



MICHAEL N. FEUER  
CITY ATTORNEY

REPORT NO. R 1 4 - 0 0 7 3  
FEB 2 7 2014

**REPORT RE:**

**REVISED DRAFT ORDINANCE AMENDING SECTIONS 41.50 AND 63.44 OF THE  
LOS ANGELES MUNICIPAL CODE TO REVISE THE DEFINITION OF  
SMOKING TO INCLUDE ELECTRONIC SMOKING DEVICES AND  
TO REVISE VARIOUS PROVISIONS REGARDING THE PROHIBITION OF  
SMOKING IN CERTAIN PLACES**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, CA 90012

**Honorable Members:**

This Office previously prepared and transmitted for your consideration a draft ordinance to amend Sections 41.50 and 63.44 of the Los Angeles Municipal Code (LAMC) to revise the definition of smoking to include electronic smoking devices and revise various provisions regarding the prohibition of smoking in certain places. During the consideration of the proposed ordinance by the Arts, Parks, Health, Aging & River Committee on February 24, 2014, the Committee requested the following changes be made to the draft ordinance: (1) provide an exemption for the use of electronic smoking devices at vaping lounges similar to the state exemption afforded to tobacco use at tobacco stores; (2) provide an exemption that allows the use of electronic smoking devices at theatrical production sites similar to that provided under a state exemption for smoking of tobacco at theatrical production sites; and (3) other technical changes as provided by this Office.

Two technical changes are provided by this Office: (1) making clear that the definition of smoking does not include use of a product, like an asthma inhaler, specifically approved by the United States Food and Drug Administration for use in mitigating, treating or preventing disease; and (2) reaffirming existing City law that

expressly prohibits smoking, including use of an electronic smoking device, in buildings owned and leased by the City. Pursuant to the request of the Committee, we have revised the draft ordinance and transmit it for your consideration approved as to form and legality.

Council Rule 38 Referral

A copy of this draft ordinance was sent, pursuant to Council Rule 38, to the Department of Recreation and Parks, the Fire Department and the Police Department with a request that all comments, if any, be presented directly to the City Council or its Committees when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Celina Porras at (213) 978-7970. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON  
Chief Assistant City Attorney

DM:CP:pj  
Transmittal

ORDINANCE NO. \_\_\_\_\_

An ordinance amending Sections 41.50 and 63.44 of the Los Angeles Municipal Code to revise the definition of smoking to include electronic smoking devices and to revise various provisions regarding the prohibition of smoking in certain places.

**THE PEOPLE OF THE CITY OF LOS ANGELES  
DO ORDAIN AS FOLLOWS:**

Section 1. Section 41.50 of the Los Angeles Municipal Code is amended in its entirety to read as follows:

**SEC. 41.50. SMOKING PROHIBITED IN DESIGNATED AREAS.**

**A. Definitions.** As used in this section:

1. **“Bar”** shall mean an indoor area utilized primarily for the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.

2. **“Smoke”** shall mean 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 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.

3. **“Smoking”** shall mean engaging in an act that generates smoke, such as possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, a lighted cigarette, or an operating electronic smoking device.

4. **“Electronic Smoking Device”** shall mean an electronic or battery-operated device that delivers vapors for inhalation. This term shall include 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.

5. **“Outdoor Dining Area”** shall mean:

a. An outdoor area of a business, such as a restaurant, that is dedicated by the business as a place for the consumption of food or drinks that are regularly sold or provided by that business, and all non-enclosed

areas within 10 feet thereof. An outdoor dining area shall not include an area that is contiguous to one of the following:

(i) A bar, or a nightclub that requires its patrons to be 18 or older; or

(ii) A restaurant, business or non-commercial building that is completely closed to the general public for a private event.

b. An outdoor area that is dedicated by the person authorized to manage or control the area as a place for the consumption of food or drinks that are regularly sold or provided by one or more nearby businesses, such as a food court, and all non-enclosed areas within 10 feet thereof; or

c. An outdoor area comprised of a 40-foot radius of a business, such as a food kiosk, food cart or mobile food truck, that regularly sells or provides food or drinks but has no area dedicated by the business as a place for the consumption of food or drinks that are regularly sold or provided by that business.

## **B. Prohibitions.**

1. Smoking, as defined in Section 41.50.A.3, shall be prohibited in all places where the smoking of tobacco is prohibited by local, state or federal law. The use of an electronic smoking device is permissible:

a. in a business establishment in which the exclusive purpose of the business is the sale or use of electronic smoking devices, provided that the business does not sell or allow the consumption of alcoholic beverages or food on the premises and does not permit any person under the age of 18 years of age to be present or enter the premises at any time, unless accompanied by the person's parent or legal guardian; and

b. at a theatrical production site, if the use of an electronic smoking device is an integral part of the story in the theatrical production.

2. Smoking, as defined in Section 41.50.A.3, shall also be prohibited in the following places:

a. Any portion of a building owned or leased by the City of Los Angeles;

b. City permitted farmer's markets as defined in Section 12.24.X.6; and

c. Outdoor dining areas.

**C. No-Smoking Signs.**

1. Any business or person having the authority to manage and control any area designated as a no-smoking area shall post or cause to be posted "No Smoking" signs in conspicuous locations within the designated no-smoking areas. All such signs shall clearly and conspicuously recite the phrase "**NO SMOKING**" and/or use the international no-smoking symbol and shall cite Section 41.50 of the Los Angeles Municipal Code. The signs shall be posted not less than 5 feet nor more than 8 feet above floor level and shall be of sufficient number and location to ensure that any person in the designated no-smoking area shall see at least one of the signs. For outdoor dining areas, the additional requirements shall be followed:

a. Any business with an outdoor dining area as defined in Section 41.50 A.5.a, such as a restaurant, and any person authorized to manage or control an outdoor dining area as defined in Section 41.50 A.5.b, such as a food court, shall post no-smoking signs of sufficient number to ensure that the no-smoking prohibition is clearly visible and readable to patrons in the outdoor dining area and to persons passing outdoors within 10 feet of the outdoor dining area. The no-smoking signs shall contain the international no-smoking symbol and state in size 14 font or larger, "No smoking in this outdoor dining area or within 10 feet of this outdoor dining area"; or

b. Any business with an outdoor dining area as defined in Section 41.50 A.5.c, such as a food kiosk, food cart or mobile food truck, shall post a no-smoking sign located near the cashier that is clearly visible and readable to its customers. The no-smoking sign shall contain the international no-smoking symbol and state in size 14 font or larger, "No smoking within 40 feet of this business."

2. It shall be unlawful to willfully mutilate or destroy any signs required by this section.

**D. Penalty.** Except as otherwise expressly provided herein, violation of any provision or failure to comply with any requirement of this section is an infraction.

**E. Discrimination Unlawful.** It shall be unlawful for an employer to discharge or in any manner discriminate against any employee who exercises his or her rights under this section if the dominant intent of the employer is retaliation against the employee for exercising those rights. Violation of this provision shall be a misdemeanor.

Sec. 2. Subsection A of Section 63.44 of the Los Angeles Municipal Code is amended in its entirety to read as follows:

**SEC. 63.44. REGULATIONS AFFECTING PARK AND RECREATION AREAS.**

**A. Definitions.** As used in this section:

**“Beach”** shall include public seashore and shoreline areas bordering the Pacific Ocean that are owned, managed or controlled by the City.

**“Park”** shall include every public park, roadside rest area, playground, zoological garden, ocean, beach or other recreational facility area, together with any parking lot, reservoir pier, swimming pool, golf course, court, field, bridle path, trail, or other recreational facility, or structure thereon, in the City of Los Angeles and under the control, operation or management of the Board of Recreation and Park Commissioners, the Los Angeles County Department of Parks and Recreation, the Los Angeles County Department of Beaches, or the Los Angeles Memorial Coliseum Commission. **“Park”** does not include any State Historic Park located within the City of Los Angeles.

**“Board”** shall mean the Board of Recreation and Park Commissioners.

**“Smoke”** shall mean 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 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.

**“Smoking”** shall mean engaging in an act that generates smoke, such as possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, a lighted cigarette, or an operating electronic smoking device.

**“Electronic Smoking Device”** shall mean an electronic or battery-operated device that delivers vapors for inhalation. This term shall include 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.

Sec. 3. Paragraph 24 of Subsection B of Section 63.44 of the Los Angeles Municipal Code is amended to read as follows:

24. Smoking, as defined in Section 63.44.A, is prohibited. A violation of this subdivision shall be punishable as an infraction.

(a) **Exception.** Smoking is permitted in the following areas:

(1) City golf courses, except for the following courses where smoking is only allowed in designated areas and not in all areas of the course:

Roosevelt Golf Course

Wilson Golf Course

Harding Golf Course

Tregnan Golf Academy

(2) Those areas within parks that are specified in a permit issued by the Recreation and Parks Film Office authorizing smoking by actors during filming; and

(3) Designated smoking areas at the Autry National Center, the Greek Theater, and the Los Angeles Zoo.

(b) **No-Smoking Signs.** The Department shall post and maintain "No Smoking" signs in conspicuous locations. All these signs shall clearly and conspicuously recite the phrase "**NO SMOKING**" and/or use the international no-smoking symbol and shall cite this subdivision of Section 63.44 of the Los Angeles Municipal Code.

Sec. 4. Paragraph 25 of Subsection B of Section 63.44 of the Los Angeles Municipal Code is added to read as follows:

25. No person shall discard, dispose of, or deposit any tobacco product, including cigarette and cigar butts and ashes, except in approved containers specifically placed and designated for receipt of trash, refuse, rubbish, litter or other kind of waste materials. A violation of this subdivision shall be punishable as an infraction.

Sec. 5. **SEVERABILITY.** Pursuant to the provisions of Los Angeles Municipal Code Section 11.00 (k), if any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance which can be implemented without the invalid provision, and, to this end, the provisions of this ordinance are declared to be severable.

Sec. 6. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles at its meeting of \_\_\_\_\_.

HOLLY L. WOLCOTT, Interim City Clerk

By \_\_\_\_\_  
Deputy

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  \_\_\_\_\_  
DAVID MICHAELSON  
Chief Assistant City Attorney

Date 2-27-14

File No. \_\_\_\_\_