

City of Laguna Beach

AGENDA BILL

No. **17**

Meeting Date: 5/9/2017

SUBJECT: INTRODUCTION OF ORDINANCE AMENDING CHAPTER 7.40 OF THE LAGUNA BEACH MUNICIPAL CODE RELATING TO THE REGULATION AND PROHIBITION OF SMOKING

SUMMARY OF THE MATTER:

City Councilmembers and City staff have been contacted by residents expressing their concerns regarding secondhand smoke in various public places, such as sidewalks and parking lots. Additional complaints regarding secondhand smoke have been made about other public places, such as alleys due to secondary effects of sober living homes at which onsite smoking is prohibited.

Furthermore, the City surveyed residents last summer in order to identify projects that are a priority for the community. One of the survey's findings indicated support for a citywide smoking ban in all public places by 75% of survey respondents.

At its meeting on January 24, 2017, the City Council directed staff to prepare a draft Ordinance that would:

1. Expand the City's current smoking prohibitions to all public places citywide, including sidewalks, parking lots, and alleys as well as common areas in multi-unit residences; and
2. Include electronic smoking devices such as e-cigarettes and vaporizers as well as all tobacco and marijuana products.

At the same meeting, the City Council directed staff to come up with ideas for signage, education, and outreach in addition to enforcement strategies.

City staff and the City Attorney have worked closely to draft the attached Ordinance for the City Council's consideration. Essentially, the draft Ordinance would continue existing smoking prohibitions at public beaches, public parks, and outdoor dining areas and expand the prohibition to all public places citywide such as sidewalks, streets, and alleys as well as multi-unit residence common areas like pools, laundry rooms, and hallways. Moreover, electronic devices such as e-cigarettes and vaporizers as well as tobacco

RECOMMENDATION: It is recommended that the City Council: Introduce the attached Ordinance amending Chapter 7.40 to the Municipal Code prohibiting smoking in all public places as well as common areas of multi-unit residence by (1) asking the City Clerk to read the title of the Ordinance, and (2) approving a motion to waive further reading of the Ordinance and pass it to a second reading.

Appropriations Requested: N/A

Fund: _____

Attachments: Attachment A – draft Ordinance

Attachment B – signage concepts

Submitted By: Ryan Hallett

Ryan Hallett, Administrative Analyst

Coordinated with: Christa Johnson

Christa Johnson, Assistant City Manager

Coordinated with: City Attorney

Approved: John Pietig

John Pietig, City Manager

and marijuana products have been included in the definition of smoking as to prohibit the use of such devices and products in public places. The draft Ordinance also continues existing prohibitions against smoking and open fires in hazardous fire areas as well as City facilities and City property, prohibits smoking on property of other governmental bodies within the City when those bodies consent to the prohibition, provides for signage to remind persons of smoking prohibitions, and establishes penalties for enforcement purposes.

Background

Secondhand smoke has been classified as a known human carcinogen by the U.S. Environmental Protection Agency, the U.S. Surgeon General, and the International Agency for Research on Cancer. Because of its adverse health effects, the City's Municipal Code already prohibits smoking in certain areas such as on public beaches and beach access ways, public parks, eating establishments, public transportation, and public restrooms. However, the City's existing smoking regulations could be expanded to provide additional protections to residents and visitors from secondhand smoke exposure.

In its 2017 State of Tobacco Control report, the American Lung Association gave the City of Laguna Beach an "F" grade in tobacco control while cities such as Laguna Hills, Laguna Woods, and Santa Ana received a "C" grade due to more stringent local policies regarding outdoor air, smoke-free housing, and the implementation of a local tobacco retailer license. It is important to note that Laguna Woods prohibits smoking in indoor and outdoor common areas of multi-unit residences, which include hallways, laundry rooms, game rooms, and swimming pools.

According to the American Lung Association, if the draft Ordinance is enacted the City's tobacco control grade would rise to a "C" grade. In order for the City to receive an "A", additional regulations would need to be enacted, such as nonsmoking units in apartments and condominiums, as well as the institution of a new license for local tobacco retailers. Should the City Council wish, these additional regulations could be discussed at a later date. However, it is important to note that should the City Council enact the draft Ordinance, Laguna Beach would be the first and only city in Orange County to prohibit smoking in all public places citywide.

In addition to secondhand smoke exposure to traditional tobacco products, electronic smoking devices such as e-cigarettes and vaporizers emit aerosol that has been found to contain nicotine and other additional toxins according to The Centers for Disease Control and Prevention. A 2015 report from the California Department of Public Health found that aerosol produced by electronic smoking devices contain at least ten chemicals that are on the state's Proposition 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm.

Overview of draft Ordinance

City staff and the City Attorney have worked closely to draft the attached Ordinance for the City Council's consideration. It is important to note that in the development of the draft Ordinance, staff consulted with cities that have citywide smoking bans, such as Manhattan Beach and Calabasas, in addition to cities who have stringent smoke-free laws, such as Hermosa Beach, Beverly Hills, Pasadena, and Santa Monica.

An in-depth overview following the layout of the draft Ordinance is provided below:

Purpose

The purpose of the draft Ordinance has been updated to recognize that residents and visitors alike have the right to be free from secondhand smoke and to declare secondhand smoke a public

nuisance. Additionally, the draft Ordinance is intended to ensure a cleaner and more hygienic environment for the city, its residents and visitors, and its natural resources.

Definitions

This section has been modified to include definitions for “multi-unit residence,” “multi-unit residence common area,” and “public place,” as well as redefining “smoking.”

- “Multi-unit residence” has been defined as a residential property that contains two or more units rented or available to be rented and not occupied by a landlord of the premises. This does not include condominiums, mobile home parks, hotels, motels, or bed and breakfast establishments.
- “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.
- “Public Place” means any indoor or outdoor public place such as dining areas, sidewalks, alleys, plazas, streets, farmers’ markets, parades, and festivals.
- “Smoking” has been redefined to include not only tobacco products, but also electronic smoking devices such as e-cigarettes and vaporizers as well as marijuana products.

Where Smoking is Prohibited and Permitted

The draft Ordinance would amend Chapter 7.40 of the Municipal Code to prohibit smoking in the following areas:

- Multi-unit residence common areas;
- Places of employment; and
- Public places.

Under the draft Ordinance, smoking would be permitted on private residential properties and within a vehicle.

Moreover, this section also provides some language as to what is and what is not allowed as it pertains to businesses and its employees. For example, this section states that business owners and employees shall not knowingly permit smoking in any public area under their control that is prohibited by law. If they do, they could be found in violation. Furthermore, places like hotels, motels, or bed and breakfast establishments may permit or prohibit smoking on portions of their property that is not open to the public such as guest rooms and swimming pools.

Hazardous Fire Areas

The draft Ordinance would continue existing prohibitions against smoking and open fires in hazardous fire areas as identified by the Fire Chief. This language was carried over from the previous version of Chapter 7.40, which the City Council adopted in 2014. It is worth noting that violation of this provision would still be a misdemeanor and thereby punishable as provided by state law.

City Facilities and City Property

Smoking and open fires would be prohibited in all enclosed areas and outdoor property, including buildings and vehicles, that are owned, leased or operated by the City.

Property of Other Governmental Bodies

This section allows the City to enforce this chapter as it applies to any public place that is an enclosed area or outdoor property that is within the City, but owned, leased, or operated by another governmental body such as the State of California or the County of Orange. However, the City can only exercise this power if the governmental body consents in writing to the City's enforcement. For example, the City would be able to enforce its prohibition of smoking on beaches in South Laguna if the County of Orange gave its consent, in writing, to enforce local laws.

Signage

In the draft Ordinance, business owners and the City would be required to post signs informing residents and visitors of the smoking prohibitions. This section was part of the original Code and has been modified to be broad as the sign specifications and locations. As part of the City's public outreach and education, staff will be providing various resources to businesses such as window decals, coasters, and flyers that can be used to notify patrons of the new smoking prohibitions.

Enforcement

Smoke-free community ordinances are designed to be self-enforcing to obtain compliance. Staff does not intend to assign police officers to the task of seeking out and ticketing individuals who are smoking in public places. The intent is to have enough visible signage and community outreach materials in place for the public to become aware of the City's smoking regulations to obtain voluntary compliance.

However, staff does recommend that the City's sworn and non-sworn police personnel as well as any peace, fire, marine safety, or code enforcement officer be asked to maintain an awareness of the City's regulations. Additionally, the above-referenced personnel will also warn and educate members of the public of the smoking prohibitions, and enforce as needed, should they encounter people smoking while they are conducting their duties in the City.

Additional enforcement provisions include:

- Fire and code enforcement officers may inspect any establishment undergoing any mandatory inspections for compliance with the smoking regulation;
- Business owners and employees shall orally inform persons violating the City's smoking prohibitions;
- The City will provide a notice to all business license applicants as well as those renewing a business license informing them of the Ordinance;
- Causing, permitting, aiding, abetting, or concealing a violation of the chapter shall constitute a violation;
- Violation of this chapter is an infraction and shall be punishable by \$100 for first violation, \$200 for second violation within one year, and \$500 for a third violation within one year, with the exception of the hazardous fire areas provision, which would be a misdemeanor if violated and punishable by state law;

- Any private individual may enforce this chapter by means of a civil action on his or her own behalf.

Public Outreach and Education, and Signage

Several local communities with similar beach tourist and international visitor populations, such as Manhattan Beach, Calabasas, Hermosa Beach, and Beverly Hills, have had successful results with their strict smoking ordinances mainly due to extensive public outreach, education, and signage. It is worth noting that city staff has already started preliminary outreach with the Laguna Beach Chamber of Commerce as well as Visit Laguna Beach. Both organizations received advance copies of the draft Ordinance to share with their members and was asked to forward any questions regarding the draft Ordinance to city staff.

Should the City Council choose to adopt the draft Ordinance at the second reading, the City will need to make the public aware of new smoking prohibitions. Part of this outreach could include providing self-enforcing resources to assist the businesses and multi-unit residences such as window decals, coasters, flyers, etc. A comprehensive public education program could utilize the City's message boards, social media, newspaper ads, website notices, staff outreach, and downtown foot patrol as well as include some kind of a slogan. For example, Manhattan Beach uses the slogan "Breath Free MB" while Hermosa Beach uses "Smoke-Free Hermosa" and "Healthy Air Hermosa" slogans. A public outreach and education campaign of this magnitude would cost approximately \$10,000 based on figures received from other cities who have done this type of campaign. Should the draft Ordinance pass first reading, staff will be asking for an appropriation related to public outreach and education at second reading.

Signage is also important when educating and informing the public of smoking prohibitions. Draft sign concepts have been attached to this agenda bill as Attachment B. These signs were designed based on signs seen in other cities that prohibit smoking citywide.

ATTACHMENT A

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 and open fires 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.

(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 and open fires prohibited in City facilities and on City property.

(a) 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.

(b) To the extent not prohibited by Section 7.40.040, open fires are prohibited 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 (h), 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):

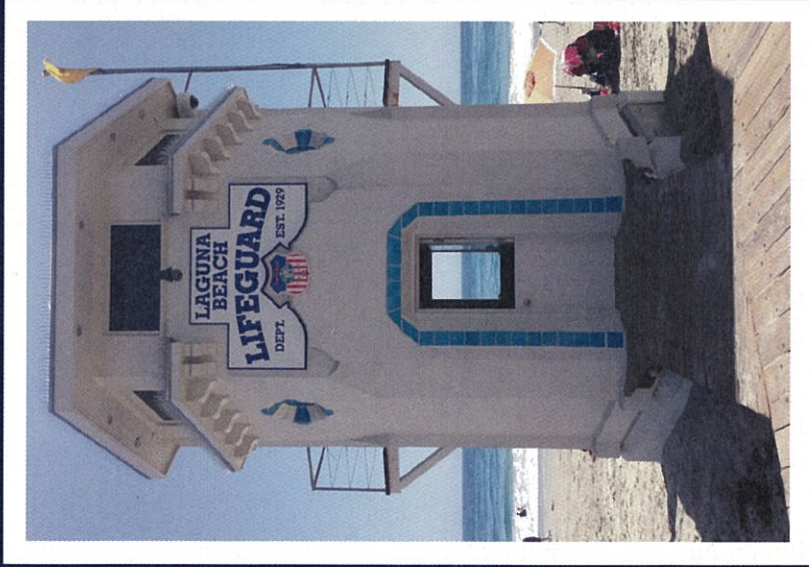
ABSTAIN: COUNCILMEMBER(S):

ABSENT: COUNCILMEMBER(S):

City Clerk, City of Laguna Beach, CA

ATTACHMENT B

BREATHE FREE



LAGUNA BEACH

SMOKE-FREE PUBLIC PLACES



LBMC SECTION 7.40

HEALTHY AIR

Laguna Beach

SMOKE-FREE PUBLIC PLACES



LBMC SECTION 7.40