

## MONTEREY COUNTY BOARD OF SUPERVISORS

<b>MEETING:</b> January 11, 2011 – 10:30 a.m.	<b>AGENDA NO.:</b> 5-1
<b>SUBJECT:</b> Consider adoption of an ordinance amending Section 10.70.080 and repealing Section 10.70.120 of the Monterey County Code relating to indoor smoking restrictions.	
<b>DEPARTMENT:</b> Health – Public Health Bureau	

### **RECOMMENDATION:**

It is recommended that the Board of Supervisors consider adoption of an ordinance amending Section 10.70.080 and repealing Section 10.70.120 of the Monterey County Code relating to indoor smoking restrictions.

### **SUMMARY/DISCUSSION:**

This matter was set by Board action on December 14, 2010.

#### Section 10.70.080(A)(2)

Chapter 10.70 of the Monterey County Code, also known as the “Smoking Pollution Control Ordinance,” prohibits smoking in all public places and in places of employment. Subsection 10.70.080(A)(2) of the Monterey County Code, adopted in 1994, expressly exempts bars from the indoor smoking restrictions set forth in Chapter 10.70. California Labor Code section 6404.5, enacted by the State Legislature in 1995, prohibits smoking of tobacco products in places of employment, including bars. Section 10.70.080(A)(2) is in direct conflict with state law and, therefore, should be repealed.

#### Section 10.70.120

Section 10.70.120, adopted in 1994, grants the County Health Officer authority to exempt a business or other facility from the indoor smoking restrictions of Chapter 10.70 of the Monterey County Code if the County Health Officer finds that the business or facility permits only adults 18 years of age or older to enter; a majority of the customers who regularly and continuously patronize the business or facility are regular smokers; and a significant portion of these customers will not patronize the business or facility if they are prohibited from smoking. Labor Code section 6404.5, prohibiting smoking in an enclosed space at all places of employment in California, supersedes and pre-empts local enforcement of the earlier adopted Section 10.70.120. Labor Code section 6404.5 allows local governments to adopt or enforce local laws that impose stricter indoor smoking restrictions. On the other hand, section 6404.5 prohibits local governments from adopting or enforcing local laws that loosen state indoor smoking restrictions. Section 10.70.120 is in direct conflict with state law and, therefore, should be repealed.


### **OTHER AGENCY INVOLVEMENT:**

County Counsel has approved the ordinance as to form.

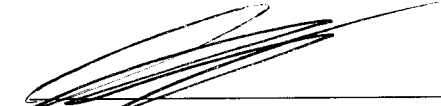
**FINANCING:**

There is no financial impact to the General Fund.

**Prepared by:**

  
\_\_\_\_\_  
Kathy Robinson,  
Management Analyst II  
796-1286

**Approved by:**

  
\_\_\_\_\_  
Ray Bullick,  
Director of Health

Date: 12/20/10

Date: 12-21-10

Attachment: Ordinance

cc: Charles J. McKee, County Counsel  
Michael Miller, Auditor-Controller