

Ordinance No. 2014 -

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS,
CALIFORNIA, AMENDING SECTION 8.80 OF THE SAN MARCOS MUNICIPAL CODE
RELATING TO SMOKING IN PUBLIC PLACES

WHEREAS, electronic cigarettes, commonly known as e-cigarettes, are battery operated devices designed to deliver nicotine, flavors and other substances through vapor inhaled by the user; and

WHEREAS, the popularity of e-cigarettes has grown and continues to grow across the nation;
and

WHEREAS, e-cigarettes are designed to resemble traditional cigarettes and pipes, as well as novelty items, but do not contain tobacco; and

WHEREAS, e-cigarettes are made to mimic conventional cigarettes, making enforcement of no-smoking rules difficult and confusing to enforce; and

WHEREAS, although e-cigarettes are new to the marketplace to determine the long-term health effects, current research indicates that chemicals contained in e-cigarettes may be harmful and that vaping does release potentially dangerous substances in the air; and

WHEREAS, the City Council of the City of San Marcos wishes to include e-cigarettes in the smoking controls and treat them in a manner similar to conventional cigarettes.

NOW, THEREFORE, the City Council of the City of San Marcos, in accordance with the freedom accorded to charter cities generally, and by the Charter of the City of San Marcos, specifically does ordain as follows:

Section 1: 8.80 of the San Marcos Municipal Code is hereby amended as follows:

CHAPTER 8.80
SMOKING IN CERTAIN PUBLIC PLACES

SECTIONS:

8.80.010	Purpose of Chapter
8.80.020	Definitions
8.80.030	Prohibitions
8.80.040	Designation of Smoking Areas
8.80.050	Optional Prohibition
8.80.060	Posting of Signs
8.80.070	Exceptions to Article
8.80.080	Enforcement and Appeal

8.80.010 Purpose of Chapter. Because smoking of tobacco or any other weed or plant, or inhaling e-liquids, smoke juices or cartomizers, is a positive danger to health and cause of material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined places, and in order to serve public health, safety and welfare, the declared purpose of this chapter is to prohibit the smoking of tobacco, or any other weed or plant, or inhaling e-liquids, smoke juices or cartomizers, in public places of employment, except in designated smoking areas.

8.80.020 Definitions.

(a) Smoke or smoking as defined in this chapter shall mean the gases, particles or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, except when the combusting material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory; and shall include the carrying of a lighted pipe, or lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar or cigarette of any kind or the carrying or use of an activated or functioning electronic and/or battery-operated device, the use of which may resemble smoking (commonly known as "vaping") that can be used to deliver an inhaled dose of nicotine or other substances by delivering a vaporized solution. Electronic smoking device includes any such device, whether manufactured, distributed marketed or sold as an electronic cigarette, an e-cigarette, an electronic cigar, electronic cigarillo, an electronic pipe, an electronic hookah, or any product name or descriptor, including any component, part or accessory of such a device, whether or not sold separately. Electronic smoking device does not include any product specifically approved by the United State Food and Drug Administration for therapeutic purposes or for use in the mitigation, treatment or prevention of disease, where such product is marketed and sold solely for such an approved purpose.

(b) Public place shall mean any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, waiting rooms, reception areas, educational facilities and public transportation facilities. A private residence is not a public place.

(c) Place of employment shall mean any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to work areas, employee lounges, conference rooms, and employee cafeterias. A private residence is not a place of employment.

8.80.030 Prohibitions. No person shall smoke in a public place or place of employment, except in designated areas.

8.80.040 Designation of Smoking Areas. Smoking areas may be designated in public places and places of employment by proprietors or other persons in charge except in retail stores, retail service establishments, food markets, public conveyances, theaters, auditoriums, public assembly rooms, meeting rooms, rest rooms, elevators, pharmacies, libraries, museums or galleries which

are open to the public or any other place where smoking is prohibited by law, ordinance or regulation. Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas. It shall be the responsibility of employers to provide smoke-free areas for nonsmokers to the maximum extent possible within existing facilities. ~~Restaurants covered by the provisions of this chapter shall designate an adequate amount of seating capacity to sufficiently meet the demands and shall inform all patrons that a no-smoking section is provided.~~

8.80.050 Optional prohibition. All managers and owners of any establishments serving or doing business with the public may at their discretion post no-smoking signs within various areas of their businesses and utilize the full right of the provisions of this chapter. ~~No public place other than the ones enumerated in section 8.80.070 shall be designated as a smoking area in its entirety.~~

8.80.060 Posting of signs. Signs which designate smoking or no-smoking areas established by this chapter shall be clearly, sufficiently, and conspicuously posted in every room, building, or other place so covered in this chapter. No-smoking signs shall be specifically placed in retail food production and marketing establishments, including grocery stores and supermarkets open to the public, so they are clearly visible to persons upon entering the store, clearly visible to persons in checkout lines, and clearly visible to persons at meat and produce counters. The manner of such posting including the wording, size, color, design, and place of posting, whether on the walls, doors, tables, counters, stands or elsewhere shall be at the discretion of the owner, operator, manager, or other person having control of such room, building or other place so long as clarity, sufficiency, and conspicuousness are apparent in communicating the intent of this chapter.

8.80.070 Exceptions to Chapter. Exceptions to the requirements of this chapter shall be as follows:

(a) Certain areas designated for smoking by the business establishment in compliance with state and federal law, including Individual private offices, hotel and motel meeting and assembly rooms rented to guests, areas and rooms while in use for private social functions, ~~private hospital rooms, psychiatric facilities, jails,~~ bars, and stores that deal exclusively in tobacco products and accessories.

~~(b) — Restaurants or eating establishments with an eating capacity of less than twenty (20) persons. Those with a seating capacity of less than twenty (20) shall have the option of designating a no-smoking section or allowing or prohibiting smoking throughout the establishment.~~

~~(eb)~~ Any owner or manager of a business or other establishment subject to this chapter may apply to the City Manager for an exemption or modification of the provisions of this chapter due to unique or unusual circumstances or conditions.

8.80.080 Enforcement and Appeal.

- (a) The City Manager shall be responsible for compliance with this chapter when facilities which are owned, operated or leased by the City of San Marcos are involved.
- (b) The owner, operator, or manager of any facility, business, or agency within the purview of this chapter shall comply herewith. Such owner, operator, or manager shall post or cause to be posted all no-smoking signs required by this chapter. Such owner, operator, or manager shall not allow service to any person who violates this chapter by smoking in a posted no-smoking area.
- (c) It shall be the responsibility of employers to disseminate information concerning the provisions in this chapter to employees.
- (d) The provisions of this chapter shall be effective May 1, 1983, excepting that those provisions pertaining to places of employment shall apply only to places of employment of the City of San Marcos, until July 1, 1984, at which time this chapter becomes applicable to all places of employment as well.

Section 2. If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted the Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 3. This Ordinance shall be effective thirty (30) days following its adoption. Within fifteen (15) days following its adoption, the City Clerk shall publish this Ordinance of the title thereof, as a summary as required by state law.

Section 4. The City Clerk shall certify to the passage of this Ordinance and cause the same to be published in accordance with the provisions of State Law in a newspaper of general circulation designated for legal notices publication in the City of San Marcos.

INTRODUCED at a regular meeting of the City Council of the City of San Marcos held on the 28th day of October, 2014; and

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Marcos held on the 28th day of October, 2014, by the following roll call vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

APPROVED:

James M. Desmond, Mayor
City of San Marcos

ATTEST:

APPROVED AS TO FORM:

Phillip Scollick, City Clerk
City of San Marcos

Helen Holmes Peak, City Attorney
City of San Marcos