

ORDINANCE NO. 17-1638

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, RENAMING CHAPTER 11 OF ARTICLE IV OF THE CARSON MUNICIPAL CODE AS “SECONDHAND SMOKE CONTROL,” AND AMENDING CHAPTER 11 TO STRENGTHEN REGULATION OF SECONDHAND SMOKE

WHEREAS, at the November 8, 2016 general election, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”) was approved by California voters as Proposition 64, which legalized limited personal recreational cannabis use and possession; and

WHEREAS, the AUMA, Health & Safety Code § 11362.3(a)(1-2), provides that the AUMA shall not be interpreted to permit any person to smoke cannabis or cannabis products in public places or in any place where smoking tobacco is prohibited; and

WHEREAS, secondhand smoke can result from many types of smoking, including the smoking of tobacco, the smoking of cannabis, and the use of electronic smoking devices (also known as “vaping”); and

WHEREAS, the federal Environmental Protection Agency has found secondhand smoke to be a risk to public health, and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen; and

WHEREAS, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to second-hand smoke has serious health effects including asthma in children and adults; lung, sinus and breast cancer; heart disease; low birth-weight babies; Sudden Infant Death Syndrome (SIDS); increased respiratory infections in children; and death; and

WHEREAS, the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, has concluded that exposure to secondhand smoke is a leading cause of preventable death in the United States; and

WHEREAS, the U.S. Surgeon General and the California Environmental Protection Agency have repeatedly identified secondhand smoke as a health hazard; and

WHEREAS, exposure to secondhand smoke anywhere is injurious to health, and exposure to secondhand smoke from an adjacent or nearby property can occur at sustained and significant levels, including but not limited to for reasons of the volume of smoking, the proximity of smoking, the number of smokers, or the direction and amount of wind; and

WHEREAS, non-consensual exposure to the strong odor of secondhand smoke is offensive to many people, an obstruction to the free use of property, and interferes with the comfortable enjoyment of life and property; and

WHEREAS, non-consensual exposure anywhere to secondhand smoke constitutes a public nuisance because of interference with the health, safety and welfare of members of the public; and

WHEREAS, to provide for the public health, safety and welfare of the residents and visitors of the City of Carson, the City desires to protect the public from exposure to secondhand smoke where they live, work and play; and

WHEREAS, the City previously adopted Chapter 11 (Smoking Prohibited in Certain Public Places) in Article III (Public Safety) to protect the public health, safety and general welfare by prohibiting smoking in certain public places under circumstances where other persons will be exposed to secondhand smoke; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA FINDS AND ORDAINS AS FOLLOWS:

SECTION 1. THE CITY COUNCIL OF THE CITY OF CARSON HEREBY MAKES THE FOLLOWING FINDINGS:

- A. The recitals set forth above are all true and correct and are incorporated herein.
- B. The regulations of secondhand smoke established by this Ordinance are reasonable and necessary to protect the public health, safety and welfare, and are enacted pursuant to the authority granted to the City by state law.

SECTION 2. CHAPTER 11 OF ARTICLE IV OF THE CARSON CITY CODE IS HEREBY RENAMED “SECONDHAND SMOKE CONTROL” AND IS AMENDED AS FOLLOWS:

- 1. The following words and definitions shall be added to Section 41100 (Definition) to read in its entirety as follows:

“Electronic smoking device” means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances (including but not limited to cannabis), including any component, part or accessory of such a device, whether or not sold separately. 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. The following word and its definition, contained in Section 41100 (Definition), are hereby amended to read in their entirety as follows (new text is identified in ***bold & italics***, deleted text in strike through):

“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 or congestion relief, such as, for example, smoke from incense or vapor from a congestion relieving vaporizer. The term “smoke” includes but is not limited to tobacco smoke, ~~electronic cigarette vapors~~ ***from an electronic smoking device***, crack cocaine smoke and marijuana smoke.

- 3. Section 41120 (Secondhand smoke generally) shall be added to read in its entirety as follows:

“Section 41120 - Secondhand smoke generally.

For all purposes within the jurisdiction of the city, no person shall cause smoke to unreasonably interfere with the reasonable use and enjoyment of another person's private residence."

4. Subsection (e) of Section 41110 (Penalties and Enforcement) is hereby amended to read in its entirety as follows (new text is identified in ***bold & italics***, deleted text in ~~strike through~~):

*"(e) Any violation of this Article is hereby declared to be a ~~nuisance~~***public nuisance which may be abated in accordance with the procedures set forth in Chapter 7 of Article 5 of the Carson City Code as applicable to this chapter. All costs to abate such public nuisance, including attorneys' fees and court costs, shall be paid by the person causing the nuisance, including the property owner where the nuisance is occurring.***"*

5. Subsection (i) shall be added to Section 41110 (Penalties and Enforcement) to read in its entirety as follows:

"(i) Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued."

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its passage.

SECTION 5. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

PASSED AND ADOPTED on the ____ day of _____, 2017, by the following vote:

AYES:
NOES:
ABSENT:

ALBERT ROBLES, Mayor

ATTEST:

DONESIA GAUSE, City Clerk

APPROVED AS TO FORM:

01007.0001/424161.1

SUNNY K. SOLTANI, City Attorney