

ORDINANCE No. 17-14

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA AMENDING ARTICLE
6 OF CHAPTER 5 OF THE HAYWARD MUNICIPAL CODE REGARDING
SMOKING POLLUTION CONTROL

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Article 6 of Chapter 5 of the Hayward Municipal Code and is hereby amended and enacted to read as follows:

SEC. 5-6.00 - TITLE.

This article shall be known as the 'Smoking Pollution Control Ordinance.'

SEC. 5-6.01 - FINDINGS AND PURPOSE.

The City Council of the City of Hayward hereby finds that:

- a. Numerous studies have found that smoking is a major contributor to indoor pollution;
- b. The U.S. Environmental Protection Agency has determined that second-hand smoke is a Class-A carcinogen for which there is no safe exposure level;
- c. Reliable studies have shown that breathing second hand smoke is a particular health hazard for certain population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease;
- d. Health hazards induced by breathing second-hand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm;
- e. Nonsmokers with allergies or respiratory diseases, and those who suffer other ill effects of breathing second-hand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same;

- f. The simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to second-hand smoke;
- g. Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restrictions on smoking in public places;
- h. Smoking is a documented cause of fires;
- i. Cigarette, cigar burns, and ash stains on merchandise and fixtures cause economic losses to businesses;
- j. The Surgeon General has determined that cigarettes and other forms of smoking tobacco are as addictive as drugs such as heroin and cocaine;
- k. The free distribution of cigarettes encourages people to begin smoking, and tempts those, who had to quit, to begin smoking again;
- l. With certain exceptions, state law prohibits smoking inside an enclosed place of employment;
- m. State law prohibits public school students from smoking or using tobacco *or* cannabis related products while on campus, while attending school-sponsored activities, or while under the supervision of school district employees;
- n. State law prohibits smoking in playgrounds and tot lots and within 20 feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions.
- o. State law prohibits smoking or ingesting cannabis or cannabis products in a public place, except in accordance with Section 26200 of the Business and Professions Code.
- p. State law prohibits smoking or ingesting cannabis or cannabis products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.
- q. State law prohibits smoking or ingesting cannabis or cannabis products while riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or

other vehicle used for transportation except as permitted on a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation that is operated in accordance with Section 26200 of the Business and Professions Code and while no persons under 21 years of age are present.

WHEREFORE, it is the intent of the City Council of the City of Hayward in enacting this ordinance to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of tobacco and cannabis use around non-tobacco and non-cannabis users; by protecting children from exposure to smoking tobacco and cannabis while they play; by reducing the potential for children to associate smoking tobacco and cannabis with a healthy lifestyle; by protecting the public from smoking tobacco-related and cannabis-related litter and pollution; and by affirming and promoting the family atmosphere of the City's public places.

SEC. 5-6.02 - DEFINITIONS.

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

- a. 'Business' means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
- b. 'Dining area' means any area, both enclosed and unenclosed, available to or customarily used by the general public, that is designed, established, or regularly used for the consuming food or drink;
- c. 'Enclosed' means closed in by a roof and walls on all sides with appropriate openings for ingress and egress.
- d. 'Playground' means any park or recreational area designed in part to be used by children that has play or sports equipment installed or has been designated or

landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on City grounds.

- e. 'Public Place' means any place to which the public is invited or in which the public is permitted including, but not limited to, any rights-of-way, (which include but are not limited to sidewalks, streets, and medians), banks, educational facilities, health facilities, public transportation facilities, reception areas, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms.
- f. 'Reasonable distance' means any distance necessary to insure that occupants of a building are not exposed to second-hand smoke created by smokers outside of the building.
- g. 'Recreational area' means any area, public or private, open to the public for recreational purposes regardless of any fee requirement, including, for example, parks, gardens, sporting facilities, and playgrounds.
- h. 'Service line' means any place where one (1) or more persons are waiting for or receiving service of any kind, whether or not such service includes the exchange of money, including but not limited to ATMs, bank teller windows, telephones, ticket lines, bus stops, and taxi stands.
- i. 'Smoke or Smoking' means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or device, or any other lighted or heated tobacco or plant product, or cannabis or cannabis product, intended for inhalation, in any manner or in any form, whether natural or synthetic. "Smoking" also includes the use of an electronic smoking device which creates a vapor or aerosol, in any manner or in any form.
- j. 'Sports arena' means enclosed or outdoor sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.

- k. 'Tobacco Product' or "Tobacco Products" means any product containing, made or derived from tobacco or contains synthetically produced nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. "Tobacco product" includes, but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, or electronic smoking devices (with or without nicotine). "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.
- l. "Cannabis Product" or "Cannabis Products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- m. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (excepted the resin extracted therefrom), fiber, oil, cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this article "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the California Health and Safety code.

SEC. 5-6.03 - APPLICATION TO CITY FACILITIES, AREAS, AND VEHICLES.

Smoking shall be prohibited in all facilities, areas, and vehicles owned, leased, operated, or controlled by the City of Hayward, and all such areas shall be subject to the provisions of this Article.

SEC. 5-6.04 - PROHIBITION OF SMOKING IN PUBLIC PLACES, AND CERTAIN OTHER AREAS.

- a. Smoking shall be prohibited in any and all public places within the City of Hayward, whether enclosed or unenclosed, including but not limited to the following:
 - (1) Elevators and restrooms;
 - (2) Buses, taxicabs, and other means of public transit offered within the City, and in ticket, boarding, and waiting areas of public transit depots, including bus shelters;
 - (3) Service lines;
 - (4) The sites of public events including, for example, sports events, entertainment, speaking performances, ceremonies, pageants, and fairs; provided however that this prohibition shall not prevent the establishment of a separate, designated smoking area set apart from the primary event area and no larger;
 - (5) Retail stores, except in areas in the stores not open to the public, and with respect to cannabis or cannabis products, except in accordance with Section 26200 of the California Business and Professions Code and as permitted by a Conditional Use Permit pursuant to Section 10-1.3600 et seq., of this Code, on the site of a permitted commercial cannabis retail dispensary by qualified patients.
 - (6) Within enclosed common areas for hotels and motels, as well as 35 percent (35%) of private hotel and motel rooms rented to transients, as defined by Hayward Municipal Code, Chapter 8, Article 4.
 - (7) Restaurants, dining areas, and bars, whether enclosed or unenclosed;
 - (8) Public areas of libraries and museums when open to the public;
 - (9) Any facility used primarily for exhibiting any motion picture, stage drama, lecture, music recital, or other similar performance, except when smoking is part of any such production by the performers;
 - (10) Every room, chamber, and place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, or

agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.

- (11) Sports arenas, recreational areas, parks, playgrounds, and greenways
- (12) With respect to cannabis or cannabis products, within 1,000 feet of a school, day care center, or youth center while children are present at such a school, day care center, or youth center, except in or upon the grounds of a private residence or in accordance with Section 26200 of, or Chapter 3.5 (as it relates to Medical Cannabis Section) of Division 8 of, the California Business and Professions Code and only if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present.
- (13) With respect to cannabis or cannabis products, any location where smoking tobacco is prohibited.

- b. Notwithstanding any other provision of this Article, any person, business, nonprofit entity, owner, operator, manager, or employer who controls any premises described in this section may declare that entire establishment as a non-smoking establishment.
- c. No person shall dispose of smoking waste within the boundaries of an area in which smoking is prohibited, including inside the perimeter of any Reasonable Distance required by this Article.

SEC. 5-6.05 - REASONABLE SMOKING DISTANCE REQUIRED—20 FEET.

NOTE—(This section removed by Ordinance 10-13, adopted Oct. 26, 2010)

SEC. 5-6.06 - AREAS NOT SUBJECT TO SMOKING REGULATIONS.

- a. Private residences, except when used as a child care or a health care facility.
- b. Hotel and motel rooms rented to guests; provided, however that each hotel and motel designates not less than thirty-five percent (35%) of their guest rooms as non-smoking

rooms and removes ashtrays from these rooms. Permanent "no smoking" signage shall be posted in nonsmoking rooms.

- c. With respect to cannabis or cannabis products, in accordance with Section 26200 of the California Business and Professions Code and as permitted by a Conditional Use Permit pursuant to Section 10-1.3600 et seq., of this Code, on the site of a permitted commercial cannabis retail dispensary by qualified patients.

SEC. 5-6.07 - POSTING OF SIGNS.

- a. "Smoke Free" or "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently, and conspicuously posted in every building or other place where smoking is regulated by this section, by the owner, operator, manager, or other person having control of such building or other place.
 - (1) Every theater owner, manager, or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium.
 - (2) Every restaurant shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

SEC. 5-6.08 - TOBACCO AND CANNABIS SAMPLES PROHIBITED.

No person shall knowingly distribute, furnish without charge, or cause to be furnished without charge for a commercial purpose, cigarettes, tobacco, cannabis or cannabis products, or coupons for cigarettes or other tobacco, cannabis or cannabis products, at any event open to the public or in any public place, including but not limited to any public way, mall or shopping center, park, playground, or any property owned by the City or any other public agency, except in a retail tobacco store or cannabis dispensary licensed pursuant to state and local law.

SEC. 5-6.09 VENDING MACHINES RESTRICTED.

No cigarette or other tobacco product, including cannabis and cannabis products may be sold, offered for sale, or distributed by or from a vending machine or other applicable or similar device designed or used for vending purposes.

SEC. 5-6.10 - ENFORCEMENT OFFICER.

Enforcement shall be implemented by the City Manager or designee.

SEC. 5.6.11 - CIVIL AND ADMINISTRATIVE ENFORCEMENT AND PENALTIES FOR VIOLATIONS.

- a. It shall be unlawful for any person to smoke in any area restricted by the provisions of this section.
- b. It shall be unlawful for any person who owns, manages, operates, or otherwise controls any use of any premises subject to any regulation under this section to fail to comply with its provisions.
- c. Violations of this Article are subject to civil and administrative enforcement, punishable by a civil fine established by resolution of the Hayward City Council. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing as provided for in Chapter 1, Article 7 of the Hayward Municipal Code.
- d. Any person who smokes in an area where smoking is prohibited is guilty of trespass and, if the area is accessible by the public during the normal course of operations, such smoking constitutes a public nuisance.
- e. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance shall also constitute a violation.
- f. Upon a proper showing and hearing before the City Council that determines that a business establishment has violated the provisions contained in this section more than three (3) times in any calendar year, the City Council has the discretion to revoke the business license of the establishment.

- g. The remedies provided by this Article are cumulative and in addition to any other remedy available at law or in equity.

SEC. 5-6.12. - OTHER APPLICABLE LAWS.

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law or regulation.

Section 2. California Environmental Quality Act (CEQA). The City Council independently finds and determines that this action is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3), as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

Section 3. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 4. This Ordinance shall become effective thirty (30) days after adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 17th day of October, 2017, by Council Member Zermeño.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the 30th day of October, 2017, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS: Zermeño, Márquez, Mendall, Peixoto, Lamnin, Salinas
MAYOR: Halliday

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

APPROVED: Brian Halliday
Mayor of the City of Hayward

DATE: November 14, 2017

ATTEST: William Perez
City Clerk of the City of Hayward

APPROVED AS TO FORM:

Emilio S. Fero
City Attorney of the City of Hayward