



CITY OF RANCHO MIRAGE

CITY COUNCIL,
LIBRARY AND OBSERVATORY BOARD,
HOUSING AUTHORITY BOARD,
AND THE CITY COUNCIL REPRESENTING
THE REDEVELOPMENT SUCCESSOR AGENCY

REGULAR MEETING
THURSDAY, JANUARY 16, 2020
1:00 P.M.^{i,ii}

AGENDA

City of Rancho Mirage
City Hall - Council Chamber
69-825 Highway 111
Rancho Mirage, CA 92270

CALL TO ORDER

- a) Flag Salute
- b) Roll Call: Kite, Townsend, Weill, Hobart, Smotrich.

PRESENTATIONS

Palm Valley School Presentation.

NON-AGENDA PUBLIC COMMENTS – An opportunity for the public to speak on issues that are not on the agenda for a maximum of three minutes per speaker.

CITY COUNCIL/BOARD MEMBER COMMENTS/REPORTS

CITY MANAGER COMMENTS

MINUTES December 19, 2019 Regular Meeting.

CONSENT CALENDAR

1. Waive Full Reading of All Ordinances Introduced or Adopted Pursuant to this Agenda.
2. Final Acceptance of Citywide Rubberized Emulsion Aggregate Slurry (REAS) Project - CP 19-349.
3. Approval of Final Tract Map No. 34435 (Iridium).
4. Final Acceptance of Improvements for Parcel Map No. 32327 (Cielo Azul).
5. Extension of Completion Date for Parcel Map No. 36683 (Bruno Lemay).
6. Extension of Completion Date for Tract Map No. 36698 (Bravo Properties, Inc.).
7. Special Assistance Fund (SAF) Awards.
8. Contracts.
9. Demands.

PUBLIC HEARINGS

10. Consideration of a one-year Extension of Time for Tentative Tract Map No. 35573 (TTM2X35573), which consists of a 4.72-acre parcel to be subdivided into 20 single family residential lots, and the associated Preliminary Development Plan (PDP18001). The project is located on the south side of Mirage Cove Drive.

ACTION CALENDAR

11. Consideration of a Donation to Eisenhower Health.
12. Design Plans for Active Transportation and Roadway Improvements - Citywide Street Striping Plans (CP 19-354).
13. Ordinance No. (Next in Order), 1st Reading, Repealing and Replacing Chapter 9.30 ("Use of Library and Observatory") of Division III ("Offenses Against Public Peace") of Title 9 ("Public Peace, Morals and Welfare") of the Rancho Mirage Municipal Code Regarding the Public's Use of the Rancho Mirage Library and Observatory.
14. Ordinance No (Next in Order), 1st Reading, Adding Chapter 8.32 (Prohibition on the Sale of Electronic Cigarettes) to Title 8 (Health and Safety) of the Rancho Mirage Municipal Code to Prohibit the Sale and Distribution of Electronic Cigarettes.
15. Consideration of a Donation to Children's Discovery Museum of the Desert.

CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL - SIGNIFICANT EXPOSURE TO LITIGATION
Pursuant to Government Code Section 54956.9. One Potential Case:
Facts and Circumstances to be Announced at Meeting prior to Recessing into Closed Session.
2. CONFERENCE WITH LEGAL COUNSEL - POTENTIAL INITIATION OF LITIGATION
Pursuant to Government Code Section 54956.9(d) (4). (Three Potential Cases)
3. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(d)(1)
Case Name Unspecified: Disclosure of case name will jeopardize existing settlement negotiations

ADJOURNMENT

ⁱ People with disabilities are encouraged to attend. If you have special communication or access needs, please contact the City Clerk's office at (760) 324-4511 in advance of the meeting.

ⁱⁱ Staff reports for all agenda items considered in open session, and any writings or documents provided to a majority of the legislative bodies regarding any item on this agenda, are available for public inspection at City Hall, at the Rancho Mirage Library & Observatory, and on the City's website at www.RanchoMirageCa.gov.

Declaration of Posting:

I, Kristie Ramos, City Clerk of the City of Rancho Mirage, do hereby declare that a copy of the foregoing Meeting Notice/Agenda was personally delivered to the legislative bodies, posted in the City Hall posting box, at the Rancho Mirage Library & Observatory, and on the City website at least 72 hours in advance of the meeting.

K. Ramos
Signature

01/10/2020
Date



STAFF REPORT

TO: Mayor and City Council

DATE: January 16, 2020

FROM: Isaiah Hagerman, City Manager
Tyler Fowlkes, Administrative Analyst

SUBJECT: Ordinance Prohibiting the Sale and Distribution of Electronic Cigarettes

SPECIFIC REQUEST OR RECOMMENDATION

That the City Council introduce Ordinance No. (Next in Order) Adding Chapter 8.32 (Prohibition on the Sale of Electronic Cigarettes) to Title 8 (Health and Safety) of the Rancho Mirage Municipal Code to Prohibit the Sale and Distribution of Electronic Cigarettes.

JUSTIFICATION OR INFORMATION

Mayor Iris Smotrich has proposed that the City Council take action to address the issue of the negative health effects associated with the use of electronic cigarettes.

Electronic cigarettes are defined as any device or delivery system sold in combination with nicotine which can be used to deliver to a person nicotine in aerosolized or vaporized form. Electronic cigarettes are also known as or include e-cigarettes, e-cigars, e-pipes, vape pens, e-hookahs and electronic nicotine delivery systems ("ENDS"). Some electronic cigarettes look like regular cigarettes, cigars, or pipes and some look like USB flash drives, pens, and other everyday items.

It has been reported that electronic cigarettes are the most commonly used tobacco product among youth. In 2018, more than 3.6 million U.S. middle and high school students used e-cigarettes in the past 30 days. This figure includes 20.8% of high school students and 4.9% middle school students.

In 2009, Congress enacted the Family Smoking Prevention and Tobacco Control Act ("Tobacco Control Act") which authorized the U.S. Food and Drug Administration ("FDA") the authority to regulate the manufacture, distribution, and marketing of tobacco products. A central requirement of the Tobacco Control Act is to conduct a premarket review of all new tobacco products that were not commercially marketed in the United States as of February 15, 2007. A pre-market review determining the appropriateness of all new tobacco products for the protection of the public health is required before a product enters the marketplace. Virtually all electronic cigarettes sold today are considered "new tobacco products" which have not yet received pre-market review by the FDA to determine their appropriateness for public health. In the meantime, pending the FDA's review, electronic cigarettes are being marketed, sold and distributed across

JUSTIFICATION OR INFORMATION CONTINUED:

the country in an unregulated manner and without any solid scientific knowledge of the detrimental health effects the use of electronic cigarettes may have on both adults and children, albeit there have been a growing number of reports of children being hospitalized for respiratory problems some doctors suspect are related to the use of electronic cigarettes.

Pending the FDA's review of the health effects of electronic cigarettes, many cities across the country are taking a preempted role in regulating the sale and distribution of electronic cigarettes in the form of an absolute ban on their sale or distribution. Mayor Smotrich proposes that the City of Rancho Mirage do the same, which the City Council may rescind if the FDA concludes there are no negative health effects related to the use of electronic cigarettes or until such time the State or Federal governments preempt such local regulation.

Incidentally, the City Council adopted Riverside County Ordinance No. 838, which delegates the regulation and enforcement of the City's tobacco retailer permits to the County of Riverside Department of Environmental Health. Ordinance No. 838, however, does not address whether electronic cigarettes may be sold or distributed in the City of Rancho Mirage. Whether electronic cigarettes may be sold or distributed in the City is a decision reserved for the City Council.

In light of the foregoing, it is recommended that the City Council adopt the attached ordinance banning the sale and distribution of any electronic cigarette products within the City of Rancho Mirage.

ATTACHMENT(S):

1. Draft Ordinance Banning the Sale and Distribution of Electronic Cigarettes

ATTACHMENT 1
DRAFT ORDINANCE
(SEE ATTACHED)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO MIRAGE, CALIFORNIA, ADDING CHAPTER 8.32 (PROHIBITION ON THE SALE OF ELECTRONIC CIGARETTES) TO TITLE 8 (HEALTH AND SAFETY) OF THE RANCHO MIRAGE MUNICIPAL CODE TO PROHIBIT THE SALE AND DISTRIBUTION OF ELECTRONIC CIGARETTES

WHEREAS, the City of Rancho Mirage ("City") is a charter city and recognized for certain purposes as a political subdivision of the State of California; and

WHEREAS, the City Council desires to take preemptive action to address the issue of the potential negative health effects associated with the use of electronic cigarettes as reported by certain families, hospital officials and the media; and

WHEREAS, electronic cigarettes are defined as any device or delivery system sold in combination with nicotine which can be used to deliver to a person nicotine in aerosolized or vaporized form; and

WHEREAS, electronic cigarettes are also known as or include e-cigarettes, e-cigars, e-pipes, vape pens, e-hookahs and electronic nicotine delivery systems ("ENDS") and look like regular cigarettes, cigars, pipes, USB flash drives, pens and other everyday items; and

WHEREAS, it has been reported that electronic cigarettes are the most commonly used tobacco product among youth and that in 2018, more than 3.6 million U.S. middle and high school students used e-cigarettes in the past 30 days, which includes 20.8% of high school students and 4.9% middle school students; and

WHEREAS, in 2009, Congress enacted the Family Smoking Prevention and Tobacco Control Act ("Tobacco Control Act") which authorized the U.S. Food and Drug Administration ("FDA") the authority to regulate the manufacture, distribution, and marketing of tobacco products; and

WHEREAS, a central requirement of the Tobacco Control Act is to conduct a premarket review of all new tobacco products that were not commercially marketed in the United States as of February 15, 2007; and

WHEREAS, a pre-market review determining the appropriateness of all new tobacco products for the protection of the public health is required before a product enters the marketplace, and

WHEREAS, virtually all electronic cigarettes sold today are considered "new tobacco products" which have not yet received pre-market review by the FDA to determine their appropriateness for public health; and

WHEREAS, pending the FDA's review, electronic cigarettes are being marketed, sold and distributed across the country in an unregulated manner and without any solid scientific knowledge of the detrimental health effects the use of electronic cigarettes may have on both adults and children, albeit there have been a growing number of reports of children being hospitalized for respiratory problems some doctors suspect are related to the use of electronic cigarettes; and

WHEREAS, pending the FDA's review of the health effects of electronic cigarettes, many cities across the country are taking a preempted role in regulating the sale and distribution of electronic cigarettes in the form of an absolute ban on their sale or distribution; and

WHEREAS, the City Council adopted Riverside County Ordinance No. 838, which delegates the regulation and enforcement of the City's tobacco retailer permits to the County of Riverside Department of Environmental Health; and

WHEREAS, Ordinance No. 838, however, does not address whether electronic cigarettes may be sold or distributed in the City of Rancho Mirage. Whether electronic cigarettes may be sold or distributed in the City is a decision reserved for the City Council; and

WHEREAS, in light of the foregoing, the City Council may adopt an ordinance banning the sale and distribution of any electronic cigarette products, as defined in Section 30121 of the California Revenue and Taxation Code, as may be amended from time to time, within the City of Rancho Mirage; and

WHEREAS, Section 30121 (c) of the California Revenue and Taxation Code defines "electronic cigarettes" as any device or delivery system sold in combination with nicotine which can be used to deliver to a person nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah; and

WHEREAS, Section 30121 (c) of the California Revenue and Taxation Code further defines Electronic cigarettes include any component, part, or accessory of such a device that is used during the operation of the device when sold in combination with any liquid or substance containing nicotine; and

WHEREAS, Section 30121 (c) of the California Revenue and Taxation Code also provides that electronic cigarettes also include any liquid or substance containing nicotine, whether sold separately or sold in combination with any device that could be used to deliver to a person nicotine in aerosolized or vaporized form; and

WHEREAS, Section 30121 (c) of the California Revenue and Taxation Code also provides that electronic cigarettes do not include any device not sold in combination with any liquid or substance containing nicotine, or any battery, battery charger, carrying case, or other accessory not used in the operation of the device if sold separately; and

WHEREAS, Section 30121 (c) of the California Revenue and Taxation Code additionally provides that electronic cigarettes shall not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and sold solely for such approved use; and

WHEREAS, Section 30121 (c) of the California Revenue and Taxation Code finally provides that nicotine does not include any food products as that term is defined pursuant to Section 6359 of the California Revenue and Taxation Code.

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

Section 1. RECITALS

That the above Recitals are true and correct and are incorporated as though fully set forth herein.

Section 2. ADDING CHAPTER 8.32 (PROHIBITION ON THE SALE OF ELECTRONIC CIGARETTES) TO TITLE 8 (HEALTH AND SAFETY) OF THE RANCHO MIRAGE MUNICIPAL CODE TO PROHIBIT THE SALE AND DISTRIBUTION OF ELECTRONIC CIGARETTES

That Title 8 (Health and Safety) of the Rancho Mirage Municipal Code is hereby amended as follows:

CHAPTER 8.32

PROHIBITION ON THE SALE OF ELECTRONIC CIGARETTES

8.32.010 Prohibition.

No electronic cigarettes, as defined in Section 30121 of the California Revenue and Taxation Code, as may be amended from time to time, shall be sold or distributed in the City of Rancho Mirage.

8.32.020 No Conflict with Federal or State Law

Nothing in this Chapter 8.32 shall be interpreted or applied so as to create any requirement, power or duty that is preempted by federal or state law.

8.32.025 Violations—Permit Modification, Suspension and Revocation.

A violation of any provision of this chapter by the owner of any establishment or place of business within the city or any of the owner's employees, volunteers or independent contractors shall constitute grounds for modification, suspension and/or revocation of any affiliated business licenses or use permits pursuant to the provisions set forth in Chapter 14.170 (Permit and License Suspension, Modification and Revocation Procedures) of Title 14 of this code.

8.32.026 Violations—Notice of Violation.

The city may issue a notice of violation to the owner of any establishment or place of business within the city or any of the owner's employees, volunteers or independent contractors, pursuant to Chapter 14.70 (Notice of Violation) of this code, for violating any provision of this chapter.

8.32.027 Violations—Administrative Citation.

The city may issue an administrative citation to the owner of any establishment or place of business within the city or any of the owner's employees, volunteers or independent contractors, pursuant to Chapter 14.80 (Administrative Citation and Appeal Procedures) of this code, for violating any provision of this chapter. Nothing in this section shall preclude the city from also issuing an administrative citation upon the occurrence of the same offense on a separate day. Unless otherwise provided herein, any person issued an administrative citation pursuant to this chapter shall for each separate violation be subject to the following fines: (1) an administrative fine in an amount not to exceed five hundred dollars (\$500.00) for the first citation; (2) an administrative fine in an amount not to exceed one thousand dollars (\$1,000.00) for a second citation issued for the same offense within a twelve-month period of the date of the first offense; and (3) an administrative fine in an amount not to exceed one thousand five hundred dollars (\$1,500.00) for a third and any subsequent citation issued for the same offense within a twelve-month period of the date of the first offense.

8.32.028 Violations—Infraction.

The city may issue an infraction citation to the owner of any establishment or place of business within the city or any of the owner's employees, volunteers or independent contractors, pursuant to the provisions set forth in Chapter 14.100 (Infraction Violations) of this code, including, but not limited to, the imposition of any and all criminal penalties set forth therein if there is any violation of this chapter committed, caused or maintained by any of the above parties. Nothing in this section shall preclude the city from also issuing an infraction citation upon the occurrence of the same offense on a separate day. Unless otherwise provided herein, any person issued an infraction citation pursuant to this chapter shall for each separate violation be subject to the following fines: (1) a fine in an amount not to exceed five hundred dollars (\$500.00) for the first citation; (2) a fine in an amount not to exceed one thousand dollars (\$1,000.00) for a second citation issued for the

same offense within a twelve-month period of the date of the first offense; and (3) a fine in an amount not to exceed one thousand five hundred dollars (\$1,500.00) for a third and any subsequent citation issued for the same offense within a twelve-month period of the date of the first offense.

8.32.029 Violations—Public Nuisance.

It shall be a public nuisance for the owner of any establishment or place of business within the city or any of the owner's employees, volunteers or independent contractors to commit, cause or maintain a violation of this chapter, which shall be subject to the provisions of Chapter 14.120 (Notice of Public Nuisance and Order to Abate and Appeal Procedures) of this code.

Section 3. CITY ATTORNEY REVIEW

That the City Attorney prepared and framed this Ordinance pursuant to Section 1.04.010 of the Municipal Code and finds that the City Council has the authority to adopt this Ordinance, that the Ordinance is constitutionally valid and that the Ordinance is consistent with the general power and purposes of the City as set forth in Section 1.04.031 of the Municipal Code.

Section 4. SEVERABILITY

That the City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 5. REPEAL OF CONFLICTING PROVISIONS

That all the provisions of the Rancho Mirage Municipal Code as heretofore adopted by the City of Rancho Mirage that are in conflict with the provisions of this Ordinance are hereby repealed.

Section 6. AMENDING OF BAIL SCHEDULE

That the City Attorney's Office is hereby directed to determine whether this Ordinance necessitates amendment of the City's Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

Section 7. EFFECTIVE DATE

That this Ordinance shall take effect on the 30th day following its second reading by the City Council.

Section 8. CERTIFICATION

That the City Clerk shall certify to the passage hereof, and cause it to be posted as required by law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The foregoing Ordinance was approved and adopted at a meeting of the City Council held on _____, 20____, by the following vote:

Ayes:

Noes:

Abstain:

Absent:

CITY OF RANCHO MIRAGE

Iris Smotrich, Mayor

ATTEST:

Kristie Ramos, City Clerk

APPROVED AS TO FORM:

Steven B. Quintanilla, City Attorney