

ORDINANCE NO. 735

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
ROLLING HILLS ESTATES, CALIFORNIA, ADDING CHAPTER
8.40 (REGULATION OF SMOKING) TO THE ROLLING HILLS
ESTATES MUNICIPAL CODE**

The City Council of the City of Rolling Hills Estates ordains as follows:

SECTION 1. Findings. The City Council of the City of Rolling Hills Estates finds as follows:

A. Section VII of Article XI of the California Constitution provides that a City may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

B. Smoking and the breathing of second-hand smoke has been identified as a significant health hazard by numerous authorities.

i. The United States Surgeon General, the United States Centers for Disease Control, the United States Environmental Protection Agency, and the California Environmental Protection Agency have each concluded that involuntary smoking by inhaling second-hand smoke poses a significant public health hazard and can cause lung cancer and heart disease.

ii. The World Health Organization (WHO) estimates that tobacco kills up to half of its users, amounting to more than 8 million deaths each year worldwide, including nearly half a million people who die prematurely from smoking in the United States alone.

C. The U.S. Food and Drug Administration (FDA) has conducted laboratory analysis of electronic cigarette samples and found they contained carcinogens and toxic chemicals to users and bystanders could potentially be exposed.

D. According to the FDA, in 2020, an estimated 3.6 million middle and high school students were current users of electronic cigarettes.

E. The California Legislature enacted the California Indoor Clean Air Act of 1976 (Health and Safety Code section 118875 and following) which limits or prohibits smoking within certain specified areas frequented by the public in an effort to combat the health impacts of smoking. As part of the Act, Health and Safety Code section 118910 explicitly provides that a local governing body may ban completely the smoking of tobacco, or may regulate smoking in any manner not inconsistent with the Indoor Clean Air Act or any other provision of state law.

F. Cigarette butts and other smoking waste are commonly littered or improperly disposed so that such waste migrates to the storm drain system and eventually pollutes the ocean and beaches.

G. A reduction in cigarette litter will advance compliance with federal, state and local clean water mandates, including trash Total Maximum Daily Load (TMDL) and other requirements of the National Pollutant Discharge Elimination System, and reduce pollution in the nearby marine environment and public beaches.

H. It is well documented that smoking, the improper disposal of lighted smoking products, as well as the use of cigarette lights are a leading cause of fires and fire deaths.

I. As set forth in Municipal Code section 8.16.020, the City is designated as being located in a Very High Fire Hazard Severity Zone. The prohibition of smoking on City property will help reduce the risk of accidental fires.

J. After consideration of a draft ordinance regulating smoking on City property and certain private property frequented by the public, the City Council desires to add a new Chapter 8.40 (Regulation of Smoking) to the municipal code to address the significant health and safety impacts associated with smoking in certain enclosed and unenclosed areas of City property and may reconsider regulations affecting private property at a later date.

SECTION 2. Environmental Findings. The City Council exercises its independent judgment and finds that this Ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the because the subject ordinance and regulations have no potential for resulting in any significant physical change to the environment, either directly or indirectly. In addition, the regulations set forth in this ordinance is also exempt under Section 15308 because it is intended to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.

SECTION 3. Addition of RHEMC Chapter 8.40. Chapter 8.40 of the RHEMC is added as set forth in the attached Exhibit A.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Publication. The City Clerk is directed to cause this ordinance to be published in the manner required by law.

ADOPTED on November 9, 2021.

STEVEN ZUCKERMAN, MAYOR

ATTEST:

LAUREN PETTIT, CITY CLERK

I HEREBY CERTIFY that the foregoing Ordinance No. 735 was adopted by the City Council of the City of Rolling Hills Estates at a regular meeting held on November 9, 2021, by the following vote:

AYES: HUFF, SCHMITZ, STEGURA, ZERUNYAN, ZUCKERMAN

NOES: NONE

ABSTAIN: NONE

ABSENT: NONE

LAUREN PETTIT, CITY CLERK

Chapter 8.40 - REGULATION OF SMOKING

8.40.010 - Definitions.

The following words and phrases are defined as set forth below for the purposes of this chapter unless the context clearly requires a different definition:

"City property" means all buildings, facilities, structures and accompany grounds owned, leased, maintained or controlled by the city, all city parks, all city equestrian trails, and all city hiking trails, recreational paths and walkways (but excluding city sidewalks).

"Electronic smoking device" means an electronic or battery-operated device that delivers vapors for inhalation. This term includes every variation and type of such devices whether they are 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.

"Enclosed area" means all space in a building between a floor and ceiling which is enclosed on all sides by solid walls or windows exclusive of door or passage ways which extend from the floor to the ceiling; and all areas screened by partitions which do not extend to the ceiling or are not solid.

"Smoke" means the gases, particles or vapors released into the air as a result of combustion, electrical ignition or vaporization, including from an electronic smoking device, when the purpose of the combustion, electrical ignition or vaporization is human inhalation of the gases, particles or vapors. Smoke does not mean the combustion of material solely for olfactory purposes such as, for example, smoke from incense, that does not contain any cannabis, tobacco or nicotine or the emissions from a product specifically approved by the United States Food and Drug Administration for use in mitigating, treating or preventing disease.

"Smoking" means engaging in an act that generates smoke, including from tobacco or cannabis, such as possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, a lighted cigarette, an operating electronic smoking device, or any other act of smoking as defined in Section 22950.5(c) of the Business & Professions Code. This includes: (1) inhaling, exhaling, or burning, any tobacco, nicotine, cannabis, or plant product, whether natural or synthetic; (2) carrying any lighted, heated, or activated tobacco, nicotine, cannabis, or plant product, whether natural or synthetic, intended for inhalation; or (3) using an electronic smoking device or hookah.

"Tobacco product" means any tobacco product as defined in Section 22950.5(d) of the Business and Professions Code, but does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

"Unenclosed area" means any area that is not an enclosed area.

8.40.020 - Prohibition of smoking on city property.

Smoking is prohibited in all enclosed and unenclosed areas of city property.

8.40.030 – Disposal

No person may dispose of any cigarette, cigar or tobacco or electronic smoking device or any part of a cigarette or cigar or electronic smoking device on any city property, including city sidewalks, except in an appropriate or designated disposal container.

8.40.040 - Violations and penalties.

- A. A violation of this chapter constitutes an infraction, subject to penalties as provided for in Chapter 1.24 of this code. Such violations may also be enforceable through administrative citations as provided for in Chapter 1.25 of this code.
- B. Punishment under this section will not preclude punishment pursuant to Labor Code section 6405.5, Health & Safety Code section 13002, Penal Code section 374.4, or any other law proscribing the act of littering. Nothing in this section precludes any person from seeking any other remedies, penalties or procedures provided by law.