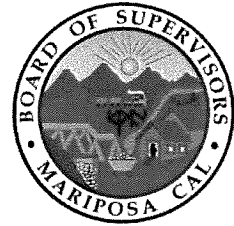




MARIPOSA COUNTY

HHS/Public Health • (209) 966-2000



ORDINANCE 2019-1145

MEETING: September 24, 2019
TO: The Board of Supervisors
FROM: Chevon Kothari, Health and Human Services Director
RE: Ordinance Amending Chapter 8.25 Regulate Smoking and Tobacco Use

RECOMMENDED ACTION AND JUSTIFICATION:

Waive the Second Reading and Adopt an Ordinance amending Health and Safety Code, Chapter 8.25 "Regulate Smoking and Tobacco Use" to define and include Outdoor Dining Areas to Section 8.25.030 - Prohibition of Smoking in Unenclosed Areas.

The ordinance will amend Chapter 8.25 of the Mariposa County Code, Section 8.25.010 Definitions to include a definition for Outdoor Dining Areas and will amend Section 8.25.030 - Prohibition of Smoking in Unenclosed Areas to include Outdoor Dining Areas. The Board of Supervisors were provided with information to support the smoking restriction in Outdoor Dining Areas as presented by the Mariposa County Tobacco Education at the June 25, 2019 Board meeting. Exemptions in California's smoke-free workplace law do not prohibit smoking in outdoor places of employment and as such do not protect employees who work in outdoor dining areas from harmful health effects of secondhand smoke. This amendment will provide protection from secondhand smoke for both workers and customers while in outdoor dining areas.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On October 27, 2015 the Board of Supervisors adopted Ordinance No. 1112 under the Health and Safety Code Chapter 8.25 entitled "Regulate Smoking and Tobacco Use", to bring County code up to date with State and Federal Laws. The new ordinance repealed Chapters 8.24 and 9.20 which contained outdated tobacco regulations.

This ordinance was introduced at the August 20, 2019 Board meeting.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve the amendment and employees and customers in outdoor dining areas will continue to be impacted by the harmful health effects of secondhand smoke.

ATTACHMENTS:

Final - AMEND_Chap8.25_Smoking (DOCX)
Sample letter to restaurant owners (PDF)

Ordinance 2019-1145

PUBLIC COMMENT - Letter from Maria Wolf in support of ordinance (PDF)

RESULT: ADOPTED [4 TO 1]

MOVER: Kevin Cann, District IV Supervisor

SECONDER: Rosemarie Smallcombe, District I Supervisor

AYES: Rosemarie Smallcombe, Merlin Jones, Kevin Cann, Miles Menetrey

NAYS: Marshall Long

**STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS**

MARIPOSA COUNTY ORDINANCE NO. 1145

AN ORDINANCE AMENDING CHAPTER 8.25 OF THE MARIPOSA COUNTY CODE

WHEREAS, the Board of Supervisors desire to amend Chapter 8.25 of the Mariposa County Code; 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, exposure to secondhand smoke anywhere has negative health impacts, and exposure to second hand smoke occurs at significant levels outdoors;

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

WHEREAS, exemptions in California's smoke-free workplace law does not prohibit smoking in outdoor places of employment, which disproportionately employ individuals of low-income and individuals of color; and

WHEREAS, as of January 2019, there are at least 116 California cities and counties that restrict smoking in all outdoor dining areas and these policies ensure that all workers and customers are protected from secondhand smoke exposure.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, a political subdivision of the State of California, does ordain as follows:

SECTION 8. Section 8.25.010 of Chapter 8.25, Regulate Smoking and Tobacco Product Use is hereby amended to read 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. "Outdoor Dining Area" means:
 - 1. Any area, including streets and sidewalks, that is available to or customarily used by the general public or an Employee, and that is designed, established or regularly used for consuming food or drink, and all non-enclosed areas within 25 feet thereof. An outdoor dining area shall not include an area that is contiguous to a restaurant, business or non-commercial building that is completely closed to the public for a private event.
 - 2. An area comprised of a 25-foot radius of a business, such as a food kiosk, food cart, or mobile food truck, that regularly sells or provides food or drinks but has no area dedicated by the business as a place for the consumption of food or drinks regularly sold or provided by that business.
- H. "Person" means any natural person, Business, cooperative association, Nonprofit Entity, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.
- I. "Public Place" means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.

- J. “Reasonable Distance” means a distance of twenty-five (25) feet in any direction from an area in which Smoking is prohibited.
- K. “Recreational Area” means all Mariposa County parks, community parks, community sports fields, the Mariposa Farmers Market, and the Mariposa Creek Parkway.
- L. “Service Area” means any Yosemite Area Regional Transportation System bus stop.
- M. “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.
- N. “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.
- O. “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.
- P. “Unenclosed Area” means any area that is not an Enclosed Area.

SECTION 8. Section 8.25.030 of Chapter 8.25, Regulate Smoking and Tobacco Product Use is hereby amended to read as follows:

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; and
 - 3. Outdoor Dining Areas.

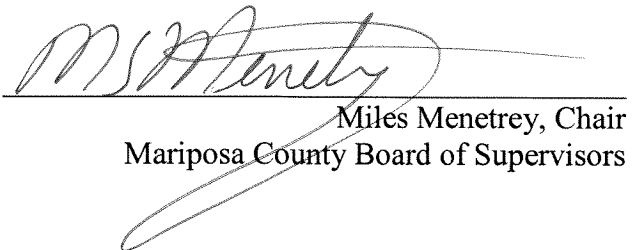
- B. Nothing in this Chapter prohibits any Person, Employer, or Nonprofit Entity with legal control over any property from prohibiting Smoking on any part of such property, even if Smoking is not otherwise prohibited in that area.

- C. The Project Director of the Mariposa County Health and Human Services Agency, Public Health Branch, 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.

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


PASSED AND ADOPTED on this 24th day of September, 2019, by the following vote:

AYES: SMALLCOMBE, JONES, CANN, MENETREY
NOES: LONG
ABSTAINED: NONE
EXCUSED: NONE




Miles Menetrey, Chair
Mariposa County Board of Supervisors

Attest:



René LaRoche,
Clerk of the Board of Supervisors

Approved as to Form:



Steven W. Dahlem
County Counsel