

**CITY COUNCIL
AGENDA REPORT**



**CITY OF MILLBRAE
621 Magnolia Avenue
Millbrae, CA 94030**

SUBJECT: An Ordinance Amending Chapter 5.95 "Smoking Control" of Title 5 of the Millbrae Municipal Code to Prohibit Smoking in Multi-Unit Residential Housing and Provide for Regulating Outdoor Smoking in the Vicinity of Such Units and Outdoor Spaces

ATTACHMENTS:

- Draft Smoking Control Ordinance (Clean Copy)

Report No. *6324*

For Agenda of: July 23, 2019

Department: Community Development

Originator: Brad Misner

Approved: *[Signature]*

Budget Action Yes: No: X

Finance Review: *[Signature]*

REPORT TYPE: ACTION X INFORMATIONAL

ITEM TYPE: CONSENT X PUBLIC HEARING EXISTING BUSINESS NEW BUSINESS

RECOMMENDATION:

Staff recommends waiving the second reading and adopting the amendments to Chapter 5.95 "Smoking Control" of the Millbrae Municipal Code.

BACKGROUND:

On July 26, 2018, the 2017-2018 San Mateo County Grand Jury issued a report, "Smoke-Free Multiunit Housing: NO IFS, ANDS, OR BUTTS." The findings of the report recommended that all cities that have not adopted an ordinance prohibiting smoking in multi-unit developments hold public hearings to consider restricting smoking in multi-unit housing within their jurisdictions due to the negative and harmful impacts associated with second hand smoke.

The City does not currently prohibit smoking in multi-unit residences. On June 25, 2019, the City Council held a public hearing regarding a proposed ordinance amending Chapter 5.95 "Smoking Control" of the Millbrae Municipal Code that would prohibit smoking in multi-unit residences. After significant discussion, the Council introduced the ordinance and waived the first reading, and directed staff to bring back a revised ordinance reflecting a series of amendments suggested by the Council.

On July 9, 2019, the City Council held a discussion of a revised ordinance that was presented by staff, reflecting the amendments to the ordinance directed by the Council, and considered further suggestions by staff regarding enforcement of the ordinance. The Council approved the revised ordinance as presented, and decided that no further changes regarding enforcement were necessary. It waived the reading of the revised ordinance and directed that it be brought back for final approval upon a second reading.

ANALYSIS:

The Council may waive the second reading and adopt the amendments to Chapter 5.95 "Smoking Control" of the Millbrae Municipal Code. As stated in the ordinance, the amendments will go into effect on January 1, 2020.

FISCAL IMPACT:

There is no anticipated fiscal impact associated with this action.

CITY COUNCIL ACTION:

Waive the second reading of and adopt the proposed Ordinance Amending Chapter 5.95 "Smoking Control" of Title 5 of the Millbrae Municipal Code to Prohibit Smoking in Multi-Unit Residential Housing and Provide for Regulating Outdoor Smoking in the Vicinity of Such Units.

ORDINANCE NO. 2019-__

**CITY OF MILLBRAE, COUNTY OF SAN MATEO
STATE OF CALIFORNIA**

**AN ORDINANCE AMENDING CHAPTER 5.95 "SMOKING CONTROL," OF TITLE 5 OF
THE MILLBRAE MUNICIPAL CODE TO PROHIBIT SMOKING IN MULTI-UNIT
RESIDENTIAL HOUSING AND PROVIDE FOR REGULATING OUTDOOR SMOKING IN
THE VICINITY OF SUCH UNITS AND OUTDOOR SPACES**

WHEREAS, citizens and numerous organizations have expressed concerns and made complaints associated with the harm caused by second-hand smoke; and

WHEREAS, the 2017-2018 San Mateo County Grand Jury issued a report on July 26, 2018, entitled "Smoke-Free Multitenant House: No Ifs, Ands, OR Butts"; and

WHEREAS, the report made certain findings and recommendations regarding the content and implementation of smoking ordinances in the various municipalities examined in the report, including the City of Millbrae; and

WHEREAS, health hazards related to smoking and breathing second-hand smoke can include certain cancers and adverse respiratory effects, and worsen the quality of life for citizens with existing allergies and respiratory diseases; and

WHEREAS, studies have found that tobacco and other sources of second-hand smoke are major contributors to indoor air pollution; and

WHEREAS, chemicals in tobacco, vaping liquids, cannabis and other such products creating smoke and/or vapor have been classified as carcinogens; and

WHEREAS, studies have shown that tobacco and other products creating inhaled smoke or vapor are major contributors to air pollution and detrimental to nonsmokers' health, welfare and comfort, especially to elderly people, children, individuals with cardiovascular disease, impaired respiratory function, or allergies; and

WHEREAS, those who suffer ill effects of breathing secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of reactions to secondhand smoke; and

WHEREAS, the United States Surgeon General has concluded that there is no risk free level of exposure to secondhand smoke and neither separating smokers from nonsmokers, nor installing ventilation systems eliminates exposure to secondhand smoke; and

WHEREAS, the California Air Resources Board has identified secondhand smoke as a toxic air contaminant for which there is no safe level of exposure, the same category as the most toxic automotive and industrial air pollutants; and

WHEREAS, secondhand smoke exposure elevates the risks of low birth weight and Sudden Infant Death Syndrome for infants of mothers who smoke; and

WHEREAS, secondhand smoke exposure causes as many as 500,000 children in the United States to

suffer from lower respiratory tract infections each year, exacerbates childhood asthma, and increases the prevalence of fluid in the middle ear, a sign of chronic middle ear disease; and

WHEREAS, the U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found they contained carcinogens and toxic chemicals to which users and bystanders could be exposed; and

WHEREAS, with certain exceptions, state law prohibits smoking inside an enclosed place of employment; and

WHEREAS, state law prohibits smoking in playgrounds and tot lots and within 20 feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions; and

WHEREAS, cigarettes, cigars, pipes and other smoking materials are the leading cause of fire deaths in the United States, and produced an estimated 140,700 smoking-related fires, 720 deaths, 1,580 injuries, and \$530 million in direct property damage in 2007; and

WHEREAS, sixty-two percent of California renters surveyed felt that there was a need for laws to limit smoking in apartment buildings; and

WHEREAS, surveys of San Mateo County residents that showed that 100% of tenants believe secondhand smoke is harmful, 95% would be bothered by the smell of tobacco in their apartments, and 75-79% support smoke free multi-unit housing policies.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILLBRAE, CALIFORNIA, DOES ORDAINS as follows:

SECTION 1. FINDINGS. The City Council of the City of Millbrae finds as follows:

1. The recitals stated herein are true and correct.
2. The amendments detailed in Section 2 are necessary to: protect the public health, safety, and welfare of lawful occupants of multi-unit residences by discouraging the inherently dangerous behavior of smoking around non-smoking users; to decrease the exposure of the public to secondhand smoke in and around their homes; to protect children from inhaling secondhand smoke and from choking or ingesting butts or other toxic tobacco litter where children live and play; and to strike a reasonable balance between the need of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air has priority.

SECTION 2. AMENDMENTS TO SMOKING CONTROL ORDINANCE. Title 5, Chapter 5.95, "Smoking Control," of the Millbrae Municipal Code is amended and restated in its entirety to read as set forth below:

5.95.010 Definitions.

- 5.95.020 Smoking in city-owned facilities.**
- 5.95.025 Prohibition of smoking in multi-unit residences.**
- 5.95.030 Smoking in public places.**
- 5.95.040 Smoking in places of employment.**
- 5.95.050 Nonregulated smoking areas.**
- 5.95.060 Posting of signs.**
- 5.95.070 Regulation of methods of selling tobacco products.**
- 5.95.080 Violation – Penalty.**
- 5.95.090 Enforcement of Labor Code Section 6404.5.**

5.95.010 Definitions.

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

- A. "Bar" or "tavern" means an establishment primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is incidental. If a restaurant, motel, hotel, bowling center or other facility contains an enclosed room or area primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises in which the serving of food is incidental and said room or area is physically separated from all other places of employment or public places in the facility, such enclosed room or area will be considered a "bar" or "tavern" for purposes of this chapter.
- B. "Business entity" means 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.
- C. "Dining area" means any enclosed area containing a counter or tables upon which meals are served.
- D. "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.
- E. "Employer" means any person, partnership, corporation or nonprofit entity, including a municipal corporation, who employs the services of one or more persons.
- F. "Enclosed" means closed in by a roof and four walls with appropriate openings for ingress, egress and windows.
- G. "Nonprofit entity" means 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.
- H. "Place of employment" means any enclosed area which is not a public place under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to, work areas, offices, employee lounges, and restrooms, conference and classrooms, cafeterias and hallways, provided that a private vehicle and a private residence are not places of employment, except during the time that the residence is used as a licensed child care or a licensed health care facility.

I. "Private function" means any meeting, social gathering, activity not open to the general public conducted or held in any conference or meeting room, or in any public or private assembly room in any restaurant, hotel or motel and which either has been rented or is being used with the permission of the owner or lessee or manager thereof.

J. "Public place" means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to: banks, educational facilities, health facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms.

K. "Restaurant" means any coffee shop, cafeteria, sandwich stand, soda fountain, private or public school cafeteria, and any other eating or dining establishment, organization, club, boardinghouse or guesthouse, which gives or offers food for sale to the public, guests, patrons or employees.

L. "Service line" means indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service includes the exchange of money.

M. "Smoking" means inhaling, exhaling, burning or carrying any lighted or heated pipe, cigar, or cigarette of any kind, or any other lighted or heated tobacco or plant product 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.

N. "Sports arena" means sports pavilions, gymnasiums, health spas, boxing arenas, 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.

O. "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, and inhalation or by any other means of ingestion. (Ord. 596, § 2, Amended by Ord. 616, § 1 and Ord. 622, § 1; 1976 Code § 5-19.01).

P. "Multi-Unit Residence" means residential property containing two or more units, with one or more shared wall, floor, ceiling or ventilation system, including apartments, condominiums, duplexes or townhomes and their patios and balconies. A multi-unit residence does not include:

1. A hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2);
2. A single-family residence, including one which has a detached permitted accessory dwelling unit on the same lot.
3. Owner-occupied duplexes and triplexes.

Q. "Multi-Unit Residence Common Area" means any indoor or outdoor area of a Multi-Unit Residence accessible to and usable by residents of different units, including halls and paths, lobbies, laundry rooms, common cooking areas, outdoor eating areas, play areas, shared patios, shared balconies, shared restrooms, elevators and stairwells, swimming pools, carports, garages and parking areas.

R. "Service Area" means any publicly or privately owned area, including streets and sidewalks that is designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service or to make a transaction, whether or not such a service or transaction includes the exchange of money.

5.95.020 Smoking in city-owned facilities.

Smoking is prohibited in all enclosed facilities or buildings owned or controlled by the city, including hearing rooms, places of public assembly, offices, waiting rooms, lobbies and public hallways. (Ord. 596, § 2; 1976 Code § 5-19.02).

5.95.025 Prohibition of Smoking in Multi-Unit Residences.

- A. Smoking is prohibited inside any unit within a Multi-Unit Residence.
- B. Smoking is prohibited within any enclosed or unenclosed Multi-Unit Residence Common Area.
- C. Smoking is prohibited within a 40 foot radius in any direction of any Multi-Unit Residence Common Area or of any Multi-Unit Residence.
- D. Smoking is prohibited within any Service Area within a 40 foot radius in any direction of a Multi-Unit Residence and/or Multi-Unit Residence Common Area.
- E. All new residential leases in Multi-Unit Residences where smoking is prohibited must include a notice informing the tenant that (i) smoking is prohibited in the unit, in the Multi-Unit Residence Common Areas and within 40 feet of the Multi-Unit Residence and Multi-Unit Residence Common Areas, and (ii) violation of the prohibition on smoking is a material breach of the lease.

5.95.030 Smoking in public places.

Smoking is prohibited in all enclosed public places, including, but not limited to, the following:

- A. Elevators and restrooms;
- B. In ticket, boarding and enclosed waiting areas of public transit depots and bus stops, and in buses, taxicabs and other public transit vehicles under the authority of the city;
- C. Service lines;
- D. Retail stores, retail tobacco stores and retail food marketing establishments, including grocery stores and supermarkets;
- E. All enclosed facilities of business and nonprofit entities available to and customarily used or patronized by the general public, including, but not limited to, business offices, banks, hotels and motels;
- F. Restaurants;
- G. Aquariums, libraries and museums;
- H. Sports arenas and convention halls;
- I. Any building not open to the sky which is used primarily for exhibiting any motion picture, stage drama, lecture, musical recital or other similar performance, except when smoking is part of any such production;
- J. Doctors' and dentists' offices, waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, and physical therapy facilities;
- K. Polling places;
- L. Hotel and motel lodging rooms rented to guests; provided, that not more than forty-nine percent of the rooms in any hotel or motel may be designated as rooms where smoking is allowed;

M. Bowling centers. (Ord. 596, § 2, Amended by Ord. 616, § 2; 1976 Code § 5-19.03).

5.95.040 Smoking in places of employment.

Smoking is prohibited in all places of employment. (Ord. 596, § 2; 1976 Code § 5-19.04).

5.95.050 Nonregulated smoking areas.

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, but only to the extent, in the manner and during the time period permitted under state law in California Labor Section 6404.5, as it may hereafter be amended;
2. Private vehicles, single-family residences, and owner occupied duplexes and triplexes, except when used as a licensed childcare or a licensed health care facility;
3. Enclosed meeting, conference or banquet rooms in a hotel, motel or restaurant, except while food or beverage functions are taking place, including setup, service and cleanup activities, or when the room is being used for exhibit purposes.

B. Notwithstanding any other provision of this chapter, any owner, operator, manager or other person who controls any establishment described in this section may declare the entire establishment as a nonsmoking establishment. (Ord. 596, § 2, Amended by Ord. 599, § 1 and Ord. 616, § 3; 1976 Code § 5-19.05).

5.95.060 Posting of signs.

A. The owner, operator, manager or other person having control of any building, structure, facility or place where smoking is prohibited by this chapter shall post clearly and conspicuously at every entrance to such building or place "No Smoking" signs 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 enclosed in a red circle with a red bar across it. Notwithstanding the foregoing, this Section does not apply to Multi-Unit Residences with three or fewer units.

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 prior to the showing of each feature motion picture.

C. Where smoking is permitted in designated areas of a building, structure, facility or place under this chapter, the owner, operator, manager or other person having control of such building or place shall post at every entrance in a clear and conspicuous manner a sign stating "Smoking Is Prohibited Except in Designated Areas." (Ord. 596, § 2, Amended by Ord. 616, § 4; 1976 Code § 5-19.06).

5.95.070 Regulation of methods of selling tobacco products.

A. Vending Machine Restrictions. No tobacco product may be sold, offered for sale or distributed by or from a vending machine, appliance or any other device designed or used for vending purposes except if such machine, appliance or device is located at least fifteen feet away from the entrance of a premises issued an on-sale public premises license as defined in Section 23039 by the Department of Alcoholic Beverage Control to sell alcoholic beverages. Any tobacco product vending machine, appliance or device permitted by this subsection also shall be located in a place where it is clearly visible to, and continuously monitored by, an adult employee or owner of the licensed on-sale public premises as referenced above.

B. Self-Service Displays. No person, firm, association or business entity shall sell, permit to sell or be sold, or offer for sale any cigarette or other tobacco product by means of a self-service display unless the self-service

display is clearly visible to, and continuously monitored by, adult employees or owners of the business or public place. The term "self-service display" shall mean an open display of tobacco products to which the public has access without the intervention or assistance of an employee, representative or agent of the vendor. (Ord. 596, § 2, Amended by Ord. 622, § 2; 1976 Code § 5-19.07).

5.95.080 Violation – Penalty.

- A. It is unlawful for any person to smoke in a place where smoking is prohibited.
- B. It is unlawful for any person who owns, manages, or otherwise controls the use of any premises subject to the prohibition of this chapter to fail to post signs as required by this chapter, provided, however, that employees are not required to designate their individual work areas.
- C. Any person violating any of the provisions of this chapter is guilty of an infraction. Any person convicted of an infraction under the provisions of this chapter shall be punishable in accordance with the penalties set forth in MMC 1.05.010. (Ord. 596, § 2; 1976 Code § 5-19.08).

5.95.090 Enforcement of Labor Code Section 6404.5.

- A. Authority. Notwithstanding the foregoing sections of this chapter, which are preempted by current state law, the provisions of Labor Code Section 6404.5, governing smoking in enclosed places of employment, shall be enforced by the city of Millbrae police bureau and by employees of the San Mateo County Health Services Agency, division of public health, as designated by the director of health services; provided, however, that employees designated by the director of health services 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 Health Services Agency Division of Public 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 director of the San Mateo County Health Services Agency to engage in such enforcement activities shall have the power, authority and immunity of a public officer to issue citations.
- C. Training Program. The director of San Mateo County Health Services Agency, in coordination with the San Mateo County 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. (Ord. 646, § 1; 1976 Code § 5-19.09)

Section 3. SEVERABILITY. In the event any section, clause or provision of this Ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect. It is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared to be invalid or unconstitutional.

Section 4. PUBLICATION. At least five (5) days prior to its adoption and within fifteen (15) days after its adoption, the City Clerk shall cause a summary of the Ordinance to be posted in the City Clerk's office; posted on the City's website; and be published once in a newspaper of general circulation published in the County of San Mateo and circulated in the City of Millbrae.

Section 5. LEGISLATIVE HISTORY AND EFFECTIVE DATE. This Ordinance is introduced on July 9, 2019 with an adoption date of July 23, 2019 and shall be effective January 1, 2020.

The foregoing ordinance was adopted by the City Council of the City of Millbrae, County of San Mateo, State of California by the following vote:

AYES:

NOES:

ABSENT:

Mayor

ATTEST:

City Clerk