

ORDINANCE NO. 19-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAYWOOD ADOPTING A REVISED CHAPTER 42 OF THE MAYWOOD MUNICIPAL CODE TO PROHIBIT SMOKING IN CITY PARKS AND RECREATION AREAS AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the City of Maywood values the health, welfare, and safety of its citizens and chooses to support proactive measures in an effort to meet this objective; and

WHEREAS, the City Council directed staff to develop a proposed ordinance to prohibit smoking and tobacco use in City parks and recreation areas; and

WHEREAS, tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs; and

WHEREAS, the Centers for Disease Control and Prevention has found that tobacco-related diseases is the nation's leading cause of preventable death.¹ The World Health Organization estimates that tobacco accounts for the greatest cause of death worldwide;² and

WHEREAS, the U.S. Surgeon General³, the U.S. Environmental Protection Agency⁴ and, the California Environmental Protection Agency⁵ has found secondhand smoke to be a public health risk^{6 7 8}; and

¹ U.S. Department of Health and Human Services. *The Health Consequences of Smoking — 50 Years of Progress A Report of the Surgeon General Executive Summary*. 2014. Available at: www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf.

² World Health Organization. *Tobacco Fact Sheet No. 339*. July 2015. Available at: <http://www.who.int/mediacentre/factsheets/fs339/en/>

³ U.S. Department of U.S. Department of Health and Human Services. 2006 Surgeon General's Report—The Health Consequences of Involuntary Exposure to Tobacco Smoke. 2006. Available at: www.cdc.gov/tobacco/data_statistics/sgr/2006/index.htm.

⁴ U.S. Environmental Protection Agency. *Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders*. <https://www.epa.gov/aboutepa/epa-designates-passive-smoking-class-or-known-human-carcinogen>

⁵ Chemicals known to the state to cause cancer or reproductive toxicity. State of California Environmental Agency Office of Health Hazard Assessment Safe Drinking Water and Toxic Enforcement Act of 1986. 2015. Available at: www.oehha.ca.gov/prop65/prop65_list/files/P65single012315.pdf.

⁶ U.S. Department of Health and Human Services. *The Health Consequences of Smoking — 50 Years of Progress A Report of the Surgeon General Executive Summary*. 2014. Available at: www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf.

⁷ Institute of Medicine. *Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence*. Washington, DC; 2010. Available at: www.iom.edu/en/Reports/2009/Secondhand-Smoke-Exposure-and-Cardiovascular-Effects-Making-Sense-of-the-Evidence.aspx.

WHEREAS, electronic cigarettes, commonly known as e-cigarettes, e-cigars, e-cigarillos, e-pipes, and e-hookahs, are battery operated devices designed to look like and be used in the same manner as conventional tobacco products;⁹ and

WHEREAS, the U.S. Food and Drug Administration (“FDA”) conducted laboratory analysis of electronic cigarettes and found harmful effects to humans;¹⁰ 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;¹¹ and

WHEREAS, electronic cigarettes often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products;¹² and

WHEREAS, the California legislature enacted five separate bills, Senate Bills 5 and 7 and Assembly Bills 7, 9 and 11 (collectively “the Smoking Legislation”), which regulate tobacco and tobacco products. With limited exceptions, the Smoking Legislation does not preempt or otherwise prohibit the adoption of local standards, or enforcement of local ordinances, that impose greater restrictions than the State standards¹³; and

WHEREAS, Senate Bill 5 redefines tobacco products for purposes of the Stop Tobacco Access to Kids Enforcement Act to include electronic devices such as electronic cigarettes.

WHEREAS, it is the intent of the City Council in enacting this Ordinance to provide for the public health, safety, and welfare by discouraging smoking and tobacco use around non-tobacco users, where they live, work, and play; by reducing the

⁸ U.S. Department of Health and Human Services. *The Health Consequences of Smoking — 50 Years of Progress A Report of the Surgeon General Executive Summary*. 2014. Available at: www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf.

⁹ Yamin, C.K., Bitton A., and Bates, D.W. *E-Cigarettes: A Rapidly Growing Internet Phenomenon*. *Annals of Internal Medicine*, 153:607-609, 2010.

¹⁰ <http://www.fda.gov/downloads/drugs/scienceresearch/ucm173250.pdf>

¹¹ U.S. Food and Drug Administration. *News Release, FDA and Public Health Experts Warn About Electronic Cigarettes*. July 22, 2009. Available at: www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm

¹² McMillen, R., Maduka, J., and Winickoff, J. “Use of Emerging Tobacco Products in the United States.” *Journal of Environmental and Public Health*.

¹³ Assembly Bill 7 expands the prohibition on smoking in the workplace to include owner-operated businesses and states that the regulation of smoking in the workplace is a matter of statewide concern thereby eliminating the need of local governments to enact workplace smoking restrictions. Assembly Bill 7 supersedes and renders unnecessary any local enactment regulating the smoking of tobacco products in workplaces unless any of the provisions of Assembly Bill 7 are repealed in which case local governments will have the right and authority to enforce previously enacted ordinances or to enact new ordinances prohibiting smoking in the workplace.

potential for children to wrongly associate smoking and tobacco use with a healthy lifestyle and by affirming and promoting a healthy environment in Maywood

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MAYWOOD, CALIFORNIA DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 42 of Title 5 (Public Welfare, Morals and Conduct) of the Maywood Municipal Code is hereby amended in its entirety to read as follows:

“CHAPTER 42 - SMOKING PROHIBITED IN PARKS AND RECREATION AREAS

5-42.01 - Definitions.

(a) “Electronic cigarette” shall mean an electronic and/or battery operated device, the use of which may resemble smoking or “vaping”, which can be used to deliver an inhaled dose of nicotine or other substances. The term shall include every variation and type of such devices whether they are manufactured, distributed, marketed, or sold as an electronic cigarette, an e-cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product sold by or distributed by any other product name or descriptor. The term does not include any inhaler prescribed by a licensed doctor.”

(b) “Park” shall mean City parks owned or controlled by the City of Maywood as designated in the City’s General plan or by action of the City Council. Future facilities of the City designated in the General Plan or by action of the City Council as a park shall also be included in the definition of park without further amendment of this section.

(c) “Recreation area” shall mean areas open to the public for recreational purposes regardless of any fee or age requirement, including, for example, but not limited to parks, recreational facilities, picnic areas, playgrounds, tot lots, gardens, athletic fields, walking paths, bike paths, sports facilities, skateboard parks and other open spaces.

(d) “Smoke” or “smoking” means the engaging in an act that generates smoke or vapor, such as, for example: possessing, carrying or operating a lighted pipe, lighted cigar, lighted cigarette, or lighted hookah pipe of any kind; operating, lighting, igniting, activating or vaping an electronic cigarette; or lighting or igniting a pipe, cigar, cigarette, or hookah pipe of any kind including but not limited to, tobacco, cannabis, plant, chemicals or other smoking or combustible material. “Smoke” or “smoking” also means inhaling, exhaling, burning or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, electronic cigarette, pipe, hookah, tobacco, nicotine, marijuana, plant, chemicals or other smoking material in any manner or in any form.

Smoke also 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 or vaporizing material contains no tobacco, nicotine, or cannabis 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, vapors from an electronic smoking device, and cannabis smoke or any other like substance.

(e) "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; and (2) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.

Notwithstanding any provision of subsections (1) and (2) to the contrary, "tobacco product" includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately. "Tobacco product" does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

5-42.02 - Prohibition.

(a) Smoking or use of any tobacco product shall be prohibited in any park or recreation area.

(b) No person shall be in possession of a burning tobacco or tobacco-related product, including but not limited to cigarettes, cigars, pipes or similar devices in or upon any park or recreation area in the City.

(c) No person shall dispose of lighted or unlighted cigarettes or cigars, or cigarette or cigar butts, or similar devices, or any other tobacco-related waste in or upon any park or recreation area, except in a receptacle designated for such disposal.

(d) No person shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to obtain compliance with this section.

(e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter is prohibited.

5-42.03 - Enforcement

(a) Each separate violation of this Chapter is an **infraction** punishable by:

1. A fine not to exceed one hundred dollars (\$100.00) for the first violation.

2. A fine not to exceed two hundred dollars (\$200.00) for the second violation of this chapter within one year.

3. A fine not to exceed five hundred fifty dollars (\$500.00) for each additional violation of this chapter within one year.

(b) Punishment under this section shall not preclude punishment pursuant to Health and Safety Code Section 13002, Penal Code Section 374.4 or any other law proscribing the act of littering. Nothing in this section shall preclude any person, corporation or governmental entity from seeking any other remedies, penalties or procedures provided by law whether civil or criminal.”

Section 2. Pursuant to the California Environmental Quality Act (“CEQA”), as amended, the CEQA Guidelines, and the City’s local CEQA Guidelines, City staff for the City of Maywood determined that the proposed Ordinance has no possibility of causing a significant impact on the environment. Staff concludes that the proposed Ordinance is exempt from the application of CEQA pursuant to CEQA Guidelines Section 15061(b)(3), in that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. This finding is premised on the fact that the project consists of a proposed Ordinance and does not include proposed construction or proposed alteration to the physical environment. Furthermore, the Ordinance will have no adverse environmental effects because it will reduce the public’s exposure to the harmful effects of second-hand smoke. The City Council concurs with City staff’s determination and therefore directs staff to prepare and file a Notice of Exemption with the County Clerk, pursuant to CEQA Guidelines Section 15062, within five days of the date of this action.

Section 3. If any provision of this ordinance, or the application thereof, to any person or circumstances is held invalid or unconstitutional by any court or competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or applications, and to this end, the provisions of this ordinance are declared to be severable. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof even if one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof is declared invalid or unconstitutional.

PASSED, APPROVED, and ADOPTED this 8th day of May, 2019 by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:



Eduardo De La Riva, Mayor

ATTEST:



Gerardo Mayagoitia City Clerk

APPROVED AS TO FORM:



Roxanne Diaz, City Attorney

I, Gerardo Mayagoitia, City Clerk of the City of Maywood, do hereby certify that the foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Maywood held on the 8th day of May, 2019 by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:



Gerardo Mayagoitia, City Clerk