

ORDINANCE NO. O2M21-4785

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALHAMBRA UPDATING CHAPTER 9.18 OF THE ALHAMBRA MUNICIPAL CODE TO IDENTIFY ADDITIONAL AREAS WHERE SMOKING IS PROHIBITED

THE CITY COUNCIL OF THE CITY OF ALHAMBRA DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings. The City Council finds and declares as follows:

WHEREAS, 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;

WHEREAS, the United States Surgeon General, the United States Centers for Disease Control, 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;

WHEREAS, the California Legislature enacted the “California Occupational Safety Health Act of 1973 in order to assure safe and healthful working conditions in California by, in part, limiting and/or prohibiting the smoking of tobacco products in “enclosed places of employment”;

WHEREAS, California Labor Code section 6404.5 explicitly provides that any place not defined as a “place of employment” or other area where the smoking of tobacco products is not regulated by Labor Code section 6404.5(e) “shall be subject to local regulation of smoking of tobacco products”;

WHEREAS, the California Legislature enacted the California Indoor Clean Air Act of 1976 and limited and/or prohibited smoking within certain specified areas frequented by the public in an effort to combat the health impact of tobacco smoking;

WHEREAS, California 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;

WHEREAS, California Civil Code Section 1947.5 explicitly authorizes landlords of residential dwelling units to prohibit the smoking of tobacco products on any portion of property where the dwelling units are located, including within any dwelling unit, or other interior or exterior area;

WHEREAS, California Civil Code Section 1947.5(d) explicitly provides that Section 1947.5 shall not be construed as to preempt any local ordinance that restricts the smoking of cigarettes or other product;

WHEREAS, the City Council received a presentation on February 22, and again on March 22, 2021 concerning the need for revisions to the City’s existing smoking restrictions found in Chapter 9.18 of the Alhambra Municipal Code;

WHEREAS, the Public Health Law Center’s and the American Lung Association’s Law and Policy Partnership to End the Commercial Tobacco Epidemic provided materials to the City Council that

included statistics and citations in support of those statistics in a Model Ordinance, some of which are set forth below;

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the following:

1. 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;

2. Tobacco use causes disease in nearly all organ systems and is responsible for an estimated 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all chronic obstructive pulmonary disease deaths in the United States;

3. The estimated economic damage attributable to smoking and exposure to secondhand smoke in the United States is nearly \$300 billion annually;

4. Despite significant progress, tobacco use remains the leading cause of preventable death and disease in the United States,

WHEREAS, tobacco use is the number one cause of preventable death in California and continues to be an urgent public health issue, as evidenced by the following:

1. An estimated 40,000 California adults die from smoking annually;

2. Each year, smoking costs California an estimated \$13.3 billion in direct health care expenses, \$3.6 billion in Medicaid costs, and \$10.4 billion in productivity losses;

3. Research indicates that more than 25% of all adult cancer deaths in California are attributable to smoking;

WHEREAS, significant disparities in tobacco use exist in California, which create barriers to health equity, as evidenced by the following:

1. African American (17.0%) and American Indian (19.1%) Californians report a higher smoking prevalence than white Californians (11.8%);

2. The American Indian population in California reports the highest cigarette smoking rate among adults, and American Indian youth report the highest rate of smoking among high school students;

3. Californians with the highest levels of educational attainment and annual household income report the lowest smoking rates;

4. Those who identify as lesbian, gay, bisexual, or transgender in California report smoking at higher rates than those who do not;

5. Californians who live in multiunit housing report smoking cigarettes at a higher rate (13.1%) than those who live in a house (9.7%);

6. Californians who reported experiencing psychological distress in the preceding month smoked at a rate far higher (26.7%) than the average statewide smoking rate (11.0%);

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

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1. In 2006, the U.S. surgeon general concluded that there is no risk-free level of exposure to secondhand smoke;

2. In 2006, the California Air Resources Board identified secondhand smoke as a toxic air contaminant, in the same category as the most toxic automotive and industrial air pollutants, and a serious health threat for which there is no safe level of exposure;

3. In 2006, the California Environmental Protection Agency added secondhand smoke to the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke can occur at significant levels outdoors, as evidenced by the following:

1. Levels of secondhand smoke exposure outdoors can reach levels recognized as hazardous, depending on direction and amount of wind, number and proximity of smokers, and enclosures like walls or roofs;

2. Smoking cigarettes near building entryways can increase air pollution levels by more than two times background levels, with maximum levels reaching the “hazardous” range on the United States EPA’s Air Quality Index;

3. To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move 20 to 29 feet away from the source of the smoke, about the width of a two-lane road;

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

1. Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke;

2. Secondhand smoke was responsible for an estimated 34,000 heart disease-related and 7,300 lung cancer-related deaths among adult nonsmokers each year during 2005–2009 in the United States;

3. Research indicates that exposure to secondhand smoke increases the risk of coronary heart disease by 25% to 30% and increases the risk of stroke by 20% to 30%;

4. Secondhand smoke kills more than 400 infants every year;

WHEREAS, electronic smoking device aerosol may be considered a health hazard, as evidenced by the following:

1. Research has found electronic smoking device aerosol contains at least 12 chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm, such as formaldehyde, acetaldehyde, lead, nickel, chromium, arsenic, and toluene;

2. Electronic smoking device aerosol is not harmless water vapor as it contains varying concentrations of particles and chemicals with some studies finding particle sizes and nicotine concentrations similar to, or even exceeding, conventional cigarette smoke;

3. Evidence continues to build that exposure to electronic smoking device aerosol, including secondhand exposure, has immediate impacts on the human respiratory and cardiovascular systems, and poses a risk to human health;

4. Given the increasing prevalence of electronic smoking device use, especially among youth and young adults, widespread nicotine exposure resulting in addiction and other harmful consequences serious concerns;

WHEREAS, secondhand cannabis smoke has been identified as a health hazard, as evidenced by the following:

1. The California Environmental Protection Agency includes cannabis smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer;

2. Cannabis smoke contains at least 33 known carcinogens;

3. In one study, exposure to cannabis smoke in an unventilated setting resulted in detectible levels of cannabinoids in non-smoker participants' blood and urine, and participants experienced minor increases in heart rate and impaired cognitive performance;

3. A recent systematic review of the literature concluded that secondhand exposure to cannabis smoke leads to cannabinoid metabolites in bodily fluids and individuals experiencing self-reported psychoactive effects;

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and can reduce medical costs; these outcomes, consistently demonstrated in peerreviewed research, include the following:

1. Reduced prevalence of tobacco use;

2. Reduced secondhand smoke exposure, as measured by self-report and laboratory analysis of biomarkers or indoor air;

3. Increased cessation of tobacco use;

4. Reduced initiation of tobacco use among young people;

5. Fewer hospitalizations from tobacco-related diseases, such as asthma and cardiovascular disease.

SECTION 2. Chapter 9.18 of the Alhambra Municipal Code is hereby amended as follows:

Section 9.18.020 is amended to include the following definitions:

“OUTDOOR DINING AREA. Any publicly or privately owned outdoor areas, including streets and sidewalks, that is available to or customarily used by the general public or an employee, and that is designed, established, or regularly used for consuming food or drink.

PARK or PUBLIC GROUNDS. As defined in § 14.04.010 of this Code, as well as public and privately owned recreational facilities, parks, playgrounds, athletic fields restrooms, picnic areas, spectator and concession areas, walking paths, gardens, hiking trails, roller and ice-skating rinks, skateboard parks, amusement parks, zoos, and aquatic areas.

PUBLIC EVENT AREA. Any publicly or privately owned place used for an event open to the general public, regardless of any fee or age requirement, including a farmers' market, parade, fair, or festival.

SERVICE AREA. Any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term "service area" includes, but is not limited to, areas including or within 25 feet of information kiosks, automatic teller machines, service lines, bus stops or shelters, or cab stands.

SMOKE or SMOKING. Includes inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking. Smoke and Smoking and Tobacco product includes those definitions set forth in California Health and Safety Code section 104495, as that section may be amended from time to time. Plant product includes cannabis, as defined in California Business and Professions Code section 26001, as that section may be amended from time to time."

Section 9.18.030 is amended to include the following language:

(C) Any Park or Public Grounds; excluding the Alhambra Municipal Golf Course.

(D) Any Outdoor Dining Area and within 25 feet of same.

(E) Within 20 feet of any entryway to or operable window of any place where smoking is prohibited.

(F) Any Public Event Area.

(G) Any Service Areas.

(H) Any sidewalks.

(J) Any private apartment and condo common areas in complexes of at least 5 units (except in landlord designated areas at least 20 feet from other prohibited areas).

(K) Within 20 feet of any vent into an enclosed area.

(L) Any outdoor job or work sites (except in employer designated areas at least 20 feet from other prohibited areas)."

Section 9.18.070 is amended to read as follows:

"Violation of any provision of this chapter shall be subject to issuance of an administrative citation pursuant to Chapter 1.13. Alternatively, violation of any provision of this chapter shall also be an infraction, punishable as provided in this code by:

(A) A fine not exceeding \$100 for a first violation;

(B) A fine not exceeding \$200 for a second violation of the same section of this code or ordinance within one year;

(C) A fine not exceeding \$500 for each additional violation of the same section of this code or ordinance within one year.”

SECTION 3. The Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (“CEQA”), pursuant to CEQA Guidelines Section 15308, Actions by Regulatory Agencies for Protection of the Environment. This exemption applies to actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. The Ordinance is also exempt from CEQA pursuant to Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment.

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 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. Effective Date. This ordinance takes effect 40 days from the date of its adoption.

SECTION 6. Publication. The City Clerk is directed to certify this ordinance and cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED THIS 10th DAY OF MAY, 2021.

/s/ Sasha Renée Pérez
Mayor Sasha Renée Pérez

ATTEST:

/s/ Lauren Myles
Lauren Myles, City Clerk

APPROVED AS TO FORM

/s/ Joseph M. Montes
Joseph M. Montes, City Attorney

I, Lauren Myles, City Clerk of the City of Alhambra, certify Ordinance No. O2M21-4785 was adopted by the City Council at a regular meeting held May 10, 2021, by the following vote:

AYES: LEE, MAZA, MALONEY, ANDRADE-STADLER, PEREZ
NOES: NONE
ABSENT: NONE

Lauren Myles, City Clerk

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4/21/21