

April 18, 2019

**REMINDER OF NEW REQUIREMENTS: CITY OF CLAYTON
MULTI-UNIT HOUSING GOES SMOKE-FREE ON MAY 1, 2019
(Single-Family Detached Homes Not Included)**

Dear City of Clayton Homeowner Association Managers, Multi-Unit Housing Owners, and Residents:

Following several months of community discussion, on May 1, 2018, the City of Clayton City Council adopted Ordinance No. 481, which amended the City's smoking regulations. The City Council determined the smoking restrictions put in place with this Ordinance will serve the public health, safety and welfare due to known dangers to health posed by smoking and secondhand smoke. In this Ordinance are provisions for multi-unit housing in the City of Clayton to go 100% smoke-free starting May 1, 2019. Multi-unit housing includes attached single-family homes, townhomes, row houses, duplexes, apartments, condominiums, senior and assisted living facilities, long-term health care facilities, and any multi-unit residence with two or more dwelling units. "Smoking" includes the use of tobacco products, cannabis products, and any electronic smoking devices (e.g. electronic cigarettes, vape pens, Juuls, etc.). These regulations apply only to multi-unit housing and do not apply to single-family detached homes.

As of May 1, 2019, smoking is prohibited in the following areas of all multi-unit residential housing (i.e., housing with two or more attached units) in the City of Clayton:

- In 100% of all new and existing multi-unit residential units;
- On all balconies, patios, decks, garages, and carport areas; and
- All enclosed and unenclosed multi-unit residence common areas, except where a landlord or other person legally responsible for the maintenance of the common area has designated an unenclosed area as a smoking area. The smoking area must be 25 feet from all non-smoking areas, must not include areas primarily used by children, must not be more than 25% of the total common area, must have a clearly marked perimeter, and must be appropriately signed.

A copy of City of Clayton Ordinance No. 481 and the related amended City Smoking Regulations are attached (Clayton Municipal Code Chapter 8.14 – Regulations of Smoking). Sections of this Chapter that are of particular importance include, but are not limited to, 8.14.030.K.; 8.14.050.E., F., and G.; 8.14.080; 8.14.090; and, 8.14.130.

It is important for Homeowner Association Managers to distribute this reminder notice and assist with assuring compliance with applicable provisions of Ordinance No. 481.

Thank you.

City of Clayton Community Development Department

ORDINANCE NO. 481

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON
AMENDING CHAPTER 8.14 (REGULATION OF SMOKING) OF THE CLAYTON
MUNICIPAL CODE**

**THE CITY COUNCIL
City of Clayton, California**

**THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY FIND AS
FOLLOWS:**

WHEREAS, the U.S. Environmental Protection Agency has determined that tobacco smoke is the major contributor of particulate indoor air pollution; and

WHEREAS, reliable studies have shown that breathing side stream or secondhand smoke is a significant health hazard, in particular for elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function; including asthmatics and those with obstructive airway disease; and

WHEREAS, health hazards induced by breathing side stream or secondhand smoke include heart disease, lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, broncho constriction, and broncho spasm; and

WHEREAS, nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing side stream or secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same; and

WHEREAS, the smoking of tobacco, or any other weed or plant, is a danger to health; and

WHEREAS, the health care costs and lost productivity incurred by smoking-related disease and death represent a heavy and avoidable financial drain on our community; and

WHEREAS, the free distribution of cigarettes and other tobacco products encourages people to begin smoking and using tobacco products, and tempts those who had quit smoking to begin smoking again; and

WHEREAS, free distribution of cigarettes and other tobacco products promotes unsightly litter, thereby increasing the costs to the public in cleaning the streets; and also causes pedestrian traffic congestion; and

WHEREAS, electronic smoking devices, commonly known as "electronic cigarettes," "e-cigarettes," "e-cigars," "e-cigarillos," "e-pipes," "e-hookahs," "electronic nicotine delivery systems," "vape pens" etc., are battery operated devices designed to deliver nicotine, flavor, and/or other substances through a vapor inhaled by the users; and

WHEREAS, the use of electronic smoking devices, also referred to as ‘e-cigarettes,’ has grown in in popularity in recent years, even as traditional tobacco use has declined; and

WHEREAS, electronic smoking devices' vapor emissions and cartridge contents have been found to contain a number of dangerous substances including chemicals known to the State of California to cause cancer such as formaldehyde, acetaldehyde, lead, nickel, and chromium; and

WHEREAS, exposure to vapor from electronic smoking devices may cause passive or secondhand vaping; and

WHEREAS, electronic smoking devices emit vapor and other substances that may be inhaled by bystanders, who may include children and youth, the elderly, among others, and the effect of such substances on the user and bystanders has not been shown to be safe; and

WHEREAS, electronic smoking devices may have the capacity to ‘re-normalize’ tobacco use and often mimic conventional tobacco products with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes; and

WHEREAS, the use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment; and

WHEREAS, due to the federal prohibitions on marijuana/cannabis use, the effects of cannabis smoking have not been widely studied, however, exposure to cannabis smoke may cause passive or second hand cannabis smoking and therefore similar health effects as exposure to smoke from tobacco products; and

WHEREAS, California Health and Safety Code, Section 11362.3, provides that smoking or ingesting cannabis or cannabis products is not permitted in any public place and smoking is prohibited in places where smoking tobacco is prohibited, among other places.

WHEREAS, the City of Clayton (“City”) prohibits smoking in city-owned, leased or operated facilities, in parks, trails and open spaces, as well as certain enclosed and unenclosed areas of the City open to the public; and

WHEREAS, the purpose of the City’s smoking restrictions is to serve the public health, safety and welfare due to the known dangers to health posed by smoking and secondhand smoke; and

WHEREAS, the City’s smoking regulations have not been updated since 1993; and

WHEREAS, the City desires to clarify its local smoking regulations consistent with the recently enacted Adult Use of Marijuana Act of 2016 (commonly known as AUMA or Proposition 64) that cannabis smoking is prohibited anywhere tobacco smoking is prohibited; and

WHEREAS, the City Council desires to pass this ordinance in order to more fully protect City citizens against unwanted secondhand smoke in public places, in multi-family dwellings, and to clarify and confirm that smoking marijuana/cannabis and use of electronic smoking devices is prohibited and subject to the same enforcement and penalties as other smoking restrictions; and

WHEREAS, this Ordinance is authorized by California Health and Safety Code section 118910 and California Business and Professions Code section 26200.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON DOES ORDAIN AS FOLLOWS:

Section 1. **Incorporation of Recitals.** The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. **Clayton Municipal Code Chapter 8.14 (“Regulation of Smoking”) Amended.** Clayton Municipal Code, Chapter 8.14, entitled “Regulation of Smoking,” is hereby adopted and amended as set forth in Exhibit “A” attached hereto and incorporated herein by reference.

Section 3. **CEQA.** This Ordinance is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment. This Ordinance expands the scope of smoke-free places in the City of Clayton and adds cannabis smoke and the use of electronic smoking or vaporizing devices, thereby reducing exposure to second hand smoke and offering greater protection to indoor and outdoor air quality.

Section 4. **Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

Section 5. **Effective Date and Publication.** This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution by the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause the amendments adopted in Section 2 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of the City of Clayton held on April 17, 2018.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular public meeting thereof held on May 1, 2018 by the following vote:

AYES: Mayor Haydon, Vice Mayor Shuey, Councilmembers Catalano, Diaz and Pierce.

NOES: None.

ABSENT: None.

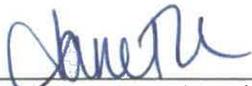
ABSTAIN: None.

THE CITY COUNCIL OF CLAYTON, CA



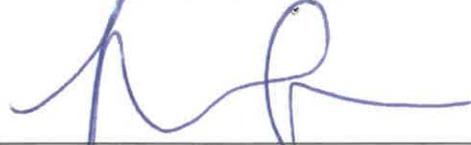
Keith Haydon, Mayor

ATTEST



Janet Brown, City Clerk

APPROVED AS TO FORM



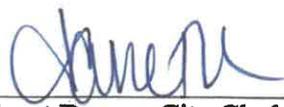
Malathy Subramanian, City Attorney

APPROVED BY ADMINISTRATION



Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on May 1, 2018.



Janet Brown, City Clerk

EXHIBIT A

Chapter 8.14 - REGULATION OF SMOKING

Sections:

8.14.010 - Reserved.

8.14.020 - Purpose.

Because smoking is a positive danger to public health, and a cause of material discomfort and a public health hazard even to those exposed to secondhand smoke or vapor, the compelling purpose and intent of this chapter include, but are not limited, to:

- A. Promote the public health, safety and welfare by prohibiting smoking in certain areas which are used by or open to the public;
- B. Assure a cleaner and more hygienic environment for the City, its residents, visitors, and natural resources; and
- C. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including children and youth, to breathe smoke-free and drug-free air, recognizing the threat to public health and the environment caused by smoking and unwelcome secondhand smoke and vapor.

8.14.030 - Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as hereafter set out, unless it is apparent that they have a different meaning:

- A. "Bar" means any business licensed or required to be licensed by the Department of Alcoholic Beverage Control for alcoholic beverage on-sale privileged as a "public premise" as defined by California Business and Professions Code section 23039.
- B. "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes. For purposes of this chapter, the term "business" also includes a nonprofit entity.
- C. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For purposes of this chapter, the term "cannabis" shall include "cannabis," "cannabis concentrate" and "cannabis products" as those terms are defined by California Business and Professions Code section 26001, and specifically includes hashish, dabs, or similarly mildly euphorogenic and hallucinogenic drugs are prepared from the plant genus *Cannabis*, whether for medical or adult use.
- D. "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, paths, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.
- E. "Dining Area" means any area, including streets and sidewalks, that is available to or customarily used by the general public or an employee, and that is designed, established, or regularly used, for consuming food and drink. For purposes of this chapter, "dining area" does not include the unenclosed or outdoor areas of a private restaurant that is not open to the general public during all or any hours of operation and is only open to members. The term "dining area" shall not include a bar.
- F. "Distribute" means to give, sell, deliver, dispense, issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue.

- G. "Electronic Smoking Device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vapor or vape pen or any other product name or descriptor.
- H. "Employee" means any person who is employed or retained as an independent contractor by any employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer.
- I. "Employer" means any business or government entity that retains the service of one (1) or more employees.
- J. "Enclosed" 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 constraint to airflow including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or
 2. Four (4) walls or other vertical constraints to airflow including, but not limited to, vegetation that exceed six (6) feet in height, whether or not those boundaries include vents or other openings.
- K. "Multi-unit Residence" means improved property containing two (2) or more dwelling units sharing one or more walls, including, but not limited to, attached single-family homes, townhomes, row houses, duplexes, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. Multi-unit residences do not include the following:
1. A detached single-family home; or
 2. A detached single-family home with a detached or attached in-law, second unit, or accessory dwelling unit permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections; or
 3. A mobile home in a mobile home park.
- L. "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.
- M. "Open Space" means land left basically in its natural, undeveloped state to promote scenic and aesthetic beauty and used for the preservation of natural resources, managed production of resources and outdoor recreation.
- N. "Park" means all public open spaces, recreation areas and trails owned and maintained by the City of Clayton, whose primary purpose is recreation, either passive or active.
- O. "Person" means any natural person, business, cooperative association, homeowners association, nonprofit entity, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.
- P. "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. "Place of employment" does not include tobacco shops or private smokers' lounges that meet the requirements of subdivision (e)(2) of

Labor Code Section 6404.5 or its successor and this chapter. A private residence is not a place of employment unless it is used as a childcare or health care facility.

- Q. "Public Event" means any event which is open to and may be attended by the general public, including but not limited to such events as farmers' markets, parades, craft fairs, festivals, concerts, performances or other exhibitions, regardless of any fee or age requirement.
- R. "Public Place" means any area, whether publicly or privately owned, to which the public has access by right or by invitation, expressed or implied, whether by payment of money or not and regardless of any age requirement. "Public place" does not include tobacco shops or private smokers' lounges that meet the requirements of subdivision (e)(2) of Labor Code Section 6404.5 or its successor and this chapter.
- S. "Recreational Area" means any area that is 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, open spaces, parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, and skateboard parks, but does not include the unenclosed outdoor areas of private golf courses.
- T. "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 areas including or adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.
- U. "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 cannabis or other controlled 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, and cannabis smoke or vapors.
- V. "Smoking" means engaging in an act that generates smoke, such as, for example, inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, tobacco product, cannabis, or other plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking or vaping device for the purpose of circumventing the prohibition of smoking. The term "smoking" shall include, but not be limited to "smoking" as the term is defined by California Business and Professions Code, Section 22950.5.
- W. "Tobacco Product" means any of the following:
1. A product containing, made, 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, or snuff.
 2. An electronic smoking device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, vapor pen or hookah.
 3. Any component, part, or accessory of a tobacco product, whether or not sold separately.

"Tobacco product" does not include a 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 such an approved purpose. The term "tobacco product" shall include, but not be limited to "tobacco product" as the term is defined by California Business and Professions Code, Section 22950.5.

- X. "Trail" means a marked or established path or route, paved or unpaved, used for the recreational activities of walking, hiking, bicycling, and/or horseback riding.
- Y. "Unenclosed" means any area that is not Enclosed.
- Z. "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 attached single-family home; row houses; an apartment; a duplex; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a room in a single room occupancy ("SRO") facility; a room in a homeless shelter; a single-family home; and an in-law or accessory dwelling unit.
- AA. "Vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion or payment of money, whether by coin or paper bill, credit card, cell phone app or other item representative of value, which dispenses or releases a tobacco product and/or tobacco accessories.

8.14.040 - Regulation of Smoking in City Facilities.

- A. Smoking is prohibited in all buildings, vehicles, or other enclosed areas occupied by City employees, owned or leased by the City, or otherwise operated by the City.
- B. Smoking is prohibited in all unenclosed areas owned, leased, or operated by the City, including City parks, trails and recreational areas, parking lots, corporation yards, the grounds of any building owned, leased, or operated by the City with the exception of public sidewalks.

8.14.050 - Prohibition of Smoking.

Smoking is prohibited in the following places within the City of Clayton:

- A. Enclosed places of employment in accordance with California Labor Code, section 6404.5, including those enclosed places of employment exempted by the California smoke-free workplace law (Labor Code section 6404.5(e), as that section may be amended from time to time) except as provided below:
 - 1. Smoking inside a tobacco shop is not prohibited by this subsection if (a) the tobacco shop does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the premises; (b) the tobacco shop prohibits those under the age of 21 from entering the store at all times; and (c) the premises of the tobacco shop is an independent freestanding building unattached to any other building, establishment, or use. For the purposes of this exception, "Tobacco Shop" means any tobacco retailer that derives more than seventy-five percent (75%) of gross sales receipts from the sale or exchange of tobacco products and tobacco paraphernalia.
- B. Enclosed public places.
- C. Service areas (enclosed and unenclosed).
- D. The following unenclosed areas:
 - 1. Dining areas.
 - 2. Recreational areas.

3. Public events.

- E. All enclosed and unenclosed multi-unit residence common areas, except that a landlord or other person legally responsible for maintenance of the common area may designate a portion of an unenclosed common area as a smoking area. A designated smoking area of an unenclosed 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 unenclosed common area; must have a clearly marked perimeter; and must be identified by conspicuous signs.
- F. Dwelling units in any new multi-unit residence, including enclosed and unenclosed balconies, porches, decks, patios, garages, and carport areas, that receives a building permit on or after the effective date of this chapter.
- G. Dwelling units in any existing multi-unit residence, including enclosed and unenclosed balconies, porches, decks, patios, garages, and carport areas, on or after May 1, 2019.

Nothing in this chapter prohibits any person 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.

8.14.060 – Permissible Smoking Areas

Nothing in this chapter prohibits any person from smoking:

- 1. Inside private vehicles.
- 2. Inside private, detached single-family residences except private residences used as child care facilities or health care facilities.
- 3. Inside an accessory dwelling unit that is attached to or detached from a detached single-family residence.
- 4. As provided under subsection 8.14.050.G.

8.14.070 - Prohibition of Smoking and Ingesting Cannabis and Cannabis Products.

Smoking cannabis is prohibited in all places where smoking tobacco products is prohibited. In addition, smoking cannabis is prohibited in the following places:

- A. In or upon all property owned, leased, or operated by the City, expressly including any public park, street, sidewalk, trail, bike path, alley, highway, parking lot or parking structure, or in any other public place as defined in this chapter and by state law. (See, Cal. Health & Safety Code § 11362.3(a)(1).)
- B. Within 1,000 feet of a school, day care center, or youth center while children are present at such a school, day care center, or youth center, except in or upon the grounds of a private residence if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present.
- C. In or upon the grounds of a school, day care center, or youth center, regardless of whether children are present. (See, Cal. Health & Safety Code § 104559; Labor Code § 6404.5.)
- D. While driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation. (See, Cal. Health & Safety Code § 11362.3; Vehicle Code § 23152.)

E. Ingesting cannabis is prohibited in any public place, as defined herein.

8.14.080 – Multi-unit Residences Required Lease Terms.

A. Lease Terms. The following lease terms are required immediately following the effective date for all new units and are required for existing units by May 1, 2019 in multi-unit residences:

(1) Every lease or other rental agreement for the occupancy of a new or existing unit in a multi-unit residence entered into, renewed, or continued month-to-month after the effective date of this chapter shall include the following:

- i. A clause providing that as it is a material breach of the agreement to allow or engage in smoking in the unit, including exclusive-use areas such as balconies, porches, or patios. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in the unit or exclusive use areas such as balconies, porches, or patios."
- ii. A clause providing that it is a material breach of the agreement for any tenant or any other person subject to the control of the tenant to engage in smoking in any common area of the multi-unit residence other than a designated smoking area. Such a clause might state, "It is a material breach of this agreement for any tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any common area of the property, except in an unenclosed designated smoking area, if one exists."
- iii. A clause providing that it is a material breach of the agreement for any tenant or any other person subject to the control of the tenant to violate any law regulating smoking while anywhere on the property. Such a clause might state, "It is a material breach of this agreement for any tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property."
- iv. A clause expressly conveying third-party beneficiary status to all occupants of the multi-unit residence as to the smoking provisions of the lease or other rental agreement. Such a clause might state, "Other occupants of the property are express third-party beneficiaries of those provisions in this agreement regarding smoking. As such, other occupants of the property may enforce such provisions by any lawful means, including by bringing a civil action in a court of law."

B. Whether or not a landlord complies with subsection (A), the clauses required by that subsection shall be implied and incorporated by law into every agreement to which subsection (A) applies and shall become effective as of the earliest possible date on which the landlord could have made the insertions pursuant to subsection (A).

C. A tenant who breaches a smoking provision of a lease or other rental agreement for the occupancy of a unit in a multi-unit residence, or who knowingly permits any other person subject to the control of the tenant or present by invitation or permission of the tenant, shall be liable for the breach to: (i) the landlord; and (ii) any occupant of the multi-unit residence who is exposed to smoke or who suffers damages as a result of the breach.

D. This chapter shall not create additional liability for a landlord to any person for a tenant's breach of any smoking provision in a lease or other rental agreement for the occupancy of a unit in a multi-unit residence if the landlord has fully complied with this section.

8.14.090 - Posting and Notice Requirements.

- A. "No Smoking" signs 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 clearly, sufficiently and conspicuously posted in every building or other place where smoking is controlled by this chapter, by the owner, operator, manager or other person having control of such building or other place. For unenclosed areas, the signs must be posted at each point of ingress to the area, and in at least one other conspicuous point within the area. For multi-unit residences, the signage shall indicate smoking is prohibited within units in the multi-unit residence and within the common areas, except as designated under Section 8.14.050(E).
- B. With respect to each multi-unit residence, the person legally responsible for maintenance of the common area shall within thirty (30) days of the effective date of this chapter, notify the occupants and owners of units in writing by mail or delivery to the unit of the smoking prohibitions and penalties imposed by this chapter.
- C. Notwithstanding this section, the presence or absence of signs or failure to receive notice shall not be a defense to a charge of smoking in violation of any other provision of this chapter.

8.14.100 - Vending Machines.

Vending machines for the distribution of tobacco products and/or cannabis products shall be prohibited within the City of Clayton.

8.14.110 - Distribution of Free Samples and Coupons.

No person, including any agent or employee of any person, in the business of selling or otherwise distributing tobacco products or cannabis/cannabis products for commercial purposes shall in the course of such business distribute, or direct, authorize, or permit any agent or employee to distribute: (1) any tobacco product, including any smokeless tobacco product, or (2) coupons, certificates, or other written material which may be redeemed for tobacco products without charge, to any person in any public place.

8.14.120 - Out of Package Sales.

No person shall sell or offer for sale tobacco products or smokeless tobacco not in the original packaging provided by the manufacturer.

8.14.130 – Enforcement.

- A. Administration of this chapter shall be by the City Manager or his/her designees.
- B. Any citizen who desires to register a complaint hereunder may initiate enforcement consideration with the City Manager or his/her designees.
- C. Any person acting for the interests of itself, its members, or the general public (hereinafter "private enforcer") may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this chapter against any person who has violated this chapter two (2) or more times. Upon proof of the violations, a court shall grant all appropriate relief, including: (1) awarding damages; and (2) issuing an injunction or a conditional judgment. If there is insufficient or no proof of actual damages for a specific violation, the court shall award one hundred fifty dollars (\$150.00) for each violation as statutory damages. A private enforcer shall provide a copy of his, her, or its action to the City Manager within seven (7) days of filing it.
- D. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity, including without limitation, administrative fines.

8.14.140 - Penalties.

- A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this chapter to fail to properly post signs required hereunder.
- B. It shall be unlawful for any person to smoke in any area restricted by the provisions of this chapter. Each instance of smoking in violation of this chapter shall constitute a separate violation.
- C. No person shall knowingly permit smoking in an area which is under the legal or de facto control of that person and in which smoking is prohibited by this chapter.
- D. Unless state law requires a different remedy, any person who violates subsection A. or B. or C. herein, or any other provision of this chapter, shall be guilty of a misdemeanor unless it is charged as in an infraction, in the discretion of the City Manager in accordance with chapter 1.20 of the Clayton Municipal Code. As required by state law, violations of section 8.14.070 shall be charged as an infraction and subject to the penalties set forth in state law (See, Cal. Health & Safety Code § 11362.4, as may be amended.).

8.14.150 - 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 rights afforded by this chapter.

8.14.160 - Other Applicable Laws.

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