



MEMORANDUM

TO: CITY COUNCIL

FROM: TERESA MCCLISH, COMMUNITY DEVELOPMENT DIRECTOR
CITY ATTORNEY, HEATHER K. WHITHAM

SUBJECT: CONSIDERATION OF ADOPTION OF AN ORDINANCE AMENDING SECTIONS OF THE ARROYO GRANDE MUNICIPAL CODE RELATING TO SMOKING AND THE REGULATION OF TOBACCO RETAILERS

DATE: AUGUST 27, 2019

SUMMARY OF ACTION:

Adoption of an Ordinance amending the Arroyo Grande Municipal Code (AGMC) to modify existing ordinances prohibiting smoking in various areas of the City to specifically include electronic cigarettes and cannabis and update certain sections regulating tobacco retailers to be consistent with modifications to State law.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

No impact on financial or personnel resources.

RECOMMENDATION:

It is recommended that the City Council adopt an Ordinance amending sections of the Arroyo Grande Municipal Code relating to smoking and the regulation of tobacco retailers.

BACKGROUND:

On August 13, 2019, the City Council introduced an Ordinance to amend sections of the AGMC to expand the definitions of smoking contained within the AGMC to include electronic cigarettes and cannabis. The Ordinance also amends sections of the AGMC regulating the sale of tobacco to reflect the change in State law, which increased the legal age to purchase and smoke tobacco products from eighteen to twenty-one.

ANALYSIS OF ISSUES:

The Ordinance is now ready for adoption. The Ordinance will become effective thirty days after final passage of the Ordinance.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Adopt the Ordinance amending sections of the AGMC relating to smoking and the regulation of tobacco retailers;
2. Modify and reintroduce the Ordinance; or
3. Provide direction to staff.

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ADVANTAGES:

Modifying the City's AGMC definitions of smoking to include other forms of nicotine delivery devices and cannabis will better protect the citizens of Arroyo Grande and its visitors from the harmful effects of second hand smoke. Amending the portions of the AGMC regulating tobacco retailers will ensure the AGMC is consistent with State law.

DISADVANTAGES:

No disadvantages identified.

ENVIRONMENTAL REVIEW:

This Ordinance is not a "project" under the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15378(b)(5), which applies to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. In accordance with the California Environmental Quality Act (CEQA) and the State CEQA Guidelines, it has been determined that this item is not subject to CEQA Per Section 15061(b)(3) of the Guidelines, regarding the common sense rule that where it can be seen with certainty that there is no possibility of a significant effect on the environment, an activity is not subject to CEQA.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE AMENDING SECTIONS OF THE ARROYO GRANDE MUNICIPAL CODE RELATING TO SMOKING AND THE REGULATION OF TOBACCO RETAILERS

WHEREAS, in order to protect the public health, safety, and general welfare of its citizens, the Arroyo Grande Municipal Code regulates smoking and activities related to smoking in various provision of the Arroyo Grande Municipal Code; and

WHEREAS, the City Council finds it is in the best interest of the City and its residents to amend the definitions related to smoking contained in the Arroyo Grande Municipal Code in order to include electronic smoking devices and cannabis; and

WHEREAS, due to modifications to State law, the City Council also desires to update sections of the Arroyo Grande Municipal Code related to the regulation of tobacco retailers in order to remain consistent with State law.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE DOES ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. Subsection E, of Section 12.20.060 of Chapter 12.20 of Title 12 of the Arroyo Grande Municipal Code is hereby amended to read as follows:

12.20.060 – Behavior in parks.

No person using a park shall:

E. Smoke in any passive or active city park, including dedicated public parks, paths, trails, pedestrian bridges, public open spaces and sports facilities. For the purposes of this chapter, “smoke” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product, including cannabis and cannabis products, intended for inhalation, whether natural or synthetic, in any manner or in any form. To “smoke” includes the use of an electric smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.

SECTION 3. Subsection C.8 of Section 16.52.050 of Chapter 16.52 of Title 16 of the Arroyo Grande Municipal Code is hereby amended to read as follows:

16.52.050 – Arcades.

C. Minimum Development and Performance Standards.

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8. Smoking and Drinking. No alcoholic beverages or tobacco products shall be sold or consumed on the premises, and there shall be no smoking within the arcade. For the purposes of this chapter, “smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product, including cannabis and cannabis products, intended for inhalation, whether natural or synthetic, in any manner or in any form. “Smoking” includes the use of an electric smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking. “Tobacco product” shall have the same meaning as that term is defined in Business and Professions Code Section 22950.5 as that section may be amended from time to time.

SECTION 4. Sections 8.36.010 and 8.36.020 of Chapter 8.36 of Title 8 of the Arroyo Grande Municipal Code are hereby amended to read as follows:

Section 8.36.010 – Posting of signs.

Any person, business, tobacco retailer, or other establishment subject to this chapter shall post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under twenty-one (21) years of age is illegal and subject to penalties. The notice must comply in all respects with Business and Professions Code Section 22952 as such section may be amended from time to time. For the purposes of this chapter, “tobacco products” shall have the same meaning as defined in Business and Professions Code Section 22950.5 as such section may be amended from time to time.

Section 8.36.020 – Sales to minors.

No person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this chapter shall sell, offer to sell or permit to be sold any tobacco product as defined by Business and Professions Code Section 22950.5 as such section may be amended from time to time, to an individual without requesting and examining identification establishing the purchaser’s age as twenty-one (21) years of age or older. This section does not apply to the sale, giving or furnishing of a tobacco product to active duty military personnel who are eighteen (18) years of age or older. An identification card issued by the United States Armed Forces shall be used as proof of age for this purpose.”

SECTION 5. The definition of “Tobacco product” contained in Section 8.38.020 of Chapter 8.38 of Title 8 of the Arroyo Grande Municipal Code is hereby amended to read as follows:

8.38.020 – Definitions.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

“Tobacco product” means any of the following:

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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 electric 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.

“Tobacco product” does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.”

SECTION 6. This Ordinance is not a “project” under the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15378(b)(5), which applies to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. In accordance with the California Environmental Quality Act (CEQA) and the State CEQA Guidelines, it has been determined that this item is not subject to CEQA Per Section 15061(b)(3) of the Guidelines, regarding the common sense rule that where it can be seen with certainty that there is no possibility of a significant effect on the environment, an activity is not subject to CEQA.

SECTION 7. A summary of this Ordinance shall be published in a newspaper published and circulated in the City of Arroyo Grande at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. A certified copy of the full text of the proposed Ordinance shall be posted in the office of the City Clerk. Within fifteen (15) days after adoption of the Ordinance, the summary with the names of those City Council members voting for and against the Ordinance shall be published again, and the City Clerk shall post a certified copy of the full text of such adopted Ordinance. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage.

SECTION 8. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage.

SECTION 9. 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 shall 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.

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On motion by Council Member _____, seconded by Council Member _____, and by the following roll call vote to wit:

AYES:

NOES:

ABSENT:

the foregoing Ordinance was adopted this ____ day of _____, 2019.

CAREN RAY RUSSOM, MAYOR

ATTEST:

KELLY WETMORE, CITY CLERK

APPROVED AS TO CONTENT:

JIM BERGMAN, CITY MANAGER

APPROVED AS TO FORM:

HEATHER K. WHITHAM, CITY ATTORNEY

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