

ORDINANCE NO. 18-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA AMENDING CHAPTER 6.40 AND DELETING PORTIONS OF CHAPTER 13.04 OF THE DANA POINT MUNICIPAL CODE RELATING TO THE REGULATION AND PROHIBITION OF SMOKING IN THE CITY

The City Council of the City of Dana Point does ordain as follows:

SECTION 1: Chapter 6.40 Prohibition Against Smoking in Certain Places Open to the Public is hereby amended to read in its entirety as follows:

Chapter 6.40 Smoking Regulated or Prohibited

- 6.40.010 Purpose**
- 6.40.020 Definitions**
- 6.40.030 Smoking prohibited in public places**
- 6.40.040 Smoking and open fires prohibited in hazardous fire areas**
- 6.40.050 Smoking prohibited in City facilities and on City property**
- 6.40.060 Smoking prohibited on property of other government bodies**
- 6.40.070 Posting of sign required**
- 6.40.080 Enforcement**
- 6.40.090 Other applicable laws**

6.40.010 Purpose

This chapter recognizes the right of residents and visitors to the city to be free from unwelcome secondhand smoke, which is deemed to be a public nuisance. The purpose of this chapter is to promote and protect the public health, safety, and general welfare by prohibiting smoking in public places, in hazardous fire areas, and in City facilities and on City property where persons will be exposed to unwelcome secondhand smoke and also the risks and dangers associated with fires. This chapter is further intended to ensure a cleaner and more hygienic environment for the city, its residents and visitors, and its natural resources.

6.40.020 Definitions

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

(a) "Electronic smoking device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such device, whether or not sold separately. This definition 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, including any component, part or accessory of such device, whether or not sold separately.

(b) "Employer" means any person who employs the services of an individual person.

(c) "Employee" means any person who is employed by an employer for direct or indirect monetary wages or profit.

(d) "Enclosed" means closed in by a roof and four walls with appropriate openings for ingress and egress.

(e) "Place of employment" means any area under the legal or de facto control of an employer that an employee or the general public may enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, construction sites, taxis, employee lounges, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses, and any private residences subject to state licensing requirements that are used as child-care or health-care facilities.

(f) "Public place" means any indoor or outdoor public place publicly or privately owned, including but not limited to any public buildings, restaurants, dining areas, bars, entryways, elevators, hospitals and health care facilities, public meeting rooms, theaters and auditoriums, public restrooms, service lines, streets, alleys, rights-of-way, sidewalks, plazas, beaches and beach access ways, public transportation and bus shelters, parking lots, parking structures, parks, picnic areas, playgrounds, sports fields, walking paths, hiking trails, bike paths, and hazardous fire areas. "Public place" includes any place being used for a public event, including but not limited to a farmers' market, parade, craft fair, festival, or any other event open to the general public.

(g) "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 material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. "Smoke" includes but is not limited to tobacco smoke, electronic cigarette vapors, and marijuana smoke.

(h) "Smoking" means the release of gases, particles, or vapors into the air as the result of combustion, electrical ignition, or vaporization and/or inhaling, exhaling, burning or carrying any lighted, heated or ignited cigar, cigarette, cigarillo, pipe, hookah,

electronic smoking device, or any plant product, including but not limited to tobacco and marijuana, intended for human inhalation.

6.40.30 Smoking prohibited in public places.

(a) In addition to all places where smoking is prohibited under state or federal law, in which case those laws apply, no person shall smoke in, and smoking areas shall not be established or designated in, all of the following areas:

- (1) Places of employment; and
- (2) Public places.

(b) Smoking is permitted in the following locations within the city, unless otherwise provided by state or federal law or this code:

- (1) Private residential properties, other than those used as a child-care or health-care facility subject to State licensing requirements; and
- (2) Within a moving or stationary vehicle, including a vehicle on a public street or right-of-way or parked in a public place.

(c) No employer, owner, operator, manager, employee or other person having control of a place of employment or a public place shall knowingly permit smoking in an area in which smoking is prohibited by law. This subsection does not require the physical ejection of any person from the business or the taking of steps to prevent smoking under circumstances that would involve a significant risk of physical harm.

(d) The owner, operator or manager of a hotel, motel or bed and breakfast establishment may establish rules permitting or prohibiting smoking on the portions of the property not open to the public, including guest rooms, pools, and similar facilities and areas, provided that such rules comply with applicable laws.

(e) No employer, owner, operator, manager, employee or other person having control of an outdoor dining area, restaurant, snack shop or alcohol beverage establishment shall place ashtrays on tables or otherwise make ashtrays or receptacles for smoking waste available to patrons.

(f) Nothing in this chapter prohibits any person or employer with legal control over any property from prohibiting smoking on any part of such property, even if smoking is not otherwise prohibited in that area.

6.40.040 Smoking and open fires prohibited in hazardous fire areas.

Smoking and open fires are prohibited in any hazardous fire area as identified by the chief.

(a) The fire chief has identified the following locations as hazardous fire areas and has provided signage identifying such:

- (1) All open space and wildland interface areas in and surrounding the city.

6.40.050 Smoking prohibited in City facilities and on City property.

Smoking is prohibited in all enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Dana Point, as well as on all outdoor property owned, leased, or operated by the City of Dana Point.

6.40.060 Smoking prohibited on property of other governmental bodies.

Smoking is prohibited in all enclosed areas, including buildings, as well as on all outdoor property within the city owned, leased, or operated by other governmental bodies, including the State of California, the County of Orange, and special districts, when such other governmental body has consented in writing to the City enforcing the provisions of this section on such property.

6.40.070 Posting of sign required.

Except where other signs are required, whenever in this code smoking is prohibited, "No Smoking" or "Smoke Free" signs shall be conspicuously posted by the owner, operator, manager, or other persons having control of such room, building, or other place where smoking is prohibited. The City Manager shall post signs at or near the primary entrance(s) to a public place in which smoking is prohibited and which is owned or controlled by the City. Signage required by this section shall not be subject to Chapter 9.37. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provisions of this chapter.

6.40.080 Enforcement.

(a) The provisions of this chapter may be enforced by the Orange County Sheriff's Department, any peace officer or fire or code enforcement officer, or other employees designated by the City Manager.

(b) While an establishment is undergoing otherwise mandatory inspections, fire and code enforcement officers may inspect the establishment for compliance with this chapter.

(c) Notice of the provisions of this chapter shall be provided to all applicants for a business license or renewal thereof; provided, however, any failure to provide such notice shall be no defense to a violation of this chapter.

(d) Employers, owners, operators, managers or employees of same shall be required to orally inform persons violating this chapter of the provisions hereof. The duty to inform such violator shall arise when such employer, owner, operator, manager or employee of the same becomes aware of such violation.

(e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.

(f) Except as provided in subsection (g), any person who is found to violate any provision of this chapter shall be deemed guilty of an infraction and shall be punishable by:

- (1) A fine not exceeding one hundred (\$100.00) dollars for the first violation;
- (2) A fine not exceeding two hundred (\$200.00) dollars for a second violation within one (1) year; and
- (3) A fine not exceeding five hundred (\$500.00) dollars for a third violation within one (1) year.

(g) Any person who is found to violate the prohibition of smoking in a hazardous fire area pursuant to section 6.40.040 shall be guilty of a misdemeanor and shall be punishable as provided by state law.

(h) Any aggrieved person may enforce the provisions of this chapter by means of a civil action on his or her own behalf pursuant to California Civil Code section 3501 et seq.

6.40.090 Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted or prohibited by other applicable laws.

SECTION 2: Section 13.04.105 Prohibition of Smoking of Tobacco Products in Public Parks is deleted in its entirety.

SECTION 3: Section 13.04.020 Definitions is hereby amended to delete the definitions of "Smoking" and "Tobacco Product" in subsections (e) and (f).

SECTION 4: CEQA Determination. In adopting this Ordinance, the City Council finds that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Title 14 California Code of Regulations Sections 15061(b)(3) and 15378, in that it can be seen with certainty that the adoption of the Municipal Code amendments propose no activity that may have a significant effect on the environment and will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

SECTION 5: Severability. If any section, subsection, subdivision, 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 and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the

fact that any one or more section, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared unconstitutional.

SECTION 6: Effective Date. This Ordinance shall become effective thirty (30) days after its passage and adoption. Within fifteen (15) days of the date of adoption of this Ordinance, the City Clerk shall post a copy of said Ordinance in places designated for such posting and shall certify to the same. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be published as required by law.

PASSED, APPROVED and ADOPTED this 16th day of January, 2018.



RICHARD A. WICZOREK, MAYOR

ATTEST:



KATHY M. WARD, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF DANA POINT)

I, Kathy M. Ward, City Clerk of the City of Dana Point, do hereby certify that the foregoing Ordinance No. 18-02 was duly introduced at a regular meeting of the City Council on the 5th day of December, 2017, and was duly adopted and passed at a regular meeting of the City Council on the day of 16th day of January, 2018, by the following vote, to wit:

AYES: Council Members Lewis, Tomlinson, and Wyatt

NOES: Mayor Pro Tem Muller and Mayor Viczorek

ABSENT: None



KATHY M. WARD, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

AFFIDAVIT OF POSTING
AND PUBLISHING

KATHY WARD, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 18-02, being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA AMENDING CHAPTER 6.40 AND DELETING PORTIONS OF CHAPTER 13.04 OF THE DANA POINT MUNICIPAL CODE RELATING TO THE REGULATION AND PROHIBITION OF SMOKING IN THE CITY

was published in summary in the Dana Point News on the 14th day of December, 2017, and the 25th day of January, 2018, and in further compliance with City Resolution No. 91-10-08-01 on the 7th day of December, 2017, and on the 18th day of January, 2018 was caused to be posted in four (4) public places in the City of Dana Point, to wit:

Dana Point City Hall
Capistrano Beach Post Office
Dana Point Post Office
Dana Point Library



KATHY WARD, CITY CLERK
Dana Point, California