



Agenda Item No. 15.

Staff Report

Date: December 14, 2017
To: Mayor Robbins and Council Members
From: Heidi Scoble, Planning Manager
Subject: Amendment to Chapter 6.18, Smoking Regulations, of the Ross Municipal Code

Recommendation

That Council waive the first reading and introduce Ordinance No. 685 amending Ross Municipal Code Chapter 6.18 (Smoking Regulations) to address new and existing multi-unit residences, regulating the sale of tobacco products, updating definitions, and prohibiting smoking on active construction sites.

Background and Discussion

The Town has had Smoking Regulations in place since 1989 and amended in 2007. Currently the regulations prohibit smoking in the following places:

1. Places of employment, including retail stores, banks, restaurants, bars and healthcare facilities;
2. Town-owned facilities, except residential facilities;
3. Recreation and exercise facilities, including theatres, auditoriums, galleries, museums, libraries, gyms and sports facilities;
4. Service areas, including ATM and ticket lobbies;
5. Lobbies, hallways, elevators, dining areas, laundry rooms, public restrooms and other common areas in multiple-unit housing, assisted living facilities and nursing homes;
6. A minimum of fifty percent of guest rooms in every hotel and bed-and-breakfast facility must be permanently designated as completely nonsmoking;
7. Town-owned recreation areas, including parks and playing fields;
8. Town-owned sites of public events, including but not limited to sports events, entertainment, ceremonies and parades;
9. Service areas, including bus stops, ticket lines and ATMs;
10. Outdoor dining areas of restaurants;
11. Courtyards and other areas where air circulation may be impeded by architectural, landscaping or other barriers; and

12. Within 20 feet of any entrance, opening or exit of any enclosed area within which smoking is prohibited, except while passing on the way to another destination.

The only areas where smoking would be permitted in Town, based on local, state, or federal law, is as follows:

1. Private residences (both inside and outside), except when used as a child care or health care facility subject to licensing requirements;
2. Retail tobacco stores, except where smoke from such stores enters an adjacent enclosed area where smoking is not permitted.
3. By performers during theatrical performances, if smoking is an integral part of the story in the theatrical production.

On August 29, 2017, the Town of Ross received an email relating to tobacco controls in Ross. The purpose of the email was to encourage the Town to consider enhancing its existing Smoking Regulations resulting from the American Lung Association's annual Report Card which has given the Town an overall grade "C" (see attached Report Card). The State of Tobacco Control 2017 Report Card, identifies that the Town has the opportunity to enhance its existing regulations to improve the following:

1. Smokefree Outdoor Air related to sidewalks and worksites
2. Smokefree Housing related to Apartments, Condominiums, and Common Areas
3. Reducing Sales of Tobacco Products through licensing requirements
4. Emerging Issues Bonus Points related to definitions of secondhand smoke and licensing, retailer location restrictions, sampling of Tobacco products, Sales of Tobacco in Pharmacies, Flavored Tobacco Products, and Minimum Pack Size of Cigars.
5. Update and add new definitions to include electronic smoking devices, dining areas, common areas, and any other definition necessary for understanding of the regulations.

On October 12, 2017, the Council considered the above information and directed staff to amend the current Smoking Regulations are proposed to be amended as follows:

1. Add the following new definitions: Bar; Child Care Facilities; Common Area; Common Interest Complex; Dining area; Electronic Smoking Device; Landlord; Minor; Multi-Unit Residence; Reasonable Distance; Recreational area; Smoke; Tobacco Product; Unenclosed Area; and Unit.
2. Amend the language of the following definitions: Enclosed Area; Public Place; Service area; and Smoking.
3. Amend Section 6.18.030, Prohibition of smoking in enclosed public places, to match the definitions.
4. Amend Section 6.18.030, Prohibition of smoking in enclosed public places, by consolidating the former Section 6.18.050, Smoking optional areas, to Section 6.18.030.B and expanding

upon where one can smoke in enclosed public places.

5. Amend Section 6.18.040, Prohibition of smoking in certain unenclosed public places, by adding the following places: Bars; Active Construction sites; and Multi-Unit Residences common areas.
6. Add a new Section 6.18.45, Smoking Restrictions for New and Existing Units of Multi-Unit Residences.
7. Replace Section 6.18.050, Smoking optional areas, with a new section titled, Required and Implied Lease Terms for Units in Multi-Unit Residences.
8. Amend Section 6.18.060, Duty of person, employer, or nonprofit entity, to expand upon and make the regulations clearer.
9. Add a new Section 6.18.065, Regulating the Sale of Tobacco Products.
10. Replace Section 6.18.070, Enforcement, with a new section 6.18.070, Licensing of Tobacco Retailers.
11. Add a new Section 6.18.075, Enforcement that was previously located in Section 6.18.070. Section 6.18.075 would include amended language regarding enforcement.
12. Amend Sections 6.18.080, 6.18.090, 6.18.100, and 6.18.110 for minor formatting.

Fiscal, resource and timeline impacts

Staff time to prepare this staff report, in addition to future staff reports and ordinance amendments.

Alternative actions

None recommended.

Environmental review (if applicable)

N/A

Attachments

1. Ordinance 685
2. Redline Version of Ordinance 685
3. Town Council Minute Excerpt from October 12, 2017

ATTACHMENT 1

TOWN OF ROSS

ORDINANCE NO. 685

AN ORDINANCE OF THE TOWN OF ROSS AMENDING CHAPTER 6.18 OF THE ROSS MUNICIPAL CODE, RESTRICTING SMOKING

WHEREAS, the Town of Ross, having adopted Ordinance No. 475 in 1989, was one of the first local governments in the state of California to restrict smoking in public places; and

WHEREAS, the Town of Ross, adopted Ordinance No. 602 in 2007 amending Ordinance No. 475 to include additional regulations pertaining to secondhand smoke; and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the conclusions of the U.S. Surgeon General, the California Air Resources Board, and the California Environmental Protection Agency; and

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs with studies showing that smoke-free policies effectively reduce tobacco use, reduce initiation of tobacco use, improve air quality, and reduce hospitalizations due to heart attacks and asthma attacks; and

WHEREAS, laws restricting electronic smoking devices use in smoke-free locations have demonstrated similar benefits to the public, and have been promoted by the State of California's Tobacco Education and Research Oversight Committee; and

WHEREAS, smokeless tobacco is not a safe alternative to smoking as it has been associated with various cancers, pregnancy complications, and other diseases; and

WHEREAS, polls show that most Californians do not smoke and a majority favor limitation on smoking in multi-family residences; and

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions; and

WHEREAS, as of January 2015, there are at least 348 California cities and counties with local laws restricting smoking in recreational areas, and 48 with local laws restricting smoking on sidewalks in commercial areas; and

WHEREAS, reducing the initiation rate among young adults could be a highly effective way to reduce long term smoking rates because, nationally, the vast majority of adult smokers began smoking by the time they were 18 years old; and

WHEREAS, there is no Constitutional right to smoke;

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

Section 1: The Ross Town Council does ordain that Chapter 6.18 "Smoking Regulations" is hereby amended to read as follows:

Chapter 6.18

SMOKING REGULATIONS

Sections

- 6.18.010 Title
- 6.18.020 Definitions
- 6.18.030 Prohibition of smoking in enclosed public places
- 6.18.040 Prohibition of smoking in certain unenclosed public places
- 6.18.045 Smoking Restrictions for New and Existing Units of Multi-Unit Residences
- 6.18.050 Required and Implied Lease Terms for Units in Multi-Family Residences
- 6.18.060 Duty of person, employer, business or nonprofit entity
- 6.18.065 Regulating the Sale of Tobacco Products
- 6.18.070 Licensing of Tobacco Retailers
- 6.18.075 Enforcement
- 6.18.080 Violation – penalty
- 6.18.090 Retaliation prohibited
- 6.18.100 Other applicable laws
- 6.18.110 Severability

Section 6.18.010 Title

This chapter shall be known as the Ross Smoke Ordinance.

Section 6.18.020 Definitions

The following words and phrases, whenever used in this article, shall have the following meanings:

- A. "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages.
- B. "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes.

- C. "Child Care Facilities" means any family day care regulated by Section 1597.30 through 1597.621 of the California Health and Safety Code and any day care center for children regulated by Section 1596.90et seq. of the California Health & Safety Code. It does not include foster homes or residential care facilities.
- D. "Common Area" means every Enclosed Area and 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, restrooms, laundry rooms, cooking areas, and eating areas.
- E. "Common Interest Complex" means a Multi-Unit Residence that is a condominium project, a community apartment project, a stock cooperative, or a planned development as defined by California Civil Code section 4100.
- F. "Dining Area" means any area, including streets and sidewalks, which is available to or customarily used by the general public, and which is designed, established, or regularly used for consuming food or drink.
- G. "Electronic Smoking Device" means an electronic and/or battery-operated device that can be used to deliver an inhaled dose of nicotine, or other substances, including a 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, or any other product name or descriptor.
- H. "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages.
- I. "Employer" means any person, partnership, corporation, including a municipal corporation, which employs the services of one or more individual persons.
- J. "Enclosed Area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has (1) any type of overhead cover whether or not that cover includes vents or other openings and at least three 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 walls or other vertical constraints to airflow including, but not limited to, vegetation that exceed six feet in height, whether or not those constraints include vents or other openings.
- K. "Landlord" means any Person who owns property let for residential use, any Person who lets residential property, and any Person who manages such property, except that "Landlord" does not include a master tenant who sublets a Unit as long as the master tenant sublets only a single Unit of a Multi-Unit Residence.
- L. "Minor" shall mean any individual who is less than eighteen (18) years old.

- M. "Multi-Unit Residence" means property containing two (2) or more Units, including but not limited to a Common Interest Complex, except the following specifically excluded types of housing:
- (1) a single-family residence; and
 - (2) detached or attached in-law or accessory dwelling Unit to single family residence.
- N. "Nonprofit entity" means any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a "nonprofit entity" within the meaning of this section.
- O. "Openings" shall include main entrances, exits, operable windows and ventilation intake systems.
- P. "Person" means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee or any other legal entity.
- Q. "Place of employment" means any area under the legal or actual control of an employer or sole proprietor which employees normally frequent during the course of employment.
- R. "Public place" means any area or building open to any area, publicly or privately owned, which is open to the general public, including for example: restaurants, bars, retail stores, banks, theatres, healthcare facilities, parks, playgrounds, government facilities, bus shelters, public transportation facilities, bed and breakfast facilities, and farmers' markets. Public Place does not mean within private vehicles in or on public place.
- S. "Reasonable Distance" means a distance of 20 feet in any direction from an area in which Smoking is prohibited.
- T. "Recreation area" means any area open to the general public for recreational purposes, including, for example, sports facilities, parks, public gardens, children's play areas and playgrounds.
- U. "Retail tobacco store" means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.
- V. "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), bank teller windows, telephones, ticket lines, bus stops and cab stands.

- W. "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, marijuana, cocaine or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "Smoke" includes, but is not limited to, tobacco smoke, Electronic Smoking Device vapors, marijuana smoke, and crack cocaine smoke.
- X. "Smoking" means the inhaling and/or exhaling of Smoke and/or the inhaling, exhaling, burning, or carrying any lighted, heater, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation.
- Y. "Tobacco Product" means:
- (1) any product containing, made, or derived from tobacco, marijuana 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, snuff; and
 - (2) Any Electronic Smoking Device.
 - (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, "Tobacco Product" includes any component, part, or accessory of a Tobacco Product, whether or not sold separately. "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 such product is marketed and sold solely for such an approved purpose.
- Z. "Unenclosed Area" means any area that is not an Enclosed Area.
- AA. "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes but is not limited to an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room occupancy ("SRO") facility; a room in a homeless shelter; a single-family home; and an in-law or accessory dwelling unit.

Section 6.18.030 Prohibition of smoking in enclosed public places.

- A. Smoking and the use of Tobacco Products are prohibited in all enclosed public places within the Town of Ross, including, but not limited to:
- 1. Places of employment, including retail stores, banks, restaurants, bars and offices;
 - 2. Town-owned facilities, including residential facilities;

3. Recreation and exercise facilities, including theatres, auditoriums, galleries, museums, libraries, gyms and sports facilities;
 4. Service areas, including ATM and ticket lobbies;
 5. Lobbies, hallways, elevators, dining areas, laundry rooms, public restrooms and other common areas in Multi-Unit Residences, Residential care facilities; and
 6. A minimum of fifty percent of guest rooms in every hotel and bed-and-breakfast facility must be permanently designated as completely nonsmoking.
- B. Smoking and the use of Tobacco Products are prohibited by this Chapter in all other enclosed public places except as provided below:
1. Inside private vehicles.
 2. Inside private, single family residences except residences used as Child Care Facilities or Residential care facilities as defined in Section 18.12.275 of the Ross Municipal Code.
 3. Inside a guest house or Accessory Dwelling Units attached to or detached from single family residences.
 4. Smoking inside a Retail Tobacco Store if:
 - a. The Retail Tobacco Store does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the premises.
 - b. The Retail Tobacco Store prohibits Minors from entering at all times; and
 - c. The Retail Tobacco Store is located within a freestanding building, detached from other structures and uses.
 5. By performers during theatrical performances, if smoking is an integral part of the story in the theatrical production.
- C. Nothing in this Chapter shall be construed to prevent any owner, operator, manager or other person who controls any establishment or facility from declaring and enforcing a nonsmoking policy.

Section 6.18.040 Prohibition of smoking in certain unenclosed public places.

- A. Except as otherwise expressly authorized by state or federal law, smoking and the use of Tobacco Products are prohibited in the following unenclosed public places:
1. Town-owned recreation areas, including parks and playing fields.

2. Town-owned sites of public events, including but not limited to sports events, entertainment, ceremonies and parades.
 3. Service areas, including bus stops, ticket lines and ATMs.
 4. Outdoor dining areas of restaurants.
 5. Bars.
 6. Courtyards and other areas where air circulation may be impeded by architectural, landscaping or other barriers.
 7. Within 20 feet of any entrance, opening or exit of any enclosed area within which smoking is prohibited, except while passing on the way to another destination.
 8. Active construction sites where a Town building permit has been issued.
- B. The use of Tobacco Products are prohibited in Common Areas of Multi-Unit Residences, except that a Person with legal control over a Common Area may designate a portion of the Unenclosed Area of the Common Area as a designated smoking area if the area meets all of the following criteria:
1. The area must be located a Reasonable Distance from any Unit or Enclosed Area where Smoking is prohibited by this section or other law. The area must be established by binding agreement relating to the ownership, occupancy, or use of real property or by designation of a Person with legal control over the property. In the case of a nonsmoking area created by agreement or designation, this provision does not apply unless the Person designating the Smoking area has actual knowledge of, or has been given notice of, the agreement or designation. A Person with legal control over a designated smoking area may be obliged to modify, relocate, or eliminate that the area as laws change, as binding agreements are created, and as nonsmoking areas on neighboring property are established;
 2. The area must not include, and must be a Reasonable Distance from, Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, but not limited to playgrounds, tennis courts, swimming pools, school campuses, and sandboxes;
 3. The area must be no more than ten percent (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated;
 4. The area must have a clearly marked perimeter;
 5. The area must be identified by conspicuous signs;

6. The area must be completely within an Unenclosed Area; and
 7. The area must not overlap with any Enclosed or Unenclosed Area in which Smoking is otherwise prohibited by this section or other provisions of this Code state law, or federal law.
- J. Nothing in this section prohibits any Person, Landlord, Employer, or Nonprofit Entity with legal control over any property from prohibiting Smoking and Tobacco Product use on any part of such property, even if Smoking or the use of Tobacco Products is not otherwise prohibited in that area.
 - K. No person shall dispose of smoking waste within the boundaries of an area in which smoking is prohibited.

Section 6.18.045 Smoking Restrictions for New and Existing Units of Multi-Unit Residences

- A. All Units within those Multi-Unit Residences in existence prior to the effective date of this Section shall be subject to the provisions of this Chapter upon the earliest of the following occurrences:
 1. When the lease, in effect as of the effective date of this Section, expires or is renewed.
 2. In the case of a month-to-month lease, on the first day of the next rental period following the effective date of this Section.
 3. When a new lease is entered into with a new or existing tenant.
- B. Each and every Unit of a Multi-Unit residence that becomes available for the first time on or after the effective date of this Section shall be subject to the provisions of this Chapter.

Section 6.18.050 Required and Implied Lease Terms for Units in Multi-Unit Residences

- A. Every lease or other rental agreement for the occupancy of a Unit in a Multi-Unit residence that takes effect after the effective date of this Section shall include the provisions set forth in subsection (B) below on the earliest possible date when such an amendment is allowable by law after providing the minimum legal notice.
- B. Every lease or other rental agreement governed by subsection (A) above shall be amended or prepared to include the following provisions:
 1. A clause providing that as of the agreement's commencement date, it is a material breach of the agreement to allow or engage in smoking in the unit. 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."

2. A clause providing that it is a material breach of the agreement for the 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 other than in a designated smoking area. 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 any common area of the property, except in an outdoor designated smoking area, if one exists."
 3. A clause providing that it is a material breach of the agreement for 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. Such a clause might state, "It is a material breach of this agreement for the 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."
 4. A clause expressly conveying third-party beneficiary status to all occupants of the Multi-Unit residence as to the smoking provisions of the agreement. Such a clause might state, "Other occupants of the property are express third-party beneficiaries of those provisions in this agreement that concern smoking. As such, other occupants of the property may seek to enforce such provisions by any lawful means, including by bringing a civil action in a court of law."
- C. Whether or not a Landlord complies with subsections (A) and (B) above, the clauses required by those subsections shall be implied and incorporated by law into every agreement to which subsections (A) and (B) apply, and shall become effective as of the earliest possible date on which the Landlord could have made the amendments or included the clauses in the agreements pursuant to subsections (A) and (B).
- D. This section shall not create additional liability in 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 and Section 6.18.040.
- E. Failure to enforce any smoking provision required by this Section shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

Section 6.18.060 Duty of person, employer, or nonprofit entity.

- A. No Person, Landlord, Employer, or Nonprofit entity shall knowingly or intentionally permit Smoking in an area which is under the legal or actual control of that Person, Landlord, Employer, or Nonprofit entity.
- B. No Person, Landlord, Employer, or Nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, including but not limited to ashtrays or ash

cans, within an area that is under the legal or actual control of the Person, Landlord, Employer, or Nonprofit entity and where smoking is prohibited and in which smoking is prohibited.

- C. No Person shall dispose of used smoking or Tobacco Product waste within the boundaries of an area in which Smoking or Tobacco Product use is prohibited, including within any Reasonable Distance required by this section.
- D. A Person, Landlord, Employer, or Nonprofit Entity that has legal control of an area in which smoking and the use of Tobacco Products are prohibited by this Section shall post a clear, conspicuous and unambiguous “No Smoking” and “No Use of Tobacco Products” or “Smokefree” and “Tobacco-Free” sign at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs shall have letters of no less than one inch in height and shall include the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it). Signs posted on the exterior of buildings to comply with this section shall include the Reasonable Distance requirement set forth in Section 6.18.020.Q of this Chapter. At least one sign with the Town phone number to which complaints can be directed must be placed conspicuously in each place in which Smoking is prohibited. For purposes of this Section, the Public Works Director or his/her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the Town.
- E. Each instance of Smoking or Tobacco Product use in violation of this section shall constitute a separate violation. For violations other than for Smoking, each day of a continuing violation of this section shall constitute a separate violation.

Section 6.18.065 Regulating the Sale of Tobacco Products

- A. Any Person, Business, tobacco retailer, or other establishment subject to this Chapter shall post plainly visible signs at the point of purchase of Tobacco Products which state “THE SALE OF TOBACCO PRODUCTS BY PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW. PHOTO ID REQUIRED.” The letters of said sign shall be at least one quarter (1/4) inch high.
- B. No Person, Business, tobacco retailer, or owner, manager, or operator of any establishment subject to this Chapter shall sell, offer to sell, or permit to be sold any Tobacco Product to an individual without requesting and examining identification establishing the purchaser’s age as eighteen year or greater unless the seller has some reasonable basis for determining the buyer’s age.
- C. It shall be unlawful for any Person, Business, or tobacco retailer to sell, permit to be sold, or offer for sale any Tobacco Product by means of self-service displays or by any other means other than vendor-assisted sales.
- D. No Person, Business, tobacco retailer or other establishment subject to this Chapter shall locate, install, keep, maintain or use, or permit the location, installation, keeping,

maintenance or use on his, her, or its Premises any vending machine for the purpose of selling or distributing any Tobacco Product. Any tobacco vending machine in use on the effective date of this Section shall be removed within thirty (30) days after said effective date.

Section 6.18.070 Licensing of Tobacco Retailers

It is unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products within Town limits without first obtaining and maintaining a valid tobacco retailer's license from the Town of Ross for each location where these sales are conducted. No tobacco retailer's license will be issued that authorizes tobacco retailing at any location other than a fixed location. Tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.

A. Application, Issuance and Renewal Procedure.

1. An application for a tobacco retailer's license shall be submitted to the Town in the name of the retailer, individual, or entity proposing to conduct retail tobacco sales on the business premises. The application shall be signed by the retailer, individual or entity or agent with written authority to act for same. All applications shall be submitted on a form made available by the Town and shall contain the name, address, and telephone number of the applicant and the business name, address, and telephone number of each establishment where tobacco is to be sold. Existing tobacco retailers shall apply for a license within 90 days of the effective date of this Section.
1. All tobacco retailer's licenses will be issued and due for renewal effective July 1st and will expire on the subsequent June 30th. Licensees must apply for renewal before the tobacco retailer's license expires.
2. A licensed tobacco retailer shall inform the Town in writing of any change in the information submitted on an application for a tobacco retailer's license within 10 business days of a change.
3. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code Section 6250 et seq.) or any other applicable law, subject to the laws' exemptions.

B. Issuance, Display, and Transfer of License.

1. Upon receipt of a completed application for a tobacco retailer's license, the City will issue a tobacco retailer's license, unless any of the following grounds for denial exist:
 - a. The application is incomplete or inaccurate;
 - b. The application seeks authorization for tobacco retailing by a person or location for which a suspension is in effect;

c. The application seeks authorization for tobacco retailing that is an unlawful use of land, building or structure contrary to any provision of the Town of Ross Municipal Code; and

d. Failure to pay an outstanding fine.

2. Each licensee must prominently display the tobacco retailer's license at the location where tobacco retail sales are conducted.

3. The tobacco retailer's license is nontransferable. If there is a change in location, a new tobacco retailer's license will be issued for the new address upon receipt of notification of change of location. The new tobacco retailer's license will retain the same expiration date as the previous one.

C. Business License.

If a tobacco retailer's license is denied, revoked, or suspended, the holder of a valid business license may nevertheless carry on all lawful aspects of his or her business, other than the sale or offering for sale of tobacco products, unless otherwise prohibited.

D. License Revocation or Suspension.

1. A tobacco retailer's license may be revoked or suspended for any violation of this Section or any state or federal tobacco-related laws. A tobacco retailer's license may also be revoked or suspended for the following reasons:

a. Subsequent to the issuance of the tobacco retailer's license, Town staff conclude that one or more of the grounds for denial, as specified in this Section, existed either when a license application was made or before the tobacco retailer's license was issued;

b. Two or more suspensions have been issued to the tobacco retailer within a 12-month period.

2. If any grounds for revocation or suspension exist, the Town may issue a notice of revocation or suspension hearing. The notice of revocation or suspension hearing must include all of the following information:

a. The address or a definite description of the location where the tobacco retailer's license is issued;

b. The grounds for revocation or suspension;

c. The date of the revocation or suspension hearing before the administrative hearing officer designated by the Town Manager. The notice of revocation or suspension hearing will set the hearing date no sooner than 20 days and no later than 45 days following the date the notice of revocation or suspension hearing is served.

3. A tobacco retailer's license may be revoked or suspended by the hearing officer after a tobacco retailer's license revocation or suspension hearing. At the hearing, the licensee will have the opportunity to testify and to present evidence, including witnesses, concerning the alleged grounds set forth in the notice of revocation or suspension hearing. Any other interested party, including without limitation the property owner, employees, or neighbors, may also present evidence. The hearing officer shall limit the evidence to that which is relevant to establishing or refuting the alleged grounds for revocation or suspension. After considering the testimony and evidence submitted at the hearing, the hearing officer must make findings based on the record of the hearing, and issue a final written decision that includes those findings to uphold, revoke or suspend the tobacco retailer's license. A revocation or suspension is without prejudice to the filing of a new application for a tobacco retailer's license.
4. The decision of the hearing officer to revoke or suspend a tobacco retailer's license shall be final and conclusive. Within 20 days after the administrative hearing officer's filing and service of the order, a responsible party held liable under the decision may seek judicial review by filing an appeal to be heard by the Superior Court pursuant to California Government Code Section 53069.4. A copy of the notice of appeal shall be served in person or by first-class mail upon the Town by the appellant.
5. The tobacco retailer's license revocation or suspension becomes a final administrative order at one of the following times:
 - a. On the date of the revocation or suspension hearing, if a tobacco retailer fails to appear at a scheduled revocation or suspension hearing;
 - b. On the date when the time for an appeal has expired without a written appeal on record.

Section 6.18.075 Enforcement.

- A. Notice of this Chapter shall be provided to all applicants for a business license or renewal thereof that have a business establishment in Ross frequented by the public. However, lack of such notice shall be no defense to a violation of this Chapter.
- B. Enforcement of this Chapter shall be the responsibility of the Chief of Police or his/her designee.
- C. Any citizen may make a complaint under this Chapter to the Chief of Police or his/her designee.
- D. The Town may seek compliance with this Chapter by any remedy allowed under this Code, including, but not limited to, revocation, suspension, civil fines and any other remedy allowed by law. Such remedies may be sought independent of one another or may be sought in addition to one another.

Section 6.18.080 Violation -- penalty.

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Chapter to refuse to comply with any of its provisions, or to permit any employee or patron to violate this Chapter.
- B. It shall be unlawful for any person to smoke in any area where smoking is prohibited under this Chapter.
- C. Causing, permitting, aiding, abetting or concealing a violation of any provision of this ordinance shall also constitute a violation.
- D. Any Person, Landlord, Employer, or Nonprofit Entity, tobacco retailer, or owner, manager or operator of any establishment subject to this Chapter who violates any provision of this Chapter shall be deemed guilty of an infraction, punishable by:
 - a. A fine not exceeding one hundred dollars for the first violation;
 - b. A fine not exceeding two hundred dollars for a second violation of this Chapter within one year
 - c. A fine not exceeding five hundred dollars for each additional violation of this Chapter within five years.
- E. The remedies provided by this Chapter are cumulative and in addition to any other remedy available at law or in equity.

Section 6.18.090 Retaliation prohibited.

No Person or Employer shall discharge or in any manner retaliate against any employee because such employee exercises any right to a smoke free environment afforded by this Chapter.

Section 6.18.100 Other applicable laws.

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

Section 6.18.110 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The Ross Town Council hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

SECTION 2. CEQA. The Town Council hereby finds that this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Title 14, under 14 Cal. Code Regs. Section 15061(b)(3) because it can be seen with certainty that there is no possibility that its

adoption will have a significant adverse effect on the environment. It is also categorically exempt under 14 Cal. Code Regs. Section 15308 because the Ordinance constitutes a regulatory activity whose purpose is to protect air quality and prevent the adverse health effects of air pollutants caused by smoking.

SECTION 3. Savings Clause. Neither the adoption of this Ordinance nor the repeal or amendment by this Ordinance of any ordinance or part or portion of any ordinance previously in effect in the Town, or within the territory comprising the Town, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this Ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

SECTION 4. Certification. The Town Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be posted within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 5: Effective Date. This Ordinance shall take effect thirty (30) days after its final passage and adoption, and shall be posted in three public places in Town.

The foregoing ordinance was introduced by the Ross Town Council at its regular meeting on December 14, 2017 and adopted by the Town Council at its regular meeting held on the XX day of _____ 201X by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Elizabeth Robbins, Mayor

ATTEST:

Linda Lopez, Town Clerk

ATTACHMENT 2

REDLINE VERSION

Chapter 6.18

SMOKING REGULATIONS

Sections

- 6.18.010 Title
- 6.18.020 Definitions
- 6.18.030 Prohibition of smoking in enclosed public places
- 6.18.040 Prohibition of smoking in certain unenclosed public places
- 6.18.045 Smoking Restrictions for New and Existing Units of Multi-Unit Residences
- 6.18.050 Required and Implied Lease Terms for Units in Multi-Family Residences ~~Smoking optional areas~~
- 6.18.060 Duty of person, employer, business or nonprofit entity
- 6.18.065 Regulating the Sale of Tobacco Products
- 6.18.070 Licensing of Tobacco Retailers ~~Enforcement~~
- 6.18.075 Enforcement
- 6.18.080 Violation – penalty
- 6.18.090 Retaliation prohibited
- 6.18.100 Other applicable laws
- 6.18.110 Severability

Section 6.18.010 Title

This chapter shall be known as the Ross ~~Secondhand~~ Smoke Ordinance.

Section 6.18.020 Definitions

The following words and phrases, whenever used in this article, shall have the following meanings:

- A. "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages.
- B. "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes.
- C. "Child Care Facilities" means any family day care regulated by Section 1597.30 through 1597.621 of the California Health and Safety Code and any day care center for children regulated by Section 1596.90et seq. of the California Health & Safety Code. It does not include foster homes or residential care facilities.

- D. "Common Area" means every Enclosed Area and 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, restrooms, laundry rooms, cooking areas, and eating areas.
- E. "Common Interest Complex" means a Multi-Unit Residence that is a condominium project, a community apartment project, a stock cooperative, or a planned development as defined by California Civil Code section 4100.
- F. "Dining Area" means any area, including streets and sidewalks, which is available to or customarily used by the general public, and which is designed, established, or regularly used for consuming food or drink.
- G. "Electronic Smoking Device" means an electronic and/or battery-operated device that can be used to deliver an inhaled dose of nicotine, or other substances, including a 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, or any other product name or descriptor.
- H. "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages.
- I. "Employer" means any person, partnership, corporation, including a municipal corporation, which employs the services of one or more individual persons.
- J. "Enclosed Area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has (1) any type of overhead cover whether or not that cover includes vents or other openings and at least three 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 walls or other vertical constraints to airflow including, but not limited to, vegetation that exceed six feet in height, whether or not those constraints include vents or other openings. ~~"Enclosed space" means a structure enclosed by roof and four walls with or without windows and appropriate openings for ingress and egress.~~
- K. "Landlord" means any Person who owns property let for residential use, any Person who lets residential property, and any Person who manages such property, except that "Landlord" does not include a master tenant who sublets a Unit as long as the master tenant sublets only a single Unit of a Multi-Unit Residence.
- L. "Minor" shall mean any individual who is less than eighteen (18) years old.

- M. "Multi-Unit Residence" means property containing two (2) or more Units, including but not limited to a Common Interest Complex, except the following specifically excluded types of housing:
- (1) a single-family residence; and
 - (2) detached or attached in-law or accessory dwelling Unit to single family residence.
- N. "Nonprofit entity" means any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a "nonprofit entity" within the meaning of this section.
- O. "Openings" shall include main entrances, exits, operable windows and ventilation intake systems.
- P. "Person" means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee or any other legal entity.
- Q. "Place of employment" means any area under the legal or actual control of an employer or sole proprietor which employees normally frequent during the course of employment.
- R. "Public place" means any area or building open to any area, publicly or privately owned, which is open to the general public, including for example: restaurants, bars, retail stores, banks, theatres, healthcare facilities, parks, playgrounds, government facilities, bus shelters, public transportation facilities, bed and breakfast facilities, and farmers' markets. Public Place does not mean within private vehicles in or on public place. ~~"Public place" means any area or building open to the general public, including for example: restaurants, bars, retail stores, banks, theatres, healthcare facilities, parks, playgrounds, government facilities, and bus shelters.~~
- S. "Reasonable Distance" means a distance of 20 feet in any direction from an area in which Smoking is prohibited.
- T. "Recreation area" means any area open to the general public for recreational purposes, including, for example, sports facilities, parks, public gardens, children's play areas and playgrounds.
- U. "Retail tobacco store" means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.
- V. "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), bank teller windows, telephones, ticket lines, bus stops and cab stands. "Service area" means any area at which one or more persons are waiting for a transaction, entry or service of any kind, whether or not such service involves the exchange of money, including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops and cab stands.

W. "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, marijuana, cocaine or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "Smoke" includes, but is not limited to, tobacco smoke, Electronic Smoking Device vapors, marijuana smoke, and crack cocaine smoke.

X. "Smoking" means the inhaling and/or exhaling of Smoke and/or the inhaling, exhaling, burning, or carrying any lighted, heater, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation. "Smoking" means and includes the carrying of a lighted pipe, cigar or cigarette of any kind; the emitting or exhaling of smoke from a lighted pipe, cigar or cigarette of any kind; and the lighting of a pipe, cigar or cigarette of any kind.

Y. "Tobacco Product" means:

(1) any product containing, made, or derived from tobacco, marijuana 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, snuff; and

(2) Any Electronic Smoking Device.

(3) Notwithstanding any provision of subsections (1) and (2) to the contrary, "Tobacco Product" includes any component, part, or accessory of a Tobacco Product, whether or not sold separately. "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 such product is marketed and sold solely for such an approved purpose.

Z. "Unenclosed Area" means any area that is not an Enclosed Area.

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

Section 6.18.030 Prohibition of smoking in enclosed public places.

~~Except as otherwise provided, smoking shall be prohibited in all enclosed public places within the town of Ross, such as:~~

- A. Smoking and the use of Tobacco Products are prohibited in all enclosed public places within the Town of Ross, including, but not limited to:
1. Places of employment, including retail stores, banks, restaurants, bars and healthcare facilities;
 2. Town-owned facilities, ~~except~~ including residential facilities;
 3. Recreation and exercise facilities, including theatres, auditoriums, galleries, museums, libraries, gyms and sports facilities;
 4. Service areas, including ATM and ticket lobbies;
 5. Lobbies, hallways, elevators, dining areas, laundry rooms, public restrooms and other common areas in Multi-Unit ~~multiple-unit~~ Residences, ~~assisted living Residential care facilities and nursing homes~~; and
 6. A minimum of fifty percent of guest rooms in every hotel and bed-and-breakfast facility must be permanently designated as completely nonsmoking.
- B. Smoking and the use of Tobacco Products are prohibited by this Chapter in all other enclosed public places except as provided below:
1. Inside private vehicles.
 2. Inside private, single family residences except residences used as Child Care Facilities or Residential care facilities as defined in Section 18.12.275 of the Ross Municipal Code.
 3. Inside a guest house or Accessory Dwelling Units attached to or detached from single family residences.
 4. Smoking inside a Retail Tobacco Store if:
 - a. The Retail Tobacco Store does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the premises.
 - b. The Retail Tobacco Store prohibits Minors from entering at all times; and
 - c. The Retail Tobacco Store is located within a freestanding building, detached from other structures and uses.

5. By performers during theatrical performances, if smoking is an integral part of the story in the theatrical production.
- C. Nothing in this Chapter shall be construed to prevent any owner, operator, manager or other person who controls any establishment or facility from declaring and enforcing a nonsmoking policy.

Section 6.18.040 Prohibition of smoking in certain unenclosed public places.

- A. Except as otherwise expressly authorized by state or federal law, smoking and the use of Tobacco Products are prohibited in the following unenclosed public places:

1. Town-owned recreation areas, including parks and playing fields.
2. Town-owned sites of public events, including but not limited to sports events, entertainment, ceremonies and parades.
3. Service areas, including bus stops, ticket lines and ATMs.
4. Outdoor dining areas of restaurants.
5. Bars.
6. Courtyards and other areas where air circulation may be impeded by architectural, landscaping or other barriers.
7. Within 20 feet of any entrance, opening or exit of any enclosed area within which smoking is prohibited, except while passing on the way to another destination.
8. Active construction sites where a Town building permit has been issued.

~~B. No person shall dispose of smoking waste within the boundaries of an area in which smoking is prohibited.~~

- B. The use of Tobacco Products are prohibited in Common Areas of Multi-Unit Residences, except that a Person with legal control over a Common Area may designate a portion of the Unenclosed Area of the Common Area as a designated smoking area if the area meets all of the following criteria:

1. The area must be located a Reasonable Distance from any Unit or Enclosed Area where Smoking is prohibited by this section or other law. The area must be established by binding agreement relating to the ownership, occupancy, or use of real property or by designation of a Person with legal control over the property. In the case of a nonsmoking area created by agreement or designation, this provision does not apply unless the Person designating the Smoking area has actual knowledge of, or has been given notice of, the agreement or designation. A Person with legal control over a designated smoking area may be obliged to modify,

relocate, or eliminate that the area as laws change, as binding agreements are created, and as nonsmoking areas on neighboring property are established;

2. The area must not include, and must be a Reasonable Distance from, Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, but not limited to playgrounds, tennis courts, swimming pools, school campuses, and sandboxes;
 3. The area must be no more than ten percent (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated;
 4. The area must have a clearly marked perimeter;
 5. The area must be identified by conspicuous signs;
 6. The area must be completely within an Unenclosed Area; and
 7. The area must not overlap with any Enclosed or Unenclosed Area in which Smoking is otherwise prohibited by this section or other provisions of this Code state law, or federal law.
- J. Nothing in this section prohibits any Person, Landlord, Employer, or Nonprofit Entity with legal control over any property from prohibiting Smoking and Tobacco Product use on any part of such property, even if Smoking or the use of Tobacco Products is not otherwise prohibited in that area.
- K. No person shall dispose of smoking waste within the boundaries of an area in which smoking is prohibited.

Section 6.18.045 Smoking Restrictions for New and Existing Units of Multi-Unit Residences

- A. All Units within those Multi-Unit Residences in existence prior to the effective date of this Section shall be subject to the provisions of this Chapter upon the earliest of the following occurrences:
1. When the lease, in effect as of the effective date of this Section, expires or is renewed.
 2. In the case of a month-to-month lease, on the first day of the next rental period following the effective date of this Section.
 3. When a new lease is entered into with a new or existing tenant.
- B. Each and every Unit of a Multi-Unit residence that becomes available for the first time on or after the effective date of this Section shall be subject to the provisions of this Chapter.

Section 6.18.050 Required and Implied Lease Terms for Units in Multi-Unit Residences

Smoking optional areas

~~A. Except as otherwise prohibited by state or federal law, the following areas shall not be subject to the smoking prohibitions of this article:~~

- ~~1. Private residences, except when used as a child care or health care facility subject to licensing requirements;~~
- ~~2. Retail tobacco stores, except where smoke from such stores enters an adjacent enclosed area where smoking is not permitted.~~
- ~~3. By performers during theatrical performances, if smoking is an integral part of the story in the theatrical production.~~

~~B. Nothing in this chapter shall be construed to prevent any owner, operator, manager or other person who controls any establishment or facility from declaring and enforcing a nonsmoking policy.~~

A. Every lease or other rental agreement for the occupancy of a Unit in a Multi-Unit residence that takes effect after the effective date of this Section shall include the provisions set forth in subsection (B) below on the earliest possible date when such an amendment is allowable by law after providing the minimum legal notice.

B. Every lease or other rental agreement governed by subsection (A) above shall be amended or prepared to include the following provisions:

1. A clause providing that as of the agreement's commencement date, it is a material breach of the agreement to allow or engage in smoking in the unit. 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."
2. A clause providing that it is a material breach of the agreement for the 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 other than in a designated smoking area. 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 any common area of the property, except in an outdoor designated smoking area, if one exists."
3. A clause providing that it is a material breach of the agreement for 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. Such a clause might state, "It is a material breach of this agreement for the 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."

4. A clause expressly conveying third-party beneficiary status to all occupants of the Multi-Unit residence as to the smoking provisions of the agreement. Such a clause might state, "Other occupants of the property are express third-party beneficiaries of those provisions in this agreement that concern smoking. As such, other occupants of the property may seek to enforce such provisions by any lawful means, including by bringing a civil action in a court of law."
- C. Whether or not a Landlord complies with subsections (A) and (B) above, the clauses required by those subsections shall be implied and incorporated by law into every agreement to which subsections (A) and (B) apply, and shall become effective as of the earliest possible date on which the Landlord could have made the amendments or included the clauses in the agreements pursuant to subsections (A) and (B).
- D. This section shall not create additional liability in 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 and Section 6.18.040.
- E. Failure to enforce any smoking provision required by this Section shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

Section 6.18.060 Duty of person, employer, ~~business~~ or nonprofit entity.

- A. ~~No Pperson, Landlord, Eemployer, business or Nonprofit entity shall knowingly or intentionally permit Smoking in an area which is under the legal or actual control of the that Pperson, Landlord, Eemployer, or Nonprofit entity and in which smoking is prohibited by law and the person, employer, business or nonprofit entity is not otherwise compelled to act under state or federal law.~~
- B. ~~No Pperson, Landlord, Eemployer, business or Nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, including but not limited to such as, for example ashtrays or ash cans, within an area that is under the legal or actual control of the Pperson, Landlord, Eemployer, business or Nonprofit entity and where smoking is prohibited and in which smoking is prohibited.~~
- C. No Person shall dispose of used smoking or Tobacco Product waste within the boundaries of an area in which Smoking or Tobacco Product use is prohibited, including within any Reasonable Distance required by this section.
- D. A Person, Landlord, Employer, or Nonprofit Entity that has legal control of an area in which smoking and the use of Tobacco Products are prohibited by this Section shall post a clear, conspicuous and unambiguous "No Smoking" and "No Use of Tobacco Products" or "Smokefree" and "Tobacco-Free" sign at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs shall have letters of no less than one

inch in height and shall include the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it). Signs posted on the exterior of buildings to comply with this section shall include the Reasonable Distance requirement set forth in Section 6.18.020.Q of this Chapter. At least one sign with the Town phone number to which complaints can be directed must be placed conspicuously in each place in which Smoking is prohibited. For purposes of this Section, the Public Works Director or his/her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the Town.

- E. Each instance of Smoking or Tobacco Product use in violation of this section shall constitute a separate violation. For violations other than for Smoking, each day of a continuing violation of this section shall constitute a separate violation.

Section 6.18.065 Regulating the Sale of Tobacco Products

- A. Any Person, Business, tobacco retailer, or other establishment subject to this Chapter shall post plainly visible signs at the point of purchase of Tobacco Products which state "THE SALE OF TOBACCO PRODUCTS BY PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW. PHOTO ID REQUIRED." The letters of said sign shall be at least one quarter (1/4) inch high.
- B. No Person, Business, tobacco retailer, or owner, manager, or operator of any establishment subject to this Chapter shall sell, offer to sell, or permit to be sold any Tobacco Product to an individual without requesting and examining identification establishing the purchaser's age as eighteen year or greater unless the seller has some reasonable basis for determining the buyer's age.
- C. It shall be unlawful for any Person, Business, or tobacco retailer to sell, permit to be sold, or offer for sale any Tobacco Product by means of self-service displays or by any other means other than vendor-assisted sales.
- D. No Person, Business, tobacco retailer or other establishment subject to this Chapter shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her, or its Premises any vending machine for the purpose of selling or distributing any Tobacco Product. Any tobacco vending machine in use on the effective date of this Section shall be removed within thirty (30) days after said effective date.

Section 6.18.070 Licensing of Tobacco Retailers Enforcement

- ~~A. Notice of this chapter shall be provided to all applicants for a business license or renewal thereof that have a business establishment in Ross frequented by the public. However, lack of such notice shall be no defense to a violation of this chapter.~~
- ~~B. Enforcement of this chapter shall be the responsibility of the Police Chief. Any peace officer or code enforcement official also may enforce this chapter.~~

~~C. Any citizen may make a complaint under this chapter to the Police Chief or his/her designee.~~

It is unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products within Town limits without first obtaining and maintaining a valid tobacco retailer's license from the Town of Ross for each location where these sales are conducted. No tobacco retailer's license will be issued that authorizes tobacco retailing at any location other than a fixed location. Tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.

A. Application, Issuance and Renewal Procedure.

1. An application for a tobacco retailer's license shall be submitted to the Town in the name of the retailer, individual, or entity proposing to conduct retail tobacco sales on the business premises. The application shall be signed by the retailer, individual or entity or agent with written authority to act for same. All applications shall be submitted on a form made available by the Town and shall contain the name, address, and telephone number of the applicant and the business name, address, and telephone number of each establishment where tobacco is to be sold. Existing tobacco retailers shall apply for a license within 90 days of the effective date of this Section.
1. All tobacco retailer's licenses will be issued and due for renewal effective July 1st and will expire on the subsequent June 30th. Licensees must apply for renewal before the tobacco retailer's license expires.
2. A licensed tobacco retailer shall inform the Town in writing of any change in the information submitted on an application for a tobacco retailer's license within 10 business days of a change.
3. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code Section 6250 et seq.) or any other applicable law, subject to the laws' exemptions.

B. Issuance, Display, and Transfer of License.

1. Upon receipt of a completed application for a tobacco retailer's license, the City will issue a tobacco retailer's license, unless any of the following grounds for denial exist:
 - a. The application is incomplete or inaccurate;
 - b. The application seeks authorization for tobacco retailing by a person or location for which a suspension is in effect;
 - c. The application seeks authorization for tobacco retailing that is an unlawful use of land, building or structure contrary to any provision of the Town of Ross Municipal Code; and
 - d. Failure to pay an outstanding fine.

2. Each licensee must prominently display the tobacco retailer's license at the location where tobacco retail sales are conducted.

3. The tobacco retailer's license is nontransferable. If there is a change in location, a new tobacco retailer's license will be issued for the new address upon receipt of notification of change of location. The new tobacco retailer's license will retain the same expiration date as the previous one.

C. Business License.

If a tobacco retailer's license is denied, revoked, or suspended, the holder of a valid business license may nevertheless carry on all lawful aspects of his or her business, other than the sale or offering for sale of tobacco products, unless otherwise prohibited.

D. License Revocation or Suspension.

1. A tobacco retailer's license may be revoked or suspended for any violation of this Section or any state or federal tobacco-related laws. A tobacco retailer's license may also be revoked or suspended for the following reasons:

a. Subsequent to the issuance of the tobacco retailer's license, Town staff conclude that one or more of the grounds for denial, as specified in this Section, existed either when a license application was made or before the tobacco retailer's license was issued;

b. Two or more suspensions have been issued to the tobacco retailer within a 12-month period.

2. If any grounds for revocation or suspension exist, the Town may issue a notice of revocation or suspension hearing. The notice of revocation or suspension hearing must include all of the following information:

a. The address or a definite description of the location where the tobacco retailer's license is issued;

b. The grounds for revocation or suspension;

c. The date of the revocation or suspension hearing before the administrative hearing officer designated by the Town Manager. The notice of revocation or suspension hearing will set the hearing date no sooner than 20 days and no later than 45 days following the date the notice of revocation or suspension hearing is served.

3. A tobacco retailer's license may be revoked or suspended by the hearing officer after a tobacco retailer's license revocation or suspension hearing. At the hearing, the licensee will have the opportunity to testify and to present evidence, including witnesses, concerning the alleged grounds set forth in the notice of revocation or suspension hearing. Any other interested party, including without limitation the property owner,

employees, or neighbors, may also present evidence. The hearing officer shall limit the evidence to that which is relevant to establishing or refuting the alleged grounds for revocation or suspension. After considering the testimony and evidence submitted at the hearing, the hearing officer must make findings based on the record of the hearing, and issue a final written decision that includes those findings to uphold, revoke or suspend the tobacco retailer's license. A revocation or suspension is without prejudice to the filing of a new application for a tobacco retailer's license.

4. The decision of the hearing officer to revoke or suspend a tobacco retailer's license shall be final and conclusive. Within 20 days after the administrative hearing officer's filing and service of the order, a responsible party held liable under the decision may seek judicial review by filing an appeal to be heard by the Superior Court pursuant to California Government Code Section 53069.4. A copy of the notice of appeal shall be served in person or by first-class mail upon the Town by the appellant.
5. The tobacco retailer's license revocation or suspension becomes a final administrative order at one of the following times:
 - a. On the date of the revocation or suspension hearing, if a tobacco retailer fails to appear at a scheduled revocation or suspension hearing;
 - b. On the date when the time for an appeal has expired without a written appeal on record.

Section 6.18.075 Enforcement.

- A. Notice of this Chapter shall be provided to all applicants for a business license or renewal thereof that have a business establishment in Ross frequented by the public. However, lack of such notice shall be no defense to a violation of this Chapter.
- B. Enforcement of this Chapter shall be the responsibility of the Chief of Police or his/her designee. Any peace officer or code enforcement official also may enforce this chapter.
- C. Any citizen may make a complaint under this Chapter to the Chief of Police or his/her designee.
- D. The Town may seek compliance with this Chapter by any remedy allowed under this Code, including, but not limited to, revocation, suspension, civil fines and any other remedy allowed by law. Such remedies may be sought independent of one another or may be sought in addition to one another.

Section 6.18.080 Violation -- penalty.

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Chapter to refuse to comply with any of its provisions, or to permit any employee or patron to violate this Chapter.

- B. It shall be unlawful for any person to smoke in any area where smoking is prohibited under this Chapter.
 - C. Causing, permitting, aiding, abetting or concealing a violation of any provision of this ordinance shall also constitute a violation.
 - D. Any Person, Landlord, Employer, ~~business~~ or Nonprofit Entity, tobacco retailer, or owner, manager or operator of any establishment subject to this Chapter who violates any provision of this Chapter shall be deemed guilty of an infraction, punishable by:
 - a. A fine not exceeding one hundred dollars for the first violation;
 - b. A fine not exceeding two hundred dollars for a second violation of this Chapter within one year
 - c. A fine not exceeding five hundred dollars for each additional violation of this Chapter within five years.
-
- E. The remedies provided by this Chapter are cumulative and in addition to any other remedy available at law or in equity.

Section 6.18.090 Retaliation prohibited.

No Person or Employer shall discharge or in any manner retaliate against any employee because such employee exercises any right to a smoke free environment afforded by this Chapter.

Section 6.18.100 Other applicable laws.

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

Section 6.18.110 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The Ross Town Council hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

ATTACHMENT 3

REGULAR MEETING of the ROSS TOWN COUNCIL
THURSDAY, OCTOBER 12, 2017

*****EXCERPT*****

1. 6:00 p.m. Commencement.

Mayor Elizabeth Robbins; Mayor Pro Tempore Beach Kuhl; Council Member Elizabeth Brekhus; Council Member Katie Hoertkorn; Council Member Rupert Russell; and Town Attorney Greg Stepanicich.

Administrative Agenda.

11. Town Council to consider whether to amend the Town's existing Smoking Regulations per Chapter 6.18 of the Ross Municipal Code.

Planning Manager Heidi Scoble summarized the staff report and recommended that the Council consider whether to amend the Town's existing smoking regulations per Chapter 6.18 of the Ross Municipal Code.

Council Member Hoertkorn asked staff if Airbnb rentals qualify. Planning Manager Scoble responded that under the rule of permissive zoning that Airbnb may not be allowed in Town. Council Member Brekhus thought one interpretation is permissive zoning and another option is to regulate. Her sense is to leave as is with the concept that it's allowed.

Mayor Robbins pointed out that smoking would not be allowed in Airbnb. Planning Manager Scoble responded that individuals are allowed to smoke on private property and that Bed and Breakfast uses are regulated.

Mayor Robbins asked staff what specific enhanced guidelines are recommended. Planning Manager Scoble suggested the definitions should be enhanced to include e-cigarettes and define what smoking is in greater detail. Scoble also suggested including tobacco licensing to improve their grade, in addition to regulating smoking on sidewalks, work sites, and downtown.

Council Member Russell asked about smoking in backyards. Planning Manager Scoble responded that smoking in an individual's private yard is permissible.

Mayor Robbins opened the public hearing on this item.

Bob Currey, Marin County representative, believed having an "A" grade would send a great message to members of the community and make Marin a healthy community.

There being no further public testimony on this item, the Mayor closed the public portion and brought the matter back to the Council for discussion.

Council Member Russell wanted to do whatever it takes to receive an "A" grade.

Council Member Hoertkorn supported staff's recommended changes.

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Mayor Pro Tempore Kuhl felt it is important to govern their community. He opposed excessive regulations on individual's behavior on sidewalks. Council Member Brekhus agreed with Mayor Pro Tempore Kuhl's thoughts, but supported adding definitions for e-cigarettes and including marijuana cigarettes as well.

The Council directed staff to amend the smoking regulations as discussed.