

**Chapter 445-2
GENERAL PROVISIONS**

445-2.002 Title.

This division is known as the secondhand smoke and tobacco product control ordinance of Contra Costa County.

(Ords. 2006-66 § 4, 98-43 § 2, 91-44 § 2)

445-2.004 Purpose.

The purposes of this division are to protect the public health, safety and welfare against the health hazards and harmful effects of the use of addictive tobacco products; and further to maintain a balance between the desires of persons who smoke and the need of nonsmokers to breathe smoke-free air, while recognizing that where these conflict, the need to breathe smoke-free air shall have priority.

(Ords. 2006-66 § 4, 98-43 § 2, 91-44 § 2)

445-2.006 Definitions.

For the purposes of this division, the following words and phrases have the following meanings:

- (a) "Characterizing flavor" means a distinguishable taste or aroma imparted by a tobacco product or any byproduct produced by the tobacco product that is perceivable by an ordinary consumer by either the sense of taste or smell, other than the taste or aroma of tobacco. A "characterizing flavor" includes, but is not limited to, a taste or aroma relating to a fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice.
- (b) "Cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.
- (c) "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.
- (d) "Consumer" means a person who purchases a tobacco product for consumption and not for sale to another.
- (e) "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, an

electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, or a vapor pen.

- (f) "Enclosed" means all space between a floor and ceiling where the space is closed in on all sides by solid walls or windows that extend from the floor to the ceiling. An enclosed space may have openings for ingress and egress, such as doorways or passageways. An enclosed space includes all areas within that space, such as hallways and areas screened by partitions that do not extend to the ceiling or are not solid.
- (g) "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.
- (h) "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."
- (i) "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.
- (j) "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.
- (k) "Multi-unit residence" means a building that contains two or more dwelling units, including but not limited to apartments, condominiums, senior citizen housing, nursing homes, and single room occupancy hotels. A primary residence with an attached or detached accessory dwelling unit permitted pursuant to Chapter 82-24 is not a multi-unit residence for purposes of this division.
- (l) "Multi-unit residence common area" means any indoor or outdoor area of a multi-unit residence accessible to and usable by residents of different dwelling units, including but not limited to halls, lobbies, laundry rooms, common cooking areas, stairwells, outdoor eating areas, play areas, swimming pools, and carports.
- (m) "Place of employment" means any area under the control of an employer, business, or nonprofit entity that an employee, volunteer, or the public may have cause to enter in the normal course of operations, regardless of the hours of operation. Places of employment include, but are not limited to: indoor work areas; bars; restaurants; at least eighty percent of the guest rooms in any hotel and motel; vehicles used for business purposes; taxis; employee lounges and breakrooms; conference and banquet rooms; bingo and gaming

facilities; long-term health care facilities; warehouses; retail or wholesale tobacco shops; and private residences used as licensed child-care or health-care facilities when employees, children or patients are present and during business hours. The places specified in subdivisions (e)(1), (2), (6), and (7) of Labor Code section 6404.5 are places of employment for the purposes of this division and are regulated as specified in this division. The places specified in subdivisions (e)(3), (4), and (5) of Labor Code section 6404.5 are not places of employment for the purposes of this division.

- (n) "Public place" means any area to which the public is invited or in which the public is permitted. A private residence is not a public place.
- (o) "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.
- (p) "Service area" means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not the service involves the exchange of money. "Service areas" include but are not limited to automatic teller machine waiting areas, bank teller windows, ticket lines, bus stops and taxi 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 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.
- (r) "Smoking" means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product intended for human inhalation.
- (s) "Tobacco paraphernalia" means any item designed or marketed for the consumption, use, or preparation of tobacco products.
- (t) "Tobacco product" means any of the following:
 - (1) Any product containing, made from, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but

not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff.

- (2) Any electronic smoking device.
 - (3) Any component, part, or accessory of a tobacco product, whether or not it is sold separately.
 - (4) "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for that approved purpose.
- (u) "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.

(Ord. No. 2017-01, § II, 7-18-17; Ord. No. 2013-10, § II, 4-9-13; Ord. No. 2010-10, § II, 10-12-10; Ord. No. 2006-66 § 4; Ord. No. 98-43 § 2; Ord. No. 91-44 § 2)

**Chapter 445-4
SECONDHAND SMOKE**

445-4.002 County facilities.

- (a) Smoking is prohibited in all buildings, vehicles, and other enclosed areas occupied by county employees, owned or leased by the county, or otherwise operated by the county.
- (b) Smoking is prohibited in all outdoor areas owned or leased by the county, including parking lots, the grounds of the county's hospital and health clinics, and the grounds of all other buildings owned or leased by the county.
- (c) Smoking is prohibited on the grounds of the county's jails and county juvenile system facilities to the extent allowed by law.

(Ords. 2014-06, § II, 6-17-14, 2006-66 § 5, 91-44 § 2)

445-4.004 Prohibition of smoking.

Smoking is prohibited in the following places within the unincorporated area of Contra Costa County:

- (a) Enclosed places of employment.

- (b) Enclosed public places.
- (c) Service areas.
- (d) All areas within twenty feet of doors, windows, air ducts and ventilation systems of enclosed places of employment, except while passing on the way to another destination.
- (e) All areas within twenty feet of doors, windows, air ducts and ventilation systems of enclosed public places, except while passing on the way to another destination.
- (f) The following outdoor areas:
 - (1) Outdoor dining areas at bars and restaurants.
 - (2) Outdoor lounges and outdoor dining areas at places of employment.
 - (3) Public trails and public parks.
 - (4) Public event venues.
- (g) All multi-unit residence common areas, except that a landlord may designate a portion of an outdoor common area as a smoking area. A designated smoking area of an outdoor common area of a multi-unit residence must not overlap with any area where smoking is otherwise prohibited by local, state, or federal law; must be located at least twenty-five feet in all directions from non-smoking areas; must not include areas used primarily by children; must be no more than twenty-five percent of the total outdoor common area; must have a clearly marked perimeter; and must be identified by conspicuous signs.
- (h) All areas within twenty feet of doors, windows, air ducts and ventilation systems of multi-unit residences, except while passing on the way to another destination.
- (i) All outdoor balconies, porches, decks, patios, and carports of multi-unit residences.
- (j) All dwelling units in any ~~new~~ multi-unit residence, except as otherwise provided in Section 445-4.006 that receives a building permit on or after January 1, 2011.

(Ords. 2017- ____ § 2, 2010-10 § 3, 2006-66 § 5, 91-44 § 2).

~~(Ords. 2010-10, § III, 10-12-10, 2006-66 § 5, 91-44 § 2)~~

445-4.006 Exceptions.

- (a) Smoking is permitted at any location within the county unless otherwise prohibited by this code or by state or federal law.
- (b) Smoking is permitted in up to twenty percent of guest rooms in any hotel or motel, as long as the hotel or motel permanently designates at least eighty percent of its guest

rooms as nonsmoking rooms, appropriately signs nonsmoking rooms, and permanently removes ashtrays from these rooms. Smoking rooms shall be segregated from nonsmoking rooms on separate floors, wings or portions of either. Smoking rooms and nonsmoking rooms shall not be interspersed. Nothing in this division requires a hotel or motel to provide smoking rooms and the owner or operator of a hotel or motel may choose to prohibit smoking throughout the property.

(c) If a dwelling unit in a multi-unit residence is subject to a lease or other rental agreement and smoking is authorized under the lease or rental agreement, smoking is permitted in the dwelling unit until the lease or rental agreement is modified to prohibit smoking in accordance with Section 445-4.014.

(d) If a dwelling unit in a multi-unit residence is owner-occupied, smoking is permitted in the owner-occupied dwelling unit until [date, one year after effective date of ordinance].

(Ords. 2017- § 2, 2010-10 § 4, 2006-66 § 5, 91-44 § 2).

(Ords. 2010-10, § IV, 10-12-10, 2006-66 § 5, 91-44 § 2)

445-4.008 Posting requirements.

- (a) "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of 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 conspicuously posted in every building or other place where smoking is regulated by this division by the owner, operator, manager or other person having control of the building or other place.
- (b) Every hotel or motel regulated by this division shall post at its entrance a sign clearly stating that nonsmoking rooms are available, and every patron shall be asked as to his or her preference.

(Ords. 2006-66 § 5, 91-44 § 2)

445-4.010 Ashtray placement.

No ashtray or other receptacle used for disposing of smoking materials may be placed at any location where smoking is prohibited by this division or otherwise prohibited by law.

(Ord. No. 2009-26, § II, 10-20-09)

445-4.012 Disclosure of non-smoking residential units.

In a multi-unit residence where units are rented or leased to tenants, the owner and manager of the residence shall do all of the following:

- (a) Maintain and keep on file at the premises: (1) a list of all designated non-smoking units at the residence; and (2) a floor plan of the residence that identifies the location of all designated non-smoking units, any units where smoking is permitted, and any designated outdoor smoking areas.
- (b) Disclose whether a policy for handling smoking complaints is in effect at the multi-unit residence, and if so, the terms of that policy.
- (c) Provide a copy of the list and floor plan, and a copy of any policy for addressing smoking complaints in effect at a multi-unit residence, to each tenant along with every new lease or rental agreement for the occupancy of a unit in a multi-unit residence.

(Ord. No. 2009-26, § III, 10-20-09)

445-4.014 Required lease terms.

- (a) Commencing ~~[date, effective date of the ordinance]~~ January 1, 2011, every lease and other rental agreement for the occupancy of a dwelling unit in a multi-unit residence that is entered into, renewed, or continued month-to-month must include the terms specified in subsection (b) of this section on the earliest possible date allowed by law after providing any required legal notice.
- (b) Required Terms.
 - (1) ~~For any multi-unit residence where the landlord has designated separate smoking and non-smoking dwelling units, a~~ Δ clause stating that smoking is prohibited in all dwelling units ~~that have been designated as non-smoking units~~ must be included in the written agreements specified in subsection (a) of this section.
 - ~~(2) For any multi-unit residence where the landlord has prohibited smoking in all dwelling units, a clause stating that smoking is prohibited in all dwelling units must be included in the written agreements specified in subsection (a) of this section.~~
 - ~~(3) For any new multi-unit residence that receives a building permit on or after January 1, 2011, a clause stating that smoking is prohibited in all dwelling units must be included in the written agreements specified in subsection (a) of this section.~~
 - ~~(2)~~(4) A clause stating that it is a material breach of the lease or rental agreement to: (i) violate any law regarding smoking while on the premises; (ii) smoke in ~~a non-smoking~~ any dwelling unit; or (iii) smoke in any multi-unit residence common

area where smoking is prohibited, must be included in the written agreements specified in subsection (a) of this section.

- (c) The California Apartment Association's Form 34.0, revised ~~January 2010~~ December 2016 and as amended from time to time, may be used to comply with this section.
- (d) A landlord's failure to enforce any smoking regulation of a lease or agreement on one or more occasions does not constitute a waiver of the lease or agreement provisions required by this section and does not prevent future enforcement of the lease or agreement provisions required by this section.
- (e) A landlord is not liable under this chapter to any person for a tenant's breach of smoking regulations if:
 - (1) The landlord has fully complied with all provisions of this chapter, and
 - (2) Upon receiving a signed written complaint regarding prohibited smoking, the landlord provides a warning to the offending tenant, stating that the tenant may be evicted if another complaint is received. Upon receiving a second signed, written complaint against the offending tenant, the landlord may evict the tenant, but is not liable for the failure to do so.

~~(Ord. 2017-___ § 4, 2010-10 § 5).~~

~~(Ord. No. 2010-10, § V, 10-12-10)~~

Chapter 445-8 ENFORCEMENT

445-8.002 Compliance.

- (a) A person may not smoke in any place where smoking is prohibited by this division.
- (b) A person who owns, manages, operates or otherwise controls the use of any place where smoking is prohibited by this division may not knowingly or intentionally permit smoking in those places. For purposes of this subsection, a person has acted knowingly or intentionally if he or she has not taken the following actions to prevent smoking by another person: (1) requested that a person who is smoking refrain from smoking; and (2) requested that a person who is smoking leave the place if the person refuses to stop smoking after being asked to stop. This section does not require physically ejecting a person from a place or taking steps to prevent smoking under circumstances that would involve risk of physical harm.
- (c) The presence or absence of the signs required by Section 445-4.008 is not a defense to the violation of any other provision of this division.

(Ords. 2006-66 § 7, 91-44 § 2)

(Ord. No. 2009-26, § IV, 10-20-09)

445-8.004 Remedies.

The county may seek compliance with this division by any remedy allowed under this code, including but not limited to administrative fines (Chapter 14-12), infraction citations (Section 14-8.008), and any other remedy allowed by law.

(Ords. 2006-66 § 7, 2003-01 § 4, 98-43 § 2, 91-44 § 2)

445-8.006 Initiation of enforcement.

Any person may initiate enforcement of this division by notifying the director of health services or his or her designee of any violation.

(Ords. 2006-66 § 7, 91-44 § 2)

445-8.008 Liability.

For purposes of determining liability of persons, firms, corporations, or controlling franchises with business operations in multiple locations, each individual business location shall be deemed a separate entity.

(Ords. 2006-66 § 7, 2003-01 § 4, 98-43 § 2).

445-8.010 No retaliation.

No person shall retaliate against any employee or applicant for employment because the employee or applicant exercises any rights afforded by this division.

(Ords. 2006-66 § 7, 91-44 § 2)

445-8.012 Other applicable laws.

This division shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(Ords. 2006-66 § 7, 91-44 § 2)