

REGULAR

NUMBER: 227.5

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS AMENDING THE MILPITAS MUNICIPAL CODE TO REGULATE SMOKING IN UNENCLOSED PLACES

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of May 1, 2012, upon motion by Councilmember Giordano and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- Tobacco-related illness is the leading cause of preventable death in the United States, accounting for about 443,000 deaths each year; and
- Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth; and
- Some of the most common types of cancers including stomach, liver, uterine, cervix, and kidney are related to tobacco use; and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke; and
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure; and
- The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm; and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for as many as 3,000 deaths from lung cancer and 46,000 deaths from heart disease among nonsmokers each year in the United States; and
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty percent; and
- Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis in as many as 300,000 children in the United States under the age of 18 months each year; and exacerbates childhood asthma; and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- The total annual economic burden of smoking in the United States is \$193 billion; and
- From 2001-2004, the average annual health care expenditures attributable to smoking were approximately \$96 billion; and
- The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over \$10 billion per year in the United States in 2005; and
- California's Tobacco Control Program saved the state and its residents \$86 billion in health care expenditures between the year of its inception, 1989, and 2004, with savings growing yearly; and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does occur at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind and number and proximity of smokers; and

- Irritation from secondhand smoke begins at levels as low as 4 micrograms per cubic meter, and in some outdoor situations this level can be found as far away as 13 feet from the burning cigarette; and
- Smoking cigarettes near building entryways can increase air pollution levels by more than two times as compared to background levels, with maximum levels reaching the “hazardous” range on the federal Environmental Protection Agency’s Air Quality Index; and
- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 25 feet away from the source of the smoke, about the width of a two-lane road; and

WHEREAS, cigarette butts are a major and persistent source of litter, as evidenced by the following:

- It is estimated that over two billion cigarette butts are discarded every day worldwide, and that Americans alone discard more than 175 million pounds of cigarette butts every year; and
- Cigarette butts are often cast onto sidewalks and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons and ultimately the ocean; and
- Cigarette filters, made of plastic cellulose acetate, take approximately 15 years to decompose; and

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs, as evidenced by the following:

- Cities with smoke-free laws see an appreciable reduction in hospital admittances for heart attacks in the months and years after such laws are passed; and
- Smoking bans help people reduce the number of cigarettes they smoke or quit altogether; and
- Strong smoking regulations for restaurants decrease the number of children who transition from experimenting with smoking to becoming actual smokers; and

WHEREAS, the U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found they contained carcinogens and toxic chemicals to which users and bystanders could potentially be exposed; and

WHEREAS, creating smoke-free areas helps protect the health of the 86.9% of Californians who are nonsmokers; and

WHEREAS, society is becoming less tolerant and less accepting of cigarette smoking, as evidenced by the following,

- A 2008 survey of California voters found that 97% thought that secondhand smoke is harmful, 88% thought secondhand smoke was harmful even outdoors, 65% were bothered by secondhand smoke, and 73% support laws restricting smoking in outdoor public places; and
- People living in cities with strong smoke-free air laws are more likely to believe smoking is not acceptable and that smokers should attempt to quit smoking; and
- As of 2010, there are at least 273 California cities and counties with local laws restricting smoking in recreational areas, 85 with smoke-free outdoor dining laws, and 23 that restrict smoking on sidewalks in commercial areas; and

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions; and state law prohibits smoking within 20 feet of entryways and operable windows of government buildings; and

WHEREAS, there is no constitutional right to smoke.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF CHAPTER 215 OF TITLE V OF THE MILPITAS MUNICIPAL CODE

A new Section V-215-1.15(e) of the Milpitas Municipal Code is hereby added to read as follows:

(e) Public Park shall mean any area owned, operated and maintained by the City of Milpitas that is set aside and maintained for park and public recreation use.

SECTION 3. AMENDMENT OF CHAPTER 215 OF TITLE V OF THE MILPITAS MUNICIPAL CODE

A new Section V-215.125(c) of the Milpitas Municipal Code is hereby added to read as follows:

(c) All Public Parks owned and operated by the City of Milpitas.

SECTION 4. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.