




AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: September 4, 2018

Agenda Item 8B

Approvals:

City Manager 

Dept. Head 

Attorney 

Finance 

Department: Beaches, Parks and Recreation
Prepared By: City Attorney

Subject: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING THE SAN CLEMENTE MUNICIPAL CODE, CHAPTER 8.64 TO DEFINE SMOKING TO INCLUDE VAPING AND ELECTRONIC DEVICES.

Fiscal Impact: None.

Summary: Staff recommends the City Council consider an ordinance amending the San Clemente Municipal Code to define smoking to include vaping and electronic devices.

Background: The City, by virtue of the police powers delegated to it by the California Constitution, is authorized to adopt policies to promote the health, safety, and general welfare of its residents. This authority includes the regulation of certain disorderly conduct within the City.

The California Department of Health and other organizations have found that vaping and electronic cigarettes are not emission-free and their pollutants could be of health concern for both users and those exposed to the secondhand aerosol. Vaping and electronic smoking devices do not emit water vapor, but a concoction of chemicals toxic to human cells in the form of an aerosol. The chemicals in the aerosol travel through the circulatory system to the brain and all organs

At its regular meeting on Tuesday, August 21, 2018, the City Council directed staff to draft an amendment to this definition to also include electronic and vaping devices.

Discussion: The proposed ordinance promotes health, safety, and general welfare by defining smoking to include vaping and electronic devices.

San Clemente Municipal Code, section 8.64.020 defines smoking as follows:

"Smoke" or "smoking" means and includes the carrying or holding of a lighted pipe or a lighted cigar or a lighted cigarette of any kind or any other lighted smoking equipment, and the lighting of a pipe, cigar, or cigarette of any kind, and inhaling, emitting, or exhaling the smoke of a pipe, cigar or cigarette of any kind.

The draft amendment will add the following sentence to existing definition:

"Smoke" or "smoking" also means and includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.

San Clemente Municipal Code, chapter 8.64 prohibits smoking in a number of places and settings, including elevators, hospitals, beaches, and public parks. This proposed ordinance would ensure that vaping and electronic smoking devices are included in the chapter 8.64's "no smoking" provisions.

California law provides that smoking marijuana (cannabis) is prohibited where smoking is prohibited. Under Health and Safety Code, section 11362.3(a)(2), a person may not "[s]moke cannabis or cannabis products in a location where smoking tobacco is prohibited."

Environmental

Review:

This action would not, in itself, in any way impact or alter the physical environment. Accordingly, this action is not a "project" under State CEQA Guidelines section 15378, and exempt from environmental review under State CEQA Guidelines section 15061(b)(3) (the general-rule exemption).

Recommended

Action:

STAFF RECOMMENDS THAT the City Council introduce an ordinance amending the San Clemente Municipal Code to define smoking to include vaping and electronic devices.

Attachments: 1. Ordinance.

Notification: Not applicable.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING THE SAN CLEMENTE MUNICIPAL CODE, CHAPTER 8.64 TO DEFINE SMOKING TO INCLUDE VAPING AND ELECTRONIC SMOKING DEVICES.

WHEREAS, smoking is hazardous to health. Numerous studies have shown that second-hand smoke is a significant public health hazard;

WHEREAS, the California Department of Health and other organizations have found that vaping and electronic cigarettes are not emission-free and their pollutants could be of health concern for both users and those exposed to the secondhand aerosol;

WHEREAS, vaping and electronic smoking devices do not emit water vapor, but a concoction of chemicals toxic to human cells in the form of an aerosol. The chemicals in the aerosol travel through the circulatory system to the brain and all organs;

WHEREAS, mainstream and secondhand aerosol from vaping and electronic cigarettes have been found to contain at least ten chemicals that are on California's Proposition 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm;

WHEREAS, the City desires to amend the San Clemente Municipal Code to define smoking to include, in addition to lighted cigarettes and similar devices, vaping and electronic cigarettes.

WHEREAS, the City, by virtue of the police powers delegated to it by the California Constitution, is authorized to adopt policies to promote the health, safety, and general welfare of its residents;

NOW, THEREFORE, the City Council of the City of San Clemente does ordain as follows:

Section 1. Recitals. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. Chapter 8.64, Smoking, Code Amendment. San Clemente Municipal Code title 8, Health and Safety, chapter 8.64, Smoking, section 8.64.020, Definitions, definition of "smoke" or "smoking," is hereby amended as follows (additions shown in underline, deletions shown in ~~strikeout~~):

8.64.020 - Definitions

...

"Smoke" or "smoking" means and includes the carrying or holding of a lighted pipe or a lighted cigar or a lighted cigarette of any kind or any other lighted smoking equipment, and the lighting of a pipe, cigar, or cigarette of any kind, and inhaling, emitting, or exhaling the smoke of a pipe, cigar or cigarette of any kind. "Smoke" or "smoking" also means and includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.

Section 3. Existing Code Provisions. All existing provisions of the Municipal Code that are repeated herein are repeated only to aid decision-makers and the public in understanding the effect of the proposed changes. Restatement of existing provisions does not constitute a new enactment.

Section 4. CEQA. The City Council finds that this ordinance is not subject to the requirements of California Environmental Quality Act ("CEQA") for the following reasons:

- A. This ordinance is not "project" within the meaning of section 15378 of the State CEQA Guidelines, because it has no potential for resulting in direct or indirect physical change in the environment.
- B. This Ordinance is exempt under section 15061(b)(3), the general rule exemption, because it can be seen with certainty that there is no possibility that this code amendment will have a significant effect on the environment.

The City Council, therefore, directs that a Notice of Exemption for this ordinance be filed with the County Clerk of the County of Orange in accordance with State CEQA Guidelines.

Section 5. Publication. The City Clerk shall certify to the adoption of this ordinance and cause it, or a summary of it, to be published once within fifteen (15) days of adoption in a newspaper of general circulation printed and published within the City of San Clemente, and shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code, section 36933.

Section 6. Records. The documents and materials associated with this Ordinance that constitute the record of proceedings on which the City Council's findings and determinations are based are located at City Hall, 100 Avenida Presidio, San Clemente, CA 92672.

Section 7. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this Ordinance are

severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

APPROVED AND ADOPTED this _____ day of _____, _____.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of
San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the ____ day of _____, _____, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this ____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

CITY ATTORNEY