



# Council Agenda Report

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**SUBJECT: PUBLIC HEARING – INTRODUCE AND WAIVE FIRST READING OF ORDINANCE NO. 006-2021 ADDING CHAPTER 8.30, REGULATIONS ON SMOKING AND SMOKING PARAPHERNALIA**

## **MEETING**

**DATE: July 6, 2021**

## **RECOMMENDATION**

It is recommended that the City Council of the City of Rio Vista introduce by title only and waive the first reading of **Ordinance No. 006-2021**, an ordinance of the City of Rio Vista adding Chapter 8.30, Regulations on Smoking and Smoking Paraphernalia.

## **BACKGROUND**

At a prior Council meeting, Council directed staff to bring forward an ordinance addressing smoking and vaping in the city. Council expressed concern regarding vaping and wanted that addressed in the ordinance as well.

Therefore, the purpose of the proposed ordinance is to protect the public health, safety, and general welfare by prohibiting secondhand smoke in public places and businesses open to the public and reducing the use of tobacco vaping products by youth and sale of tobacco vaping products within the city.

By way of background, California has been in the forefront regarding statewide initiatives to reduce the harmful effects of smoking, to include secondhand smoking. The 1988 passage of Proposition 99, the Tobacco Tax and Health Protection Act, imposed a 25 cent per pack cigarette tax and created statewide programs to reduce smoking. By 1993, local jurisdictions throughout the state had enacted smoke-free workplace ordinances that protected nearly two-thirds of California workers. The success of local tobacco control legislation helped form the 1994 creation and passage of Assembly Bill (AB) 13, the California Smoke-Free Workplace Act.

There are numerous studies concluding that secondhand smoke is harmful to individuals, including a report from the California Air Resources Board declaring secondhand smoke as a toxic air contaminant, and a report from the U.S. Surgeon General stating that there is no risk-free level of exposure to secondhand smoke. A 2007 study conducted by researchers from Stanford University found that outdoor secondhand smoke exposure can be comparable to indoor secondhand smoke levels

when an individual is near a smoker outdoors. Many cities throughout the state have used these compelling healthcare studies as the basis for implementing additional regulations related to secondhand smoke to outdoor public places. At least eighty-three cities and counties in California have passed what are considered to be comprehensive outdoor secondhand smoke ordinances. Precedence has been established should the Council wish to pass its own comprehensive ordinance.

Therefore, the City Council of the City of Rio Vista makes the following findings:

1. Vaping is smoking with the aid of an electronic device, e-cigarette, or other vaping device that heats liquid that can contain nicotine, cannabis, or other substances; and
2. Vaping may harm users when poisonous metal particles from the heating element wear down, break off, and reach deep into the user's lungs; and
3. Aerosol exhaled while vaping can contain volatile organic compounds, cancer-causing chemicals, heavy metals such as nickel, tin, and lead, nicotine, and ultra-fine particles; and
4. Flavoring in vaping products may contain diacetyl, a chemical linked to serious lung disease; and
5. Vaping can cause difficulty with critical thinking skills, attention, problem solving, memory, depression or anxiety, addiction, and other serious health hazards; and
6. The Center for Disease Control has reported 15% of lung injury cases associated with vaping products are reported in youth and eight in ten lung injury cases linked to vaping are younger than 35 years old; and
7. The 2017 California Healthy Kids Survey revealed 22% of 7th graders, 45% of 9th graders, and 55% of 11th graders responded it was easy or fairly easy for them to get to access tobacco products; and
8. State law prohibits the sale or furnishing of tobacco products, including flavored tobacco products and other vaping paraphernalia, to persons under 21 years of age, with limited exception; and
9. California courts in *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, and *Prime Gas v. City of Sacramento* (2010) 184 Cal.App.4th 697, have affirmed the power of local jurisdictions to regulate business activity in order to discourage violations of law; and
10. State law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law; and
11. Exposure to secondhand smoke is a threat to the health, safety, and welfare of the community and public peace; and
12. Exposure to secondhand smoke is the third-leading cause of preventable death in the United States; and
13. Scientific studies have concluded that smoking products that contain nicotine, cannabis, and other substances causes chronic lung disease, coronary heart disease, stroke, and cancer; and
14. The City Council wishes to protect the public health, safety, and welfare and regulate business activity in order to discourage violations of law by limiting access to flavored tobacco products within the city and by regulating the

inherently dangerous behavior of smoking nicotine, cannabis, and other smoking substances near non-smokers.

The attached draft ordinance:

- Prohibits the sale of flavored tobacco products
- Prohibits the sale or distribution of tobacco vaping products
- Prohibits secondhand smoke in public places
- Defines where smoking is permitted

**ENVIRONMENTAL ASSESSMENT:**

It has been determined that adoption of this ordinance will not have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act (Section 15061 (b) (3)).

**FISCAL IMPACT:**

The adoption of this ordinance will result in a minimal fiscal impact for the cost and installation of no smoking signs.

Rob Hickey  
City Manager

Attachment: Draft Ordinance No. 006-2021

**ORDINANCE NO. 006-2021**

**AN ORDINANCE OF THE CITY OF RIO VISTA ADDING  
CHAPTER 8.30, REGULATIONS ON SMOKING AND SMOKING PARAPHERNALIA**

**WHEREAS**, the City Council wishes to protect the public health, safety, and general welfare by prohibiting the use of vaping products by youth and reducing access to vaping products within the city.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RIO VISTA HEREBY ORDAINS AS FOLLOWS:**

**Section 1. Purpose and Authority.** The purpose of this Ordinance is to protect the public health, safety, and general welfare by prohibiting second hand smoke in public places and businesses open to the public, and reducing the use of vaping products by youth and sale of vaping products within the city.

**Section 2. Enactment.** Chapter 8.30, Use and Sale of Vaping Products is added to the Rio Vista Municipal Code as follows:

**Title 8 HEALTH AND SAFETY**

**Chapter 8.30 REGULATIONS ON SMOKING AND SMOKING PARAPHERNALIA**

- 8.30.010 Findings and Intent.**
- 8.30.020 Definitions.**
- 8.30.030 Sale or offer for sale of flavored tobacco products prohibited.**
- 8.30.040 Sale or Distribution of Vaping Products to Youth Prohibited**
- 8.30.050 Secondhand Smoke in Public Places Prohibited and a Public Nuisance.**
- 8.30.060 Places Where Secondhand Smoke Permitted.**
- 8.30.070 Enforcement and Civil Fine.**
- 8.30.080 No Duty to Enforce.**
- 8.30.090 Reservation of Legal Options.**

**8.30.010 Findings and Intent.**

The City Council of the City of Rio Vista makes the following findings in adopting this Ordinance:

- A. Vaping is smoking with the aid of an electronic device, e-cigarette, or other vaping device that heats liquid that can contain nicotine, cannabis, or other substances; and
- B. Vaping may harm users when poisonous metal particles from the heating element wear down, break off, and reach deep into the user's lungs; and

- C. Aerosol exhaled while vaping can contain volatile organic compounds, cancer-causing chemicals, heavy metals such as nickel, tin, and lead, nicotine, and ultra-fine particles; and
- D. Flavoring in vaping products may contain diacetyl, a chemical linked to serious lung disease; and
- E. Vaping can cause difficulty with critical thinking skills, attention, problem solving, memory, depression or anxiety, addiction, and other serious health hazards; and
- F. The Center for Disease Control has reported 15% of lung injury cases associated with vaping products are reported in youth and eight in ten lung injury cases linked to vaping are younger than 35 years old; and
- G. The 2017 California Healthy Kids Survey revealed 22% of 7<sup>th</sup> graders, 45% of 9<sup>th</sup> graders, and 55% of 11<sup>th</sup> graders responded it was easy or fairly easy for them to get to access tobacco products; and
- H. State law prohibits the sale or furnishing of tobacco products, including flavored tobacco products and other vaping paraphernalia, to persons under 21 years of age, with limited exception; and
- I. California courts in *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, and *Prime Gas v. City of Sacramento* (2010) 184 Cal.App.4th 697, have affirmed the power of local jurisdictions to regulate business activity in order to discourage violations of law; and
- J. State law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law; and
- K. Exposure to secondhand smoke is a threat to the health, safety, and welfare of the community and public peace; and
- L. Exposure to secondhand smoke is the third-leading cause of preventable death in the United States; and
- M. Scientific studies have concluded that smoking products that contain nicotine, cannabis, and other substances causes chronic lung disease, coronary heart disease, stroke, and cancer; and
- N. The City Council wishes to protect the public health, safety, and welfare and regulate business activity in order to discourage violations of law by limiting access to flavored tobacco products within the city and by regulating the inherently dangerous behavior of smoking nicotine, cannabis, and other smoking substances near non-smokers.

### **8.30.020 Definitions.**

For the purposes of this chapter, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

"Business open to the public" means any place of employment, as defined in Labor Code section 6404.5, that a member of the public may lawfully enter.

"Characterizing flavor" means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a characterizing flavor.

"Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

"Electronic smoking device" means an electronic device which can be used to deliver an inhaled dose of any substance, including any component, part, or accessory of such a device, whether or not sold separately, commonly used for vaping.

"E-liquid" (also known by various names such as "e-juice" and "vape juice") means any liquid that is used in an electronic smoking device.

"Enclosed area" means an area in which outside air cannot circulate freely to all parts of the area. Enclosed area includes any covered or partially covered area having more than 75% of its perimeter walled or otherwise restricted to the outside.

"Flavored tobacco product" means any tobacco product that contains a constituent that imparts a characterizing flavor.

"Private Residence" means any building, buildings, or part of a building owned by a private entity which serves as a permanent residence where sewage is generated. Private residences include, but are not limited to, single family homes, town houses, duplexes, condominiums, mobile homes, accessory dwelling units and apartments.

"Sell", "Sale" or "to Sell" mean any transaction where, for any consideration, ownership is transferred from one person or entity to another including, but not limited to any transfer of title or possession for consideration, exchange or barter, in any manner or by any means.

"Secondhand smoke" means any airborne byproduct of smoking, visible and nonvisible, including odor.

"Smoking" means inhaling, exhaling, or burning or carrying any lighted or heated cigar,

cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral non-electronic or electronic ("vaping") lighted or heated cigar, cigarette, hookah, pipe, or any other device for oral inhalation of tobacco or cannabis products for the purpose of circumventing the prohibition of smoking.

"Tobacco retailer" means any store, stand, booth, concession or any other enterprise that engages in the retail sale of tobacco products, including but not limited to stores that engage in the retail sale of food items.

"Unenclosed area" means any area which is not an enclosed area.

"Vaping" means smoking with the aid of an electronic smoking device, e-cigarette, or other vaping device that heats liquid commonly called e-liquid.

"Vaping Product" means an electronic smoking device, e-liquid, and any other product sold for the purpose of vaping.

"Youth" means any person under twenty-one (21) years of age.

#### **8.30.030 Sale or offer for sale of flavored tobacco products prohibited.**

(a) The sale or offer for sale, by any person or tobacco retailer of any flavored tobacco product is prohibited and no person or tobacco retailer shall sell, or offer for sale, any flavored tobacco product.

(b) There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

#### **8.30.040 Sale or Distribution of Vaping Products to Youth Prohibited.**

Except as otherwise permitted by city ordinance or state or federal law or regulation, it is hereby declared to be unlawful, a public nuisance, and a violation of this chapter for any person or business to create, permit, or otherwise allow, tacitly or otherwise, for the sale, offer for sale, or display for sale of any vaping product to a youth within the city.

#### **8.30.050 Secondhand Smoke in Public Places Prohibited and a Public Nuisance.**

Except as otherwise permitted by this chapter or expressly permitted by state or federal law, it is hereby declared to be unlawful, a public nuisance, and a violation of this chapter for any person or business to create, permit, or otherwise allow exposure to secondhand smoke anywhere in the city, including but not limited to:

1. Public places, parks, sidewalks, walkways, transportation, and buildings.
2. Enclosed areas and unenclosed areas of any business open to the public.
3. Enclosed areas and unenclosed areas of any city, school, hotel or motel, restaurant, and other places of public accommodation.

#### **8.30.060 Places Where Smoking Permitted.**

Notwithstanding subsection 8.30.050, secondhand smoke is permitted in the following locations within the city, unless otherwise prohibited by state or federal law, and only as long as it is not in an area in which secondhand smoke will enter into an area that secondhand smoke is always prohibited by this chapter, by state or federal law, or by the property owner:

- A. Private residence, except for private residences licensed as family day care homes.
- B. An unenclosed area that is not within 20 feet of a location where secondhand smoke is prohibited, no non-smoker or youth is present, and it is not reasonable to expect a non-smoker or youth to arrive due to the time of day and other factors.

#### **8.30.070 Enforcement and Civil Fine.**

A. Enforcement. The Chief of Police or his/her designee may issue a notice of violation of this chapter by issuing a citation detailing the date and circumstances of violation within thirty (30) days of the violation. The citation shall state the civil fine and give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting a hearing. An administrative hearing may be held in accordance with the procedures set forth in Chapter 8.16.

B. Civil Fine. The total civil fine for violation of this chapter may be deemed a debt owed to the city by any person who violates this chapter. Any person owing such a debt may be liable in an action brought in the name of the city for recovery of the same.

1. The first violation may result in a citation with a \$100 fine.
2. The second violation may result in a citation with a \$200 fine.
3. The third violation may result in a citation with a \$300 fine.
4. Any subsequent violation may result in a citation with a \$500 fine for each subsequent violation.

C. The remedies provided by this chapter are cumulative and in addition to any other remedies at law or in equity.

D. The City Manager or his/her designee may consider the facts of each case and, in lieu of the civil fine, allow community service work on behalf of the city and/or training, counseling, or classes that are relevant to the purposes of this chapter.



**8.30.080 No Duty to Enforce.**

Nothing in this chapter shall be construed as imposing on the city any duty to issue any violations of this chapter, and the city shall not be held liable for failure to issue a citation for violation of this chapter.

**8.30.090 Reservation of Legal Options.**

The city does not waive its right to seek remedies for violation of this chapter through other procedures. The procedures provided for in this chapter are in addition to any other statute, ordinance, or law, civil or criminal. This chapter in no way limits the authority of the Chief of Police or his/her designee to make arrests for any criminal offense arising out of conduct regulated by this chapter.

**Section 3. Severability.**

The provisions of this Ordinance are hereby declared to be severable if any provision, clause, word, sentence or paragraph of sections, or the application thereof to any person, establishment, or circumstances, shall be held invalid. Such invalidity shall not result in the invalidity of the entire chapter which can be given effect without the invalid provision or application. The Rio Vista City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

**Section 4. Effective Date and Publication.**

This Ordinance shall take effect thirty (30) days after its adoption. The City Clerk is hereby directed to publish a summary of the Ordinance within fifteen (15) days after passage in a newspaper of general circulation published in the City of Rio Vista.

I, **JOSE JASSO, CITY CLERK OF THE CITY OF RIO VISTA, HEREBY CERTIFY** this Ordinance was introduced at a regular meeting of the Rio Vista City Council on **July 6, 2021** and **PASSED and ADOPTED** by the City Council of the City of Rio Vista at a regular meeting on **July \_\_, 2021**.

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

\_\_\_\_\_  
**Ronald Kott, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Jose Jasso, MMC, City Clerk**