

ORDINANCE NO. 2020-06R

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING CHAPTER 22A OF THE
ESCONDIDO MUNICIPAL CODE TO
ENHANCE INDOOR AND OUTDOOR AIR
REGULATIONS BY REGULATING WHERE
SMOKING IS ALLOWED IN THE CITY OF
ESCONDIDO

WHEREAS, smoking leads to disease and disability and harms nearly every organ of the body. More than 16 million Americans are living with a disease caused by smoking; and

WHEREAS, tobacco product use remains the leading cause of preventable death in the United States, killing more than 480,000 people each year. For every person who dies because of smoking, at least 30 people live with a serious smoking-related illness; and

WHEREAS, secondhand smoke exposure contributes to approximately 41,000 deaths among nonsmoking adults and 400 deaths in infants each year; and

WHEREAS, the City Council of the City of Escondido ("City") seeks to encourage healthier lifestyles and the City recognizes that the use of tobacco products has devastating health consequences. The negative effects from smoking and secondhand smoke exposure constitute a harm which the City has a substantial government interest in preventing and/or abating; and

WHEREAS, the City desires to provide protection for the public health, safety, and general welfare by enacting new laws to regulate where smoking is prohibited to protect everyone's right to breathe clean air; and

WHEREAS, nothing in this ordinance shall be interpreted or applied so as to create

any requirement, power, or duty that is preempted by state or federal law.

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That proper notices of a public hearing have been given and public hearings have been held before the City Council on this issue.

SECTION 2. That Chapter 22A of the Escondido Municipal Code is hereby repealed and replaced as follows:

Sec. 22A-1. Definitions.

In this chapter, the following words and phrases shall have the following meanings:

City-owned building means a building owned and occupied, or leased and occupied, by the city, except for a residential space.

Dining area means any non-residential location where food or beverages are served by a business or routinely consumed by customers. This includes, but is not limited to, restaurant or bar seating areas and patios.

Public open space means any established parcel or area of land unoccupied by buildings, driveways and parking areas, open to the public, and intended for uses including outdoor recreation, education, and scenic and visual enjoyment by the public at large. "Public open spaces" include, but are not limited to, city parks, canyons, ranches, forests and agricultural lands, the immediate surrounding areas of lakes, streams and rivers and other scenic areas owned or controlled by the City. A municipal golf course shall not be included within the definition of "public open space."

Public place means any enclosed area to which the public is invited or in which the public is permitted, except for city-owned buildings. "Public places" include retail stores, retail service establishments, retail food production and market establishments,

restaurants, theaters, waiting rooms, reception areas, educational facilities, health facilities, public transportation facilities, and all other areas to which members of the public are invited. A private residence shall not be included within the definition of “public place.”

Smoke or smoking shall have the meaning as defined in Cal. Bus & Prof Code Section 22950.5(c).

Tobacco product shall have the meaning as defined in Cal. Bus & Prof Code Section 22950.5(d).

Trail means any path within a city park or public open space dedicated to pedestrian, bicycle, or bridle traffic. “Trail” shall also include any pathway dedicated to bicycle traffic within a city park or public open space.

Section 22A-2. Prohibitions.

(a) State and Federal Smoking Prohibitions. It is unlawful to smoke in any place where state and federal tobacco laws regulate the use of tobacco products.

(b) Local Smoking Prohibitions. It is unlawful to smoke in the following places within the City of Escondido:

(1) Any public open space or trail, including designated parking areas of any City recreational area;

(2) Any outdoor public space within the public right-of-way, including but not limited to roads, alleyways, sidewalks, entryways, waiting areas, bus stops, train platforms or boarding areas;

(3) Any City-owned parking lot;

(4) Any outdoor community event on all public property, when open to the public, such as farmers’ markets, exhibits, parades, concerts, performances, and other temporary use activities and events;

(6) Within eighty (80) feet of the entrance, exit, or operable window of a City-owned or operated building, including designated parking areas of any City-owned or operated building;

(7) Any dining area and within twenty-five (25) feet of the entrance, exit, or operable window of any dining area, on public and private property; and

(8) Within 25 feet of any public place where a sign is posted prohibiting smoking in such area.

(c) It shall be unlawful for individuals under the age of 21 years to use or possess tobacco products, except as allowed under State and Federal law.

Section 22A-3. Violations and penalties.

Any person who violates any of the provisions of this chapter is guilty of an infraction except for the fourth or each additional violation of a provision within one (1) year which shall be a misdemeanor. Penalties for a violation of this chapter shall be as designated in Section 1-17.

SECTION 3. California Environmental Quality Act (“CEQA”). That the City has determined that this Municipal Code Amendment is not a project pursuant to CEQA Guidelines Section 15378(b)(2), which provides that a project does not include general policy and procedure making. The adoption of this Municipal Code Amendment is also not a project pursuant to CEQA Guidelines Section 15378(b)(5), which provides that a project does not include organizational and administrative action of government that will not result in direct or indirect physical changes in the environment.

In the alternative, the City has determined that if the adoption of the Municipal Code Amendment is a project, it is subject to exemption. It can be seen with certainty that there is no possibility the adoption of this Municipal Code Amendment will have a

significant adverse effect on the environment because the Municipal Code Amendment prohibits the use of tobacco products in certain areas. The adoption of this Municipal Code Amendment is therefore exempt from California Environmental Quality Act review pursuant to the common sense exemption found in CEQA Guidelines Section 15061(b)(3). It is also categorically exempt under CEQA Guidelines Section 15308, which exempts from CEQA any projects by a regulatory agency for the protection of the environment. The Ordinance constitutes a regulatory activity whose purpose is to protect air quality and prevent adverse health effects of air pollutants cause by smoking. Pursuant to CEQA, a Notice of Exemption relative to the Ordinance was adopted and will be filed with the County Clerk at a time and in a manner as described by law.

SECTION 4. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 5. That the adoption of this Ordinance is not intended to affect or disrupt the continuity of the City's business or administration of its law, including but not limited to the following:

- Actions and proceedings that began before the effective date of this ordinance;
- Prosecution for ordinance violations committed before the effective date of this ordinance; and/or
- The amount, or collection, of license, fee, penalty debt, forfeiture, or obligations due and unpaid as of the effective date of this ordinance.

SECTION 6. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the City of Escondido.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 25th day of March, 2020 by the following vote to wit:

AYES : Councilmembers: DIAZ, MARTINEZ, MORASCO, MCNAMARA

NOES : Councilmembers: NONE

VACANT : Councilmembers: DISTRICT 2

APPROVED:

DocuSigned by:
Paul McNamara
CAACE20782954D3
PAUL MCNAMARA, Mayor of the
City of Escondido, California

ATTEST:

DocuSigned by:
Zack Beck
A58535D0BDC1430
ZACK BECK, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, Zack Beck, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2020-06R passed at a regular meeting of the City Council of the City of Escondido held on the 25th day of March, 2020, after having been read at the regular meeting of said City Council held on the 4th day of March, 2020.

DocuSigned by:
Zack Beck
A58535D0BDC1430
ZACK BECK, City Clerk of the
City of Escondido, California

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