



## Council Agenda Report

**From:** Robert Burton, Chief of Police  
**Subject:** Second Reading - Smoking Ordinance  
**Date:** February 21, 2017

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### Facts

1. On February 7, 2017 the City Council held a public hearing and then introduced the attached ordinance for first reading by title only.
2. No substantive changes have been made to the proposed ordinance since the first reading.
3. A summary of the proposed ordinance was published on February 15, 2017 in a newspaper of general circulation. In addition, within 15 days following second reading, a summary of the proposed ordinance will once again be published in a newspaper of general circulation.
4. Tobacco use causes death and disease and continues to be an urgent public health challenge.
5. Secondhand smoke has been identified as a health hazard and exposure can cause death and disease.
6. Exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke occurs at significant levels outdoors.
7. Cigarette butts are a major and persistent source of litter and pose a health threat to young children and animals.
8. Tobacco use and exposure to secondhand smoke impose great social and economic costs.
9. There is broad public recognition of the dangers of secondhand smoke and support for smokefree air laws.
10. Laws restricting the use of tobacco products have recognizable benefits to public health and medical costs with a review of over 80 peer-reviewed research studies showing that smokefree policies effectively reduce tobacco use, reduce exposure to secondhand smoke, increase the number of tobacco users who quit, reduce initiation of tobacco use among young people and reduce tobacco related illnesses and death.
11. California State Ballot Proposition 64, also known as the Adult Use of Marijuana Act ("AUMA"), was recently approved and passed by California voters at the November 8, 2016 general election, and authorizes persons 21 years of age or older to possess, smoke and ingest marijuana and marijuana products without a medical prescription.
12. AUMA states that it shall not be construed to permit smoking or ingesting marijuana in any public place or in places where smoking tobacco is prohibited, but does not define "public place."
13. Laws restricting electronic smoking devices use also have benefits to the public and the State smokefree workplace law does not expressly prohibit the use of electronic smoking devices in enclosed workplaces.
14. California cities and counties have the legal authority to adopt local laws that make all indoor places of employment nonsmoking and State law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions.
15. As of April 2015, there are at least 64 California cities and counties with local laws restricting smoking in workplaces not covered by the state smokefree workplace law.
16. As of April 2014, at least 131 local jurisdictions in California prohibit the use of electronic smoking devices in specific locations.

17. As of January 2015, there are at least 348 California cities and counties with local laws restricting smoking in recreational areas, 129 with local laws restricting smoking in outdoor dining places, and 48 with local laws restricting smoking on sidewalks in commercial areas.
18. The City of Paso Robles is the only City in San Luis Obispo County that does not have a comprehensive smoking ordinance in place to protect the public.
19. There is no Constitutional right to smoke

### **Options**

1. Take no action.
2. Adopt on 2<sup>nd</sup> reading of Ordinance No. XXX to amend Chapter 9.41 of the municipal code to expand certain smoking restrictions, expressly prohibit smoking marijuana in public places, and set February 21, 2017, as the date for adoption of said ordinance.
3. Amend the foregoing option.
4. Refer back to staff for additional analysis.

### **Analysis and Conclusions**

The City of Paso Robles is the only City in San Luis Obispo County without a comprehensive smoking ordinance to protect both its residents and visitors from the effects of second hand smoke. Without a comprehensive and thoughtful ordinance, the City would not be promoting public health and safety. The attached ordinance strikes a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including children, to breathe smoke-free and drug-free air, recognizing the threat to public health and the environment caused by smoking and unwelcome secondhand smoke.

### **Fiscal Impact**

The primary fiscal impact include the costs incurred for signs that will identify the smoking restrictions at City parks. Staff estimates these will cost a total of about \$1,500; the signs will be funded within existing departmental budgets and by donations.

### **Recommendation**

Adopt on 2<sup>nd</sup> reading Ordinance No. XXX to amend Chapter 9.41 of the municipal code to expand certain smoking restrictions and expressly prohibit smoking marijuana in public places.

### **Attachments**

1. Ordinance No. XXX
2. Notice and Summary

ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES TO AMEND CHAPTER 9.41 OF THE MUNICIPAL CODE TO EXPAND CERTAIN SMOKING RESTRICTIONS AND EXPRESSLY PROHIBIT SMOKING MARIJUANA IN PUBLIC PLACES

WHEREAS, the City of El Paso de Robles ("City") prohibits smoking in city-owned, leased or operated public meeting facilities, including the City Council chambers; and

WHEREAS, the purpose of the City's smoking restrictions is to serve the public health, safety and welfare due to the known dangers to health posed by smoking and secondhand smoke; and

WHEREAS, despite the existing restrictions on smoking and the known adverse effects of secondhand smoking, there are still many public places and publicly accessible places in which smoking is not expressly prohibited by the City's Code; and

WHEREAS, California State Ballot Proposition 64, also known as the Adult Use of Marijuana Act ("AUMA"), was approved and passed by California voters at the November 8, 2016 general election, and authorizes persons 21 years of age or older to possess, smoke, and ingest marijuana and marijuana products without a medical prescription; and

WHEREAS, AUMA states that it shall not be construed to permit smoking or ingesting marijuana in any public place or in places where smoking tobacco is prohibited, but does not define "public place"; and

WHEREAS, the City Council therefore desires to amend and expand the existing smoking restrictions to expressly prohibit smoking in all public buildings, parks and within enclosed areas open to the general public; and

WHEREAS, the City Council further desires to expressly define, clarify and prohibit the smoking of marijuana or marijuana products in any public place or publicly accessible place consistent with state law; and

WHEREAS, the City Council desires to pass this ordinance in order to more adequately protect City citizens against unwanted secondhand smoke in public places, and to clarify and confirm that smoking marijuana is prohibited and subject to the same enforcement and penalties as other smoking restrictions; and

WHEREAS, this ordinance is authorized by California Health and Safety Code section 118910 and California Business and Professions Code section 26200.

NOW, THEREFORE, the City Council of the City of El Paso de Robles does ordain as follows:

SECTION 1. Recitals. The above recitals are incorporated as though set forth in this section.

SECTION 2. Amendment. Chapter 9.41 of the Paso Robles Municipal Code is hereby amended to read in full as follows:

Chapter 9.41 - SMOKING PROHIBITED IN PUBLIC PLACES

9.41.010 - Purpose.

Because smoking is a positive danger to health, a cause of material discomfort, and a health hazard even to those exposed to secondhand smoke, the declared purposes of this chapter are to:

- A. Promote the public health, safety and welfare by prohibiting smoking, expressly including the smoking of marijuana or marijuana products, in certain areas which are used by or open to the public;
- B. Ensure a cleaner and more hygienic environment for the City, its residents, visitors, and natural resources; and
- C. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including children, to breathe smoke-free and drug-free air, recognizing the threat to public health and the environment caused by smoking and unwelcome secondhand smoke.

9.41.020 – Definitions.

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

“E-Cigarette” means any electronic oral device, such as one composed of a heating element, battery and/or electronic circuit, which provides a vapor of nicotine or any other substances, including marijuana or marijuana products, and the use or inhalation of which simulates smoking. E-Cigarette shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, hookah pen, or any other similar product name or descriptor.

“Enclosed place” means any covered or partially covered space having more than fifty percent (50%) of its perimeter area walled in or otherwise closed to the outside, such as a covered porch with more than two walls, or any space open to the sky but having more than seventy-five percent (75%) of its perimeter area walled in or otherwise closed to the outside, such as a courtyard or the walled-in patio of a dining establishment.

“Smoking” means inhaling, exhaling, burning or carrying any lighted cigarette, e-cigarette, cigar, pipe, weed, plant, or other combustible substance in any manner or in any form, including smoking of marijuana or marijuana products.

9.41.030 - Prohibition of smoking in certain public places and places of employment.

Smoking shall be prohibited in the following places:

- A. Within all city-owned, leased, or operated buildings, including meeting facilities and the Library Conference Room/City Council Chamber;
- B. Within all places of employment, in accordance with California Labor Code section 6404.5, as may be amended;
- C. Within all enclosed places, whether publicly- or privately-owned and regardless of any applicable fee or age requirement, that are available and open to the general public, including but not limited to parking garages, bars, restaurants, cafes, outdoor dining patios or courtyards, clubs, stores, arenas, taxis and buses;

- D. At all outdoor public events, including but not limited to sports events, speaking performances, ceremonies, pageants, fairs, and other entertainment events open to the public;
- E. In or upon any city park or playground, city sports facility, or city trail area;
- F. Within twenty (20) feet of the entrance or exit of any commercial establishment open to the general public; and
- G. In common areas of multi-unit residential buildings, including halls, lobbies, outdoor eating areas, play and swimming areas.

9.41.040 – Prohibition of smoking marijuana.

In addition to all those places where smoking is prohibited, smoking marijuana or marijuana products is additionally prohibited in the following places:

- A. In or upon all property owned, leased, or operated by the City, expressly including any public park, street, sidewalk, trail, bike path, alley, highway, parking lot, or parking structure;
- B. Within 1,000 feet of a school, day care center, or youth center while children are present at such a school, day care center, or youth center, except in or upon the grounds of a private residence if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present;
- C. In or upon the grounds of a school, day care center, or youth center while children are present; and
- D. While driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

9.41.050 – Posting of signs.

Signs which designate smoking or nonsmoking areas established by this chapter shall be conspicuously posted in every room, building or other place covered by this chapter. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter.

9.41.040 - Compliance.

The city manager or his designated representative shall be responsible for enforcing compliance with this chapter.

9.41.050 - Violation—Penalty.

Any person who violates any provision of this chapter, including an owner, operator or manager of any facility or business within the purview of this chapter who fails to post required signs or who knowingly permits any person to violate this chapter while within such facility or business, is guilty of an infraction, and is subject to punishment as provided for in Chapter 1.02 (Penalties) or as provided for in Chapter 1.03 (Administrative Citation) of this code.

**SECTION 3.** Severability. If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

SECTION 4. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption and, within fifteen (15) days after its passage, shall be published at least once in a newspaper of general circulation published and circulated within the City.

INTRODUCED on the 7<sup>th</sup> day of February 2017 and PASSED AND ADOPTED by the City Council of the City of El Paso de Robles on this 21<sup>st</sup> day of February 2017, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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Steven W. Martin  
Mayor of the City of El Paso de Robles

ATTEST

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Kristen L. Buxkemper  
Deputy City Clerk

**TO BE PUBLISHED WITHIN 15 DAYS AFTER ADOPTION ]**

**NOTICE AND SUMMARY OF ORDINANCE NO. XXX  
AMENDING CHAPTER 9.41 OF THE MUNICIPAL CODE TO EXPAND  
CERTAIN SMOKING RESTRICTIONS AND EXPRESSLY PROHIBIT SMOKING  
MARIJUANA IN PUBLIC PLACES**

On February 7, 2017, the Paso Robles City Council adopted Ordinance Number [REDACTED], which amends Section 9.41 to the City of El Paso de Robles Municipal Code which regulates smoking in public places. The Ordinance makes the following amendments to the Municipal Code:

Section 9.41 will prohibit smoking, expressly including the smoking of marijuana or marijuana products, in certain areas which are used by or open to the public.

The Ordinance will take effect on March 21, 2017.

The above summary constitutes the major highlights of the proposed Ordinance. A reading of the entire ordinance may be necessary to obtain a full understanding of the Ordinance. A copy of the full text of the Ordinance is posted and is available at the City Clerk's office located at 1000 Spring Street, Paso Robles, California 93446.

Ordinance No. [REDACTED] was introduced at a regular meeting of the Paso Robles City Council held on February 7, 2017, and was adopted at a regular meeting of the Paso Robles City Council on February 21, 2017, by the following vote:

Ayes:

Nos:

Absent: