

ORDINANCE NO. 19-019

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE
AMENDING CHAPTER 11.24
OF THE PACIFIC GROVE MUNICIPAL CODE
REGARDING SMOKING REGULATIONS**

WHEREAS, since 1976, the City of Pacific Grove (City) has regulated smoking as set forth in Pacific Grove Municipal Code (PGMC) Chapter 11.24; and

WHEREAS, the American Lung Association of California has requested the City consider adopting updates to its smoking regulations due to its perceived lack of nonsmoking areas, particularly in parks, along the coast, and in the downtown corridor; and

WHEREAS, in recent years, the tobacco industry has been using flavored tobacco products to target youth, and studies indicate that the majority of youth who experiment with tobacco start with flavored tobacco; and

WHEREAS, on September 18, 2019, Staff was directed to bring back to City Council proposed amendments to Chapter 11.24; and

WHEREAS, this ordinance amends Chapter 11.24 of the Municipal Code to expand the definition of smoking to include vaping, prohibit smoking in Multi-Unit residences and at special events, and prohibit flavored tobacco products; and

WHEREAS, notice of the public hearing was published or posted on November 28, 2019; and

WHEREAS, in the enactment of this ordinance, the City followed the California Environmental Quality Act (CEQA) guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq.; and

WHEREAS, enactment of this Ordinance is exempt from CEQA pursuant to section 15061(b)(3) of the Guidelines. The City Council determines it does not have the potential for causing a significant effect on the environment.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. Existing Municipal Code section 11.24.010 of Chapter 11.24, entitled "Purpose and findings" shall be amended by the deletion of all text shown in ~~strikeout~~

text (~~strikeout text~~) and by the addition of all text shown in bold, italic text (***bold italic text***), as follows:

11.24.010 Purpose and findings.

The council of the city of Pacific Grove hereby finds:

(a) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution; and

(b) Reliable studies have shown that breathing sidestream or secondhand smoke is a significant health hazard for certain population groups, including elderly people, those with cardiovascular disease, and those with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

(c) Health hazards induced by breathing sidestream or secondhand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm; and

(d) The smoking *or vaping* of tobacco, or any other plant *or substance*, is a proven danger to health; and

(e) Section 6404.5 of the California Labor Code prohibits smoking in a “place of employment,” with certain exceptions, and also provides that local government may regulate smoking in any areas not included within the definition of place of employment. The provisions of this chapter are intended to prohibit smoking in areas deemed by the council as worthy of regulation, such areas, in the opinion of the council, not covered by Labor Code Section 6404.5, *as may be amended*.

(f) The use of electronic smoking devices has increased significantly in recent years, and studies on electronic smoking devices’ vapor emissions and cartridge contents have found a number of dangerous substances.

SECTION 3. Existing Municipal Code section 11.24.020 of Chapter 11.24, entitled “Definitions” shall be amended by the deletion of all text shown in strikeout text (~~strikeout text~~) and by the addition of all text shown in bold, italic text (***bold italic text***), as follows:

11.24.020 Definitions.

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

“Beach” means all sand areas and adjacent water areas of a public park within the city of Pacific Grove.

“Characterizing Flavor” means a distinguishable taste or aroma of candy, chocolate, vanilla, fruit, berry, nut, herb, spice, honey or an alcoholic drink that is imparted to tobacco or tobacco smoke either prior to or during consumption. **“Characterizing flavor”** does not include a taste or aroma from tobacco.

“Common Area” means an area in a Multi-Unit Residence that residents of more than one Unit are entitled to enter or use, including, without limitation, halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

“Dining Area” means any area, including streets and sidewalks, available to or customarily used by the general public or an employee, and that is designed, established, or regularly used for consuming food or drink.

“Electronic Smoking Device” means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. **Electronic Smoking Device** includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

“Enclosed Area” means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

(a) any type of overhead cover, whether or not that cover includes vents or other openings and at least three walls or other physical boundaries of any height, whether or not those boundaries include vents or other openings; or

(b) four walls or other vertical boundaries that exceed six feet in height, whether or not those boundaries include vents or other openings.

“Flavored Tobacco Product” means any Tobacco Product that imparts a Characterizing Flavor, including but not limited to individual Flavored Tobacco Products, packages of Flavored Tobacco Products, or any combination thereof.

“Labeling” means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.

“Landlord” means any person or agent of a person who owns, manages, or is otherwise legally responsible for a Unit in a Multi-Unit Residence that is leased to a residential tenant, except that **“Landlord”** does not include a tenant who sublets a Unit (e.g., a sub-lessor).

“Manufacturer” means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a Tobacco Product; or imports a finished Tobacco Product for sale or distribution into the United States.

“Multi-Unit Residence” means property containing two or more residential Units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. Multi-Unit Residences do not include the following:

(a) a hotel or motel that meets the requirements of California Civil Code section 1940, subdivision (b)(2), as may be amended;

(b) a mobile home park;

(c) a campground;

(d) a single-family home, except if used as a child care or health care facility subject to licensing requirements; and

(e) a single-family home with a detached or attached accessory dwelling unit permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2, as may be amended, or this Code except if such single-family home or accessory dwelling unit is used as a child care or health care facility subject to licensing requirements.

“New Unit” means a Unit that is issued a certificate of occupancy and also means a Unit that is let for residential use for the first time after the effective date of this ordinance.

“Nonsmoking Area” means any area, whether in which Smoking is prohibited by:

(a) this chapter or other applicable law;

(b) binding agreement relating to the ownership, occupancy, or use of real property; or

(c) designation of a person with legal control over the area.

“Oceanfront” means the area within the city of Pacific Grove that abuts Sunset and Ocean View Blvd. and extends to the Monterey Bay. This area includes the recreational trail.

“Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold or offered for sale to a consumer.

“Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal

entity.

“Reasonable distance” shall mean a distance of 20 feet in any direction from an area in which smoking is prohibited.

~~“Smoke” or “smoking” means the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment, or the lighting or emitting or exhaling of the smoke of a pipe, cigar or cigarette of any kind, including but not limited to tobacco or any other weed or plant.~~

“Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “Smoke” includes, but is not limited to, tobacco smoke, vapors from an electronic device, cannabis smoke, and crack cocaine smoke.

“Smoking” means inhaling, exhaling, vaping, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic device, or any other device that delivers nicotine or other substances to a person.

“Tobacco Product” means:

(a) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff.

(b) Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.

(c) Notwithstanding any provision of subsections (a) and (b) to the contrary, Tobacco Product includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. Tobacco Product does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, as may be amended.

“Tobacco Retailer” means any person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, Tobacco Products or Tobacco Paraphernalia. “Tobacco Retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

“Unenclosed Area” means any area that is not an Enclosed Area.

“Unit” means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio. “Unit” includes, without limitation, an apartment, a condominium, a townhouse, a room in a senior facility, a room in a long-term health care facility, assisted living facility, or hospital; a room in a hotel or motel; a dormitory room; a room in a single room occupancy facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an accessory dwelling unit. Unit includes, without limitation, a New Unit.

SECTION 4. Existing Municipal Code section 11.24.030 of Chapter 11.24, entitled “Prohibition of smoking in designated enclosed areas” shall be amended by the deletion of all text shown in strikeout text (~~strikeout text~~) and by the addition of all text shown in bold, italic text (***bold italic text***), as follows:

11.24.030 Prohibition of smoking in designated ***Eenclosed Aareas.***

Smoking shall be prohibited in the following places within the city:

- (a) Within public buildings in areas available to and customarily used by the general public;
- (b) Public areas of all buildings available and customarily used by the general public ~~used for recreational purposes; provided, that this prohibition shall not apply when such an area is rented for a private, closed function;~~
- (c) Elevators, public restrooms, ~~indoor service lines,~~ buses, taxicabs and other means of public transit under the authority of the city;
- (d) Enclosed theaters, auditoriums and halls which are used for motion pictures, stage dramas and musical performances, ballets or other exhibitions, except when smoking is part of any such production;
- (e) Public schools and other public facilities under the control of another public agency, which are available to and are customarily, used by the general public, to the extent that the same are subject to the jurisdiction of the city.

SECTION 5. A new section 11.24.032 shall be added to Chapter 11.24, entitled “Prohibition of smoking in new and existing units of Multi-Unit residences” as follows:

11.24.032 Prohibition of smoking in new and existing units of Multi-Unit residences.

(a) Smoking is prohibited in all Units of a Multi-Unit Residence, including any associated exclusive use Enclosed Areas or Unenclosed-Areas, such as a private balcony, porch, deck, or patio as provided below:

(1) Smoking in any New Unit of a Multi-Unit Residence on or after October 1, 2020 is a violation of this Chapter.

(2) Smoking in an existing Unit of a Multi-Unit Residence that is not a New Unit, on or after October 1, 2021 is a violation of this Chapter.

(b) An owner may designate a Smoking area in a Multi-Unit residence if the area is:

(1) An Unenclosed Area;

(2) Located a reasonable distance from Unenclosed Areas primarily used by children or Unenclosed Areas with improvements that facilitate physical activity including but not limited to playgrounds, tennis courts, swimming pools, and school campuses;

(3) Located a reasonable distance from any Nonsmoking Area. The location of Nonsmoking Areas may change due to enactment of law, execution of an agreement, or other event that affects the Area's Smoking designation. If an event occurs that changes a Nonsmoking Area, a person with legal control over a designated Smoking area within less than a reasonable distance of that Nonsmoking Area must modify, relocate, or eliminate that designated Smoking Area so as to maintain compliance with the requirements of this Chapter;

(i) In the case of a Nonsmoking Area on an adjacent property established by private agreement or designation and not by this Chapter or other law, it shall not be a violation of this Chapter for a person with legal control to designate a Smoking area within a reasonable distance of the Nonsmoking Area unless that person has actual knowledge of, or a reasonable person would know of, the private agreement or designation. It shall not be a violation of this Chapter for a person to Smoke within a Nonsmoking Area if the area is erroneously designated as a Smoking area unless a reasonable person would know of the error.

(4) No more than ten percent (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated;

(5) Defined by a clearly marked perimeter;

(6) Identified by conspicuous signs; and

(7) Not overlapping any other Area where Smoking is prohibited by this Chapter or other law.

(c) No person with legal control over a Common Area of a Multi-Unit Residence in which Smoking is prohibited by this Chapter or other law shall knowingly permit the presence of ash trays, ash cans, or other receptacles designed for or primarily used for disposal of Smoking waste within the Area.

SECTION 6. Existing Municipal Code section 11.24.035 of Chapter 11.24, entitled “Prohibition of smoking at parks, playgrounds, and recreation areas” shall be amended by the deletion of all text shown in ~~strikeout text~~ and by the addition of all text shown in bold, italic text (*bold italic text*), as follows:

11.24.035 Prohibition of smoking *in Unenclosed Areas* ~~at parks, playgrounds, and recreation areas.~~

Smoking shall be prohibited in any outdoor area ~~that has been improved or developed by or on behalf of the city, and open to the general public for park or recreational use,~~ including but not limited to *outdoor dining*, ~~public parks, picnic areas, playgrounds, sports or playing fields, roadways, sidewalks, public or special events, farmer’s market, oceanfront, and beaches, including;~~

(e) It shall be a violation of this Chapter to dispose of any smoking materials or associated materials or throw or deposit in or upon any public or private property, driveway, parking area, street, alley, sidewalk, recreation trial, beach, open space, component of the storm drain system, or otherwise discarded or abandoned so that the same may cause or contribute to litter and pollution.

SECTION 7. A new section 11.24.040 shall be added to Chapter 11.24, entitled “Prohibition of the sale of Flavored Tobacco Products” as follows:

11.24.040 Prohibition of the sale of Flavored Tobacco Products.

(a) Tobacco Retailers or any of their agents or employees are prohibited from selling or offering for sale or possessing with intent to sell or offer for sale, any Flavored Tobacco Product.

(b) There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Flavored Tobacco Products possesses such Flavored Tobacco Products with intent to sell or offer for sale.

(c) There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, Manufacturer, or its employees or agents has:

(1) made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;

(2) used text or images on the Tobacco Product's Labeling or Packaging to explicitly or implicitly indicate the Tobacco Product imparts a Characterizing Flavor; or

(3) taken action directed to consumers that would be reasonably expected to cause consumers to believe the Tobacco Product imparts a Characterizing Flavor.

SECTION 8. Existing Municipal Code section 11.24.040 of Chapter 11.24, entitled "Posting requirements" shall be renumbered and amended by the deletion of all text shown in strikeout text (~~strikeout text~~) and by the addition of all text shown in bold, italic text (***bold italic text***), as follows:

11.24.0450 Posting Requirements.

"No smoking" signs, with letters of not less than one inch in height, or the international "no smoking" symbol shall be clearly and conspicuously posted in every building or other place where smoking is prohibited by this chapter.

SECTION 9. Existing Municipal Code section 11.24.050 of Chapter 11.24, entitled "Enforcement" shall be renumbered and amended by the deletion of all text shown in strikeout text (~~strikeout text~~) and by the addition of all text shown in bold, italic text (***bold italic text***), as follows:

11.24.0560 Enforcement.

(a) Enforcement of this chapter shall be implemented by the city manager or ~~his or her~~ designee.

(b) Anyone who desires to register a complaint hereunder may initiate enforcement with the city manager or ~~his or her~~ designee.

(c) Any owner, manager, operator or employee of any establishment controlled by this chapter shall have the right to inform persons violating this chapter of the appropriate provisions hereof.

SECTION 10. Existing Municipal Code section 11.24.060 of Chapter 11.24, entitled “Penalty for violations” shall be renumbered and amended by the deletion of all text shown in strikethrough text (~~strikethrough text~~) and by the addition of all text shown in bold, italic text (***bold italic text***), as follows:

11.24.0670 Penalty for violations.

(a) It is unlawful and an infraction for any person who owns, manages, operates or otherwise controls the use of any premises subject to the provisions of this chapter to fail to: ~~properly~~ post signs required hereunder, ~~properly~~ set aside nonsmoking areas, ***and*** comply with any other requirements of this Chapter.

(b) It is unlawful and an infraction for any person to smoke in any area where smoking is prohibited by ~~the provisions of~~ this chapter or other applicable law.

(c) Any violations of ~~any provisions of~~ this chapter may be enforced pursuant to chapter 1.16 ***or 1.19*** PGMC.

SECTION 11. Existing Municipal Code section 11.24.070 of Chapter 11.24, entitled “Other applicable laws” shall be renumbered and amended by the deletion of all text shown in strikethrough text (~~strikethrough text~~) and by the addition of all text shown in bold, italic text (***bold italic text***), as follows:

11.24.0780 Other applicable laws.

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

SECTION 12. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 13. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement effect this Ordinance.

SECTION 14. In accord with Article 15 of the City Charter, this ordinance shall become effective on the thirtieth (30th) day following passage and adoption hereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS 18th day of December, 2019, by the following vote:

AYES: Mayor Peake, Mayor Pro Tem Huitt, Councilmembers Amelio, Garfield, McAdams, Smith and Tomlinson.

NOES: None.

ABSENT: None.

APPROVED:

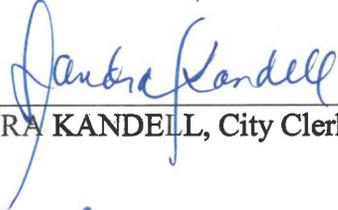


BILL PEAKE, Mayor

ATTEST:

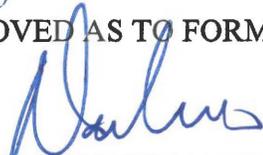
DATED:

12/19/19



SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:



DAVID C. LAREDO, City Attorney