

Article 3: Environmental Health Quality Controls

(Retitled from "Water Quality Controls" on 3-8-1994 by O-18047 N.S.)

Division 10: Regulations on Smoking and Use of Electronic Cigarettes

("Smoking Regulations" added 3-8-1994 by O-18047 N.S.)

(Retitled to "Regulations on Smoking and Use of Electronic Cigarettes" on 10-2-2014 by O-20408 N.S.; effective 11-1-2014.)

§43.1001 Definitions

For purposes of this Division, the following definitions apply:

Boardwalk means the public walkway on Ocean Front Walk in Mission Beach, beginning at the South Mission Beach Jetty northward to the terminus of the public walkway at Ocean Boulevard and Law Street in Pacific Beach. Also, the public walkway at Ocean Beach Park and the public walkway (the La Vereda and Calle Opima rights-of-way) at Kellogg Park at La Jolla Shores Beach.

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

City-owned fishing pier includes, without limitation, the Ocean Beach Municipal Pier and the City-owned portions of Crystal Pier, including that area subject to leasehold.

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 has the same meaning as *coastal beach*, as defined in San Diego Municipal Code [Code] section 113.0103, provided that the *coastal beach* is owned or controlled by the City of San Diego.”

Public park has the same meaning as in Code section 113.0103.

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 has the same meaning as in Code section 56.54(a).

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 means a play area designed for use by children that is located in a *public park*. The boundary of a *tot lot* is typically defined with concrete or wood, but may be defined by other material.

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*.

(Amended 11-27-2000 by O-18892 N.S.)

(Amended 7-18-2006 by O-19508 N.S.; effective 8-17-2006)

(Amended 5-21-2007 by O-19620 N.S.; effective 6-20-2007.)

(Renumbered from former Section 43.1002 and amended 10-2-2014 by O-20408 N.S.; effective 11-1-2014.)

§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) It is unlawful to intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with the provisions of this Division.
- (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.

(Amended 11-27-2000 by O-18892 N.S.)

(Amended 7-18-2006 by O-19508 N.S.; effective 8-17-2006)

(Amended 5-21-2007 by O-19620 N.S.; effective 6-20-2007.)

(Renumbered from former Section 43.1003 and amended 10-2-2014 by O-20408 N.S.; effective 11-1-2014.)

§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.

(Renumbered from Sec. 45.0104 and amended 3-8-1994 by O-18047 N.S.)

(Amended 5-21-2007 by O-19620 N.S.; effective 6-20-2007.)

(Renumbered from former Section 43.1004, retitled from “Designation of Smoking Areas” to “Designation of Areas for Smoking and the Use of Electronic Cigarettes” and amended 10-2-2014 by O-20408 N.S.; effective 11-1-2014.)

§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.

(Renumbered from Sec. 45.0105 and amended 3-8-1994 by O-18047 N.S.)

(Amended 5-21-2007 by O-19620 N.S.; effective 6-20-2007.)

(Renumbered from former Section 43.1005 and amended 10-2-2014 by O-20408 N.S.; effective 11-1-2014.)

§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.

(Renumbered from Sec. 45.0107, retitled to "Exemptions" and amended 3-8-1994 by O-18047 N.S.)
(Amended 5-21-2007 by O-19620 N.S.; effective 6-20-2007.)
(Renumbered from former Section 43.1007 and amended 10-2-2014 by O-20408 N.S.; effective 11-1-2014.)

§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.

(Renumbered from Sec. 45.0108, retitled to "Duty to Enforce" and amended 3-8-1994 by O-18047 N.S.)
(Amended 5-21-2007 by O-19620 N.S.; effective 6-20-2007.)
(Renumbered from former Section 43.1008 and amended 10-2-2014 by O-20408 N.S.; effective 11-1-2014.)

§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.

*(Renumbered from Sec. 45.0109 and amended 3-8-1994 by O-18047 N.S.)
(Amended 5-21-2007 by O-19620 N.S.; effective 6-20-2007.)
(Renumbered from former Section 43.1009 and amended 10-2-2014 by O-20408 N.S.; effective 11-1-2014.)*

§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.

*(Renumbered from Sec. 45.0110 and amended 3-8-1994 by O-18047 N.S.)
(Amended 5-21-2007 by O-19620 N.S.; effective 6-20-2007.)
(Renumbered from former Section 43.1010, retitled from “Education for No-Smoking Program” to “Education for No-Smoking and No-Electronic Cigarette Program” and amended 10-2-2014 by O-20408 N.S.; effective 11-1-2014.)*