

Chapter 10.70 - SMOKING POLLUTION CONTROL

Sections:

10.70.010 - Title.

This Chapter shall be known as the "Smoking Pollution Control Ordinance."

(Ord. 3729, 1993)

10.70.020 - Findings and purpose.

A. The County of Monterey Board of Supervisors does hereby find that:

1. The Environmental Protection Agency has designated secondhand smoke a Class A carcinogen; and
2. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution; and
3. Reliable studies have shown that breathing secondhand smoke is a significant health hazard especially for pregnant women and their unborn children, infants, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and
4. Health hazards induced by breathing secondhand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm; and
5. Nonsmokers who suffer allergies, respiratory diseases, and other ill effects of breathing secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of such adverse reactions; and
6. Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restrictions on smoking in public places and places of employment; and
7. Smoking is a potential cause of fires, and cigarette, cigar burns, and ash stains on merchandise and fixtures cause losses to businesses.

B. Accordingly, the Board of Supervisors finds and declares that the purpose of this Chapter is to protect the public health and welfare by prohibiting smoking in all public places and in places of employment.

(Ord. 3729, 1993)

10.70.030 - Definitions.

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

"Bar" means an enclosed 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" for the purpose of this definition does not include any area where smoke can filter into a restaurant through a passageway, ventilation system, or any other means.

"Business" 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.

"County Health Officer" means the Director of the County Health Department or his or her designee.

"Dining area" means any enclosed area containing a counter or tables upon which food is served.

"Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for a nonprofit entity.

"Employer" means any person, partnership, corporation, public agency, or nonprofit entity, who employs the services of one or more persons.

"Enclosed" means closed in by a roof and four walls with appropriate openings for ingress and egress.

"Motion picture theater" means any theater engaged in the business of exhibiting motion pictures.

"Nonprofit entity" means any corporation, unincorporated association, or other entity created for charitable, philanthropic educational, character building, 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.

"Place of employment" means any enclosed area 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, employee lounges and restrooms, conference and class rooms, employee cafeterias, and hallways. A private residence is not a "place of employment" unless it is used as a child care or health care facility.

"Public place" means any area to which the public is invited or in which the public is permitted. For the purpose of this Chapter, a private residence is not a "public place" except when the residence is used as a child care, health care, board and care, or community foster care facility.

"Restaurant" means any coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, dining area, private and public school cafeteria, or eating establishment, boardinghouse, or guesthouse, which gives or offers for sale food to the public, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined this Section.

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

"Smoking" means inhaling, exhaling, burning or carrying any lighted pipe, cigar, cigarette, weed, plant, or other combustible organic or chemical substance, the smoke from which is specifically designed or intended to be inhaled or drawn into the nose or mouth.

"Sports arena" means any enclosed or open sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling alley, or other similar place where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports or other events, activities, or presentations.

"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, bills, trade checks, or slugs.

(Ord. 3746, § 1, 1994)

10.70.040 - Application of Chapter to County owned or leased facilities and vehicles.

Smoking is prohibited in all enclosed facilities and vehicles owned or leased by the County of Monterey.

(Ord. 3729, 1993)

10.70.050 - Prohibition of smoking in public places.

Smoking shall be prohibited in all public places within the unincorporated areas of Monterey County, including, but not limited to, the following places:

- A. Elevators.
- B. Buses, taxicabs, and other means of public transit under the authority of the County of Monterey, and ticket, boarding, and waiting areas of public transit depots.
- C. Restrooms.
- D. Service lines.
- E. Retail stores.
- F. Common areas in apartment buildings, condominiums, retirement facilities, and nursing homes.
- G. Child day care facilities, as defined in the California Health and Safety Code, and private residences while used as family day care homes.
- H. All areas available to, and customarily used by, the general public in all businesses and nonprofit entities patronized by the public, including, but not limited to, offices, banks, hotels, and motels.
- I. Public areas of aquariums, libraries, and museums when open to the public.
- J. Within any area or facility which is primarily used for, or designed for the primary purpose of, exhibiting any motion picture, stage, drama, lecture, musical recital, or other similar performance, except when smoking is part of a stage production.
- K. Restaurants and restaurant-bar combinations.
- L. Theater-bar combinations and dinner theaters.
- M. Laundromats.
- N. Beauty shops and barber shops.
- O. Malls, except in outdoor malls in specifically designated smoking areas.
- P. Within sports arenas and convention halls.
- Q. Parks, outdoor recreation areas, and recreational trails, where such parks, recreation areas,

and trails are designated as nonsmoking.

- R. Video arcades, bingo parlors, card rooms, game rooms, pool halls, dance halls, amusement centers, and bowling alleys.
- S. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the County or any political subdivision of the State during such time a public meeting is in progress.
- T. The grounds, waiting rooms, hallways, wards, and patient rooms of health care facilities, including, but not limited to, hospitals, medical centers, clinics, physical therapy facilities, and medical, dental, and chiropractic offices.
- U. Areas which share the air space - including but not limited to air conditioning, heating, or other ventilation systems, entries, doorways, open windows, hallways, and stairways - with other enclosed areas in which smoking is prohibited.
- V. At least seventy-five (75) percent of the guest rooms in every hotel and motel shall be maintained as fixed nonsmoking rooms.

(Ord. 3746 § 2, 1994)

10.70.060 - Regulation of smoking in places of employment.

- A. It shall be the responsibility of each employer to provide a smoke-free place of employment for all employees.
- B. Within ninety (90) days of the effective date of this Chapter, each employer having an enclosed place of employment located within the County shall adopt, implement, make known, and maintain a written smoking policy which shall contain the following requirement:

Smoking shall, without exception, be prohibited in all enclosed facilities within a place of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairwells, restrooms, vehicles, and all other enclosed facilities.
- C. The smoking policy shall be communicated to all employees within three weeks of its adoption, and at least annually thereafter.
- D. Each employer shall provide a written copy of the smoking policy to any existing or prospective employee who so requests.
- E. No employer or other person shall discharge, refuse to hire, discriminate against, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights to a smoke-free place of employment afforded by this Chapter.
- F. No employer or other person shall discharge, discriminate against, or retaliate against any employee who smokes, if the employee obeys the employer's nonsmoking policies and regulations.

(Ord. 3746 § 3, 1994)

10.70.070 - Regulation of the sale and distribution of tobacco products.

- A. Every person, business, tobacco retailer, or other establishment subject to this Chapter shall post, at each point of purchase of tobacco products, plainly visible with letters of not less than one-quarter inch in height stating:

Notice

The sale of tobacco products to persons under eighteen years of age is prohibited by law.
Photo id required.

- B. No person, business, tobacco retailer, or owner, manager, or operator of any establishment subject to this Chapter shall sell, offer to sell, or permit to be sold any tobacco product to an individual without requesting and examining identification establishing the purchaser's age as eighteen (18) years or older unless the seller has some reasonable basis for determining that the buyer is eighteen (18) years of age or older.
- C. It shall be unlawful for any person, business, or tobacco retailer to sell, permit to be sold, or offer for sale any tobacco product by means of self-service displays or by any other means other than vendor-assisted sales.
- D. No person, business, tobacco retailer, or other establishment subject to this Chapter shall locate, install, keep, maintain, or use, or permit the location, installation, keeping, maintenance, or use on his, her or its premises any vending machine for the purpose of selling or distributing any tobacco product. Any tobacco vending machine in use on the effective date of this Chapter shall be removed within thirty (30) days after the effective date of this Chapter.

(Ord. 3746 § 4, 1994)

10.70.080 - Where smoking not regulated.

- A. Notwithstanding any other provision of this Chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this Chapter:
 - 1. Private residences, except when used as a child care, health care, board and care, or community foster care facility.
 - 2. Parks, outdoor recreation areas, and recreational trails, except where such parks, recreation areas, and trails are designated as nonsmoking.
- B. Notwithstanding any other provision of this Chapter, any owner, operator, manager, or other person who controls any establishment described in this Chapter may declare that entire establishment as a nonsmoking establishment.

(Ord. No. 5185, § 1, 8-23-2011; Ord. 3746 § 5, 1994)

10.70.090 - Posting of signs.

- A. Every owner, operator, manager, or other person having control of a building or other public place where smoking is regulated by this Chapter shall post plainly visible signs, with letters of not less than one inch (1") in height, stating either "Smoking" or "No Smoking", whichever is appropriate under this Chapter, 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).
- B. Every theater and auditorium shall have posted plainly visible signs in the lobby stating that smoking is prohibited within the theater or auditorium. In addition, in the case of motion picture theaters, information that smoking is prohibited in the theater shall be shown upon the screen for at least five seconds prior to the showing of each motion picture.
- C. Every restaurant shall have a plainly visible sign posted at every entrance clearly stating that smoking is prohibited within the restaurant.
- D. Every hotel and motel shall have plainly visible signs posted in the registration and lobby areas which state that nonsmoking rooms are maintained and may be available; rooms designed as being nonsmoking shall have signs designating such restriction conspicuously placed within the room.

(Ord. 3746 § 6, 1994)

10.70.100 - Enforcement.

- A. The County Health Officer shall enforce and implement this Chapter.
- B. Any person who desires to register a complaint under this Chapter may initiate an enforcement action with the County Health Officer.
- C. Whenever any facility in which smoking is prohibited by this Chapter applies for any permit or regulatory approval of the County or undergoes any required inspection, the Health Department shall require a certification from the owner, manager, operator, or other person having control of such facility that all requirements of this Chapter have been complied with.
- D. Any owner, operator, or employee of any facility in which smoking is prohibited may inform persons violating this Chapter of the appropriate provisions of this Chapter.

(Ord. 3746 § 7, 1994)

10.70.110 - Violations and penalties.

- A. It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any facility in which smoking is prohibited by this Chapter to fail to comply with the provisions of this Chapter.
- 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, business, or owner, proprietor, manager, or operator of any establishment subject to this Chapter who violates Section 10.70.040, 10.70.050, 10.70.060, 10.70.080, or 10.70.090 of this Chapter shall be guilty of an infraction.

(Ord. 3746 § 8, 1994)

10.70.120 - Reserved.

Editor's note— Ord. No. 5185, § 2, adopted August 23, 2011, repealed the former section 10.70.120 in its entirety, which pertained to exemptions and derived from Ord. No. 3746, § 13, adopted 1994.

10.70.130 - Public education.

- A. The County Health Officer shall engage in a continuing program to explain and clarify the purposes of this Chapter to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. Where feasible, such education program shall be undertaken and maintained in conjunction and coordination with appropriate health or safety-oriented community-based organizations and coalitions.
- B. The County Health Officer shall, in coordination with other health agencies, have the responsibility for providing public education on the health consequences of smoking.

(Ord. 3746 § 9, 1994)

10.70.140 - Governmental agency cooperation.

The County Health Officer shall annually request such governmental and educational agencies having offices within Monterey County to establish local operating procedures that are consistent with the provisions of this Chapter. The County Health Officer shall urge Federal, State, municipal public agencies, and special districts to enact and enforce smoking prohibitions and restrictions for their facilities within Monterey County that are consistent with the provisions of this Chapter.

(Ord. 3746 § 10, 1994)

10.70.150 - Other applicable laws.

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

(Ord. 3746 § 11, 1994)

10.70.160 - Review.

The Board of Supervisors shall review the provisions of this Chapter within one year of its adoption to determine what, if any, amendments must be enacted. However, failure to review this Chapter within the time specified shall not abrogate any of its provisions.

(Ord. 3746 § 12, 1994)

