



## REPORT TO CITY COUNCIL

Approved by:

  
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Department Director

  
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Arnoldo Rodriguez, City Manager

Council Meeting of: May 15, 2019

Agenda Number: C-4

### SUBJECT:

Second reading and consideration of adoption of an ordinance amending Chapter 7 of Title V and repealing in its entirety Chapter 5 of Title VII of the Madera Municipal Code in order to update existing regulations associated with smoking, including the prohibition of smoking in City park facilities.

### RECOMMENDATION:

It is recommended that the City Council (Council) adopt the ordinance rezoning the subject property.

### SUMMARY:

The Council introduced the ordinance amendment at its May 1<sup>st</sup> meeting. The second reading and adoption of the ordinance would complete the amendment process, refreshing current ordinance related to smoking in the City, and adding provisions prohibiting smoking in recreational areas of the community.

### DISCUSSION:

At the Council's February 20<sup>th</sup> meeting, Council gave direction to staff in support of updating City ordinance related to smoking to include a prohibition of smoking in City park facilities because of a heightened awareness of the harmful effects of secondhand smoke. In conjunction with the update of City ordinance, staff included verbiage that addressed new smoking trends such as vaping, e-cigarettes and cannabis, and incorporated new definitions that account for changes in smoking related activities and smoking related business practices. An exception allows smoking at the golf course. A chapter of ordinance specific to smoking in City facilities only would be repealed in its entirety since regulations within City facilities are identical to all other places within the City, rendering the chapter unnecessary.

### FINANCIAL IMPACT:

There is no direct positive or negative financial impact associated with the ordinance amendment. The amendment could require public outreach and education in advance of any programmatic enforcement of the revised ordinance. Any costs associated with education and enforcement would be borne primarily by the General Fund.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

The ordinance amendment will further apply the core vision statements in the Vision Plan of “A Safe, Healthy Environment” by limiting smoking activities and providing smoke-free parks for the City’s residents.

**ALTERNATIVES:**

The Council could consider alternatives other than staff’s recommendation of adoption of the ordinance. Those include:

1. Discontinue the ordinance amendment process.
2. Continuing the item with direction to staff to provide additional information.
3. Provide staff with other alternative directives.

**ATTACHMENTS:**

1. Ordinance

**Attachment 1: Ordinance**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA AMENDING CHAPTER 7 OF TITLE V AND REPEALING IN ITS ENTIRETY CHAPTER 5 OF TITLE VII OF THE MADERA MUNICIPAL CODE IN ORDER TO UPDATE EXISTING REGULATIONS ASSOCIATED WITH SMOKING, INCLUDING THE PROHIBITION OF SMOKING IN CITY PARK FACILITIES.

THE CITY COUNCIL OF THE CITY OF MADERA DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Madera has held a public hearing and has determined that the proposed ordinance text amendment is consistent with the General Plan.

SECTION 2. The City Council has determined the ordinance text amendment to be consistent with the purpose and intent of Title V - Sanitation and Health of the Madera Municipal Code.

SECTION 3. The City Council has determined the ordinance text amendment to be consistent with the purpose and intent of Title VII – Public Works of the Madera Municipal Code.

SECTION 4. Chapter 7 of Title V, Smoking Regulations is hereby amended as follows:

**[§ 5-7.01 PURPOSE AND FINDINGS.**

~~(A) Findings.~~

- ~~(1) The U.S. Environmental Protection Agency (EPA) has determined that tobacco smoke is a major source of indoor air pollution, and the Surgeon General's 1986 report on the Health Consequences of Involuntary Smoking includes that exposure to tobacco smoke places healthy non-smokers at increased risk for developing lung cancer. Other health hazards from involuntary smoking include respiratory infection, broncho-constriction, and broncho-spasm. While all members of the population are truly at increased risk due to exposure to secondhand tobacco smoke, it constitutes a special health hazard for children, the elderly, and people with chronic lung disorders, including asthmatics and those with obstructive airway disease and cardiovascular disease.~~
- ~~(2) Secondhand smoke from tobacco may cause a significant amount of cardiovascular disease in the United States and that the number of deaths from this cause may exceed the deaths caused by lung disease associated with secondhand smoke.~~
- ~~(3) Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort of non-smokers and constitutes a public nuisance.~~
- ~~(4) Secondhand smoke has been found by the Environmental Protection Agency to be a known carcinogen.~~

(A) Secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- (1) The U.S. surgeon general concluded that there is no risk-free level of exposure to secondhand smoke.

- (2) The California Air Resources Board categorized secondhand smoke as a toxic air contaminant, along with most toxic automotive and industrial air pollutants, for which there is no safe level of exposure.
- (3) The California Environmental Protection Agency (EPA) included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm.
- (4) The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) has concluded that the only means of effectively eliminating health risk associated with indoor exposure [to secondhand smoke, cannabis smoke, and aerosol from electronic smoking devices] is to ban smoking activity.

(B) Exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke can occur at significant levels outdoors, as evidenced by the following:

- (1) Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind, number and proximity of smokers, and enclosures like walls or roofs.
- (2) Smoking cigarettes near building entryways can increase air pollution levels by more than two times background levels, with maximum levels reaching the hazardous range on the United States EPA's Air Quality Index.
- (3) To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move 20 to 29 feet away from the source of the smoke, about the width of a two-lane road.
- (4) In 2014, secondhand smoke was responsible for an estimated 33,950 heart disease-related and 7,330 lung cancer-related deaths in the United States.
- (5) Exposure to secondhand smoke increases the risk of coronary heart disease by about 25 percent to 30 percent and increases the risk of stroke by 20 percent to 30 percent.
- (6) Secondhand smoke kills more than 400 infants every year.

(C) Electronic smoking device aerosol may be considered a health hazard, as evidenced by the following:

- (1) Research has found electronic smoking device aerosol contains at least 10 chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm, such as formaldehyde, acetaldehyde, lead, nickel, and toluene.
- (2) Electronic smoking device aerosol is not harmless water vapor as it contains varying concentrations of particles and chemicals with some studies finding particle sizes and nicotine concentrations similar to, or even exceeding, conventional cigarette smoke.
- (3) Evidence continues to build that exposure to electronic smoking device aerosol, including secondhand exposure, has immediate impacts on the human respiratory and cardiovascular systems, and thus likely poses a risk to human health.
- (4) Given the increasing prevalence of electronic smoking device use, especially among youth and young adults, widespread nicotine exposure resulting in addiction and other harmful consequences is a serious concern.
- (5) A number of health authorities, including the U.S. surgeon general, ASHRAE, and State of California's Tobacco Education and Research Oversight Committee (TEROC) all support inclusion of electronic smoking devices in regulations of smoking and other tobacco product use.

~~(B)~~(D) Accordingly, the City Council declares that the purpose of this chapter is to protect the health, safety, and general welfare of the residents of, persons employed in, and persons who frequent

the city who would benefit by the regulation of smoking, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

## § 5-7.02 DEFINITIONS.

~~For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

(A) Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter. If any of the definitions in this section conflict with definitions in other chapters of the Municipal Code, these definitions shall prevail for the purpose of interpreting and enforcing this section. If a term is not defined in this section, or other sections of the Municipal Code, the most common dictionary definition is assumed to be correct.

(B)The following definitions are listed in alphabetical order.

**BAR.** 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. When a bar is operated within a building in conjunction with another use, such as a restaurant, only the area utilized primarily for the consumption of alcoholic beverages shall constitute the bar. The dining area of a restaurant utilized primarily for the serving and consumption of food shall not constitute a bar, even though alcoholic beverages may be served therein.

**BUSINESS.** Any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

**DINING AREA.** Any enclosed area containing a counter or tables upon which meals are served.

**ELECTRONIC SMOKING DEVICE.** Means an electronic device that can be used to deliver an inhaled dose of nicotine, or plant product intended for inhalation. An "electronic smoking device" includes a device that is manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, or a vapor pen.

**EMPLOYEE.** Any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit.

**ENCLOSED.** Shall be applicable to buildings and structure only. A building or structure shall be deemed enclosed unless the interior of the building or structure or portion thereof is, temporarily or permanently, directly exposed to the outside air by reason of either temporary removal of a substantial portion of an exterior wall (for example, roll-up doors on shops and garages) or by reason of nonexistence of a substantial portion of at least one of the exterior walls of the building or structure (for example, three-sided buildings).

**ENCLOSED AREA.** All space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.

**MEMBERS OF THE GENERAL PUBLIC.** Shoppers, customers, patrons, patients, students, clients and other similar invitees of a commercial enterprise, nonprofit entity, or public agency, and excluding employees thereof, sales representatives, service repair persons, and persons delivering goods, merchandise, or services to a commercial enterprise, nonprofit entity, or county.

**NONPROFIT ENTITY.** Any corporation, unincorporated association, or other entity created for charitable, educational, political, social, or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a **NONPROFIT ENTITY** within the meaning of this section.

**PLACE OF EMPLOYMENT.** Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to:

- (1) Work areas;
- (2) Conference and classrooms;
- (3) Employee cafeterias;
- (4) Employee lounges and restrooms; and
- (5) Hallways.

**PRIVATE FUNCTION.** Any function to which the general public is not invited.

**PUBLIC PLACE.** Any enclosed area, not a private residence, to which the public is invited or in which the public is permitted, including, but not limited to:

- (1) Banks;
- (2) Child care facilities;
- (3) Educational facilities;
- (4) Health care facilities;
- (5) Public transportation facilities;
- (6) Recreation areas;
- (7) Restaurants;
- (8) Retail stores;
- (9) Retail service establishments;
- (10) Retail food production, and marketing establishments;
- (11) Waiting rooms.

**RECREATIONAL AREA.** Means any areas that are public or privately owned, controlled or used by the City of Madera and open to the general public for recreational purposes, regardless of any fee or age requirement. The term "Recreational Area" includes but is not limited to parks, picnic areas, playgrounds, sports fields, walking paths, gardens, bike paths, riding trails, swimming pools, and skateboard parks. The term **RECREATIONAL AREA** does not include any streets and/or sidewalks located within or upon any abutting right-of-way.

**RECREATIONAL FACILITIES.** Sports pavilions, gymnasiums, health spas, boxing areas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.

**RESTAURANT.** Any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering

facilities, except that the term **RESTAURANT** shall not include a cocktail lounge or tavern if the cocktail lounge or tavern is a **BAR** as defined in this chapter.

**SERVICE LINE.** Any indoor line at which one or more persons are waiting for, or receiving service of, any kind whether or not such service involves the exchange of money.

**SMOKING.** ~~Lighting, inhaling, exhaling, or burning any pipe, cigar, cigarette, weed, or plant, or carrying any lighted pipe, lighted cigar, lighted cigarette, lighted weed, lighted plant, or other ignited combustible substance in any manner or in any form.~~ Lighting, inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product (e.g. cannabis) intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.

**TOBACCO PRODUCTS.** A product containing, made from, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff. An electronic device that delivers nicotine or other vaporized liquid to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah. Any component, part, or accessory of a tobacco product, whether or not sold separately.

**TOBACCO STORE.** ~~Any retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.~~ Establishments engaged primarily in the retail sale of **TOBACCO PRODUCTS**, wherein the sale of other products is merely incidental. This definition includes humidors, smoking rooms, head shops, vape lounges and hookah bars.

**UNENCLOSED AREA.** Any area that is not an **ENCLOSED AREA**.

**WORK AREA** or **WORK PLACE.** Any area of a place of employment enclosed by floor to ceiling walls in which two or more employees are assigned to perform work for an employer.

### § 5-7.03 PROHIBITION OF SMOKING IN PUBLIC PLACES.

(A) Smoking is prohibited in all enclosed public places within the city, including, but not necessarily limited to, the following places;

(1) Bars.

(2) Bowling alleys.

(3) Buses, taxicabs and other means of public transit operated by or licensed by the city. Smoking may be allowed in waiting areas of public transit terminals in designated areas. In such facilities 75% of the facility will be designated as smoke-free. The prohibitions contained in this section shall be applicable to depots and other terminals utilized by members of the general public for the purpose of being transported upon or departing from airlines, trains, buses, and taxis.

(4) Day care facilities, including private residences during the time when such residences are operated as licensed or unlicensed day care facilities for children or the elderly.



~~(512)~~ *Doctors' offices, dentists' offices, waiting rooms, hallways, wards, and semi-private rooms of health facilities, including, but not limited to, hospitals, clinic, and physical therapy facilities.* In bed- space areas of health facilities used for two or more patients, smoking shall be prohibited unless all patients within the room are smokers and request in writing upon the health care facility's admission forms to be placed in a room where smoking is permitted.

~~(61)~~ Elevators ~~and restrooms.~~

~~(713)~~ *Hospitals, rest and convalescent homes, medical clinics, physical therapy facilities, and other places where medical, dental, psychiatric, or counseling services are delivered to members of the general public.* Operators of facilities treating psychiatric or chemically impaired patients may permit smoking by patients in designated areas provided the medical director of such facility has determined in writing that the practice is beneficial for the recovery or treatment of such patients and that the practice will not interfere with the recovery and treatment of non-smoking patients, and provided that adequate non-smoking areas are made available for non-smoking patients. This section shall not be construed to prevent smoking in locations or otherwise under conditions in which smoking is expressly authorized by, or under statutes or administrative regulations applicable to, such licensed facilities.

~~(814)~~ Polling places.

(9) Recreational facilities.

~~(a) Recreational facilities, including enclosed areas of sports pavilions, gymnasiums, exercise rooms, health spas, boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys and other similar places where members of the general public assemble to either engage in physical exercise, participate in athletic competition, or witness sports events.~~

~~(b) Smoking is prohibited at all times within the seating areas of an enclosed arena and in the surrounding open concourse where food and beverages are dispensed.~~

~~(c) Smoking may be allowed in bowling alleys on those occasions when league play occupies the majority of bowling lanes in the establishment, and a majority of the members of the league(s) vote to allow smoking. Evidence of the voting procedure and outcome of the vote must be retained by the establishment, for inspection by the city upon request, for the duration of the league's play.~~

(10) Recreational areas.

~~(117)~~ Restaurants.

~~(12)~~ Restrooms.

~~(134)~~ Retail stores, ~~except areas in the stores not open to the public and all areas within retail tobacco stores.~~

~~(145)~~ Retail food marketing establishments, including grocery stores and supermarkets, ~~except those areas not open to the public which may be otherwise regulated by this chapter.~~

~~(165)~~ Schools or educational institutions operated by a commercial enterprise, public agency, or nonprofit entity for the purpose of providing academic classroom instruction, trade, craft, computer, or other technical training, or instruction in dancing, artistic, musical, or other cultural skills.

~~(173)~~ Service lines.

~~(18)~~ Theaters, including motion picture theaters, meeting halls and auditoriums where motion pictures or live theatrical musical or dramatic productions are made to an audience consisting of members of the general public assembled for the purpose of witnessing the performance or presentation, provided, however, this section shall not be construed to prevent smoking by performers in connection with a stage production or by persons making a presentation concerning addiction to tobacco and other drugs.

- (196) All areas available to, and customarily used by, the general public in all businesses and nonprofit entities patronized by the public, including, but not limited to, business offices, banks, hotels, and motels.
- (2010) Any building not open to the sky which is used primarily as a museum or for exhibiting any motion picture, stage drama, lecture, musical recital, or other similar performance, except when smoking is part of any such production.
- (2111) Every room, chamber, and place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, or agencies of the city of any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city.

(B) Smoking is prohibited in all unenclosed public places within the city, including, but not necessarily limited to, the following places;

- (1) Outdoor dining areas.  
(2) Recreational areas.

(CB) 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 as a non-smoking establishment. ~~Further, provided that notwithstanding this chapter, the owner or person who controls such establishment may, but is not required to, set aside in any facility described in this section, a separate room with walls and doors reasonably impermeable to tobacco smoke for use as an employee lounge or break room.~~

**§ 5-7.04 WHERE SMOKING NOT REGULATED. EXCEPTIONS TO PROHIBITION OF SMOKING IN PUBLIC PLACES**

(A) Notwithstanding any other provisions of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

- ~~(1) Bars.~~
- (12) A private residence, including an attached or detached garage ~~whether or not the~~ except when the residence is utilized for office or other business purposes ~~except and/or~~ when such residence is operated as a licensed or unlicensed day care facility for children or the elderly.
- (23) Hotel and motel rooms rented to guests.
- (34) Tobacco stores, whether operated as a separate business entity or as a physically separated facility within a department store or other business entity. Note: tobacco stores, like all businesses, are obligated to provide a safe work environment protecting their employees for exposure to second hand smoke.
- (45) Private clubs during events attended exclusively by members of the organization and their invited guests and from which members of the general public are excluded.
- ~~(6) Within conference meeting rooms, public and private assembly rooms, banquet rooms, dining rooms or common areas of restaurants, and hotels and motels while these places are occupied for private functions to which only persons specifically invited are entitled to attend and from which members of the general public are excluded.~~
- ~~(7) Within bowling alleys while the majority of available bowling lanes are occupied by league play and the league(s) have voted to allow smoking.~~
- ~~(8) A private enclosed place occupied exclusively by smokers, even though such a place may be visited by nonsmokers.~~
- ~~(9) Cardrooms licensed by the city.~~

~~(10) Those areas in restaurants where signs indicate smoking is allowed.~~

(56) City streets and sidewalks, except as otherwise prohibited by state law.

(B) In addition to those areas identified in § 5-7.04(A) above, the provisions of this chapter shall not be applicable to the following:

(1) golf courses.

(2) other City-owned property per the direction of the City Manager.

(CB) Notwithstanding any other provisions of this section, any owner, operator, manager, or other person who controls any establishment described in this section may declare that entire establishment, or any portion thereof, as a non-smoking establishment.

#### **§ 5-7.05 POSTING OF SIGNS.**

(A) "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one-inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette and electronic smoking device enclosed in a red circle with a red bar across it) shall be clearly, sufficiently, and conspicuously posted in every building or other place where smoking is controlled by this chapter or by the owner, operator, manager, or other person having control of such building or other place.

(B) Every theater owner, manager, or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium, and in the case of motion picture theaters, such information shall be shown upon the screen for at least five seconds prior to the showing of each feature motion picture.

#### **§ 5-7.06 ENFORCEMENT.**

(A) The regulations contained herein shall be enforced by the City's ~~Environmental Health Officer~~ Code Enforcement Division.

(B) Any citizen who desires to register a complaint hereunder may initiate enforcement with the City's ~~Environmental Health Officer~~ Code Enforcement Division.

(C) Any owner, manager, operator, or employees of any establishment controlled by this chapter shall have the right to inform persons violating this chapter of the appropriate provisions thereof.

(D) Notwithstanding any other provisions of this chapter, a private citizen may bring legal action to enforce this chapter.

#### **§ 5-7.07 VIOLATIONS.**

(A) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the regulation under this chapter to fail to comply with its provisions.

(B) It shall be unlawful for any person to smoke in an area restricted by the provisions of this chapter.

**§ 5-7.08 NONRETALIATION.**

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

**§ 5-7.09 GOVERNMENTAL AGENCY COOPERATION.**

The City ~~Administrator~~ Manager shall annually request other governmental and educational agencies having facilities within the city to establish local operating procedures in cooperation and compliance with this chapter. The City ~~Administrator~~ Manager shall urge federal, state, city, and special school district agencies to enforce their existing smoking control regulations and to comply voluntarily with this chapter.

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

SECTION 5. Chapter 5 of Title VII, Smoking in City Facilities, is hereby repealed in its entirety.

SECTION 6. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or void for any other reason.

SECTION 7. This Ordinance shall be effective and of full force and effect at 12:01 am on the thirty-first (31<sup>th</sup>) day after its passage.

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