

ORDINANCE NO. 1129

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAMARILLO, CALIFORNIA, AMENDING AND RESTATING CHAPTER 9.24 AND CHAPTER 9.36 OF THE CAMARILLO MUNICIPAL CODE PERTAINING TO THE CITY'S TOBACCO REGULATIONS

The City Council of the City of Camarillo ordains as follows:

SECTION 1. Findings. The City Council of the City of Camarillo finds as follows:

A. On May 4, 2016, the State Legislature passed Assembly Bill No. 11, Senate Bill No. 5, and Senate Bill No. 7 (collectively, the "Tobacco 21 Law") to further address the dangers to public health from tobacco, electronic smoking devices and other tobacco-related products.

B. The Tobacco 21 Law requires tobacco users to be at least 21 years of age to purchase, possess or consume tobacco products, unless the user is an active duty member of the United States Armed Forces and at least 18 years of age.

C. The City wishes to amend the Camarillo Municipal Code regulations related to the use, furnishing, possession, and sales of tobacco products, for consistency with the Tobacco 21 Law, and to further clarify the existing provisions of the Municipal Code.

SECTION 2. Environmental Findings. The City Council exercises its independent judgment and finds that the enactment of this ordinance is exempt from the California Environmental Quality Act ("CEQA") under the CEQA Guidelines (Chapter 3 of Title 14 of the California Code of Regulations beginning at Section 15000), specifically, Section 15061(b)(3), because the adoption of this ordinance will implement a regulatory process that will not foreseeably result in construction or other physical activities, either directly or indirectly, and that therefore the enactment of this ordinance does not have the potential to result in any significant effects on the environment.

SECTION 3. Amendment and Restatement of Municipal Code Chapter 9.24. Chapter 9.24 (Regulation of Smoking) of the Camarillo Municipal Code is amended and restated as set forth in the attached Exhibit A.

SECTION 4. Amendment and Restatement of Municipal Code Chapter 9.36. Chapter 9.36 (Regulation of the Sale of Tobacco Products and Electronic Smoking Devices and Products) of the Camarillo Municipal Code is amended and restated as set forth in the attached Exhibit B.

SECTION 5. 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 hereby 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 6. Effective Date. This ordinance is effective 30 days after its adoption.

SECTION 7. Publication. The City Clerk is directed to cause this ordinance to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED September 28, 2016.



Mayor

Attested to on 9/29/16
Jamadland

City Clerk

I, Jeffrie Madland, City Clerk of the City of Camarillo, certify Ordinance No. 1129 was introduced by the City Council at a meeting held September 14, 2016, and subsequently passed and adopted by the City Council at a regular meeting held September 28, 2016, by the following vote:

AYES: Councilmembers: Kildee, Little, McDonald, Mayor Morgan
NOES: Councilmembers: None
ABSENT: Councilmembers: Graveh

Jamadland

City Clerk



EXHIBIT A

Chapter 9.24 - REGULATION OF SMOKING

Sections:

9.24.010 Definitions.

In addition to the definitions contained in this code, including the city's Zoning Ordinance, the following words and phrases are defined as set forth below, for the purpose of this chapter, unless the context clearly requires a different definition:

A. "Business" means any sole proprietorship, partnership, joint venture, corporation or other legal entity formed for profit-making purposes, including but not limited to, retail establishments where goods and/or services are sold, and professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are provided.

B. "Dining area" means any area, including streets and sidewalks, available to or customarily used by the general public that is designed, established, or regularly used for consuming food or drink.

C. "Employee" means any person who is employed or retained as an independent contractor by any business, employer or non-profit entity in consideration for direct or indirect monetary wages or profit. Employee also means any person who volunteers his or her services to a non-profit entity, business or employer.

D. "Employer" means any person, business or non-profit entity that retains the services of one or more employees.

E. "Enclosed area" means all space in a building between a floor and ceiling which is enclosed on all sides by solid walls or windows exclusive of door or passage ways which extend from the floor to the ceiling; and all areas which are screened by partitions which do not extend to the ceiling or are not solid.

F. "Family day care home" means a home providing day care for children, which is subject to state and/or county licensing requirements.

G. "Multi-unit residence" means a building or portion thereof designed for occupancy by two or more families living independently of each other, with each provided with kitchen facilities. A single-family house shared by roommates is not a multi-unit residence for purposes of this section.

H. "Multi-unit residence common area" means every area of a multi-unit residence accessible to and usable by the occupants of more than one dwelling space, including but not limited to halls, lobbies, laundry rooms, paths, courtyards, elevators, stairs, community rooms, outdoor eating areas, play areas and swimming pools.

I. "Non-profit entity" means any corporation, unincorporated association or other legal entity created for charitable, philanthropic, educational, character building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain.

J. "Parking lot" means a parking area, whether public or private, used for the parking of vehicles and available for public use, either free of charge or for remuneration.

K. "Place of employment" means any area under the control or possession of an employer, business or non-profit entity which employees may enter during the course of their employment, including but not limited to, indoor and outdoor work areas, construction sites, vehicles used in employment or for business purposes, taxis, employee lounges and restrooms, conference and banquet rooms, bingo and gaming facilities, retail tobacco stores, long-term health care facilities, warehouses, and employee cafeterias and hallways. A private residence is a "place of employment" if it is used, at any time, as a family day care home or residential care home.

L. "Public place" means any area to which the public is invited or in which the public is permitted, regardless of any fee or age requirement, but does not include streets or sidewalks, except those streets or sidewalks designated by city council resolution.

M. "Reasonable distance" means a distance of twenty-five feet in any direction from an area in which smoking is prohibited.

N. "Recreational area" means any area that is publicly or privately owned, and open to the general public for recreational purposes regardless of any fee requirement, including but not limited to, parks, picnic areas, gardens, swimming pools, walking paths, skateboard parks, sporting facilities, stadiums, fitness clubs and playgrounds, but does not include golf course fairways.

O. "Residential care home" means a home providing round-the-clock care for children or elderly persons, which is subject to state and/or county licensing requirements.

P. "Retail smoking products store" means any retail business establishment generating at least ninety percent of its revenues from the sale of smoking products, including but not limited to, cigarettes, cigars, pipe tobacco, electronic smoking devices and smoking accessories.

Q. "Service area" means any publicly or privately owned area, including streets and sidewalks, designed to be used or regularly used by one or more persons to receive or wait to receive a service, enter a public place or place of employment, or make a transaction, whether or not the exchange of money is involved. The term "service area" includes but is not limited to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines or cab stands.

R. "Sidewalk" means any public or private sidewalk or walkway located in a public place.

S. "Smoke" means the gases, particles or vapors released into the air as a result of combustion, electrical ignition or vaporization, including from an electronic smoking device, when the purpose of the combustion, electrical ignition or vaporization is human inhalation of the gases, particles or vapors. Smoke does not mean the combustion of material solely for olfactory purposes such as, for example, smoke from incense, that does not contain any tobacco or nicotine or the emissions from a product specifically approved by the United States Food and Drug Administration for use in mitigating, treating or preventing disease.

T. "Smoking" means engaging in an act that generates smoke, such as possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, a lighted cigarette, an operating electronic smoking device, or any other act of smoking as defined in Section 22950.5(c) of the Business & Professions Code.

U. "Smoking lounge" means a business established for the purpose of providing customers with a place to purchase and smoke cigarettes, cigars and pipe tobacco, electronic smoking devices and or the purchase of smoking accessories and which generates at least ninety percent of its revenues from the sale of tobacco products and/or electronic smoking devices, including but not limited to, cigarettes, cigars, pipe tobacco, electronic smoking devices, and smoking accessories.

V. "Unenclosed area" means any area that is not an enclosed area.

W. "Electronic smoking device" means an electronic or battery-operated device that delivers vapors for inhalation. This term includes every variation and type of such devices whether they are 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.

9.24.020 Prohibition of smoking in certain enclosed and unenclosed areas.

A. Smoking is prohibited in the following enclosed and unenclosed areas within the City of Camarillo, except in such places in which smoking is already prohibited by state or federal law, in which case the state or federal law applies:

- (1) Public places;
- (2) Dining areas;
- (3) Recreation areas;
- (4) Service areas;
- (5) Private residences if used, at any time, as a family day care home or residential care home;
- (6) The permitted sites of public events held in unenclosed areas, including but not limited to sports events, entertainment and speaking performances,

ceremonies, pageants, parades, farmers' markets and fairs, whether in a private venue or on a public street. This prohibition applies from the time 60 minutes before the event begins to the time 60 minutes after the event ends;

(7) Multi-unit residence common areas, but not including parking lots;
and;

(8) Sidewalks designated by city council resolution.

B. Smoking is prohibited in all enclosed and unenclosed places of employment, except in such places in which smoking is already prohibited by state or federal law, in which case the state or federal law applies, and except as provided for in Section 9.24.030E of this chapter.

9.24.030 Permissible smoking areas.

Notwithstanding any other provision of this chapter, smoking is permitted in the following areas unless prohibited by federal or state law:

A. Private residences, except if used, at any time, as a family day care or residential care home, subject to state and/or county licensing requirements;

B. Retail smoking products stores and smoking lounges that are located in a building which contains no other businesses or uses and the walls of the building are at least ten feet from any other building; except that smoking of electronic smoking devices is permissible in smoking lounges legally in operation on the effective date of this ordinance at their current location even if said smoking lounge is in a building that contains other businesses with adjacent to that smoking lounge.

C. Parking lots, except:

(1) Smoking is not permitted in parking lots when the parking lot is included in an approved permit for a public event.

(2) Smoking is not permitted in parking lots within a reasonable distance of any location where smoking is prohibited by this chapter.

D. Streets and sidewalks, except:

(1) Smoking is not permitted on streets or sidewalks designated as "No Smoking" by city council resolution.

(2) Smoking is not permitted on streets or sidewalks within a reasonable distance of any location where smoking is prohibited by this chapter.

E. Up to twenty percent of hotel and motel guest rooms, provided at least eighty percent of the guest rooms in a hotel or motel are designated as permanent non-smoking rooms and ashtrays and matches are permanently removed from such non-

smoking rooms. Permanent "No Smoking" signage must be posted in non-smoking rooms; and

F. Enclosed places of employment when all three of the following criteria are satisfied:

(1) There are no employees other than the owner(s) or operator(s) of the business or non-profit entity;

(2) The public is not permitted in such places of employment; and

(3) The enclosed area containing the place of employment is located in a building which contains no other businesses or uses and the walls of the building are at least ten feet from any other building.

9.24.040 Reasonable smoking distance required.

A. Smoking in unenclosed areas is prohibited within a reasonable distance from any entrance, exit, window, opening, crack, or vent into an enclosed area in which smoking is prohibited, except while actively passing on the way to another destination and so long as smoke does not enter any enclosed area in which smoking is prohibited.

B. Smoking in unenclosed areas is prohibited within a reasonable distance from any unenclosed area in which smoking is prohibited under Section 9.24.020 of this chapter, except while actively passing on the way to another destination.

C. The prohibitions in subsections (A) and (B) do not apply to unenclosed areas of private residential properties that are not multi-unit residences.

9.24.050 Duty of person, employer, business or non-profit entity.

A. No person, employer, business or non-profit entity may knowingly permit smoking in an area which is under the control or possession of the person, employer, business or non-profit entity and in which smoking is prohibited by law and the person, employer, business or non-profit entity is not otherwise compelled to act under state or federal law.

B. No person may dispose of any cigarette, cigar or tobacco or electronic smoking device or any part of a cigarette or cigar or electronic smoking device except in a designated waste disposal container.

C. Notwithstanding any other provision of this chapter, any person, landlord, employer, business or non-profit entity who controls any property, establishment or place of employment regulated by this chapter may declare any part of such area in which smoking would otherwise be permitted to be a non-smoking area.

9.24.060 Posting of signs.

A. Signs for Enclosed Areas.

(1) Signs with the words "No Smoking in This Establishment or Within 25 Feet of Entrances, Exits and Operable Windows," a City of Camarillo phone number where complaints can be directed, and citation of this Chapter, California Labor Code Sec. 6404.5 and California Government Code Sec. 7597, will be provided by the city and must be conspicuously posted at all entrances to every enclosed area in which smoking is prohibited by this chapter by the person, employer, business or non-profit entity having control or possession of such place. For purposes of this chapter, the city manager or designee will be responsible for the posting of signs in facilities owned or leased in part by the City of Camarillo.

(2) For enclosed buildings with multiple tenants, signs with the wording specified in this section must be conspicuously posted at each exterior entrance to the building by the person, employer, business or non-profit entity having control or possession of such building. Individual enclosed areas within the multiple-tenant building need not be posted.

B. Signs for All Other Areas. "No Smoking" or "Smoke Free" signs, with letters of no less than two inches in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) must be clearly, sufficiently and conspicuously posted in every unenclosed area in which smoking is prohibited by this chapter by the person, employer, business or non-profit entity having control or possession of such place.

C. In any business where smoking is permitted in enclosed areas pursuant to this chapter and, in addition to the "No Smoking" sign requirements of Section 9.24.030E:

(1) Signs must be permanently posted which include the words: "WARNING: SMOKING ALLOWED IN THIS ESTABLISHMENT" or "WARNING: SMOKING ALLOWED IN PORTIONS OF THIS ESTABLISHMENT";

(2) Each such sign must be printed in capital letters not less than two inches in height; and

(3) All such signs must be posted so as to be clearly visible from the exterior of the entrance(s) to the building.

9.24.070 Violations and penalties.

A. A violation of this chapter constitutes an infraction, subject to penalties as provided for in Chapter 1.12 of this code.

B. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter will constitute a violation.

C. The remedies provided by this chapter are cumulative and in addition to any other remedy available at law or in equity.

D. Enforcement of this chapter may be implemented by the city manager. Any peace officer or code enforcement official also may enforce this chapter.

E. Except as otherwise provided, enforcement of this chapter is at the sole discretion of the city. Nothing in this chapter creates a right of action in any person against the city or its agents to compel public enforcement of this chapter against private parties.

F. Punishment under this section will not preclude punishment pursuant to Health & Safety Code Section 13002, Penal Code Section 374.4, or any other law proscribing the act of littering. Nothing in this section precludes any person from seeking any other remedies, penalties or procedures provided by law.

9.24.080 Non-retaliation.

No person, business, employer or non-profit entity may intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this chapter.

9.24.090 Public education.

The city manager, in conjunction with the Ventura County Department of Health and other health organizations, may engage in a continuing program to explain and clarify the purposes and requirements of this ordinance to citizens affected by it, and to guide owners, operators, employers and managers in their compliance with it. Such program may include the publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

9.24.0100 Other applicable laws.

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

9.24.0110 Application to publicly owned facilities.

All facilities owned, leased or controlled by the city or by any other public agency will be subject to the provisions of this chapter, unless now or hereafter the application of this chapter to such public facilities is prohibited or preempted by applicable law.

EXHIBIT B

Chapter 9.36 - REGULATION OF THE SALE OF TOBACCO PRODUCTS AND ELECTRONIC SMOKING DEVICES AND PRODUCTS

Sections:

9.36.010 Definitions.

For the purpose of the provisions of this chapter, the following words and phrases have the meanings set forth below:

A. "Business" means any sole proprietorship, joint venture, corporation or other legal entity formed for profit-making purposes, including, but not limited to, retail establishments where goods or services are sold.

B. "Electronic smoking device" means an electronic or battery operated device that delivers vapors for inhalation. This term includes every variation and type of such devices whether they are 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.

C. "Electronic smoking device paraphernalia" means cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic smoking device batteries, electronic smoking device chargers, and any other item specifically designed for the preparation, charging, or use of electronic smoking devices.

D. "Electronic smoking device product" means any form or concentration of nicotine, synthetically produced nicotine, or any other product that is used in an electronic smoking device to produce smoke.

E. "Electronic smoking device retailer" means any person or legal entity operating a business at which electronic smoking devices and/or electronic smoking device products are offered for sale.

F. "Employee" means any person who is employed in any capacity by a business which offers for sale any tobacco product, including but not limited to, any person who volunteers his or her services for a non-profit entity which offers for sale any tobacco product.

G. "Person" means a natural person or any legal entity.

H. "Self-service display" means any open display of any type of smoking products and paraphernalia that the public has access to without the assistance or intervention of an employee.

I. "Smoke" means the gases, particles or vapors released into the air as a result of combustion, electrical ignition or vaporization, including from an electronic

smoking device, when the purpose of the combustion, electrical ignition or vaporization is human inhalation of the gases, particles or vapors. Smoke does not mean the combustion of material solely for olfactory purposes such as, for example, smoke from incense, that does not contain any tobacco or nicotine or the emissions from a product specifically approved by the United States Food and Drug Administration for use in mitigating, treating or preventing disease.

J. "Smoking" means engaging in an act that generates smoke, such as possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, a lighted cigarette, an operating electronic smoking device, or any other act of smoking as defined in Section 22950.5(c) of the Business & Professions Code.

K. "Smoking lounge" means a business established for the purpose of providing customers with a place to purchase and smoke any form of tobacco or electronic smoking device product and/or purchase smoking products and paraphernalia and which generates at least ninety percent of its revenues from the sale of smoking products and paraphernalia.

L. "Smoking products and paraphernalia" means electronic smoking device, electronic smoking device paraphernalia, electronic smoking device product, tobacco paraphernalia, and tobacco product.

M. "Smoking products and paraphernalia retailer" means any person or legal entity operating a business at which smoking products and paraphernalia are offered for sale.

N. "Smoking products and paraphernalia vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases smoking products and paraphernalia.

O. "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, cigarette rolling machines, any other item designed for the consumption or preparation of tobacco products, or any other item as defined in Section 22962(a)(2) of the Business and Professions Code.

O. "Tobacco product" has the meaning set forth Section 22950.5(d)(1) of the Business and Professions Code, and includes any of the following:

(1) A 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, or snuff.

(2) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.

(3) Any component, part, or accessory of a tobacco product, whether or not sold separately.

P. "Vendor-assisted" means that only an employee of a smoking products and paraphernalia retailer has access to smoking products and paraphernalia and assists a customer by supplying the smoking products and paraphernalia, and the customer does not take possession of the smoking products and paraphernalia until it is purchased.

9.36.020 Prohibitions.

Q. Signage. No person may engage in the sale of any smoking products and paraphernalia without first posting and permanently maintaining a plainly visible sign at the point-of-sale of smoking products and paraphernalia which must contain the following words with initial letters capitalized in the following manner:

The Sale of Tobacco Products or Electronic Smoking Devices to Persons Under 21 Years of Age is Prohibited by Law and Subject to Penalties. Valid Identification May Be Required. To Report an Unlawful Tobacco Sale Call 1-800-5ASK-4-ID. Business and Professions Code Section 22952.

The sign must be square in shape and no smaller than 5.5 inches high by 5.5 inches wide (30.25 square inches) or be rectangular in shape and no smaller the 3.66 inches high by 8.5 inches wide (31.11 square inches). A sign may be larger; however, the sign must be proportionate to one set of the dimensions. The sign must be printed in ink that is of high contrast from the color of the background material. The size, typeface and weight of the lettering must be in conformance with California Code of Regulations Title 17, Section 6902.

Signs may be available from the Tobacco Education Clearing House of California at www.tobaccofreecatalog.org.

R. Identification. No person or employee may sell, offer to sell, permit to be sold, give, or in any way furnish any smoking products and paraphernalia to any person who appears to be under twenty-seven years of age, without first verifying by means of photographic identification containing the person's date of birth that the person is not under 21 years of age, except where the person is at least 18 years of age and presents a valid, unexpired, photographic identification issued by the United States Armed Forces that indicates the person's proof of age and military status.

S. Packaging. No person or employee may sell, offer to sell or permit to be sold, any smoking products and paraphernalia not in the original packaging provided by the manufacturer and with all required health warnings.

T. Self-Service Display. No person or employee may sell, offer for sale or display for sale, give, or in any way furnish any smoking products and paraphernalia by means of a self-service display or by any means other than vendor-assisted sales.

U. Smoking. No vendor may allow an employee or any other person to smoke or otherwise sample a tobacco product or electronic smoking device product prior to purchase, unless the vendor's place of business is a legally permitted smoking lounge, and the smoking of the tobacco or electronic smoking device product is allowed under state or federal law.

V. Machines. No business or other commercial retail or wholesale outlet, may locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his or her or its premises of, any smoking products and paraphernalia vending machine for the purpose of selling or distributing any smoking products and paraphernalia.

9.36.030 Non-retaliation.

No person may discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant agrees to abide by the provisions of this chapter.

No person may intimidate or threaten any reprisal or effect any reprisal for the purpose of retaliating against any employee because such employee seeks to attain compliance with the provisions of this chapter.

9.36.040 Conflicts of law.

This chapter will not be interpreted or construed to permit smoking products and paraphernalia vending machines and/or distribution of smoking products and paraphernalia product samples where they are otherwise restricted by other applicable laws. This chapter will not be construed to be in conflict with any laws and/or regulations imposed by the state or federal government.

9.36.050 Penalty for violation.

Any violation of the provisions of this chapter will be deemed to be a misdemeanor and punishable as such. Each day a violation of any provision of this chapter will continue is to be a new and separate violation.