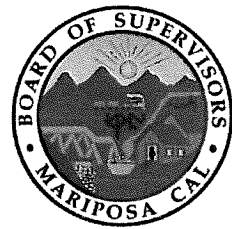


MARIPOSA COUNTY

Health • (209) 966-3689



ORDINANCE 2015-1112

MEETING: October 27, 2015
TO: The Board of Supervisors
FROM: Charles Mosher, Acting Health Officer
RE: Waive 2Nd Reading and Adopt New Ordinance Under Chapter 8.25

RECOMMENDED ACTION AND JUSTIFICATION:

Waive Second Reading and Adopt Ordinance Under The Health and Safety Code, Chapter 8.25 Entitled "Regulate Smoking and Tobacco Use." State and Federal laws regulating smoking and tobacco use have changed since these Chapters were adopted and it is appropriate to update them.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The most recent changes to Chapter 9.20 "Prohibiting Smoking in County Facilities Including County-Owned Vehicles, Child Care Facilities, Home Day Care, and Regulating Tobacco Vending Machines" were Sections 1009 and 1010 in 2004, other sections in this Chapter were adopted back in 1992.

Chapter 8.24 "Smoking in Prohibited Areas" has not been updated since 1950.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve the changes to the Ordinance and the County will be out of date with State and Federal laws.

ATTACHMENTS:

Summary of Adopted Ordinance 10-27-15 meeting (DOC)
Ordinance for adoption - 10-27-15 (DOCX)

CAO RECOMMENDATION

Requested Action Recommended

Mary Hodson
Mary Hodson, CAO 10/6/2015

RESULT: ADOPTED [UNANIMOUS]
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Kevin Cann, District IV Supervisor
AYES: Smallcombe, Jones, Long, Cann, Carrier

MARIPOSA COUNTY BOARD OF SUPERVISORS ORDINANCE NO. 1112
AN ORDINANCE REPEALING CHAPTERS 8.24 AND 9.20 THE MARIPOSA
COUNTY CODE AND ADOPT A NEW CHAPTER 8.25
TO REGULATE SMOKING AND TOBACCO PRODUCT USE

WHEREAS, the Board of Supervisors desire to repeal Chapters 8.24 and 9.20 of the Mariposa County Code; and

WHEREAS, Chapters 8.24 and 9.20 contain outdated tobacco regulations; and

WHEREAS, the Board of Supervisors desire to create a new Chapter 8.25 “Regulate Smoking and Tobacco Product Use” in the Health and Safety Code Section, to bring County Code up to date with tobacco regulations; and

WHEREAS, tobacco-related illness is the leading cause of preventable death in the United States, accounting for about 480,000 deaths each year; and

WHEREAS, the United States Surgeon General concluded there is no risk-free level of exposure to secondhand smoke; and

WHEREAS, the State of California repeatedly has identified secondhand smoke as a health hazard; and

WHEREAS, 40.6 percent of children nationwide, including 67.9 percent of non-Hispanic black children, are exposed to secondhand smoke; and

WHEREAS, exposure to secondhand smoke can occur at significant levels outdoors; and

WHEREAS, smokeless tobacco is not a safe alternative to smoking; and

WHEREAS, electronic cigarettes are not a safe alternative to traditional cigarettes and other tobacco products; and

WHEREAS, the California State Health Officer has declared concern over electronic cigarettes with respect to youth, in part because youth are more likely to use electronic cigarettes than traditional cigarettes; and

WHEREAS, recent data from the Centers for Disease Control and the United States Food and Drug Administration show youth use of electronic cigarettes tripled between 2013 and 2014; and

WHEREAS, public use of electronic cigarettes threatens to renormalize smoking and undermine the progress of California’s smoke free air laws; and

WHEREAS, research confirms electronic cigarette aerosols contain harmful chemicals much like secondhand smoke from traditional cigarettes; and

WHEREAS, cigarette butts are a major and persistent source of hazardous litter; and

WHEREAS, ingestion of cigarette butts and ingestion of electronic cigarette “juice” pose a health threat to young children; and

WHEREAS, litter from tobacco products is also a fire hazard. Between 2003 and 2011, local fire departments nationwide responded to more than 350,000 fires that were ignited by smoking materials like cigarettes, cigars, pipes, and lighters. In 2012, 46 fires in Mariposa, Madera, and Merced County were caused by smoking; and

WHEREAS, 88 percent of Californian adults do not smoke and a majority favor limitations on smoking in public outdoor places, such as recreational areas and bus stops; and

WHEREAS, smoke free policies have been found to be highly effective in reducing active smoking and nonsmokers’ exposure to secondhand smoke; and

WHEREAS, the State smoke free workplace law does not expressly prohibit the use of electronic smoking devices in enclosed workplaces; and

WHEREAS, the State of California’s Tobacco Education and Research Oversight Committee (TEROC) “opposes the use of e-cigarettes in all areas where other tobacco products are banned;” and

WHEREAS, the Centers for Disease Control has concluded, “it is critical that comprehensive tobacco control and prevention strategies for youth focus on all tobacco products, not just cigarettes;” and

WHEREAS, at least 62 local jurisdictions in California prohibit the use of electronic smoking devices in specific locations; and

WHEREAS, as of January 2, 2015, there are at least 348 California cities and counties with local laws restricting smoking in recreational areas.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, it is the intent of the County Board of Supervisors, in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking, tobacco use, and vaping around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke and e-cigarette vapors where they work and play; by reducing the potential for children to wrongly associate smoking, tobacco use, and vaping with a healthy lifestyle; and by affirming and promoting a healthy environment in the County a political subdivision of the State of California, does ordain as follows:

8.25.010 Definitions.

The following words and phrases, whenever used in this Chapter shall have the meanings defined in this section unless the context clearly requires otherwise:

- A. "Business" means any sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity formed for profit-making purposes.
- B. "Electronic Smoking Device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.
- C. "Employee" means any Person who is employed or retained as an independent contractor by any Employer in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for an Employer.
- D. "Employer" means any Business or Nonprofit Entity that retains the service of one or more Employees.
- E. "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 (3) walls or other vertical constraint to airflow including, but not limited to, vegetation of any height whether or not those boundaries include vents or other openings; or
 - 2. four (4) walls or other vertical constraints to airflow including, but not limited to, vegetation that exceed six (6) feet in height whether or not those boundaries include vents or other openings.
- F. "Nonprofit Entity" means any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association, or other entity created for charitable, religious, philanthropic, educational, political, social, or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a Nonprofit Entity within the meaning of this Chapter.
- G. "Person" means any natural person, Business, cooperative association, Nonprofit Entity, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.
- H. "Public Place" means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.

- I. “Reasonable Distance” means a distance of twenty-five (25) feet in any direction from an area in which Smoking is prohibited.
- J. “Recreational Area” means all Mariposa County parks, community parks, community sports fields, the Mariposa Farmers Market, and the Mariposa Creek Parkway.
- K. “Service Area” means any Yosemite Area Regional Transportation System bus stop.
- L. “Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine *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.
- M. “Smoking” means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation.
- N. “Tobacco Product” means:
 - 1. any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether Smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
 - 2. Any Electronic Smoking Device that delivers nicotine or other substances to the Person inhaling from the device, including, but not limited to an electronic cigarette, cigar, pipe, or hookah.
 - 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.
- O. “Unenclosed Area” means any area that is not an Enclosed Area.

8.25.020 Prohibition of Tobacco Products Use in Enclosed Areas.

- A. Tobacco Product Use Prohibited in Enclosed County Facilities. The use of Tobacco Products is prohibited in all Enclosed Areas owned, operated, or leased in whole or in part by Mariposa County, except in places subject to the prohibition on

smoking contained in Labor Code section 6404.5, in which case that law applies as it relates to the prohibition on Smoking.

- B. Use of Electronic Smoking Devices Prohibited in Smoke free Workplaces. The use of an Electronic Smoking Device is prohibited in Mariposa County in all places subject to the smoking prohibitions contained in California Labor Code section 6404.5, as that section may be amended from time to time.

8.25.030 Prohibition of Smoking in Unenclosed Areas.

- A. Smoking is prohibited in the Unenclosed Areas of the following places within the County of Mariposa, except places where Smoking is already prohibited by state or federal law, in which case those laws apply:
 - 1. Recreational Areas; and
 - 2. Service Areas.
- B. Nothing in this Chapter prohibits any Person, Employer, or Nonprofit Entity with legal control over any property from prohibiting Smoking on any part of such property, even if Smoking is not otherwise prohibited in that area.
- C. The Director of the Mariposa County Health Department, Tobacco Education Program, or his/her designee shall conduct an ongoing educational program to explain and clarify the purposes and requirements of this Chapter, as well as to provide guidance to Persons, Employers, and Nonprofit Entities about compliance. However, lack of such education shall not be a defense to a violation of this Chapter.

8.25.040 Reasonable Smoking Distance Required.

- A. Smoking in all Unenclosed Areas shall be prohibited within a Reasonable Distance from any doorway, window, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited, except while the Person Smoking is actively passing on the way to another destination and provided Smoke does not enter any Unenclosed Area in which Smoking is prohibited.
- B. Smoking in Unenclosed Areas shall be prohibited within a Reasonable Distance from any Unenclosed Areas in which Smoking is prohibited under Section 8.25.030 of this Chapter, except while the Person Smoking is actively passing on the way to another destination and provided Smoke does not enter any Unenclosed Area in which Smoking is prohibited.

8.25.050 Other Requirements and Prohibitions.

- A. No Person, Employer, or Nonprofit Entity shall knowingly permit Smoking or the use of Tobacco Products in an area which is under the legal or de facto control of that Person, Employer, or Nonprofit Entity and in which Smoking or the use of Tobacco Products is prohibited by law.

- B. No Person, Employer, or Nonprofit Entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or de facto control of that Person, Employer, or Nonprofit Entity and in which Smoking or the use of Tobacco Products is prohibited by law, including, without limitation, within a Reasonable Distance required by this Chapter from any area in which Smoking or the use of Tobacco Products is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of Smoking or the use of Tobacco Products in violation of any provision of this Chapter.
- 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 Chapter.
- D. A Person, Employer, or Nonprofit Entity that has legal or de facto control of an area in which Smoking and the use of Tobacco Products is prohibited by this Chapter shall post a clear, conspicuous and unambiguous “No Smoking, No Vaping, and No Use of Tobacco Products” or “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 8.25.040 For purposes of this section, the County Administrative Officer 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 County. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of Smoking or the use of Tobacco Products in violation of any other provision of this Chapter.
- E. No Person, Employer, or Nonprofit Entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another Person who seeks to attain compliance with this Chapter.
- F. Each instance of Smoking or Tobacco Product use in violation of this Chapter shall constitute a separate violation. For violations other than for Smoking, each day of a continuing violation of this Chapter shall constitute a separate violation.

8.25.060 Penalties and Enforcement.

- A. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.
- B. Each incident of Smoking or use of Tobacco Products in violation of this Chapter is an infraction subject to a one hundred dollar (\$100) fine or otherwise punishable pursuant to Chapter 8.25 of this code. Other violations of this Chapter may, at the

discretion of the District Attorney, be prosecuted as infractions or misdemeanors when the interests of justice so require. Enforcement of this chapter shall be the responsibility of Mariposa County Sheriff's Department. In addition, any peace officer or code enforcement official also may enforce this chapter.

- C. Violations of this Chapter are subject to a civil action brought by the County of Mariposa, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.
- D. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.
- E. Any violation of this Chapter is hereby declared to be a nuisance.
- F. In addition to other remedies provided by this Chapter or by other law, any violation of this Chapter may be remedied by a civil action brought by the County Counsel, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.
- G. Except as otherwise provided, enforcement of this Chapter is at the sole discretion of the County. Nothing in this Chapter shall create a right of action in any Person against the County or its agents to compel public enforcement of this Chapter against private parties.

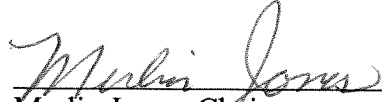
8.25.070 Statutory Construction and Severability.

It is the intent of the Board of Supervisors of the County of Mariposa to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this ordinance, 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 ordinance, or its application to any other Person or circumstance. The Board of Supervisors of the County of Mariposa hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof independently, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

This Ordinance shall become effective thirty (30) days after final passage pursuant to Government Code §25123.

PASSES AND ADOPTED by the Mariposa County Board of Supervisors this 27th day of October, 2015, by the following vote:

AYES: SMALLCOMBE, JONES, LONG, CANN, CARRIER
NOES: NONE
ABSENT: NONE
ABSTAINED: NONE



Merlin Jones, Chair
Mariposa County Board of Supervisors

ATTEST:



RENÉ LaROCHE, Clerk of the Board

APPROVED AS TO FORM:



STEVEN W. DAHLEM, County Counsel