

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VACAVILLE
REPEALING CHAPTER 9.65 OF THE VACAVILLE MUNICIPAL CODE AND
ADOPTING A NEW CHAPTER 9.65 TO THE VACAVILLE MUNICIPAL CODE
RELATING TO SMOKING RESTRICTIONS; AMENDING CHAPTER 9.66 OF THE
VACAVILLE MUNICIPAL CODE RELATING TO VENDING MACHINES – SALE OF
SMOKING PRODUCTS; AND AMENDING SECTION 12.28.091 OF THE VACAVILLE
MUNICIPAL CODE RELATING TO SMOKING WITHIN CITY RECREATIONAL AREAS**

WHEREAS, the City’s smoking regulations in Chapter 9.65 of the Vacaville Municipal Code have not been updated since 1987; and

WHEREAS, the state laws, including section 6404.5 of the Labor Code, have been amended since the City’s adoption of Chapter 9.65 to be more restrictive of smoking in enclosed places of employment; and

WHEREAS, the City Council desires to update Chapter 9.65 of the Vacaville Municipal Code so that it is consistent with state law and to regulate, in addition to tobacco products, electronic smoking devices and the smoking of medical marijuana; and

WHEREAS, state law expressly declares its intent not to preempt the field of regulation of smoking pursuant to section 118910 of the California Health and Safety Code and section 6404.5(j) of the California Labor Code.

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

Section 1. Upon the effective date of this ordinance, Chapter 9.65 of the Vacaville Municipal Code, entitled “Smoking Restrictions,” is repealed and a new Chapter 9.65 of the Vacaville Municipal Code is adopted to read as follows:

CHAPTER 9.65

SMOKING RESTRICTIONS

- 9.65.010 Purpose and findings.**
- 9.65.020 Definitions.**
- 9.65.030 Prohibition of smoking in enclosed areas.**
- 9.65.040 Prohibition of smoking in unenclosed areas.**
- 9.65.050 Regulation of smoking in smokers lounges and smoke shops.**
- 9.65.060 Minors. Sale, furnishing, possession or use of electronic smoking devices.**
- 9.65.070 Responsibility for violations of chapter.**
- 9.65.080 Signage.**
- 9.65.090. Disposal of smoking products.**
- 9.65.100 Retaliation.**
- 9.65.110 Enforcement.**
- 9.65.120 Public nuisance.**
- 9.65.130 Civil injunction.**

- 9.65.140 Administrative fines and costs.**
- 9.65.150 Remedies cumulative; each day a separate offense.**
- 9.65.160 Other applicable laws.**

9.65.010 Purpose and findings.

A. The city council finds that:

1. The U.S. Department of Health and Human Services has found that tobacco use is one of the leading causes of preventable death in this country. Approximately 480,000 adults die each year from cigarette smoking, including an estimated 41,000 deaths resulting from secondhand smoke exposure.
2. The U.S. Centers for Disease Control and Prevention have found that approximately 16 million people in the United States currently suffer from smoking caused illness.
3. The U.S. Surgeon General has found that approximately 5.6 million children under the age of 18 will ultimately die from smoking unless smoking rates decline.
4. The U.S. Centers for Disease Control and Prevention have found that tobacco use and exposure to secondhand smoke imposes great social and economic costs. The total annual public and private health care expenditures caused by smoking is approximately \$170 billion. The total annual cost of smoking in California has been estimated at \$475 per resident.
5. The U.S. Surgeon General has found that there is no risk-free level of exposure to secondhand smoke. According to one study, 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.
6. The American Lung Association has found that children are particularly vulnerable to secondhand smoke and are more likely to develop asthma, have more asthma attacks, suffer pneumonia and have more ear infections.
7. The U.S. Centers for Disease Control and Prevention have found that cigarette butts pose a health threat to young children. Additionally, more than one study has concluded that cigarette butts are a persistent source of litter.
8. Existing studies on electronic smoking devices have found that such devices contain known carcinogens and misrepresent nicotine content on their labels. As a result, the U.S. Food and Drug Administration has warned the public about the potential health risks of using electronic

smoking devices.

9. Electronic smoking devices offered for sale in this state are not currently subject to state and federal quality control procedures. More than one study has concluded that exposure to aerosol/vapor from electronic smoking devices may have harmful effects on non-smokers.
10. The State of California's Tobacco Education and Research Oversight Committee opposes the use of electronic smoking devices in all areas where tobacco products are banned.
11. 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.
12. The American Lung Association has found that smoke from marijuana combustion has been shown to contain many of the same toxins, irritants and carcinogens as tobacco smoke.
13. The Center for Tobacco Control has found that breathing secondhand marijuana smoke may cause heart damage and impair vascular function.
14. Section 11362.79 of the California Health and Safety Code expressly provides that nothing in the Compassionate Use Act or the Medical Marijuana Program Act (sections 11362.7 et seq. of the California Health and Safety Code) authorizes a person having a medical marijuana identification card to smoke in any place where smoking is prohibited by law.
15. There is no constitutional right to smoke.

B. Based on these findings, the purpose and intent of this chapter is:

1. To generally promote the health and welfare of all persons in the city against the health hazards and harmful effects of addictive smoking products.
2. To minimize the availability and use of smoking products in public places in order to reduce the involuntary exposure of nonsmokers to the harmful effects of secondhand smoke and aerosol/vapors.
3. To promote a healthy environment in and around the city's outdoor public places.

9.65.020. Definitions.

As used in this chapter, the following words and phrases shall have the following meanings, unless the context shall indicate another meaning or intent. Whenever any reference is made herein to any local law or regulation or to any state or federal statute, regulation or other law, the reference includes any subsequent amendment or

superseding provision.

“Automated Teller Machine” shall mean any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit, or savings account.

“Designated smoking area” shall mean one or more areas that have been posted with signs or otherwise designated to permit smoking within such areas. The location of the designated smoking area shall be approved by the City Manager or designee. Where feasible, the designated smoking area shall not be located within twenty-five feet of any enclosed and unenclosed areas where smoking is prohibited.

“Electronic smoking device” shall mean an electronic device which 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 electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette/e-cig, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape/vaporizer, or any other product name or descriptor. “Electronic smoking device” shall also include the fluid that fuels an electronic smoking device, such as, “EJuices” or “ELiquid”.

“Employee” shall mean any person who is employed, or who is 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.

“Employer” shall mean any person that retains the service of one or more employees, independent contractors, or volunteers.

“Enclosed area” shall mean any area in which outside air cannot circulate freely to all parts of the area.

“Outdoor dining and bar patios” shall mean any unenclosed area, street, or sidewalk, which is available or customarily used by the general public and which is designed, established, or regularly used for consuming food or drink.

“Person” shall mean any natural person, sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity.

“Place of employment” shall mean 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 operations, regardless of the hours of operation.

“Public place” means any place, publicly or privately owned, which is open to the general public regardless of any fee, admission or age requirement.

“Smoke” shall mean:

- A. The gases, particles, or aerosol/vapors released into the air as a result of the combustion, electrical ignition, or vaporization of a smoking product; and
- B. The apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts.
- C. "Smoke" includes, but is not limited to, tobacco smoke, electronic smoking device aerosols/vapors, and marijuana smoke.
- D. "Smoke" does not include the combusting or vaporizing of material that does not contain tobacco or nicotine, and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense.

"Smoke shop" shall mean any retail business establishment, the main purpose of which is the sale of smoking products. For the purposes of this definition, "Smoke shop" means any retailer that is dedicated exclusively to the sale and use of smoking products.

"Smokers lounge" shall mean any enclosed area in or attached to a retail smoke shop. "Smokers lounge" includes, but is not limited to, cigar lounges, hookah bars and tobacco clubs.

"Smoking" shall mean inhaling, exhaling, burning, or carrying any lighted, heated, or ignited smoking product, or any plant product intended for human inhalation.

"Smoking product" shall mean:

- A. Any product containing, made, or derived from marijuana, 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.
- B. Any electronic smoking device.
- C. "Smoking product" includes any component, part, or accessory of a smoking product, whether or not sold separately. "Smoking product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a smoking cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

"Special event" shall mean a sporting, cultural, business, amusement, or other type of unique activity, occurring for a limited or fixed duration (for example, one-time, weekly, monthly, annually), sponsored or permitted by the city, and open to the general public regardless of any fee, admission or age requirement.

"Unenclosed area" means any area that is not an enclosed area.

9.65.030. Prohibition of smoking in enclosed areas.

Smoking is prohibited in enclosed areas of the following places:

- A. Public places.
- B. Places of employment, with the following exceptions:
 - 1. Hotels, motels, or similar transient lodging establishments, as designated in Section 6404.5(d)(1)-(3) of the California Labor Code. Notwithstanding the foregoing, any person who owns or controls a hotel, motel, or similar transient lodging establishment may declare the entire establishment to be a nonsmoking establishment.
 - 2. Smokers lounges and smoke shops, subject to the requirements of Section 9.65.040 of this chapter.
- C. Businesses that have a common or shared air space with an enclosed area in which smoking is prohibited such as, openings, cracks, air ventilation systems, doorways, hallways, and stairways. This provision would apply, for example, to an office space occupied by a solo practitioner and who has no employees and does not see clients in this space. Notwithstanding the foregoing, if a business was legally established prior to the effective date of this chapter, and subject to Chapter 14.09.135 of this code regulating on-conforming uses and structures, the building shall be brought into conformance with the foregoing requirements no later than six (6) months from the effective date of this chapter.

9.65.040 Prohibition of smoking in unenclosed areas.

Smoking is prohibited in any of the following unenclosed areas:

- A. Within twenty-five feet of a main exit, entrance or operable window of a public building owned, leased or controlled by the city.
- B. Adjacent to a main exit, entrance or operable window of a privately owned commercial building.
- C. Within twenty-five feet of any playground or tot lot sandbox area.
- D. Outdoor dining and bar patios.
- E. Within twenty-five feet of any outdoor dining or bar patio.
- F. Within twenty-five feet of any service area. For the purposes of this section, “service area” means any publicly or privately owned area 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.

- G. Special events, except in a designated smoking area. Notwithstanding the foregoing, any person who sponsors, permits, or controls the special event may declare the entire event to be non-smoking.

9.65.050. Regulation of smoking in smokers lounges and smoke shops.

Smoking inside of a smokers lounge or smoke shop is not prohibited by this chapter if:

- A. Adequate ventilation is provided for the smoking and/or heating of smoking products in accordance with all requirements of local, state or federal law. At a minimum, the ventilation system shall assure that smoke from the smokers lounge or smoke shop is incapable of migrating into any other smoke free portion of the building in which such smokers lounge or smoke shop is located, or into any other smoke free building adjacent to or in the vicinity of the smokers lounge or smoke shop, or into adjacent or nearby unenclosed areas used by the public such as sidewalks.
- B. The business has its own business license, separate and apart from any other business.
- C. The business has its own entrance to the premises, separate and apart from any other business.
- D. The business has its own separate enclosure (unit, suite, etc.), separate and apart from any other business.
- E. There is no free distribution of smoking products.
- F. No beverages or food products are sold or consumed on the premises.
- G. Persons under the age of eighteen (18) years are prohibited from entering, working at, or patronizing the premises.
- H. Notwithstanding the foregoing, if a smokers lounge or smoke shop was legally established prior to the effective date of this chapter, and subject to Chapter 14.09.135 of this code regulating on-conforming uses and structures, the smokers lounge or smoke shop shall be brought into conformance with the foregoing requirements no later than six (6) months from the effective date of this chapter.

9.65.60 Minors. Sale, furnishing, possession or use of electronic smoking devices.

- A. It shall be unlawful for any person to sell, or otherwise furnish an electronic smoking device to a person under 18 years of age.
- B. It shall be unlawful for any person under 18 years of age to purchase, possess or use any electronic smoking device.

9.65.070. Responsibility for violations of chapter.

In addition to any person who violates the provisions of this chapter, no person shall knowingly permit smoking in an area that is under the legal or de facto control of such person and in which such uses are prohibited by this chapter or other law.

9.65.080. Signage.

“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 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. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of smoking in violation of this chapter.

9.65.090. Disposal of smoking products.

No person shall dispose of a lighted or unlighted smoking product, smoking product-related waste or any other combustible material in a public place, except in a device designated for such disposal, such as, for example, ash trays or ash cans.

9.65.100 Retaliation.

No person or employer shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to obtain compliance with this section.

9.65.110. Enforcement.

Any person subject to this chapter who personally, or through an agent, employee, independent contractor or other intermediary, violates any provision of this chapter commits an infraction.

9.65.120. Public nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared to be a public nuisance.

9.65.130. Civil injunction.

The violation of any provision of this chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of the city, create a cause for injunctive relief.

9.65.140. Administrative fines and costs.

In addition to the remedies set forth above, any person subject to this chapter who personally, or through an agent, employee, independent contractor or other intermediary, violates any provision of this chapter may be subject to administrative fines and costs pursuant to Chapter 1.28 of this code.

9.65.150. Remedies cumulative; each day a separate offense.

Any person subject to this chapter who personally, or through an agent, employee, independent contractor or other intermediary, violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such violation is committed, continued or permitted to exist by such person. All remedies provided herein shall be cumulative and not exclusive.

9.65.160 Other applicable laws.

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

Section 2. Chapter 9.66 of the Vacaville Municipal Code, entitled "Vending Machines – Cigarettes and Other Tobacco Products," is amended to read in full as follows:

CHAPTER 9.66

**VENDING MACHINES AND SELF SERVICE DISPLAYS –
SALE OF SMOKING PRODUCTS**

- 9.66.010 Purpose and findings.**
- 9.66.020 Definitions.**
- 9.66.030 Vending machine sales and self service displays prohibited.**
- 9.66.040 Vending machines – Removal.**
- 9.66.050. Enforcement.**
- 9.66.060 Public nuisance.**
- 9.66.070. Civil injunction.**
- 9.66.080. Administrative fines and costs.**
- 9.66.090 Remedies cumulative; each day a separate offense.**

9.66.010 Purpose and findings.

- A. The city council finds that:
 - 1. The U.S. Surgeon General has found that approximately 5.6 million children under the age of 18 will ultimately die from smoking unless smoking rates decline.
 - 2. The U.S. Centers for Disease Control and Prevention have found that more than 3,200 children per day under the age of 18 try smoking for the first time and approximately 2,100 children per day who have been occasional smokers become daily cigarette smokers.
 - 3. The U.S. Centers for Disease Control and Prevention have found that approximately 6.2% of middle school students and 23.3% of high school students currently use smoking products, including tobacco products and electronic smoking devices. From 2011-2012, electronic cigarette use doubled among middle school and high school students, notwithstanding

that state law prohibits the sale of electronic smoking devices to minors under section 119405 of the California Health and Safety Code.

4. According to the Campaign for Tobacco-Free Kids, approximately 540 million packs of cigarettes per year are consumed by children under the age of 18.
5. Existing studies on electronic smoking devices have found that such devices contain known carcinogens and misrepresent nicotine content on their labels. As a result, the U.S. Food and Drug Administration has warned the public about the potential health risks of using electronic smoking devices.
6. Electronic smoking devices offered for sale in this state are not currently subject to state and federal quality control procedures.

B. Based on these findings, the purpose and intent of this chapter is:

1. To generally promote the health and welfare of all persons in the city against the health hazards and harmful effects of addictive smoking products.
2. To minimize the availability and use of smoking products in public places in order to reduce the involuntary exposure of nonsmokers to the harmful effects of secondhand smoke and aerosol/vapors.
3. To prevent adolescents from illegally obtaining smoking products by limiting the use of vending machines in the city which sell or distribute such products.
4. To significantly reduce the ability of minors from illegally obtaining smoking products by limiting the use of vending machines in the city which sell or distribute such products.

9.66.020. Definitions.

As used in this chapter, the following words and phrases shall have the following meanings, unless the context shall indicate another meaning or intent. Wherever reference is made herein to any local law or regulation or to any state or federal statute, regulation or other law, such reference shall include such statute, regulation or other law as the same exists or may hereinafter be amended, renumbered, or redesignated from time to time.

“Electronic Smoking Device” shall mean an electronic device which 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 electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette/e-cig, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vape/vaporizer, or any other product name or descriptor. “Electronic smoking device” shall also include the fluid that fuels an electronic smoking device, such as

“EJuices” or “ELiquid”.

“Person” shall mean any natural person, sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity.

“Smoking Product” shall mean:

- A. Any product containing, made, or derived from marijuana, 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.
- B. Any electronic smoking device.
- C. “Smoking product” shall include any component, part, or accessory of a smoking product, whether or not sold separately. “Smoking product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a smoking cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

“Vending machine” shall mean any electronic or mechanical device or appliance, the operation of which depends upon the insertion of money, credit cards, tokens, or other form of payment, which in exchange dispenses or releases smoking products, either exclusively or as one kind of available item.

9.66.030. Vending machine sales and self-service displays prohibited.

- A. No smoking product may be sold, offered for sale, or distributed by or from a vending machine or appliance, or any other mechanical device designed or used for vending purposes, except for vending machines located within the premises licensed by the state for on-site liquor sales and located within the areas of such premises to which access by minors is prohibited by law.
- B. No retail sales business shall display its smoking products for sale in a self-service display area. Such products must be displayed behind an enclosed counter of the business and the retailer or employee of the retailer shall be required to dispense the smoking product. For the purposes of this section, a self-service display is a rack, shelf or kiosk that holds smoking products that the public has access to without the assistance of the retailer or employee of the retailer.

9.66.040. Vending machines – removal.

Any vending machine which is not permitted under Section 9.66.030 of this chapter shall be removed within one hundred twenty days from the effective date of this chapter.

9.66.050. Enforcement.

Any person subject to this chapter who personally, or through an agent, employee, independent contractor or other intermediary, violates any provision of this chapter commits an infraction.

9.66.060 Public nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared to be a public nuisance.

9.66.070. Civil injunction.

The violation of any provision of this chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of the city, create a cause for injunctive relief.

9.66.070. Administrative fines and costs.

In addition to the remedies set forth above, any person subject to this chapter who personally, or through an agent, employee, independent contractor or other intermediary, violates any provision of this chapter may be subject to administrative fines and costs.

9.66.080. Remedies cumulative; each day a separate offense.

Any person subject to this chapter who personally, or through an agent, employee, independent contractor or other intermediary, violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such violation is committed, continued or permitted to exist by such person. All remedies as provided herein shall be cumulative and not exclusive.

Section 3. Section 12.28.091 of the Vacaville Municipal Code, entitled "Prohibition of smoking within city parks and recreational facilities except in designated areas," is hereby amended to read in full as follows:

12.28.091. Prohibition of smoking within city recreational areas.

A. Definitions.

As used in this chapter, the following words and phrases shall have the following meanings, unless the context shall indicate another meaning or intent, Wherever reference is made herein to any local law or regulation or to any state or federal statute, regulation or other law, such reference shall include such statute, regulation or other law as the same exists or may hereinafter be amended, renumbered, or redesignated from time to time

"Designated smoking area" shall mean one or more areas that have been posted with signs stating that smoking is permitted within such areas. Such smoking area shall be approved by the City Manager or designee. Factors to consider when designating a smoking area shall include, but not be limited to, the distance of the smoking area from

enclosed and unenclosed areas where smoking is prohibited and whether it would be feasible to locate the smoking area at least twenty-five (25) or more from such enclosed or unenclosed areas.

“Electronic Smoking Device” shall mean an electronic device which 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 electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette/e-cig, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vape/vaporizer, or any other product name or descriptor. “Electronic smoking device” shall also include the fluid that fuels an electronic smoking device, such as but not limited to “EJuices” or “ELiquid”.

“Person” shall mean any natural person, sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity.

“Recreational area” shall mean any area that is owned or controlled by the city 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, including special use parks (such as dog parks, motorsports parks, and bike trails), picnic areas, playgrounds, tot lot sandbox areas, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, and amusement parks.

“Playgrounds” and “tot lot sandbox areas” shall have the same meaning as defined in section 104495 of the California Health and Safety Code.

“Smoke” shall mean:

1. The gases, particles, or aerosol/vapors released into the air as a result of the combustion, electrical ignition, or vaporization of a smoking product; and
2. The apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts.
3. “Smoke” includes, but is not limited to, tobacco smoke, electronic smoking device aerosols/vapors, and arijuana smoke.
4. “Smoke” does not include the combusting or vaporizing of material that does not contain tobacco or nicotine, and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense.

“Smoking” shall mean inhaling, exhaling, burning, or carrying any lighted, heated, or ignited smoking product.

“Smoking Product” shall mean:

1. Any product containing, made, or derived from marijuana, 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. "Smoking product" includes any component, part, or accessory of a smoking product, whether or not sold separately.
- B. Smoking within a city owned or controlled recreational area is prohibited except in a designated smoking area.
- C. No person shall smoke within 25 feet of a playground or a tot lot sandbox area.
- D. No person shall dispose of a lighted or unlighted smoking product, smoking product-related waste or any other combustible material within a recreational area, except in a device designated for such disposal, such as, for example, ash trays or ash cans.
- E. **Retaliation Prohibited.**

No person shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to obtain compliance with this section.

F. **Enforcement.**

Any person subject to this chapter who personally, or through an agent, employee, independent contractor or other intermediary, violates any provision of this chapter commits an infraction.

G. **Public nuisance.**

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared to be a public nuisance.

H. **Civil injunction.**

The violation of any provision of this chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of the city, create a cause for injunctive relief.

I. **Administrative fines and costs.**

In addition to the remedies set forth above, any person subject to this chapter who personally, or through an agent, employee, independent contractor or other intermediary, violates any provision of this chapter may be subject to administrative fines and costs.

J. **Remedies cumulative; each day a separate offense.**

Any person subject to this chapter who personally, or through an agent, employee, independent contractor or other intermediary, violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any

such violation is committed, continued or permitted to exist by such person. All remedies provided herein shall be cumulative and not exclusive.

Section 4. SEVERABILITY.

If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

Section 5. PUBLICATION AND EFFECTIVE DATE.

This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

I HEREBY CERTIFY that this ordinance was introduced at a regular meeting of the City Council of the City of Vacaville, held on the ___ day of _____, 2015, and **ADOPTED AND PASSED** at a regular meeting of the City Council of the City of Vacaville held on the 10th day of February, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

APPROVED:

Michelle A. Thornbrugh, City Clerk

Leonard J. Augustine, Mayor

Date:_____