Administrative Report

N.1., **File #**19-0315 **Council Action Date:**10/1/2019

To: **MAYOR AND CITY COUNCIL**

From: BRANDY FORBES, COMMUNITY DEVELOPMENT DIRECTOR

TITLE

DISCUSSION AND POSSIBLE ACTION REGARDING A CITY-WIDE SMOKING BAN IN PUBLIC PLACES AND IMPLEMENTING A LOCAL TOBACCO RETAIL PERMIT.

ADOPT BY TITLE ONLY ORDINANCE NO. 3193-19 ADDING MUNICIPAL CODE CHAPTER 9, ARTICLE 1, TO TITLE 5 TO DISALLOW SMOKING IN PUBLIC PLACES IN THE CITY WITH THE EXCEPTION OF DESIGNATED SMOKING AREAS. FOR SECOND READING AND ADOPTION.

RE-INTRODUCE BY TITLE ONLY ORDINANCE NO. 3194-19 ADDING MUNICIPAL CODE CHAPTER 9, ARTICLE 2, TO TITLE 5 TO CREATE A LOCAL TOBACCO RETAIL PERMIT AND APPROVAL PROCESS. FOR RE-INTRODUCTION AND FIRST READING

EXECUTIVE SUMMARY

In response to a Strategic Plan objective, staff has prepared draft ordinances to establish a City-wide smoking ban in public places and implement a local tobacco retail permit. The City Council discussed the draft ordinances on September 3, 2019 and supported the City-wide smoking ban with the exception of designated areas and directed staff to revise the proposed Local Tobacco Retail Permit Ordinance. The City-wide smoking ban is being presented for second reading and adoption.

After the September 3, 2019 hearing, the City received a letter from the National Association of Tobacco Outlets (NATO), which is included in the public comment letters attached to this administrative report. The letter requests that the local tobacco retail permit ordinance be re-introduced for first reading, stating that the addition of more flavored products was a substantive change to the original draft ordinance presented. The revised ordinance has been brought back this evening for first reading in order to provide an opportunity for additional public input and comment.

BACKGROUND

On September 18, 2018, May 7, 2019 City Council discussed potential tobacco regulations. The meetings included testimony from representatives of the Beach Cities Health District, the Coalition for Tobacco Free Los Angeles County, Los Angeles County Department of Public Health, Asian American Drug Abuse Program, along with City residents. After discussion, the Council was favorable to establishing tobacco regulations utilizing a stepped approach, where stricter regulations could be implemented over time, if needed. City Council directed staff to prepare ordinances for a

local retail tobacco control permit and smoke free public places. Draft ordinances were introduced at the City Council meeting of September 3, 2019.

City-wide Smoking Ban in Public Places

Existing law prohibits smoking in public parks and the pier. Based on City Council direction, the new ordinance would expand the prohibition and defines additional public areas where smoking would be prohibited. The proposed ordinance would define "Public place as "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." The smoking ban would include areas within twenty (20) feet of any door, window, opening, or vent into a public place. Residential property and moving vehicles are excluded from the ban. Violations would be punishable by infraction.

Additionally, the ordinance includes an updated definition of "smoking" and "smoke" to include electronic smoking devices and marijuana smoke.

At the September 3, 2019 meeting, City Council was presented with two versions of the proposed ordinance, one being a City-wide ban with no exceptions, the second allowing commercial locations to create designated smoking areas for employees and patrons. After discussion, City Council was supportive of the ordinance allowing for designated smoking areas, and is presented at this time for second reading and adoption.

Local Tobacco Retail Permit

Also, for further consideration this evening, is an ordinance establishing a local tobacco retail permit. The local permit is a valuable mechanism that allows the City to establish its own stricter local tobacco regulations and helps fund enforcement.

By implementing a local tobacco retail permit ordinance, the current 43 tobacco retailers, and any new, would be required to obtain and maintain an annual Tobacco Retail Permit with the City of Redondo Beach, in addition to their City Business License. Tobacco retailers include any business location where tobacco, tobacco products, and tobacco paraphernalia are sold.

Provisions included in the tobacco retail permit are:

- Defining "tobacco products" to include electronic smoking devices
- Prohibiting the sale of all flavored tobacco products
- No sales to minors
- Banning self-service displays
- Requiring an inspection once a year
- Allowing undercover enforcement
- Non-transferrable

At the September 3, 2019 meeting, discussion occurred among City Council regarding the extent to which flavored products should be banned. The proposed ordinance presented that evening excluded mint, spearmint, wintermint, and menthol from the sale prohibition, based on the assumption that those were not typical flavors which are attractive to youth. However, after public

testimony to the contrary and further discussion, Council voted to include mint and menthol variations in the definition of “flavored” and ban the sale of all flavored tobacco products. Locations which allow only patrons 21-years of age and older or active military 18-years of age and older would be excluded from the provisions.

After the hearing, the City received a letter from the National Association of Tobacco Outlets (NATO), included in the public comment letters attached to this administrative report. The letter requests that the local tobacco retail permit ordinance be re-introduced for first reading, stating that addition of more flavored products was a substantive change to the original draft ordinance presented. The revised ordinance has been brought back this evening for first reading in order to provide an opportunity for additional public input and comment.

Enforcement would be administrative, with written notices for initial violations that would allow the business to take corrective actions. Non-compliance, or further violations, will result in a 60-day suspension, then a 90-day suspension for further violation, and potential revocation for continued violations.

Annual Permit Fee

An annual permit fee will be established within the City’s Master Fee Schedule, by separate Resolution, in an amount not to exceed the City’s reasonable costs of permit administration, including staff time for inputting, processing, monitoring, and enforcing. A proposed resolution with the recommended fee amount will be presented to City Council at second reading and adoption of the ordinance.

Grace Period to Comply

Based on the City Council’s direction, current tobacco retailers will have one (1) year to comply with obtaining the local retail permit

COORDINATION

The preparation of the administrative report and ordinances have been coordinated with the City Attorney's Office.

FISCAL IMPACT

The cost of preparing this report is included within the Community Development Department’s portion of the adopted 2019-20 Annual Budget and is part of the department’s annual work program.

Fiscal impact of a Tobacco Retail Permit will be assessed upon adoption of a resolution establishing the permit fee

APPROVED BY:
Joe Hoefgen, City Manager

ATTACHMENTS

- Ordinance City-wide smoking ban with the exception of designated smoking areas
- Ordinance Local Tobacco Retail Permit
- September 3, 2019 City Council Administrative Report
- Public Comment Letters
- PowerPoint Presentation

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 PLACES 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

WHEREAS, According to the CDC, Smoking 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, 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 Intemal 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, pursuant to California Health & Safety Code Section 118910, the City is permitted to locally regulate tobacco sales and use; 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, 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 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.”

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 twenty feet (20') of any door, window, opening, or vent, into a public place, except for such areas on private residential property.

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

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 **Designated Smoking Area.**

(a) The owner of a property located in the City may request the creation of a designated smoking area to be located on their property. The business 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 twenty feet (20') 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.

(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 6. 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 7. 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 8. PUBLICATION AND EFFECTIVE DATE. This ordinance shall be published by one insertion in The Beach Reporter, 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 1st day of October, 2019.

_____
Mayor William C. Brand

APPROVED AS TO FORM:

_____
Michael W. Webb, City Attorney

ATTEST:

_____
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 3rd day of September, 2019, and was duly approved and adopted at a regular meeting of said City Council held on the 1st day of October, 2019, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Eleanor Manzano, CMC
City Clerk

ORDINANCE NO. 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, or coffee, 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 retailer 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 is sold."

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 Beach Reporter, 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:

_____
Michael W. Webb, City Attorney

ATTEST:

_____
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. 3194-19 was duly introduced at a regular meeting of the City Council held on the 1st 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

Administrative Report

N.1., **File #**19-0013 **Council Action Date:**9/3/2019

To: **MAYOR AND CITY COUNCIL**

From: BRANDY FORBES, COMMUNITY DEVELOPMENT DIRECTOR

TITLE

DISCUSSION AND POSSIBLE ACTION REGARDING ESTABLISHING A CITY-WIDE SMOKING BAN IN PUBLIC PLACES AND IMPLEMENTING A LOCAL TOBACCO RETAIL PERMIT.

(A) INTRODUCE BY TITLE ONLY ORDINANCE NO. 3193-19 ADDING MUNICIPAL CODE CHAPTER 9, ARTICLE 1, TO TITLE 5 TO DISALLOW SMOKING IN PUBLIC PLACES IN THE CITY;

OR

(B) INTRODUCE BY TITLE ONLY ORDINANCE NO. 3193-19 ADDING MUNICIPAL CODE CHAPTER 9, ARTICLE 1, TO TITLE 5 TO DISALLOW SMOKING IN PUBLIC PLACES IN THE CITY WITH THE EXCEPTION OF DESIGNATED SMOKING AREAS; **AND**

INTRODUCE BY TITLE ONLY ORDINANCE NO. 3194-19 ADDING MUNICIPAL CODE CHAPTER 9, ARTICLE 2, TO TITLE 5 TO CREATE A LOCAL TOBACCO RETAIL PERMIT AND APPROVAL PROCESS

EXECUTIVE SUMMARY

In response to a Strategic Plan objective, staff gave a presentation to the City Council on May 7, 2019 outlining options to implement a local tobacco retail permit and City-wide smoking ban in public places. The City Attorney's office has prepared the ordinances based on City Council's direction.

BACKGROUND

On September 18, 2018 and May 7, 2019, City Council discussed potential tobacco regulations. The meetings included testimony from representatives of the Beach Cities Health District, the Coalition for Tobacco Free Los Angeles County, Los Angeles County Department of Public Health, Asian American Drug Abuse Program, along with City residents. After discussion, the Council was favorable to establishing tobacco regulations utilizing a stepped approach, where stricter regulations could be implemented over time, if needed. City Council directed staff to prepare ordinances for a local retail tobacco control permit and smoke free public places.

City-wide Smoking Ban in Public Places

Existing law prohibits smoking in public parks and the pier. Based on City Council direction, the new ordinance would expand the prohibition and defines additional public areas where smoking would be prohibited. The proposed ordinance would define "Public place as "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. " The smoking ban would include areas within twenty (20) feet of any door, window, opening, or vent into a public place. Residential property and moving vehicle are excluded from the ban. Violations would be punishable by infraction.

Additionally, the ordinance includes an updated definition of "smoking" and "smoke" to include electronic smoking devices and marijuana smoke.

At the May 7, 2019 meeting, City Council discussed allowing businesses to have the option of creating a designated smoking area for employees and patrons. If Council is supportive of this, staff has drafted a second version of the ordinance which creates a procedure for businesses to pursue this option.

The Beach Cities Health District (BCHD), along with other public health agencies, are supportive of the City's action to ban smoking in public places, similar to ordinances already adopted by Manhattan Beach and Hermosa Beach. BCHD has expressed its support of the City's efforts and has offered assistance with community outreach and education. BCHD provided examples to City staff of other cities' informational materials to help model our own public education campaign.

Local Tobacco Retail Permit

Also for consideration this evening is an ordinance establishing a local tobacco retail permit.

By implementing a local tobacco retail permit ordinance, the current 43 tobacco retailers, and any new, would be required to obtain and maintain an annual Tobacco Retail Permit with the City of Redondo Beach, in addition to their City Business License. Tobacco retailers include any business location where tobacco, tobacco products, and tobacco paraphernalia are sold.

Provisions included into a tobacco retail permit are:

- Defining "tobacco products" to include electronic smoking devices
- Banning of certain flavored tobacco products
- No sales to minors
- Banning self-service displays
- Requiring an inspection once a year
- Allowing undercover enforcement
- Non-transferrable

Enforcement would be administrative, with written notices for initial violations that would allow the business to take corrective actions. Non-compliance, or further violations, will result in a 60-day suspension, then a 90-day suspension for further violation, and potential revocation for continued violations.

Annual Permit Fee

An annual permit fee will be established within the City's Master Fee Schedule, by separate Resolution, in an amount not to exceed the City's reasonable costs of permit administration, including staff time for inputting, processing, monitoring, and enforcing. A proposed resolution with the recommended fee amount will be presented to City Council at second reading and adoption of the ordinance.

Grace Period to Comply

Based on the City Council's direction, current tobacco retailers will have six (6) months to comply with obtaining the local retail permit.

COORDINATION

The preparation of the administrative report and ordinances have been coordinated with the City Attorney's Office.

FISCAL IMPACT

The cost of preparing this report is included within the Community Development Department's portion of the adopted 2019-20 Annual Budget and is part of the department's annual work program.

Fiscal impact of a Tobacco Retail Permit will be assessed upon adoption of a resolution establishing the permit fee.

APPROVED BY:
Joe Hoefgen, City Manager

ATTACHMENTS

Ordinance City-wide Smoking Ban (A)
Ordinance City-wide Smoking Ban with the exception of Designated Smoking Areas (B)
Ordinance Local Tobacco Retail Permit
Administrative Report May 7, 2019
Minutes excerpt City Council May 7, 2019

ORDINANCE NO. 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 PLACES IN THE CITY

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

WHEREAS, According to the CDC, Smoking 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, 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 Intemal 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, pursuant to California Health & Safety Code Section 118910, the City is permitted to locally regulate tobacco sales and use; 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, 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 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) "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.

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

(d) "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.

(e) "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.

(f) "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.

(g) "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."

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) Places of employment, including those regulated by California Labor Code Section 6404.5;

(3) Any area within twenty feet (20') of any door, window, opening, or vent, into a public place, except for such areas on private residential property.

(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.

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

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. 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 6. 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 7. PUBLICATION AND EFFECTIVE DATE. This ordinance shall be published by one insertion in The Beach Reporter, 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 17th day of September, 2019.

_____
Mayor William C. Brand

APPROVED AS TO FORM:

_____
Michael W. Webb, City Attorney

ATTEST:

_____
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. 3193-19 was duly introduced at a regular meeting of the City Council held on the 3rd day of September, 2019, and was duly approved and adopted at a regular meeting of said City Council held on the 17th day of September, 2019, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Eleanor Manzano, CMC
City Clerk

ORDINANCE NO. 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 PLACES 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

WHEREAS, According to the CDC, Smoking 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, 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 Intemal 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, pursuant to California Health & Safety Code Section 118910, the City is permitted to locally regulate tobacco sales and use; 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, 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 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."

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 twenty feet (20') of any door, window, opening, or vent, into a public place, except for such areas on private residential property.

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

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 **Designated Smoking Area.**

(a) The owner of a property located in the City may request the creation of a designated smoking area to be located on their property. The business 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 twenty feet (20') 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.

(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 6. 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 7. 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 8. PUBLICATION AND EFFECTIVE DATE. This ordinance shall be published by one insertion in The Beach Reporter, 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 17th day of September, 2019.

_____
Mayor William C. Brand

APPROVED AS TO FORM:

_____
Michael W. Webb, City Attorney

ATTEST:

_____
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. 3193-19 was duly introduced at a regular meeting of the City Council held on the 3rd day of September, 2019, and was duly approved and adopted at a regular meeting of said City Council held on the 17th day of September, 2019, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Eleanor Manzano, CMC
City Clerk

ORDINANCE NO. 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 Intemal 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 (with the exception of mint, menthol, spearmint or wintergreen), including but not limited to strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, 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 retailer 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 is sold."

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 Beach Reporter, 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 17th day of September, 2019.

_____
Mayor William C. Brand

APPROVED AS TO FORM:

_____
Michael W. Webb, City Attorney

ATTEST:

_____
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. 3194-19 was duly introduced at a regular meeting of the City Council held on the 3rd day of September, 2019, and was duly approved and adopted at a regular meeting of said City Council held on the 17th day of September, 2019, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Eleanor Manzano, CMC
City Clerk

Administrative Report

Council Action Date: May 7, 2019

To: **MAYOR AND CITY COUNCIL**

From: **BRANDY FORBES, COMMUNITY DEVELOPMENT DIRECTOR**

Subject: **PROVISIONS FOR ORDINANCES TO ESTABLISH A CITY-WIDE SMOKING BAN IN PUBLIC PLACES AND IMPLEMENT A TOBACCO RETAIL PERMIT**

RECOMMENDATION

1. Discuss options and provide direction for an ordinance to establish a City-wide smoking ban in public places for tobacco and cannabis;
2. Discuss options and provide direction for an ordinance to implement a tobacco retail permit; and
3. Direct staff to prepare the ordinances.

EXECUTIVE SUMMARY

In response to a Strategic Plan objective, staff has prepared the following report outlining options to implement a local tobacco retail permit and City-wide smoking ban in public places. Staff requests that City Council provide direction on the specific provisions for each ordinance.

BACKGROUND

On September 18, 2018, City Council held a discussion on potential tobacco regulations. The meeting included testimony from representatives of the Beach Cities Health District, the Coalition for Tobacco Free Los Angeles County, Los Angeles County Department of Public Health, Asian American Drug Abuse Program, along with City residents. After discussion, the Council was favorable to establishing tobacco regulations utilizing a stepped approach, where stricter regulations could be implemented over time, if needed. City Council directed staff to prepare ordinances for a local retail tobacco control license and smoke free public places. Staff is requesting that Council provide additional direction on the specific provisions for each ordinance.

City-wide Smoking Ban in Public Places

Currently, Redondo Beach only has a smoke-free recreational area policy which does not specifically include Electronic Smoking Devices (ESDs) and cannabis. In Hermosa Beach and Manhattan Beach, smoking bans in public places have been implemented in conjunction with campaigns that educate the community and engage local businesses. The Beach Cities Health District would support City efforts in such a campaign.

There are two policy approaches to comprehensive outdoor smoking ordinances, inclusive and listing. The inclusive approach would ban smoking in all public places in the community, similar to what Hermosa Beach and Manhattan Beach have adopted. The listing approach limits the ban to specified locations where smoking is prohibited. To be considered a comprehensive ordinance by the American Lung

Association, at least 5 of the following 7 areas must be included: dining areas, entryways, public events, recreational areas, service areas, sidewalks, and outdoor worksites. Additionally, the policy may include an updated definition of "smoking" and "smoke" to include ESDs and cannabis.

In addition to the inclusion of ESDs and cannabis in the definition of "smoking", staff recommends that the City Council provide direction on the definition for "public place," which may include, but not limited to, the following:
• Streets and sidewalks
• Public parking lots
• Plazas
• Exterior patio areas of restaurants and/or bars and outdoor dining areas
• Exterior areas of commercial private property

Currently, staff recommends the exclusion of private residential property from the smoking ban, similar to the City of Manhattan Beach ordinance.

Further, staff requires direction from the City Council regarding the penalty for violations, that could be criminal or civil. A criminal violation may be can range from an infraction, a misdemeanor or a woblette, which would allow for the violation to be charged as either an infraction or a misdemeanor. Civil citations may also be utilized, but are not an ideal enforcement option as the City does have as robust an internal due process system for the processing of civil citations.

Local Tobacco Retail Permit

Local tobacco retail permits target retailers to prevent youth access to tobacco products. Currently, over 140 California jurisdictions, including 44 Los Angeles County jurisdictions, have passed local retail permitting. These local regulations have shown to be effective in reducing the illegal sale of tobacco products to minors. The permit typically includes a fee for administration of the permit and enables local jurisdictions to implement penalties for violations, including sale to minors.

Under the current State regulations, tobacco retailers must possess a valid Cigarette and Tobacco Products Retailers License from the California Department of Tax and Fee Administration (CDTFA). The CDTFA database shows 43 active tobacco retailers within Redondo Beach.

By implementing a local tobacco retail permit ordinance, the 43 retailers, and any new, would be required to obtain and maintain an annual Tobacco Retail Permit for the City of Redondo Beach, in addition to their City Business License. Tobacco retailers include any business location where tobacco, tobacco products, and tobacco paraphernalia are sold.

Provisions can be included into a tobacco retail permit such as:
• Defining "tobacco products" to include ESDs
• Banning of certain flavored tobacco products
• Limiting sales of other tobacco products or sale of drug paraphernalia
• Banning the sale of alcoholic beverages for consumption on premises
• Banning self-service displays
• Non-transferrable

In developing the ordinance, staff requests direction from the City Council in the following areas:

<u>Annual Permit Fee</u>

An annual permit fee would be established within the City's Master Fee Schedule in an amount not to

exceed the City's reasonable costs of permit administration, including staff time for inputting, processing, and monitoring. Staff recommends an annual permit fee between $35 - $55, which would cover the fully-loaded staff cost of processing.

Grace Period to Comply

Staff requests direction from City Council on a fair length of time to bring current 43 tobacco retailers into compliance. Options can include a set length of time (i.e. within six months) or can coincide with each individual business' renewal date of their City Business License.

Penalties for Violations

There are various options for enforcement when violations occur. The City can choose to implement administrative enforcement, with written notices for violations. This would allow for the business to make corrective actions. Continued violations may lead to suspension and/or revocation of the tobacco retail permit, after an administrative hearing process. With this option, City Council would provide direction as to the number of violations that would constitute grounds for suspension and/or revocation.

A second option would be to implement criminal citations, where a violations may be cited as infractions or misdemeanors or an initial infraction, with subsequent violations graduating to misdemeanors with associated fines and penalties (a woblette). Continued violations may also lead to suspension and/or revocation.

COORDINATION

The preparation of the administrative report and options for each ordinance have been coordinated with the City Attorney's Office.

FISCAL IMPACT

The cost of preparing this report is included within the Community Development Department's portion of the adopted 2018-19 Annual Budget and is part of the department's annual work program.

Fiscal impact of a Tobacco Retail Permit will be assessed upon direction from the City Council related to the fee amount.

SUBMITTED BY:

Brandy Forbes, Community Development Director

APPROVED BY:

Joe Hoefgen, City Manager

ATTACHMENTS:

- *September 18, 2018 City Council Administrative Report*
- *September 18, 2018 City Council Minutes*
- *City of Manhattan Beach Smoking Ban in Public Places Ordinance*
- *City of Hermosa Beach Tobacco Retail License Ordinance*
- *List of Redondo Beach Tobacco Retailers*

Substitute Motion by Councilmember Nehrenheim, seconded by Councilmember Loewenstein, to authorize the City Manager to execute the grant application and certifications for submission to the U.S. Department of Housing and Urban Development (HUD), authorize the Mayor and/or City Manager to execute the CDBG funding agreement upon HUD's approval of the Action Plan, and to approve Option #2. Motion failed with the following vote:

AYES: Nehrenheim, Loewenstein
NOES: Horvath, Gran, Emdee
ABSENT: None

M. ITEMS CONTINUED FROM PREVIOUS AGENDAS - NONE

N. ITEMS FOR DISCUSSION PRIOR TO ACTION

N.1 DISCUSSION AND POSSIBLE ACTION ON PROVISIONS FOR ORDINANCES TO ESTABLISH A CITY-WIDE SMOKING BAN IN PUBLIC PLACES AND IMPLEMENT A TOBACCO RETAIL PERMIT.

CONTACT: BRANDY FORBES, COMMUNITY DEVELOPMENT DIRECTOR

Community Development Director Forbes gave a report and reviewed the following:

- Background
- City-Wide Smoking Ban in Public Places
- Local Tobacco Retail Permit
- Recommendation

Senior Deputy City Attorney Jillian Martins spoke on the following:

- Provide staff with specific direction on the following:
    - City-wide smoking ban
        - Definition of public place or a list of specified locations
        - Inclusion or exclusion of ESDs and cannabis
        - Civil or criminal
    - Local tobacco retail permit
    - Direct staff to prepare the ordinances

Mayor Brand called for public comment.

Michael Olivarez, Advocacy Manager of Lung Force, American Lung Association, supported the City's efforts regarding nicotine addiction which is very dangerous, noted a rise again because of the reinvention, expressed concern with costly and deadly impacts of nicotine addiction, and supported the measure.

Elizabeth Jacoby, Policy Coordinator County of Los Angeles Public Health, gave a report, spoke on addiction, noted new users from new electronic smoking devices which are not safe, a significant increases in tobacco use, gave statistics and studies and reviewed strategies from the County of Los Angeles Public Health.

Motion by Councilmember Nehrenheim, seconded by Councilmember Loewenstein, to receive and file documentation presented by Ms. Jacoby. Motion carried unanimously.

Marie Gambon, Redondo Beach, spoke on issues regarding smoking and youth access, electronic vaping, epidemic proportions, ages have become younger, and asked for the licensing ordinance.

Dr. Andrew Lesser, District 1, stated he quit smoking four years ago after smoking for 35 years, noted increased difficulty of smoking in public places helped him quit, and expressed concern with the ESD's which don't help smokers quit. He expressed concern with the ads for ESD's which are just as dangerous as tobacco. He said cigarettes are an addiction and supported saving the youth from smoking, to include ESD's and to ban smoking and vaping in public places.

Jacqueline Sun, Beach Cities Health District, spoke on exposure to secondhand smoke, economic burdens of smoking-related illnesses, emissions from ESD's and cannabis, stated pollutants are harmful, and vaping is continuing to be a trend among the youth. She said the ordinances will allow citation of youth on campus, and giving more tools. She suggested directing to the Manhattan Beach ordinance where smoking isn't allowed and best practices. She spoke on tobacco retail licensing which is a tool to address youth access, reviewed smoking among students at RUHS, and stated products are being marketed to youth with flavors.

Motion by Councilmember Loewenstein, seconded by Councilmember Nehrenheim, to extend Ms. Sun's time. Motion carried unanimously.

Ms. Sun reviewed best practices and fees, suggested considering the opportunity to limit proximity to schools and young-sensitive areas and ban flavors, and supported community education and technical support.

Craig Cadwallader, Surfrider Foundation SB Chapter, supported a comprehensive outdoor ban such as in Manhattan Beach rather than a listing which failed in Hermosa Beach, expressed concern with the number of cigarette butts in the area, and noted impacts from cigarettes. He supported passing the ordinances.

In response to Councilmember Gran regarding the bars on the street in Hermosa Beach and Manhattan Beach, Mr. Cadwallader stated designated areas didn't work and are difficult to implement. He also said Beverly Hills had a smoking ban in place which did not affect the businesses, and statistics show that businesses improved without the smoking.

Susan Humola supported a ban on smoking in multi-housing and pointed out that their balconies are very close to each other and smoke comes into their home at all hours.

Senior Deputy City Attorney Martins noted legal issue as they relate to private residences, but stated she could review options for regulating common areas or banning smoking in multi-unit residential.

Sam Humola, 565 Esplanade, expressed concern with smoking exposure from cigarettes and marijuana in multi-unit condos and apartments, and suggested a public hearing for residents to weigh-in.

Rolf Strutzenberg stated Manhattan Beach did a good job with their ordinance.

There being no one else wishing to comment, Mayor Brand closed the public comment period.

In response to Councilmember Horvath regarding defining public places, Senior Deputy City Attorney Martins stated it is important to inclusively define a public place if the intention is to enact a comprehensive ban. She reviewed examples in the Manhattan Beach ordinance, and stated she is looking for direction regarding a definition as broad and expansive as in Manhattan Beach or more narrow such as solely publicly owned areas/public rights-of-way.

In response to Councilmember Loewenstein, Senior Deputy City Attorney Martins stated beaches and parks are already included. She also said the use of cigarettes, ESD's and cannabis should all be disallowed together.

Councilmember Horvath supported a comprehensive ban that would be broad such as in Manhattan Beach, to include ESD's and cannabis and an infraction such as already set up in the City. He supported a comprehensive approach for a local tobacco retail permit including the banning of flavored products. He stated TRL's should have a one-time warning/suspension of a license for a 30 or 60 day period and if compliance is still not met, a revocation hearing of a permit would start.

In response to Councilmember Horvath regarding adding in a buffer to cover potential enforcement compliance costs, Senior Deputy City Attorney Martins stated the main concern is to tie specific costs for enacting the tobacco retail license process. She also referred to the grace period to comply, stated there are currently 43 tobacco retailers in the City, and suggested a six-month grace period.

Councilmember Horvath pointed out that Beverly Hills is discussing whether or not to disallow sales of all tobacco products throughout their city.

In response to Mayor Brand regarding alcohol consumption in conjunction with a permit, Senior Deputy City Attorney Martins stated the current state requirements regarding hookah lounges cannot sell alcohol at the same location where tobacco is allowed. She said this would add a clarifying local regulation ensuring that alcohol consumption is not allowed at the same location.

In response to Councilmember Gran, Senior Deputy City Attorney Martins stated as part of the permit fee, two annual inspections by code enforcement personnel would be included. She said enforcement costs can also be included in an annual license fee and as a cost recovery mechanism.

Councilmember Gran asked about public places and people coming out on the sidewalk and smoking on private property. Senior Deputy City Attorney Martins explained that with the Manhattan Beach definition, private property accessible to the public is considered a public place and smoking is disallowed. She suggested having designated smoking areas that are permitted.

Planning Analyst Lina Portolese stated Manhattan Beach's ordinance is more restrictive and includes public open areas and places of employment.

Councilmember Gran suggested allowing businesses or places to permit a small area for smoking. He also supported a stepped approach and looking at the majority of people.

Councilmember Nehrenheim supported allowing smoking in certain areas per the businesses. He also referred to enforcement for the tobacco retail license and suggested the first violation be a 30-day suspension, the second violation a 90-day suspension and the third violation to undertake to revoke the license. He also reviewed the recommendations in the staff report.

Councilmember Emdee noted government overreach versus what society would want, and suggested making a stand that the City is a nonsmoking city, and believed the City doesn't have the resources for penalizing. She suggested more of a civil issue, and believed there will be self-regulation. She also supported the retail licensing permit and to allow a small smoking designated area for businesses.

In response to Councilmember Loewenstein regarding paraphernalia, Planning Analyst Lina Portolese explained this would include rolling papers, little cigars, flavored products, pipes, etc.

Senior Deputy City Attorney Martins believed that paraphernalia was intended as a broad term and suggested Council could limit the sales of certain smoking devices.

Councilmember Loewenstein did not support banning certain paraphernalia, stated the point of a smoking ban is the impact on everybody else, expressed concern with the number of cigarette butts in the harbor, supported banning smoking in public areas, and suggested eventually looking at a ban in private places.

Senior Deputy City Attorney Martins clarified that an infraction is a citation that only comes with a fine, stated it is difficult to collect any kind of fine with a civil penalty, and suggested an infraction based enforcement process for the city-wide smoking ban. She also noted the retail permit process proposed by Councilmember Horvath would be an administrative/civil process, suspending the license either once or twice and then revoking the license.

Councilmember Loewenstein supported enforcement, putting in effort and resources which could be tracked.

Councilmember Gran supported having a designated permitted area for smoking.

Councilmember Loewenstein supported a total ban.

Mayor Brand believed our right to breathe clean area far supersedes those who want to smoke, supported having an infraction, noted that the police will enforce at their discretion, stated he didn't expect full enforcement, and noted the City is behind the curve with other cities.

In response to Mayor Brand regarding the status of leaf blowers, Community Development Director Forbes stated the City has issued approximately 1,000 notices of leaf blower violations and will be issuing citations by code enforcement.

Councilmember Horvath stated education and branding will need to take place with the ban, and believed an infraction system may be easier to enforce. He also did not support smoking outside of businesses, and stated he can go either way on the civil or infraction and the paraphernalia.

Motion by Councilmember Horvath, seconded by Councilmember Loewenstein, to support a citywide comprehensive smoking ban using the Manhattan Beach listing of public places with some specificity, with the inclusion of ESD's and cannabis, and having a stepped infraction as a penalty; for the Local Tobacco Retail Permit, to include everything listed under staff recommendation with paraphernalia being clearly youth oriented products; and to have a one-time 60-day suspension with a second violation resulting in a potential revocation of the permit.

Friendly Amendment by Councilmember Gran to include a stepped approach and having a designated smoking area outside. Councilmembers Horvath and Loewenstein accepted the amendment.

Friendly Amendment by Councilmember Nehrenheim to have a 60-day suspension, 90-day suspension, and then a revocation process, to remove "banning alcohol consumption in conjunction with a permit" and to have an inspection once a year. Councilmembers Horvath and Loewenstein accepted the amendment.

Motion carried unanimously (5-0).

Motion by Councilmember Nehrenheim, seconded by Councilmember Loewenstein, to defer Item N2 and to complete Items P1 through P4 on the agenda. Motion carried unanimously.

Public Communication Received by City Clerk's Office: 9/6/2019

Sender:

Mark Nelson

The smoking ban for Redondo is much needed. However, second hand smoke from adjoining buildings, whether single or multifamily, or from outdoor areas is a significant problem as well as noted by a recent Nextdoor post and a few dozen replies.

A good model ordinance is found with more protections can be found at https://www.codepublishing.com/CA/Dublin/Dublin05/Dublin0556.html

The important addition is:

Secondhand smoke—Declaration of nuisance.
Secondhand smoke constitutes a nuisance. Notwithstanding any other provisions of this chapter, a private citizen may bring a legal action to abate secondhand smoke as a nuisance.

Could you please consider a change or amendment to your 5-0 voted version of the smoking ban?

Thank you!

NATO

September 10, 2019

VIA EMAIL

Hon. Bill Brand, Mayor
Hon. Laura Emdee, Council Member
Hon. John Gran, Council Member
Hon. Christian Horvath, Council Member
Hon. Todd Loewenstein, Council Member
Hon. Nils Nehrenheim, Council Member
415 Diamond Street
Redondo Beach, CA 90277

RE: September 3, 2019 Agenda Item Regarding a Local Tobacco Retail Permit

Dear Mayor Brand and Council Members Emdee, Gran, Horvath, Lewenstein and Nehrenheim:

As the Executive Director and Legal Counsel for the National Association of Tobacco Outlets, Inc., I am writing regarding the procedure that was used for the above-referenced agenda item.

California State Law requires that if a non-urgent ordinance is introduced for first reading, and is significantly changed before second reading (other than for corrections of typographical or clerical errors), the ordinance must be reintroduced. [*See* California Government Code Section 36934; *see* also League of California Cities, Ordinances and Resolutions: Practice Tips for Effective Legislation, Section D(3) "Alterations (other than for typographical or clerical errors) prior to second reading require re-introduction for all non-urgency ordinances." https://www.cacities.org/getattachment/530f101f-f778-47cf-8995-3fca3e8ba129/LR-Foley.aspx.] Indeed, the Redondo Beach legal counsel advised the city council members of the same statutory requirements at the September 3rd hearing.

A lengthy and at times confusing discussion ensued among the members of the Council, including passage of the introduced ordinance, a mayor's veto (which was determined to be improper from the dais), a reconsideration of the introduced ordinance, and purported substantive amendments to the introduced ordinance well beyond typographical or error corrections (including what would amount to extending the ban on flavored tobacco products beyond the originally introduced

ordinance.) Apparently, the intent is to bring some additional amendments on a future consent agenda, that is, without any opportunity for debate of language never published. For this reason, we believe it is incumbent upon the Mayor and City Council to reintroduce the ordinance for first reading before further proceeding. To do otherwise simply deprives the regulated community and the citizens of Redondo Beach of a meaningful way of addressing the ordinance as it would actually be passed.

It was clear from comments of both Council Members and city staff that there was confusion about what was discussed. At the end of the adoption, the mayor himself stated that he was not quite sure exactly what had transpired but relied on the clerk having captured the essence of actions. This does not pass the test of open government that Redondo Beach is bound by. The concern that the hearing had gone long and there were other items to deal with on your agenda cannot be a justification to avoid the mandated process. In fact, the long hearing and the confusion among council members and city staff suggests that this issue requires more focused reflection than a rush to adopt an uncertain, confusing ordinance.

We would greatly appreciate the opportunity for additional, non-repetitive and thoughtful input from all interested persons before adopting this ordinance.

We appreciate you considering our concerns and look forward to hearing from you.

Sincerely,

Thomas Briant

NATO Executive Director and Legal Counsel

ANR AMERICANS FOR NONSMOKERS' RIGHTS

September 12, 2019

Mayor Bill Brand
Redondo Beach
415 Diamond Street
Redondo Beach, CA 90277

Dear Mayor Brand and members of the City Council,

On behalf of our members in Redondo Beach, Americans for Nonsmokers' Rights wishes to express our support for expanding the city's smokefree air protections to prohibit smoking in outdoor public places, especially spaces where people work and gather such as outdoor dining areas, shopping centers, parks and recreation areas, outdoor public events, transit stops, and commercial areas.

Smoking in outdoor areas is not just a nuisance; it's also a health hazard. **Outdoor places where people gather can have significant levels of exposure to secondhand smoke,** and nonsmokers deserve protection from breathing toxic smoke. The U.S. Surgeon General concluded that there is no safe level of exposure to secondhand smoke, and even small amounts of tobacco smoke in short periods of time can be harmful.

Communities are choosing to adopt smokefree laws for outdoor public places not only to reduce exposure to secondhand smoke for employees and the public, but also to have healthier spaces for recreation and physical activity, decrease costly and environmentally harmful cigarette butt waste, reduce fire risk, and create better social environments for youth by setting the example that tobacco use is not the norm.

Redondo Beach would be in good company by having smokefree outdoor public places where people work and gather. Numerous communities throughout California have already adopted similar laws, including more than 125 that have smokefree outdoor dining, more than 200 that have smokefree parks, and more than 60 that have smokefree beaches. These figures only include the strongest local laws that do not include smoking areas.

We recommend that the Council adopt the proposed ordinance that does not include an exemption for designated smoking areas. Allowing businesses to create designated smoking areas may be counter-productive by concentrating smoking and keeping it visible, and may not have an impact on reducing secondhand smoke exposure. In particular, trash receptacles for tobacco waste can be seen as a green light to encourage smoking in the area.

We also encourage the Council to consider adopting an ordinance for 100% smokefree multi-unit housing in order to protect the health and safety of all multi-unit residents and to help ensure everyone's right to a smokefree living environment. Smokefree multi-unit housing is a powerful way to have a broad, positive community impact by reducing secondhand

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exposure where many people spend much of their time—especially children, the elderly, and people with disabilities—and can suffer from persistent levels of exposure.

Given these facts, Americans for Nonsmokers' Rights encourages Redondo Beach to adopt the proposed ordinance to expand smokefree protections to outdoor public places without designated smoking areas, and to consider bringing smokefree air to multi-unit housing to create healthier, safer living environments for Redondo Beach residents.

Thank you for your leadership and desire to make Redondo Beach the best place to live, work, and visit. Please feel free to contact us at 510-841-3032 if you have any questions, comments, or feedback.

Sincerely,

Cynthia Hallett

Cynthia Hallett, MPH
President and CEO

Americans for Nonsmokers' Rights is a national, member-based, not-for-profit organization based in Berkeley, CA that is dedicated to helping nonsmokers breathe smokefree air since 1976.

INTRODUCE ORDINANCES ESTABLISHING A CITY-WIDE SMOKING BAN AND IMPLEMENTING A LOCAL TOBACCO RETAIL PERMIT

CITY COUNCIL
OCTOBER 1, 2019

Background

- City Council held discussions on September 18, 2018, May 7, 2019, and September 3, 2019

- City Council directed staff to prepare the following ordinances:
  - *City-wide smoking ban in public places*
  - *Local tobacco retail permit*

- These actions are supported by community advocates including the Beach Cities Health District and LA County Department of Public Health

City-Wide Smoking Ban in Public Places

- Defines public places and includes private property areas that are open to the general public
- Includes areas within 20 feet of any door, window, opening or vent into a public place
- Residential property and moving vehicles are excluded from the ban
- Definition of smoking includes electronic smoking devices and marijuana
- Allows businesses to create a designated smoking area for patrons and employees and establishes a permit process for this approval
- Violations are punishable by infraction

Local Tobacco Retail Permit

- Requires tobacco retailers to obtain and maintain an annual Tobacco Retail Permit with the City
- Provisions include:
  - *Defining tobacco products to include ESDs*
  - *Banning sales of all flavored products including mint, menthol, spearmint, and wintergreen*
  - *Banning self-service displays*
  - *Banning sales to anyone under 21 years of age*
  - *Establishing application process and requirements*
  - *Require an inspection by City officials once a year*
  - *Allows undercover enforcement*
  - *Non-transferable*
- 1-year grace period for the 43 current retailers to comply
- Establishes administrative enforcement and penalty for violations

Recommendation

- Adopt by title only an ordinance adding Municipal Code Chapter 9, Article 1, to Title 5 to disallow smoking in public places in the City except for designated smoking areas

- Re-introduce by title only an ordinance adding Municipal Code Chapter 9, Article 2, to Title 5 to create a local tobacco retail permit and approval process