

BUSINESS OF THE COUNCIL OF THE CITY OF HALF MOON BAY

AGENDA REPORT

For meeting of: **October 2, 2018**

TO: Honorable Mayor and City Council

VIA: David Boesch, Interim City Manager

FROM: Catherine Engberg, City Attorney

TITLE: **ORDINANCE REGULATING SMOKING IN CERTAIN PLACES AND SALE OF TOBACCO PRODUCTS**

RECOMMENDATION:

Conduct a public hearing and reintroduce an ordinance adding Chapter 7.50 (Regulating Smoking in Certain Places) and Chapter 7.60 (Regulating Sale of Tobacco Products) to the Half Moon Bay Municipal Code.

FISCAL IMPACT:

There is no direct fiscal impact associated with this item but, following implementation of the tobacco retailer ordinance, there could be a small reduction in sales tax revenue associated with the ban on tobacco sales in pharmacies and the ban on sales of flavored tobacco.

STRATEGIC ELEMENT:

This action supports the Healthy Communities and Public Safety Element of the Strategic Plan.

BACKGROUND:

The City of Half Moon Bay does not currently have an ordinance regulating smoking or requiring special permitting for retailers of tobacco products. The Council has previously directed the City Attorney's office to develop an ordinance in coordination with the San Mateo County Health Program's Chronic Disease and Injury Prevention Division.

At the February 6, 2018 and May 15, 2018 City Council meetings, the Council provided staff policy direction on the draft ordinances and in response to results from a public opinion survey of Half Moon Bay residents on smoking regulation. Council remained undecided, however, on whether a multifamily residence individual unit smoking ban was appropriate for Half Moon Bay and directed staff to present to the Council two versions of the ordinance for Council's consideration.

At its August 21, 2018 meeting, the City Council considered two versions of a city-wide smoking ordinance to regulate smoking and the sale of tobacco products within Half Moon Bay. One

version included a prohibition on smoking in individual units of multifamily housing, and the second version did not. Following a public hearing, the Council introduced, on first reading, the version of the ordinance banning smoking in individual units of multifamily housing.

At its September 4, 2018 meeting, rather than conduct a second reading, Council directed staff to make further refinements to the proposed ordinance to include: 1) a prohibition on smoking on public sidewalks and walkways; and 2) an exemption for the use of an electronic smoking device in a multifamily residence by a qualified medical cannabis patient.

As amended, the proposed ordinance would add Chapter 7.50 (Regulating Smoking in Certain Places), which would reiterate existing state law restrictions, and expand on those restrictions as follows (refinements shown in underline):

- Define “smoke” as including, but not limited to, tobacco smoke, electronic cigarette vapors, and marijuana smoke;
- Prohibit smoking in unenclosed public places (including dining areas, service areas, and locations where special events are held);
- Add a reasonable distance requirement by prohibiting smoking within 20 feet of any doorway, window, opening, or vent of an enclosed place of employment in which smoking is prohibited;
- Add restrictions on smoking in multifamily housing, including a prohibition on smoking in individual units and an exemption for the use of an electronic smoking device by a qualified medical cannabis patient; and
- Prohibit smoking in a wider range of public places, including recreation areas, public beaches, parking lots that serve recreation areas, and any public sidewalk or walkway, parkway, curb, or gutter.

The ordinance would also add Chapter 7.60, which would regulate tobacco sales as follows (no changes since the prior version):

- Require all retailers of tobacco products to obtain a permit from the City;
- Impose restrictions on who qualifies for such permits;
- Prohibit sampling and coupons for tobacco products;
- Ban tobacco product sales from vending machines;
- Ban tobacco product sales at pharmacies in Half Moon Bay; and
- Ban the sale of flavored tobacco products in Half Moon Bay.

The revised ordinance will also strengthen the findings regarding the health and environment impacts of smoking and secondhand smoking.

DISCUSSION:

The proposed refinements are shown in underline in the attached ordinance (Attachment 1). This report discusses the two policy changes pursuant to the Council’s September 4 direction.

Please refer to the staff report for the August 21 meeting for additional background on the Ordinance Regulating Smoking in Certain Places and Regulating the Sale of Tobacco Products.

1. Prohibitions on smoking in multifamily developments.

The proposed ordinance would prohibit smoking in the common areas of multifamily residences and in individual units in multifamily housing. The combined effect of these multifamily smoking bans would protect Half Moon Bay residents who live in multifamily housing from being subjected to the health risks of secondhand smoke exposure in their own homes.

On September 4, 2018, the Council directed staff to refine the ordinance's ban with respect to electronic smoking devices. Based on studies of vapor and its potential health impacts, prohibiting the use of electronic smoking devices in multifamily dwellings where smoking is also prohibited would result in indoor and outdoor environments that are generally smoke free and more protective of public health. Thus, Council expressed agreement regarding prohibiting the use of electronic smoking devices in multifamily dwellings where smoking is also prohibited, with an exception for medical cannabis use via electronic smoking devices.

2. Public Sidewalks, Walkways, Parkways, Curbs, and Gutters

The amended ordinance would prohibit smoking on public sidewalks, walkways, parkways, curbs, and gutters (in addition to other public places). Based on staff's research, approximately 42 California cities¹ have adopted ordinances banning smoking on sidewalks in some or all parts of the City, including Palo Alto, Foster City, and Daly City. In Palo Alto, smoking is prohibited in all commercial areas, which includes all publicly owned sidewalks. In Foster City, smoking is banned on sidewalks in or adjacent to common interest developments, apartments, shopping centers, and commercial properties with retail establishments. Similarly, Daly City bans smoking on all sidewalks in or adjacent to common interest developments, apartments, shopping centers, and commercial properties with retail establishments.

Prohibiting smoking on public sidewalks, walkways, parkways, curbs, and gutters is designed to protect the public, especially vulnerable populations such as children and seniors, from exposure to secondhand smoke. This prohibition will also reduce the environmental impact of smoking by reducing the amount of cigarette butts that are found in public places. Cigarette butts are a major and persistent source of litter, do not biodegrade, and are often cast onto sidewalks and streets, frequently ending up in storm drains that flow into creeks, rivers, and ultimately the ocean.

¹ *Comprehensive Outdoor Secondhand Smoke Ordinances*, The Center for Tobacco Policy Organizing (March 2018), available at <https://center4tobaccopolicy.org/wp-content/uploads/2018/03/Comprehensive-Outdoor-Secondhand-Smoke-Ordinances-2018-03-15.pdf>.

ATTACHMENTS:

1. Ordinance Regulating Smoking in Certain Places and Regulating Sale of Tobacco Products (redline to version introduced on August 21, 2018)
2. Ordinance Regulating Smoking in Certain Places and Regulating Sale of Tobacco Products (clean version)
3. Public Correspondence

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HALF MOON BAY, CALIFORNIA ADDING CHAPTERS 7.50 AND 7.60 REGULATING SMOKING IN CERTAIN PLACES AND SALE OF TOBACCO PRODUCTS TO TITLE 7 OF THE HALF MOON BAY MUNICIPAL CODE AND FINDING THAT THE ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE CITY COUNCIL OF THE CITY OF HALF MOON BAY DOES ORDAIN AS FOLLOWS:

Section 1. Findings: The City Council finds and declares as follows.

(a) Approximately 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the nation's leading cause of preventable death.

(b) Secondhand smoke has been identified as a health hazard numerous times and the U.S. Surgeon General's has concluded that there is no risk-free level of exposure to secondhand smoke.

(c) Exposure to secondhand smoke has negative impacts and exposure to secondhand smoke can occur at significant levels both indoors and outdoors, depending on direction and amount of wind and number and proximity of smokers.

(d) Studies document that secondhand smoke transfers between attached units within a building and increases chemical contamination levels within nonsmoking units.

(e) Cigarette butts are a major and persistent source of litter, do not biodegrade, and are often cast onto sidewalks and streets, frequently ending up in storm drains that flow into creeks, rivers, and ultimately the ocean.

(f) The City Council of the City of Half Moon Bay wishes to increase the number of smoke-free environments in Half Moon Bay and encourage responsible retailing of tobacco products, paraphernalia, and electronic smoking devices.

(g) Flavored tobacco products have become increasingly common and are available in a variety of flavors that appeal to children and young adults.

(h) The U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be "starter" products that help establish smoking habits that can lead to long-term addiction.

(i) The ordinance furthers efforts to promote responsible retailing of tobacco products and limit the exposure of sensitive populations to those products by banning the sale of certain tobacco products and requiring retailer licensing.

(j) This ordinance creates additional smoke-free environments by establishing regulations for multifamily housing complexes, outdoor events, entryways, outdoor dining areas, recreation areas, service areas, outdoor worksites, sidewalks, walkways, parkways, curbs, and gutters.

Section 2. Municipal Code Amendments Regulating Smoking in Certain Places and Regulating Sale of Tobacco Products. New Chapters 7.50 “Regulating Smoking in Certain Places” and 7.60 “Regulating Sale of Tobacco Products” of the Half Moon Bay Municipal Code are adopted as set forth in Attachment A. Attachment A of this Ordinance is incorporated herein in its entirety.

Section 3. Severability. If any section, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such a 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 adopted this Ordinance and each section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 4. California Environmental Quality Act. The City Council finds that the introduction and adoption of this Ordinance is Categorical Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline section 15061(b)(3). CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance the amendments to the existing City Code and related sections and additions of provisions and reference appendices to the existing Code; the amendments and additions would have a de minimis impact on the environment.

Section 5. Publication. The City Clerk of the City of Half Moon Bay is hereby directed to publish this Ordinance, or the title hereof as a summary, pursuant to Government Code Section 36933, once within fifteen (15) days after its passage in Half Moon Bay Review, a newspaper of general circulation published in the City of Half Moon Bay.

Section 6. Effective Date. This Ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

INTRODUCED at a regular meeting of the City Council of the City of Half Moon Bay, California, held on the 2nd day of October, 2018.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Half Moon Bay, California, held on the ___ day of _____, 2018, by the following vote:

Ayes, Councilmembers:

Noes, Councilmembers:

Absent, Councilmembers:

Abstain, Councilmembers:

ATTEST:

APPROVED:

Jessica Blair, City Clerk

Deborah Penrose, Mayor

ATTACHMENT A

Chapter 7.50 REGULATING SMOKING IN CERTAIN PLACES

Sections:

7.50.010	Title.
7.50.020	Findings and purposes.
7.50.030	Definitions.
7.50.040	Smoking prohibited.
7.50.050	Employee notification requirements.
7.50.060	Smoking permitted.
7.50.070	Posting of Signs.
7.50.080	Unlawful Acts.
7.50.090	Enforcement.
7.50.100	Violations.

7.50.010 Title.

This chapter shall be known as the Regulating Smoking in Certain Places Ordinance.

7.50.020 Findings and purposes.

The City Council finds and determines that there is an overwhelming body of evidence indicating the adverse effects of tobacco smoke on the health and physical comfort of people. The purposes of this Article are to protect the public health and welfare by prohibiting or regulating smoking in certain places and to strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers to breathe smoke-free air, and to recognize that where these needs conflict, the need to breathe smoke-free air shall have priority.

The City recognizes that smoking is regulated by the State. Nothing herein is intended to conflict with State law. Where there is a conflict between this Code and State law, the more restrictive of the two shall apply.

7.50.030 Definitions.

The following words and phrases shall have the meanings set forth below when used in this Chapter. The singular shall include the plural and the plural shall include the singular.

A. "Dining area" means an area containing tables or counters open to the public and designed, established, or regularly used for consuming food or drink regardless if located on public or private property.

B. "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 constraints 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, regardless of composition, including, but not limited to, vegetation, that exceed six (6) feet in height, whether or not those boundaries include vents or other openings.

C. "Landlord" means any Person or agent of a Person who owns, manages, or is otherwise legally responsible for a Unit in a Multiunit Residence that is leased to a residential tenant. For purposes of this ordinance, a tenant who sublets their Unit (e.g., a sublessor) is not a Landlord.

D. "Multiunit Residence" means property containing two (2) or more Units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. Multiunit Residences do not include the following:

1. A hotel or motel that meets the requirements of California Civil Code section 1940(b)(2);
2. A mobile home park;
3. A campground;
4. A marina or port;
5. A single-family home, except if used as a health care facility subject to licensing requirements; and
6. A single-family home with a detached or attached in-law or second unit permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections, except if the single-family home or in-law/second Unit is used as a health care facility subject to licensing requirements.

E. "Common Area" means every Enclosed Area and every Unenclosed Area of a Multiunit Residence that residents of more than one Unit are entitled to enter or use, including, but not limited to, halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

F. "Nonsmoking Area" means any Enclosed Area or Unenclosed Area in which Smoking is prohibited by:

1. This Chapter or other law;
2. Binding agreement relating to the ownership, occupancy, or use of real property; or
3. A Person with legal control over the area.

G. "Open to the public" means an area which is available for use by or accessible to the general public during normal course of business conducted by either public or private entities.

H. "Parkway" means the portion of a street other than a roadway or a sidewalk, including a median and the area between the curb and the sidewalk, which may include landscaping.

I. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.

J. "Restaurant" means any establishment which gives, sells or offers for sale to the public any food for immediate consumption on the premises. The term includes, but is not limited to, any coffee shop, cafeteria, short-order cafe, luncheonette, tavern, bar, cocktail lounge, sandwich stand, soda fountain, public or private lunchroom or dining room.

K. "Retail tobacco store" means a retail establishment engaged primarily in the sale of tobacco products and tobacco accessories and the sale of other products is merely incidental.

L. "Service area" means any area open to the public, whether publicly or privately-owned area, designed or regularly used by one or more person(s) to receive or wait to receive goods, services, enter a public place, or make a transaction, whether or not such service includes exchange of money. Service areas include, but are not limited to, information kiosks, bus stops, lines of automated teller machines, public telephones, and ticket purchase kiosks.

M. "Sidewalk" means a pedestrian walkway as otherwise defined in Section 5600 of the Streets and Highways Code.

N. "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 of materials contains no tobacco or nicotine and the purpose of the inhalation is solely olfactory, such as, for example, smoke from incense. The term "smoke" includes, but is not limited to, tobacco smoke, electronic cigarette vapors, and cannabis smoke.

O. "Smoking" means engaging in an act that generates smoke, such as, for example, possessing a lighted pipe, lighted hookah pipe, an operating electronic cigarette, a lighted cigar, or a lighted cigarette of any kind; or lighting or igniting of a pipe, cigar, hookah pipe, or cigarette of any kind.

P. "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 device that delivers nicotine or other substances to the Person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.

3. Notwithstanding any provision of subsections (1) and (2) to the contrary, "Tobacco Product" includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. "Tobacco Product" does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

Q. "Unenclosed Area" means any area that is not an Enclosed Area.

R. "Unit" means a personal dwelling space, even one lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use Enclosed Area or Unenclosed Area, such as a private balcony, porch, deck, or patio. "Unit" includes, without limitation, an apartment; a condominium; a townhouse; a room in a senior facility; a room in a long-term health care facility, assisted living facility, or hospital; a room in a hotel or motel; a dormitory room; a room in a single-room occupancy ("SRO") facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit. Unit includes, without limitation, a New Unit.

S. "Workplace" means an area which utilized primarily for the conduct of a business or other enterprise, including, but not limited to outdoor workplaces such as construction sites.

7.50.040 - Smoking prohibited.

It shall be unlawful to smoke in public places within the City, including but not limited to, the following:

A. Business establishments. Smoking is prohibited within all workplaces and other areas open to the public in business establishments providing goods or services to the general public

and not otherwise mentioned in this Section, including, but not limited to, retail service establishments, personal service establishments, financial institutions, and offices.

B. City-owned vehicles. Smoking is prohibited in City-owned vehicles.

C. Designated nonsmoking areas. Notwithstanding any other provision of this Section, any owner, operator, manager or other person who controls the use of any establishment described in this Section may declare that entire establishment as a nonsmoking area. In addition, any owner, operator, manager or other person who controls the use of any public or private establishment which is not described in this Section may declare any portion or all of such establishment as a nonsmoking area and upon the posting of appropriate signs, smoking shall be prohibited in such areas.

D. Elevators. Smoking is prohibited in all elevators in buildings open to the public, including elevators in office, hotel and apartment buildings irrespective of the number of units within such buildings.

E. Entrances. Smoking is prohibited within twenty feet horizontally or vertically of any entrances, exits, operable windows, or air intake openings into an enclosed area in which smoking is prohibited, except while the person is actively passing on the way to another destination.

F. Health care facilities. Smoking is prohibited in all areas open to the public, including lobbies, waiting rooms and hallways, within any public or private hospital, clinic, medical office, nursing or convalescent home or other health care facility. If the facility contains a cafeteria or other form of restaurant, as defined in Section 7.50.030, such restaurant shall comply with the regulations set forth in subsection (a) of this Section. Smoking is further prohibited in any room occupied by two or more patients of a health care facility described herein, 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.

G. Hotel and motel common areas. Except as permitted in Section 7.50.060, smoking is prohibited in all areas of a hotel or motel that guests are entitled to enter or use, including, but not limited to, halls and paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities and swimming pool areas, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.

H. Individual units in multiunit residences. Smoking is prohibited in individual units of multiunit residences. Units in a multiunit residences shall not be subject to the smoking restrictions until fourteen (14) months after the effective date of this chapter, or until the legal occupants on the effective date of this chapter vacate the unit, whichever occurs first. All new leases and lease renewals shall include a clause prohibiting smoking in all areas of the complex, including inside individual units and on private balconies or patios, but excepting designated smoking areas.

I. Multiunit residence common areas. Smoking is prohibited in multiunit residence common areas.

J. Museums, libraries and galleries. Smoking is prohibited in all areas of museums, libraries, and galleries which are open to the public.

K. Public events. All special event permits shall prohibit smoking at events requiring such permits unless the organizer certifies that the event is for adults only and will not be promoted to attract children under the age of eighteen years.

L. Public lobbies and hallways. Smoking is prohibited in lobbies, hallways and other areas of City owned or controlled buildings which are open to the public.

M. Public meeting rooms. Smoking is prohibited in meeting rooms, hearing rooms, conference rooms, chambers and other places of public assembly in which the business of the City is conducted by any elected or appointed official, council, commission, committee, or board which requires or permits direct participation or observation by the general public.

N. Public restrooms. Smoking is prohibited in restrooms open to the public.

O. Recreation area. Smoking is prohibited in any outdoor area that is publicly owned 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, beaches, riparian areas, parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, horseback riding trails, swimming pools, and skateboard parks.

P. Recreation area parking area. Smoking is prohibited in any parking lot or any other area designated or primarily used for parking vehicles of persons accessing a recreational area.

Q. Restaurants. Smoking is prohibited in all restaurant spaces and dining areas.

R. Service areas. Smoking is prohibited in all service areas.

S. Smoking prohibited where prohibited by State law. Wherever smoking is prohibited by State law, smoking shall be prohibited in Half Moon Bay.

T. Theaters and auditoriums. Smoking is prohibited within all parts of any building which is used for exhibiting any motion picture, stage drama, performance or other similar performance, which parts are open to the public; provided, however, that smoking is permitted on a stage when such smoking is part of a stage production.

U. Any public sidewalk or walkway, or any parkway, curb or gutter.

7.50.050 – Employee notification requirements.

A. Any employer having a workplace located within the City of Half Moon Bay shall inform employees of work place smoking restrictions pursuant to the City Code.

B. Places of employment exempt from the prohibition of smoking in Section 7.50.060 shall also be exempt from this Section.

7.50.060 - Smoking permitted.

A. Smoking is not prohibited within any of the following places:

1. Retail tobacco stores regardless of whether they also serve as a place of employment.
2. Twenty percent of guestroom accommodations in a hotel or motel.
3. Any areas not generally open to the public, except as otherwise provided in Section 7.50.040.
4. Private residences except (1) multifamily residence common areas, (2) individual units in multifamily residences as provided in Section 7.50.040, and (3) where State law prohibits smoking as, for example, during the provision of child care.
5. Within a moving or stationary vehicle, including a vehicle on a public street or right-of-way or parked in a public place, except for City-owned vehicles, State-owned passenger vehicles, vehicles in which a minor is present, vehicles in which a non-smoking employee is present, vehicles regularly used to transport a child in residential foster care, youth buses as defined in California Vehicle Code Section 12523, and buses, taxicabs, and rideshare vehicles in which a passenger is present.

B. Notwithstanding the foregoing, any owner, operator, manager or other person who controls the use of any public or private establishment or place described in Paragraph (A) of this Section may voluntarily designate any portion or all of such establishment or place as a non-smoking area.

C. Notwithstanding any other provisions of this chapter, use of an electronic smoking device in a multifamily residence by a qualified medical cannabis patient as defined in California Health and Safety Code Section 11362.7 et. seq. is not prohibited by this ordinance. Notwithstanding the foregoing, such use of marijuana may be prohibited or regulated by other provisions of this code, state law, or federal law.

D. Notwithstanding the foregoing, smoking is not allowed in any location where it is prohibited by State law.

7.50.070 - Posting of signs.

A. Where smoking is prohibited throughout a building or structure, "No Smoking" signs shall be clearly posted at each entrance to the building or structure.

B. Where smoking is permitted in designated areas of a building or structure, signs stating that "Smoking is prohibited except in designated areas" shall be clearly posted at each entrance of the building or structure, and signs stating "Smoking Permitted" shall be clearly posted in all designated smoking areas of the building or structure.

C. Any ashtray located in a nonsmoking area must have a sign conspicuously posted in close proximity to the ashtray stating "Smoking Prohibited—Extinguish Here," or language with equivalent meaning.

D. It shall be the responsibility of the owner, operator, manager or other person who controls the use of any place where smoking is regulated by this Article to post the signs required by this Section.

7.50.080 - Unlawful acts.

A. It shall be unlawful for any person to smoke in a place where smoking is prohibited pursuant to this Article.

B. It shall be unlawful for any person who owns, operates, manages or controls the use of any place where smoking is prohibited or regulated under this Article to fail to properly set aside required "no smoking" areas, to properly post any signs required by Section 7.50.070, to adopt a smoking restriction policy, or to comply with any other requirement of this Article.

7.50.090 - Enforcement.

The City Manager, or designee, is authorized to enforce the provisions of this Article. Any owner, operator, manager, employee, guest or customer of any establishment regulated by this Article shall have the right to inform persons violating this Article of the appropriate provisions contained herein.

7.50.100 - Violations.

The violation of any provision contained in this Article shall constitute an infraction and a public nuisance, subject to enforcement and the penalties, civil fines, and other remedies.

Chapter 7.60 REGULATING THE SALE OF TOBACCO PRODUCTS

Sections:

- 7.60.010 Title.
- 7.60.020 Requirement for Permit.
- 7.60.030 Definitions.
- 7.60.040 Application, Issuance, and Renewal Procedure.
- 7.60.050 Display of Permit.
- 7.60.060 Fees for Permit.
- 7.60.070 Permit is Nontransferable.
- 7.60.080 Suspension of Permit.
- 7.60.090 Administrative Fine.
- 7.60.100 Limit on Eligibility for a Tobacco Retailer Permit.
- 7.60.110 Tobacco Samples and Vending Machines Prohibited.
- 7.60.120 Sale or Offer for Sale of Flavored Tobacco Products Prohibited.
- 7.60.130 Enforcement of Applicable Law.
- 7.60.140 Authorized Enforcement by San Mateo County Personnel.

7.60.010 Title.

This chapter shall be known as the Regulating Tobacco Retailers Licensing, Prohibiting Tobacco Sales at Pharmacies and in Vending Machines, and Prohibiting the Sale of Flavored Tobacco Ordinance.

7.60.020 Requirement for Permit.

It shall be unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products without first obtaining and maintaining a valid tobacco retailer's permit from San Mateo County for each location where such sales are conducted. Permits are valid for one year and shall be renewed annually.

7.60.030 Definitions.

The following words and phrases, whenever used in this article, shall have the meanings defined in this section.

A. "Characterizing Flavor" means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product. Characterizing Flavors include, but are not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a Characterizing Flavor.

B. "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a Tobacco Product during the processing, manufacture, or packing of the Tobacco Product.

C. "Coupon" means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

D. "Distinguishable: means perceivable by either the sense of smell or taste.

E. "Flavored Tobacco Product" means any Tobacco Product that contains a constituent that imparts a Characterizing Flavor.

F. "Labeling" means written, printed, pictorial, or graphic matter upon any Tobacco Product or any of its Packaging.

G. "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold, or offered for sale, to a consumer.

H. "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

I. "Tobacco Paraphernalia" means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.

J. "Tobacco product" as used in this Chapter shall have the meaning given in Section 7.50.030 of this Code.

K. "Tobacco Retailer" means any Person who Sells, offers for Sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products, or Tobacco Paraphernalia. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for Sale exchanged, or offered for exchange.

7.60.040 Application, Issuance, and Renewal Procedure.

A. Application for a tobacco retailer's permit shall be submitted in the name of the entity or person proposing to conduct retail tobacco sales and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the

Environmental Health Division of the San Mateo County Health System(hereinafter referred to in this chapter as the Environmental Health Division) and contain the following information:

1. The name, address, and telephone number of the applicant;
2. The business name, address, and telephone number of each location where tobacco is retailed; and
3. Such other information as the Director of the Environmental Health Division or his or her designee determines is necessary for implementation of this ordinance codified in this chapter.

B. Applicants for renewal must follow the application procedures set forth in subsection A. A renewal for a tobacco retailer's permit will be denied if the application is for a person or location for which a suspension is in effect and/or if there are any outstanding fines issued by the San Mateo County Environmental Health Division or City of Half Moon Bay.

7.60.050 Display of Permit.

Upon receipt of an application for a tobacco retailer's permit, the Director or his or her designee shall issue a permit which must be prominently displayed at each location where tobacco retail sales are conducted.

7.60.060 Fees for Permit.

The fee for a tobacco retailer's permit shall reflect the county's costs of processing the permit and regulating compliance with this chapter and shall be contained in San Mateo County Municipal Code section 5.64.070.

7.60.070 Permit is Nontransferable.

Tobacco retailer's permits are nontransferable as between entities, retailers, individuals, locations or otherwise.

7.60.080 Suspension of Permit.

A. Grounds for Suspension. A tobacco retailer's permit may be suspended, as set forth below in subdivision B, by the Director of the Environmental Health Division or his or her designee upon a finding, after notice and opportunity to be heard, that either of the following occurred.

1. After the permit was issued it was determined that the application for the permit is incomplete or inaccurate.

2. The permittee or his or her agent has violated any provision of this chapter or any federal or state tobacco-related law.

B. Time Period of Suspension of Permit.

1. Upon the first time that the Director of the Environmental Health Division or his or her designee makes the finding that either subsection A.1 or A.2 of this section has occurred, the permit to sell tobacco products shall be suspended for up to thirty days.

2. Upon the second time that the Director of the Environmental Health Division or his or her designee makes the finding set forth in subsection A.1 or A.2. of this section within twenty-four months of the first determination, the permit to sell tobacco products shall be suspended for no less than thirty days and up to ninety days.

3. Upon the third and each subsequent time that the director of the environmental health division or his or her designee makes the finding set forth in subsections A.1. and A.2 within twenty-four months of a prior determination, the permit to sell tobacco products shall be suspended for no less than ninety days and up to one year.

C. Effective Date of Suspension.

1. If the Director of the Environmental Health Division or his or her designee makes oral findings and issues an order of suspension at the hearing, the suspension will be effective ten days from the date of the hearing, unless a timely appeal is filed in accordance with subsection D.

2. If the Director of the Environmental Health Division or his or her designee makes written findings and issues an order of suspension by certified mail after the hearing, the suspension will be effective fifteen days from the date appearing on the notice of that finding and order of suspension, unless a timely appeal is filed in accordance with subsection D.

D. Appeal of Suspension.

1. The decision of the Director of the Environmental Health Division or his or her designee is appealable to the San Mateo County Licensing Board.

2. An appeal must be in writing, be addressed to the Director of the Environmental Health Division and be hand-delivered to the offices of the Division of Environmental Health.

3. An appeal must be received by the Division of Environmental Health before the effective date of suspension provided by subsections C.1. or C.2. in order to be considered.

4. The filing of a timely appeal will stay a suspension pending a decision on the appeal by the San Mateo County Licensing Board.

5. The decision of the San Mateo County Licensing Board shall be a final administrative order, with no further administrative right of appeal.

7.60.090 Administrative Fine.

A. Grounds for Fine. A fine may be imposed upon findings made by the Director of the Environmental Health Division or his or her designee, that any retailer, individual, or entity who is an owner of a retail establishment:

1. Does not have a valid tobacco retailer's permit; and
2. Offers for sale any tobacco product or paraphernalia.

B. Amount of Fine. Upon findings made under subsection A., the retailer, individual, or entity who is an owner of a retail establishment shall be subject to an administrative fine as follows:

1. A fine not exceeding one hundred dollars for a first violation.
2. A fine not exceeding two hundred dollars for a second violation.
3. A fine not exceeding five hundred dollars for the third and subsequent violations.
4. Each day that tobacco products are offered for sale without a permit shall constitute a separate violation. A finding of "offering for sale" will be made if these tobacco products are actually sold and/or displayed in the retail establishment.

C. Fine Procedures. Notice of the fine shall be served on the retailer, individual, or entity who is owner of the establishment by certified mail. The notice shall contain an advisement of the right to request a hearing before the Director of the Environmental Health Division or his or her designee contesting the imposition of the fine. Said hearing must be requested within ten days of the date appearing on the notice of the fine. The decision of the Director of the Environmental Health Division shall be a final administrative order, with no administrative right of appeal.

D. Failure to Pay Fine. If said fine is not paid within thirty days from the date appearing on the notice of the fine or of the notice of determination of the director of the environmental health division or her or his designee after the hearing, the fine shall be referred to a collection agency within or external to the county. In addition, any outstanding fines must be paid prior to the issuance of any permit by the San Mateo County Health System Environmental Health Division or the City of Half Moon Bay.

7.60.100 Limit on Eligibility for a Tobacco Retailer Permit.

- A. No new tobacco retailer permit may be issued to a pharmacy.
- B. No existing tobacco retailer permit may be renewed by a pharmacy.
- C. This section shall become operative on April 1, 2019.

7.60.110 Tobacco Samples and Vending Machines Prohibited.

A. No Tobacco Product may be sold, offered for sale, or distributed by or from a vending machine or other appliance, or any other device designed or used for vending purposes.

B. No person shall knowingly distribute or furnish without charge, or cause to be furnished without charge to the general public, cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products, at any event open to the public, or in any public place, including, but not limited to, any right-of-way, mall or shopping center, park, playground, and any other property owned by the City, any school district, or any park district.

7.60.120 Sale or Offer for Sale of Flavored Tobacco Products Prohibited.

A. The sale or offer for sale, by any person or Tobacco Retailer of any Flavored Tobacco Product is prohibited and no person or Tobacco Retailer shall sell, or offer for sale, any Flavored Tobacco Product.

B. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Manufacturer or any of the Manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor including, but not limited to, text, color, and/or images on the product's Labeling or Packaging that are used to explicitly or implicitly to communicate that the Tobacco Product has a Characterizing Flavor.

- C. This section shall become operative on April 1, 2019.

7.60.130 Enforcement of Applicable Law.

If an agent or employee of the tobacco retailer violates any provisions of this chapter or any federal or state tobacco related law, the tobacco retailer shall immediately report the violation to the environmental health division.

7.60.140 Authorized Enforcement by San Mateo County Personnel.

The County of San Mateo, its officers, employees and agents are hereby authorized to enforce this ordinance on behalf of the city, within the jurisdiction areas of this city. Such enforcement authority includes, but is not limited to, the collection of fees and fines, expending such revenue in the enforcement of the tobacco retailer permit, holding hearings, suspending permits and issuing administrative fines.

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