



Council Agenda Report

To: Mayor Farrer and the Honorable Members of the City Council

Prepared by: Jesse Bobbett, Community Services Director

Approved by: Reva Feldman, City Manager

Date prepared: May 29, 2020 Meeting date: June 22, 2020

Subject: Ordinance Regarding Smoking Regulations

RECOMMENDED ACTION: 1) After the City Attorney reads the title, introduce on first reading Ordinance No. 466 (Attachment 1) amending Malibu Municipal Code (MMC) Title 9 (Public Peace and Welfare) Chapter 9.34 (Smoking Regulations) to regulate smoking in the City, repealing MMC Sections 9.04.010 and 12.08.035 (Ordinance No. 265), and finding the same exempt from the California Environmental Quality Act; and 2) Direct staff to schedule second reading and adoption of Ordinance No. 466 for the July 13, 2020 Regular City Council meeting.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal Year 2019-2020. It is a part of normal staff operations.

DISCUSSION: The City's insurance carrier, California Joint Powers Insurance Authority (JPPIA) has recommended that the City update its ordinance regarding smoking regulations, including several sections of the MMC that will apply to the new Temporary Skate Park. The review was completed ensure that the MMC adequately protects the City against liability in addition to providing a safe and secure facility for visitors.

The MMC, as currently drafted, prohibits smoking in many public areas; however, it does not prohibit smoking in City parks and open spaces. Additionally, the MMC does not address vaping and the use of electronic smoking devices in areas where smoking is prohibited, including outdoor dining areas, public right of way, the Malibu Pier, beaches, public events, and meetings of the City Council, Commissions, Boards, or Committees.

The MMC addresses smoking regulations for these areas in three separate sections:

Title 9 – Offenses Against Public Peace and Decency

- Section 9.04.010 – Smoking Prohibited

Title 9 – Offenses Against Public Peace and Decency

- Chapter 9.34 - Smoking Regulations

Title 12 - Parks, Beaches and Other Recreation Areas

- Section 12.08.035 - Smoking prohibited on beaches

Staff researched municipal code language regarding smoking regulations in other cities and revised MMC Chapter 9.34 to:

- Consolidate language from MMC Sections 9.04.010 and 12.08.035 into Chapter 9.34
- Prohibit smoking in City parks and open spaces
- Amend Section 9.34.010 (Definitions) to include vaping and the use of electronic smoking devices
- Repeal MMC Sections 9.04.010 and 12.08.035

Staff recommends that the Council: 1) introduce on first reading Ordinance No. 466 (Attachment 1) amending Malibu Municipal Code (MMC) Title 9 (Public Peace and Welfare) Chapter 9.34 (Smoking Regulations) to regulate smoking in the City, repealing MMC Sections 9.04.010 and 12.08.035 (Ordinance No. 265), and finding the same exempt from the California Environmental Quality Act; and 2) direct staff to schedule second reading and adoption of Ordinance No. 466 for the July 13, 2020 Regular City Council meeting.

ATTACHMENT: Ordinance No. 466

ORDINANCE NO. 466

AN ORDINANCE OF THE CITY OF MALIBU AMENDING TITLE 9 (PUBLIC PEACE AND WELFARE) OF THE MALIBU MUNICIPAL CODE (MMC), CHAPTER 9.34 (SMOKING REGULATIONS) TO REGULATE SMOKING IN THE CITY, REPEALING MMC SECTIONS 9.04.010 AND 12.08.035 OF THE MALIBU MUNICIPAL CODE, AND FINDING THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Malibu does ordain as follows:

SECTION 1. Purpose.

This chapter recognizes the right of residents and visitors to the City to be free from unwelcome secondhand smoke. The purpose of this Ordinance is to consolidate the City's smoking regulations into one chapter by bringing the smoking regulations found in other parts of the Malibu Municipal Code (Sections 9.04.010 and 12.08.035) into Chapter 9.34 and to promote and protect the public health, safety, and general welfare by prohibiting smoking in public places, in City facilities and on City property to prevent exposure to unwelcome secondhand smoke. This chapter is further intended to ensure a cleaner and more hygienic environment for the City, its residents and visitors, and its natural resources

SECTION 2. Chapter 9.34 Smoking Regulations is hereby amended to read in its entirety as follows:

Chapter 9.34

SMOKING REGULATIONS

- 9.34.010 Definitions.**
- 9.34.020 Smoking in outdoor dining areas prohibited.**
- 9.34.030 Posting of signs and providing smokers waste receptacles.**
- 9.34.040 Smoking at public events prohibited.**
- 9.34.050 Smoking prohibited in parks and on beaches.**
- 9.34.060 Violation—Penalty.**
- 9.34.070 Other Applicable Laws**

9.34.010 Definitions

For purposes of this chapter, the following terms shall have the following meanings:

“Outdoor dining area” means any unenclosed area located on private or public property made available to or customarily used by the general public that is designed, established or regularly used for consuming food and/or beverages or where food and/or beverages are served

whether or not for compensation. This includes, but is not limited to, restaurants, hotels, bar standing and seating areas, supermarkets, patios, and coffee shops.

“Public event” means an activity, ceremony, event, fair, farmer’s market, function, gathering, meeting, pageant, or program—whether athletic, civic, cultural, charitable, community, entertainment, intellectual, recreational, or social—that: (1) is open to the general public whether or not a ticket or an admission fee is required; (2) takes place outside of an enclosed structure or building; and (3) a person, employer, business, non-profit entity, or the city sponsors, hosts, organizes, or operates. “Public event” shall also include the meeting place of the city council or any commission, board or committee of the city during any meeting thereof, including any recess.

“Smoking” means the inhaling, exhaling, or emitting of fumes, vapor or aerosol, in any manner or in any form, any lighted or activated pipe, cigar, cigarette, electronic smoking device, or other smoking product or equipment used to burn any tobacco product, weed, plant, or any other combustible substance.

“Smoking outpost” means the non-enclosed area, location, place, or site—identified by a posted “Smoking Permitted” sign—that is cordoned off or specifically designated, within which a person may smoke.

9.34.020 Smoking in outdoor dining areas prohibited.

Smoking is prohibited in all outdoor dining areas located on private or public property, including the public right-of-way. Smoking is also prohibited within twenty (20) feet of an outdoor dining area, except while actively passing by on the way to another destination.

9.34.030 Posting of signs and providing smokers waste receptacles.

Any business with an area subject to the prohibition set forth in Section 9.32.020 of this chapter shall post or cause to be posted and shall maintain “no smoking” signs in conspicuous locations within said area. All such signs shall: (1) be no greater than one square foot in size; (2) be prominently displayed; (3) clearly state “no smoking” and/or use the international “no smoking” symbol; and (4) reference Section 9.34.020 of the Malibu Municipal Code. Any business with an area subject to the prohibition set forth in Section 9.34.020 shall also provide a smoker’s waste receptacle twenty (20) feet from the entry way or, where that distance is not possible, at the farthest possible point away from the entry way.

9.34.040 Smoking at public events prohibited.

- A. Smoking is prohibited at, and within twenty (20) feet of, any public event except within a designated smoking outpost.
- B. For purposes of this section, any designated smoking outpost:

1. Must be located the greatest distance practicable, but at least twenty (20) feet away, from an opening, or an entrance or exit, to an enclosed area;
2. Must measure fifty (50) square feet or less in total area;
3. Must not be combined or merged with another on-site smoking outpost;
4. Must not be located within twenty (20) feet of any place where food or beverage is being prepared or sold;
5. Must have a clearly marked perimeter;
6. Must not be located within two hundred (200) feet of another designated smoking outpost;
7. Must be identified by one or more conspicuously posted signs; and
8. Must have at least one smoker's waste receptacle.

9.34.050 Smoking prohibited in parks, open spaces, and on beaches.

Notwithstanding the provisions of Section 12.08.020(A), it is unlawful to smoke in any public park, any open space, any public beach or any area of the Malibu Pier not designated for smoking within the City of Malibu. For the purpose of this section, "beach" shall not include parking lots or roadways.

9.34.060 Violation—Penalty.

In addition to any other criminal, civil or other legal remedy established by law that may be pursued to address violations of the municipal code, violations of the provisions of this chapter are subject to the administrative penalty provisions of Chapter 1.10.

9.34.070 Other Applicable Laws

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

SECTION 3. Environmental Review.

This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The City Council hereby finds that under Section 15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. It also finds the Ordinance is

exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 as the prohibition of smoking will benefit the environment by removing air pollution and smoking related waste such as cigarette butts while decreasing the risk of fire in the City.

SECTION 4. Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

The City Council hereby declares that it would have passed this Ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

SECTION 5. Repealing of Sections 12.08.035 and 9.04.010.

Sections 9.04.010 and 12.08.035 (Ordinance No. 265) are repealed in their entirety.

SECTION 6. Certification.

The City Clerk shall certify the passage and adoption of this Ordinance and enter it into the book of original Ordinances.

PASSED, APPROVED AND ADOPTED this ____ day of ____ 2020.

KAREN FARRER, Mayor

ATTEST:

HEATHER GLASER, City Clerk

Date: _____

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

CHRISTI HOGIN, City Attorney