

ORDINANCE NO. 2020-_____

AN ORDINANCE OF THE CITY OF CULVER CITY, CALIFORNIA, AMENDING CHAPTER 9.11, *SMOKING REGULATIONS*, OF THE CULVER CITY MUNICIPAL TO PROHIBIT THE USE OF ELECTRONIC SMOKING DEVICES (E-CIGARETTES) IN OUTDOOR DINING AREAS AND CITY PARKS AND RECREATIONAL AREAS, INCLUDING A PROHIBITION ON SMOKING AND USE OF E-CIGARETTES IN CITY HALL COURTYARD AND TOWN PLAZA.

WHEREAS, electronic smoking devices, commonly known as “electronic cigarettes,” “e-cigarettes,” “e-cigars,” “e-cigarillos,” “e-pipes,” “e-hookahs,” “electronic nicotine delivery systems,” etc. (collectively referred to as “E-Cigarettes”), are battery operated devices designed to deliver nicotine, flavor, and/or other substances through a vapor inhaled by the user, and considered to be noncombustible tobacco products; and

WHEREAS, Chapter 9.11, *Smoking Regulations*, of the Culver City Municipal Code includes a prohibition against smoking in outdoor dining areas (Section 9.11.110) and in City parks and recreational areas (Section 9.11.115); however, there is no prohibition against using E-Cigarettes in these locations, and the definition of Recreational Areas excludes City Hall Courtyard and Town Plaza; and

WHEREAS, since the time these provisions were last updated in 2008, there has been a significant increase in the use of E-Cigarettes, as well as a substantial amount of new information from public agencies and the scientific community regarding the health impacts of E-Cigarettes; and

WHEREAS, in 2015, CDPH issued a Health Advisory, *Electronic Cigarettes: A Summary of the Public Health Risks and Recommendations for Health Care Professionals*, discussing health risks posed by the use of E-Cigarettes which include, but are not limited to:

- Heated e-liquid (used in E-Cigarettes) forms an aerosol, which is absorbed through the blood stream and delivered directly to the brain and all body organs.

- In addition to nicotine, e-liquids contain other toxic chemicals known to cause cancer, birth defects and other reproductive harm.
- E-Cigarette emissions are also a health concern for those exposed to secondhand aerosol (exposure to secondhand aerosol results in nicotine absorption at levels comparable to secondhand smoke).
- Using a nicotine-containing E-Cigarette for five minutes causes similar lung irritation, inflammation and effect on blood vessels as smoking a traditional cigarette, which may increase the risk of a heart attack.
- Exposure to and use of nicotine products by adolescents is of particular concern because it is a critical period for brain growth and development; and

WHEREAS, in 2018, the National Academies of Sciences, Engineering, and Medicine (NASEM) issued a report Public Health Consequences of E-Cigarettes with the following findings¹:

1. There is conclusive evidence that:

- E-Cigarette use increases airborne concentrations of particulate matter and nicotine in indoor environments compared with background levels.
- Except for nicotine, under typical conditions of use, exposure to potentially toxic substances from e-cigarettes is significantly lower compared with combustible tobacco cigarettes.
- Exposure to nicotine from e-cigarettes is highly variable and depends on product characteristics (including device and e-liquid characteristics) and how the device is operated.
- In addition to nicotine, most e-cigarette products contain and emit numerous potentially toxic substances.
- Other than nicotine, the number, quantity, and characteristics of potentially toxic substances emitted from e-cigarettes are highly variable and depend on product characteristics (including device and e-liquid characteristics) and how the device is operated.
- E-cigarette devices can explode and cause burns and projectile injuries. Such risk is significantly increased when batteries are of poor quality, stored improperly, or modified by users.
- Intentional or accidental exposure to e-liquids (from drinking, eye contact, or dermal contact) can result in adverse health effects including but not limited to seizures, anoxic brain injury, vomiting, and lactic acidosis.

2. There is substantial evidence that:

- Nicotine intake from e-cigarette devices among experienced adult e-cigarette users can be comparable to that from combustible tobacco cigarettes.

¹ National Academies of Sciences, Engineering, and Medicine. (2018). *Public health consequences of e-cigarettes*. National Academies Press. <https://www.nap.edu/read/24952/chapter/2#6>

- E-Cigarette use increases risk of using combustible tobacco cigarettes among youth and young adults.
- E-Cigarette aerosols can induce acute endothelial cell dysfunction, although the long-term consequences and outcomes with long-term exposure to e-cigarette aerosol are uncertain.
- E-Cigarette use results in symptoms of dependence on e-cigarettes.
- Some chemicals present in e-cigarette aerosols (e.g., formaldehyde, acrolein) are capable of causing DNA damage and mutagenesis.
- Heart rate increases shortly after nicotine intake from E-Cigarettes.

WHEREAS, on February 11, 2020, the Centers for Disease Control and Prevention (CDC) reported that as of February 4, 2020, a total of 2,758 lung injury hospitalizations or deaths associated with using E-Cigarette, or vaping, products have been reported to CDC from all 50 states, the District of Columbia, and two U.S. territories (Puerto Rico and U.S. Virgin Islands); and 64 deaths have been confirmed in 28 states and the District of Columbia²; and

WHEREAS, of the injuries and deaths reported by the CDC, 37 cases, including one death, have been reported in Los Angeles County.³

WHEREAS, the City Council hereby declares that the intent and purpose of the proposed amendment to Chapter 9.11, *Smoking Regulations*, of the Culver City Municipal Code, to prohibit the use of E-Cigarettes in outdoor dining areas and City parks and recreational areas, including a prohibition on smoking and the use of E-Cigarettes in City Hall Courtyard and Town Plaza, is to further control public exposure to secondhand smoke, vapors and aerosol by prohibiting the use of E-Cigarettes at certain locations, and extending the smoking prohibition to City Hall Courtyard and Town Plaza, in addition to those places where smoking is prohibited by state law.

² Centers for Disease Control and Prevention, *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products* posted February 11, 2020, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html (accessed February 17, 2020).

³ County of Los Angeles Department of Public Health, *The Dangers of Vaping*, <https://admin.publichealth.lacounty.gov/sapc/public/vaping-faq.htm> (accessed February 17, 2020).

1 **NOW THEREFORE**, the City Council of the City of Culver City, California,
2 **DOES HEREBY ORDAIN** as follows:

3
4 **SECTION 1.** Section 9.11.100 of Chapter 9.11 of the Culver City Municipal
5 Code is hereby amended to read as follows (underlined text denotes additions;
6 ~~strikethrough text~~ denotes deletions):

7 **§ 9.11.100 PURPOSE.**

8 It is the intent of the City Council to control exposure to secondhand smoke,
9 vapors and aerosol by prohibiting smoking and the use of electronic smoking
10 devices at certain locations, in addition to those places where smoking is prohibited
11 by state law. The California Air Resources Board has identified environmental
12 tobacco smoke, or secondhand smoke, as a toxic air contaminant, which may cause
13 and contribute to death or serious illness, including increased risks of cancer, and is
14 especially hazardous to children and people with asthma and other respiratory
15 problems. In addition, the California Department of Public Health has identified
16 electronic smoking device emissions as a health concern for those exposed to
17 secondhand aerosol (also known as vapor), which results in nicotine absorption at
18 levels comparable to secondhand smoke. The intent and purpose of prohibiting
19 smoking and the use of electronic smoking devices at the locations identified in this
20 Chapter is to protect the public health, safety, and welfare by reducing the number
21 of locations in the city where exposure to secondhand smoke, aerosol and vapors
22 can occur. The provisions of this Chapter are intended to be a supplement to
23 existing state law smoking prohibitions and restrictions.

1 **SECTION 2.** Section 9.11.105 of Chapter 9.11 of the Culver City Municipal
2 Code is hereby amended to read as follows (underlined text denotes additions;
3 ~~strikethrough text~~ denotes deletions):

4 **§ 9.11.105 DEFINITIONS.**

5 For the purposes of this chapter, the following definitions shall apply unless
6 the context clearly indicates or requires a different meaning.

7 **DESIGNATED SMOKING AREA.** An area in the City Hall Courtyard that has
8 designated by the City, in its discretion, as an area where smoking is permissible.

9 **ELECTRONIC SMOKING DEVICE.** An electronic device that can be used to
10 deliver an inhaled dose of nicotine, or other substances, including any component,
11 part, or accessory of such a device, whether or not sold separately. **ELECTRONIC**
12 **SMOKING DEVICE** includes any such device, whether manufactured, distributed,
13 marketed, or sold as an electronic cigarette, an electronic cigar, an electronic
14 cigarillo, an electronic pipe, an electronic hookah, or any other product name or
15 descriptor.

16 **ELECTRONIC SMOKING DEVICE PARAPHERNALIA.** Cartridges,
17 cartomizers, e-liquid, smoke juice, tips, atomizers, **ELECTRONIC SMOKING**
18 **DEVICE** batteries, **ELECTRONIC SMOKING DEVICE** chargers, and any other item
19 specifically designed for the preparation, charging, or use of **ELECTRONIC**
20 **SMOKING DEVICES.**

21 **ENCLOSED AREA.** An area that is closed in by a roof and walls, with
22 appropriate openings for ingress and egress.

23 **NON-ENCLOSED AREA.** A predominantly outdoor area that does not meet
24 the definition of "enclosed," including but not limited to, **OUTDOOR DINING AREAS**
25 outdoor dining areas.

26 **OUTDOOR BAR PATIO.** Any non-enclosed area located on private or public
27 property utilized primarily for the serving and/or consumption of alcoholic beverages,
28

1 in which the serving and/or consumption of food is incidental to the serving and/or
2 consumption of such beverages, and where minors are not allowed to enter and
3 remain. **OUTDOOR BAR PATIO** does not include an **OUTDOOR DINING AREA**
4 ~~outdoor dining area~~, regardless of whether alcoholic beverages are served and/or
5 consumed therein.

6 **OUTDOOR DINING AREA.** Any non-enclosed area located on private or
7 public property, made available to or customarily used by the general public, that is
8 designed, established or regularly used for consuming food and/or beverages, or
9 where food and/or beverages are served, whether or not for compensation. This
10 includes, but is not limited to, restaurants, hotels, patios, and coffee shops. This
11 does not include **OUTDOOR BAR PATIOS** ~~outdoor bar patios~~.

12 **PARK OR RECREATIONAL AREA.** Any outdoor area owned or operated by
13 the City of Culver City ~~or Culver City Redevelopment Agency~~, open to the general
14 public for primarily recreational purposes, regardless of any fee or age requirement,
15 including but not limited to, picnic areas, playgrounds, sports or athletic fields,
16 walking paths, gardens, hiking trails, bike paths, skateboard parks and dog parks. A
17 **PARK OR RECREATIONAL AREA** shall ~~not~~ include the City Hall Courtyard (except
18 in **DESIGNATED SMOKING AREAS**), Town Plaza, any paved public sidewalk
19 immediately abutting the boundary of the **PARK OR RECREATIONAL AREA**, or
20 any parking area within the boundaries of the **PARK OR RECREATIONAL AREA**.

21 **SMOKING or TO SMOKE.** The possession of a lighted or operating
22 **TOBACCO PRODUCT** ~~tobacco product~~, lighted or operating **TOBACCO**
23 **PARAPHERNALIA** ~~tobacco paraphernalia~~, or any other lighted weed or plant,
24 including a lighted pipe, cigar, hookah pipe, or cigarette of any kind; and the lighting
25 or operation of a **TOBACCO PRODUCT** ~~tobacco product~~, **TOBACCO**
26 **PARAPHERNALIA** ~~tobacco paraphernalia~~, or any other weed or plant, including a
27 pipe, cigar, hookah pipe, or cigarette of any kind, intended for human inhalation.
28

1 ***TOBACCO PARAPHERNALIA.*** Any item designed or marketed for the
2 consumption, use, or preparation of Tobacco Products. "Tobacco Paraphernalia"
3 includes Electronic Smoking Device Paraphernalia. Cigarette papers or wrappers,
4 pipes, holders of smoking materials of all types, cigarette rolling machines, and any
5 other item designed for the smoking, preparation, storing, or consumption of
6 tobacco products.

7 ***TOBACCO PRODUCT*** shall mean:

8 1. Any product containing, made, or derived from tobacco or
9 nicotine that is intended for human consumption, whether smoked, heated,
10 chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any
11 other means, including, but not limited to a cigarette, cigar, little cigar,
12 chewing tobacco, pipe tobacco, snuff, or snus; and

13 2. Any ***ELECTRONIC SMOKING DEVICE*** and any substances
14 that may be aerosolized or vaporized by such device, whether or not the
15 substance contains nicotine.

16 3. Notwithstanding the definitions set forth in subsections 1 and 2
17 to the contrary, ***TOBACCO PRODUCT*** includes any component, part, or
18 accessory of subsections 1 and 2, whether or not any of these contains
19 tobacco or nicotine, including but not limited to filters, rolling papers, blunt or
20 hemp wraps, hookahs, and pipes.

21 4. ***TOBACCO PRODUCT*** does not include drugs, devices, or
22 combination products authorized for sale by the United States Food and Drug
23 Administration, as those terms are defined in the Federal Food, Drug and
24 Cosmetic Act.

25 ~~1. Any substance containing tobacco leaf, including but not limited to,~~
26 ~~cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping~~
27 ~~tobacco, bidis, or any other preparation of tobacco; and~~

1 ~~2. Any product or formulation of matter containing biologically active~~
2 ~~amounts of nicotine that is manufactured, sold, offered for sale, or otherwise~~
3 ~~distributed with the expectation that the product or matter will be introduced into the~~
4 ~~human body, but does not include any product specifically approved by the United~~
5 ~~States Food and Drug Administration for use in treating nicotine or tobacco~~
6 ~~dependence.~~

7
8 **SECTION 3.** Section 9.11.105 of Chapter 9.11 of the Culver City Municipal
9 Code is hereby amended to read as follows (underlined text denotes additions;
10 ~~strikethrough text~~ denotes deletions):

11 **§ 9.11.115 SMOKING PROHIBITED IN CITY PARKS AND**
12 **RECREATIONAL AREAS.**

13 A. *Prohibition.* Smoking within any park or recreational area is prohibited.

14 B. *Exception.* This Section 9.11.115 shall not apply to any Designated
15 Smoking Area, which may be established in the City Hall Courtyard at the City's
16 discretion.

17 ~~—BC.~~ *Tobacco waste.* The disposal of any tobacco product or tobacco
18 paraphernalia within any park or recreational area is prohibited, except in a city-
19 designated waste receptacle, or unless being done as part of a scene in a film,
20 television or live performance production.

21 ~~—CD.~~ *Posting of signs.* The city shall cause the installation of "No Smoking"
22 signs, with letters of no less than one inch in height and including the international
23 "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette
24 enclosed in a red circle crossed by a red bar. Such signs shall be clearly and
25 conspicuously posted and maintained at all main entrances to a park or recreational
26 area, and additional signs shall be posted in a quantity and manner reasonably likely
27 to inform individuals occupying the park or recreational area that smoking is
28 prohibited within the area.

SECTION 4. Pursuant to Section 619 of the City Charter, this Ordinance shall take effect thirty (30) days after the date of its adoption. Pursuant to Sections 616 and 621 of the City Charter, prior to the expiration of fifteen (15) days after the adoption, the City Clerk shall cause this Ordinance, or a summary thereof, to be published in the Culver City News and shall post this Ordinance or a summary thereof in at least three places within the City.

SECTION 5. The City Council hereby declares that, if any provision, section, subsection, paragraph, sentence, phrase or word of this ordinance is rendered or declared invalid or unconstitutional by any final action in a court of competent jurisdiction or by reason of any preemptive legislation, then the City Council would have independently adopted the remaining provisions, sections, subsections, paragraphs, sentences, phrases or words of this ordinance and as such they shall remain in full force and effect.

APPROVED AND ADOPTED this _____ day of _____, 2020.

MEGHAN SAHLI-WELLS, Mayor
City of Culver City, California

ATTEST:

APPROVED AS TO FORM:

JEREMY GREEN, City Clerk

A20-00083

CAROL A. SCHWAB, City Attorney