

Town of Yountville

Ordinance Number 24-530

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF YOUNTVILLE
AMENDING SECTIONS 8.28.020 AND 8.28.060 OF CHAPTER 8.28 OF TITLE 8 OF
THE YOUNTVILLE MUNICIPAL CODE REGARDING SMOKING IN PUBLIC PLACES
AND FINDING AMENDMENTS EXEMPT FROM THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT (CEQA)**

WHEREAS, Section 7 of Article XI of the California Constitution authorizes the Town to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

WHEREAS, Health & Safety Code sections 118910 and 104495 and Labor Code section 6404.5 authorize the Town Council to regulate the smoking of tobacco in any manner not inconsistent with law.

WHEREAS, the Town finds it necessary and desirable to amend Chapter 8.28 of the Yountville Municipal Code to regulate the smoking of e-cigarettes and other vaporized substances in public places and require that workplace smoking policies be updated.

WHEREAS, the California Health and Safety Code (HSC) Division 103 (Disease Prevention and Health Promotion) Part 3 (Risk Reduction) Chapter 1 (Tobacco Control) Article 1 (Tobacco Use Prevention) Section 104495 establishes definitions for the Tobacco Use Prevention section, defining "Tobacco Product" as:

1. A 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, or snuff
2. An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah
3. Any component, part, or accessory of a tobacco product, whether or not sold separately

and establishes an exemption for nicotine replacement products approved by the United States Food and Drug Administration.

WHEREAS, the Town Council has a substantial interest in protecting the community from the harms of tobacco use, including secondhand exposure.

WHEREAS, the Town Council now wishes to amend the Yountville Municipal Code to implement this change.

Now, therefore, the Town Council of the Town of Yountville does ordain as follows:

SECTION 1. RECITALS: The foregoing recitals are true and correct and incorporated into the findings herein.

SECTION 2. RECORD: The Record of Proceedings ("Record") upon which the Town Council bases its decision includes, but is not limited to: (1) the staff reports, Town files and records and other documents prepared for and/or submitted to the Town relating to the proposed Ordinance, (2) the evidence, facts, findings and other determinations set forth in this Ordinance, (3) the Town of Yountville General Plan and its certified final EIR and the Yountville Municipal Code, (4) all designs, plans, studies, data and correspondence submitted to the Town in connection with the proposed Ordinance, (5) all documentary and oral evidence received at public workshops, meetings, and hearings or submitted to the Town relating to the proposed Ordinance, and (6) all other matters of common knowledge to the Town Council including, but not limited to, Town, state, and federal laws, policies, rules, regulations, reports, records and projections related to development within the Town of Yountville and its surrounding areas.

SECTION 3. CODE AMENDMENT: YMC section 8.28.020 is hereby repealed and replaced to read as follows (additions denoted with underlined text and deletions denoted with ~~struck through~~ text):

§ 8.28.020. Definitions.

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

"Bar" means an enclosed area that is primarily devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.

"Business" means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

"Dining area" means any enclosed area containing a counter or tables upon which meals are served.

"Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

"Employer" means any person, partnership, corporation, or nonprofit entity, including a municipal corporation, who employs the services of one or more persons.

"Enclosed" means closed in by roof and four walls with appropriate openings for ingress and egress.

"Nonprofit entity" means any corporation, unincorporated association, or other entity created for charitable, educational, political, social, or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a "nonprofit entity" within the meaning of this section.

"Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, and restrooms, conference and class rooms, cafeterias and hallways. Except:

1. A private residence is not a place of employment, unless it is used as a childcare or health care facility.
2. The dining area of a restaurant is not a place of employment.

"Public place" means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to: banks, educational facilities, health facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms.

"Restaurant" means any coffee shop, cafeteria, tavern, sandwich stand, soda fountain, private or public school cafeteria, and any other eating establishment, organization, club, boardinghouse, or guest house, which gives or offers food for sale to the public, guests, patrons or employees, except that the term "restaurant" shall not include a cocktail lounge or tavern if such cocktail lounge or tavern is a "bar" as defined in this section.

"Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories.

"Self-service merchandising" means open display of tobacco products to which the public has access without the intervention of an employee.

"Semi-enclosed" means any area covered by a solid (nonpermeable) roof of any type, including, but not limited to, open-sided tents and kiosks.

"Service line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service includes the exchange of money.

"Smoking" means inhaling, exhaling, burning, vaping, or carrying any lighted pipe, cigar, tobacco product, or cigarette of any kind, or any other combustible substance.

"Sports arena" means sports pavilions, gymnasiums, health spas, swimming pools, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.

"Tobacco product" means any of the following: tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.

1. A 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, or snuff.
2. An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.
3. Any component, part, or accessory of a tobacco product, whether or not sold separately.

"Tobacco vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a tobacco product.

"Vendor-assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.

SECTION 4. CODE AMENDMENT: YMC section 8.28.060 is hereby repealed and replaced to read as follows (additions denoted with underlined text and deletions denoted with ~~struck through~~ text):

8.28.060. Places of employment—Regulations.

~~Within 60 days of the effective date of this chapter, e~~Each employer and each place of employment located within the Town shall adopt, implement, make known, and maintain a written smoking policy. Such policy shall be reviewed and revised as appropriate on or before January 1 of each year and ~~which~~ shall contain, at a minimum, the following requirements:

A. Smoking shall be prohibited in all enclosed and semi-enclosed facilities within a place of employment without exception. This includes common work areas,

auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles and all other enclosed facilities.

B. The smoking policy shall be communicated to all employees within three weeks of its adoption and/or revision, and at least annually thereafter.

C. All employers shall supply a written copy of the smoking policy to any prospective employee who so requests.

D. All employees shall comply with these nonsmoking provisions and shall be responsible for their implementation in their places of employment.

E. "No Smoking" signs shall be conspicuously posted at building entrances and in employee lounges, cafeterias and lunchrooms.

F. Places of employment exempt from the prohibition on smoking in other sections of this chapter shall also be exempt from this section.

SECTION 5. CEQA: The Town Council has considered all of the evidence in the Record, including the staff reports, the testimony received during the meeting on the matter held by the Town Council, and hereby determines that this Ordinance is exempt from review under the California Environmental Quality Act (CEQA). Pursuant to section 15061(b)(3) of the CEQA Guidelines, CEQA applies only to projects which have the potential for causing a significant effect and/or physical change on the environment. This Ordinance will not result in a significant foreseeable environmental impact or physical change in the environment.

SECTION 6. SEVERABILITY: If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases or portions might be declared invalid or unconstitutional.

SECTION 7. EFFECTIVE DATE: This Ordinance shall take effect 30 days after final adoption.

SECTION 8. INCONSISTENT PROVISIONS: Any provision of the Yountville Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Ordinance.

SECTION 9. CERTIFICATION: The Town Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Within 15 days from the date of passage of this Ordinance, the Town Clerk shall post a copy of the Ordinance in accordance with California Government Code in at least three public places in the Town.

INTRODUCED by the Town Council at a regular meeting held on August 6, 2024.

PASSED AND ADOPTED by the Town Council at a regular meeting held on the September 17, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Margie Mohler, Mayor

ATTEST:

Hilary Gaede, Communications Director/ Town Clerk

APPROVED AS TO FORM:

Gary B. Bell, Town Attorney

I, Hilary Gaede, TOWN CLERK of the Town of Yountville, California, do hereby certify that the foregoing was regularly introduced and placed upon its first reading at a regular meeting of the Town Council on the 6th day of August, 2024. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the Town Council on the 17th day of September 2024, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Hilary Gaede, Communications Director/ Town Clerk