

MARIPOSA COUNTY ORDINANCE 843

AN ORDINANCE ADDING CHAPTER 9.20
ENTITLED PROHIBITING SMOKING IN COUNTY FACILITIES,
CHILD CARE FACILITIES INCLUDING HOME DAY CARE,
AND REGULATING TOBACCO VENDING MACHINES

I

FINDINGS AND PURPOSE

WHEREAS, the Board of Supervisors of the County of Mariposa finds as follows:

1. That smoking tobacco in enclosed areas creates a significant health risk for smokers and for nonsmokers who breathe secondhand smoke in such areas.

2. That with respect to smoking, the right of nonsmokers to breathe smoke-free air is paramount to the interest of smokers in breathing smoke.

3. That there is no possibility that the adoption of this ordinance may have a significant effect on the environment.

4. That the U.S. Surgeon General has declared that nicotine is addictive and children can become addicted to these products through the easy purchase from tobacco vending machines even though California law (penal Code Section 308) precludes the sale of tobacco substances to children under the age of eighteen.

5. That numerous studies have found that tobacco smoke is a major contribution to indoor air pollution, and that breathing secondhand smoke is a cause of respiratory infections, asthma, bronchitis, emphysema, heart disease and lung cancer in nonsmokers. At special risk are elderly people, infants, children, pregnant women, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.

NOW THEREFORE, THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY does ordain as follows:

SECTION I: Chapter 9.20, entitled "Prohibiting Smoking in County Facilities including County owned vehicles, Child Care Facilities including Child Home Day Care, Regulating Tobacco Vending Machines and establishing a voluntary approval rating for restaurants" shall be added to Title 9, entitled "Public Peace, Morals and Welfare" to read in its entirety as follows:

Chapter 9.20

PROHIBITING SMOKING IN COUNTY FACILITIES INCLUDING
COUNTY OWNED VEHICLES, CHILD CARE FACILITIES, HOME DAY CARE, AND
REGULATING TOBACCO VENDING MACHINES

Sections:

- 9.20.010 Citation.
- 9.20.020 Purposes.
- 9.20.030 Definitions.
- 9.20.040 Application of chapter to county-owned facilities and vehicles.
- 9.20.050 Regulation of smoking in places of county employment and vehicles.
- 9.20.060 Tobacco vending machines supervised.
- 9.20.070 Prohibition of smoking in child care facilities including child home day care.
- 9.20.080 Approval rating for restaurants.
- 9.20.090 Posting requirements.
- 9.20.100 Enforcement.
- 9.20.110 Violations and penalties.
- 9.20.120 Nonretaliation.
- 9.20.130 Public education.
- 9.20.140 Other applicable laws.

9.20.010 Citation.

Chapter 9.20 entitled "Prohibiting Smoking in County Facilities and/or Vehicles, Child Care Facilities including Child Home Day Care, and Regulating Tobacco Vending Machines in the County" may be cited as the "*Non-smoking Ordinance.*"

9.20.020 Purposes.

The purposes of this Ordinance, hereinafter referred to as chapter, are:

1. To restrict the sale of cigarettes to children through vending machines;
2. To protect the public health and welfare by prohibiting smoking in County owned or rented facilities and vehicles, child day care facilities, including child home day care and;
3. To recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

9.20.030 Definitions.

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

- A. "**Bar**" means an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term

"bar" shall not include the restaurant dining area. A bar is a place which does not share the same air space as the restaurant and has a County Bar Permit.

B. "Child Care Facility including Home Day Care" means any facility, day care school, church and/or private residence where children are cared for.

C. "County workplace" means any enclosed building area where County employees work which is owned, leased, operated or used by Mariposa County, including areas where public meetings and/or committee meetings are conducted. Included in this definition are County vehicles. A Department Head may designate a smoking vehicle but it would become a nonsmoking vehicle whenever a member of the public is seated therein, or a nonsmoking employee is seated therein.

D. "Employee" means any person who is employed by the County in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services.

E. "Department Head" means any individual identified as the Head of a Public Department of the County of Mariposa who employs the services of one or more individual persons.

F. "Enclosed Area" means 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, or similar structures.

G. "Place of Employment" means any enclosed area under the control of a public employer which employees normally frequent during the course of employment, including but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, and hallways. A private residence is not a "place of employment" unless it is used as a child care facility.

H. "Restaurant" means any coffee shop, cafeteria, sandwich stand, deli, private and public school cafeteria, and any other eating establishment which gives or offers for sale prepared food to the public, guests, or employees, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined above.

I. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed or pipe tobacco.

J. "Smoke Free" means that within a building so designated, no smoking is permitted at any time or that any room or rooms within the building where smoking is permitted are served by a ventilation

system which is completely separate from the remainder of the building, and there is no shared air space.

K. **"Smoking Permitted"** means that within a building so designated, smoking is permitted.

L. **"Tobacco Vending Machine"** means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, trade checks or slugs.

9.20.040 Application of chapter to county-owned facilities and vehicles.

All enclosed facilities owned or rented by the County of Mariposa, including vehicles shall be subject to the provisions of this article.

9.20.050 Regulation of smoking in places of county employment and vehicles.

A. It shall be the responsibility of County Department Heads to provide a smoke-free workplace for all employees, including county owned, rented and/or leased vehicles.

B. Department Head may designate a smoking vehicle but it will be a nonsmoking car if a member of the public or nonsmoking employee is in the vehicle.

9.20.060 Tobacco vending machines supervised.

It shall be the responsibility of both the owner of tobacco vending machines and owners of businesses where such machines are placed to supervise, at all times when the vending machine is available to the public, the use of the machine to be certain that no one who is under the age required by the State law, purchases tobacco products from the machine. Vending machines are to be located behind the registration counter of hotels or motels and under the continuous supervision by the management, and/or located in the bar area where children are prohibited to enter.

9.20.070 Prohibition of smoking in child care facilities including child home day care.

It shall be the responsibility of child day care facility operator, including home day care operator to provide a smoke-free environment for all children who attend the facility and/or home.

9.20.080 Voluntary Approval Rating for Restaurants.

Within sixty (60) days of the enactment of this ordinance, the owners or operators of all licensed restaurants in Mariposa County shall indicate to the Health Department, in writing, whether their restaurant will be designated "smoke free" or "smoking permitted". Within fourteen (14) days of that date, the Health Department will provide each restaurant with signs appropriate to that designation, which must be prominently displayed at each entrance to the restaurant.

The Health Department will have several signs of different design from which the signs for display may be selected. Signs will be provided free of charge to restaurant owners and operators.

Owners and operators of restaurants may change their restaurant's status from "smoking permitted" to "smoke free" or vice versa upon 14 days notice to the Health Department.

9.20.090 Posting requirements

A. "Smoking Prohibited" signs 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), and, in the case of restaurants so designated, "Smoking Permitted" signs shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is regulated by this article, by Department Head, supervisor, manager, owner or other person having control of such building or other place.

9.20.100 Enforcement

A. The Mariposa County Health Department shall enforce the requirements of this ordinance. Distribution of "No Smoking" signs shall be implemented by the Health Department.

B. Any employee or citizen who desires to register a complaint under this chapter may do so with the supervisor, Department Head, owner, or operator in charge of the facility where non-compliance occurs and/or with the Health Department.

9.20.110 Violations and penalties.

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

B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.

C. Any person who violates any provision of this ordinance shall be guilty of an infraction under Chapter 1.20, the general penalty provisions of this code.

9.20.120 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 right to a smoke-free environment afforded by this chapter.

9.20.130 Public education.

The County Health Department shall engage in a program to explain and clarify the purposes and requirements of this ordinance to county personnel and to citizens affected by it including child day care owners, operators and managers in their compliance with it. Such program may include publication of informational brochures and informational items in the print and electronic media.

9.20.140 Other applicable laws.

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

SECTION II: This ordinance shall become effective thirty (30) days from the date of final passage, pursuant to California Government Code Section 25123.

PASSED AND ADOPTED by the Board of Supervisors of Mariposa County this 24th day of November 1992, by the following vote.

AYES: BAGGETT, PUNTE, ERICKSON, RADANOVICH

NOES: NONE

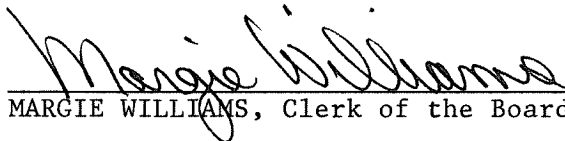
ABSENT: TABER

ABSTAINED: NONE


BY 
VICE CHAIRMAN

SALLY S. PUNTE, Chairperson
MARIPOSA COUNTY BOARD OF SUPERVISORS

ATTEST:


MARGIE WILLIAMS, Clerk of the Board

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:


JEFFREY G. GREEN, County Counsel