

## ORDINANCE NO. 2020-2878

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA MESA REPEALING AND REPLACING CHAPTER 7.27 AND REPEALING SECTION 9.08.074 OF THE LA MESA MUNICIPAL CODE TO UPDATE AND REVISE THE REGULATION OF SMOKING IN THE CITY OF LA MESA

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WHEREAS, smoking of tobacco (including electronic cigarettes or vaping devices), or any other weed or plant (natural or synthetic), is a danger to the public health and a material annoyance, inconvenience, discomfort, and a health hazard to those that are exposed to such pollution; and

WHEREAS, this Ordinance is intended to preserve the public health, safety and welfare by prohibiting the smoking of tobacco (including electronic cigarettes or vaping devices), or any other weed or plant (natural or synthetic), by prohibiting such smoking in public places and places of employment except as permitted herein.

NOW, THEREFORE, THE CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1: Chapter 7.27 of the La Mesa Municipal Code is hereby repealed in its entirety and replaced with the following:

#### **“Chapter 7.27 – PROHIBITION OF SMOKING IN CERTAIN AREAS**

##### 7.27.010 – Purpose.

Because second hand smoke of tobacco, or any other weed or plant (including cannabis), is a danger to health and a material annoyance, inconvenience, discomfort, and a health hazard to those who are exposed to such pollution, and in order to serve the public health, safety and welfare, the declared purpose of this Chapter is to prohibit the smoking of tobacco, or any weed or plant, in public places and places of employment except as permitted herein.

##### 7.27.020 – Definitions.

For purposes of this Chapter, the following terms have the following meanings:

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‘Smoke’ or ‘smoking’ means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. ‘Smoke’ or ‘smoking’ includes the use of an electronic smoking device that creates an aerosol or vapor (commonly known as vaping), in any manner or in any form, or the use of any oral device for the purpose of circumventing the prohibition of smoking. Electronic smoking devices covered include 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. 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.

‘Public place’ means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement. Public place includes all City streets and sidewalks, outdoor worksites, and publicly or privately-owned indoor and outdoor areas that are open to the public. Such places include but are not limited to: hotel rooms, bars, eating establishments,

recreational areas, playgrounds, parks and tobacco-selling businesses except as provided for pursuant to Section 7.27.035 of this Chapter.

7.27.030 Smoking in Enclosed Areas of Places of Employment—Prohibited by State Law

Smoking is prohibited by State law in enclosed areas of places of employment as defined and regulated pursuant to California Labor Code Section 6404.5, as may be amended from time to time, which is hereby incorporated by reference as if fully set forth herein. Pursuant to said section, the City is authorized to enforce said section.

7.27.035 Smoking in Public Places—Prohibited—Exceptions

- A. No person shall smoke in a public place, a common area within multi-unit housing (open to the public) or unenclosed place of employment. No owner, operator or manager of any of these places shall knowingly or intentionally allow smoking in these areas.
- B. The following establishments shall be excepted from the smoking prohibitions established pursuant to Section 7.27.035.A of this Chapter:
  - (1) Twenty percent of the guestroom accommodations in a hotel, motel or similar transient lodging establishment;
  - (2) Retail or wholesale tobacco shops which means any business establishment, the main purpose of which is the sale of tobacco products, including but not limited to, cigars, pipe tobacco and smoking accessories;
  - (3) Private smokers' lounges (including hookah bars) which means any enclosed area or facility properly sealed off and ventilated to prevent exposure of smoke to the public from smoking patrons;
  - (4) Any restaurant and/or bar legally operating an outdoor dining and/or smoking facility continuously for adults (21 years or older) for not less than 60 days prior to the effective date of this Ordinance. Any such facility may continue to operate so long as it is not intentionally discontinued for a period of 90 consecutive calendar days; provided, that such areas are not located or encroaching upon City property or rights-of-way. For purposes of this paragraph, maintenance, repair and rehabilitation does not constitute intentional discontinuation.

7.27.040 Posting of signs.

A sign that reads "No Smoking or vaping" shall be clearly, sufficiently and conspicuously posted in the outside window of every building covered by this Chapter. Any such sign shall have large and easily readable black letters on a white background and be 8.5 x 11 inches in size or larger.

7.27.050 - Governmental Agency Cooperation.

The city manager shall annually request such governmental and educational agencies involved with their specific business within the City of La Mesa to establish local operating procedures to cooperate and comply with this Chapter. In federal, state, county, and special school districts within the City of La Mesa, the city manager shall urge enforcement of their existing no-smoking prohibitions and request cooperation with this Chapter.

#### 7.27.060 State Law Enforcement.

The City Attorney may enforce any State laws regulating or restricting smoking, as may be amended from time to time, which do not otherwise expressly prohibit such enforcement. State smoking restrictions include:

- A. Child/Day Care Centers (Health and Safety Code Section 1596.795);
- B. Farmers' Markets (Health and Safety Code Section 114371);
- C. Foster and Group Homes (Health and Safety Code Section 1530.7);
- D. Government Buildings (Government Code Section 7596-7597);
- E. Multi-unit Housing (Labor Code Section 6404.5 and Civil Code Section 1947.5);
- F. Personal Vehicles (Health and Safety Code Section 118948);
- G. Public Transportation (Health and Safety Code Section 118925);
- H. Workplace (Labor Code Section 6404.5); and
- I. Playgrounds, Tot Lots, and Youth Sporting Events (Health and Safety Code 104495).

#### 7.27.065 – Information and Notice.

- A. The City Manager or his or her designee shall provide business license applicants with copies of this Chapter.
- B. It shall be the responsibility of employers to disseminate information to the public concerning the provisions of this Chapter.

#### 7.27.070 - Violations and penalties.

Any person who violates any provision of this Chapter by smoking in a posted "No Smoking or Vaping" area or by failing to post or cause to be posted a "No Smoking or Vaping" sign required by this Chapter, shall be guilty of an infraction. The first such violation shall be recorded as an official warning, and any subsequent violation by the same person or entity, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars. A person under the age of 21 found in violation of this Chapter shall be assigned non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community service, or another penalty that the City Attorney determines to be appropriate. The City Attorney will consult with court personnel, educators, parents, children and other interested parties to determine an appropriate penalty for persons under the age of 21 in the City.

#### 7.27.090 - Severability.

If any provision, clause, sentence or paragraph of this Chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of the provisions of this Chapter which can be given effect without the invalid provision or application; accordingly, the provisions of this Chapter are hereby declared to be severable."

SECTION 2: Section 9.08.074 of the La Mesa Municipal Code is hereby repealed in its entirety.

SECTION 3: This Ordinance shall become effective in accordance with applicable law 60 days after adoption to provide for sufficient notice and an educational period. The City Clerk is hereby authorized to use summary publication procedures pursuant to Government Code Section 36933 utilizing a newspaper of general circulation published in the City of La Mesa.

INTRODUCED AND READ at a Regular meeting of the City Council of the City of La Mesa, California, held the 14th day of January 2020, and thereafter PASSED AND ADOPTED at a Regular meeting of said City Council held the 28th day of January 2020, by the following vote, to wit:

AYES: Councilmembers Alessio, Baber, Parent, Weber and Mayor Arapostathis

NOES: None

ABSENT: None

APPROVED:

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MARK ARAPOSTATHIS, Mayor

ATTEST:

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MEGAN WIEGELMAN, CMC, City Clerk

#### CERTIFICATE OF CITY CLERK

I, MEGAN WIEGELMAN, City Clerk of the City of La Mesa, California, do hereby certify the foregoing to be a true and correct copy of Ordinance No. 2020-2878, duly passed and adopted by the City Council of said City on the date and by the vote therein recited and that the same has been duly published according to law.

MEGAN WIEGELMAN, CMC, City Clerk

(SEAL OF CITY)