ORDINANCE NO. 1431

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA AMENDING THE ARCATA MUNICIPAL CODE RELATING TO SMOKING

TITLE V—SANITATION & HEALTH
CHAPTER 7—RESTRICTING SMOKING IN THE CITY

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

Section 1: Title V (Sanitation & Health), Chapter 7 (Restricting Smoking in the City), of the Arcata Municipal Code is hereby replaced by the following.

SEC. 5700. Findings.

A. The Council finds that because the United States Environmental Protection Agency ("EPA") has designated environmental tobacco smoke ("ETS") a Class A carcinogen and has determined that ETS is a major source of indoor air pollution and a cause of lung cancer in non-smokers, the City has a responsibility to protect the public health and welfare of its citizenry through the adoption of appropriate smoking prohibitions. While all members of the population are at increased risk due to exposure to ETS, such exposure constitutes a special health hazard for children.

B. State law regulates smoking within the workplace through laws found in the California Labor Code Section 6404.5. These laws create a uniform statewide standard, which restricts and prohibits the smoking of tobacco products in all parts of enclosed places of employment with 14 specified exclusions. The stated intent of the Legislature in enacting the specific exclusions is to allow for local regulation in any workplace area specifically excluded. The Council finds that ETS exposure within some of the workplace areas specifically excluded from state law presents a health risk necessitating local regulation.

C. The Council additionally finds that ETS exposure in certain other non-workplace areas, located both inside and outside, presents a similar health risk for which local regulation is appropriate.

D. The Council further finds that exposure to secondhand smoke or vapors from non-tobacco products such as electronic cigarettes and marijuana, may be injurious to the health and create a nuisance.

SEC. 5701. Purposes.

The purposes of this Chapter are:

A. To protect the public health and welfare of Arcata citizens in general and children in particular by prohibiting smoking in all enclosed public places and workplaces, except where specifically excluded; to restrict smoking at certain outdoor public places where the health hazard of ETS exposure is high, including children's playgrounds and sports facilities or events; to restrict smoking in the vicinity of City buildings and facilities; and to allow business entities to prohibit smoking at the entrances to their business establishments.

B. To strike a reasonable balance between persons who smoke and non-smokers to breathe smoke-free air, and to recognize that where these needs conflict, the need to breathe smoke-free air shall have priority.

SEC. 5702. Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as herein defined.

A. Business. "Business" means any sole proprietorship, partnership, nonprofit corporation, for-profit corporation or other entity, including retail, professional, charitable and educational entities and establishments, where goods or services are sold or provided.

B. Common Areas. "Common areas" means every enclosed area or unenclosed area of a multi-unit residential complex that residents of more than one unit in such multi-until residential complex are entitled to enter or use, including, for example, halls and paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities and swimming pools, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.

C. Enclosed. "Enclosed" means closed in by a roof and four walls with appropriate opening for ingress and egress.

D. Multi-Unit Residential Complexes. "Multi-unit residential complexes" means property containing two (2) or more residential units.

E. Place of employment. "Place of employment" means any place, and the premises appurtenant thereto, where employment is carried on. For purposes of this paragraph, "employment" includes the carrying on of any trade, enterprise, project, industry, business, occupation or work in which any person is engaged or permitted to work for hire except household domestic service.

F. Public Place. "Public place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to the following:

1. All enclosed areas available to and customarily used by the general public in any and all businesses, including appurtenant enclosed areas commonly used by the general public such as elevators, stairways, hallways and restrooms.

2. All areas of the lobby in a hotel, motel or other transient lodging establishment. For purposes of this paragraph "lobby" means the common public area of such an establishment in which registration and other similar or related transaction, or both, are conducted and in which the establishment's guests and members of the public typically congregate.

3. Meeting, conference and banquet rooms in convention centers, hotels, motels or other transient lodging establishments.

4. Libraries, museums and galleries.

5. Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including but not limited to hospitals, clinics, physical therapy facilities, doctors' and dentists offices.

6. Common areas of apartments, condominiums and multi-unit residential complexes, including without limitation stairways, hallways, and within 30 feet of any individual unit entrance, whether or not such common area is enclosed.

7. Childcare facilities as defined in the California Health and Safety Code and private residences while used as a family day care home.

G. Smoke. "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition or vaporizations, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts. Smoke includes, but is not limited to, tobacco smoke, electronic cigarette vapors, and marijuana smoke.

H. Smoking. "Smoking" means engaging in act that generates Smoke, such as, for example: possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, an operating electronic cigarette or a lighted cigarette of any kind; or lighting or igniting a pipe, a hookah pipe, a cigar, or cigarette of any kind. Without limiting the foregoing, this definition intentionally excludes the burning of incense, candles and other similar materials.

SEC. 5703. Smoking Prohibitions.

A. City Buildings and Facilities. Smoking shall be prohibited within an area measured thirty (30) feet from any exterior wall or facade surrounding all City buildings and facilities.

B. Downtown. Smoking shall be prohibited within the downtown area. For purposes of this chapter, the "downtown area," or "downtown," means that area located in Arcata and bordered by 7th Street to the South, 11th Street to the north, J Street to the west and Highway 101 to the east, including sidewalks.

C. Enclosed Public Places. Smoking shall be prohibited in all enclosed public places as defined in Sections 5702(C) and 5702(F).

D. Entrances to Businesses. Smoking shall be prohibited within thirty (30) feet of the entrance to any retail, nonprofit, or service-related business.

E. Multi-Unit Residential Complexes. Smoking shall be prohibited in the following areas located within multi-unit residential complexes:

1. Common areas.

2. Unenclosed, exclusive-use private balconies, porches, decks and patios.

F. Open Windows and Doors. It shall be the responsibility of any person smoking outside to ensure that smoke does not enter any buildings through open windows or doors.

G. Outdoor Sports Areas. Smoking shall be prohibited at outdoor sports areas. For purposes of this ordinance, "outdoor sports areas" means outdoor sports complexes, fields,

gymnasiums, swimming pools, roller or ice rinks, skateboard parks, ball parks, basketball courts, tennis courts and other similar places where members of the general public assemble.

H. Places of Employment. Smoking shall be prohibited within places of employment except as specified in Section 5704.

I. Playground Areas. Smoking shall be prohibited within the outer perimeter of all City parks containing playground areas, and on any adjacent sidewalk.

J. Restaurants, Outdoor Areas. Smoking shall be prohibited within restaurants including outdoor areas of restaurants. For purposes of this paragraph, "restaurant" means any eating establishment, organization or club which gives or offers food to the public, guests, patrons or employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering functions, except that the term "restaurant" shall not include bars or taverns.

K. Service Lines. Smoking shall be prohibited in service lines. For purposes of this paragraph, service line means any indoor or outdoor line at which one or more persons are waiting for or receiving service of any kind, including ATM, bank, food or other services whether or not such service involves the exchange of money.

L. Other Outdoor Areas. Smoking shall be prohibited within Bayside Farm, the D Street Linear Park, the Arcata Community Forest, and the Arcata Marsh and Wildlife Sanctuary, including adjacent parking areas, as such areas are defined by reference to maps on file with the City Manager.

M. Special Events. Smoking shall be prohibited at all activities or events held at City parks, building or grounds for which a permit is required pursuant to Section 10006 of this Code.

SEC. 5704. Exceptions.

Notwithstanding the prohibitions found in Section 5703, smoking may be permitted as follows at the discretion of the employer, business owner or property owner:

A. Places of Employment Exceptions. The following exceptions to California Labor Code Section 6404.5 are expressly adopted or modified as specified:

1. Smoking may be permitted within up to forty-five percent (45%) of the guest room accommodations in a hotel, motel, or similar transient lodging establishment.

B. Non-Smoking Establishments. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment is a non-smoking establishment.

C. Multi-unit residential complexes. A person having legal control over a common area of a multi-residential complex may designate a portion of an unenclosed area of the common area as a designated smoking area provided it meets the following criteria:

1. The area is located at least 30 feet from any residential living space or enclosed area where smoking is prohibited by this chapter;

2. The area must not include, and must be at least 30 feet from, (i) unenclosed areas primarily used by children and/or (ii) unenclosed areas containing improvements that facilitate physical activity including, for example, 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 residential complex 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 chapter, state law, or federal law.

SEC. 5705. Posting of Signs.

A. Posting Requirements. "No Smoking" signs shall be posted in the discretion of the City Manager, or designee, as needed to provide adequate notice. 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 may be used if determined adequate to provide notice of the scope of the prohibition.

SEC. 5706. Enforcement.

A. Enforcement of this Chapter shall be implemented by the Chief of Police.

B. No employer shall knowingly or intentionally permit smoking in an enclosed space at a place of employment.

C. No person shall engage in smoking in an enclosed public space, an enclosed space at a place of employment, or in any other place regulated by this ordinance. (Amend. Ord. 1289)

SEC. 5707. Violations and Penalties.

A. A violation of any provision of this ordinance shall be an infraction.

B. The owner, operator, or manager in control of the use of premises subject to restrictions of this Chapter shall not be responsible for violations of this Chapter within said premises by patrons or citizens, provided that patrons or citizens have been adequately informed that their actions may be in violation of the law. Any such owner, operator or manager of a business shall have adequately informed patrons or citizens if he or she has taken reasonable steps to orally inform such patron or citizen of the violation.

Section 3: Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this

Chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid under law.

Section 4: This ordinance is exempt from the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Section 5: This ordinance will take effect thirty (30) days after the date of its adoption.

DATE: June 19, 2013

ATTEST: APPROVED:

[redacted] [redacted]

City Clerk, City of Arcata Mayor, City of Arcata

Clerk's Certificate

I hereby certify that the foregoing is a true and correct copy of **Ordinance No. 1431**, passed and adopted at a regular meeting of the City Council of the City of Arcata, County of Humboldt, State of California, on the 19th day of June, 2013, by the following vote:

AYES: **BRINTON, WHEETLEY, ORNELAS, STILLMAN, WINKLER**

NOES: **NONE**

ABSENT: **NONE**

ABSTENTIONS: **NONE**

[redacted]

City Clerk, City of Arcata