

City of Laguna Beach
AGENDA BILL

No. 13

Meeting Date: 1/24/17

SUBJECT: CITYWIDE SMOKING POLICY CONSIDERATIONS

SUMMARY OF THE MATTER:

City Councilmembers and City staff have been contacted by residents expressing their concerns regarding secondhand smoke in various public places such as sidewalks and parking lots. Additionally, residents have complained about secondhand smoke in public places, such as alleys, due to secondary effects of sober living homes.

Background

Secondhand smoke has been classified as a known human carcinogen by the U.S. Environmental Protection Agency, the U.S. National Toxicology Program, the U.S. Surgeon General, and the International Agency for Research on Cancer. California first banned smoking in enclosed spaces at places of employment, including day care facilities, in 1995. Subsequently, California's smoking ban has grown to include building entryways, playgrounds, restaurants, bars, and public transit. In 2008, it became an infraction to smoke in a car when a minor is present due to the harmful effects of secondhand smoke.

Most recently, Governor Brown signed a package of tobacco bills into law, which went into effect on June 9, 2016, that included raising the legal smoking age from 18 to 21. As part of the tobacco package, electronic cigarettes ("e-cigarettes") and other electronic smoking paraphernalia, such as vaporizers, are now considered tobacco products and subject to the State's current smoking ban restrictions. By doing so, these products are now banned anywhere smoking is prohibited on a statewide level such as playgrounds, restaurants, bars, and public transit. In addition, voters passed Proposition 64 last year to legalize the use of recreational marijuana. As part of Proposition 64, marijuana use is prohibited in public places as well as places where tobacco products are also prohibited. Essentially, any place where tobacco products are prohibited so is the use of marijuana.

(Continued)

RECOMMENDATION: It is recommended that the City Council provide direction on: 1) modifying the City of Laguna Beach's smoking ordinance; and 2) the possible expansion of smoking prohibitions citywide and whether or not to include various electronic smoking devices as prohibited devices.

Appropriations Requested: (none)

Fund: N/A

Attachments: N/A

Submitted by: Ryan Hallett
Ryan Hallett, Administrative Analyst

Coordinated with: Christa Johnson
Christa Johnson, Assistant City Manager

Approved: John Pietig
John Pietig, City Manager

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According to a 2016 State of Tobacco control report produced by the American Lung Association, 31 out of 34 Orange County cities received a failing grade as it applies to overall tobacco control. Nearby cities such as Laguna Hills and Laguna Woods as well as Santa Ana were rated a “C” grade for their overall tobacco control due to more stringent local policies regarding outdoor air, smoke-free housing, and implementing a local tobacco retailer license. These cities also received higher grades than Laguna Beach because their municipal code enumerates more places where smoking is prohibited when compared to Laguna Beach.

Last summer, the City surveyed residents in order to identify projects that are a priority for the community. This would enable the City Council to acquire statistically valid and reliable data of public opinions in order to make strategic decisions based upon the consensus of a broad representative sampling of the community. At its June 28, 2016 meeting, the City Council received a presentation regarding the results of the survey. One of its findings indicated support for a citywide ban on smoking in all public places by 75% of survey respondents.

History of Local Smoking Ordinance

Adopted on February 19, 1985, Ordinance 1074 added Chapter 7.40 to the Laguna Beach Municipal Code regulating and prohibiting smoking in public areas and work place to “serve public health, safety and welfare.” The City Council recited in its ordinance that the smoking of tobacco is dangerous, a material annoyance, inconvenience, discomfort, and a health hazard to those around it. It is worth noting that smoking is defined in Chapter 7.40.020 as “...the combustion of any cigar, cigarette, pipe or any similar article, using any form of tobacco or other combustible substance in any form.” Areas that were originally protected under the 1985 ordinance included: elevators, hospitals and health care facilities, public meeting rooms, theaters and auditoriums, public restrooms, indoor service lines, eating establishments (with some exclusions), office workplace, and public transportation.

Since 1985, six ordinance amendments have been adopted by the City Council regulating and prohibiting smoking in the following areas: All eating establishments with indoor and outdoor seating areas, Forest Lane, public parks, beaches, beach access ways, ACT V Lot, 20652 Laguna Canyon Road, and hazardous fire areas. As part of a cleanup measure in 2011, City ordinance 1550 amended various aspects of Title 25, the Zoning Code, to include the prohibition of outdoor smoking on properties of residential care facilities located in several zones.

Discussion

Definition of Smoking

As mentioned earlier, Governor Brown signed a number of tobacco bills that expanded the definition of tobacco product to include e-cigarettes and other electronic smoking paraphernalia, such as vaporizers. By doing so, these products are now banned anywhere tobacco products are prohibited on a statewide level. However, the portion of the Laguna Beach Municipal Code that regulates and prohibits smoking is defined in a way that only the combustion of tobacco is considered smoking. Therefore, the use of e-cigarettes and vaporizers are allowed in public areas that are not restricted by state law such as local parks, beaches, beach access ways, ACT V Lot, and hazardous fire areas.

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Electronic Smoking Devices

E-cigarettes and vaporizers are electronic smoking devices that are typically battery-operated devices and are filled with liquid nicotine, or other products, and utilize a vapor inhaler. In contrast to combustible tobacco products, electronic smoking devices do not emit smoke; aerosol is produced. The aerosol contains nicotine and can contain other additional toxins, according to The Centers for Disease Control and Prevention. A 2015 report from the California Department of Public Health found that aerosol produced by electronic smoking devices contain at least ten chemicals that are on the state's Proposition 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm. One study found that individuals exposed to aerosol from electronic smoking devices absorb nicotine at levels comparable to tobacco secondhand smoke.

Locations where smoking and electronic smoking devices are allowed

With all of the amendments to state law and local ordinances over the last 30 years, it is worth noting where smoking and electronic devices are currently allowed in the City:

- Alleys
- ATM/Ticket lines
- Bike Paths
- Multi-Unit Residences Common Areas
- Parking Lots
- Parking Structures
- Pathways
- Plazas
- Rights-of-Ways
- Sidewalks
- Streets/Roads

Policy Questions

Given the complaints regarding secondhand smoke reports to City Council members and staff, recent changes in state law, and results from last year's community survey city staff has developed two policy questions for the City Council to consider.

Policy Question 1 – *Does the City Council want to expand the City's smoking ban to include all public areas?*

Here is a list of public areas where the City has prohibited smoking in its municipal code:

- ACT V Lot
- Eating Establishments
- Elevators
- Forest Lane
- Hospitals and Health Care Facilities
- Indoor Service Lines
- Laguna Canyon Road
- Office Workplace
- Public Beaches and Beach Access Ways
- Public Meeting Rooms
- Public Parks
- Public Transportation
- Theaters and Auditoriums
- Hazardous Fire Areas – Open Space and Wildland Interface Areas

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Below is a table indicating where other California cities have prohibited smoking in public areas and are options available to policymakers to extend secondhand smoke protections. Staff analyzed municipal codes of nearby cities such as Laguna Hills and Laguna Woods, which are considered to have more rigorous smoking policies than Laguna Beach based on the 2016 State of Tobacco Report produced by the American Lung Association. Manhattan Beach and Calabasas municipal codes were also analyzed because they are considered to have citywide smoking bans. In these kind of cities, smoking is typically banned in all public areas throughout the entire jurisdiction and only allow smoking in a private residence or vehicle.

Is Smoking Currently Banned in this Public Area?					
Public Area	Laguna Beach	Laguna Hills	Laguna Woods	Manhattan Beach	Calabasas
Alleys	No	No	No	Yes	Yes
ATM/Ticket lines	No	No	No	Yes	Yes
Bike Paths	No	No	No	Yes	Yes
Multi-Unit Residences Common Areas	No	No	Yes	Yes	Yes
Parking Lots	No	No	No	Yes	Yes
Parking Structures	No	Yes	No	Yes	Yes
Pathways	No	No	No	Yes	Yes
Plazas	No	No	No	Yes	Yes
Right-of-Ways	No	No	No	Yes	Yes
Sidewalks	No	No	No	Yes	Yes
Streets/Roads	No	No	No	Yes	Yes

Similar to Laguna Beach, cities like Laguna Hills and Laguna Woods only ban smoking in certain public areas. For example, Laguna Hills bans smoking in areas that are enclosed and publicly accessible like galleries, libraries, sports arenas, parking structures, and meeting rooms in addition to unenclosed public areas such as parks, outdoor patio and dining areas. Similarly, Laguna Woods bans smoking in enclosed publicly accessible areas like lobbies and museums as well as unenclosed publicly accessible areas like outdoor dining areas, parks, and public events sponsored or-cosponsored by the City such as sporting events, entertainments, ceremonies, etc.

Laguna Woods, however, goes a step further by banning smoking in common areas of multi-unit residences, which include apartments and condominiums. Smoking is banned in shared carports, entryways, and swimming pools. Additionally, smoking is banned in unenclosed balconies and patios of multi-unit residences as well as enclosed balconies and patios unless the windows and doors are closed to prevent the escape of smoke. Manhattan Beach and Calabasas also prohibit smoking in common areas of multi-unit residences. Interestingly, Manhattan Beach along with other cities such as Pasadena, Alameda, and Belmont have completely banned smoking in multi-unit residences that share a wall with another residence to limit secondhand smoke exposure. The City Council could consider prohibiting smoking in common areas of multi-unit residences as well as in multi-unit residences. It is worth noting that policymakers have had to weigh property owner rights versus the rights of individuals exposed to

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secondhand smoke when considering to prohibit smoking in common areas of multi-unit residences and multi-unit residences.

Policy Question 2 – Does the City Council want to include Electronic Smoking Devices, such as e-cigarettes and vaporizers, in the City’s smoking ban?

As previously mentioned, the State of California now includes electronic smoking devices, such as e-cigarettes and vaporizers, into their definition of tobacco products thereby prohibiting the use of these devices in the same areas where other tobacco products are prohibited statewide such as public transit, worksites, restaurants, schools, and playgrounds. More than 140 California cities and counties have passed laws that subject electronic smoking devices to the same regulations as tobacco products including Anaheim, Costa Mesa, Garden Grove, Seal Beach, Mission Viejo, Laguna Hills, and Laguna Niguel. It is worth noting that in 2013 an amendment to the Laguna Beach Municipal Code to incorporate e-cigarettes into the smoking ban was brought before the City Council and was not approved. However, given the change in state law, the City Council may wish to weigh in on this matter again.

Conclusion

City staff is seeking City Council direction to Policy Questions 1 and 2 so that if directed by the City Council staff can return with a draft ordinance for further discussion and consideration.