cigarettes and Cigarette Butts by Children – Rhode Island, January 1994-July 1996.” *Morbidity and Mortality Weekly Report*, 46(06): 125-128, 1997. Available at: [www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm).

<sup>23</sup> Surfrider Foundation, San Diego Chapter, Hold on to Your Butt, [www.surfridersd.org/hotyb.php](http://www.surfridersd.org/hotyb.php).

<sup>24</sup> Surfrider Foundation, San Diego Chapter, Hold on to Your Butt, [www.surfridersd.org/hotyb.php](http://www.surfridersd.org/hotyb.php).

<sup>25</sup> Tobacco Prevention Settlement Program. “Tobacco Litter Hurts Everyone.” Santa Barbara 681-5407 or Santa Maria 346-7275. <http://www.sbcphd.org/tobacco> Accessed 1-12-10.

- Cities with smokefree laws see an appreciable reduction in hospital admittances for heart attacks in the months and years after such laws are passed;<sup>26</sup> and
- Smoking bans help people reduce the number of cigarettes they smoke or quit altogether;<sup>27</sup> and
- Strong smoking regulations for restaurants decrease the number of children who transition from experimenting with smoking to becoming actual smokers;<sup>28</sup> and

**WHEREAS**, creating smokefree areas helps protect the health of the 86.7% of Californians who are nonsmokers;<sup>29</sup> and

**WHEREAS**, society is becoming less tolerant and less accepting of cigarette smoking, as evidenced by the following,

- A 2008 survey of California voters found that 75% thought that secondhand smoke is harmful, 64% were bothered by secondhand smoke, and 73% support laws restricting smoking in outdoor public places;<sup>30</sup> and
- People living in cities with strong smokefree air laws are more likely to believe smoking is not acceptable and that smokers should attempt to quit smoking;<sup>31</sup> and
- As of 2008, there are 187 California cities and counties with local laws restricting smoking in at least one outdoor area;<sup>32</sup> and

<sup>26</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. "Reduced Hospitalizations for Acute Myocardial Infarction After Implementation of a Smoke-Free Ordinance – City of Pueblo, Colorado, 2002 – 2006." *Morbidity and Mortality Weekly Report*, 57(51&52): 1373-1377, 2009. Available at: [www.cdc.gov/mmwr/preview/mmwrhtml/mm5751a1.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5751a1.htm); Glantz SA. "Meta-Analysis of the Effects of Smokefree Laws on Acute Myocardial Infarction: An Update." *Preventive Medicine*, 47(4): 452-453, 2008.

<sup>27</sup> Neighmond P. "Smoking Bans Help People Quit, Research Shows." *National Public Radio*, October 25, 2007. Available at: [www.npr.org/templates/story/story.php?storyId=15610995](http://www.npr.org/templates/story/story.php?storyId=15610995).

<sup>28</sup> Siegel M, Albers AB, Cheng DM, et al. "Local Restaurant Smoking Regulations and the Adolescent Smoking Initiation Process: Results of a Multilevel Contextual Analysis Among Massachusetts Youth." *Archives of Pediatrics and Adolescent Medicine*, 162(5): 477-483, 2008. Available at: <http://archpedi.ama-assn.org/cgi/reprint/162/5/477.pdf>.

<sup>29</sup> Hong M, Barnes RL and Glantz SA. *Tobacco Control in California 2003-2007: Missed Opportunities*. San Francisco: Center for Tobacco Control Research and Education, 2007, p. 9. Available at: <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1074&context=ctcre>.

<sup>30</sup> Goodwin Simon Victoria Research. *Study of California Voters' Attitudes About Secondhand Smoke Exposure*. Sacramento: Center for Tobacco Policy & Organizing, 2008, p. 1-3. Available at: [www.center4tobaccopolicy.org/files/files/Results%20of%20SHS%20Poll%20November%202008.pdf](http://www.center4tobaccopolicy.org/files/files/Results%20of%20SHS%20Poll%20November%202008.pdf).

<sup>31</sup> Indiana University. *News Release, Indiana University Research at American Public Health Association Meeting*. October 27, 2008. Available at: <http://newsinfo.iu.edu/tips/page/normal/9085.html#3>.

<sup>32</sup> California Clean Air Project, California Secondhand Smoke Policy Database, <http://ccap.etr.org/index.cfm?fuseaction=policydb.home>.

- 69% of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings and 78% support laws that create nonsmoking units;<sup>33</sup> and
- 62% of California renters feel that there is a need for laws to limit smoking in apartments;<sup>34</sup> and

**WHEREAS**, the U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found they contained carcinogens and toxic chemicals to which users and bystanders could potentially be exposed;<sup>35</sup> and

**WHEREAS**, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions;<sup>36</sup> and state law prohibits smoking within 20 feet of entryways and operable windows of government buildings;<sup>37</sup> and

**WHEREAS**, there is no Constitutional right to smoke;<sup>38</sup> and

**WHEREAS**, 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;<sup>39</sup> and

**WHEREAS**, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance.<sup>40</sup>

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<sup>33</sup> Goodwin Simon Victoria Research. *Study of California Voters' Attitudes About Secondhand Smoke Exposure*. 2008. Available at: [www.center4tobaccopolicy.org/files/files/Results%20of%20SHS%20Poll%20November%202008.pdf](http://www.center4tobaccopolicy.org/files/files/Results%20of%20SHS%20Poll%20November%202008.pdf) (Statewide poll of 600 California voters, conducted November 2008).

<sup>34</sup> American Lung Association of California, Center for Tobacco Policy and Organizing. *Statewide Apartment Renter Study*. 2004. Available at: [www.center4tobaccopolicy.org/files/files/5242\\_Center%20Renter%20Survey%20Results%20May%202004.pdf](http://www.center4tobaccopolicy.org/files/files/5242_Center%20Renter%20Survey%20Results%20May%202004.pdf) (A survey of apartment residents throughout California).

<sup>35</sup> US Food and Drug Administration. *News Release, FDA and Public Health Experts Warn About Electronic Cigarettes*. 2009. Available at: [www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm).

<sup>36</sup> Cal. Health & Safety Code § 104495 (West 2008).

<sup>37</sup> Cal. Gov't Code § 7597 (West 2008).

<sup>38</sup> Public Health Law & Policy, Technical Assistance Legal Center. *There Is No Constitutional Right to Smoke*. 2005. Available at: [http://talc.phlaw.org/pdf\\_files/0051.pdf](http://talc.phlaw.org/pdf_files/0051.pdf).

<sup>39</sup> Cal. Civil Code § 3479 (West 2009).

<sup>40</sup> *In Re Jones*, 56 Cal.App.2d 658, 663 (1943); *See also* Cal. Const., art. XI, § 7 and Cal. Gov. Code § 38771 (West 2009).

***NOW THEREFORE, it is the intent of the City Council, in enacting this ordinance,*** to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke where they live, work, and play; by reducing the potential for children to wrongly associate smoking with a healthy lifestyle; and by affirming and promoting a healthy environment in and around the City's outdoor places.

**SECTION II.** Chapter 97 of the Eureka Municipal Code is hereby amended to read as follows:

**Section 97.01 DEFINITIONS.** The following words and phrases, whenever used in this chapter shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes.

(b) "Common Area" means every Enclosed Area or Unenclosed Area of a Multi-Unit Residence that residents of more than one Unit of that Multi-Unit Residence are entitled to enter or use, including, for example, halls and paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities and swimming pools, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.

(c) "Dining Area" means any area, including streets and sidewalks, which is available to or customarily used by the general public or an Employee, and which is designed, established, or regularly used for consuming food or drink.

(d) "Employee" means any Person who is employed or retained as an independent contractor by any Employer or Nonprofit Entity in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for an Employer or Nonprofit Entity.

(e) "Employer" means any Business or Nonprofit Entity that retains the service of one or more Employees.

(f) "Enclosed Area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

- (1) any type of overhead cover whether or not that cover includes vents or other openings and at least three (3) walls or other

vertical boundaries of any height whether or not those boundaries include vents or other openings; or

- (2) four (4) walls or other vertical boundaries that exceed six (6) feet in height whether or not those boundaries include vents or other openings.

(g) "Landlord" means any Person who owns property let for residential use, any Person who lets residential property, and any Person who manages such property, except that "Landlord" does not include a master tenant who sublets a Unit as long as the master tenant sublets only a single Unit of a Multi-Unit Residence.

(h) "Multi-Unit Residence" means property containing two (2) or more Units, except the following specifically excluded types of housing:

- (1) a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2);
- (2) a mobile home park;
- (3) a campground;
- (4) a single-family home;
- (5) a single-family home with a detached or attached in-law or second unit when permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections.

(i) "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 government agency is not a Nonprofit Entity within the meaning of this chapter.

(j) "Nonsmoking Area" means any Enclosed Area or Unenclosed Area of a Multi-Unit Residence in which Smoking is prohibited by: (1) this chapter or other law; (2) by binding agreement relating to the ownership, occupancy, or use of real property; or (3) by designation of a Person with legal control over the area. In the case of a Smoking prohibition established only by private agreement or designation and not by this chapter or other law, it shall not be a violation of this chapter for a Person to engage in Smoking or to allow Smoking in that area unless: (1) the Person knows that Smoking is not permitted; or (2) a reasonable Person would know that Smoking is not permitted.

(k) "Person" means any natural person, Business, cooperative association, Nonprofit Entity, personal representative, receiver, trustee, assignee, or any other legal entity including government agencies.

(l) "Place of Employment" means any area under the legal or de facto control of an Employer, that an Employee or the general public may have cause to enter in the normal course of the operations, 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, hookah bars, retail tobacco shops, and private residences that are used as child care or health care facilities subject to licensing requirements..

(m) "Public Place" means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.

(n) "Reasonable Distance" means a distance of thirty (30) feet in any direction from an area in which Smoking is prohibited.

(o) "Recreational Area" means any area that is owned or operated by the City of Eureka and open to the general public for recreational purposes, regardless of any fee or age requirement. The term "Recreational Area" includes but is not limited to parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, horseback riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, and amusement parks.

(p) "Service Area" means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more Persons to receive a service, wait to receive a service or to make a transaction, whether or not such 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 shelters, mobile vendor lines or cab stands.

(q) "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 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 cigarette vapors, marijuana smoke, and crack cocaine smoke.

(r) "Smoking" means engaging in an act that generates Smoke, such as, for example: possessing a lighted pipe, a lighted hookah pipe, an operating electronic cigarette, a lighted cigar, or a lighted cigarette of any

kind; or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind.

(s) "Unenclosed Area" means any area that is not an Enclosed Area.

(t) "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes but is not limited to an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room occupancy ("SRO") facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit.

## **Section 97.02 PROHIBITION OF SMOKING IN ENCLOSED AND UNENCLOSED AREAS.**

(a) Smoking is prohibited in the Enclosed Areas of the following places within the City of Eureka, except in places listed in subsection (c) below, and except places where Smoking is already prohibited by state or federal law, in which case those laws apply:

- (1) Places of Employment;
- (2) Public Places;
- (3) Common Areas;

(b) Smoking is prohibited in the Unenclosed Areas of the following places within the City of Eureka, except places where Smoking is already prohibited by state or federal law, in which case those laws apply:

- (1) Recreational Areas;
- (2) Service Areas;
- (3) Dining Areas;
- (4) Places of Employment;

(5) Common Areas, provided that a Person with legal control over a Common Area may designate a portion of the Unenclosed Area of the Common Area as a designated Smoking area if the area meets all of the following criteria:

- (a) the area must be located a Reasonable Distance from

any Nonsmoking Area. A Person with legal control over a Common Area in which a designated Smoking area has been designated shall modify, relocate or eliminate that designated Smoking area so as to maintain compliance with the requirements of this subsection as laws change, as binding agreements are created, and as Nonsmoking Areas on neighboring property are established.

(b) the area must not include, and must be a Reasonable Distance from, Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, and school campuses;

(c) the area must be no more than ten percent (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated;

(d) the area must have a clearly marked perimeter;

(e) the area must be identified by conspicuous signs;

(f) the area must be completely within an Unenclosed Area;  
and

(g) the area must not overlap with any Enclosed or Unenclosed Area in which Smoking is otherwise prohibited by this chapter or other provisions of this Code, state law, or federal law;

(6) All exclusive-use Unenclosed Areas associated with a Unit, such as, for example, a private balcony, porch, deck, or patio;

(7) On and within 100 feet of the Eureka Boardwalk, which is located from the foot of "C" to the foot of "G" Streets, the Old Town Gazebo Plaza, and Clark Plaza, located at the corner of 3rd and E Street; and

(8) Other Public Places, when being used for a public event, including a farmers' market, parade, craft fair, festival, Arts Alive, or any other event which may be attended by the general public.

(c) Unless otherwise prohibited by law, smoking is permitted in the following Enclosed Areas:

(1) Private residences, except those used as a child care or health care facility subject to licensing requirements; and

(2) Up to twenty-five percent (25%) of hotel and motel guest rooms, if the hotel or motel permanently designates particular guest rooms as nonsmoking rooms such that seventy-five (75%) or more of its guest rooms are nonsmoking and ashtrays and matches are permanently removed from such nonsmoking rooms. Permanent "No Smoking" signage shall be posted in nonsmoking rooms.

(d) Nothing in this chapter prohibits any Person, Employer, or Nonprofit Entity with legal control over any property from prohibiting Smoking on any part of such property, even if Smoking is not otherwise prohibited in that area.

(e) The City Manager or his/her designee shall engage in an ongoing educational program to explain and clarify the purposes and requirements of this chapter, as well as providing guidance to Persons, Landlords, Employers, and Nonprofit Entities about compliance. However, lack of such education shall not be a defense to a violation of this chapter.

#### **Section 97.03 REASONABLE SMOKING DISTANCE REQUIRED.**

(a) Smoking in all Unenclosed Areas shall be prohibited within a Reasonable Distance from any doorway, window, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited, except while actively passing on the way to another destination and provided Smoke does not enter any Enclosed Area in which Smoking is prohibited.

(b) Smoking in Unenclosed Areas shall be prohibited within a Reasonable Distance from any Unenclosed Areas in which Smoking is prohibited under Section 97.02 of this chapter, except while actively passing on the way to another destination and provided Smoke does not enter any Unenclosed Area in which Smoking is prohibited.

#### **Section 97.04 DISCLOSURE OF NONSMOKING UNITS BY LANDLORD.**

A Landlord of a Multi-Unit Residence with less than one hundred percent (100%) nonsmoking Units shall provide to every prospective tenant, prior to entering into a new lease or other rental agreement for the occupancy of a Unit, a diagram depicting the location of the designated nonsmoking Units in relation to all other Units and any designated Smoking areas.

#### **Section 97.05 SMOKING AND SMOKE GENERALLY.**

(a) The provisions of this chapter are restrictive only and establish no new rights for a Person who engages in Smoking. Notwithstanding (i) any provision of this chapter or other provisions of this Code, (ii) any failure by any Person to restrict Smoking under this chapter, or (iii) any explicit or implicit provision of this Code that allows Smoking in any place, nothing in this Code

shall be interpreted to limit any Person's legal rights under other laws with regard to Smoking, including, for example, rights in nuisance, trespass, property damage, and personal injury or other legal or equitable principles.

(b) For all purposes within the jurisdiction of the City of Eureka, nonconsensual exposure to Smoke is a nuisance, and the uninvited presence of Smoke on property is a nuisance and a trespass.

### **Section 97.06 OTHER REQUIREMENTS AND PROHIBITIONS.**

(a) No Person, Landlord, Employer, or Nonprofit Entity shall knowingly permit Smoking in an area which is under the legal or de facto control of the Person, Landlord, Employer or Nonprofit Entity and in which Smoking is prohibited by law, unless otherwise required by state or federal law.

(b) For purposes of subsection (a), a Person, Landlord, Employer, or Nonprofit Entity has not acted knowingly or intentionally in violation of subsection (a) if he, she, or it has taken the following reasonable steps to prevent Smoking in an area which is under the legal or de facto control of the Person, Landlord, Employer, or Nonprofit Entity:

(1) Posted clear and prominent "No Smoking" or "Smokefree" signs as required by subsection (e), below;

(2) Removed all ash receptacles, such as, for example, ash trays or ash cans, as required by subsection (c), below; and

(3) Requested that an individual refrain from Smoking who is Smoking in violation of this chapter and in an area which is under the legal or de facto control of the Person, Landlord, Employer or Nonprofit Entity.

(c) No Person, Landlord, Employer, or Nonprofit Entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or de facto control of the Person, Landlord, Employer or Nonprofit Entity and in which Smoking is prohibited by law, including, without limitation, within a Reasonable Distance required by this chapter from any area in which Smoking is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of Smoking in violation of any provision of this chapter.

(d) No Person shall dispose of used Smoking or Tobacco Product waste within the boundaries of an area in which Smoking is prohibited, including inside the perimeter of any Reasonable Distance required by this chapter.

(e) A Person, Landlord, Employer, or Nonprofit Entity that has legal or de facto control of an Enclosed or Unenclosed Area in which Smoking is

prohibited by this chapter shall post a clear, conspicuous and unambiguous "No Smoking" or "Smokefree" sign at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs shall have letters of no less than one inch in height and shall include the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it). Signs posted on the exterior of buildings to comply with this section shall include the Reasonable Distance requirement set forth in Section 97.03 At least one sign with Humboldt County Department of Health and Human Services, Public Health Branch's phone number [268-2132] where complaints can be directed must be conspicuously posted in each place in which Smoking is prohibited. For purposes of this section, the City Manager or his/her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the City. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of Smoking in violation of any other provision of this chapter.

(f) No Person, Landlord, Employer, or Nonprofit Entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another Person who seeks to attain compliance with this chapter.

(g) Each instance of Smoking in violation of this chapter shall constitute a separate violation. For violations other than for Smoking, each day of a continuing violation of this chapter shall constitute a separate violation.

### **Section 97.07 PENALTIES AND ENFORCEMENT.**

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

(b) Each incident of Smoking in violation of this chapter is an infraction subject to a one hundred dollar (\$100) fine or otherwise punishable pursuant to section 10.99 of this code . Other violations of this chapter may, in the discretion of the City Prosecutor, be prosecuted as infractions or misdemeanors when the interests of justice so require. Enforcement of this chapter shall be the responsibility of the Chief of Police. In addition, any peace officer or code enforcement official also may enforce this chapter.

(c) Violations of this chapter are also subject to a civil action brought by the City of Eureka, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.

(d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.

(e) Any violation of this chapter is hereby declared to be a nuisance.

(f) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the City Attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

(g) Except as otherwise provided, enforcement of this Chapter is at the sole discretion of the City of Eureka. Nothing in this Chapter shall create a right of action in any Person against the City of Eureka or its agents to compel public enforcement of this Chapter against private parties. ]

(h) Any Person acting for the interests of itself, its members, or the general public may bring a civil action to enjoin a violation of this chapter by a Landlord, Employer, Business, or Nonprofit Entity or to enjoin repeat violations of this chapter by an individual.

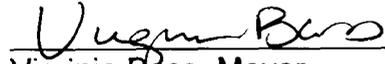
**Section 97.08 STATUTORY CONSTRUCTION & SEVERABILITY.** It is the intent of the City Council of the City of Eureka to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Eureka hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof independently, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

This Ordinance was passed and adopted at a regular meeting of the Eureka City Council on the 20th day of July, 2010 as follows:

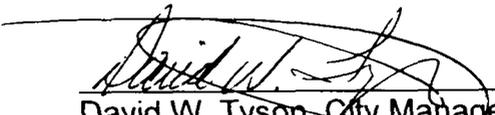
AYES: COUNCILMEMBERS GLASS, ATKINS, LEONARD, JAGER, JONES  
NOES: COUNCILMEMBERS  
ABSENT: COUNCILMEMBERS  
ABSTAIN: COUNCILMEMBERS

  
Mike Jones, Mayor Pro Tem

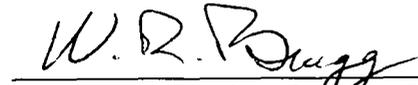
The above ordinance was presented to the Mayor on the 21st day of July, 2010, and hereby approved.

  
Virginia Bass, Mayor

Approved as to Administration:

  
David W. Tyson, City Manager

Approved as to form:

  
William Bragg, Interim City Attorney

The above ordinance was attested by the City Clerk of the City of Eureka on the 28th day of July, 2010.

  
Pamela J. Powell, City Clerk