

ORDINANCE NO. 2016-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONROVIA, CALIFORNIA, AMENDING CHAPTER 12.32 OF THE MONROVIA MUNICIPAL CODE TO PROHIBIT SMOKING AND TOBACCO USE IN ALL CITY PARKS AND CHANGING ALL REFERENCES IN CHAPTER 12.32 FROM COMMUNITY SERVICES DEPARTMENT/DIRECTOR TO PUBLIC SERVICES DEPARTMENT/DIRECTOR

WHEREAS, Chapter 12.32 of the Monrovia Municipal Code establishes rules and regulations governing City parks; and

WHEREAS, the City of Monrovia values the health, welfare, and safety of its citizens and chooses to support proactive measures in an effort to meet this objective; and

WHEREAS, the City Council directed staff to develop a proposed ordinance to prohibit smoking and tobacco use in all City parks; and

WHEREAS, tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs; and

WHEREAS, the Centers for Disease Control and Prevention has found that tobacco-related diseases is the nation's leading cause of preventable death.¹ The World Health Organization estimates that tobacco accounts for the greatest cause of death worldwide;² and

WHEREAS, the U.S. Surgeon General³, the U.S. Environmental Protection Agency⁴ and, the California Environmental Protection Agency⁵ has found secondhand smoke to be a public health risk^{6 7 8}; and

¹ U.S. Department of Health and Human Services. *The Health Consequences of Smoking — 50 Years of Progress A Report of the Surgeon General Executive Summary*. 2014. Available at: www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf.

² World Health Organization. *Tobacco Fact Sheet No. 339*. July 2015. Available at: <http://www.who.int/mediacentre/factsheets/fs339/en/>

³ U.S. Department of U.S. Department of Health and Human Services. 2006 Surgeon General's Report—The Health Consequences of Involuntary Exposure to Tobacco Smoke. 2006. Available at: www.cdc.gov/tobacco/data_statistics/sgr/2006/index.htm.

⁴ U.S. Environmental Protection Agency. *Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders*. <https://www.epa.gov/aboutepa/epa-designates-passive-smoking-class-or-known-human-carcinogen>

⁵ Chemicals known to the state to cause cancer or reproductive toxicity. State of California Environmental Agency Office of Health Hazard Assessment Safe Drinking Water and Toxic Enforcement Act of 1986. 2015. Available at: www.oehha.ca.gov/prop65/prop65_list/files/P65single012315.pdf.

⁶ U.S. Department of Health and Human Services. *The Health Consequences of Smoking — 50 Years of Progress A Report of the Surgeon General Executive Summary*. 2014. Available at: www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf.

⁷ Institute of Medicine. *Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence*. Washington, DC; 2010. Available at: www.iom.edu/en/Reports/2009/Secondhand-Smoke-Exposure-and-Cardiovascular-Effects-Making-Sense-of-the-Evidence.aspx.

WHEREAS, electronic cigarettes, commonly known as e-cigarettes, e-cigars, e-cigarillos, e-pipes, and e-hookahs, are battery operated devices designed to look like and be used in the same manner as conventional tobacco products;⁹ and

WHEREAS, the U.S. Food and Drug Administration (“FDA”) conducted laboratory analysis of electronic cigarettes and found harmful effects to humans;¹⁰ and

WHEREAS, 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;¹¹ and

WHEREAS, electronic cigarettes often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products;¹² and

WHEREAS, the California legislature recently enacted five separate bills, Senate Bills 5 and 7 and Assembly Bills 7, 9 and 11 (collectively “the Smoking Legislation”), which regulate tobacco and tobacco products. With limited exceptions, the Smoking Legislation does not preempt or otherwise prohibit the adoption of local standards, or enforcement of local ordinances, that impose greater restrictions than the State standards¹³; and

WHEREAS, Senate Bill 5 redefines tobacco products for purposes of the Stop Tobacco Access to Kids Enforcement Act to include electronic devices such as electronic cigarettes.

WHEREAS, it is the intent of the City Council in enacting this Ordinance to provide for the public health, safety, and welfare by discouraging smoking and tobacco use around non-tobacco users, where they live, work, and play; by reducing the potential for children to wrongly associate smoking and tobacco use with a healthy lifestyle and by affirming and promoting a healthy environment in Monrovia.

THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROVIA, CALIFORNIA DOES ORDAIN AS FOLLOWS:

⁸ U.S. Department of Health and Human Services. *The Health Consequences of Smoking — 50 Years of Progress A Report of the Surgeon General Executive Summary*. 2014. Available at: www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf.

⁹ Yamin, C.K., Bitton A., and Bates, D.W. *E-Cigarettes: A Rapidly Growing Internet Phenomenon*. *Annals of Internal Medicine*, 153:607-609, 2010.

¹⁰ <http://www.fda.gov/downloads/drugs/scienceresearch/ucm173250.pdf>

¹¹ U.S. Food and Drug Administration. *News Release, FDA and Public Health Experts Warn About Electronic Cigarettes*. July 22, 2009. Available at: www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm

¹² McMillen, R., Maduka, J., and Winickoff, J. “Use of Emerging Tobacco Products in the United States.” *Journal of Environmental and Public Health*.

¹³ Assembly Bill 7 expands the prohibition on smoking in the workplace to include owner-operated businesses and states that the regulation of smoking in the workplace is a matter of statewide concern thereby eliminating the need of local governments to enact workplace smoking restrictions. Assembly Bill 7 supersedes and renders unnecessary any local enactment regulating the smoking of tobacco products in workplaces unless any of the provisions of Assembly Bill 7 are repealed in which case local governments will have the right and authority to enforce previously enacted ordinances or to enact new ordinances prohibiting smoking in the workplace.

Section 1. Code Amendment. The City Council hereby amends Section 12.32.020 (Applicability of Chapter.) of Chapter 12.32 (Parks) of Title 12 (Streets, Sidewalks and Public Places) of the Monrovia Municipal Code in its entirety as follows:

“§ 12.32.020 DEFINITIONS AND APPLICABILITY OF CHAPTER.

(A) Definitions

(1) “Electronic Smoking Device” means an electronic device that creates an aerosol or vapor, or that 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. “Electronic Smoking Device” includes 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.

(2) “Reasonable Distance” means a distance of twenty-five (25) feet in any direction from an area in which Smoking is prohibited.

(3) “Recreational Area” means any area that is owned, controlled or used by the City and open to the general public for recreational purposes, regardless of any fee or age requirement. The term “Recreational Area” includes but is not limited to parks, picnic areas, playgrounds, sports fields, court yards, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, and skateboard parks.

(4) “Smoke” or “Smoked” 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” or “Smoked” includes, but is not limited to, tobacco smoke, Electronic Smoking Device vapors, marijuana smoke, and crack cocaine smoke.

(5) “Smoking” means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation, or the act of lighting or igniting a cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation.

(6) “Tobacco Product” means:

(a) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether Smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco; and

(b) any Electronic Smoking Device.

(c) Notwithstanding any provision of subsections (a) and (b) to the contrary, “Tobacco Product” includes any component, part, or accessory of a Tobacco Product, whether or not sold separately. “Tobacco Product” does not include any 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 such product is marketed and sold solely for such an approved purpose.

(B) Applicability of Chapter. The rules and regulations prescribed in this chapter shall govern the use of the city parks designated in Section 12.32.010 as well as any future Recreational Area including, without limitation, the Hillside Wilderness Preserve. The City Council may, in its discretion, apply additional or more restrictive rules and regulations to specific parks or Recreational Areas based on unique circumstances.”

Section 2. Code Amendment. The City Council hereby amends Section 12.32.050 (Restrictions applicable to city parks and the use of park facilities.) of Chapter 12.32 (Parks) of Title 12 (Streets, Sidewalks and Public Places) of the Monrovia Municipal Code by adding a new paragraph (E)(2):

“(E)(2) Smoking or use of any Tobacco Product shall be prohibited in any city park or Recreational Area. Smoking, or the use of any Tobacco Product must be a Reasonable Distance from any city park or Recreational Area. The Reasonable Distance is measured from the curb cut (edge of an adjacent road) that is adjacent to the city park or Recreational Area. If a curb cut is not located adjacent to a city park or Recreational Area, the Reasonable Distance is measured from any entrance or exit to the city park or Recreational Area.”

Section 3. The City Council hereby amends Section 12.32.080 (Power to Issue Citations.) of Chapter 12.32 (Parks) of Title 12 (Streets, Sidewalks and Public Places) of the Monrovia Municipal Code to read as follows:

“In addition to any citation authority conferred by applicable law, any employee or officer of the Public Services Department designated by the Director of Public Services, the Fire Department or the Police Department shall have the power and authority to issue an administrative citation in accordance with Chapter 1.17 of the code if he or she determines that a violation of this chapter has occurred. Such employee or officer shall have the authority to determine whether the violation shall be punishable as an infraction, a misdemeanor, or as an administrative citation. Violations of Section 12.32.050(E)(2) shall be punishable as an administrative citation subject to the following maximum fines: \$100 for a first violation, \$200 for a second violation, and \$500 for a third and any subsequent violation.”

Section 4. All references to the Community Services Department/Director in Chapter 12.32 (Parks) of Title 12 (Streets, Sidewalks and Public Places) of the Monrovia Municipal Code are hereby changed to the Public Services Department/Director.

Section 5. CEQA. The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance will have a significant adverse effect on the environment because the Ordinance only expands upon existing smoking restrictions and does not include proposed construction or proposed alteration to the physical environment. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

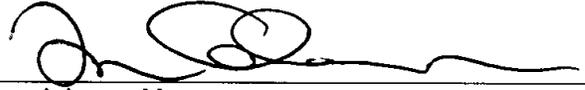
Section 6. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section 7. Publication. The City Clerk shall certify to the passage of this ordinance and shall cause same to be published pursuant to state law within fifteen (15) days after its passage, and this ordinance shall become effective thirty (30) days after its passage.

Section 8. Effective Date. This ordinance shall be in full force and effect thirty (30) days after the date of its adoption.

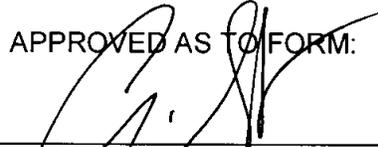
INTRODUCED this 19th day of July, 2016.

PASSED, APPROVED and ADOPTED this 2nd day of August, 2016.



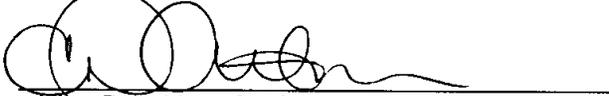
Tom Adams, Mayor
City of Monrovia

APPROVED AS TO FORM:



Craig A. Steele, City Attorney
City of Monrovia

ATTEST:



Alice D. Atkins, CMC, City Clerk
City of Monrovia

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) §
CITY OF MONROVIA)

I, ALICE D. ATKINS, CMC, City Clerk of the City of Monrovia, California, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 2016-09; It has been published pursuant to law; was duly adopted and passed at a regular meeting of the Monrovia City Council on the 2nd day of August, 2016, by the following vote:

AYES: Councilmembers Crudginton, Shevlin, Spicer, Mayor Adams

NOES:

ABSTAIN:

ABSENT: Mayor Pro Tem Blackburn

ATTEST:



Alice D. Atkins, CMC, City Clerk
City of Monrovia