

ORDINANCE NO. 3112

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADDING CHAPTER 13A TO TITLE 6 OF THE ONTARIO MUNICIPAL CODE REGARDING SMOKE FREE PARKS.

WHEREAS, the City Council of the City of Ontario may adopt an ordinance affecting the health, safety, and welfare of its residents; and

WHEREAS, California Health and Safety Code Section 118910 expressly permits local governments to regulate or completely ban the smoking of tobacco products; and

WHEREAS, tobacco use is the leading cause of preventable death and disease in the United States; and

WHEREAS, there is no constitutional right to smoke; and

WHEREAS, the California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure; and

WHEREAS, the California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm; and

WHEREAS, studies on electronic cigarettes' vapor emissions and cartridge contents have found a number of dangerous substances including chemicals known to the State of California to cause cancers, such as formaldehyde, acetaldehyde, lead, nickel, and chromium; and

WHEREAS, secondhand marijuana smoke contains many of the same chemicals and carcinogens as secondhand tobacco smoke, and results from laboratory testing under standard conditions found that secondhand marijuana smoke contained more than twice as much tar and ammonia as tobacco smoke and more than eight times as much hydrogen cyanide; and

WHEREAS, cigarette butts are a major and persistent source of litter, and are often discarded on the ground as an environmental blight and do not biodegrade. Discarded cigarettes impose additional maintenance expenses to clean up and pose a fire risk as well as risk to human and animal health through potential ingestion and contamination of water sources.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein by this reference.

SECTION 2. Chapter 13A is hereby added to Title 6 of the Ontario Municipal Code to read in full as set forth below.

CHAPTER 13A: SMOKE FREE PARKS

- 6-13A.01 Prohibition and Policy.
- 6-13A.02 Definitions.
- 6-13A.03 Interpretation.
- 6-13A.04 Notice.
- 6-13A.05 Penalties for Failure to Comply.

Sec. 6-13A.01. Prohibition and Policy.

(a) The use of Tobacco, Electronic Delivery Devices, and Marijuana are prohibited in all Public Parks in the City of Ontario at all times. This prohibition is enacted in order to preserve the public health, safety, and welfare of the residents of the City of Ontario, as well as the environment of the City of Ontario.

(b) The provisions of this section do not apply to publicly owned areas and places, or portions thereof, which are used by or used for events of the United States, the State of California, or any agency or instrumentality thereof.

Sec. 6-13A.02. Definitions.

(a) Use of Tobacco and/or Electronic Delivery Devices and/or Marijuana means the act of smoking, chewing, or the use of any other tobacco and/or electronic delivery devices and/or marijuana products in any form.

(b) Smoke or Smoking means inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other tobacco plant or product, or inhaling or exhaling aerosol or vapor from any electronic delivery devices. Smoking includes being in possession of a lit or heated cigar, cigarette, pipe, or any part of tobacco or plant product intended for inhalation, or an electronic delivery device that is turned on or otherwise activated.

(c) Tobacco Product means any substance made or derived from any parts of the tobacco plant, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and smokeless tobacco, or products prepared from tobacco and designed for smoking or ingestion, or any other product name of descriptor.

(d) Electronic Delivery Device means any product containing or delivering nicotine, lobelia, or any other substance that can be used to stimulate smoking through inhalation of aerosol or vapor from the product. This term includes, but is not limited to, devices manufactured, distributed, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipes, vape pens, electronic hookah, electronic cigarillo, or any other product name or descriptor.

(e) Marijuana means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include: (1) Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or (2) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

(f) Public Parks means all public parks within the City of Ontario that are currently, or in the future, listed on the City of Ontario's website as a park. All City of Ontario golf courses, as they appear on the City's website now or in the future, are excluded from the definition of Public Parks and the applicability of this Ordinance. The term includes, but is not limited to, restrooms, spectator and concession areas, playgrounds, athletic fields, aquatic areas, in or on City-owned vehicles, and in City-owned parking lots at those public parks.

(g) All times means twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty-five (365) days a year.

Sec. 6-13A.03. Interpretation.

(a) This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 6-13A.04. Notice.

(a) Wherever this Chapter prohibits smoking, conspicuous signs containing the words "NO SMOKING" in all capital letters not less than one inch in height on a contrasting background shall be posted. It shall be the duty of the owner, operator, manager or other persons having control of any Public Parks to clearly post such signs or cause the same to be clearly posted within ninety (90) days of the effective date of the ordinance codified in this Chapter.

(b) The "NO SMOKING" signs shall be posted in multiple languages at strategic locations to inform all persons about the policy.

(c) City of Ontario staff and volunteers shall be notified about this no smoking policy through an internal memorandum.

(d) City of Ontario staff shall communicate this policy to all event organizers.

Sec. 6-13A.05. Penalties for Failure to Comply.

(a) Each incident in violation of this Chapter is an infraction subject to:

1. A fine of \$50 for a first violation.

2. A fine not exceeding \$100 for a second violation of this Chapter within one (1) year.

3. A fine not exceeding \$200 for each additional violation of this Chapter within one (1) year.

(b) Enforcement of this Chapter shall begin one (1) year after the Effective Date of this Ordinance.

SECTION 3. SEVERABILITY. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance, which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable. This Ordinance amends, adds to, and deletes (as applicable) sections of the City of Ontario Municipal Code.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect and be in force thirty (30) days after passage.

SECTION 5. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 21st day of August 2018.



PAUL S. LEON, MAYOR

ATTEST:



SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:



BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3112 was duly introduced at a regular meeting of the City Council of the City of Ontario held July 17, 2018 and adopted at the regular meeting held August 21, 2018 by the following roll call vote, to wit:

AYES:	MAYOR/COUNCIL MEMBERS:	LEON, WAPNER, DORST-PORADA AND VALENCIA
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	BOWMAN


SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3112 duly passed and adopted by the Ontario City Council at their regular meeting held August 21, 2018 and that Summaries of the Ordinance were published on July 17, 2018 and August 28, 2018, in the Inland Valley Daily Bulletin newspaper.


SHEILA MAUTZ, CITY CLERK

(SEAL)