

ORDINANCE NUMBER O- 20408 (NEW SERIES)

DATE OF FINAL PASSAGE OCT 02 2014

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 4, ARTICLE 3, BY DELETING CURRENT SECTION 43.1001, BY AMENDING AND RENUMBERING SECTION 43.1002 TO SECTION 43.1001, BY AMENDING AND RENUMBERING SECTION 43.1003 TO SECTION 43.1002, BY AMENDING AND RENUMBERING SECTION 43.1004 TO SECTION 43.1003, BY AMENDING AND RENUMBERING SECTION 43.1005 TO SECTION 43.1004, BY AMENDING AND RENUMBERING SECTION 43.1007 TO SECTION 43.1005, BY RENUMBERING SECTION 43.1008 TO SECTION 43.1006, BY AMENDING AND RENUMBERING SECTION 43.1009 TO SECTION 43.1007, BY AMENDING AND RENUMBERING SECTION 43.1010 TO SECTION 43.1008; AMENDING CHAPTER 5, ARTICLE 9, SECTION 59.0502; AMENDING CHAPTER 6, ARTICLE 3, SECTION 63.20.16; AMENDING CHAPTER 6, ARTICLE 8, SECTION 68.0131; AMENDING CHAPTER 14, ARTICLE 1, SECTION 141.0621, OF THE SAN DIEGO MUNICIPAL CODE, ALL RELATING TO SMOKING AND THE USE OF TOBACCO PRODUCTS AND ELECTRONIC CIGARETTES.

WHEREAS, the City of San Diego currently prohibits smoking of cigarettes and other tobacco products in City parks, City beaches, City airports, City sports facilities, other City-owned or City-operated locations, and sidewalk cafes; and

WHEREAS, the sales and use of electronic cigarettes has been growing exponentially; and

WHEREAS, in 2009, the U.S. Food and Drug Administration (FDA) conducted a limited laboratory analysis of 18 electronic cigarettes which resulted in the following findings:

- (1) Diethylene glycol, an ingredient used in antifreeze that is toxic to humans, was detected in one sample;

- (2) Tobacco-specific nitrosamines, which are human carcinogens, were found in half of the samples;
- (3) Tobacco-specific impurities suspected of being harmful to humans—anabasine, myosmine, and  $\beta$ -nicotyrine—were detected in a majority of the samples.

WHEREAS, the health risks associated with the use of electronic cigarettes and inhalation of second-hand vapor are unknown as they have not been fully studied; and

WHEREAS, in a letter dated September 24, 2013, and signed by Attorneys General from 40 states, the National Association of Attorneys General has urged the FDA to regulate electronic cigarettes for the protection of their states' citizens; and

WHEREAS, numerous municipalities in California and nationwide such as Carlsbad, Vista, Los Angeles, and New York City, have already enacted regulations to prohibit the use of electronic cigarettes wherever smoking of cigarettes and other tobacco products is prohibited; and

WHEREAS, to protect public health and safety and to ensure that all residents feel free to access, use, and enjoy City parks, beaches, public places, places of employment, and sidewalk cafes, it is prudent to prohibit the use of electronic cigarettes in the same locations where smoking of cigarettes and other tobacco products is prohibited; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 4, Article 3, Division 10 of the San Diego Municipal Code is amended by retitling Division 10, by deleting section 43.1001, amending and renumbering section 43.1002 to 43.1001, amending and renumbering 43.1003 to 43.1002, amending and renumbering 43.1004 to 43.1003, amending and renumbering 43.1005 to 43.1004, amending and

renumbering 43.1007 to 43.1005, amending and renumbering 43.1008 to 43.1006, amending and renumbering 43.1009 to 43.1007, and amending and renumbering 43.1010 to 43.1008, to read as follows:

**Division 10: Regulations on Smoking and Use of Electronic Cigarettes**

**§43.1001 Definitions**

For purposes of this Division, the following definitions apply:

*Boardwalk* [No change in text.]

*Child care facility* has the same meaning as in San Diego Municipal Code section 113.0103.

*City-owned fishing pier* [No change in text.]

*Electronic cigarette* means an electronic device that delivers vapor for inhalation, including hookah pens, vape pipes, and electronic hookahs. *Electronic cigarette* does not include any product approved by the United States Food and Drug Administration for sale as a drug or medical device.

*Electronic cigarette paraphernalia* has the same meaning as in San Diego Municipal Code section 33.4502.

*Electronic cigarette shop* means any business establishment the main purpose of which is the sale of *electronic cigarettes*, *electronic cigarette paraphernalia*, or *vaping juice*.

*Place of employment* means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment. It includes work areas, private offices, employee lounges, conference rooms, and employee cafeterias.

*Police permit* has the same meaning as in San Diego Municipal Code section 33.0201.

*Public beach* [No change in text.]

*Public park* [No change in text.]

*Public place* means any enclosed area where the public is routinely permitted without special invitation. It includes retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, waiting rooms, reception areas, educational facilities, health facilities, and public transportation facilities.

*Seawall* [No change in text.]

*Smoke* or *smoking* includes the carrying of a lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind.

*Tot lot* [No change in text.]

*Vape* or *Vaping* means the use of an *electronic cigarette* in any of the following ways: (1) through inhalation or exhalation of vapor from an *electronic cigarette*; or, (2) by holding or otherwise activating an *electronic cigarette* such that any vapor is being emitted from it.

*Vaping juice* has the same meaning as in San Diego Municipal Code section 33.4502.

*Vaping lounge* means any enclosed area in or attached to an *electronic cigarette shop* that is dedicated to the use of *electronic cigarette* products, including *vaping juice*.

**§43.1002 Prohibitions**

- (a) It is unlawful to *smoke* or *vape* in an enclosed *public place* or an enclosed *place of employment* except in a designated outdoor *smoking* or *vaping* area lawfully established in accordance with this Division or the law of the State of California.
- (b) It is unlawful to *smoke* or *vape* in a *tot lot* or within fifty feet of a *tot lot*. This prohibition does not apply to private property.
- (c) It is unlawful for an owner, operator, or manager of any facility, business, or agency to designate or maintain a *smoking* or *vaping* area in a *public place* or *place of employment* which does not comply with the requirements of San Diego Municipal Code sections 43.1003 and 43.1004.
- (d) It is unlawful for an owner, operator, or manager of any facility, business, or agency to knowingly permit ashtrays or other ash receptacles to be located in areas where *smoking* or *vaping* is prohibited by this Division.
- (e) [No change in text.]
- (f) It is unlawful to tamper with, remove, deface, destroy or otherwise vandalize any sign designating either:
  - (1) the prohibition of *smoking* or *vaping*, or
  - (2) a demarcated area for *smoking* or *vaping* as described in Code section 43.1002(g).
- (g) It is unlawful to *smoke* or *vape* in a *public park* or *public beach*, on a *boardwalk*, *seawall*, *City-owned fishing pier*, or on the Cabrillo Bridge in Balboa Park, except in a temporary or permanent area authorized by the

City of San Diego that is clearly demarcated by signs in conformity with this Division.

**§43.1003 Designation of Areas for Smoking and the Use of Electronic Cigarettes**

- (a) Designated areas for *smoking* and *vaping* may be established in a temporary or permanent manner, by the City Manager, or the City Manager's designee, pursuant to the provisions of San Diego Municipal Code section 43.1005, or by the owner or operator of a private facility pursuant to the provisions of this Division and California state law.
- (b) Any designated area for *smoking* or *vaping* shall be clearly marked and shall conform with all provisions of this Division and with any applicable California state law.
- (c) Notwithstanding any other provisions of this Division, any facility or area may be designated in its entirety as a no-*smoking* area or no-*vaping* area by its owner or manager.

**§43.1004 Posting of Signs**

- (a) The owner, operator or manager of any *public place* or *place of employment* shall ensure that signs are posted in accordance with this section 43.1004 to designate *smoking* and no-*smoking* areas as well as *vaping* and no-*vaping* areas.
- (b) Signs which designate *smoking* or no-*smoking* areas as well as *vaping* and no-*vaping* areas established by this Division shall be clearly, sufficiently, and conspicuously posted in every building and place covered by this Division.

- (c) No-*smoking* and no-*vaping* signs shall be specifically placed in retail food production and marketing establishments, including but not limited to grocery stores and supermarkets open to the public, so that they are clearly visible to persons entering the establishment, and clearly visible to persons at meat and produce counters.
- (d) Signs shall be placed at all entrances to *public places* and *places of employment*, including restaurants, which read substantially as follows:  
NO SMOKING AND NO USE OF ELECTRONIC CIGARETTES  
EXCEPT IN DESIGNATED AREAS.
- (e) *Smoking* and *vaping* shall be permitted in *public places* and *places of employment*, only in areas where *smoking* may be authorized under state law and provided that signage is conspicuously posted that provides notice that *smoking, vaping* or both is specifically allowed and reads substantially as follows: DESIGNATED AREA FOR SMOKING AND THE USE OF ELECTRONIC CIGARETTES.
- (f) A sign may demarcate a designated area for the use of *vaping* and disallow *smoking* as well as vice versa.

**§43.1005 Exemptions**

- (a) Prohibitions on *smoking* in *places of employment* do not apply to areas exempt under California Labor Code section 6404.5(d).
- (b) Nothing in this Division shall be construed to prohibit *smoking* or *vaping* by any theatrical or musical artist while the artist is performing on stage,

provided that *smoking* or *vaping* is a bona fide part of the act and that no other laws, ordinances, or regulations are violated.

- (c) The owner or manager of a business or other establishment subject to this Division may apply to the City Manager for an exemption or modification of the provisions of this Division due to unique or unusual circumstances or conditions, provided the request may be granted by the City Manager under California state law.
- (d) The City Manager, or a designee of the City Manager, shall have the sole authority and discretion to grant or deny requests for exemptions submitted under San Diego Municipal Code section 43.1005. The City Manager, or designee, shall take due account of the following considerations, as they reasonably apply to each application:
  - (1) Whether the applicant for an exemption under this section has demonstrated an adequate understanding of the requirements of this Division, such that it is clear that the application is not based on a misunderstanding of the minimum requirements of compliance with this Division.
  - (2) The efforts that the applicant for an exemption under this section has made to comply with the requirements of this Division.
  - (3) The physical structure of the area for which the exemption is sought.
  - (4) The number of employees in or near the area for which the exemption is sought.



- (5) The nature and frequency of contact that the applicant's business has with the public.
- (6) Whether physical disabilities of employees would render compliance with the requirements of this Division unreasonably difficult.

The applicant shall provide substantial evidence that the claimed unique or unusual circumstances exist, and that there is a necessary and compelling reason to grant an exemption.

- (e) Prohibitions on *vaping* do not apply to a *vaping lounge* or an *electronic cigarette shop* provided that such a business establishment obtains a *police permit* to operate as an *electronic cigarette retailer* as required in San Diego Municipal Code section 33.4503 and that the area for *vaping* is not accessible to minors.
- (f) Prohibitions on *smoking* and *vaping* do not apply to a private residence, including one which may serve as a *place of employment* or *public place*, except for a private residence licensed as a *child care facility*, during the hours of operation of the *child care facility* and in those areas of the *child care facility* where any minor is present.

**§43.1006 Duty to Enforce**

- (a) The City Manager is responsible for ensuring compliance with this Division in facilities owned, operated or leased by the City of San Diego.
- (b) The owner, operator or manager of any facility, business or agency shall post or cause to be posted all signs required by San Diego Municipal Code

section 43.1004. Owners, operators, managers or employees of a facility, business, or agency are required to orally inform persons violating this Division of its provisions. The duty to inform a violator shall arise when the owner, operator, manager or employee becomes aware of such violation.

- (c) Employers shall provide information concerning the provisions of this Division to their employees.
- (d) Any owner, operator, manager, or employee of any facility, business, or agency who after having informed a violator of this Division of the Division's provisions continues to witness the violation, has the express right to refuse business or service to the violator.

**§43.1007      Violations and Penalties**

- (a) Any person who violates any provision of this Division by *smoking* in a posted "No *Smoking*" area or by *vaping* in a posted "No *electronic cigarette*" area is guilty of an infraction and, upon conviction, shall be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100).
- (b) An owner, operator or manager of any facility, business, or agency who knowingly permits patrons to violate San Diego Municipal Code section 43.1002, or who knowingly fails to discharge any duty arising from the provisions of this Division, is guilty of a misdemeanor and subject to any enforcement option or penalty provision set forth in Chapter One of the San Diego Municipal Code to address violations of law.

**§43.1008 Education for No-Smoking and No-Electronic Cigarette Program**

The City Manager or his designee may engage in a continuing program to inform City employees, citizens, visitors, business owners, and operators of their responsibility to comply with the prohibitions on *smoking* and *vaping* provided in this Division.

Section 2. That Chapter 5, Article 9, Division 2 of the San Diego Municipal Code is amended by amending section 59.0202, to read as follows:

**§59.0202 Activities Prohibited within City Sports Facilities**

(a) It is unlawful for any person to do the following within any *City sports facility*:

(1) through (13) [No change in text.]

(14) *Smoke* or *vape*, except in posted designated areas for *smoking* or *vaping* at *PETCO Park*. For purposes of Section 59.0202, the terms *smoke*, *smoking*, *vape*, and *vaping* have the same meanings as in San Diego Municipal Code section 43.1001.

(15) *Smoke* or *vape*, except in designated areas for *smoking* or *vaping* at *QUALCOMM Stadium* (not including the *QUALCOMM Stadium parking facilities*) where patrons may temporarily leave the *QUALCOMM Stadium* to *smoke* or *vape*, but remain in a secure perimeter.

(b) [No change in text.]

Section 3. That Chapter 6, Article 3, Division 0 of the San Diego Municipal Code is amended by amending section 63.20.16, to read as follows:

**§63.20.16 Fishing Piers Owned or Operated by the City of San Diego — Regulations**

- (a) It is the intent and purpose of the City Council of the City of San Diego to provide for the use and enjoyment by the people of fishing piers by adopting regulations governing the conduct and behavior of persons using the piers so that these recreational facilities may be enjoyed by all.
- (b) It is unlawful for any person to perform any of the following acts on any fishing pier owned or operated by the City of San Diego:
  - (1) through (15) [No change in text.]
  - (16) *Smoke, smoking, vape, or vaping* as defined in San Diego Municipal Code section 43.1001.
- (c) through (d) [No change in text.]

Section 4. That Chapter 6, Article 8, Division 1 of the San Diego Municipal Code is amended by amending section 68.0131, to read as follows:

**§68.0131 Smoking**

No person shall *smoke* or *vape* at any place on an airport where *smoking* is prohibited. The Director shall have the authority to prohibit *smoking* or *vaping* at any place on the airport. For purposes of this section, the terms *smoke, smoking, vape, and vaping* have the same meanings as in San Diego Municipal Code section 43.1001.

Section 5. That Chapter 14, Article 1, Division 6 of the San Diego Municipal Code is amended by amending section 141.0621, to read as follows:

**§141.0621 Sidewalk Cafes**

Sidewalk cafes are outdoor dining spaces located in the *public right-of-way* that are associated with adjacent eating and drinking establishments. Sidewalk cafes are permitted as a limited use in the zones indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations. It is not the intent of this section to regulate outdoor eating and drinking establishment areas that are located on private property.

(a) Limited Use Regulations

(1) Design requirements

(A) through (M) [No change in text.]

(2) Permit requirements

(A) through (D) [No change in text.]

(3) Operational requirements

(A) through (F) [No change in text.]

(G) *Smoking or vaping* is not permitted within a sidewalk cafe at any time. For purposes of this section, the terms *smoke, smoking, vape, and vaping* have the same meanings as in San Diego Municipal Code section 43.1001.

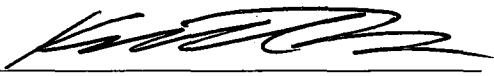
(H) through (K) [No change in text.]

(b) [No change in text.]

Section 6. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 7. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

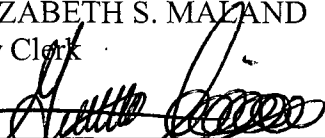
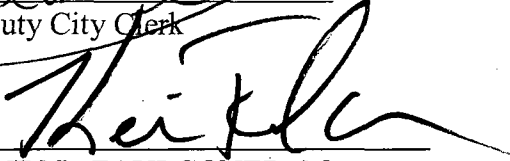
APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Kenneth R. So  
Deputy City Attorney

KRS:jdf  
07/02/14  
07/29/14 REV.  
Or. Dept: Council Districts 5 and 9  
Doc. No.: 830781\_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of SEP 16 2014.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk  


KEVIN L. FAULCONER, Mayor

Approved: 10/2/14  
(date)

Vetoed: \_\_\_\_\_  
(date)

KEVIN L. FAULCONER, Mayor

SoA  
11/5/14

**STRIKEOUT ORDINANCE**

**OLD LANGUAGE: STRIKEOUT**

**NEW LANGUAGE: UNDERLINE**

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 4, ARTICLE 3, BY DELETING CURRENT SECTION 43.1001, BY AMENDING AND RENUMBERING SECTION 43.1002 TO SECTION 43.1001, BY AMENDING AND RENUMBERING SECTION 43.1003 TO SECTION 43.1002, BY AMENDING AND RENUMBERING SECTION 43.1004 TO SECTION 43.1003, BY AMENDING AND RENUMBERING SECTION 43.1005 TO SECTION 43.1004, BY AMENDING AND RENUMBERING SECTION 43.1007 TO SECTION 43.1005, BY RENUMBERING SECTION 43.1008 TO SECTION 43.1006, BY AMENDING AND RENUMBERING SECTION 43.1009 TO SECTION 43.1007, BY AMENDING AND RENUMBERING SECTION 43.1010 TO SECTION 43.1008; AMENDING CHAPTER 5, ARTICLE 9, SECTION 59.0502; AMENDING CHAPTER 6, ARTICLE 3, SECTION 63.20.16; AMENDING CHAPTER 6, ARTICLE 8, SECTION 68.0131; AMENDING CHAPTER 14, ARTICLE 1, SECTION 141.0621, OF THE SAN DIEGO MUNICIPAL CODE, ALL RELATING TO SMOKING AND THE USE OF TOBACCO PRODUCTS AND ELECTRONIC CIGARETTES.

**Division 10: ~~Smoking Regulations~~ on Smoking and Use of Electronic Cigarettes**

**~~§43.1001~~ — Purpose and Intent**

~~The smoking of tobacco, or any other weed or plant, is a positive danger to health and is a material annoyance, inconvenience, discomfort, and health hazard to those who are present areas controlled by the City of San Diego and to both children and adults enjoying the City's public parks and public beaches, its tot lots, City-owned fishing piers, boardwalks and seawalls. Therefore, in order to~~

serve the public health, safety and welfare, the declared purpose of this Division is to prohibit the smoking of tobacco, or any weed or plant, in *public places* and any enclosed *places of employment* except for those areas listed in California Labor Code section 6404.5(d).

A further purpose of this Division is to prohibit *smoking* in and around *public parks, public beaches, City-owned fishing piers, boardwalks, seawalls and tot lots*.

**§43.10021 Definitions**

For purposes of this Division, the following definitions shall apply:

“*Boardwalk*” [No change in text.]

*Child care facility* has the same meaning as in San Diego Municipal Code section 113.0103.

“*City-owned fishing pier*” [No change in text.]

*Electronic cigarette* means an electronic device that delivers vapor for inhalation, including hookah pens, vape pipes, and electronic hookahs. *Electronic cigarette* does not include any product approved by the United States Food and Drug Administration for sale as a drug or medical device.

*Electronic cigarette paraphernalia* has the same meaning as in San Diego Municipal Code section 33.4502.

*Electronic cigarette shop* means any business establishment the main purpose of which is the sale of *electronic cigarettes, electronic cigarette paraphernalia, or vaping juice*.



~~“Place of employment”~~ means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment. It includes work areas, private offices, employee lounges, conference rooms, and employee cafeterias. ~~It does not include a private residence.~~

Police permit has the same meaning as in San Diego Municipal Code section 33.0201.

~~“Public beach”~~ [No change in text.]

~~“Public park”~~ [No change in text.]

~~“Public place”~~ means any enclosed area where the public is routinely permitted without special invitation. It includes retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, waiting rooms, reception areas, educational facilities, health facilities, and public transportation facilities. ~~It does not include a private residence.~~

~~“Seawall”~~ [No change in text.]

~~“Smoke”~~ or ~~“smoking”~~ includes the carrying of a lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind.

~~“Tot lot”~~ [No change in text.]

Vape or Vaping means the use of an electronic cigarette in any of the following ways: (1) through inhalation or exhalation of vapor from an electronic cigarette; or, (2) by holding or otherwise activating an electronic cigarette such that any vapor is being emitted from it.

Vaping juice has the same meaning as in San Diego Municipal Code section 33.4502.

Vaping lounge means any enclosed area in or attached to an electronic cigarette shop that is dedicated to the use of electronic cigarette products, including vaping juice.

**§43.10032 Prohibitions**

- (a) It is unlawful to *smoke* or vape in an enclosed *public place* or an enclosed *place of employment* except in a designated outdoor *smoking or vaping* area lawfully established in accordance with this Division or the law of the State of California.
- (b) It is unlawful to *smoke* or vape in a *tot lot* or within fifty feet of a *tot lot*. This prohibition does not apply to private property.
- (c) It is unlawful for an owner, operator, or manager of any facility, business, or agency to designate or maintain a *smoking or vaping* area in a *public place* or *place of employment* which does not comply with the requirements ~~set forth in~~ of San Diego Municipal Code ~~[Code]~~ sections 43.10043 and 43.10054.
- (d) It is unlawful for an owner, operator, or manager of any facility, business, or agency to knowingly permit ashtrays or other ash receptacles to be located in areas where *smoking or vaping* is prohibited by this Division.
- (e) [No change in text.]
- (f) It is unlawful to tamper with, remove, deface, destroy or otherwise vandalize any sign designating either:

- (1) the prohibition of *smoking or vaping, or*
- (2) a demarcated area for smoking area or vaping as described in Code section 43.10032(g) below.

(g) It is unlawful to *smoke or vape* in a *public park or public beach*, on a *boardwalk, seawall, City-owned fishing pier*, or on the Cabrillo Bridge in Balboa Park, except in a temporary or permanent area authorized by the City of San Diego that is clearly demarcated by signs in conformity with this Division.

**§43.10043 Designation of Smoking Areas for Smoking and the Use of Electronic Cigarettes**

- (a) Designated areas for smoking areas and vaping may be established in a temporary or permanent manner, by the City Manager, or the City Manager's designee, pursuant to the provisions of ~~the~~ San Diego Municipal Code section 43.10075, ~~below~~, or by the owner or operator of a private facility pursuant to the provisions of this Division and ~~the~~ California state law of the State of California.
- (b) Any designated area for smoking area or vaping shall be clearly marked and shall conform with all provisions of this Division and with any applicable California state law.
- (c) Notwithstanding any other provisions of this Division, any facility or area may be designated in its entirety as a *no-smoking area or no-vaping area* by ~~the~~ its owner or manager thereof.

**§43.10054 Posting of Signs**

- (a) The owner, operator or manager of any *public place* or *place of employment* shall ensure that signs are posted in accordance with this section 43.1004 to designate *smoking* and *no-smoking* areas as well as vaping and no-vaping areas.
- (b) Signs which designate *smoking* or *no-smoking* areas as well as vaping and no-vaping areas established by this Division shall be clearly, sufficiently, and conspicuously posted in every room, building, or and other place so covered by this Division.
- (c) *No-smoking* and no-vaping signs shall be specifically placed in retail food production and marketing establishments, including but not limited to grocery stores and supermarkets open to the public, so that they are clearly visible to persons entering the establishment, and clearly visible to persons at meat and produce counters.
- (d) Signs shall be placed at all entrances to *public places* and *places of employment*, including restaurants, which read substantially as follows:  

NO SMOKING AND NO USE OF ELECTRONIC CIGARETTES  
EXCEPT IN DESIGNATED AREAS.
- (e) *Smoking* and vaping shall be permitted in *public places* and *places of employment*, only in areas containing a sign where smoking may be authorized under state law and provided that signage is conspicuously posted that provides notice that smoking, vaping or both is specifically

allowed and reads substantially as follows: DESIGNATED AREA FOR SMOKING AREA AND THE USE OF ELECTRONIC CIGARETTES.

- (f) A sign may demarcate a designated area for the use of *vaping* and disallow *smoking* as well as vice versa.

**§43.10075 Exemptions**

- (a) Prohibitions on ~~smoking~~ *smoking* in *places of employment* shall ~~do not~~ apply to areas ~~deemed~~ exempt under California Labor Code section 6404.5(d).
- (b) Nothing in this Division shall be construed to prohibit ~~smoking~~ *smoking* or *vaping* by any theatrical or musical artist while ~~such~~ the artist is performing on stage, provided that ~~smoking~~ *smoking* or *vaping* is a bona fide part of the act and that no other laws, ordinances, or regulations are violated ~~thereby~~.
- (c) ~~Except as provided in San Diego Municipal Code [Code] section 43.10075~~  
(a), ~~above, any~~ The owner or manager of a business or other establishment subject to this Division may apply to the City Manager for an exemption or modification of the provisions of this Division due to unique or unusual circumstances or conditions, provided ~~such~~ the request may be granted by the City Manager under California state law.
- (d) The City Manager, or a designee of the City Manager, shall have the sole authority and discretion to grant or deny requests for exemptions submitted under San Diego Municipal Code section 43.10075. ~~In passing decision on such applications,~~ The City Manager, or designee, shall take

due account of the following considerations, as they reasonably apply to each application:

- (1) Whether the applicant for an exemption under this section has demonstrated an adequate understanding of the requirements of this Division, such that it is clear that the application is not based on a misunderstanding of the minimum requirements of compliance with this Division.
- (2) The efforts that the business applicant for an exemption under this section has made to comply with the requirements of this Division.
- (3) The physical structure of the area for which the exemption is sought.
- (4) The number of employees in or near the area for which the exemption is sought.
- (5) The nature and frequency of contact that the applicant's business has with the public.
- (6) Whether physical disabilities of employees would render compliance with the requirements of this Division unreasonably difficult.

The ~~burden of proof shall be upon the applicant to show by~~ applicant shall provide substantial evidence that ~~such the claimed~~ unique or unusual circumstances exist, and that there is a necessary and compelling reason to grant an exemption.

- (e) Prohibitions on *vaping* do not apply to a *vaping lounge* or an *electronic cigarette shop* provided that such a business establishment obtains a *police permit* to operate as an *electronic cigarette retailer* as required in San Diego Municipal Code section 33.4503 and that the area for *vaping* is not accessible to minors.
- (f) Prohibitions on *smoking* and *vaping* do not apply to a private residence, including one which may serve as a *place of employment* or *public place*, except for a private residence licensed as a *child care facility*, during the hours of operation of the *child care facility* and in those areas of the *child care facility* where any minor is present.

**§43.10086 Duty to Enforce**

- (a) The City Manager ~~shall be~~ is responsible for ~~assuring~~ ensuring compliance with this Division ~~when in~~ in facilities ~~which are~~ owned, operated or leased by the City of San Diego ~~are~~ involved.
- (b) The owner, operator or manager of any facility, business or agency shall post or cause to be posted all signs required by San Diego Municipal Code section 43.10054. Owners, operators, managers or employees of same a facility, business, or agency shall be are required to orally inform persons violating this Division of ~~the~~ its provisions ~~hereof~~. The duty to inform ~~such a~~ a violator shall arise when ~~such the~~ the owner, operator, manager or employee ~~of same~~ becomes aware of such violation.
- (c) Employers shall ~~disseminate~~ provide information concerning the provisions of this Division to their employees.

- (d) Any owner, operator, manager, or employee of any facility, business, or agency who after having informed a violator of this Division of the Division's provisions herein continues to witness ~~said the~~ violation, shall ~~have~~ has the express right to refuse business or service to ~~that the~~ violator.

**§43.10097    Violations and Penalties**

- (a) Any person who violates any provision of this Division by *smoking* in a posted "No *Smoking*" area or by *vaping* in a posted "No *electronic cigarette*" area is guilty of an infraction and, upon conviction ~~thereof~~, shall be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100).
- (b) An owner, operator or manager of any facility, business, or agency who knowingly permits patrons to violate San Diego Municipal Code section 43.1003~~2~~, or who knowingly fails to discharge any duty arising from the provisions of this Division, is guilty of a misdemeanor and subject to any enforcement option or penalty provision set forth in Chapter One of ~~this~~ the San Diego Municipal Code to address violations of law.

**§43.101008    Education for No-Smoking and No-Electronic Cigarette Program**

The City Manager, ~~of the City Manager's~~ or his designee, shall ~~may~~ engage in a continuing program to inform City employees, citizens, visitors, business owners, and operators of their responsibility to comply with the prohibitions on *smoking* prohibitions and *vaping* as enumerated within provided in this Division.



**§59.0202 Activities Prohibited within City Sports Facilities**

(a) It is unlawful for any person to do the following within any *City sports facility*:

(1) through (13) [No change in text.]

(14) ~~Smoke~~ Smoke or vape, except in posted designated ~~smoking~~ areas for smoking or vaping at PETCO Park. For purposes of Section 59.0202, the terms smoke, smoking, vape, and vaping have the same meanings as in San Diego Municipal Code section 43.1001.

(15) ~~Smoke~~ Smoke or vape, except in designated ~~smoking~~ areas for smoking or vaping at QUALCOMM Stadium (not including the QUALCOMM Stadium parking facilities) where patrons may temporarily leave the QUALCOMM Stadium to smoke or vape, but remain in a secure perimeter.

(b) [No change in text.]

**§63.20.16 Fishing Piers Owned or Operated by the City of San Diego — Regulations**

(a) It is the intent and purpose of the City Council of ~~the~~ City of San Diego ~~in enacting this ordinance~~ to provide for the use and enjoyment by the people of fishing piers by adopting regulations governing the conduct and behavior of persons using such ~~the piers to the end so~~ that these recreational facilities may be enjoyed by all.

(b) It ~~shall be~~ is unlawful for any person to perform any of the following acts on any fishing pier owned or operated by ~~the~~ City of San Diego:

(1) through (15) [No change in text.]

(16) Smoke, smoking, vape, or vaping as defined in San Diego  
Municipal Code section 43.10021.

(c) through (d) [No change in text.]

**§68.0131 Smoking**

No person shall ~~smoke~~ smoke or vape at any place on an airport where ~~smoking~~ smoking is prohibited. The Director shall have the authority to prohibit ~~smoking~~ smoking or vaping at any place on the airport. For purposes of this section, the terms smoke, smoking, vape, and vaping have the same meanings as in San Diego Municipal Code section 43.1001.

**§141.0621 Sidewalk Cafes**

Sidewalk cafes are outdoor dining spaces located in the *public right-of-way* that are associated with adjacent eating and drinking establishments. Sidewalk cafes are permitted as a limited use in the zones indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations. It is not the intent of this section to regulate outdoor eating and drinking establishment areas that are located on private property.

(a) Limited Use Regulations

(1) Design requirements

(A) through (M) [No change in text.]

(2) Permit requirements

(A) through (D) [No change in text.]

(3) Operational requirements

(A) through (F) [No change in text.]

(G) ~~Smoking~~ Smoking or vaping shall is not be permitted  
within a sidewalk cafe at any time. For purposes of this  
section, the terms *smoke, smoking, vape, and vaping* have  
the same meanings as in San Diego Municipal Code section  
43.1001.

(H) through (K) [No change in text.]

(b) [No change in text.]

KRS:jdf  
07/02/14  
07/29/14 REV.  
Or. Dept: Council Districts 5 and 9  
Doc. No.: 831719

Passed by the Council of The City of San Diego on SEP 16 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Harris	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 02 2014

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUL 28 2014

OCT 02 2014

, and on \_\_\_\_\_

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By [Signature], Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20408