

ORDINANCE NO. 617

AN ORDINANCE OF THE CITY OF FOSTER CITY AMENDING FOSTER CITY MUNICIPAL CODE TITLE 8, HEALTH AND SAFETY, CHAPTER 8.05, REGULATION OF SMOKING, SECTIONS 8.05.020, DEFINITIONS, AND 8.05.030, PROHIBITION OF SMOKING

CITY OF FOSTER CITY

IT IS SO ORDAINED by the City Council of the City of Foster City as follows:

Section 1. Title 8, Health and Safety, Chapter 8.05, Regulation of Smoking, Sections 8.05.020 and 8.05.030(A) of the Foster City Code are hereby amended as follows:

**8.05.020 Definitions.**

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

“Business” means any sole proprietorship, partnership, joint venture, corporation or other entity formed for either profitmaking or charitable purposes, including without limitation by reason of enumeration manufacturing concerns, retail or commercial establishments where goods or services are sold, and professional corporations or other entities where legal, medical, dental, engineering, architectural, financial or other professional services are delivered.

“Common areas” means the entire common interest development except the separate interests therein or those portions of apartment properties which are maintained on behalf of and at the expense of all residents, which may also consist of mutual or reciprocal easement rights appurtenant to the separate interests. It does not include areas determined to be “exclusive use common areas.”

“Common interest development” means a housing development such as condominiums, townhouses, or single-family homes, that allows individual owners the use of common areas and provides for a system of self-governance through an association of the homeowners within the development.

“Dining area” means an area containing tables or counters upon which meals are served.

“Employee” means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his/her services for a nonprofit agency.

“Employer” means any person, partnership, corporation, business, governmental agency, municipal corporation, nonprofit entity or person having one or more employees.

“Enclosed” means closed in by a roof and by four or more connected floor-to-ceiling walls with appropriate openings for ingress and egress.

“Exclusive use common area” means a portion of the common area designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests.

“Nonprofit entity” means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character building, political, social or other similar purposes, the net proceeds from which are not for private financial gain. A public agency is not a nonprofit entity within the meaning of this chapter.

“Open to the public” means available for use by or accessible to the general public during the normal course of business conducted by either private or public entities.

“Parking garage” means an enclosed garage where members of the general public park their vehicles.

“Place of employment” means any enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to auditoria, conference and classrooms, employee cafeterias, employee lounges and restrooms, hallways, meeting rooms, private offices, stairs, hallways, work areas, all company vehicles not permanently assigned to one person, and all facilities utilized for manufacturing, processing, assembly, maintenance or repair of any products, goods, equipment, tools, appliances, furnishings or other objects. Private residences and private vehicles are not places of employment except during the time that the residence or vehicle is used as a child care or health care facility.

“Primary entrance” means an entryway prominently delineated with signage and used by members of the public as the main source of access for ingress/egress to a facility.

“Private function” means a gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement or dining where membership or specific invitation is a prerequisite to entry and where such event is not intended for attendance by the public.

“Private residence” means all private single-family and multi-family residential living units, including apartment rental units.

“Public Place” means any area to which the public is invited or in which the public is permitted where goods or services are sold or provided, including but not limited to retail

establishments, restaurants (all available seating) retail food markets, shopping centers and their parking lots, places of employment, professional corporations or other entities where legal, medical, dental, engineering, architectural, financial or other professional services are delivered, educational facilities, health facilities, bingo parlors, public transportation facilities, reception areas, libraries and museums, retail food production and marketing establishments, restrooms, service lines, elevators, escalators, hallways, lobbies, reception areas, stairways, theaters, sports arenas, automobile dealerships, barber or beauty shops, cleaners, laundromats, polling places and places of public assembly.

“Public property” means property or rights-of-way that are owned or under the control of the City of Foster City or the Estero Municipal Improvement District.

“Restaurant” means any coffee shop, cafeteria, short order cafe, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria or eating establishment, and any other eating establishment, organization, club (including veterans’ club), boardinghouse or guesthouse, the primary function of which is to give, sell or offer for sale food to the public, guests, patrons or employees.

“Retail tobacco store” means a retail store utilized primarily for the sale of tobacco products and tobacco accessories and in which the sale of other products is merely incidental.

“Sidewalk” means a pedestrian walkway as otherwise defined in Section 5600 of the Streets and Highways Code, as well as all privately maintained pathways in the City, including but not limited to commercial and retail developments, common interest developments, apartments, multifamily developments, single family developments, and shopping centers.

“Semiprivate room” means a room in a public or private health care facility containing two beds for patients of the facility.

“Separately ventilated” means the ventilation system for an enclosed indoor smoking area must not allow air from the enclosed indoor smoking area to be circulated, filtered or otherwise intermingled with air used to ventilate nonsmoking areas.

“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 involves the exchange of money.

“Smoke or smoking” means and includes inhaling or exhaling upon, burning or carrying any lighted cigarette, cigar, pipe, hookah, weed, plant or other combustible substance used for the personal habit commonly known as smoking or an activated electronic cigarette or similar device used for the personal habit commonly known as vaping.

“Smoking victim” means any person present in a place where smoking is prohibited pursuant to this chapter at the time that smoking occurs in such a place.

“Sports arena” means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

**8.05.030 Prohibition of smoking.**

Smoking shall be prohibited in the following Public Places and other places similarly situated, including, but not limited to, the following areas:

- A. “Public Places” as defined in this chapter, unless specifically excepted in this chapter;
- B. Elevators, escalators and stairways;
- C. Public restrooms;
- D. Service lines;
- E. Buses, taxicabs and other means of public transit operating under the authority of the city, and ticket, boarding and waiting areas for public transit;
- F. All reception and waiting areas;
- G. Galleries, libraries and museums;
- H. All enclosed areas, including buildings owned or operated by the city; also included in this definition are all public vehicles owned or operated by the city and not permanently assigned to one person;
- I. Restaurants;
- J. Retail stores;
- K. Shopping centers, including their parking lots and sidewalks;
- L. Libraries and museums;
- M. Any building not open to the sky that is used primarily for exhibiting any motion picture, stage drama, lecture, musical recital or other similar performance, except when smoking is part of any such production;
- N. Enclosed sports arenas and convention halls;

- O. Doctors' offices, dentists' offices, waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities and offices of all other health care providers;
- P. Hotels and motels, which shall designate at least fifty percent of the rooms as fixed "nonsmoking" rooms and shall post signs informing guests of the requirement. No ashtrays or matches shall be supplied in such rooms. Notice of prohibition of smoking shall be posted;
- Q. All community-wide special events, including but not limited to the annual Arts and Wine Festival, the Fourth of July celebration and summer concerts;
- R. Areas that are on or adjacent to public property, including all city facilities and parks, sidewalks, pathways, pedways and parking lots. If required by law, the city shall designate an outdoor smoking area for city buildings that are places of employment;
- S. All sidewalks;
- T. All streets, except within closed vehicles;
- U. All apartment units for which new leases are executed subsequent to the effective date of this Ordinance, their balconies and patios. For apartment units with existing leases, their balconies and patios, smoking shall be prohibited commencing twelve months after the effective date of this Ordinance. This subsection shall be reviewed by the city council within six months of the effective date of the Ordinance codified in this section;
- V. Condominiums and townhomes with shared common walls, floors or ceilings, their balconies and patios;
- W. All indoor and outdoor common areas of apartment units, condominiums and townhomes, including but not limited to lobbies, hallways, stairwells, elevators, escalators, lawns, gardens, balconies, patios, yards and driveways. Exception: Smoking may be permitted in specifically designated areas of condominium, townhome and apartment facilities as long as the designated area is not located within thirty feet of an entrance/doorway, and marked with signage identifying the smoking area. The area, if interior, shall be fully enclosed, separately ventilated, and not the only space available for a particular activity or service;
- X. Senior citizen retirement or residential care houses, nursing homes or licensed community care facilities. Exception: Smoking may be permitted in specifically designated areas of the facilities listed in this subsection as long as the designated area is not located within fifty feet of an entrance/doorway and is marked with signage identifying the smoking area. The area, if interior, shall be

fully enclosed, separately ventilated, and not the only space available for a particular activity or service.

Section 2. 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 portions of this Ordinance. The City Council does hereby declare that it should 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 be declared invalid or unconstitutional.

Section 3. Taking Effect. This Ordinance shall take effect and be in force thirty (30) days from and after its adoption.

Section 4. Posting. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall have it posted in three (3) public places designated by the City Council.

This Ordinance was introduced and read on the 6th day of August 2018, and passed and adopted on the 20th day of August 2018, by the following vote:

AYES: Councilmembers Bronitsky, Mahanpour, Perez, Pollard and Mayor Hindi

NOES: None

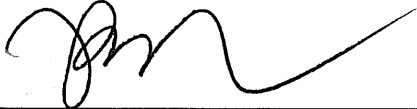
ABSENT: None

ABSTAIN: None



SAM HINDI, MAYOR

ATTEST:



PRISCILLA TAM, CITY CLERK

## CERTIFICATE OF POSTING

I, Priscilla Tam, hereby certify as follows:

That I am, and at all time herein mentioned, was the duly acting and qualified City Clerk/District Secretary of the **City of Foster City/Estero Municipal Improvement District**, Foster City, San Mateo County, California.

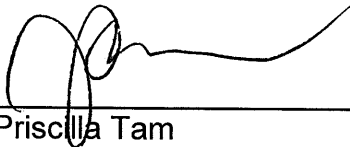
I further certify to the proper posting of:

Ordinance No. 617, "An Ordinance of the City of Foster City Amending Foster City Municipal Code Title 8, Health and Safety, Chapter 8.05, Regulation of Smoking, Sections 8.05.020, Definitions, and 8.05.030, Prohibition of Smoking (First Reading on August 6, 2018)"

in the following three public places of the **City of Foster City/Estero Municipal Improvement District**, Foster City, San Mateo County, California:

1. Recreation Center Lobby  
650 Shell Boulevard
2. Council Chambers (not a mandatory posting site)  
620 Foster City Boulevard
3. Foster City Public Library  
1000 E. Hillsdale Boulevard

Executed at the **City of Foster City/Estero Municipal Improvement District**, Foster City, San Mateo County, California this 21st day of August, 2018.



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Priscilla Tam  
City Clerk