

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING SECTION 10A.2(a) OF CHAPTER 10A OF THE OCEANSIDE CITY CODE TO PROHIBIT THE USE OF ELECTRONIC SMOKING DEVICES WHEREVER SMOKING IS PROHIBITED AND AMENDING CHAPTER 7, ARTICLE XI, OF THE OCEANSIDE CITY CODE TO MODIFY THE DEFINITION OF DRUG AND TOBACCO ESTABLISHMENTS TO PROHIBIT UNACCOMPANIED MINORS FROM ENTERING SAID ESTABLISHMENTS

WHEREAS, an "Electronic Smoking Device" means 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. The term 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 United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease; and

WHEREAS, California Health and Safety Code section 119405 prohibits the sale of electronic smoking devices to minors; and

WHEREAS, despite the state ban on the sale to minors, the use of electronic smoking devices by youth is increasing. According to a Center for Disease Control and Prevention ("CDC") survey, the use of electronic smoking devices by minors nationwide more than doubled from 2011 to 2012. The CDC survey also found that roughly 76.3 percent of middle and high school students who used e-cigarettes in the prior 30-day period had also used conventional cigarettes. (<http://www.cdc.gov/media/releases/2013/p0905-ecigarette-use.html>); and

WHEREAS, electronic smoking devices are often sold in flavors that appeal to minors; and

WHEREAS, the US Food and Drug Administration has yet to fully study the potential health risks of electronic smoking devices. However, laboratory analysis of electronic smoking devices conducted by the FDA documented that some electronic smoking devices contain

1 carcinogens, including nitrosamines, as well as toxic chemicals such as diethylene glycol, an
2 ingredient used in antifreeze;

3 (<http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm>); and

4 WHEREAS, no scientific evidence establishes that electronic smoking devices are a safe
5 substitute to traditional cigarettes or an effective smoking cessation tool; and

6 WHEREAS, the Oceanside City Code currently bans the smoking of cigarettes, lighted
7 pipes and cigars in a public parks, beaches, playgrounds, tot lot sandbox, the Civic Center Plaza
8 Complex, and the Oceanside Pier; and

9 WHEREAS, the use of electronic smoking devices in locations where smoking is
10 prohibited creates confusion and impairs the city's ability to enforce the ban on smoking; and

11 WHEREAS, the City Council of the City of Oceanside desires to promote a smoke-free
12 environment for youth in the City.

13 NOW, THEREFORE, the City Council of the City of Oceanside does ordain as follows:

14 SECTION 1. Chapter 10A of the City of Oceanside Code is amended to add a revised
15 definition of the terms smoke or smoking as follows:

16 "10A.2(a) *Smoke or smoking* shall mean and include: (1) the carry of a
17 lighted cigarette of any kind, lighted pipe or lighted cigar; or the lighting
18 of a cigarette of any kind, pipe or cigar; or (2) the use of an 'Electronic
19 Smoking Device' which for purposes of this section includes an
20 electronic and/or battery-operated device which can be used to deliver an
21 inhaled dose of nicotine or other substances. Electronic Smoking Device
22 includes any such electronic smoking device, whether manufactured,
23 distributed, marketed, or sold as an electronic cigarette, an electronic
24 cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or
25 any other product name or descriptor. Electronic Smoking Device does
26 not include any product specifically approved by the United States Food
27 and Drug Administration for use in the mitigation, treatment, or
28 prevention of disease."

1 SECTION 2. Chapter 7, Article XI, Section 7.96(a) is amended as follows:

2 “*Tobacco and drug paraphernalia establishment* means any
3 premises where tobacco and drug paraphernalia, including an
4 Electronic Smoking Device as defined in Section 10.A.2(a), is
5 displayed for sale, offered for sale or sold, and which devotes more
6 than a two (2) foot by four (4) foot (two (2) feet in depth maximum)
7 section of shelf space for tobacco and drug paraphernalia. The two
8 (2) foot by four (4) foot shelf space calculation shall include all
9 products related to the use of Electronic Smoking Devices.”

10 SECTION 3. Chapter 7, Article XI, Section 7.96(b)(2) of the Oceanside City Code is
11 amended as follows:

12 “A device ‘designed primarily for’ the smoking or ingestion set forth
13 in subdivision (a) above, is a device which has been fabricated,
14 constructed, altered, adjusted, or marked especially for use in the
15 smoking or ingestion of tobacco, nicotine or other substances, and is
16 peculiarly adapted to that purposes by virtue of a distinctive feature
17 or combination of features associated with tobacco or drug
18 paraphernalia, notwithstanding that the devise may also be used for
19 the smoking or ingestion of marijuana, hashish, hashish oil, cocaine,
20 or any other ‘controlled substance,’ or for some other purpose.”

21 SECTION 4. Chapter 7, Article XI, Section 7.96(b)(3)(d) of the Oceanside City Code is
22 amended as follows:

23 “A smokable pipe which contains a heating unit, whether the device
24 is known as an ‘electric pipe,’ or otherwise, including but not limited
25 to an Electronic Smoking Device as defined in Oceanside City Code
26 Section 10.A.2(a).”

27 SECTION 5. The City Clerk shall certify to the passage of this Ordinance and is hereby
28 directed to publish this ordinance, or the title hereof as a summary, pursuant to state statute, once

1 within fifteen (15) days after its passage in the San Diego Union-Tribune, a newspaper of
2 general circulation published in the City of Oceanside.

3 SECTION 6. This ordinance shall take effect and be in force on the thirtieth (30th) day
4 from and after its final passage.

5 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,
6 California, held on the ___ day of _____, 2014, and, thereafter,

7 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
8 Oceanside California, held on the ___ day of _____, 2014, by the following vote:

9 AYES:

10 NAYS:

11 ABSENT:

12 ABSTAIN:

13 _____
14 MAYOR OF THE CITY OF OCEANSIDE

15 ATTEST:

16 APPROVED AS TO FORM:

17 _____
18 CITY CLERK

19 
20 _____
21 CITY ATTORNEY

22
23
24 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE
25 AMENDING SECTION 10A.2(a) OF CHAPTER 10A OF THE OCEANSIDE CITY
26 CODE TO PROHIBIT THE USE OF ELECTRONIC CIGARRETTES WHEREVER
27 SMOKING IS PROHIBITED AND AMENDING CHAPTER 7, ARTICLE XI, OF THE
28 OCEANSIDE CITY CODE TO MODIFY THE DEFINITION OF DRUG AND
TOBACCO ESTABLISHMENTS TO PROHIBIT UNACCOMPANIED MINORS
FROM ENTERING SAID ESTABLISHMENTS