

**ORDINANCE NO. 2008**

**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

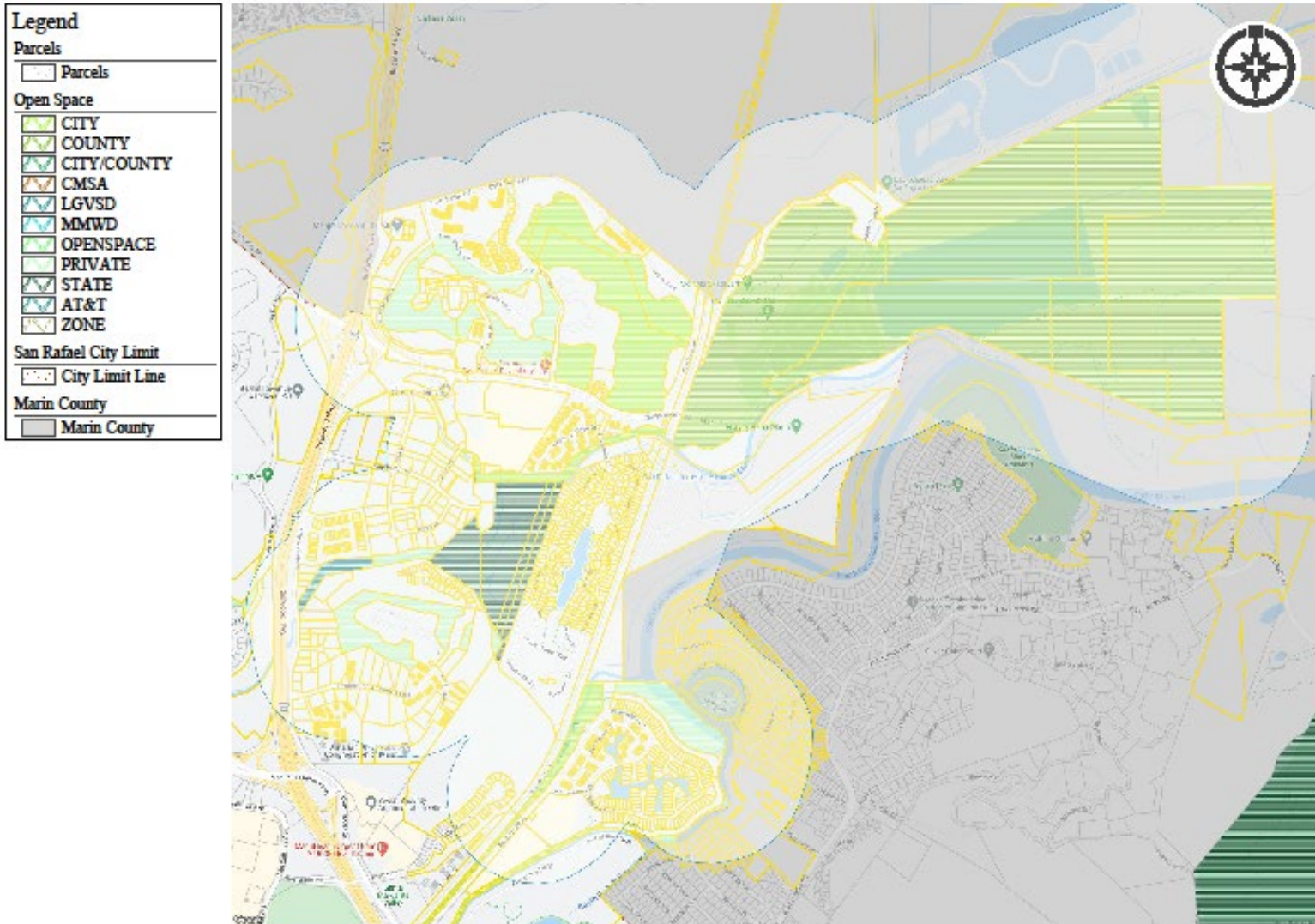
The foregoing Ordinance No. 2008 was introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 2<sup>nd</sup> day of May 2022, and ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Bushey, Hill, Kertz, Llorens Gulati & Mayor Kate  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

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 16<sup>th</sup> day of May 2022.

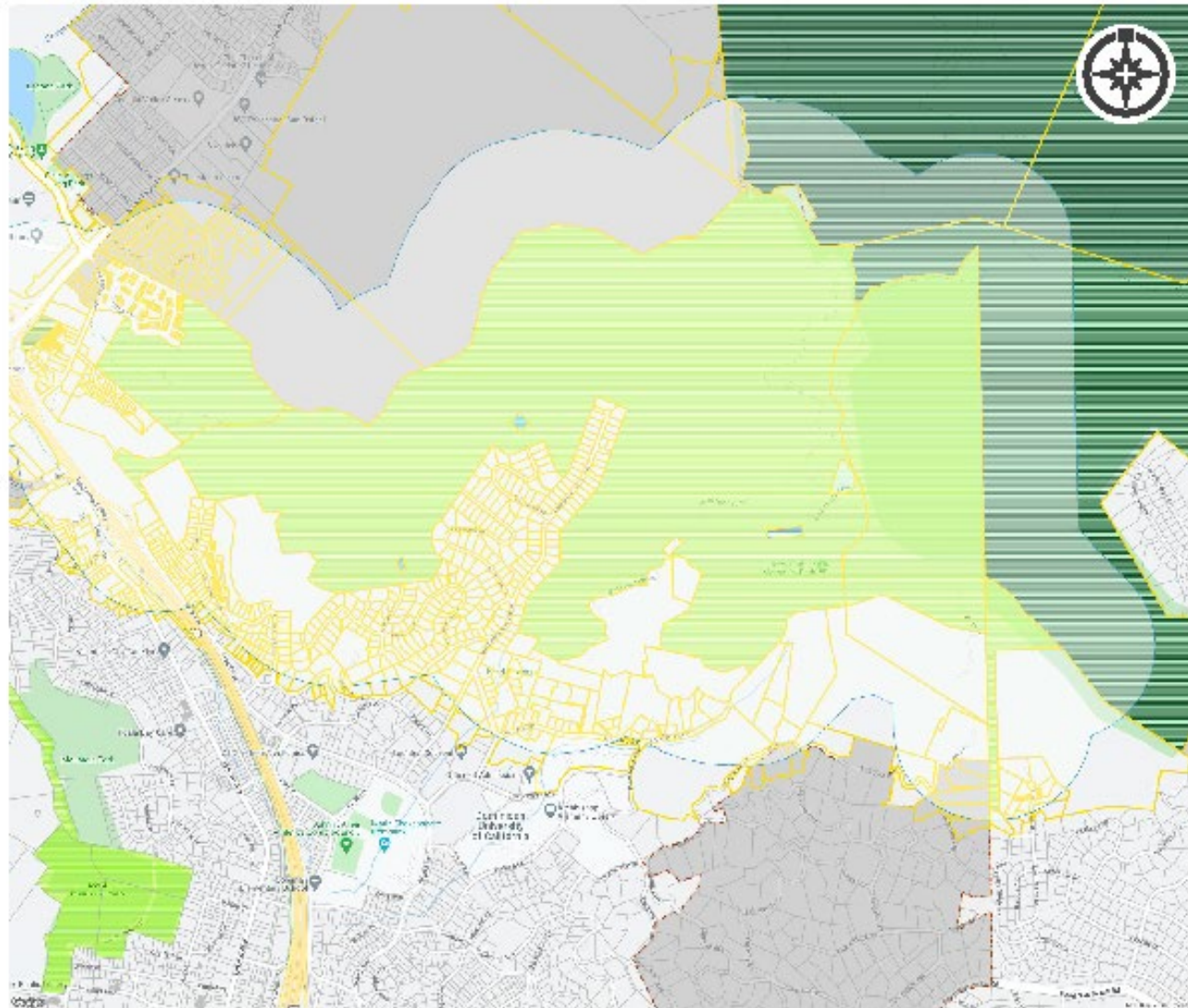
  
LINDSAY LARA, City Clerk

### Northeast San Rafael 1,000ft buffer

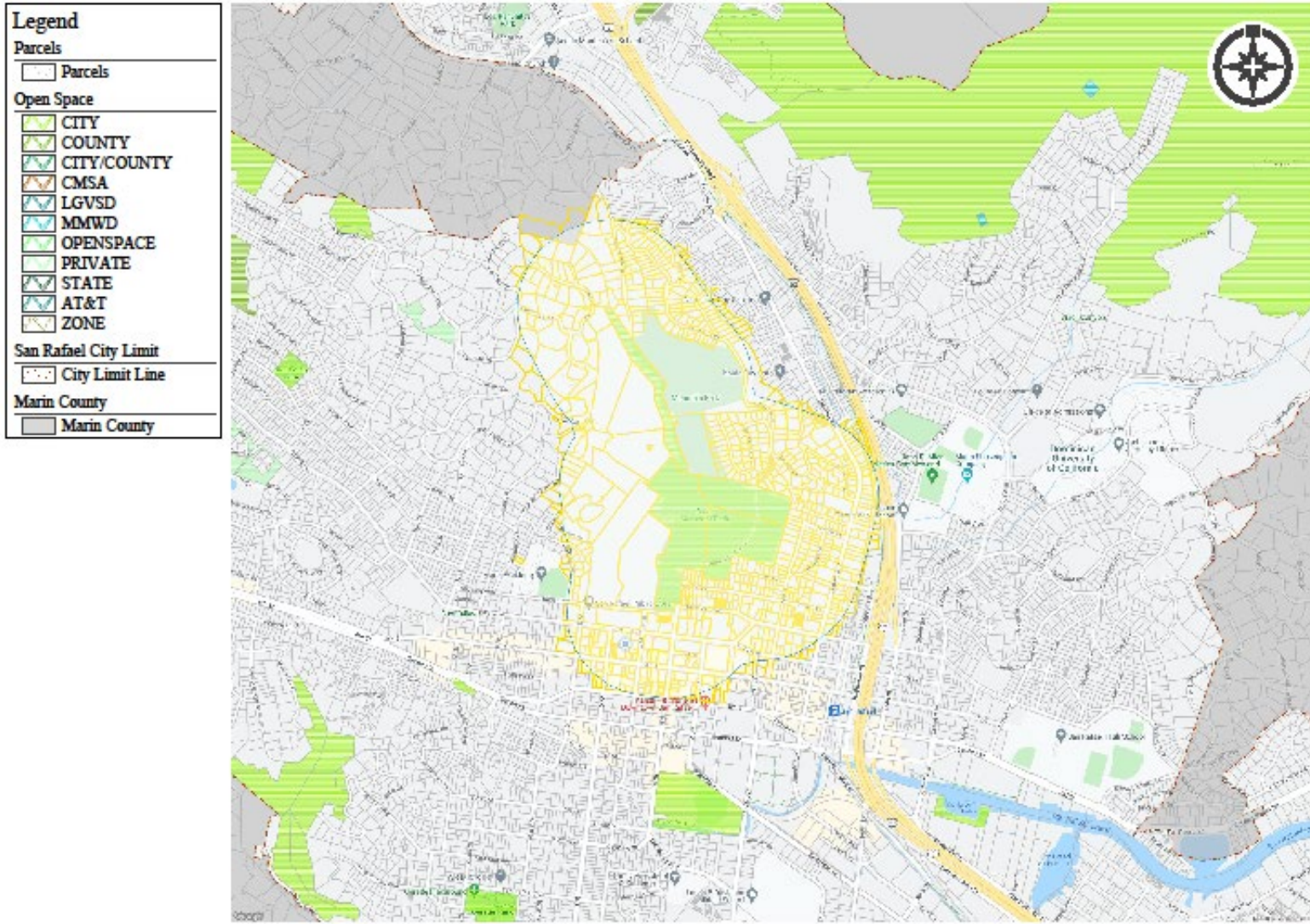


Dominican 1,000ft buffer

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

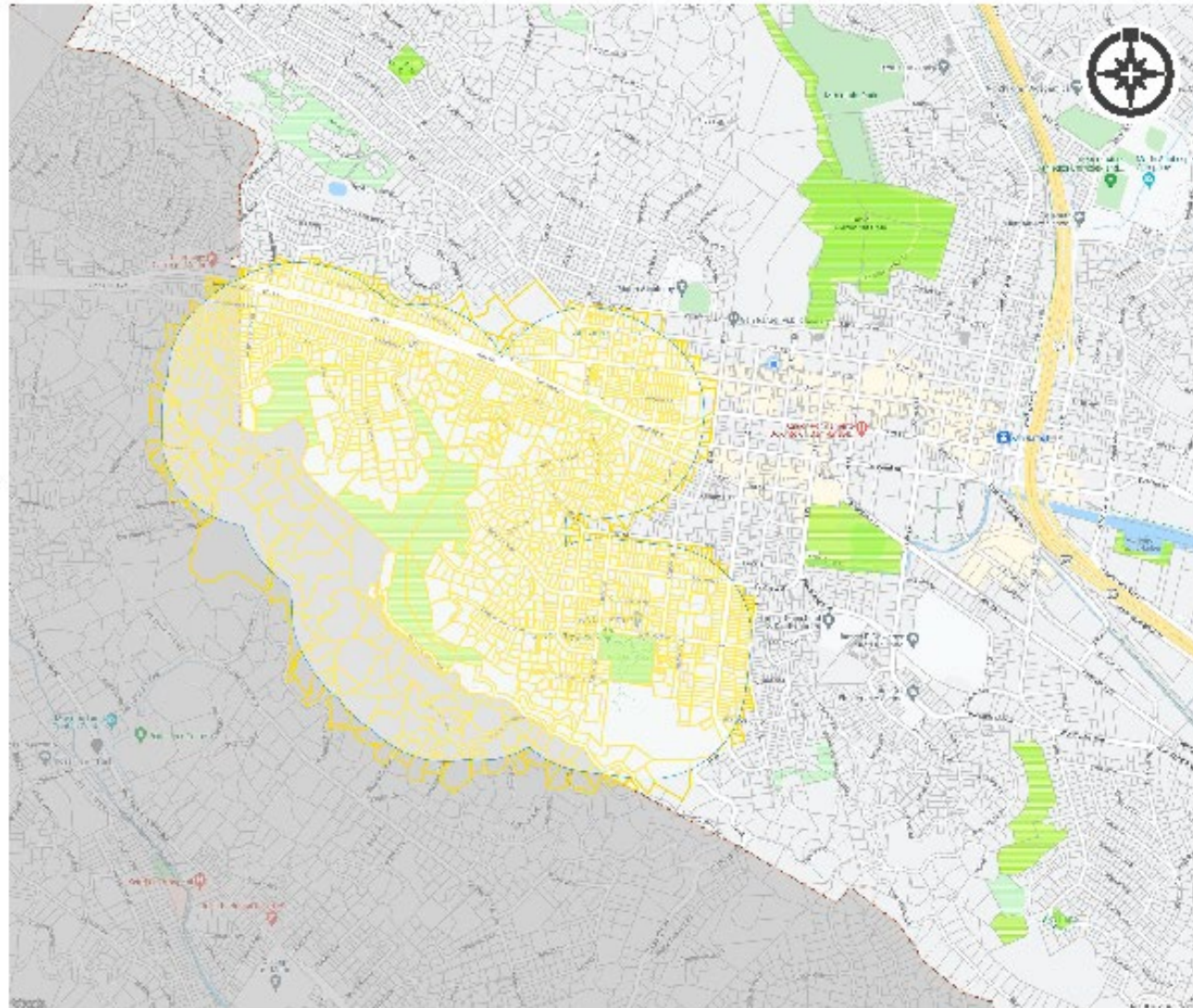


Lincoln Hill 1,000ft buffer



### 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



## **SUMMARY OF ORDINANCE NO. 2008**

### **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**

This Summary concerns a proposed ordinance of the City Council of the City of San Rafael, designated as Ordinance No. 2008, which will prohibit smoking in open space year-round and require designated smoking areas in multi-family housing complexes with more than 10 units located within 1,000 feet from open space and undeveloped lots. Ordinance No. 2008 is scheduled for adoption by the San Rafael City Council at its regular meeting of May 16, 2022. The City Clerk has been directed to publish this Summary pursuant to City Charter and California Government Code section 36933(c)(1).

## **SUMMARY OF ORDINANCE**

Ordinance No. 2008 amends Chapter 9.04.030, 9.040.090 and 19.10.060 of the San Rafael City Municipal Code, establishing the definition of undeveloped property, prohibiting smoking in open space year-round, and requiring the implementation of designated smoking areas in multi-family complexes with more than 10 units located within 1,000 feet from open space and undeveloped lots. This will further regulate smoking to further reduce the risk of wildfire and protect City residents, businesses and visitors. It will confirm that smoking in open space is prohibited year-round and subject to the same enforcement and penalties as other smoking restrictions. In addition, Ordinance No. 2008 will allow for signage in place of a designated smoking area if analysis demonstrates a designated area cannot effectively be implemented. The City Council's adoption of this ordinance allows San Rafael to serve the public health, safety, and welfare due to the known dangers to health and wildfire risk posed by smoking and preserve and protect open space and the natural environment for all to enjoy

For a complete copy of the text of the Ordinance, please contact Wildfire Mitigation Project Manager Mary Skramstad at (415-485-3025) or [mary.skramstad@cityofsanrafael.org](mailto:mary.skramstad@cityofsanrafael.org). Copies of the Ordinance are also available for public review by contacting the City Clerk's office by email to [city.clerk@cityofsanrafael.org](mailto:city.clerk@cityofsanrafael.org).

/s/ Lindsay Lara  
LINDSAY LARA  
San Rafael City Clerk  
Dated: 04/20/2022