

ORDINANCE NO. _____

**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA**

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**AN ORDINANCE REPEALING AND REPLACING CHAPTER 4.96, RELATED TO
SMOKING, OF TITLE 4 OF THE SAN MATEO COUNTY ORDINANCE CODE, TO
DELETE REDUNDANT SECTIONS RELATING TO RETAIL SALES OF TOBACCO
PRODUCTS AND TO CLARIFY DEFINITION OF TOBACCO PRODUCTS**

The Board of Supervisors of the County of San Mateo, State of California, ORDAINS as follows:

SECTION 1. The existing Chapter 4.96 of Title 4 of the San Mateo County Ordinance Code is hereby repealed in its entirety, and replaced with a new Chapter 4.96 to be numbered and entitled and to read as follows:

CHAPTER 4.96 SMOKING

4.96.010 Applicability of Chapter.

This Chapter shall apply to the unincorporated area of San Mateo County and to structures owned or leased by San Mateo County, wherever located.

4.96.020 Purposes and policies.

This Chapter shall be construed and applied to promote its basic purposes and policies which are:

- (a) To protect the public health and welfare by prohibiting or limiting smoking in public places and places of employment, as hereinafter set forth.
- (b) To strike a reasonable balance between the needs of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air should have priority.

4.96.030 Definitions.

For the purposes of this Chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section have the meanings given to them in this section.

- (a) "Enclosed" means closed in by a roof and four (4) walls with appropriate openings for ingress and egress. For purposes of this Chapter, a County of

San Mateo owned multilayer parking structure shall be considered an enclosed structure.

- (b) "Landlord" means any person or entity who owns property let for residential use, any person or entity who lets residential property, and any person or entity who manages such property, except that "landlord" does not include sub-lessors.
- (c) "Public place" means any enclosed area to which the public is invited or in which the public is permitted. A private residence is not a public place.
- (d) "Roadway" means that portion of the public right-of-way designed and Ordinarily used for motor vehicle travel. "Roadway" does not include sidewalks, curbs, driveways, medians, or other areas adjacent to public streets.
- (e) "Smoke" (noun) means any vapors, gases, particles or other by-products released as a result of combustion or electrical ignition, when the apparent or usual purpose of the combustion or electrical ignition is human inhalation of the byproducts, except when the combusting or igniting material both contains no tobacco or nicotine and the usual purpose of inhalation is solely olfactory such as with the burning of incense. Smoke does not include combustion of substances regulated by the U.S. Food and Drug Administration and used for medical or therapeutic purposes. Smoke specifically includes but is not limited to gases, particles, vapors or other by-products released by electronic cigarettes, tobacco cigarettes, herbal cigarettes, marijuana cigarettes and any other type of cigarette, pipe or other implement for the purpose of inhalation of vapors, gases, particles or other by-products released as a result of combustion or ignition.
- (f) "Smoking" or to "smoke" (verb) means possessing a lighted or ignited tobacco or nicotine product or paraphernalia; or engaging in an act that generates smoke (including, but not limited to, possessing a lighted or ignited pipe, hookah pipe, cigar, or cigarette of any kind including but not limited to an electronic cigarette); or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind including but not limited to an electronic cigarette.
- (g) "Tobacco," or "Tobacco Product," means and includes:
 - 1. Any product containing, made of, or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, chewing tobacco, pipe tobacco, snuff, or snus;

2. Any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine, and whether natural or synthetic; or
3. Any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, whether natural or synthetic, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.

"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.

4.96.040 Areas where smoking is prohibited.

Smoking shall be prohibited:

- (a) Within any enclosed structure owned or leased by San Mateo County wherever located except private residences leased from the County, which are governed by the provisions of Chapter 4.97 of this Ordinance Code; and within thirty (30) feet in any direction from any enclosed structure owned by the County, as determined by the Director of Public Works, up to the edge of County property except areas that are less than thirty (30) feet from the enclosed structure that lie within a public roadway.
- (b) Within all enclosed areas available to, and customarily used by, the general public, in all businesses patronized by the public and all enclosed passageways between businesses.
- (c) Within any area, including public parking areas, of County-owned, operated or maintained beaches, parks and trails, including but not limited to the following: Coyote Point Marina; Coyote Point Park, Crystal Springs Trail, Edgewood Park and Natural Reserve, Fitzgerald Marine Reserve, Flood Park, Huddart Park, Junipero Serra Park, Memorial/Pescadero Park, Mirada Surf East and Mirada Surf West, Sanchez Adobe, Sam McDonald Park, San Bruno Mountain Park, San Pedro Valley Park, Woodside Store, and Wunderlich Park.

4.96.110 Buildings.

"Smoking" or "No Smoking" signs, whichever are appropriate, with letters not less than one inch (1") in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be conspicuously posted in every room, building or other place where smoking is

regulated by this ordinance, by the owner, operator, manager or other person having control of such building or other place.

4.96.140 San Mateo County Health Chief.

Enforcement of this ordinance shall be implemented by the San Mateo County Health Chief and/or his/her designees. San Mateo County Health shall have the right, in connection with any regular annual inspection of a business located in the unincorporated area of the County, to require that the owner, manager, operator or other Person having control of such establishment certify that all applicable requirements of this chapter have been complied with.

4.96.150 Initiation of enforcement.

Any person or entity may initiate enforcement of this Chapter by notifying the San Mateo County Health Chief or designee of any violation.

4.96.160 Owners, operators, employees.

Any owner, manager, operator, or employee of any establishment controlled by this ordinance shall have the right to inform persons violating this Chapter of the requirements of the provisions being violated and the consequences of such violation.

4.96.170 Owners must comply.

It shall be unlawful for any person or entity who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this chapter to fail to comply with its provisions. Any landlord who has properly posted signs in accordance with this Chapter will be deemed to be in compliance with this Chapter.

4.96.180 Persons who smoke must comply.

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

4.96.190 Infraction.

Any person who violates any provision of this ordinance shall be guilty of an infraction, punishable by:

- (a) A fine not exceeding one hundred dollars (\$100) for a first violation.
- (b) A fine not exceeding two hundred dollars (\$200) for a second violation.
- (c) A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

4.96.200 Enforcement.

The San Mateo County Health Chief or designee is hereby authorized to institute and pursue enforcement, in the name of the County, pursuant to the provisions of section 25132 of the Government Code.

4.96.210 No retaliation.

No person or entity shall retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by the ordinance.

4.96.220 Sections found invalid.

If any provision, clause, section, sentence or paragraph of this ordinance or the application thereof to any person, entity or circumstances shall be held invalid, such validity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

4.96.230 Restrictions set by other applicable laws.

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety and fire codes.

4.96.240 Exemptions.

Any owner or manager of a business or establishment subject to this ordinance may apply to the San Mateo County Health Chief or designee for an exemption or modification to any provision of this ordinance due to unusual circumstances or conditions.

- (a) Such exemption shall be granted only if the San Mateo County Health Chief or his/her designee finds from the evidence presented by the applicant for exemption that due to such unusual circumstances or conditions it would cause a substantial impairment of the function of the establishment or business to carry out some or all of the provisions of this ordinance.
- (b) The applicant for an exemption shall pay the fee prescribed by the San Mateo County Health Chief to cover the cost of the hearing and noticing of hearing.

4.96.250 Continuing program.

The San Mateo County Health Chief or designee shall engage in a continuing program to inform and clarify the purposes of this ordinance to citizens affected by it, and to guide owners, operators and managers in their compliance.

4.96.260 Local operating procedures.

The San Mateo County Health Chief or designee shall annually request such governmental and educational agencies having offices within the unincorporated area of the County of San Mateo to establish local operating procedures to cooperate and comply with this ordinance. In Federal, State, school districts and special districts within the County of San Mateo, the San Mateo County Health Chief shall urge enforcement of their existing no smoking prohibitions and request cooperation with this ordinance.

4.96.270 Violation grounds for discipline.

A violation of this ordinance by a County employee shall be cause for disciplinary action, under the Rules of the Civil Service Commission.

4.96.280 Enforcement of Labor Code section 6404.5.

- (a) Authority. The provisions of Labor Code section 6404.5, governing smoking in enclosed places of employment, shall be enforced by deputies employed by the San Mateo County Sheriff and by employees of the San Mateo County Health as designated by the Chief provided, however, that employees designated by the Chief with the authority to enforce Labor Code section 6404.5 may only issue citations to employers and not to patrons, customers, consumers or other guests.
- (b) San Mateo County Health Employees as Public Officers. In the performance of their duties of monitoring and enforcing compliance with the provisions of Labor Code section 6404.5, all persons authorized by the Chief of San Mateo County Health to engage in such enforcement activities shall have the power, authority and immunity of a public officer to issue citations.
- (c) Training Program. The Chief of San Mateo County Health, in coordination with the Sheriff, shall establish and cause to be administered an enforcement training program designed to instruct each employee so authorized by this section to exercise citation authority. Such training shall include guidance and instruction regarding the evidentiary prerequisites to proper prosecution of violation thereof, and the appropriate procedures for issuing citations.

SECTION 2. This ordinance shall be effective thirty days after adoption.

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