

ORDINANCE NO. 14-0008

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH ESTABLISHING A CITYWIDE SMOKING BAN IN PUBLIC PLACES, REGULATING ELECTRONIC CIGARETTES IN THE SAME MANNER AS OTHER SMOKING DEVICES, AND AMENDING CHAPTERS 4.116, 12.08, 12.12, AND 12.48 OF THE MANHATTAN BEACH MUNICIPAL CODE

THE MANHATTAN BEACH CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City Council hereby finds, determines and declares that:

- A. Tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs; and
- B. More than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death; and
- C. The World Health Organization estimates that by 2030, tobacco will account for 10 million deaths per year, making it the greatest cause of death worldwide; and
- D. The United States Environmental Protection Agency has found secondhand smoke to be a risk to public health and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen; and
- E. Secondhand smoke is responsible for an estimated 38,000 deaths among non-smokers each year in the United States, which includes 3,000 lung cancer deaths and 35,000 deaths due to heart disease; and
- F. 87.9% of non-smokers showed detectable levels of cotinine (a metabolite of nicotine) in their blood, the most likely source of which is secondhand smoke exposure; and
- G. Secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight and increased risk of Sudden Infant Death Syndrome in infants of mothers who smoke; and
- H. Secondhand smoke exposure causes as many as 300,000 children in the United States under the age of 18 months to suffer lower respiratory tract infections, such as pneumonia and bronchitis; exacerbates childhood asthma; and increases the risk of acute, chronic, middle-ear infections in children; and
- I. The total cost of smoking in California was estimated as \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone; and

J. Cigarettes, cigars, pipes and other smoking materials are the leading cause of fire deaths in the United States, causing an estimated 31,200 structure fires and 830 deaths in 2001; and

K. 84% of Californians are non-smokers; and

L. There is no Constitutional right to smoke; and

M. The U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found they contained carcinogens and toxic chemicals to which users and bystanders could potentially be exposed; and

N. California law declares that anything that is injurious to health or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property is a nuisance; and

O. Local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance; and

P. Electronic cigarettes, commonly known as e-cigarettes, e-cigars, e-cigarillos, e-pipes, and e-hookahs, are battery operated devices, designed to be used in the same manner as conventional tobacco products, and some of which are designed to look like conventional cigarettes. Electronic cigarettes employ the use of a cartridge, generally containing up to twenty (20) milligrams of nicotine, to deliver vaporized nicotine to users. Some cartridges used by electronic cigarettes can be re-filled with liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine. Yamin, C.K., Bitton A., and Bates, D.W. "E-Cigarettes: A Rapidly Growing Internet Phenomenon." *Annals of Internal Medicine*, 153:607-609, 2010; and

Q. The U.S. Food and Drug Administration ("FDA") conducted laboratory analysis of electronic cigarettes and found the following: 1) diethylene glycol, an ingredient used in antifreeze and toxic to humans, was found in one cartridge; 2) certain tobacco-specific nitrosamines, which are human carcinogens, were detected in half of the samples tested; 3) tobacco-specific impurities suspected of being harmful to humans-anabasine, myosmine, and B-nicotyrine-were detected in a majority of the samples tested; 4) all but one tested cartridge labeled as containing no nicotine did in fact contain low levels of nicotine; 5) three identically labeled cartridges emitted markedly different amounts of nicotine with each puff (nicotine levels per one hundred (100) millilitres puff ranged dramatically from 26.8 to 43.2 micrograms nicotine); and 6) one high-nicotine cartridge delivered twice as much nicotine to users as was delivered by a nicotine inhalation product approved by the FDA for use as a smoking cessation aid, which was used as a control. U.S. Food and Drug Administration. Letter Re: Evaluation of E-Cigarettes. 2009. <http://www.fda.gov/downloads/drugs/scienceresearch/ucm173250.pdf>); and

R. 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. U.S. Food and Drug

Administration. *E-Cigarette: Questions and Answers*. 2010.  
[www.fda.gov/forconsumers/consumerupdates/ucm225210.htm](http://www.fda.gov/forconsumers/consumerupdates/ucm225210.htm); and

S. The FDA has also raised concerns that electronic cigarettes are marketed and sold to young people and are readily accessible online and via mall kiosks. U.S. Food and Drug Administration. *News Release, FDA and Public Health Experts Warn About Electronic Cigarettes*. July 22, 2009.  
[www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm); and

T. A study published in the American Journal of Public Health found similar results to the FDA testing and concluded that the electronic cigarettes tested so far have demonstrated "poor quality control; toxic contaminants, albeit at low levels; misrepresentation of the nicotine delivered; and insufficient evidence of the overall public health benefit." Cobb, N.K., Byron, J., and Abrams, D.B., et al. "Novel Nicotine Delivery Systems and Public Health: The Rise of the 'E-Cigarette.'" *American Journal of Public Health*, 100 (12): 2340-2342, 2010; and

U. Clinical studies about the safety and efficacy of electronic cigarettes for their intended use have not been submitted to the FDA, and for this reason, consumers currently have no way of knowing: 1) whether electronic cigarettes are safe for their intended use; 2) what types or concentrations of potentially harmful chemicals the products contain; or 3) what dose of nicotine the products deliver. U.S. Food and Drug Administration. *FDA Warns Of Health Risk Posed By E-Cigarettes*. 2009.  
[www.fda.gov/downloads/forconsumers/consumerupdates/UCM173430.pdf](http://www.fda.gov/downloads/forconsumers/consumerupdates/UCM173430.pdf); and

V. The World Medical Association has determined that electronic cigarettes "are not comparable to scientifically-proven methods of smoking cessation" and that "neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established." World Medical Association. *Statement on Electronic Cigarettes and Other Electronic Nicotine Delivery Systems*. October 2012.  
[www.wma.net/en/30publications/1Opolicies/e19/index.html.pdf?print-media-type&footer-right=\[pageJ/rtoPageJ\]](http://www.wma.net/en/30publications/1Opolicies/e19/index.html.pdf?print-media-type&footer-right=[pageJ/rtoPageJ]); and

W. Between 2010 and 2011, rates of both awareness and use of unregulated electronic cigarettes by adults increased significantly. King, B.A., Alam, S., and Promoff, G., et al. "Awareness and Ever Use of Electronic Cigarettes Among U.S. Adults, 2010-2011." *Nicotine and Tobacco Research*; and

X. A study published in the Journal of Environmental and Public Health suggests that electronic cigarettes "may have the capacity to 're-normalize' tobacco use in a demographic that has had significant denormalization of tobacco use previously." McMillen, R., Maduka, J., and Winickoff, J. "Use of Emerging Tobacco Products in the United States." *Journal of Environmental and Public Health*; and

Y. Recent newspaper reports from across the nation indicate that electronic cigarettes have a propensity for exploding while charging or in use. These explosions have caused severe burns and physical injuries to users. Additionally, these explosions

have caused property damage. CBS News. "Electronic Cigarette Explodes in Man's Mouth, Causes Serious Injuries." February 16, 2012. <http://www.cbsnews.com/news/electronic-cigarette-explodes-in-mans-mouth-causes-serious-injuries>; Fox 13 News. "E-Cigarette Explodes While Charging." December 9, 2013. <http://fox13now.com/2013/12/09/e-cigarette-explodes-while-charging>; and

Z. Cigarette butts and other smoking waste are commonly littered and blown out of trash receptacles so that such waste migrates to the storm drain system and eventually pollutes the ocean and beaches; and

AA. Smoking waste pollutes the marine environment, negatively impacting water quality and harming marine wildlife that often mistake smoking waste for food; and

BB. According to the State Water Resources Control Board: "Storm water pollution in Los Angeles County has significant impacts on the region's water quality, while also posing risks to the health and safety of residents, degrading natural resources, threatening the area's tourist driven economy and lowering property values in local neighborhoods"; and

CC. To aid in the protection of the marine environment and protect public health, the Los Angeles Regional Water Quality Control Board adopted a resolution incorporating a zero trash Total Maximum Daily Load (TMDL) for Debris for Nearshore and Offshore Santa Monica Bay; and

DD. The City of Manhattan Beach is identified as a responsible jurisdiction for the debris discharged to the marine environment through storm drains; and

EE. By voluntarily adopting the plastic bag, polystyrene, and outdoor smoking ordinances, the City's compliance schedule may be revised to include a three-year extension of the final compliance date, in accordance with the TMDL provisions; and

FF. An expansion of the City's smoking prohibition would lead to a reduction in smoking waste that is deposited into the storm drain system by eliminating the areas in the public right-of-way that area available for smoking; and

GG. A reduction in cigarette litter will advance compliance with Federal, State, and City clean water mandates, including with the Total Maximum Daily Loads and other requirements of the National Pollutant Discharge Elimination System, and reduce pollution in the nearby marine environment and at the City's beaches; and

HH. It is the intent of the City Council in enacting this Ordinance to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-tobacco users; by protecting children from exposure to smoking where they live and play; by protecting the public from nonconsensual exposure to secondhand smoke and the potential health risks related to a-cigarettes; by preventing the re-normalization of smoking that results from the expanded use of a-cigarettes; and by reducing smoking waste to protect the marine environment.

SECTION 2. The City Council hereby amends Manhattan Beach Municipal Code Chapter 4.116 in its entirety to read as follows:

"Chapter 4.116 - Regulation of Smoking in Public Places and Places of Employment.

4.116.010 - Scope.

The provisions of this chapter, along with the separate provisions in Title 12 (prohibiting smoking in parks, at the beach, on the Strand, and on the Valley Ardmere Greenbelt), are intended to establish a comprehensive citywide ban on smoking, with the limited exceptions set forth in this chapter. This chapter shall be interpreted in a manner supplementary to and consistent with California Labor Code Section 6404.5 and California Health and Safety Code Sections 104495 and 118875, et seq., as amended, and in all cases of conflict between this chapter and any state law, the applicable state law provision shall prevail.

4.116.020 - Definitions.

The following definitions shall govern construction of this chapter, unless the context clearly requires otherwise:

- A. "Employee" means any person who is employed by, or retained as an independent contractor by, any Employer, or any person who volunteers his or her services for a business or Employer.
- B. "Employer" means any person, partnership, corporation, association, nonprofit or other entity who or which employs or retains the service of one or more Employees.
- C. "Place of Employment" means any area under the legal or de facto control of an Employer that an Employee or the general public may enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, construction sites, vehicles used in employment or for business purposes, taxis, employee lounges, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses, and any private residences subject to state licensing requirements that are used as child-care or health-care facilities.
- D. "Public Place" means any public place, or any private place open to the general public regardless of any fee or age requirement, including, for example, streets, sidewalks, plazas, bars, restaurants, clubs, stores, stadiums, farmers' markets, bus shelters, ATM or ticket lines, theaters, parking lots, parks, playgrounds, taxis, and buses. This also shall include outdoor dining areas open to the general public.
- E. "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, except when the combusting material contains no tobacco or nicotine

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, electronic cigarette vapors, and marijuana smoke.

- F. "Smoking" means engaging in an act that generates Smoke, such as, for example: possessing a lighted pipe or a lighted hookah pipe; operating an electronic cigarette, a lighted cigar, or a lighted cigarette of any kind; or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind.

#### 4.116.030 - Prohibition of Smoking.

- A. Except as otherwise provided by this chapter or by state or federal law, Smoking is prohibited in the following locations:
1. Public Places;
  2. Places of Employment, including those regulated by California Labor Code Section 6404.5;
  3. Any area within 20 feet of any door, window, opening, or vent, into a Public Place, except for such areas on private residential property.
- B. Smoking is permitted in the following locations within the City, unless otherwise provided by state or federal law:
1. Private residential property, other than those used as a child-care or health-care facility subject to State licensing requirements.
  2. In up to twenty percent of guest rooms in any hotel or motel, if the hotel or motel permanently designates at least 80 percent of its guest rooms as nonsmoking rooms, appropriately signs non-smoking rooms and permanently removes ashtrays and matches from them. Smoking rooms shall be segregated from non-smoking rooms on separate floors, wings, or portions of either; smoking and non-smoking rooms shall not be interspersed. Nothing in this ordinance shall require a hotel or motel to provide Smoking rooms and the owner or operator of a hotel or motel may choose to prohibit Smoking throughout the property.
  3. Within a moving vehicle.
- C. No person shall dispose of any Smoking waste, including but not limited to any part of a cigarette, cigar, pipe, or tobacco product, in an area in which Smoking is prohibited by this chapter or other law, except in specific receptacles designated by the City for Smoking waste.

#### 4.116.040 - Allowing, Aiding or Abetting Illegal Smoking.

- A. No person shall knowingly permit Smoking in an area under his, her, or its legal or de facto control where Smoking is prohibited by this chapter or other law.
- B. The person who has legal or de facto control of any Public Place or Place of Employment shall post a "No Smoking" or "Smoke Free" sign, with letters of no less than one inch in height 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), at the primary entrance to each Public Place or Place of Employment in which Smoking is prohibited by this chapter. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter.

#### 4.116.050 - Penalties and Enforcement.

- A. Each separate violation of this chapter is an infraction punishable in accordance with Chapter 1.04 of this code."

SECTION 3. The City Council hereby amends Manhattan Beach Municipal Code Section 12.08.320.A to revise the definition of "Smoke/Smoking" as follows:

"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, except when the combusting material contains no tobacco or nicotine 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, electronic cigarette vapors, and marijuana smoke.

"Smoking" means engaging in an act that generates Smoke, such as, for example: possessing a lighted pipe or a lighted hookah pipe; operating an electronic cigarette, a lighted cigar, or a lighted cigarette of any kind; or lighting or igniting a pipe, an electronic cigarette, a hookah pipe, a cigar, or a cigarette of any kind.

SECTION 4. The City Council hereby amends Manhattan Beach Municipal Code Section 12.12.010 to revise the definition of "Smoke/Smoking" as follows:

"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, except when the combusting material contains no tobacco or nicotine 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, electronic cigarette vapors, and marijuana smoke.

"Smoking" means engaging in an act that generates Smoke, such as, for example: possessing a lighted pipe or a lighted hookah pipe; operating an electronic

cigarette, a lighted cigar, or a lighted cigarette of any kind; or lighting or igniting a pipe, an electronic cigarette, a hookah pipe, a cigar, or a cigarette of any kind.

SECTION 5. The City Council hereby amends Manhattan Beach Municipal Code Section 12.48.056.A to revise the definition of "Smoke/Smoking" as follows:

"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, except when the combusting material contains no tobacco or nicotine 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, electronic cigarette vapors, and marijuana smoke.

"Smoking" means engaging in an act that generates Smoke, such as, for example: possessing a lighted pipe or a lighted hookah pipe; operating an electronic cigarette, a lighted cigar, or a lighted cigarette of any kind; or lighting or igniting a pipe, an electronic cigarette, a hookah pipe, a cigar, or a cigarette of any kind.

SECTION 6. CEQA Finding. The City Council hereby finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA"). To the extent that the Ordinance applies to Places of Employment, it regulates working conditions by ensuring that employees and volunteers are not exposed to the harmful effects of second-hand smoke and is therefore categorically exempt from CEQA pursuant to Section 15324(c) of Title 14 of the California Code of Regulations ("CEQA Guidelines"). The Ordinance is also exempt from CEQA in its entirety pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment. The Ordinance will have no adverse environmental effects because it will reduce the public's exposure to the harmful effects of second-hand smoke.

SECTION 7. If any sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentence, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 8. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 9. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

PASSED, APPROVED AND ADOPTED this 17<sup>th</sup> day of June, 2014.

AYES: Lesser, D'Errico, Burton, Powell and Mayor Howorth

NOES: None

ABSENT: None

ABSTAIN: None

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AMY THOMAS HOWORTH  
Mayor

ATTEST:

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LIZA TAMURA  
City Clerk