



SAN RAFAEL
THE CITY WITH A MISSION

Agenda Item No: 6.a

Meeting Date: September 3, 2024

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Manager's Office

Prepared by: Bernadette Sullivan,
Senior Management Analyst

City Manager Approval: _____

TOPIC: SMOKING ORDINANCE AMENDMENT

SUBJECT: INTRODUCTION OF AN ORDINANCE AMENDING SECTIONS 9.04.120 OF THE SAN RAFAEL MUNICIPAL CODE TO ALLOW FOR A PRIVATE RIGHT OF ACTION FOR VIOLATIONS OF THE CITY'S SMOKING ORDINANCE.

RECOMMENDATION:

Introduce an Ordinance amending [Section 9.04.120](#) of the San Rafael Municipal Code to allow for a private right of action for violations of the City's smoking ordinance, waive further reading of the Ordinance, and refer to it by title only.

BACKGROUND:

Secondhand smoke poses health problems for non-smoking residents when it drifts from neighboring homes, apartment units, balconies, and outdoor spaces. The U.S. Surgeon General has determined that the dangers of secondhand smoke cannot be controlled by ventilation, air cleaning, or the separation of smokers from non-smokers. Several studies have concluded that smoking in multi-unit housing also contributes to higher maintenance and insurance costs. Many cities in California have begun to address the health dangers and additional costs related to secondhand smoke by implementing secondhand smoke policies.

In 2012, the City Council adopted [Ordinance No. 1908](#), significantly changing the City's smoking regulation in [San Rafael Municipal Code \("SRMC"\) Chapter 9.04](#). This ordinance change demonstrated the City's commitment to protecting people against the dangers of secondhand smoke, reducing fire hazards, and reducing property damage caused by tobacco smoke. Included in the ordinance change was the option for residential properties to create a designated smoking area provided they conform to a set of criteria. Despite these measures, the spontaneous and often brief nature of smoking incidents/reports make it challenging to catch individuals in the act. As a result, violations continue to persist, creating enforcement challenges, and community members continue to report violations that negatively impact their health and quality of life.

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

ANALYSIS:

Community concerns regarding the public health effects of secondhand smoke exposure are on the rise. There are substantial concerns about ongoing exposure to second- and thirdhand smoke, particularly in multi-unit housing complexes and other shared spaces. Complaints often highlight some inefficiencies of existing enforcement methods, such as code enforcement, which cannot always be present to witness violations taking place and, therefore, do not have the tools to enforce violations. Code Enforcement officers are routinely out in the field conducting scheduled inspections and addressing ongoing high priority issues throughout the community. Due to their structured schedules and the need to cover a wide range of responsibilities, they have limited capacity to immediately shift focus and respond to real time smoking violations as they occur. This makes it challenging to catch individuals in the act of smoking, which is necessary to cite violators.

The City's limited capacity to monitor and enforce smoking bans has led to frustration among community members who feel their health and safety are not adequately protected. Smokers can extinguish a cigarette or move to another location before an officer can arrive on the scene. Additionally, officers must prioritize their response based on the impact of the violation on the community. Situations that pose a serious risk to health and safety are prioritized, while other complaints are addressed in the order they are received. This means that when an officer can respond to a smoking complaint, the violation may no longer be occurring, making it difficult to take immediate action. This limitation contributes to the persistence of smoking violations and the resulting frustration within the community. To address this, staff recommends amending the current smoking ordinance to include a civil right of action that would provide community members with a direct mechanism to hold violators accountable and seek remedies through the legal system.

The private right of action provides a valuable tool for community members in extreme cases where other enforcement measures have not been effective. The ordinance amendment allows for a private right of action. This approach provides an added tool for accountability, enabling community members to seek legal remedies against violators without solely relying on the City's resources. By giving the community, the ability to act, this amendment would help to deter smoking violations more effectively and enhance the overall protection of public health and safety. The private enforcer must produce documentation substantiating the violation of the City's Smoking Ordinance, which could include resident complaints, inspection reports, and/or enforcement actions by local public health or code enforcement officers.

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FISCAL IMPACT:

There is no fiscal impact in passing this amendment.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Introduce an Ordinance, waive further reading of the Ordinance, and refer to it by title only.
2. Introduce an Ordinance, waive further reading of the Ordinance, and refer to it by title only, with minor modifications

3. Direct staff to return with substantive changes.

RECOMMENDED ACTION:

Introduce an Ordinance amending [Section 9.04.120](#) of the San Rafael Municipal Code to allow for a private right of action for violations of the City's smoking ordinance, waive further reading of the Ordinance, and refer to it by title only.

ATTACHMENTS:

1. Ordinance Amendment

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN RAFAEL AMENDING
CHAPTER 9, SECTION 9.04.120 OF THE SAN RAFAEL MUNICIPAL
CODE TO ALLOW FOR A CIVIL RIGHT OF ACTION FOR VIOLATIONS
OF THE CITY'S SMOKING ORDINANCE**

WHEREAS, Section 118910 of the California Health and Safety Code and Section 26200 of the Business and Professions Code expressly authorize local governments to regulate smoking in any manner not inconsistent with state law; and

WHEREAS, there is no Constitutional right to smoke; and

WHEREAS, the purpose of the City's smoking restrictions is to serve the public health, safety, and welfare due to the known dangers to health and wildfire risk posed by smoking and secondhand smoke; and

WHEREAS, In 2012, the City Council adopted [Ordinance No. 1908](#), which significantly changed the City's smoking regulation in San Rafael Municipal Code ("SRMC") Chapter 9.04; and

WHEREAS, enforcement challenges of provisions of section 9.04.120 persist, and community members continue to report violations that negatively impact their health and quality of life; and

WHEREAS, the amendments to the San Rafael Municipal Code made by adoption of this Ordinance are necessary to further enforce current smoking laws so as to more fully protect City residents, businesses and visitors against risk and unwanted secondhand smoke in public places, parks, and multiunit dwellings.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL
DOES ORDAIN AS FOLLOWS:**

Division 1. Amendment of Municipal Code.

Sections 9.04.120 of Chapter 9.04 (Clean Indoor And Outdoor Air And Health Protection) of the San Rafael Municipal Code are hereby amended to read as follows. Additions are shown in underline, and deletions are shown in ~~striketrough~~.

9.04.120 Enforcement and penalties.

A. Any violation of this chapter shall be, and the same is hereby declared to be, unlawful and a public nuisance, and shall be enforceable pursuant to Chapters 1.40, 1.42, 1.44, or 1.46 of this Code, or by any other judicial and administrative penalties and remedies available to the city under state law. Each instance of smoking in violation of this chapter shall constitute a separate violation. For violations other than for smoking, each day of a continuing violation of this chapter shall constitute a separate violation. The remedies provided by this chapter are not intended to preclude any other remedy available at law or in equity.

B. Any Person acting for the interests of itself, its members, or the general public (hereinafter "Private Enforcer") may bring a private action in any court of competent jurisdiction, including small claims court, to enforce this section against any Person who has violated this section. The Private Enforcer must produce documentation substantiating the violation of the City's Smoking Ordinance, which could include resident complaints, inspection reports, and/or enforcement actions by local public health or code enforcement officers. A court shall grant all appropriate relief, including: (1) awarding damages; and (2) issuing an injunction or a conditional judgment. Except as otherwise provided, enforcement of this section is at the sole discretion of the City. Nothing in this section shall create a right of action in any Person against the City or its agents to compel public enforcement of this section against private parties.

Division 2. Severability.

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares it would have passed and adopted this Ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

Division 3. CEQA Determination.

This Ordinance makes only administrative changes to the operations of a City commission and is therefore exempt from the requirements of the California Environmental Quality Act (CEQA) under 14 Cal. Code Regs. §15061(b)(3), the common sense exemption, because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

Division 4. Publication; Effective Date.

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published, and circulated in the City of San Rafael, and shall be in full force and effect thirty (30) days after its final passage. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for and against the Ordinance.

THE FOREGOING ORDINANCE was first read and introduced at a regular meeting of the San Rafael City Council on the 3rd day of September 2024, and was passed and adopted at a regular meeting of the San Rafael City Council on the 16th of September by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

KATE COLIN, Mayor

ATTEST:

LINDSAY LARA, City Clerk