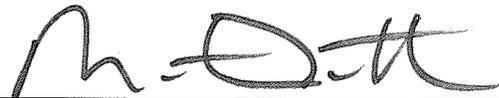


MEETING DATE: January 18, 2017

ITEM # 12

SUBJECT:**CONSIDERATION OF FIRST READING OF ORDINANCE 17-2 AMENDING CHAPTER 8.16 OF THE MUNICIPAL CODE CONCERNING SMOKING****INITIATED OR REQUESTED BY:** Commission Staff Other**REPORT COORDINATED OR PREPARED BY:**

Amanda Berlin, Assistant City Manager



Martin Tuttle, City Manager

ATTACHMENT Yes No Information Direction Action**OBJECTIVE**

The purpose of this report is to introduce for first reading an ordinance making amendments to Chapter 8.16 of the Municipal Code concerning smoking.

RECOMMENDED ACTION

It is respectfully recommended that the City Council:

- 1) Waive the first reading and read by title and number only Ordinance 17-2 of the City Council of the City of West Sacramento Amending Chapter 8.16 of the Municipal Code Concerning Smoking; and
- 2) Direct staff to return to Council for second reading and adoption of Ordinance 17-2 on February 15, 2017.

BACKGROUND

The City of West Sacramento adopted an ordinance regulating smoking in public places and places of employment in 1991. (West Sacramento Municipal Code (WSMC), Chapter 8.16) Since 1995, however, the provisions of the City's ordinance regulating smoking in enclosed spaces at a place of employment have been expressly preempted by state law under Labor Code Section 6404.5. (See WSMC, Section 8.16.005) With respect to smoking in and around city facilities, Sections 7596-7598 of the Government Code prohibit smoking inside a public building, which is a building owned and occupied, or leased and occupied by the City; but in any outdoor area of a public building, smoking is only prohibited within 20 feet of a main exit, entrance, or operable window. With respect to smoking in parks, Section 104495 of the Health and Safety Code prohibits smoking within 25 feet of a playground and prohibits littering of tobacco-related waste in these areas, but park and recreation areas outside of the 25 foot radius of playgrounds are not subject to regulation or enforcement. Local governments are not prohibited from imposing and enforcing their own smoking restrictions if they apply to areas not covered by state law or are more restrictive than state law. For example, in 2010, the City added Section 8.16.170 to the code to prohibit smoking near public transportation stops. Thus, to protect residents from drifting secondhand smoke while they enjoy outdoor areas and other activities, city governments can create smoke-free city facilities and parks and recreation areas. Laws establishing smoke-free areas also help reduce cigarette butt litter and its effects on the environment by creating cigarette "butt-free zones" where this type of trash won't blight the areas and inadvertently pollute waterways.

In November 2015, staff brought an item to Council seeking direction on the potential regulation of electronic or e-cigarette use in the City and staff was given direction to pursue changes to the municipal code to regulate use of the e-cigarettes in the same manner as other tobacco products. At the time, state law did not specifically regulate the use of electronic cigarettes. Before staff could return with proposed revisions to the code, staff learned a suite of bills were making their way through the legislature that would ban e-cigarette use in all the same places that traditional cigarettes were banned. In order to avoid a potential conflict between the proposed changes to the municipal code to address e-cigarettes and the changes proposed at the state level, staff delayed bringing the amended smoking ordinance item back to Council until it was determined whether the bills would be signed into law by the Governor. The Governor signed the bills in May and the laws went into effect on June 9, 2016. Among other things, the new laws expand the definition of "tobacco product" and "smoking" to include prohibiting use of e-cigarette devices where smoking is prohibited under Labor Code Section 6404.5.

On November 8, 2016, California voters passed the Adult Use of Marijuana Act (Proposition 64), which legalized the recreational use of marijuana. Under Proposition 64, however, persons are not permitted to

smoke marijuana in any public place, unless allowed by local ordinance, or smoke marijuana in any location where smoking tobacco is prohibited.

On November 16, 2016, staff presented information to City Council on proposed amendments to Chapter 8.16 to make city facilities and parks and recreation areas smoke-free, to address the new state laws regulating use of electronic smoking devices and marijuana (Proposition 64), and to address some existing internal inconsistencies in Chapter 8.16. Council provided feedback and directed staff to take any proposed amendments to Chapter 8.16 to the Parks, Recreation and Intergenerational Services Commission for review and recommendation prior to returning to Council. The proposed ordinance amending Chapter 8.16 was presented to the Parks, Recreation and Intergenerational Services Commission for review and recommendation on December 6, 2016. The Commission gave a positive recommendation prior to forwarding the item to the City Council for consideration.

ANALYSIS

The existing, redlined and proposed Ordinance 17-2 amending Chapter 8.16 are included as Attachments 1 through 3, respectively. Amendments to Chapter 8.16 include:

- Adding a new section establishing city facilities and parks and recreation areas as smoke-free, unless otherwise designated by signage. The new section is presented in the following form:

City Facilities and Parks and Recreation Areas.

- A. Unless otherwise designated by clearly posted and visible signage, Smoking shall be prohibited in all enclosed and non-enclosed areas of any facility owned, leased, controlled, managed or operated by the City and accessible to the general public. Such facilities include but are not limited to City Hall, City offices, parks, recreation facilities, playgrounds, skate parks, picnic areas, sports areas, walking paths, gardens, hiking trails, bike paths, swimming pools, community centers, senior centers, meeting or conference facilities, and child care facilities, but shall not include streets. The prohibition on smoking at these facilities includes the facility and the public property on which it is located extending to and including parking lots and the adjacent public sidewalk.
 - B. No person shall dispose of Smoking product or paraphernalia waste within the areas in which Smoking is prohibited under Subsection A of this section, except in a designated waste disposal container.
- Removal of some sections of Chapter 8.16 because State law (mainly Labor Code Section 6404.5(f)) already prohibits smoking in enclosed workplaces and supersedes and renders such sections unnecessary.
 - Because the existing definitions in Section 8.16.050 are identified as preempted by state law under current Section 8.16.005 and would be removed, a new definition of "Smoke" or "Smoking" is added to inform the new sections of Chapter 8.16. This definition also includes language to address the new state laws regulating use of electronic smoking devices and smoking of marijuana (Proposition 64). The new definition is presented in the following form:

"Smoke" or "Smoking" means possessing a lighted or ignited tobacco, nicotine or marijuana product or paraphernalia; or engaging in an act that generates smoke (including, but not limited to, possessing a lighted or ignited pipe, hookah pipe, cigar, electronic cigarette or cigarette of any kind); or lighting or igniting a pipe, hookah pipe, cigar, electronic cigarette or a cigarette of any kind. Smoking includes the use of any product which emits smoke in the form of gases, particles, vapors or other byproducts released by electronic cigarettes, tobacco cigarettes, herbal cigarettes, marijuana cigarettes and any other type of cigarette, pipe or other implement for the purpose of inhalation of vapors, gases, particles or their byproducts released as a result of combustion or ignition.

- Adding a new definition for "Electronic Smoking Devices" and carrying forward the definition of "Enclosed" from the existing Section 8.16.050.
- Renumbering of Sections 8.16.030, 8.16.050, 8.16.110, 8.16.130, 8.16.140, 8.16.150 and 8.16.170 to 8.16.010, 8.16.020, 8.16.050, 8.16.060, 8.16.070, 8.16.080 and 8.16.040, respectively.
- Minor amendments throughout Chapter 8.16 to address existing internal inconsistencies, including changing "tobacco products" to "Smoking products" to be consistent with the new definition of "Smoking".

Commission Recommendation

The proposed Ordinance was presented to the Parks, Recreation and Intergenerational Services Commission for review. The Commission gave a positive recommendation to forward the item to the City Council for consideration.

Strategic Plan Integration

An amendment to the municipal code regarding smoke-free city facilities parks and recreation areas supports the City's Strategic Planning Strategies in the areas of *People Feeling Safe and Secure, Comfortable Living, and Preferred Place to Live, Work and Play.*

Alternatives

1. Conduct first reading and direct staff to return to Council on February 16, 2017, for second reading and adoption of Ordinance 17-2.
2. Provide direction to staff on revisions to Ordinance 17-2, and direct staff to return to Council at a later date for first reading of the revised Ordinance.
3. Direct staff not to move forward with amendments to Chapter 8.16 regarding smoke-free city facilities and parks and recreation areas.

Alternative 1 is the staff recommended option unless Council has recommendations for revisions to the Ordinance, in which case, Alternative 2 is recommended. Alternative 3 is not recommended as it would not address the public health and welfare benefits of making city facilities parks and recreation areas smoke-free.

Coordination and Review

This report was completed in coordination with the Parks and Recreation Department, Police Department, Yolo County Health & Human Services Agency and the City Attorney.

Budget/Cost Impact

There would be no budget impact at this time, though the amendments to the smoking ordinance to address smoking in parks and recreation areas, would result in limited costs associated with outreach, new signage, and designated waste disposal containers.

ATTACHMENTS

1. Current West Sacramento Municipal Code, Chapter 8.16
2. Redline of current West Sacramento Municipal Code, Chapter 8.16
3. Ordinance 17-2 of the City Council of the City of West Sacramento Amending Chapter 8.16 of the Municipal Code Concerning Smoking

West Sacramento Municipal Code

[Up](#) [Previous](#) [Next](#) [Main](#) [Collapse](#) [Search](#) [Print](#) [No Frames](#)
[Title 8 HEALTH AND SAFETY](#)

Chapter 8.16 SMOKING

Article I. State Law Preemption

8.16.005 Preemption.

With the exception of Sections [8.16.010](#), [8.16.130](#), [8.16.140](#) and [8.16.170](#), the smoking regulations contained in this chapter have been preempted by [Labor Code Section 6405.5](#). In the event the [Labor Code](#) is amended to the extent that state law no longer preempts local regulation of smoking in the workplace, Sections [8.16.020](#) through [8.16.120](#) and [8.16.150](#) through [8.16.160](#) shall be effective. (Ord. 10-14 § 3; Ord. 95-1 § 1)

8.16.010 Restrictions—Port of Sacramento.

It is unlawful for any person to smoke any cigarette or other substance, or strike any match, or kindle any flame whatsoever within the fenced area of the Port of Sacramento, including vessels moored to the Port's facilities, except within offices and those areas designated "SMOKING AREA." (County Code § 4-7.01(a))

8.16.020 Violation—Penalty.

Any person violating any of the provisions set forth in Section [8.16.010](#) is guilty of a misdemeanor. Any person convicted of a misdemeanor under these provisions is punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment. (County Code § 4-7.01(b))

Article II. Public Places and Places of Employment

8.16.030 Purpose.

The city council finds and declares that the purposes of this article are: (1) to protect the public health and welfare by prohibiting smoking in public places, except in designated smoking areas, and by regulating smoking in places of employment; and (2) to strike a reasonable balance between the need of smokers and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air shall have priority; and (3) to prevent access to cigarettes or other tobacco products by minors through machine or appliance, or any other device designed or used for vending purposes; and (4) as a matter of policy the city is striving to create a "smoke-free" environment. (Ord. 91-23 § 1)

8.16.040 Findings.

- A. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution;
- B. Studies have shown breathing secondhand smoke to be a significant health hazard for several populations, including elderly people, individuals with cardiovascular disease, individuals with impaired respiratory functions, asthmatics, and those with obstructive airway disease;
- C. The Surgeon General of the United States found in his 1986 report that secondhand smoke is a cause of disease, including lung cancer, in healthy nonsmokers;
- D. The Surgeon General further found that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke;

- E. Nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of reactions to secondhand smoke;
- F. Studies have shown some nonsmokers cannot dine in restaurants because of adverse reaction or annoyance from secondhand smoke;
- G. Studies have also shown a majority of travelers prefer nonsmoking sections in airplanes, buses, and trains;
- H. Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restrictions on smoking in public places and places of employment;
- I. Smoking is a documented cause of fires, cigarette and cigar burns, and ash stains on merchandise and fixtures resulting in economic losses to businesses;
- J. Studies indicate that sixty percent of smokers begin by age sixteen, and ninety percent by age nineteen;
- K. Current state law prohibits the sale of cigarettes to individuals under the age of eighteen. (Ord. 91-23 § 1)

8.16.050 Definitions.

For the purpose of this article, the following words and phrases shall have the following meaning:

“Bar” means an enclosed area which is devoted to the serving of alcoholic beverages and in which the serving of food, if any, is merely incidental to the consumption of such beverages.

“Bingo parlor” or “bingo hall” means any enclosed area in which the game of bingo is conducted. All establishments subject to regulation under this code shall be included in this definition at such times as bingo games are actually being played therein.

“Bowling alley” means an enclosed area where the game of bowling is performed, consisting of one or more bowling lanes along which a ball is propelled with the object of knocking down pins arranged at the opposite end and in which the service and/or consumption of food and/or alcoholic beverages, if any, are merely incidental.

“Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where professional services are delivered.

“Dining area” means any enclosed area not located within a private residence containing a counter or tables upon which meals are served.

“Employee” means any person who is employed by any employer in consideration for direct or indirect monetary wage or profit, and any person who performs volunteer services for a nonprofit entity.

“Employer” means any person, business, or nonprofit entity which employs the services of one or more persons and includes the city.

“Enclosed” means closed in by a roof and four or more connected floor-to-ceiling walls with appropriate openings for ingress and egress.

“Hallway” means an interior space closed in by a roof and walls with appropriate openings for ingress or egress.

“Lobby” means an enclosed common area generally larger than a hallway which connects exterior entrances with one or more rooms or areas or which connects two or more rooms, including, without limitation, any area commonly known as a foyer, vestibule, or anteroom.

“Mall” means those areas of enclosed shopping centers or retail areas that are external to the retail stores and are used by customers as a route of travel from store to store, and consist primarily of walkways and seating arrangements.

“Nonprofit entity” means any corporation, unincorporated association, or other entity created for charitable, educational, political, social or other similar purposes, the net operational proceeds of which are committed to the promotion of the objectives or purposes of the organization and not private financial gain. A public agency is not a “nonprofit entity” within the meaning of this section.

“Place of employment” means any enclosed area under the control of a public or private employer normally frequented by employees during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, libraries, cafeterias and hallways. A private residence is not a “place of

employment” unless it is used as a child care or health care facility. The dining area of a restaurant is not a “place of employment.”

“Private function” means a gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement, or dining where membership or specific invitation is a prerequisite to entry and where such event is not intended for attendance by the public.

“Public place” means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, educational facilities, health facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, waiting rooms and restrooms.

“Restaurant” means any eating establishment, organization, club, boardinghouse, or guest house which gives or offers for sale food to the public, guests, patrons or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere including catering functions, except that the term “restaurant” shall not include a bar.

“Service line” means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

“Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed or other combustible substance.

“Work area” or “work place” means any area of a place of employment enclosed by floor-to-ceiling walls in which two or more employees are assigned to perform work for an employer.

To the extent any of these definitions are inconsistent or conflict with provisions of zoning ordinances of the city, the provisions of the zoning ordinances shall control. (Ord. 91-23 § 1)

8.16.060 General restrictions—Prohibition of smoking in public places.

Smoking shall be prohibited in the following places:

- A. All enclosed areas leased, or otherwise occupied or operated by, the city. City-owned and city-operated vehicles are included in this provision;
- B. All enclosed areas available to, and customarily used by the general public, and all areas of businesses generally accessible to the public, including, but not limited to, the public area of retail stores, banks, and other offices. Restaurants shall not be subject to this subsection;
- C. Elevators;
- D. Public restrooms;
- E. Service lines;
- F. Buses and other means of public transit directly or indirectly provided by the city;
- G. All lobby areas unless separate facilities are provided for smokers and nonsmokers;
- H. In public areas of galleries, libraries and museums when open to the public; provided, however, this prohibition does not prevent the designation of a separate enclosed area for smoking;
- I. Within any enclosed area which is primarily used for, or designed for the primary purpose of exhibiting any motion picture, stage drama, lecture, musical recital, or other similar performance, except when smoking is part of a stage production;
- J. Child day care facilities as defined in the California Health and Safety Code;
- K. Rooms, chambers or other enclosed areas where a meeting is being held which is or can be attended by the general public;
- L. Retail food marketing establishments, including grocery stores and supermarkets, except those enclosed areas of such establishments set aside for the purpose of serving food and drink. Such food and drink areas shall be subject to Section 8.16.080;
- M. Any enclosed area of a public or private educational facility.

Notwithstanding any other provision of the above subsections, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment. (Ord. 91-23 § 1)

8.16.070 Regulation of smoking in places of employment.

In addition to the requirements of Section 8.16.060, it shall be the responsibility of employers to provide smoke-free areas for nonsmoking employees within existing facilities to the maximum extent possible. Each employer and each place of employment located within the city shall adopt, implement, make known, and maintain a written smoking policy which shall contain at a minimum the following requirements:

A. Notice that any employee shall have the right to designate that employee's work area as a nonsmoking area and to post the same with an appropriate sign or signs, to be provided by the employer. Smoking shall not be permitted in any such properly posted nonsmoking area, nor shall anyone in a smoking area cause or permit smoke to enter into such nonsmoking areas to the maximum extent possible;

B. A prohibition of smoking in auditoriums, classrooms, libraries, conference and meeting rooms, elevators, hallways, medical facilities, restrooms, areas or rooms with photocopy or other equipment used in common with other employees, and any other areas where smoking is prohibited by this section;

C. Provisions for and maintenance of separate and contiguous nonsmoking areas between thirty percent and one hundred percent of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges or provision for and maintenance of separate and equal sized cafeterias, lunchrooms, and employee lounges for smokers and nonsmokers. The actual amount of space shall be arrived at by mutual agreement between employers and employees. Prohibition of smoking as stated in Section 8.16.060 applies to public/private education facilities;

D. Work areas shared by both smokers and nonsmokers must be nonsmoking unless every member in the work area voluntarily and willingly agrees otherwise.

The smoking policy shall be communicated to all employees within three weeks of its adoption. All employers shall post a written copy of the smoking policy in a conspicuous, accessible place in a form readily readable by employees.

Notwithstanding any other provision of this section, every employer shall have the right to designate all or any portion of any place of employment as a nonsmoking area.

Notwithstanding any provision to the contrary, the provisions of this section shall not be construed to abrogate the provisions of any labor agreements, safety rules or procedures of any employer or existing policies which provide stricter regulations of smoking in the place of employment. (Ord. 93-8 § 1(A); Ord. 91-23 § 1)

8.16.080 Restriction of smoking in restaurants.

In addition to the requirements of Section 8.16.060, within all restaurants there shall be a designated and contiguous nonsmoking area consisting of no less than fifty percent of the enclosed tables currently in use; whenever possible, smoking sections shall not be adjacent to any waiting areas, service lines, food preparation areas, or food serving areas. This section shall be implemented incrementally so that its nonsmoking area provision shall apply only to forty percent of the enclosed tables currently in use during the first three months following the effective date of the ordinance codified in this article. Thereafter, the fifty percent rule shall apply. (Ord. 91-23 § 1)

8.16.090 Regulation of smoking in hotels/motels.

In addition to the requirements of Section 8.16.060, hotels/motels built after the effective date of the ordinance codified in this article shall designate at least twenty percent of the sleeping rooms nonsmoking. (Ord. 91-23 § 1)

8.16.100 Where smoking not regulated.

Notwithstanding any other provisions to the contrary, the following areas shall not be subject to the smoking restrictions:

A. Bars;

- B. Private residences, except when used as a child care or health care facility;
- C. Motel and hotel rooms rented to guests, except as provided in Section 8.16.090. Owner/operators shall make every reasonable effort to accommodate requests for rooms where smoking is prohibited;
- D. Retail tobacco stores;
- E. Conference or meeting rooms located within restaurants, hotels or motels, and public and private assembly rooms while these places are being used for private functions;
- F. Bingo parlors.

However, reasonable efforts shall be made to accommodate nonsmoking customers.

Notwithstanding any other provision of the above subsections, any owner, operator, manager or other person who controls any establishment described may declare the entire establishment as a nonsmoking establishment. (Ord. 91-23 § 1)

8.16.110 Posting of signs.

“Smoking” or “No Smoking” signs, whichever is appropriate, with letters of not less than one inch in height or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is regulated by the sections of this article, by the owner, operator, manager or other person having control of such building or other place.

Additional requirements for restaurants: Every restaurant shall have posted at its entrance a sign clearly stating that a nonsmoking area has been established, and every patron shall be asked as to his or her preference when a host or hostess is present. If no host or hostess is available, the nonsmoking area shall be conspicuously posted.

If advance reservations are requested, the patron shall be asked to state a preference for seating in a smoking or nonsmoking area of the restaurant. (Ord. 91-23 § 1)

8.16.120 Future construction—Ventilation system.

At present no standards exist for evaluating how effective particular ventilation systems are at eliminating the harmful effects of tobacco smoke. If and when such standards become available, it is the intent of the city council to require that those standards be used when evaluating applications for building permits for new construction or remodeling of existing buildings. (Ord. 91-23 § 1)

8.16.130 Prohibition on sale of tobacco products from vending machines.

No cigarette or other tobacco product may be sold, offered for sale, or distributed by or from a vending machine or appliance, or any other device designed or used for vending purposes, except where minors are prohibited from entering without adult supervision. (Ord. 91-23 § 1)

8.16.140 Distribution of tobacco products.

The distribution of free samples of any tobacco product to any person in any public area is prohibited. This also includes distributing vouchers or coupons for free tobacco products in a public area. (Ord. 91-23 § 1)

8.16.150 Enforcement.

A. Any owner, manager, operator or employer of any establishment controlled by this article has the right and responsibility to inform persons violating this article of the appropriate provisions contained within the article.

B. Any citizen, employee or business patron may file a written complaint on any violation of this article. The written complaint should be given to the office of the code enforcement manager, community development department, during

normal business hours, or to any police officer when code enforcement personnel are unavailable. Violations of this article are deemed an infraction and punishable under Sections 1.12.030 and 1.12.040 of this code.

C. The provisions of this chapter and Labor Code Section 6404.5 shall be enforced by the city's police department and/or the code enforcement division of the department of community development. (Ord. 95-1 § 1 (part); Ord. 93-8 § 1(B); Ord. 91-23 § 1)

8.16.160 Nonretaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this article. (Ord. 91-23 § 1)

8.16.170 Public transportation stops.

Smoking of tobacco or any other substance shall be prohibited in and within twenty feet of any formally designated shelter or outdoor area where people gather to wait for entry onto public transportation. (Ord. 10-14 § 4)

View the [mobile version](#).

