

## **ORDINANCE NO. 1938**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING SAN RAFAEL MUNICIPAL CODE CHAPTER 9.04 ENTITLED "CLEAN INDOOR AND OUTDOOR AIR AND HEALTH PROTECTION" TO REGULATE THE SMOKING OF ELECTRONIC SMOKING DEVICES AND TO ELIMINATE AN EXCEPTION ALLOWING SMOKING WHILE ACTIVELY PASSING**

**WHEREAS**, on October 1, 2012 the San Rafael City Council adopted a new smoking ordinance enhancing clean air protections in San Rafael; and

**WHEREAS**, the current ordinance prohibits smoking on sidewalks, pedestrian areas, and public places such as plazas in our Downtown, except while actively passing on the way to another destination; and

**WHEREAS**, the City periodically receives complaints about smoking in the Downtown area; and

**WHEREAS**, the California Department of Health recommended in a January 2015 report entitled "State Health Officer's Report on E-Cigarettes" that Electronic Smoking Devices, including electronic cigarettes, be regulated in the same manner as traditional tobacco products; and

**WHEREAS**, on March 7, 2016 the City Council heard an informational presentation from the City Manager's Office recommending the preparation of a draft ordinance to amend the San Rafael Municipal Code to include the regulation of electronic cigarettes and to eliminate the exception to allow smoking while actively passing;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES HEREBY ORDAIN AS FOLLOWS:**

#### **DIVISION 1:**

Chapter 9.04 the San Rafael Municipal Code, entitled "Clean Indoor and Outdoor Air and Health Protection" is hereby amended as follows:

1. Section 9.04.030, entitled "Definitions", is hereby amended to add a new definition of "Electronic Smoking Device", as follows:

"Electronic Smoking Device" means an electronic device which can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately.

Section 9.04.030, entitled "Definitions", is hereby amended to amend the definition of "Smoking" to read as follows:

"Smoking" means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, or Electronic Smoking Device intended for human inhalation.

3. Section 9.04.050, entitled "Prohibition of Smoking in Public Places, Places of Employment, and Certain Other Areas", is hereby amended by amending Subsection B.9 thereof to read in its entirety as follows:

B. 9. Sidewalks and other pedestrian areas and public places in Downtown San Rafael accessible to the general public

- a. For the purposes of this section, Downtown San Rafael means the area defined by Hetherton Street between Mission Avenue and Second Street, Second Street between Hetherton and the beginning of Miracle Mile, Fourth Street from the beginning of the Miracle Mile to H Street, H Street between Fourth Street and Mission Avenue, and Mission Avenue between H Street and Hetherton Street.
- b. This prohibition applies to sidewalks along public and private streets, pedestrian alleys, walkways providing access from parking lots and structures to stores or sidewalks, and all other pedestrian paths or areas that are accessible to the general public within and around the perimeter of the area defined in subsection (a) above.

4. Section 9.04.060, entitled “Nonsmoking Buffer Zones”, is hereby amended to read in its entirety as follows:

- A. In all unenclosed areas where smoking is otherwise permitted, smoking shall nevertheless be prohibited within 20 feet from any doorway, window, opening, crack, or vent into an enclosed area in which smoking is prohibited.
- B. In all unenclosed areas where smoking is otherwise permitted, smoking shall nevertheless be prohibited within 20 feet from any unenclosed areas in which smoking is prohibited under Section 9.04.050(B) of this chapter.
- C. The prohibitions in subdivisions A and B of this section shall not apply to unenclosed areas of private residential properties that are not duplexes or multi-family residences.
- D. Smoking is prohibited in unenclosed areas of a duplex or multi-family residence, including exclusive-use areas such as balconies, porches, decks, and patios, within 20 feet from any doorway, window, opening, or other vent into an enclosed area where smoking is prohibited by this chapter or other law, or by binding agreement relating to the ownership, occupancy, or use of real property, or by designation of a person with legal control over the property.

5. Section 9.04.070, entitled “Smoking Restrictions in New and Existing Units in Duplexes and Multi-Family Residences” is hereby adding new Subsection D as follows:

- D. Notwithstanding any other provision of this chapter, the use of Electronic Smoking Devices within any unit of a duplex or multi-family residence is not prohibited by this chapter.

**DIVISION 2:**

This Ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to the State CEQA Guidelines, since it can be seen with certainty that there is no possibility that this Ordinance or its implementation would have a significant effect on the environment (14 Cal. Code Regs. Section 15061(b)(3)).

**DIVISION 3:**

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection,

sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

**DIVISION 4:**

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published, and circulated in the City of San Rafael, and shall be in full force and effect thirty (30) days after its final passage. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

/s/ Gary O. Phillips

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GARY O. PHILLIPS, Mayor

ATTEST:

/s/ Esther C. Beirne

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ESTHER C. BEIRNE, City Clerk

The foregoing Ordinance No.1938 was read and introduced at a regular meeting of the City Council of the City of San Rafael on Monday, the 4<sup>th</sup> day of April, 2016, and was ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Bushey, Colin, Gamblin and Mayor Phillips

NOES: Councilmembers: McCullough

ABSENT: Councilmembers: None

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 18th day of April, 2016.

/s/ Esther C. Beirne

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ESTHER C. BEIRNE, City Clerk