

ORDINANCE NO. 2042

**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

SUMMARY OF ORDINANCE NO. 2042

AN ORDINANCE OF THE CITY COUNCIL 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

This Summary concerns a proposed ordinance of the City of San Rafael, designated as Ordinance No. 2042, which will amend Chapter 9, Section 9.04.120 of the San Rafael Municipal Code. Ordinance No. 2042 is scheduled for adoption by the San Rafael City Council at its regular meeting of September 3, 2024. The City Clerk has been directed to publish this Summary pursuant to City Charter and California Government Code section 36933(c)(1).

SUMMARY OF AMENDMENT TO MUNICIPAL CODE

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. Pursuant to this authority, the City adopted Ordinance No. 2042, which amends regulations governing the enforcement of the City's smoking ordinance in San Rafael.

The amended regulations include the introduction of a civil right of action, allowing private individuals (referred to as "Private Enforcers") to bring legal action against those who violate the smoking restrictions outlined in Chapter 9.04 that are designed to protect the public from health effects of ongoing exposure to secondhand smoke in multi-unit housing complexes and other shared spaces. This new provision enables residents, businesses, or members of the general public to seek relief through the courts, including the awarding of damages and injunctions. The Private Enforcer must provide evidence of the violation, such as resident complaints or inspection reports. This amendment is intended to address ongoing enforcement challenges and to enhance the protection of public health, safety, and welfare against the risks associated with smoking and secondhand smoke in public places, parks, and multi-unit dwellings.

The Ordinance was Introduced on September 3, 2024, and scheduled for a Second Reading on September 16, 2024. If passed, the Ordinance becomes effective 30 days after the Second Reading, on October 16, 2024.

Copies of Ordinance No. 2042 are available for public review on the City's website: <https://www.cityofsanrafael.org>. You may also contact the City Clerk at (415) 485-3066 for more information.

LINDSAY LARA
San Rafael City Clerk
Dated: 09/06/24