



City of San Leandro

Meeting Date: October 20, 2014

Ordinance

File Number: 14-409 **Agenda Section:** CONSENT CALENDAR

Agenda Number: 8.B.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: ORDINANCE Adding and Amending San Leandro Municipal Code Subsections (n), (o) and (p) of Section 4-12-105 to Include Electronic Cigarette Vapors and the Smoking of Electronic Cigarettes and Amending San Leandro Municipal Code 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 (expands the prohibition of exposure to secondhand smoke to include smoke or vapor generated by electronic cigarettes)

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 or vapor 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.

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 and electronic cigarette vapors. The term “smoke” also includes vapor generated through the use of an electronic cigarette in any manner or in any form.

SECTION II: Subsections (o) and (p) of Section 4-12-105 shall be amended in their 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.

(p) “Tobacco product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

SECTION III: 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 IV: SEVERABILITY. 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 V: 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.

Introduced by Councilmember Reed on this 6th day of October, 2014, and passed to print by the following called vote:

Members of the Council:

AYES: Councilmembers Cutter, Gregory, Lee, Prola, Reed, Souza

(6)

NOES: None (0)

ABSENT: Mayor Cassidy (1)

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