



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Fire

**Prepared by: Quinn Gardner, Deputy Director of
Emergency Manager and Mary Skramstad,
Wildfire Mitigation Project Manager**

City Manager Approval: _____

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TOPIC: AMENDMENT OF THE CURRENT SMOKING ORDINANCE

SUBJECT: INTRODUCTION OF AN ORDINANCE AMENDING SECTIONS 9.04.030, 9.04.090 AND 19.10.060 OF THE SAN RAFAEL MUNICIPAL CODE TO PROHIBIT SMOKING IN OPEN SPACE YEAR-ROUND AND REQUIRE DESIGNATED SMOKING AREAS IN MULTI-FAMILY HOUSING COMPLEXES WITH OVER 10 UNITS LOCATED WITHIN 1,000 FEET FROM OPEN SPACE AND UNDEVELOPED LOTS IN ORDER TO PREVENT CIGARETTE-CAUSED FIRES

RECOMMENDATION: Pass to print an ordinance amending Sections 9.04.030, 9.04.090 and 19.10.060 of the San Rafael Municipal Code to prohibit smoking in open space year-round and require designated smoking areas in multi-family housing complexes with over 10 units located within 1,000 feet from open space and undeveloped lots in order to prevent cigarette-caused fires.

BACKGROUND:

Millions of acres of land are burned by wildfires every year across the United States, and humans are to blame for many of the blazes. On average, there are more than 60,000 human-ignited fires every year across the United States, according to the National Interagency Fire Center. Smoldering cigarettes are one of the most common causes of human-caused wildfires. Solano County experienced a cigarette-caused fire that burned 300 acres on October 26, 2020. Another fire ignited by cigarette butts burned about 90 acres northeast of Vacaville in October 2021. Additionally, a cigarette-caused fire in San Rafael nearly destroyed a multi-family complex at 410 Mission Ave on May 29, 2020. Ultimately, any ignition has the potential to become an out-of-control wildfire.

In 2012, the City Council adopted Ordinance No. 1908, which made significant changes to the City's regulation of smoking in San Rafael Municipal Code ("SRMC") Chapter 9.04, demonstrating 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. Although the option to install a designated smoking area has been available since 2012, it has not been widely utilized. The lack of designated smoking areas has driven residents to seek alternative locations

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

to smoke such as open-space and undeveloped lots, creating increased wildfire risk and environmental impacts.

Currently, smoking is prohibited in Downtown San Rafael, parks, open-space, eighty percent of all hotel rooms and within any housing that shares a wall with another unit such as apartments, condos and duplexes. Other prohibited smoking areas include sidewalks, enclosed and unenclosed areas within twenty feet from any doorway, window, opening, crack, or vent; indoor and outdoor common areas of residential units, with the allowance of designated smoking areas. Smoking is permitted in single family residential, private vehicles unless a child is in the vehicle, twenty percent of hotel rooms, theatrical production sites, and inside certain retail tobacco stores.

The City of San Rafael takes wildfire prevention seriously. The City is taking multiple steps to help keep our community safe. Vegetation standards were first adopted in 2007 and updated in 2021. In August 2018, City Council directed the Fire Chief to “Be Bold” in a plan to reduce wildfire risk. In 2019, the Wildfire Prevention and Protection Action plan was drafted, reviewed, and supported by the Citizens Wildfire Advisory Committee. Through 2020 Measure C funds and the Marin Wildfire Prevention Authority, San Rafael Fire has been able to take action towards wildfire mitigation through vegetation management projects, a city-wide inspection program, hiring Open Space Rangers to patrol for signs of camping activity and more.

The [San Rafael Wildfire Prevention and Protection Action Plan](#), passed in August 2020, outlines various goals to proactively and aggressively address the growing risks associated with wildfire. Item 16 in the plan directly calls for City Council Action to reduce the likelihood of ignition in undeveloped land. The Open-Space Element of the City’s [General Plan](#) details the need to protect and preserve the natural value of open space and wildlife habitat areas while permitting educational and recreational uses compatible with these resources. Also, the first goal of the [San Rafael Local Hazard Mitigation plan](#) is to minimize risk and vulnerability of the City to the impact of natural hazards and protect lives and reduce damages and losses to property, public health, economy, and the environment.

ANALYSIS:

Despite current smoking restrictions, fire history as well as reports from residents make it clear that smoking is common in and around open space areas. During inspections of undeveloped properties and open-space near densely populated areas, staff have discovered countless scattered cigarette butts and, in some cases, make-shift ash trays.

Regulations do not currently include preventative measures to reduce cigarette-caused ignitions in open-space. Existing regulations are either optional or inappropriately time-bound and require updates for consistency, clarity, and changes in dangerous behaviors.

The proposed amendments will establish designated smoking areas that will deter residents from smoking in open space and undeveloped lots and prohibit smoking in open space year-round to alleviate risk of fires, both structural and wild, reduce the amount of toxic cigarette butt litter in our environment, and create a healthy environment for both people and our wildlife.

Staff consulted with the Marin County Tobacco Related Disease Control Program Manager, Bob Curry when drafting these proposed changes. Mr. Curry is supportive of the proposed changes.

Significant Elements of Proposed Amendments: The proposed ordinance changes include prohibiting smoking in open space year-round and requiring designated smoking areas in multi-family properties located within 1,000 feet of unimproved natural landscaped areas.

- *Multi-Unit Residences:* Currently, the municipal code prohibits smoking in indoor and outdoor common areas of multi-unit residential properties. The current code has an allowance for a “designated smoking area” if it meets existing criteria as listed under SRMC section 9.04.090. The proposed ordinance requires multi-family properties of ten units or more, located within 1,000 feet from an undeveloped property or open space to install a designated smoking area within one-year of adoption to deter residents from smoking in undesignated areas. If a designated smoking area cannot be established while meeting the pre-established criteria, staff will evaluate if an exemption is necessary. If no designated area is established, the property must implement adequate signage indicating fines associated with smoking in undesignated areas.
- *Designated Smoking Areas:* Currently, the proposed ordinance allows residential properties, places of employment, community centers, and public events to create designated smoking areas provided that they conform to a set of criteria. Staff heard concerns that certain properties may not be able to meet the criteria, hence leaving no place for residents or patrons to smoke.
- *Open Space:* Currently, smoking is prohibited in open space under SRMC section 9.04.050(B) however under Section 19.10.060(13), smoking is only prohibited between May fifteenth and December first of each calendar year, except in designated areas. Staff proposes changing the language in Section 19.10.060 to prohibit smoking year-round. This is more reflective of the fire, environmental, and health risk smoking poses year-round.

Summary of Changes

The following table summarizes the specific sections of the recommended changes to reduce wildfire risk associated with smoking.

Municipal Code section	Staff recommendation
9.04.030	Add definition of undeveloped property. Undeveloped property, is any privately owned parcel or area of land or water which is essentially an unimproved natural landscape area.
9.04.090	Require all Multi-family properties with 10 units or more, located within 1,000 feet from an undeveloped property or open space to implement a designated smoking area that meets existing standards. If no such area can be found to meet the criteria for designated smoking area, staff will collaborate with property owner to seek alternatives. If efforts do not render a designated smoking area, the property must install signage indicating the property as a smoke-free zone without a designated smoking area and giving notice that smoking in undeveloped areas is a violation of the Municipal Code. After April 1, 2023, all multi-family properties with more than 10 units and within 1,000 feet of undeveloped land must have a designated smoking area or proper signage posted.
19.10.060.	(13): Smoking. Due to extreme fire hazard, public health, and environmental preservation, smoking shall not be permitted in open space areas including parking lots, at anytime.

COMMUNITY OUTREACH:

Two community meetings regarding the proposed ordinance changes were held on March 16, 2022, and April 7, 2022.

Prior to and during implementation of this Municipal Code amendment, staff will conduct direct outreach with multi-family properties affected. Outreach and implementation will include:

1. Assessing the feasibility of a designated smoking area;
2. Supporting the installation of signs as required if a designated area is not feasible by April 1, 2023;
3. Distributing educational materials;
4. Use of other digital and print tools to continue to engage and inform the public in regard to smoking in open space and undeveloped property.

FISCAL IMPACT:

There are no anticipated impacts to the General Fund. Existing staff will support implementation and enforcement. Any supply costs will be covered by Measure C, Marin Wildfire Prevention Authority.

OPTIONS:

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

1. Pass to print the Ordinance amendment as proposed or with modifications
2. Continue action for additional information and response to Council comments and concerns
3. Deny the proposed Ordinance amendment

RECOMMENDED ACTION:

Pass to print an ordinance amending Sections 9.04.030, 9.04.090 and 19.10.060 of the San Rafael Municipal Code to prohibit smoking in open space year-round and require designated smoking areas in multi-family housing complexes with over 10 units located within 1,000 feet from open space and undeveloped lots in order to prevent cigarette-caused fires.

ATTACHMENTS:

1. Ordinance
2. Maps

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING SECTIONS 9.04.030, 9.04.090 AND 19.10.060 OF THE SAN RAFAEL MUNICIPAL CODE PROHIBITING SMOKING IN OPEN SPACE YEAR-ROUND AND REQUIRING DESIGNATED SMOKING AREAS IN MULTI-FAMILY HOUSING COMPLEXES WITH OVER 10 UNITS LOCATED WITHIN 1,000 FEET FROM OPEN SPACE AND UNDEVELOPED LOTS IN ORDER TO PREVENT CIGARETTE-CAUSED FIRES

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 1. FINDINGS.

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, the amendments to the San Rafael Municipal Code made by adoption of this Ordinance are necessary to further regulate smoking so as to more fully protect City residents, businesses and visitors against wildfire risk and unwanted secondhand smoke in public places, parks, and multiunit dwellings; and to clarify and confirm that smoking in open space is prohibited year-round and subject to the same enforcement and penalties as other smoking restrictions; and

WHEREAS, the San Rafael Wildfire Prevention and Protection Action Plan, passed in August 2020, outlines the need to reduce ignition sources to protect the community and natural resources from a wildfire ignited in the open space; and

WHEREAS, it is the goal of San Rafael to preserve and protect open space and the natural environment for all to enjoy; and

WHEREAS, the City's amendment to Section 308.1.2 of the California Fire Code, as set forth in San Rafael Municipal Code Section 4.08.120, states 'Smoking is prohibited within all Parks as defined in San Rafael Municipal Code Section 8.10.015 and Open Space areas as defined in San Rafael Municipal Code Section 19.10.020, located within jurisdiction limits; and

WHEREAS, on May 2, 2022, the City Council of San Rafael conducted a duly noticed public hearing on this Ordinance and considered all oral and written comments submitted to the City;

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

DIVISION 2. AMENDMENTS TO MUNICIPAL CODE.

1. Section 9.04.030 of the San Rafael Municipal Code, entitled "Definitions" is hereby amended to add a definition for "Undeveloped property" to read as follows:

"Undeveloped property" is any privately owned parcel or area of land or water which is essentially an unimproved natural landscape area.

2. Section 9.04.090 of the San Rafael Municipal Code, entitled "Nonsmoking buffer zones" is hereby amended to read in its entirety as follows:

(1) Multi-family residences, duplexes, places of employment, city owned or controlled public place, and public events may designate an outdoor area where smoking is permitted if the area meets all of the following criteria:

- A. The area is located at least twenty-five feet (20') from any unit or enclosed area where smoking is prohibited by this chapter or other law; by binding agreement relating to the ownership, occupancy, or use of real property; or by designation of a person with legal control over the premises. A designated smoking area may require modification or elimination as laws change, as binding agreements are created, and as nonsmoking areas on neighboring premises are established.
- B. The area does not include, and is at least one hundred feet (100') from, unenclosed areas primarily used by children and unenclosed areas with improvements that facilitate physical activity including, for example, playgrounds, swimming pools, and school campuses;
- C. The area includes no more than ten percent (10%) of the total unenclosed area of the multi-family residence for which it is designated;
- D. The area has a clearly marked perimeter;
- E. The area is identified by conspicuous signs;
- F. The area is completely within an unenclosed area; and
- G. The area does not overlap with any enclosed or unenclosed area in which smoking is otherwise prohibited by this chapter or other provisions of this Code, state law, or federal law.
- H. Notwithstanding anything in this section to the contrary the city manager may in his or her discretion establish a designated smoking area in any publicly owned or operated public place in any appropriate location in or on a city owned or controlled public place.

(2) Multi-family properties with 10 units or more, located within 1,000 feet from an undeveloped property or open space must implement a designated area that meets existing standards. If no such area can be found to meet the criteria for designated smoking area, the property must be posted with signage indicating the property as a smoke-free zone without a designated smoking area and advising that violation is subject to enforcement under this Code. After April 1, 2023, all multi-family properties with more than 10 units within 1,000 feet of undeveloped land or open space must have a designated smoking area or proper signage posted.

3. Section 19.10.060 of the San Rafael Municipal Code, entitled "Open Space Regulations" is hereby amended by amending subsection (13) thereof to read in its entirety as follows:

(13) Smoking. Due to extreme fire hazard, public health, and environmental preservation, smoking shall not be permitted in open space areas including parking lots, at any time.

DIVISION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

This Ordinance is exempt from the California Environmental Quality Act (CEQA), pursuant to 14 CCR Section 15061(b)(3), since it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment. (14 Cal. Code Regs. Section 15061(b)(3), 'general rule' provision).

DIVISION 4 SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The City Council of the City of San Rafael hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases shall be declared invalid.

DIVISION 5. 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.

KATE COLIN, Mayor

Attest:

LINDSAY LARA, City Clerk

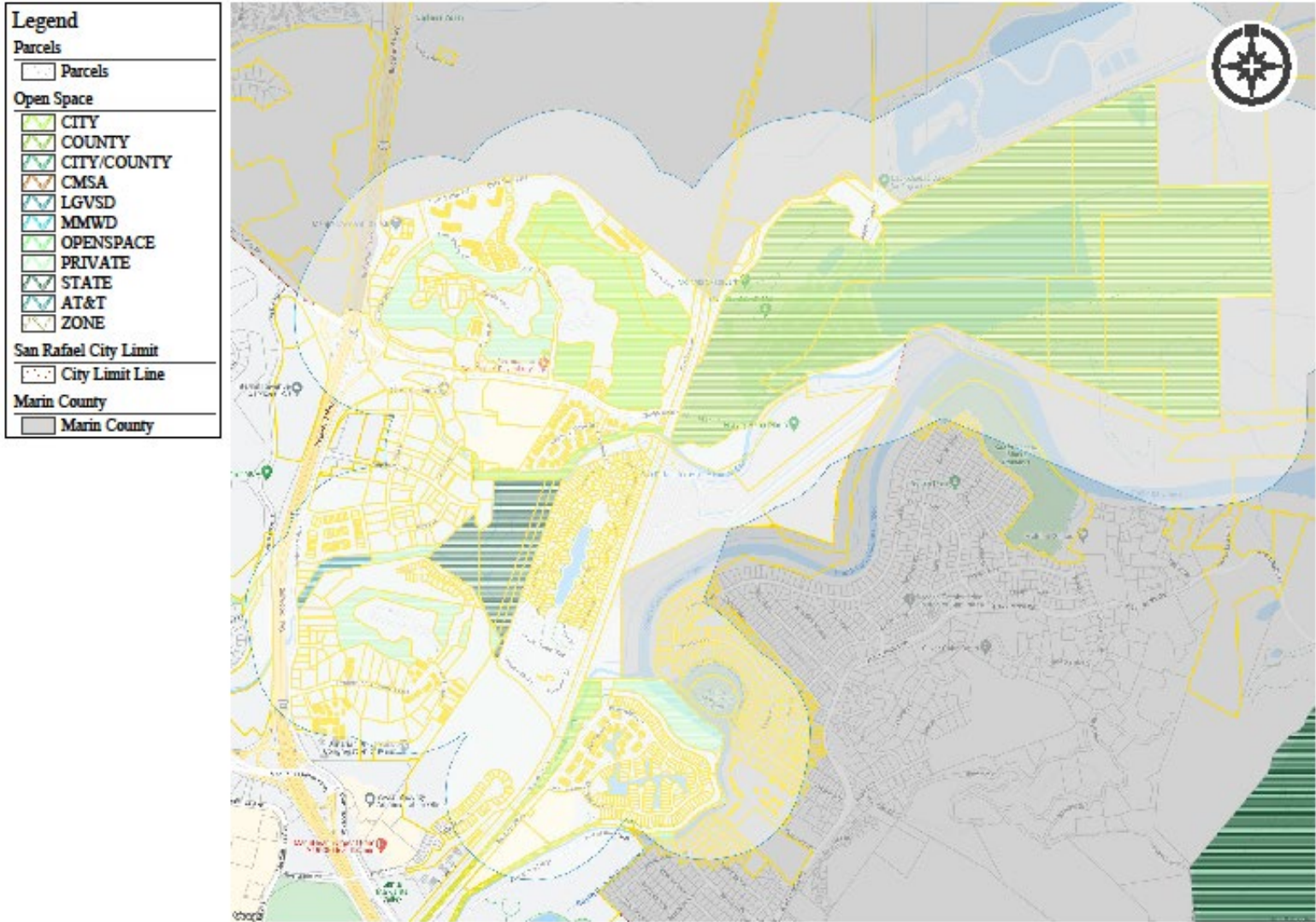
The foregoing Ordinance No. _____ was introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 2nd day of May 2022, and ordered passed to print by the following vote, to wit:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:

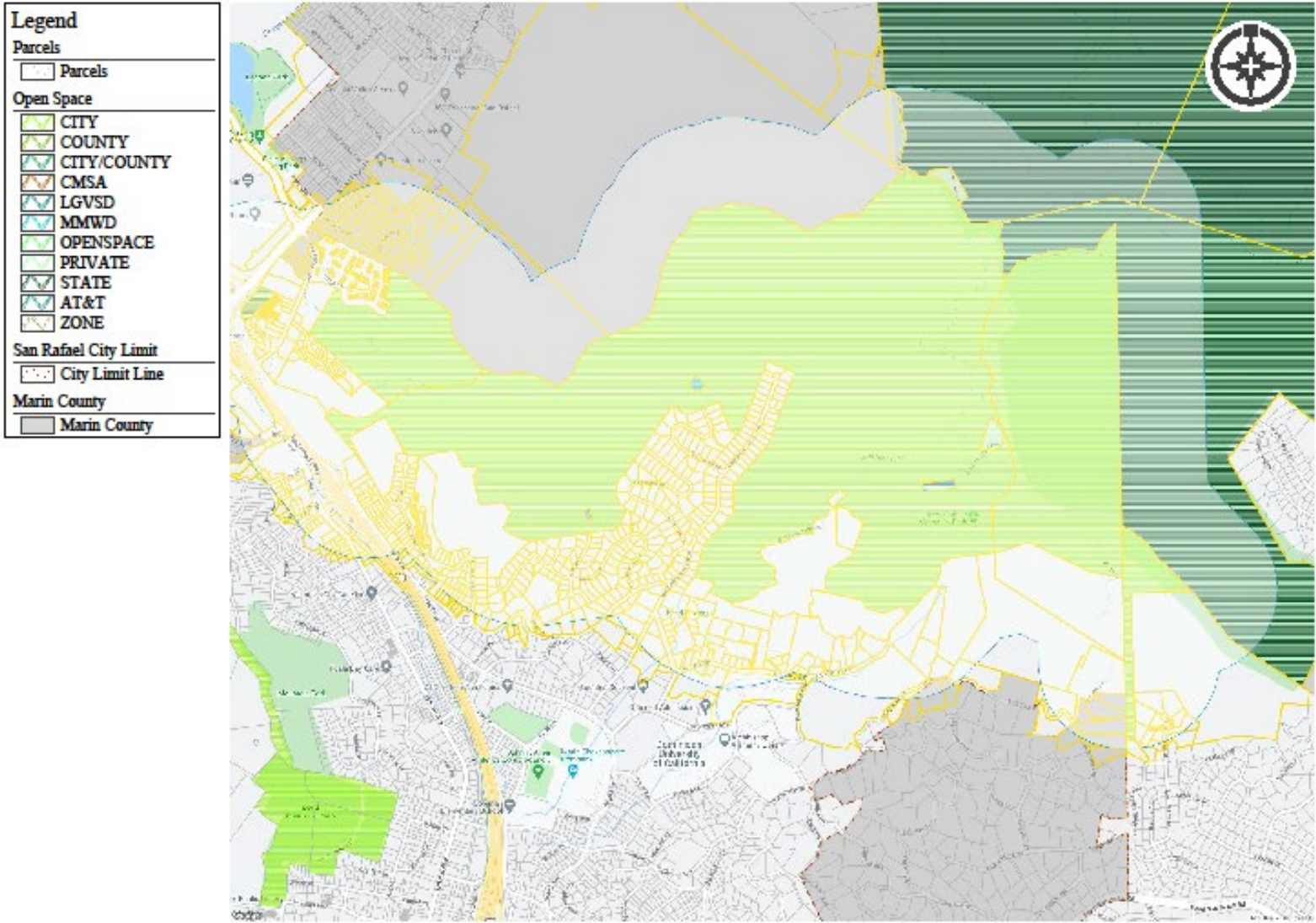
and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 16th day of May 2022.

LINDSAY LARA, City Clerk

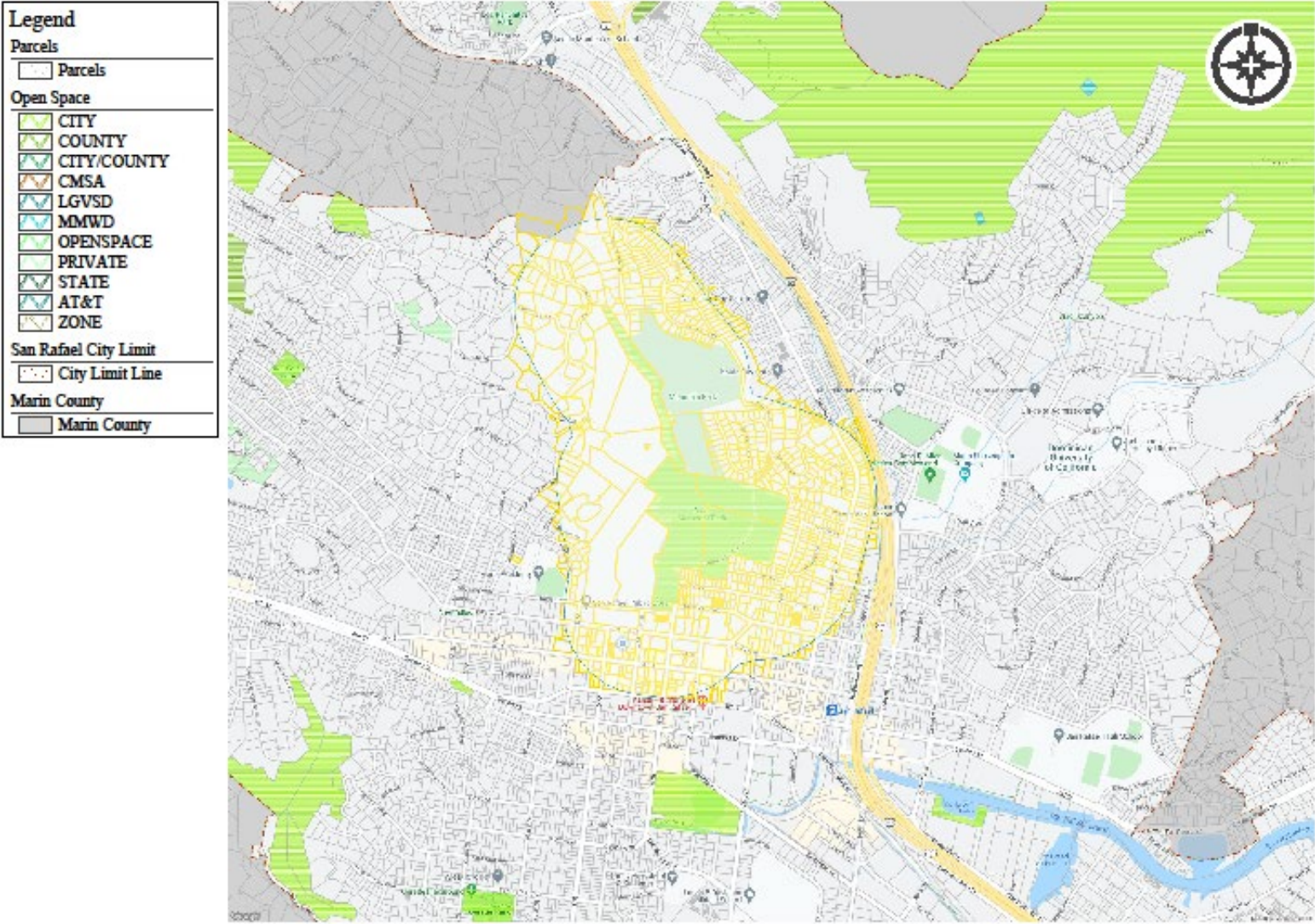
Northeast San Rafael 1,000ft buffer



Dominican 1,000ft buffer



Lincoln Hill 1,000ft buffer



West End and Gerstle Park 1,000ft buffer

Legend	
Parcels	
	Parcels
Open Space	
	CITY
	COUNTY
	CITY/COUNTY
	CMSA
	LGVSD
	MMWD
	OPENSOURCE
	PRIVATE
	STATE
	AT&T
	ZONE
San Rafael City Limit	
	City Limit Line
Marin County	
	Marin County

