



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: April 1, 2014

Agenda Item 9-B

**Approvals:**

City Manager [Signature]

Dept. Head [Signature]

Attorney [Signature]

Finance [Signature]

**Department:** Beaches, Parks & Recreation  
**Prepared By:** Pamela Passow, Recreation Manager

**Subject:** *PROPOSED SMOKING DEFINITION CHANGE FOR PUBLIC SPACES IN SAN CLEMENTE.*

**Fiscal Impact:** None.

**Summary:** The addition of new smoking technology has prompted staff to analyze the definition of smoking. It is staff's recommendation to include electronic cigarettes (e-cigarettes) and marijuana into the definitions under smoking in public spaces.

**Background:** At the August 16, 2011 meeting of the City Council, the Council approved a smoking ban in parks. This was in addition to the smoking ban on the beaches, designated inland canyons, public trails, and other public spaces. With the rising popularity of e-cigarettes, vapor cigarettes, marijuana smoking, and other new trends, staff researched the topic to determine if new ordinances should be introduced.

At its March 11, 2014 meeting, the Beaches, Parks and Recreation Commission voted unanimously to support the proposed change in smoking definitions to include electronic cigarettes and marijuana.

**Discussion:** In 2010, the case of *Sottera, Inc. v. Food and Drug Administration*, supported the idea that e-cigarettes are "made from or derived from tobacco" and therefore can be regulated as "tobacco products." The materials used in e-cigarettes are not currently regulated by the Federal Drug Administration (FDA); however, in 2011 they proposed that they are looking into regulating e-cigarettes which would include marketing restrictions and ingredient listing. Without regulations, the ingredients in the e-cigarettes vary from each manufacturer and make it difficult to determine the long lasting effects of e-cigarettes, as well as the immediate health affects for the individual smoking and/or vaping.

The e-cigarette compounds that have been identified in the aerosol (second hand smoke) include Acetaldehyde, Benzene, Cadmium, Formaldehyde, Isoprene, Lead, Nickel, Nicotine, N-Nitrosornicotine, and Toluene. All of these chemicals are listed on California's Proposition 65 list of carcinogens and reproductive toxins, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986.

The argument supporting e-cigarettes is that it eliminates second hand smoke and is safe or a better solution than traditional smoking. There is insufficient research to determine the long term health effects of the use and the second hand exposure to their use.

Over 100 local governments in the nation have banned electronic cigarettes, most within their smoking ordinances. Several states, including California, have prohibited the sale of e-cigarettes to minors since 2011.

With the State of California allowing marijuana with a valid prescription, the prevalence of marijuana smoking has also increased. Marijuana can also be found in the new technology of vaping. By adding marijuana into the smoking definition, the ban on smoking would also include marijuana in public spaces as listed in the ordinance.

The Beaches, Parks and Recreation Commission and staff recommend a change to the definition of smoking to include e-cigarettes and marijuana.

**Recommended**

**Action:** THE BEACHES, PARKS AND RECREATION COMMISSION AND STAFF RECOMMEND THAT the City Council introduce an ordinance entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CHAPTER 8.64 OF THE SAN CLEMENTE MUNICIPAL CODE AMENDING 8.64.020 DEFINITIONS.

**Attachments:** Proposed Ordinance.

**Notification:** None.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF SAN CLEMENTE, CALIFORNIA,  
AMENDING CHAPTER 8.64 OF THE SAN  
CLEMENTE MUNICIPAL CODE AMENDING  
8.64.020 DEFINITIONS**

**WHEREAS**, the various public spaces located in San Clemente are valued resources of the residents of San Clemente and its visitors. The City of San Clemente is committed to keeping the public spaces within the City clean, safe, healthy, and pleasant for everyone ; and

**WHEREAS**, smoking is hazardous to health. Numerous studies have shown that second-hand smoke is a significant public health hazard. The U.S. Environmental Protection Agency has classified second-hand smoke as a group A carcinogen, the most dangerous class of carcinogen. Smoking in public parks endangers children and others by exposing them to second-hand smoke. Moreover, children and youth who observe smoking and tobacco use in public parks may model the behavior; and

**WHEREAS**, the electronic smoking devices are also hazardous to health and exhaled e-cigarette aerosol may contain nicotine, acetone, formaldehyde, acetaldehyde, propanal, diacetyl, triacetin, marijuana, crack cocaine, and/or other harmful substances; and

**WHEREAS**, the City Council has determined that banning smoking in public spaces in the City is necessary to protect the health, safety, and welfare of San Clemente residents and visitors; and

**WHEREAS**, the City desires to amend the Municipal Code to redefine smoke and smoking, and define e-cigarettes; and

**NOW, THEREFORE**, the City Council of the City of San Clemente, California, DOES HEREBY ORDAIN AS FOLLOWS:

**Section 1:** Chapter 8.64.020 of the Code of the City of San Clemente is hereby revised to read as follows:

**8.64.020 Definitions**

“Smoking” means engaging in an act that generates Smoke, including, but not limited to: possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, an operating Electronic Smoking Device, or a lighted cigarette of any kind; or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind.

“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. The term "Smoke" includes, but is not limited to, tobacco smoke, Electronic Smoking Device vapors, marijuana smoke, and crack cocaine smoke.

"Electronic Smoking Device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. "Electronic Smoking Device" includes any such electronic smoking 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. "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.

**Section 2:** The City Clerk shall certify to the passage of this ordinance and cause the same to be published as required by law, and the same shall take effect as provided by law.

APPROVED, ADOPTED and SIGNED 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 ) ss.  
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