

ORDINANCE NO. O-3194-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA, ADDING MUNICIPAL CODE CHAPTER 9, ARTICLE 2, TO TITLE 5 TO CREATE A LOCAL TOBACCO RETAIL PERMIT AND APPROVAL PROCESS

WHEREAS, Cigarettes, cigars, pipes and other smoking materials are the leading cause of fire deaths in the United States, causing an estimated 31,200 structure fires and 830 deaths in 2001; and

WHEREAS, The tobacco industry spends billions of dollars each year on cigarette and smokeless tobacco advertising and promotions; 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, 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, on September 18, 2018, the City Council considered a number of options regarding the regulation of smoking and cigarette 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, pursuant to California Health & Safety Code Section 118910, the City is permitted to locally regulate tobacco sales and use; and

WHEREAS, on May 7, 2019, the City Council provided specific direction for staff to draft an ordinance disallowing smoking in public places and a local tobacco retailer regulation ordinance; and

WHEREAS, the City Council specified the requirements for issuance of a local tobacco retail permit as well as enforcement requirements providing that staff perform 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, 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 regulating the sales of electronic smoking devices (or esd’s); 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; 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 2, Section 5-9.201 is hereby added to the Redondo Beach Municipal code and shall read as follows:

“Section 5-9.201 **Definitions.**

(a) “Arm’s length transaction” means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two (2) informed and willing parties, neither of which is under any compulsion to participate in the

transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter, is not an arm's length transaction.

(b) "Consumer" means a person who purchases a tobacco product for consumption and not for sale to another.

(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) "Enforcement official" means any member of the Redondo Beach Code Enforcement Division, the Redondo Beach Police Department, the California Department of Health Services, the California Alcohol Beverage Control Department, and the Los Angeles County Sheriff's Department, or their designees.

(e) "Package" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold or offered for sale to a consumer.

(f) "Sale" means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

(g) "Self-service display" means the open display or storage of tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or retailer's agent or employee. A vending machine is a form of self-service display.

(h) "Smoking" means the 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 that facilitates the release of gases, particles, or vapors into the air.

(i) "Tobacco paraphernalia" means any item designed for the consumption, use, or preparation of tobacco products.

(k) "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.

(l) "Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia. "Tobacco retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

(m) "Tobacco retail permit" means a valid and current permit issued by the City of Redondo Beach allowing a retail location to sell tobacco products."

SECTION 2. AMENDMENT OF CODE. Title 5, Chapter 9, Article 2, Section 5-9.202 is hereby added to the Redondo Beach Municipal code and shall read as follows:

"Section 5-9.202 Tobacco Retailer Permit Required and Permit Shall be Displayed.

(a) It shall be unlawful for any person to act as a retailer of tobacco products and/or electronic smoking devices without first obtaining and maintaining a valid tobacco retailer permit pursuant to the provisions of this chapter for each location at which that activity is to occur.

(b) It shall be a violation of this chapter for any retailer to violate any local, state, or federal law applicable to tobacco products, electronic smoking devices, or the retailing of such products.

(c) Each tobacco retailer permit shall be prominently displayed in a publicly visible place at the permitted location."

SECTION 3. AMENDMENT OF CODE. Title 5, Chapter 9, Article 1, Section 5-9.203 is hereby added to the Redondo Beach Municipal code and shall read as follows:

"Section 5-9.203 Tobacco Retail Permit Requirements

(a) Tobacco Permit Eligibility.

(1) No retailer permit may be issued to authorize retailing at other than a fixed location. For example, retailing by persons on foot or from vehicles is prohibited.

(2) No retailer permit may be issued to authorize retailing at a temporary or recurring temporary event. For example, retailing at flea markets and farmers' markets is prohibited.

(3) No permit may be issued under this chapter to authorize tobacco retailing at any location that violates any provision of the Redondo Beach Zoning Ordinance.

(b) Application Procedure.

(1) Any person seeking a permit pursuant to this chapter shall submit a completed application, on a city-approved form, to the Community Development Department.

(2) The application for a permit under this chapter shall be submitted in the name of each and every business owner proposing to conduct retail tobacco sales for each location at which retail tobacco sales are being proposed and shall be signed by each business owner or an authorized agent thereof.

(3) Said application shall contain the following information:

i. The name, address, and telephone number of each business owner seeking a permit.

ii. The business name, address, and telephone number of the single, fixed location for which a permit is sought.

iii. A single name and mailing address of an agent authorized by the business owner to receive all communications and notices required by, authorized by, or convenient to the enforcement of this chapter. If an authorized agent is not supplied, each business owner shall be understood to consent to the provision of notice at the business address specified in subsection (C)(2) of this section.

iv. Proof that the location for which a tobacco retailer permit is sought has been issued a valid state tobacco retailer's license by the California Department of Tax and Fee Administration.

v. Whether any business owner or any agent of the business owner was previously issued a permit pursuant to this chapter which was at any time suspended or revoked, and, if so, the dates of the suspension period or the date of the revocation.

vi. Such other information as the Community Development Department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this chapter.

(4) An applicant or agent thereof shall inform the Community Development Department in writing of any change in the information submitted on an application for a tobacco retailer registration within ten (10) business days of a change.

(5) The City Council may establish by resolution the amount of an application fee for the tobacco retailer permit in an amount not to exceed the City's reasonable cost of providing the services required by this chapter, in which case the City shall accept no application unless accompanied by payment of such fee.

(6) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (Government Code Section 6250 et seq.) or any other applicable law, subject to the laws' exemptions."

SECTION 4. AMENDMENT OF CODE. Title 5, Chapter 9, Article 1, Section 5-9.204 is hereby added to the Redondo Beach Municipal code and shall read as follows:

"Section 5-9.204 **Permit Issuance.**

(a) Upon the receipt of a completed application for a tobacco retailer permit and the corresponding application fee, if any, the Finance Department, with consultation of Community Development Department for location requirements, shall issue a permit unless substantial evidence demonstrates that one (1) or more of the following bases for denial exists:

(1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter.

(2) The application seeks authorization for tobacco retailing at a location prohibited by Section 5-9.203.

(3) The applicant has had a permit issued pursuant to this chapter revoked within the preceding twelve (12) months.

(4) The application seeks authorization for tobacco retailing that is otherwise prohibited pursuant to this chapter, that is unlawful pursuant to this Code (including without limitation the Redondo Beach Zoning Ordinance and business license regulations), or that is unlawful pursuant to any other law.

(5) The applicant is indebted to the city for any unpaid fee or fine.

(b) A decision to deny issuance of a retailer permit, or to revoke a retailer permit that has been wrongly issued, can be appealed to a hearing officer, subject to the following requirements and procedures. The hearing officer shall be designated by the City Manager.

(1) All appeals must be in writing, state the grounds asserted for relief and the relief sought, and filed with the City Manager or his or her designee within ten (10) calendar days of receipt of notice of the appealed action. If such an appeal is made, it shall stay enforcement of the appealed action.

(2) After the conclusion of the hearing, the hearing officer shall issue a written decision. Any decision rendered by the hearing officer shall be a final administrative decision.

(c) Term & Renewal

(1) A tobacco retailer permit issued pursuant to this chapter shall be valid for one (1) year after the date of issuance, unless it is revoked earlier in accordance with the provisions of this chapter. The expiration date of each tobacco retailer permit shall be shown on the permit itself and each tobacco retailer permit shall expire at midnight on the expiration date.

(2) Each tobacco retailer who seeks to renew a permit issued pursuant to this chapter shall submit a renewal application on a City-approved form and tender any applicable fees to the Finance Department no later than thirty (30) calendar days prior to the expiration of the permit. Any permit issued pursuant to this chapter that is not timely renewed shall expire and become null and void at the end of its term.

(3) An application to renew a permit issued pursuant to this chapter may be denied by the Community Development Department upon the grounds set forth in Subsection (a) of this Section. An appeal of such a decision shall follow the procedures set forth in Subsection (b) of this Section.

(d) **Permit is Non-Transferable.** A permit issued pursuant to this chapter may not be transferred from one (1) person to another or from one (1) location to another. A change in business owner, business name, or location shall render the permit null and void, and shall require a new permit to be obtained in accordance with the provisions of this chapter.”

SECTION 5. AMENDMENT OF CODE. Title 5, Chapter 9, Article 1, Section 5-9.205 is hereby added to the Redondo Beach Municipal code and shall read as follows:

“Section 5-9.205 Prevention of Underaged Smoking.

(a) Notice of Minimum Age for Purchase of Tobacco Products and Electronic Smoking Devices. Retailers shall post conspicuously, at each point of purchase, a notice

stating that selling tobacco products and electronic smoking devices to anyone under twenty-one (21) years of age is illegal and subject to penalties. Such notice shall be subject to the approval of the City.

(b) **Positive Identification Required.** No retailer shall sell or transfer a tobacco product or electronic smoking device to another person who appears to be under thirty (30) years of age without first examining the customer's identification to confirm that the customer is at least the minimum age under state law to purchase and possess the tobacco product.

(c) **Flavored Tobacco Products.** No retailer shall sell a tobacco product, or any product used in an electronic smoking device, containing, as a constituent or additive, an artificial or natural flavor or an herb or spice including but not limited to strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, coffee, mint, menthol, spearmint or wintergreen that is a characterizing flavor of the tobacco product or smoke produced by the tobacco product. The prohibition in the preceding sentence shall not apply to a licensed hookah business that permits only patrons twenty-one (21) years of age or older, or active duty military personnel who are eighteen (18) years of age or older, to enter the location where the tobacco product may be consumed or purchased."

SECTION 6. AMENDMENT OF CODE. Title 5, Chapter 9, Article 1, Section 5-9.206 is hereby added to the Redondo Beach Municipal code and shall read as follows:

"Section 5-9.206 Self Service Tobacco Purchases Prohibited.

No tobacco product or electronic smoking device shall be sold, offered for sale, or distributed to the public from a vending machine or appliance, or any other coin or token operated mechanical device designed or used for vending purposes, including but not limited to, machines or devices that use remote control locking mechanisms."

SECTION 7. AMENDMENT OF CODE. Title 5, Chapter 9, Article 1, Section 5-9.207 is hereby added to the Redondo Beach Municipal code and shall read as follows:

"Section 5-9.207 Packaging and Labeling.

(a) No tobacco retailer shall sell any tobacco product to any consumer unless such product:

(1) is sold in the original manufacturer's package intended for sale to consumers; and

(2) conforms to all applicable federal labeling requirements."

SECTION 8. AMENDMENT OF CODE. Title 5, Chapter 9, Article 1, Section 5-9.208 is hereby added to the Redondo Beach Municipal code and shall read as follows:

“Section 5-9.208 Compliance Monitoring and Enforcement

(a) Compliance Monitoring and Enforcement.

(1) Compliance checks shall be conducted so as to allow enforcement officials to determine, at a minimum, if a tobacco retailer is complying with laws regulating youth access to tobacco. The Chief of Police may also conduct compliance checks to determine compliance with other laws applicable to tobacco retailing.

(2) During business hours, enforcement officials shall have the right to enter any place of business for which a permit is required by this chapter for the purpose of making reasonable inspections to observe and enforce compliance with the provisions of this chapter and any other applicable regulations, laws, and statutes.

(3) Enforcement officials shall inspect each tobacco retailer at least one (1) time per every twelve (12) month period.

(b) This Chapter does not expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or alter the penalties provided by such laws.”

SECTION 9. AMENDMENT OF CODE. Title 5, Chapter 9, Article 1, Section 5-9.209 is hereby added to the Redondo Beach Municipal code and shall read as follows:

“Section 5-9.209 Penalties for Violation

(a) The penalties for violations shall be as follows:

(1) The retailer’s permit shall be suspended for sixty (60) days for the first violation of the provisions of this ordinance.

(2) The retailer’s permit shall be suspended for ninety (90) days for the second violation of the provisions of this ordinance.

(3) The retailer’s permit shall be revoked for the third violation of the provisions of this ordinance.

(b) Appeals. If a tobacco retailer seeks to challenge a decision to suspend or revoke their tobacco retail permit, that decision can be appealed to a hearing officer designated by the City Manager. The appeal shall be subject to the following requirements and procedures.

(1) All appeals must be in writing, state the grounds asserted for relief and the relief sought, and filed with the City Manager or his or her designee within ten (10) calendar days of receipt of notice of the appealed action. If such an appeal is made, it shall stay enforcement of the appealed action.

(2) After the conclusion of the hearing, the hearing officer shall issue a written decision. Any decision rendered by the hearing officer shall be a final administrative decision.

(c) **New license after revocation.** Notwithstanding any other provision of this chapter, no tobacco retailer's license shall be issued to a tobacco retailer (or business owner thereof) whose license has previously been revoked pursuant to this chapter for a period of twelve (12) months from the date of the prior revocation, unless ownership of the business at the location has been transferred in an arm's length transaction."

SECTION 10. AMENDMENT OF CODE. Title 5, Chapter 9, Article 1, Section 5-9.210 is hereby added to the Redondo Beach Municipal code and shall read as follows:

"Section 5-9.210 Permit Conveys a Limited, Conditional Privilege.

Nothing in this Chapter shall be construed to grant any person obtaining and maintaining a retailer permit any status or right other than the limited, conditional privilege to act as a retailer at the location in the City identified on the face of the permit."

SECTION 11. 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 12. 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 13. 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-3194-19 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