

AGENDA BILL

11

No. 11

Meeting Date: 5/23/2017

SUBJECT: ORDINANCE RELATING TO THE REGULATION AND PROHIBITION OF SMOKING

SUMMARY OF THE MATTER:

On May 9, 2017, the City Council voted 4-0 (with Mayor Pro Tem Boyd absent) to introduce and approve the first reading of an ordinance that amends Chapter 7.40 of the Laguna Beach Municipal Code. The ordinance, if adopted, will: (a) expand the City’s current smoking prohibitions to all public places as well as common areas of multi-unit residences; and (b) include the prohibition of electronic smoking devices, such as e-cigarettes and vaporizers, as well as all tobacco and marijuana products in places where smoking is prohibited. The ordinance is attached for review and adoption.

If adopted at tonight’s meeting, the effective date of the Ordinance will be June 23, 2017.

Since first reading, staff was asked if individuals could smoke in their personal vehicles while parked in a public place, such as a City parking lot, and a potential ambiguity in the Ordinance was discovered. Because such a prohibition was not the intent and understanding of the City Council or staff when the Ordinance was introduced, the language of Ordinance (in section 7.40.030(b)(2)) has been clarified so as to permit smoking in a personal vehicle that is on a public street or right-of-way or parked in a public place.

Finally, staff is requesting an appropriation of \$10,000 to create public outreach, education, and signage materials that will be used to inform the public of the provisions of the Ordinance. Currently, the available fund balance in the General Fund is \$40,000 and staff is recommending that the City Council appropriate \$10,000 from that available fund balance to be used for the above-referenced materials.

RECOMMENDATION: It is recommended that the City Council: 1) Approve the second reading and adopt by title only AN ORDINANCE OF THE CITY COUNCIL OF LAGUNA BEACH, CALIFORNIA AMENDING CHAPTER 7.40 OF THE LAGUNA BEACH MUNICIPAL CODE RELATING TO THE REGULATION AND PROHIBITION OF SMOKING; and 2) Appropriate \$10,000 to create public outreach, education, and signage materials that will be used to inform the public of the Ordinance.

Appropriations Requested: \$ 10,000

Fund: General Fund

Attachments: Ordinance

Submitted By: Ryan Hallett
Ryan Hallett, Administrative Analyst

Coordinated with: Christa Johnson
Christa Johnson, Assistant City Manager

Coordinated with: Gavin Curran
Gavin Curran, Director of Finance & IT

Approved: John Pietig
John Pietig, City Manager

(15)

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF LAGUNA BEACH, CALIFORNIA
AMENDING CHAPTER 7.40 OF THE LAGUNA BEACH MUNICIPAL CODE
RELATING TO THE REGULATION AND PROHIBITION OF SMOKING**

The City Council of the City of Laguna Beach does ORDAIN as follows:

SECTION 1. Chapter 7.40 (“Smoking Regulated or Prohibited”) of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

Chapter 7.40 Smoking Regulated or Prohibited

7.40.010	Purpose
7.40.020	Definitions
7.40.030	Smoking prohibited in public places
7.40.040	Smoking and open fires prohibited in hazardous fire areas
7.40.050	Smoking prohibited in City facilities and on City property
7.40.060	Smoking prohibited on property of other governmental bodies
7.40.070	Posting of sign required
7.40.080	Enforcement
7.40.090	Other applicable laws

7.40.010 Purpose.

This chapter recognizes the right of residents and visitors to the city to be free from unwelcome secondhand smoke, which is deemed to be a public nuisance. The purpose of this chapter is to promote and protect the public health, safety, and general welfare by prohibiting smoking in public places, which include common areas of multi-unit housing, in hazardous fire areas, and in City facilities and on City property where persons will be exposed to unwelcome secondhand smoke and also the risks and dangers associated with fires. This chapter is further intended to ensure a cleaner and more hygienic environment for the city, its residents and visitors, and its natural resources.

7.40.020 Definitions.

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

(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.

(b) “Employer” means any person who employs the services of an individual person.

(c) “Employee” means any person who is employed by an employer for direct or indirect monetary wages or profit.

(d) “Enclosed” means closed in by a roof and four walls with appropriate openings for ingress and egress.

(e) “Multi-unit residence” means residential property that contains two or more units rented or available to be rented and not occupied by a landlord of the premises. “Multi-unit residence” does not include a condominium, a mobilehome park, a hotel, a motel, or a bed and breakfast establishment.

(f) “Multi-unit residence common area” means any common area of a multi-unit residence accessible to and usable by the occupants for more than one dwelling, including but not limited to halls, lobbies, laundry rooms, outdoor eating areas, play areas, and swimming pools.

(g) “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, 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.

(h) “Public place” means any indoor or outdoor public place publicly or privately owned, including but not limited to any public buildings, restaurants, dining areas, bars, entryways, elevators, hospitals and health care facilities, public meeting rooms, theaters and auditoriums, public restrooms, service lines, streets, alleys, rights-of-way, sidewalks, plazas, beaches and beach access ways, public transportation and bus shelters, parking lots, parking structures, parks, picnic areas, playgrounds, sports fields, walking paths, hiking trails, bike paths, and hazardous fire areas. “Public place” includes any place being used for a public event, including but not limited to a farmers’ market, parade, craft fair, festival, or any other event open to the general public.

(i) “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. “Smoke” includes but is not limited to tobacco smoke, electronic cigarette vapors, and marijuana smoke.

(j) “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, including but not limited to tobacco and marijuana, intended for human inhalation.

7.40.030 Smoking prohibited in public places.

(a) In addition to all places where smoking is prohibited under state or federal law, in which case those laws apply, no person shall smoke in, and smoking areas shall not be established or designated in, all of the following areas:

- (1) Multi-unit residence common areas;
- (2) Places of employment; and
- (3) Public places.

(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 properties, other than those used as a child-care or health-care facility subject to State licensing requirements; and

(2) Within a moving or stationary vehicle, including a vehicle on a public street or right-of-way or parked in a public place.

(c) No employer, owner, operator, manager, employee or other person having control of a place of employment or a public place shall knowingly permit smoking in an area in which smoking is prohibited by law. This subsection does not require the physical ejection of any person from the business or the taking of steps to prevent smoking under circumstances that would involve a significant risk of physical harm.

(d) The owner, operator or manager of a hotel, motel or bed and breakfast establishment may establish rules permitting or prohibiting smoking on the portions of the property not open to the public, including guest rooms, pools, and similar facilities and areas, provided that such rules comply with applicable laws.

(e) No employer, owner, operator, manager, employee or other person having control of an outdoor dining area, restaurant, snack shop or alcohol beverage establishment shall place ashtrays on tables or otherwise make ashtrays or receptacles for smoking waste available to patrons.

(f) Nothing in this chapter prohibits any person or employer with legal control over any property from prohibiting smoking on any part of such property, even if smoking is not otherwise prohibited in that area.

7.40.040 Smoking and open fires prohibited in hazardous fire areas.

Smoking and open fires are prohibited in any hazardous fire area as identified by the fire chief.

(a) The fire chief has identified the following locations as hazardous fire areas and has provided signage identifying such:

(1) All open space and wildland interface areas in and surrounding the city.

7.40.050 Smoking prohibited in City facilities and on City property.

Smoking is prohibited in all enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Laguna Beach, as well as on all outdoor property owned, leased, or operated by the City of Laguna Beach.

7.40.060 Smoking prohibited on property of other governmental bodies.

Smoking is prohibited in all enclosed areas, including buildings, as well as on all outdoor property within the city owned, leased, or operated by other governmental bodies, including the State of California, the County of Orange, and special districts, when such other governmental body has consented in writing to the City enforcing the provisions of this section on such property.

7.40.070 Posting of sign required.

Except where other signs are required, whenever in this code smoking is prohibited, "No Smoking" or "Smoke Free" signs shall be conspicuously posted by the owner, operator, manager, or other persons having control of such room, building, or other place where smoking is prohibited. The City Manager shall post signs at or near the primary entrance(s) to a public place in which smoking is prohibited and which is owned or controlled by the City. Signage required by this section shall not be subject to Chapter 25.54. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provisions of this chapter.

7.40.080 Enforcement.

(a) The provisions of this chapter may be enforced by the Laguna Beach Police Department, any peace officer or fire or code enforcement officer, the Laguna Beach Marine Safety Department, or other employees designated by the City Manager.

(b) While an establishment is undergoing otherwise mandatory inspections, fire and code enforcement officers may inspect the establishment for compliance with this chapter.

(c) Notice of the provisions of this chapter shall be provided to all applicants for a business license or renewal thereof; provided, however, any failure to provide such notice shall be no defense to a violation of this chapter.

(d) Employers, owners, operators, managers or employees of same shall be required to orally inform persons violating this chapter of the provisions hereof. The duty to inform such violator shall arise when such employer, owner, operator, manager or employee of the same becomes aware of such violation.

(e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.

(f) Except as provided in subsection (g), any person who is found to violate any provision of this chapter shall be deemed guilty of an infraction and shall be punishable by:

(1) A fine not exceeding one hundred (\$100.00) dollars for the first violation;

(2) A fine not exceeding two hundred (\$200.00) dollars for a second violation within one (1) year; and

(3) A fine not exceeding five hundred (\$500.00) dollars for a third violation within one (1) year.

(g) Any person who is found to violate the prohibition of smoking in a hazardous fire area pursuant to section 7.40.040 shall be guilty of a misdemeanor and shall be punishable as provided by state law.

(h) Any aggrieved person may enforce the provisions of this chapter by means of a civil action on his or her own behalf pursuant to California Civil Code section 3501 *et seq.*

7.40.090 Other applicable laws.

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

SECTION 2: The adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to Sections 15061(b)(2) and (b)(3) and 15308 of the State CEQA Guidelines.

SECTION 3: All ordinances and provisions of the Laguna Beach Municipal Code and sections thereof inconsistent herewith shall be hereby repealed to the extent of such inconsistency and no further.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such invalidity shall not affect the validity of this entire Ordinance or any of the remaining portions hereof. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, subdivision, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 5: The City Clerk of the City of Laguna Beach shall certify to the passage and adoption of this Ordinance and shall cause the same to be published in the manner required by law in the City of Laguna Beach. This Ordinance shall become effective on the expiration of thirty (30) days from and after the date of its adoption.

ADOPTED this ____ day of _____, 2017.

Toni Iseman, Mayor

ATTEST:

City Clerk

I, Lisette Chel-Walker, City Clerk of the City of Laguna Beach, do hereby certify that the foregoing Ordinance No. ____ was introduced at a regular meeting of the City Council on _____, 2017 and was finally adopted at a regular meeting of the City Council of said City held on _____, 2017 by the following vote:

AYES: COUNCILMEMBER(S):

NOES: COUNCILMEMBER(S):

ABSTAIN: COUNCILMEMBER(S):

ABSENT: COUNCILMEMBER(S):

City Clerk, City of Laguna Beach, CA