



City of San Leandro

Meeting Date: March 17, 2014

Staff Report

File Number: 14-059

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.H.

TO: City Council

FROM: Chris Zapata
City Manager

BY: City Council and
Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for an Ordinance Amending San Leandro Municipal Code Subsections (n) and (o) of Section 4-12-105 to Include Electronic-Cigarette Vapors and the Smoking of Electronic Cigarettes Respectively, Subsections (a) and (b) of Section 4-12-210 to Prohibit the Smoking of Marijuana in Certain "Exempt" Designated Areas Within the City, and Subsection (a) of Section 4-12-400 to Expand the Smoking Products that Individuals and Entities Cannot Knowingly Allow Individuals to Use on Property Under Their Control

RECOMMENDATIONS

Staff recommends that the City Council pass to print the attached Ordinance amending San Leandro Municipal Code subsections (n) and (o) of section 4-12-105 to include electronic-cigarette vapors and the smoking of electronic cigarettes respectively, subsections (a) and (b) of section 4-12-210 to prohibit the smoking of marijuana in certain "exempt" designated areas within the City, and subsection (a) of section 4-12-400 to expand the smoking products that individuals and entities cannot knowingly allow individuals to use on property under their control.

BACKGROUND AND SUMMARY

The City passed a smoking pollution control ordinance in 2009 that prohibited smoking in certain enclosed and unenclosed places and also created reasonable smoking distance requirements from certain locations. Additionally, the smoking pollution control ordinance placed certain duties on individuals and entities regarding smoking in an area under their control. In enacting the smoking pollution control ordinance, the City intended to discourage tobacco use, protect children from exposure to smoking, reduce the potential for children to associate smoking with a healthy lifestyle, and affirm and promote the family atmosphere of the City's public places.

Staff has observed individuals smoking electronic cigarettes in City facilities. Currently the health effects of secondhand exposure to electronic cigarette vapor are unknown. Expanding

the prohibition of exposure to secondhand smoke to include smoke or vapor generated by electronic cigarettes will limit the potentially harmful effects to individuals that are exposed . Additionally, children may be negatively affected by exposure to electronic cigarette smoking by associating electronic cigarette use with a healthy lifestyle.

The ordinance adds a new definition “smoke” and amends the definition of “smoking” to include the use of electronic cigarette products. As it relates to enclosed areas, expanding the definition of smoking prohibits the use of electronic cigarettes in: public places; places of employment; and other certain enclosed areas that have a common or shared air space with an area where smoking is prohibited. As it relates to unenclosed areas, expanding the definition of smoking prohibits the use of electronic cigarettes in: places of employment; service areas; public places; ticket, boarding, and waiting areas of transit depots and bus stops; parks; playgrounds; athletic facilities; golf practice facilities; and sites of public events. Additionally the ordinance prohibits smoking electronic cigarettes within 20 feet of any opening into an enclosed area in which smoking is prohibited and prohibits smoking electronic cigarettes on any public property within 300 feet of a primary or secondary school, consistent with current prohibitions on traditional smoking products. Furthermore, individuals and entities cannot knowingly allow individuals to smoke electronic cigarettes in an area under their control where smoking is prohibited. Another change is that the existing ordinance is amended to clarify that smoking marijuana is not permitted at certain “exempt” locations where smoking is allowed, such as the golf courses located within the City.

PREPARED BY: Richard Pio Roda, City Attorney, City Attorney’s Office



City of San Leandro

Meeting Date: March 17, 2014

Ordinance

File Number: 14-049

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: City Council and
Jayne Williams
Assistant to the City Attorney

FINANCE REVIEW: Not Applicable

TITLE: ORDINANCE Amending San Leandro Municipal Code Subsections (n) and (o) of Section 4-12-105 to Include Electronic Cigarette Smoke and the Smoking of Electronic Cigarettes Respectively, Subsections (a) and (b) of Section 4-12-210 to Prohibit the Smoking of Marijuana in Certain "Exempt" Designated Areas Within the City, and Subsection (a) of Section 4-12-400 to Expand the Smoking Products that Individuals and Entities Cannot Knowingly Allow Individuals to Use on Property Under Their Control

WHEREAS, in 2009 the City of San Leandro found that the harmful effects of smoking, and secondhand smoke warranted the passage of a new smoking pollution control ordinance that expanded the places within the City where smoking and the creation of secondhand smoke from smoking are prohibited; and

WHEREAS, the City of San Leandro desires to expand the prohibition of exposure to secondhand smoke to include smoke generated by electronic cigarettes, not only because of the potentially harmful effects that such smoke or vapor may cause to those exposed, but also the public welfare and health of San Leandro children will be negatively affected by exposure to electronic cigarettes as an alternative to other forms of smoking, even though electronic cigarettes may not be sold to minors, and the effects of electronic cigarette smoking by minors are, as yet, undetermined; and

WHEREAS, the City Council finds that an exception that permits the smoking of marijuana, which is a Type I controlled substance under the Federal Controlled Substances Act, exists in the ordinance, and should be closed to protect the public health and welfare of persons who use the City's golf courses and other exempt locations under the ordinance.

NOW, THEREFORE, the City Council of the City of San Leandro does ordain as follows:

SECTION I: Subsection (n) of Section 4-12-105 shall be amended in its entirety to read as follows:

(n) **“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 or vaporizing 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. The term “smoke” also includes vapor generated through the use of an electronic cigarette in any manner or in any form.

SECTION II: Subsection (o) of Section 4-12-105 shall be amended in its entirety to read as follows:

(o) **Smoking”** means engaging in an act that generates smoke, such as for example: possessing a lighted pipe, lighted hookah pipe or shisha pipe, an operating electronic cigarette, a lighted cigar, or a lighted cigarette of any kind; or lighting or igniting of a pipe, cigar, hookah pipe, cigarette of any kind, or any other weed or plant.

SECTION III: Subsection (a) of Section 4-12-210 shall be amended to read as follows:

(a) Unless otherwise prohibited by law, smoking, except smoking in a manner that generates marijuana smoke, is permitted in the following enclosed places:

SECTION IV: Subsection (b) of Section 4-12-210 shall be amended to read as follows:

(a) Unless otherwise prohibited by law, smoking, except smoking in a manner that generates marijuana smoke, is permitted in the following unenclosed places:

SECTION V: Subsection (a) of Section 4-12-400 shall be amended to read as follows:

(a) No person, owner, landlord, employer, business, or nonprofit entity shall knowingly permit smoking in an area which is under the legal or de facto control of the person, owner, landlord, employer, business, or nonprofit entity and in which smoking is prohibited by law and the person, owner, landlord, employer, business or nonprofit entity is not otherwise compelled to act under State or Federal law.

SECTION VI: If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

SECTION VII: EFFECTIVE DATE AND PUBLICATION. This Ordinance shall take effect thirty (30) days after adoption. The title thereof shall be published once and a complete copy thereof shall be posted on the City Council Chamber bulletin board for five (5) days prior to adoption.