

ORDINANCE NO. O-3193-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA, ADDING MUNICIPAL CODE CHAPTER 9, ARTICLE 1, TO TITLE 5 TO DISALLOW SMOKING IN PUBLIC IN THE CITY WITH THE EXCEPTION OF DESIGNATED SMOKING AREAS

WHEREAS, thousands of young people start smoking cigarettes every day. In fact, each day, about 2000 people younger than 18 years smoke their first cigarette and over 300 people younger than 18 years become daily cigarette smokers; and

WHEREAS, many adult cigarette smokers want to quit smoking. In 2015, Nearly 7 in 10 (68.0%) adult cigarette smokers wanted to stop smoking and more than 5 in 10 (55.4%) adult cigarette smokers had made a quit attempt in the past year; and

WHEREAS, laws which ban smoking in public places aid those who are trying to quit smoking by making it more difficult to smoke outside and seeing fewer smokers; and

WHEREAS, tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs; and

WHEREAS, more than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death; and

WHEREAS, The World Health Organization estimates that by 2030, tobacco will account for 10 million deaths per year, making it the greatest cause of death worldwide; and

WHEREAS, The United States Environmental Protection Agency has found secondhand smoke to be a risk to public health and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen; and

WHEREAS, secondhand smoke is responsible for an estimated 38,000 deaths among non-smokers each year in the United States, which includes 3,000 lung cancer deaths and 35,000 deaths due to heart disease; and

WHEREAS, 87.9% of non-smokers showed detectable levels of cotinine (a metabolite of nicotine) in their blood, the most likely source of which is secondhand smoke exposure; and

WHEREAS, secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight and increased risk of Sudden Infant Death Syndrome in infants of mothers who smoke; and

WHEREAS, secondhand smoke exposure causes as many as 300,000 children in the United States under the age of 18 months to suffer lower respiratory tract infections, such as pneumonia and bronchitis; exacerbates childhood asthma; and increases the risk of acute, chronic, middle-ear infections in children; and

WHEREAS, according to the CDC, Smoking leads to disease and disability and harms nearly every organ of the body and is the leading cause of preventable death; and

WHEREAS, 84% of Californians are non-smokers and there is no Constitutional right to smoke; and

WHEREAS, California law declares that anything that is injurious to health or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property is a nuisance; and

WHEREAS, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance; 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, electronic cigarettes, commonly known as e-cigarettes, e-cigars, e-cigarillos, e-pipes, and e-hookahs, are battery operated devices, designed to be used in the same manner as conventional tobacco products, and some of which are designed to look like conventional cigarettes. Electronic cigarettes employ the use of a cartridge, generally containing up to twenty (20) milligrams of nicotine, to deliver vaporized nicotine to users. Some cartridges used by electronic cigarettes can be re-filled with liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine. Yamin, C.K., Bitton A., and Bates, D.W. "E-Cigarettes: A Rapidly Growing Internet Phenomenon." *Annals of Internal Medicine*, 153:607-609, 2010; and

WHEREAS, The FDA has raised concerns that electronic cigarettes, which are often marketed in appealing flavors, can increase nicotine addiction among young people and may lead youth to try conventional tobacco products. U.S. Food and Drug Administration. *E-Cigarette: Questions and Answers*. 2010 www.fda.gov/forconsumers/consumerupdates/ucm225210.htm; and

WHEREAS, The FDA has also raised concerns that electronic cigarettes are marketed and sold to young people and are readily accessible online and via mall kiosks. U.S. Food and Drug Administration. *News Release, FDA and Public Health Experts Warn About Electronic Cigarettes*. July 22, 2009. www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm; and

WHEREAS, a study published in the Journal of Environmental and Public Health suggests that electronic cigarettes "may have the capacity to 're-normalize' tobacco use in a demographic that has had significant denormalization of tobacco use previously." *McMillen, R., Maduka, J., and Winickoff, .J. "Use of Emerging Tobacco Products in the United States." Journal of Environmental and Public Health*; and

WHEREAS, between 2010 and 2011, rates of both awareness and use of unregulated electronic cigarettes by adults increased significantly. *King, B.A., Alam, S., and Promoff, G., et al. "Awareness and Ever Use of Electronic Cigarettes Among U.S. Adults, 2010-2011." Nicotine and Tobacco Research*; and

WHEREAS, recent newspaper reports from across the nation indicate that electronic cigarettes have a propensity for exploding while charging or in use. These explosions have caused severe burns and physical injuries to users. Additionally, these explosions have caused property damage. *CBS News. "Electronic Cigarette Explodes in Man's Mouth, Causes Serious Injuries." February 16, 2012. <http://www.cbsnews.com/news/electronic-cigarette-explodes-in-mans-mouth-causes-serious-injuries>; Fox 13 News. "E-Cigarette Explodes While Charging." December 9, 2013. <http://fox13now.com/2013/12/09/e-cigarette-explodes-while-charging>*; and

WHEREAS, cigarette butts and other smoking waste are commonly littered and blown out of trash receptacles so that such waste migrates to the storm drain system and eventually pollutes the ocean and beaches; and

WHEREAS, smoking waste pollutes the marine environment, negatively impacting water quality and harming marine wildlife that often mistake smoking waste for food; and

WHEREAS, according to the State Water Resources Control Board: "Storm water pollution in Los Angeles County has significant impacts on the region's water quality, while also posing risks to the health and safety of residents, degrading natural resources, threatening the area's tourist driven economy and lowering property values in local neighborhoods"; and

WHEREAS, to aid in the protection of the marine environment and protect public health, the Los Angeles Regional Water Quality Control Board adopted a resolution incorporating a zero trash Total Maximum Daily Load (TMDL) for Debris for Nearshore and Offshore Santa Monica Bay; and

WHEREAS, a reduction in cigarette litter will advance compliance with Federal, State, and City clean water mandates, including with the Total Maximum Daily Loads and other requirements of the National Pollutant Discharge Elimination System, and reduce pollution in the nearby marine environment and at the City's beaches; and

WHEREAS, the adoption of this smoking prohibition would lead to a reduction in smoking waste that is deposited into the storm drain system by eliminating the areas in the public right-of-way that area available for smoking; and

WHEREAS, on September 18, 2018, the City Council considered a number of options regarding the regulation of smoking and tobacco licensure in the City; and

WHEREAS, at that meeting, a majority of the City Council voted to direct city staff to draft regulations to make the City of Redondo Beach a “smoke-free city” and to create a tobacco retail permit ordinance; and

WHEREAS, however, upon review, the direction from the City Council was not sufficiently clear to draft proposed ordinances. As such, City staff took the item back to the City Council for further consideration and direction on May 7, 2019; and

WHEREAS, after robust discussion of the City Council and participation of the public, the City Council directed staff to draft an ordinance banning smoking in public rights of way and private property that is accessible to the public; and

WHEREAS, the City Council further provided that violations of this ordinance would constitute an infraction; and

WHEREAS, the City Council also directed staff to enact an ordinance creating a local tobacco retail permit process, disallowing the sales of flavored tobacco products and electronic smoking devices (or esd’s); and

WHEREAS, the City Council further specified the enforcement and penalty provisions of the ordinance, providing annual inspections as well as a 60, then 90-day suspension for the first two (2) violations and permit revocation for the third violation; and

WHEREAS, pursuant to California Health & Safety Code Section 118910, the City is permitted to locally regulate tobacco sales and use; and

WHEREAS, on September 3, 2019 the City Council directed staff to bring back ordinances to: (1) create a local tobacco retail permit, regulating the businesses in the City that sell tobacco products and (2) disallow smoking in public except in designated smoking areas; and

WHEREAS, on October 1, 2019 the City Council further refined its direction to (1) change the exemption for sales of flavored tobacco products to solely include licensed hookah businesses and (2) to amend the provisions of the designated smoking areas, deem second-hand smoke a nuisance and create a private right of action for enforcement; and

WHEREAS, It is the intent of the City Council in enacting this Ordinance to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-tobacco users; by protecting children from exposure to smoking where they live and play; by protecting the public from nonconsensual exposure to secondhand smoke and the potential health risks related to a-cigarettes; by preventing the re-normalization of smoking that results from the expanded use of a-cigarettes; to declare smoking tobacco in public a nuisance; and by reducing smoking waste to protect the marine environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT OF CODE. Title 5, Chapter 9, Article 1, Section 5-9.101 is hereby added to the Redondo Beach Municipal Code and shall read as follows:

“Section 5-9.101 Definitions

(a) “Designated Smoking Area” means an area designated by a business where patrons or employees are permitted to smoke, as defined in subsection (e) of this Section.

(b) “Employee” means any person who is employed by, or retained as an independent contractor by, any Employer, or any person who volunteers his services for a business or Employer.

(c) “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 device, whether or not sold separately. This definition 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, including any component, part or accessory of such device, whether or not sold separately. “Electronic smoking device” does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease, where such product is marketed and sold solely for such an approved purpose.

(d) “Employer” means any person, partnership, corporation, association, nonprofit or other entity who or which employs or retains the service of one or more Employees.

(e) “Place of employment” means any area under the legal or de facto control of an employer that an employee or the general public may enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, construction sites, vehicles used in employment or for business purposes, taxis, employee lounges, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses, and any private residences subject to state licensing requirements that are used as child-care or health-care facilities.

(f) "Public place" means any public place, or any private place open to the general public regardless of any fee or age requirement, including, for example, streets, sidewalks, plazas, bars, restaurants, clubs, stores, stadiums, farmers' markets, bus shelters, ATM or ticket lines, theaters, parking lots, parks, playgrounds, taxis, and buses. This also shall include outdoor dining areas open to the general public.

(g) "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 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, electronic cigarette vapors, and marijuana smoke.

(h) "Smoking" means the release of gases, particles, or vapors into the air as the result of combustion, electrical ignition, or vaporization and/or inhaling, exhaling, burning or carrying any lighted, heated or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product intended for human inhalation.

(i) "Tobacco product" means:

(1) 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, snuff, snus; and

(2) Any electronic smoking device, with or without nicotine.

(3) Notwithstanding any provision of subsections (1), (2) and (3) of this definition to the contrary, "tobacco product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose."

SECTION 2. AMENDMENT OF CODE. Title 5, Chapter 9, Article 1, Section 5-9.102 is hereby added to the Redondo Beach Municipal Code and shall read as follows:

"Section 5-9.102 Prohibition of Smoking.

(a) Except as otherwise provided by this chapter or by state or federal law, smoking is prohibited in the following locations:

(1) Public places;

(2) The interior of places of employment, including those regulated by California Labor Code Section 6404.5;

(3) Any area within five feet (5') of any door, window, opening, or vent, into a public place.

(b) Smoking is permitted in the following locations within the City, unless otherwise provided by state or federal law or this Code:

(1) Private residential property, other than those used as a child-care or health-care facility subject to State licensing requirements.

(2) Within a moving vehicle

(3) As provided in Section 5-9.105.

(c) No person shall dispose of any smoking waste, including but not limited to any part of a cigarette, cigar, pipe, or tobacco product, in an area in which smoking is prohibited by this chapter or other law, except in specific receptacles designated by the City for smoking waste."

SECTION 3. AMENDMENT OF CODE. Title 5, Chapter 9, Article 1, Section 5-9.103 is hereby added to the Redondo Beach Municipal code and shall read as follows:

"Section 5-9.103 Designated Smoking Area

(a) A business owner in the City may request, with the permission of the property owner or landlord, the creation of a designated smoking area to be located on their property. The business owner may make an application to the Community Development Department to create a Designated Smoking Area which must comply with the following restrictions:

(1) The Designated Smoking Area must be located completely within the business' property line;

(2) The Designated Smoking Area must not be within five feet (5') of any door, window, opening, or vent, into a public place or private residence;

(3) The Employer must post a sign or signs outside the retail location that clearly, sufficiently and conspicuously informs the public that it is a designated smoking area; the signage must be compliant with Zoning Code Title 10, Chapter 2, Article 6 or Title 10, Chapter 5, Article 6, as applicable;

(4) The Designated Smoking Area must contain appropriate trash receptacles for smoking;

(5) The Designated Smoking Area can be created and be no more than twenty-five (25%) percent of the total outdoor area of the premises on which it is located;

(6) The Designated Smoking Area may not include outdoor areas used by children; including, but not limited to, playgrounds and other areas improved or designated for play or swimming;

(7) The Designated Smoking Area must have a clearly marked perimeter;

(8) The Designated Smoking Area must be identified by conspicuous signs;

(9) If the requirements for the Designated Smoking Area cannot be satisfied due to unique circumstance affecting a business or property, the City Manager or designee may approve a smoking area that meets the requirements of this section to the extent practicable. If in his judgement such an area cannot be designed, the City Manager or designee may determine that such a smoking area is not appropriate at a particular location and not designate a smoking area at that location.

(b) An approved Designated Smoking Area will be issued a permit for the creation and maintenance of the area. Each Designated Smoking Area permit shall be prominently displayed in a publicly visible place at the permitted location.

(c) A permit fee for the issuance and maintenance of a Designated Smoking Area permit shall be set by resolution."

SECTION 4. AMENDMENT OF CODE. Title 5, Chapter 9, Article 1, Section 5-9.104 is hereby added to the Redondo Beach Municipal code and shall read as follows:

"Section 5-9.104 Other applicable laws.

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

SECTION 5. AMENDMENT OF CODE. Title 5, Chapter 9, Article 1, Section 5-9.105 is hereby added to the Redondo Beach Municipal Code and shall read as follows:

"Section 5-9.105 Penalties

(a) Each separate violation of this chapter is an infraction punishable in accordance with Chapter 1-2.03 of this code.

(b) The City Council declares that exposing other persons to second-hand smoke constitutes a public nuisance and may be remedied as such.

(c) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity."

SECTION 6. AMENDMENT OF CODE. Title 5, Chapter 9, Article 1, Section 5-9.106 is hereby added to the Redondo Beach Municipal Code and shall read as follows:

"Section 5-9.106 Private Right of Action.

(a) Pursuant to California Civil Code Section 3501 et seq., any person injured by a violation of this chapter may bring a civil action to enforce this chapter by way of a conditional judgment or an injunction. Upon proof of a violation, a court shall issue a conditional judgment or an injunction.

(b) Notwithstanding any legal or equitable bar against a person seeking relief on its own behalf, a person may bring an action to enforce this chapter solely on behalf of the general public. When a person brings an action solely on behalf of the general public, nothing about such an action shall act to preclude or bar the person from bringing a subsequent action based upon the same facts but seeking relief on his, her or its own behalf.

(c) Nothing in this chapter prohibits a person from bringing a civil action in small claims court to enforce this chapter, so long as the amount in demand and the type of relief sought are within the jurisdictional requirements of that court.”

SECTION 7. INCONSISTENT PROVISIONS. Any provisions of the Redondo Beach Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 8. SEVERANCE. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 9. PUBLICATION AND EFFECTIVE DATE. This ordinance shall be published by one insertion in The Easy Reader, the official newspaper of said city, and same shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

PASSED, APPROVED AND ADOPTED this 15th day of October, 2019.

Mayor William C. Brand

APPROVED AS TO FORM:

ATTEST:

Michael W. Webb, City Attorney

Eleanor Manzano, CMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF REDONDO BEACH)

I, Eleanor Manzano, City Clerk of Redondo Beach, California, do hereby certify that the foregoing Ordinance No. O-3193-19 was duly introduced at a regular meeting of the City Council held on the 8th day of October, 2019, and was duly approved and adopted at a regular meeting of said City Council held on the 15th day of October, 2019, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Eleanor Manzano, CMC
City Clerk