

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	<u> X </u>
CM	<u> X </u>
CA	<u> </u>

DATE: OCTOBER 3, 2017
TO: CITY MANAGER/CITY COUNCIL
FROM: MAYOR DEBRA LEWIS
SUBJECT: NO SMOKING IN PUBLIC PLACES ORDINANCE

RECOMMENDED ACTION:

That the City Council:

1. Consider a proposed amendment to Dana Point Municipal Code Sections 6.40.010-6.40.030 "Prohibition Against Smoking in Certain Places Open to the Public."
2. Discuss the proposed ordinance amendment and provide direction to staff to prepare a final version for first reading at the next Regular Council meeting.

BACKGROUND:

On May 2, 2017 the City Council discussed the potential of a prohibition of smoking in all public places within the City of Dana Point. At that meeting the Council directed that staff include a question on the 2017 Dana Point Community Survey asking residents whether or not they support a smoking ban in public places in the City.

DISCUSSION:

On September 19, 2017 the City Council received a report of results from the 2017 Dana Point Community Survey from its contracted public opinion research firm FM3. The survey included a question that matched the same question asked in the Laguna Beach Community Survey on whether or not residents supported banning smoking in public places in Dana Point. An overwhelming majority of residents surveyed (73%) indicated their support (61% of which "strongly support") of a ban on smoking in public places. Survey results from the subject question are included as Supporting Document B.

As a result of the strong showing of support for such a ban, I researched the Laguna Beach City Ordinance and found it to be a comprehensive approach at accomplishing

such a ban. Attached as Action Document A is a draft amendment to the Dana Point Municipal Code which mirrors the Laguna Beach Ordinance.

The Brown Act requires that the City Council conduct its legislative deliberations in public at a noticed public meeting. The recommended actions for this item include Council's consideration of the draft, proposed amendment to the City of Dana Point's existing smoking regulations (attached as Supporting Document C) and deliberations on what, if any, suggested changes should be made to the draft ordinance amendment. Should the Council reach consensus, it is further recommended that we direct staff to make any Council-directed changes to the draft and agendize a first reading of the ordinance at the next regular meeting.

NOTIFICATION AND FOLLOW-UP:

California State Parks, County of Orange, Dana Point Chamber of Commerce, South Coast Water District and South Orange County Wastewater Authority

FISCAL IMPACT:

There is no fiscal impact to the Council's deliberation of this legislative item. Should the Council direct staff to return with an ordinance for first reading, staff will need to estimate signage and any other costs of a proposed ordinance.

ALTERNATIVE ACTIONS:

Other Council-directed action.

ACTION DOCUMENTS:

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SUPPORTING DOCUMENTS:

B. [2017 DANA POINT COMMUNITY SURVEY QUESTION 22 RESULTS](#) 10

C. [DANA POINT MUNICIPAL CODE SMOKING REGULATIONS](#)..... 13

ACTION DOCUMENT A**ORDINANCE NO. 17-XX****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA AMENDING CHAPTER 6.40 OF THE DANA POINT MUNICIPAL CODE RELATING TO THE REGULATION AND PROHIBITION OF SMOKING IN THE CITY**

The City Council of the City of Dana Point does ordain as follows:

SECTION 1: Chapter 6.40 Prohibition Against Smoking in Certain Places Open to the Public is hereby amended to read in its entirety as follows:

Chapter 6.40 Smoking Regulated or Prohibited

6.40.010	Purpose
6.40.020	Definitions
6.40.030	Smoking prohibited in public places
6.40.040	Smoking and open fires prohibited in hazardous fire areas
6.40.050	Smoking prohibited in City facilities and on City property
6.40.060	Smoking prohibited on property of other government bodies
6.40.070	Posting of sign required
6.40.080	Enforcement
6.40.090	Other applicable laws

6.40.010 Purpose

This chapter recognizes the right of residents and visitors to the city to be free from unwelcome secondhand smoke, which is deemed to be a public nuisance. The purpose of this chapter is to promote and protect the public health, safety, and general welfare by prohibiting smoking in public places, which include common areas of multi-unit housing, in hazardous fire areas, and in City facilities and on City property where persons will be exposed to unwelcome secondhand smoke and also the risks and dangers associated with fires. This chapter is further intended to ensure a cleaner and more hygienic environment for the city, its residents and visitors, and its natural resources.

6.40.020 Definitions

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

(a) "Electronic smoking device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such device, whether or not sold separately. This definition includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic

hookah, or any other product name or descriptor, including any component, part or accessory of such device, whether or not sold separately.

(b) "Employer" means any person who employs the services of an individual person.

(c) "Employee" means any person who is employed by an employer for direct or indirect monetary wages or profit.

(d) "Enclosed" means closed in by a roof and four walls with appropriate openings for ingress and egress.

(e) "Multi-unit residence" means residential property that contains two or more units rented or available to be rented and not occupied by a landlord of the premises. "Multi-unit residence" does not include a condominium, a mobilehome park, a hotel, a motel, or a bed and breakfast establishment.

(f) "Multi-unit residence common area" means any common area of a multi-unit residence accessible to and usable by the occupants for more than one dwelling, including but not limited to halls, lobbies, laundry rooms, outdoor eating areas, play areas, and swimming pools.

(g) "Place of employment" means any area under the legal or de facto control of an employer that an employee or the general public may enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, construction sites, taxis, employee lounges, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses, and any private residences subject to state licensing requirements that are used as child-care or health-care facilities.

(h) "Public place" means any indoor or outdoor public place publicly or privately owned, including but not limited to any public buildings, restaurants, dining areas, bars, entryways, elevators, hospitals and health care facilities, public meeting rooms, theaters and auditoriums, public restrooms, service lines, streets, alleys, rights-of-way, sidewalks, plazas, beaches and beach access ways, public transportation and bus shelters, parking lots, parking structures, parks, picnic areas, playgrounds, sports fields, walking paths, hiking trails, bike paths, and hazardous fire areas. "Public place" includes any place being used for a public event, including but not limited to a farmers' market, parade, craft fair, festival, or any other event open to the general public.

(i) "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, except when the combusting material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. "Smoke" includes but is not limited to tobacco smoke, electronic cigarette vapors, and marijuana smoke.

(j) "Smoking" means the release of gases, particles, or vapors into the air as the result of combustion, electrical ignition, or vaporization and/or inhaling, exhaling, burning or carrying any lighted, heated or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product, including but not limited to tobacco and marijuana, intended for human inhalation.

7.40.30 Smoking prohibited in public places.

(a) In addition to all places where smoking is prohibited under state or federal law, in which case those laws apply, no person shall smoke in, and smoking areas shall not be established or designated in, all of the following areas:

- (1) Multi-unit residence common areas;
- (2) Places of employment; and
- (3) Public places.

(b) Smoking is permitted in the following locations within the city, unless otherwise provided by state or federal law or this code:

- (1) Private residential properties, other than those used as a child-care or health-care facility subject to State licensing requirements; and
- (2) Within a moving or stationary vehicle, including a vehicle on a public street or right-of-way or parked in a public place.

(c) No employer, owner, operator, manager, employee or other person having control of a place of employment or a public place shall knowingly permit smoking in an area in which smoking is prohibited by law. This subsection does not require the physical ejection of any person from the business or the taking of steps to prevent smoking under circumstances that would involve a significant risk of physical harm.

(d) The owner, operator or manager of a hotel, motel or bed and breakfast establishment may establish rules permitting or prohibiting smoking on the portions of the property not open to the public, including guest rooms, pools, and similar facilities and areas, provided that such rules comply with applicable laws.

(e) No employer, owner, operator, manager, employee or other person having control of an outdoor dining area, restaurant, snack shop or alcohol beverage establishment shall place ashtrays on tables or otherwise make ashtrays or receptacles for smoking waste available to patrons.

(f) Nothing in this chapter prohibits any person or employer with legal control over any property from prohibiting smoking on any part of such property, even if smoking is not otherwise prohibited in that area.

6.40.040 Smoking and open fires prohibited in hazardous fire areas.

Smoking and open fires are prohibited in any hazardous fire area as identified by the chief.

(a) The fire chief has identified the following locations as hazardous fire areas and has provided signage identifying such:

- (1) All open space and wildland interface areas in and surrounding the city.

6.40.050 Smoking prohibited in City facilities and on City property.

Smoking is prohibited in all enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Dana Point, as well as on all outdoor property owned, leased, or operated by the City of Dana Point.

7.40.060 Smoking prohibited on property of other governmental bodies.

Smoking is prohibited in all enclosed areas, including buildings, as well as on all outdoor property within the city owned, leased, or operated by other governmental bodies, including the State of California, the County of Orange, and special districts, when such other governmental body has consented in writing to the City enforcing the provisions of this section on such property.

6.40.070 Posting of sign required.

Except where other signs are required, whenever in this code smoking is prohibited, "No Smoking" or "Smoke Free" signs shall be conspicuously posted by the owner, operator, manager, or other persons having control of such room, building, or other place where smoking is prohibited. The City Manager shall post signs at or near the primary entrance(s) to a public place in which smoking is prohibited and which is owned or controlled by the City. Signage required by this section shall not be subject to Chapter 9.37. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provisions of this chapter.

7.40.080 Enforcement.

(a) The provisions of this chapter may be enforced by the Orange County Sheriff's Department, any peace officer or fire or code enforcement officer, or other employees designated by the City Manager.

(b) While an establishment is undergoing otherwise mandatory inspections, fire and code enforcement officers may inspect the establishment for compliance with this chapter.

(c) Notice of the provisions of this chapter shall be provided to all applicants for a business license or renewal thereof; provided, however, any failure to provide such notice shall be no defense to a violation of this chapter.

(d) Employers, owners, operators, managers or employees of same shall be required to orally inform persons violating this chapter of the provisions hereof. The duty to inform such violator shall arise when such employer, owner, operator, manager or employee of the same becomes aware of such violation.

(e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.

(f) Except as provided in subsection (g), any person who is found to violate any provision of this chapter shall be deemed guilty of an infraction and shall be punishable by:

- (1) A fine not exceeding one hundred (\$100.00) dollars for the first violation;
- (2) A fine not exceeding two hundred (\$200.00) dollars for a second violation within one (1) year; and
- (3) A fine not exceeding five hundred (\$500.00) dollars for a third violation within one (1) year.

(g) Any person who is found to violate the prohibition of smoking in a hazardous fire area pursuant to section 6.40.040 shall be guilty of a misdemeanor and shall be punishable as provided by state law.

(h) Any aggrieved person may enforce the provisions of this chapter by means of a civil action on his or her own behalf pursuant to California Civil Code section 3501 et seq.

7.40.090 Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted or prohibited by other applicable laws.

SECTION 2: CEQA Determination. In adopting this Ordinance, the City Council finds that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Title 14 California Code of Regulations Sections 15061(b)(3) and 15378, in that it can be seen with certainty that the adoption of the Municipal Code amendments propose no activity that may have a significant effect on the environment and will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

SECTION 3: Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared unconstitutional.

SECTION 4: Effective Date. This Ordinance shall become effective thirty (30) days after its passage and adoption. Within fifteen (15) days of the date of adoption of this Ordinance, the City Clerk shall post a copy of said Ordinance in places designated for such posting and shall certify to the same. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be published as required by law.

PASSED, APPROVED and ADOPTED this ____ day of _____, 2017.

DEBRA LEWIS, MAYOR

ATTEST:

KATHY M. WARD, CITY CLERK

STATE OF CALIFORNIA)
 COUNTY OF ORANGE) ss.
 CITY OF DANA POINT)

I, Kathy M. Ward, City Clerk of the City of Dana Point, do hereby certify that the foregoing Ordinance No. 17-XX was duly introduced at a regular meeting of the City Council on the 19th day of September, 2017, and was duly adopted and passed at a regular meeting of the City Council on the ___ day of _____, 2017, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

KATHY M. WARD, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

AFFIDAVIT OF POSTING
AND PUBLISHING

KATHY WARD, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 17-XX, being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA AMENDING CHAPTER 6.40 OF THE DANA POINT MUNICIPAL CODE RELATING TO THE REGULATION AND PROHIBITION OF SMOKING IN THE CITY

was published in summary in the Dana Point News on the ___ day of _____, 2017, and, in further compliance with City Resolution No. 91-10-08-01, on the ___ day of _____, 2017, and the ___ day of _____, 2017, was caused to be posted in four (4) public places in the City of Dana Point, to wit:

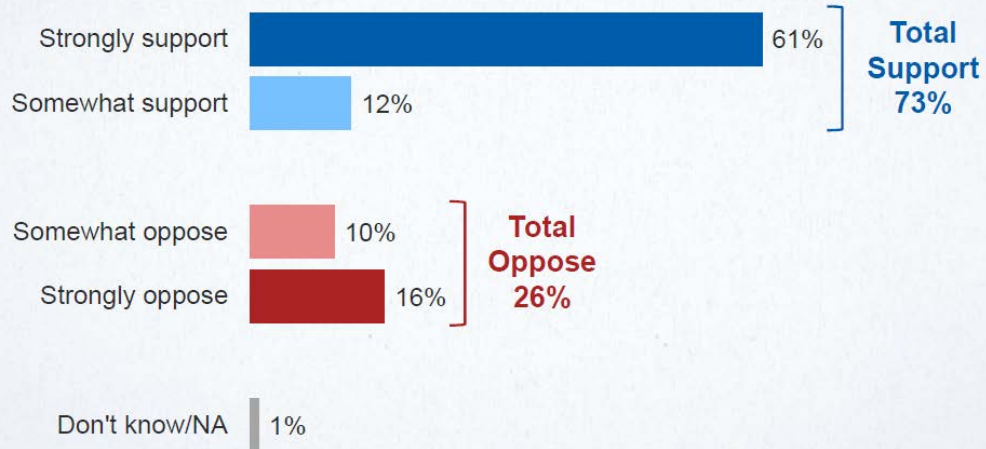
- Dana Point City Hall
- Capistrano Beach Post Office
- Dana Point Post Office
- Dana Point Library

KATHY WARD, CITY CLERK
Dana Point, California

SUPPORTING DOCUMENT B

Nearly three in four residents support a city-wide ban on smoking in all public places

Do you support or oppose a city-wide ban on smoking in all public places?



CONSULTANT EXECUTION DRAFT. NOT FOR PUBLICATION.

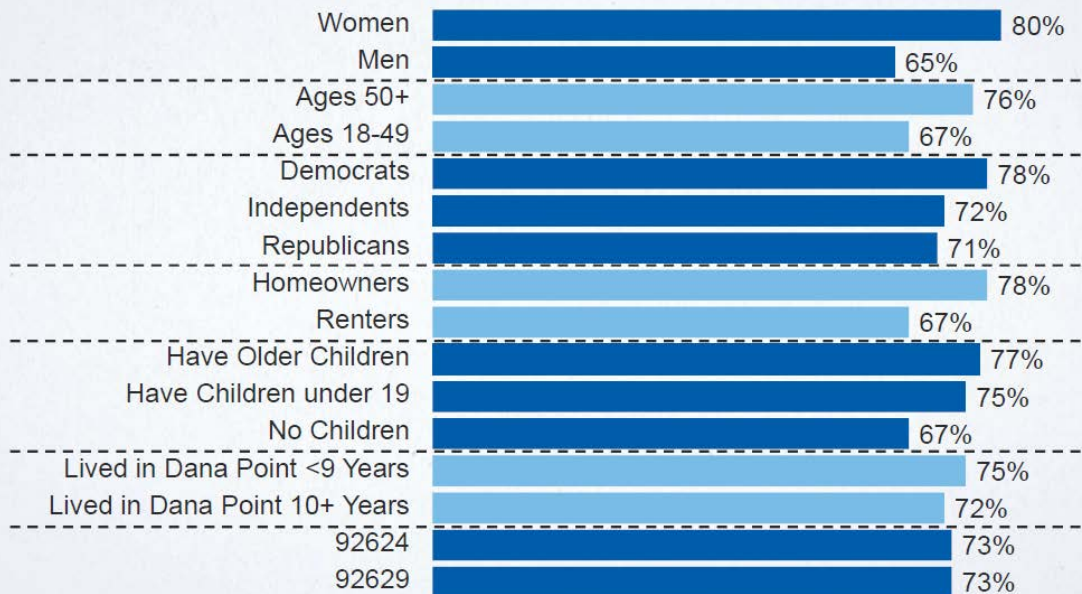
Fairbank, Maslin, Maullin, Metz & Associates - FM3

Q22.

PUBLIC OPINION RESEARCH & STRATEGY

High proportions of all subgroups support a citywide smoking ban in public places

(Total Support)



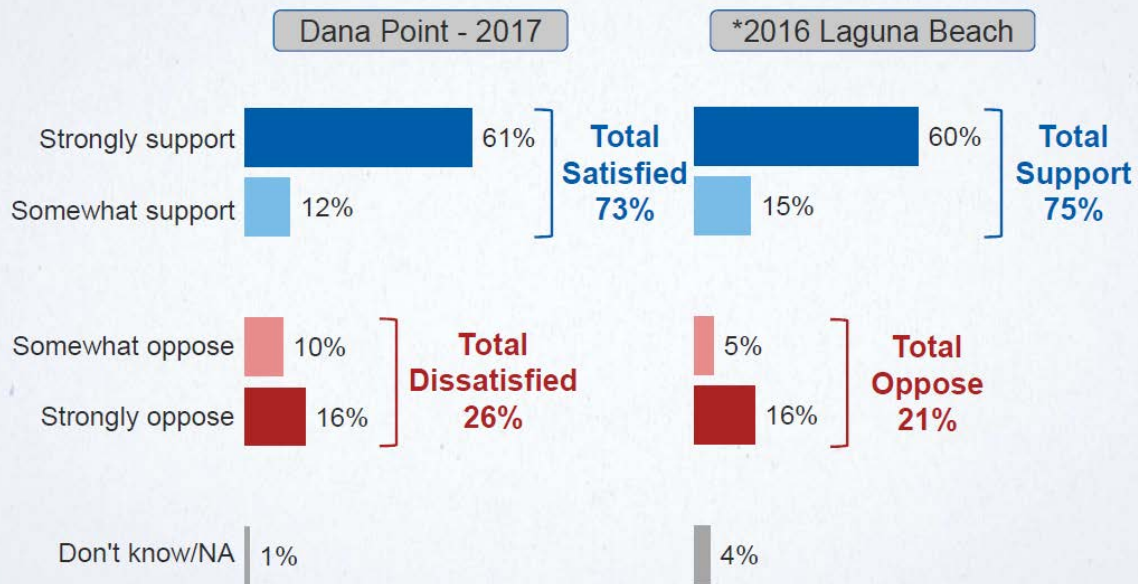
CONSULTANT EXECUTION DRAFT. NOT FOR PUBLICATION.

Fairbank, Maslin, Maulin, Metz & Associates - FMA3

Q22. Do you support or oppose a city-wide ban on smoking in all public places?

PUBLIC OPINION RESEARCH & STRATEGY

Support for ban is similar in Dana Point and Laguna Beach



CONSULTANT EXECUTION DRAFT. NOT FOR PUBLICATION.

Fairbank, Maslin, Maullin, Metz & Associates - FM3

PUBLIC OPINION RESEARCH & STRATEGY

Q22. *Laguna beach was asked if the respondent felt it was very accurate, somewhat accurate, somewhat inaccurate, or very inaccurate that "I support a proposed city-wide ban on smoking in all public places."

SUPPORTING DOCUMENT C

Chapter 6.40 PROHIBITION AGAINST SMOKING IN CERTAIN PLACES OPEN TO THE PUBLIC

6.40.010 Prohibition.

Smoking shall be prohibited in the following public places within the City:

- (a) Elevators open to and in use by the public;
- (b) Waiting rooms, public hallways and patients' rooms of every private or public health care facility, including, but not limited to, hospitals except rooms limited to a single patient and not open to the general public;
- (c) Within every room, chamber, place of meeting or public assembly, during such time as a meeting required by law to be open to the general public is in progress;
- (d) Within any building or room not open to the sky, except the lobby, when that building or room is open to the public for the purpose of exhibiting any motion picture, stage drama, lecture, musical recital or other similar performance except when smoking is part of the stage production;
- (e) In any establishment where food is being served to the general public; provided, however that:
 - (1) Until June 30, 1995, this prohibition against smoking shall not apply within a building wherein a "no smoking" area of not less than seventy-five (75%) of the floor space and of the seating capacity in which customers are served is maintained;
 - (2) Commencing on July 1, 1995, smoking shall be prohibited in one hundred percent (100%) of any building where food is being served to the general public;
 - (3) This prohibition against smoking shall not apply to any area of a building establishment which is:
 - (i) Open to the sky or open on at least two full sides, and wherein not less than fifty percent (50%) of such area is a "no smoking" area;
 - (ii) Any private party or banquet room or rooms during its use by a private party group or groups;
 - (iii) Any bar, cocktail lounge, or other similar area where alcoholic beverages are the primary sales items.
- (f) In the halls, reading and viewing rooms of museums and libraries when open to the public;
- (g) Within retail stores doing business with the general public in areas posted by the management to that effect, except in areas not open to the public. (Added by Ord. 93-07, 4/13/93)

6.40.020 Places Open to the Public Within Buildings Owned or Leased by the City.

Those places open to the public under section 6.40.010 located within buildings owned or leased by the City shall be regulated under section 6.40.010; the prohibition of Section

4-7-11 of the Codified Ordinances of the County of Orange shall be inapplicable to such public places. (Added by Ord. 93-07, 4/13/93)

6.40.030 Enforcement of Labor Code Section 6404.5.

(a) The provisions of the Labor Code Section 6404.5, governing smoking in enclosed places of employment, shall be enforced by the officers of the Code Enforcement Unit of the Community Development Department and deputies of the Orange County Sheriff's Department.

(b) In the performance of their duties of monitoring and enforcing compliance with the provisions of Labor Code Section 6404.5, all persons authorized by the Director of the Community Development Department to engage in such enforcement activities shall have the power, authority and immunity of a public officer to issue infraction citations. (Added by Ord. 02-06, 6/11/02)

Chapter 13.04 PARKS AND RECREATIONAL FACILITIES REGULATIONS

13.04.010 Scope.

The provisions of this Chapter 13.04, unless otherwise expressly provided, shall apply in all parks, beaches, and recreational areas maintained by the City. (Ord. 94-12, 8/23/94)

13.04.020 Definitions.

The following words shall have the meaning indicated when used in these regulations:

(a) "Alcoholic beverage" means alcohol, spirits, liquor, wine, beer and every liquid or solid containing one-half of one (0.5) percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances.

(b) "Amplified sound" means music, sound wave, vibration, or speech projected or transmitted by electronic equipment, including amplifiers.

(c) "Natural open-space" consists of Hilltop Park, Harbor Point Park and the South Strand Open Space as defined in the conservation easement approved by the City on November 30, 2005 and other conservation areas as may be designated by the City Council, including the Center for Natural Lands Management (CNLM) Dana Point Preserve.

(d) "Park" means any community park, neighborhood park, trail, natural open-space, conservation or recreational area owned or maintained by the City.

(e) "Smoking" means inhaling, exhaling, burning, carrying or possessing any lighted cigarette, cigar, pipe, weed, plant, tobacco product or any other combustible substance in any manner or in any form.

(f) "Tobacco product" means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or any other

preparation of tobacco. (Ord. 94-12, 8/23/94; amended by Ord. 09-05, 5/11/09; Ord. 10-03, 3/22/10; Ord. 10-04, 3/22/10)

13.04.105 Prohibition of Smoking of Tobacco Products in Public Parks.

Smoking is prohibited and unlawful in all City parks unless specifically permitted by the prior written approval of the City. Smoking is defined in Dana Point Municipal Code Section 13.04.020. (Added by Ord. 10-04, 3/22/10)