

Meeting Date: 05/20/14 (10)

ORDINANCE NO. 10339 (NEW SERIES)

AN ORDINANCE AMENDING TITLES 3, 4 AND 8 OF THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES TO REGULATE THE USE OF ELECTRONIC SMOKING DEVICES IN COUNTY PARKS, ON COUNTY TRAILS AND IN THE UNINCORPORATED AREA OF THE COUNTY OF SAN DIEGO

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1: A new Chapter 14 is added to Division 2 of Title 3 of the San Diego County Code of Regulatory Ordinances to read as follows:

CHAPTER 14. PROHIBITION ON USE OF ELECTRONIC SMOKING DEVICES IN PLACES OF EMPLOYMENT AND OTHER LOCATIONS IN THE UNINCORPORATED AREA OF THE COUNTY.

SEC. 32.1401. FINDINGS AND INTENT.

- (a) Credible studies have demonstrated that there are health concerns regarding the use of electronic smoking devices by users of the devices and bystanders.
- (b) The Centers for Disease Control and Prevention has reported that from 2011-2012, the use of electronic cigarettes by U.S. middle and high school students more than doubled.
- (c) Despite the potential use of electronic smoking devices as an aid to quitting smoking, the products are not approved by the U.S Food and Drug Administration (FDA) for smoking cessation or treatment of any health concerns. An analysis by the FDA found that e-cigarettes do contain carcinogens, including nitrosamines as well as toxic chemicals such as diethylene glycol. Although electronic smoking devices do not produce the same smoke as conventional tobacco product cigarettes, they do produce a cloud of vapors containing unknown substances and sometime produce unpleasant odors. The possible health effects of bystanders breathing or absorbing these vapors through their skin is unknown.
- (d) Nicotine is contained in most electronic smoking devices. Nicotine is a highly addictive neurotoxin included in the Proposition 65 list of Chemicals Known to the State to Cause Cancer or Reproductive Toxicity and is known to cause birth defects. Nicotine is a component of the emissions from electronic smoking devices containing nicotine and involuntarily exposes non-users to nicotine.

- (e) Scientific studies and FDA testing demonstrated that the solutions in electronic smoking devices contained toxic chemicals and that labelling often misrepresented nicotine content contained in the devices.
- (f) There are products approved by the FDA for smoking cessation. To date, scientific studies have not demonstrated the benefit of electronic smoking devices for smoking cessation and these devices are not approved by the FDA for smoking cessation.
- (g) With certain exceptions, state law prohibits smoking inside an enclosed space at a place of employment.
- (h) The use of electronic smoking devices in locations where the smoking of tobacco is prohibited may cause confusion and uncertainty, and make it more difficult to enforce smoke free environments and other prohibitions on smoking tobacco.
- (i) It is the intent of the County Board of Supervisors in enacting the Ordinance that adds this Chapter to the County Code of Regulatory Ordinances to provide for the public health, safety and welfare, by prohibiting the use of electronic smoking devices in the unincorporated area of the County in locations where state law or regulation prohibits the use and smoking of tobacco products.

SEC. 32.1402. DEFINITIONS.

For purposes of this Chapter:

- (a) “Electronic smoking device” is defined as an electronic and/or battery operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. “Electronic smoking device” includes any such electronic smoking 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. “Electronic smoking device” does not include any product specifically approved by the U.S. Food and Drug Administration for use in mitigation, treatment, or prevention of disease.
- (b) “Enclosed space” is defined as set forth in state law, Labor Code section 6404.5 and includes lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building.
- (c) “Place of employment” is defined as set forth in state law, Labor Code section 6404.5.
- (d) “Smoking” or “Smoke” for the purpose of this Chapter is defined as the use of an electronic smoking device intended to emulate smoking, which permits a person to inhale vapors, mists or aerosol that may or may not contain nicotine.

SEC. 32.1403. PROHIBITION ON USE OF ELECTRONIC SMOKING DEVICES IN AN ENCLOSED SPACE AT A PLACE OF EMPLOYMENT AND OTHER LOCATIONS IN THE UNINCORPORATED AREA OF THE COUNTY.

(a) Enclosed Spaces at Places of Employment.

No person shall engage in the smoking of an electronic smoking device in the unincorporated area of the County in an enclosed space at a place of employment, as defined in Labor Code section 6404.5. The prohibition in this section shall not apply to any place that is not defined as an enclosed space or a place of employment or any place that is otherwise excepted from the smoking prohibitions in Labor Code section 6404.5 or to any place of employment in a public building owned, leased or operated by another governmental jurisdiction.

(b) Other Locations Where Smoking Tobacco is Prohibited by State Statute or Regulation.

No person shall engage in the smoking of an electronic smoking device in the unincorporated area of the County in any other location where smoking tobacco is prohibited by any state statute or regulation.

SEC. 32.1404. VIOLATIONS AND ENFORCEMENT.

Any violation of the prohibition set forth in Section 32.1403 is an infraction, punishable by a fine not to exceed one hundred dollars (\$100) for a first violation, two hundred dollars (\$200) for a second violation within one year, and five hundred dollars (\$500) for a third and for each subsequent violation within one year.

SEC. 32.1405. SEPARATE VIOLATION FOR EACH INCIDENT.

Each incident in violation of Section 32.1403 shall constitute a separate offense.

SEC. 32.1406. ENFORCEMENT AUTHORITY.

The District Attorney and the Sheriff are authorized to administer and enforce this chapter. The District Attorney and the Sheriff may exercise any enforcement powers provided by law to enforce this chapter.

SEC. 32.1407. CONSTRUCTION/INTERPRETATION.

This section shall in all respects be construed and interpreted in the same manner as the state law prohibitions against the smoking of tobacco products contained in Labor Code section 6404.5 and in the same manner as any other state law or regulation which prohibits the smoking of tobacco products.

Section 2: Title 4, Division 1, Chapter 1, Article 2, Section 41.118 of the

San Diego County Code of Regulatory Ordinances is amended to read as follows:

SEC. 41.118. FIRE HAZARDS.

It shall be unlawful for any person in a County park to:

- (a) Ignite a fire, except in a designated campfire ring or barbecue provided by the County when campfires or cooking are allowed by park rules or as specifically authorized by a park ranger.
- (b) Ignite a fire when the County has given the person notice that the geographic area in which the park is located is subject to a red flag warning issued by the National Weather Service or the Director of Parks and Recreation has determined that it is not safe to start a fire.
- (c) Discard any lighted tobacco product or any burning or combustible material or other thing that could set fire to grass, shrubs, buildings or any other combustible substance.

Section 3: A new section 41.118.5 is hereby added to Title 4, Division 1, Chapter 1, Article 2 of the San Diego County Code of Regulatory Ordinances to read as follows:

SEC. 41.118.5. SMOKING.

It shall be unlawful for any person in a County park to carry a lighted pipe, cigar, or cigarette; to use an electronic smoking device or other smoking device, containing tobacco or any other substance; or to light, smoke, activate, or in any way use a pipe, cigar, cigarette, or electronic smoking device or other smoking device, containing tobacco or any other substance.

Section 4: Title 8, Division 12, Chapter 2, Section 812.207 of the San Diego County Code of Regulatory Ordinances is amended to read as follows:

SEC. 812.207. ACTS PROHIBITED ON TRAILS AND PATHWAYS.

It shall be unlawful for any person to engage in any of the following conduct on a trail or pathway:

- (a) Drive a motorized vehicle including, but not limited to, a car, truck, motorcycle, motorbike, go-cart, all terrain vehicle, tractor or scooter with a motor;
- (b) Dig or plow without the prior written authorization of the County Official;
- (c) Start or maintain a fire or throw away any lighted tobacco or any other burning or combustible material that could set fire to grass, shrubs, leaves, trees and/or any structure;

(d) Carry a lighted pipe, cigar, or cigarette; use an electronic smoking device or other smoking device, containing tobacco or any other substance; or light, smoke, activate, or in any way use a pipe, cigar, cigarette, electronic smoking device or other smoking device, containing tobacco or any other substance;

(e) Cause or allow a dog to be "at large" as defined in County Code Section 62.602(c);

(f) Place a sign or placard without the prior written approval of the County Official;

(g) Mark, deface, disfigure, destroy, damage, remove or tamper with any official trail sign;

(h) Plant any plant or seed without the prior written approval of the County Official;

(i) Obstruct or otherwise interfere with the use of any trail or pathway;

(j) Leave or deposit any waste paper, metal cans, plastic or glass bottles, used smoking material or any other trash;

(k) Use, transport, carry, fire, or discharge any fireworks, firearm, weapon, air gun, archery device, slingshot, paintball gun or explosive of any kind;

(l) Transport or consume any alcoholic beverage; or

(m) Mark, deface, disfigure, destroy, damage, remove or tamper with any vegetation, natural material or improvements without the prior written approval of the Director of Parks and Recreation or the Director's designee.

The prohibition in subparagraph (a) above does not apply to emergency or law enforcement vehicles, trail maintenance vehicles and equipment, or motorized wheelchairs. The prohibition in subparagraph (k) above does not apply to a wild turkey hunt in Santa Ysabel East Preserve authorized pursuant to section 41.117(b)(4) of this code.

Section 5: Effective Date. This ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days after the date of adoption of this ordinance, a summary shall be published once with the name of those members voting for and against the same in the newspaper of general circulation published in the County of San Diego.

Approved as to Form and Legality
County Counsel

By Stephen R. Magruder,
Senior Deputy

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 20th day of May, 2014.