

**ORDINANCE NO. 01-14 N.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND  
AMENDING CHAPTER 9.56 OF THE MUNICIPAL CODE RELATING TO THE  
REGULATION OF SMOKING**

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**WHEREAS**, electronic cigarettes, commonly known as “e-cigarettes,” “e-cigars,” “e-cigarillos,” “e-pipes,” “e-hookahs,” “electronic nicotine delivery systems,” etc., are battery operated devices designed to deliver nicotine, flavor, and/or other substances through a vapor inhaled by the user; and

**WHEREAS**, consumption of electronic cigarettes has increased significantly in recent years, as evidenced by the fact that:

- between 2011 and 2012 the percentage of all youth in grades 6 to 12 who had tried electronic cigarettes doubled;
- 6.8% of all youth between 6<sup>th</sup> and 12<sup>th</sup> grade report trying electronic cigarettes;
- 10% of high school students have tried electronic cigarettes;
- 9.3% of youth who have used electronic cigarettes have never smoked conventional cigarettes;
- between 2010 and 2011, rates of both awareness and use of unregulated electronic cigarettes by adults also increased significantly; and

**WHEREAS**, existing studies on electronic cigarettes’ vapor emissions and cartridge contents have found a number of dangerous substances including:

- Chemicals known to the State of California to cause cancer such as formaldehyde, acetaldehyde, lead, nickel, chromium, and toluene;
- PM<sub>2.5</sub>, acrolein, tin, and aluminum, which are associated with a range of negative health effects such as skin and eye irritation, respiratory irritation, gastrointestinal irritation, and problems with the nervous system;
- Inconsistent labeling of nicotine levels in electronic cigarette products; and
- In one instance, diethylene glycol, an ingredient used in antifreeze and toxic to humans; and

**WHEREAS**, at least one study and an international cancer research center has concluded that exposure to vapor from electronic cigarettes may cause passive vaping; and

**WHEREAS**, some cartridges used by electronic cigarettes can be re-filled with liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine; and

**WHEREAS**, clinical studies about the safety and efficacy of these products have not been submitted to the FDA for the over 400 brands of electronic cigarettes that are on the market and for this reason, consumers currently have no way of knowing:

- Whether electronic cigarettes are safe;
- What types or concentrations of potentially harmful chemicals the products contain; and
- What dose of nicotine the products deliver; and

**WHEREAS**, the World Health Organization has strongly advised consumers against the use of electronic cigarettes until they are “deemed safe and effective and of acceptable quality by a competent national regulatory body”; and

**WHEREAS**, the World Medical Association has determined that electronic cigarettes “are not comparable to scientifically-proven methods of smoking cessation” and that “neither their value as therapeutic aids for smoking cessation nor their safety as cigarette

replacements is established”; and

**WHEREAS**, the State of California’s Tobacco Education and Research Oversight Committee (TEROC) “opposes the use of e-cigarettes in all areas where other tobacco products are banned.”

**WHEREAS**, a study published in the Journal of Environmental and Public Health suggests that electronic cigarettes “may have the capacity to ‘re-normalize’ tobacco use in a demographic that has had significant denormalization of tobacco use previously”; and

**WHEREAS**, electronic cigarettes often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products; and

**WHEREAS**, the use of electronic cigarettes in smokefree locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment;

**NOW THEREFORE**, it is the intent of the Richmond City Council, in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the use of electronic cigarettes around non-users, especially children; by protecting the public from exposure to secondhand byproducts of electronic cigarettes where they live, work, and play; by facilitating uniform and consistent enforcement of smoke-free air laws; by reducing the potential for re-normalizing smoking in public places and places of employment; by reducing the potential for children to associate the use of electronic cigarettes with a normative or healthy lifestyle; and by prohibiting the sale or distribution of electronic cigarettes to minors.

## **SECTION I.**

Chapter 9.56 entitled “Regulation of Smoking” of the Richmond Municipal Code are hereby amended as follows (~~strikeout text indicates deletion~~; underline text indicates insertion):

### **Chapter 9.56 – REGULATION OF SMOKING**

#### **Sections:**

[9.56.010 Definitions.](#)

[9.56.020 Prohibition of smoking.](#)

[9.56.030 Duty of person, employer, business or nonprofit entity.](#)

[9.56.040 Sign posting requirements.](#)

[9.56.050 Penalties and enforcement.](#)

9.56.010 Definitions.

For the purposes of this chapter, the following definitions shall govern unless the context clearly requires otherwise:

- (1) "Dining area" means any area, including streets and sidewalks, available to or customarily used by the general public or employees, that is designed, established, or regularly used for consuming food or drink.
- (2) **“Electronic Cigarette” 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. “Electronic Cigarette” includes any such 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.**

- (3) "Enclosed" means:
  - (A) Any covered or partially covered space having more than 50% of its perimeter area walled in or otherwise closed to the outside such as, for example, a covered porch with more than two walls; or
  - (B) Any space open to the sky (hereinafter "uncovered") having more than 75% of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard;
  - (C) Except that an uncovered space of three thousand (3,000) square feet or more is not enclosed, such as, for example, a field in an open-air arena.
- (4) "Multi-unit residence" means a premises that contains two (2) or more units.
- (5) "Multi-unit residence common area" means any enclosed or unenclosed common area of a multi-unit residence accessible to and usable by more than one residence, including but not limited to halls and pathways, lobbies, laundry rooms, common eating and cooking areas, play areas, swimming pools, and parking areas.
- (6) "Place of employment" means any area under the control of an employer, business, or nonprofit entity that an employee, volunteer, or the general public may have cause to enter in the normal course of operations, regardless of the hours of operation. Places of employment include, but are not limited to: bars; restaurants; hotel and motel lobbies; vehicles used for business purposes; taxis; employee lounges and breakrooms; conference and banquet rooms; bingo and gaming facilities; long-term health care facilities; warehouses; retail or wholesale tobacco shops; and private residences used as licensed childcare or health-care facilities.
- (7) "Public place" means any area, publicly or privately owned, to which the general public is invited to or in which the general public is permitted, regardless of any fee or age requirement. "Public place" does not include streets or sidewalks.
- (8) "Reasonable distance" means a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty-five (25) feet.
- (9) "Recreational area" means any area, public or private, open to the general public for recreational purposes, regardless of any fee or age requirement, including, but not limited to: parklands, including portions of parks, such as picnic areas, playgrounds, or sports fields; walking paths; gardens; hiking trails; bike paths; horseback riding trails; athletic fields; skateboard parks; amusement parks; and beaches.
- (10) "Service area" means any area, including streets and sidewalks, designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction whether or not such service includes the exchange of money including, but not limited to, ATMs, bank teller windows, telephones, ticket lines, bus stops, and cab stands.
- (11) "Smoking" means possessing a lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind, including, but not limited to, tobacco, or any other weed or plant.
- (12) "Unenclosed" means any area that is not enclosed.

9.56.020 Prohibition of smoking.

- (a) Enclosed Places. Smoking shall be prohibited in the following enclosed places within the City of Richmond except in such places as listed in subsection (d) below, and except in such places in which smoking is already prohibited by state or federal law in which case those laws apply:

- (1) Public places;
  - (2) Places of employment;
  - (3) Multi-unit residence common areas.
- (b) Unenclosed Places. Smoking shall be prohibited in the following unenclosed places within the City of Richmond except in such places as listed in subsection (d) below, and except in such places in which smoking is already prohibited by state or federal law in which case those laws apply:
- (1) Dining areas;
  - (2) Recreational areas;
  - (3) Service areas;
  - (4) Public events, including but not limited to a farmers' market, parade, craft fair, festival, or any other event which may be attended by the general public; and
  - (5) Multi-unit residence common areas, except that a landlord may designate a portion of an unenclosed common area as a smoking area. A designated smoking area located in an unenclosed common area of a multi-unit residence must not overlap with any area where smoking is otherwise prohibited by local, state, or federal law; must be located at least 25 feet in all directions from nonsmoking areas; must not include areas used primarily by children; must be no more than 25 percent of the total unenclosed common area; must have a clearly marked perimeter; and must be identified by conspicuous signs.
- (c) Smoking in all unenclosed areas shall be prohibited within a reasonable distance from any doorway, window, opening, crack, or vent into an enclosed area in which smoking is prohibited, except while actively passing on the way to another destination and so long as smoke does not enter any enclosed area in which smoking is prohibited.
- (d) Exceptions. Smoking is permitted in the following locations within the City, unless otherwise prohibited by state or federal law:
- (1) Private residential property, except those used as a licensed child-care or health-care facility;
  - (2) In up to 20 percent of guest rooms in any hotel or motel, as long as the hotel or motel permanently designates at least 80 percent of its guest rooms as nonsmoking rooms, appropriately signs nonsmoking rooms, and permanently removes ashtrays from these rooms. Smoking rooms shall be segregated from nonsmoking rooms on separate floors, wings or portions of either. Smoking rooms and nonsmoking rooms shall not be interspersed. Nothing in this division requires a hotel or motel to provide smoking rooms and the owner or operator of a hotel or motel may choose to prohibit smoking throughout the property;
  - (3) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted; and
  - (4) By performers during theatrical productions, if smoking is an integral part of the story in the theatrical production.

**9.56.030 Prohibition of Electronic Cigarette Use in Smoke-Free Places**

- (a) **It shall be a violation of this Chapter to use an Electronic Cigarette in any place within the City of Richmond where Smoking is prohibited by law.**
- (b) **No Person, Employer, or Nonprofit Entity shall knowingly permit the use of Electronic Cigarettes in an area under the legal or de facto control of that Person, Employer or Nonprofit Entity and in which Smoking is prohibited by law.**

9.56.040 Duty of person, employer, business or nonprofit entity.

- (a) No person, employer, business, or nonprofit entity shall knowingly permit smoking in an area which is under the legal or de facto control of the person, employer, business, or nonprofit entity and in which smoking is prohibited by law and the person, employer, business or nonprofit entity is not otherwise compelled to act under state or federal law.
- (b) No person, employer, business, or nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area which is under the legal or de facto control of the person, employer, business, or nonprofit entity and in which smoking is prohibited, including, without limitation, inside the perimeter of any reasonable distance required by this chapter.
- (c) Notwithstanding any other provision of this chapter, any owner, landlord, employer, business, nonprofit entity, or other person who controls any property, establishment, public place or place of employment regulated by this chapter may declare any part of such area in which smoking would otherwise be permitted to be a nonsmoking area.

9.56.050 Sign posting requirements.

- (a) "Designated Smoking Area" or "No Smoking" signs, whichever are 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 red bar across it) shall be clearly and conspicuously posted in every building or other place where smoking is regulated by the City, by the owner, operator, manager, or other person having control of the building.
- (b) For purposes of this chapter, the City Manager or his or her designee shall be responsible for the posting of signs in regulated facilities owned or leased in part by the City.
- (c) Every hotel or motel within the City shall post at its entrance a sign clearly stating that nonsmoking rooms are available, and every patron shall be asked whether he or she wants a nonsmoking room.

9.56.060 Penalties and enforcement.

- (a) Violations of this chapter may, in the discretion of the City Prosecutor, be prosecuted as infractions or misdemeanors.
- (b) Each violation of this chapter by a person because of the person's smoking is an infraction subject to a one hundred dollar (\$100) fine. Other violations of this chapter constitute misdemeanors punishable as provided in Section 1.04.100 of this Code or may, in the discretion of the City Prosecutor, be prosecuted as infractions if the interests of justice so require.
- (c) Violations of this chapter are subject to a civil action brought by the City Prosecutor or the City Attorney, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.
- (d) Any person who smokes in an area where smoking is prohibited is guilty of trespass and, if the area is accessible by the public or any employee during the normal course of operations, such smoking constitutes a public nuisance.
- (e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance shall also constitute a violation.
- (f) The remedies provided by this chapter are cumulative and in addition to any other remedy available at law or in equity.
- (g) Enforcement of this chapter shall be the responsibility of the City Manager or his or her designee. Any peace officer or Code Enforcement Official also may enforce this chapter.
- (h) Any person acting for the interests of itself, its members, or the general public may bring a civil action to enjoin a violation of this chapter by a business or to enjoin repeat violations of this chapter by an individual.

**SECTION II.** Any provisions of the Richmond Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed.

**SECTION III.** **Severability.** If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, the remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed each section, subsection, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, paragraph, sentence, clause or phrase.

**SECTION IV.** **Effective Date.** All applications filed after or pending upon the date of final passage and adoption of this Ordinance shall be subject to this Ordinance. This Ordinance becomes effective thirty (30) days after its final passage and adoption.

First read at a joint meeting of the Council of the City of Richmond, California, held December 3, 2013, and finally passed and adopted at a regular meeting thereof held January 14, 2014, by the following vote:

AYES:	Councilmembers Bates, Boozé, Butt, Myrick, Rogers, Vice Mayor Beckles, and Mayor McLaughlin.
NOES:	None.
ABSTENTIONS:	None.
ABSENT:	None.

DIANE HOLMES  
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE McLAUGHLIN  
Mayor

Approved as to form:

BRUCE GOODMILLER  
City Attorney

State of California            }  
County of Contra Costa        }       : ss.  
City of Richmond               }

I certify that the foregoing is a true copy of **Ordinance No. 01-14 N.S.**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on January 14, 2014.