

ORDINANCE NO. 2384

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCADIA, CALIFORNIA, AMENDING THE ARCADIA MUNICIPAL CODE BY ADDING SECTIONS 4290.2, 4290.3, 4290.4 AND 4294 TO PART 9 OF CHAPTER 2 OF ARTICLE IV (“THE PUBLIC WELFARE, MORALS AND POLICY CODE”) WITH AN EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”), TO ESTABLISH SMOKING PROHIBITIONS FOR MULTI-FAMILY RESIDENTIAL UNITS, COMMERCIAL AND RETAIL ENTRYWAYS, AND OUTDOOR DINING FACILITIES

WHEREAS, at the August 17, 2021, City Council Meeting, the City Council requested an item be placed on a future agenda to consider updating the City’s smoking regulations to include prohibitions on smoking in multi-family residential units, in front of entryways to commercial/retail uses, and within a certain distance of outdoor dining facilities; and

WHEREAS, an ordinance addressing prohibitions on smoking in multi-family residential units, in front of entryways to commercial uses, and within a certain distance of outdoor dining facilities is non-existent in the current Arcadia Municipal Code (“AMC”). The American Lung Association, which grades California cities on overall tobacco regulation, has graded Arcadia with a letter “D” in 2021 for only regulating smoking in indoor public facilities, parks, and City sponsored events; and

WHEREAS, many cities near Arcadia have more stringent smoking regulations such as Alhambra, Beverly Hills, Burbank, Glendale, Pasadena, and Temple City; and enforce through a self-regulatory approach, hotlines, and ambassador programs; and

WHEREAS, the City Council believes that increasing smoking prohibitions to help protect community members from smoke-related diseases is necessary, as tobacco continues to be the leading cause of preventable death, contributing to nearly 500,000

deaths in the United States every year; and

WHEREAS, secondhand smoke can travel through lighting fixtures, cracks in walls, shared heating/ventilation, around plumbing, and under doors, which is another cause for increased smoking regulations; and

WHEREAS, this ordinance expands smoking prohibitions by adding new sections to Part 9 (“Smoking Prohibited in Designated Areas”) of Chapter 2 (“Disorderly Conduct, Nuisances, etc.”) of Article IV (“Public Welfare, Morals, and Policy”) in order to create additional smoking regulation categories for multi-family residential units, in front of entryways to commercial/retail uses, and within a certain distance of outdoor dining facilities; and

WHEREAS, several provisions of California state law govern the act of smoking and provide protections for persons from the adverse effects of tobacco smoke and secondhand smoke, but additional regulations are left to local authorities such as cities. California Health and Safety Code 118880 declares that tobacco smoke is a hazard to the health of the general public, and California Health and Safety Code Section 118910 states that local governing bodies may completely ban the smoking of tobacco or may regulate smoking in any manner not inconsistent with the state law; and

WHEREAS, the current definition of smoke or smoking within the chapter does not address marijuana and vaping products. Therefore, the definition of smoke or smoking is updated to include marijuana and vaping products, as these substances produce smoke containing harmful toxic emissions known to contribute to lung disease and other health issues; and

WHEREAS, the existing chapter does not contain information related to penalties

and enforcement, which this ordinance includes provisions for. The City Attorney, any peace officer and any City Code Enforcement Officer shall have the authority to enforce the provisions of the chapter; and

WHEREAS, the ordinance includes minor revisions to provide clarification of terms and headings; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code Sections 21000 et seq., the State's CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 et seq., and the City's Local CEQA Guidelines, it has been determined that this ordinance is exempt from review under CEQA pursuant to Section 15061(b)(3) and Section 15321. Section 15061 states that CEQA applies only to projects which have the potential for causing a significant effect in the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA. This ordinance is exempt under Section 15321 because it consists of material that serves only to update the Public Welfare, Morals and Policy Code by expanding smoke regulations for the benefit of public health. This ordinance is an action that does not have the potential to cause significant effects on the environment, but will rather address changes to smoking regulations in Arcadia.

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

Section 1. The Arcadia Municipal Code is amended by adding Section 4290.2, Section 4290.3, Section 4290.4, and Section 4294 to Part 9 ("Smoking Prohibited in Designated Areas") of Chapter 2 (Disorderly Conduct, Nuisances, etc.) of Article IV ("The Public Welfare, Morals and Policy Code") such that Part 9 shall read as follows:

## **PART 9. SMOKING PROHIBITED IN DESIGNATED AREAS**

### **4290. SMOKING PROHIBITED**

It shall be unlawful for any person to light, ignite or otherwise set fire to, or smoke, carry, throw or deposit any lighted cigar, cigarette, tobacco, marijuana, vaping, or other smoldering or smoke producing substance within:

- (a) Those portions of any building, structure or other enclosed facility open to the general public for the primary purpose of exhibiting any motion picture, stage production, musical recital or similar performance exclusive of sports events, other than in an area which serves as a lobby;
- (b) Any room, chamber, place of meeting or public assembly wherein public business is being conducted and which is open to members of the general public either as participants or as spectators, except that the prohibition contained in this subparagraph shall not apply within a contiguous area containing fifty percent (50%) or less of the room, chamber, or place of meeting or public assembly, if the entity having management and control of the premises has designated and identified such area as a Smoking Permitted Area by appropriate signs, provided that no division of that area of such room, chamber, place of meeting or public assembly set aside for use by the general public shall be made on a front area versus rear area basis.
- (c) Any elevator designed principally for the accommodation of passengers.

### **4290.1. SMOKING AT CITY PARKS, RECREATION AREAS AND ENTERTAINMENT EVENTS PROHIBITED.**

- (a) It shall be unlawful for any person to use any form of tobacco, marijuana, or vaping products, at any time, in or upon any City Park property or recreation area. Prohibited products include any product containing tobacco or nicotine, including, but not limited to, cigarettes, cigars, miniature cigars, smokeless tobacco, snuff, chew, clove cigarettes, betel, and nicotine delivery devices such as electronic cigarettes, as well as marijuana. Exceptions shall be made for the use or possession of prescription nicotine products.

(b) Tobacco, marijuana, and vaping products are prohibited during the performance or conduct of any City conducted or sponsored events at the parks and recreation areas, including but not limited to concerts, sports, entertainment, plays, ceremonies, carnivals, fairs, or training in any such location. Notwithstanding the foregoing, the Director of Recreation and Community Services is authorized to designate restricted areas within which the products containing tobacco or nicotine described in subsection (a) may be used at such a City conducted or sponsored event.

(c) During the period that the Arcadia Par 3 Golf Course is owned by the City of Arcadia, it shall be exempt from the prohibition against the use of products containing tobacco or nicotine.

**4290.2. SMOKING IN COMMON AREAS AND OUTDOOR AREAS OF MULTI-FAMILY RESIDENTIAL UNITS PROHIBITED.**

Smoking in multi-family residences, defined as two (2) or more units with a shared wall and/or ventilation, shall be governed by the following rules:

1. Smoking is prohibited in all common areas. A common area is defined as an enclosed or unenclosed area of a multi-family unit facility including but not limited to halls and paths, lobbies and courtyards, elevators and stairs, community rooms, playgrounds, clubhouses, gym facilities and swimming pools, parking garages and parking lots, shared laundry rooms, shared cooking or eating areas, or other shared facilities used by tenants.
2. Smoking is prohibited on patios and balconies.
3. Indoor smoking is permitted so long as smoke cannot be perceived by neighbors. Thus, smoke cannot permeate from the unit. Occupants should make reasonable efforts to diffuse smoke inside the unit to the extent practical.

**4290.3. SMOKING IN COMMERCIAL AND RETAIL ENTRYWAYS PROHIBITED.**

Smoking is prohibited within twenty-five feet (25') of a commercial or retail entryway.

**4290.4. SMOKING IN OUTDOOR DINING FACILITIES PROHIBITED.**

Smoking is prohibited in all open air dining areas located on private or public property, including the public right-of-way. In addition, smoking is prohibited within twenty-five feet (25') of an open air dining area, except smoking will be allowed if, and only if, the smoker is actively passing by the open air dining area.

**4291. POSTING OF NO SMOKING SIGNS.**

The person having the authority to manage and control any area set forth in the preceding section wherein the described prohibition applies shall post or cause to be posted and prominently displayed, and shall maintain "No Smoking" signs in conspicuous locations within said areas upon no less than two separate walls or columns in such area. Said signs shall be posted not less than five feet or more than eight feet above the floor level and shall be of sufficient number and location to cause the message by at least one of said signs to be clearly visible, legible and readable at all times from any other point within this same range of height from the floor in said area. Failure to post and maintain such signs shall be a misdemeanor.

**4292. UNLAWFUL TO MUTILATE OR DESTROY SIGNS.**

It shall be unlawful to mutilate or destroy any signs posted in accordance with this Part.

**4293. EXEMPTION.**

This Part 9 shall not be applicable to any room, chamber or place of meeting or public assembly under the jurisdiction of the Arcadia Public Schools Board of Education unless such Board of Education adopts and files with the City Clerk a Resolution declaring such places to be subject to the smoking prohibition as set forth above.

**4294. PENALTIES AND ENFORCEMENT**

It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the regulation under this chapter to fail to comply with its provisions.

It is unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.

The City Attorney, any peace officer, and any City Code Enforcement Officer shall have the authority to enforce the provisions of this chapter.

Violations of this chapter shall be considered an infraction and be charged according to the following fee schedule:

- (a) First Violation: \$100 fine
- (b) Second Violation: \$200 fine
- (c) Subsequent violations within any 12 month period: \$500 fine

SECTION 2. The City Clerk shall certify to the adoption of this Ordinance and shall cause a copy of same to be published at least once in the official newspaper of the City within fifteen (15) days after its adoption. This Ordinance shall take effect on the thirty-first (31st) day after its adoption.

[SIGNATURES ON THE NEXT PAGE]

Passed, approved and adopted this 7th day of February, 2022.

/s/ Sho Tay  
Mayor of City of Arcadia

ATTEST:

/s/ Gene Glasco  
City Clerk

APPROVED AS TO FORM:

Stephen P. Deitsch  
Stephen P. Deitsch  
City Attorney



STATE OF CALIFORNIA        )  
COUNTY OF LOS ANGELES    ) SS:  
CITY OF ARCADIA             )

I, GENE GLASCO, City Clerk of the City of Arcadia, hereby certifies that the foregoing Ordinance No. 2384 was passed and adopted by the City Council of the City of Arcadia, signed by the Mayor and attested to by the City Clerk at an adjourned regular meeting of said Council held on the 7th day of February, 2022 and that said Ordinance was adopted by the following vote, to wit:

AYES:        Beck, Verlato, Cheng, and Tay

NOES:        None

ABSENT:     None

**/s/ Gene Glasco**  
City Clerk of the City of Arcadia