

**BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA, CALIFORNIA**

ORDINANCE NO. _____

**AN ORDINANCE AMENDING SANTA BARBARA COUNTY CODE
CHAPTER 37, TO REGULATE SMOKING AND USE OF TOBACCO PRODUCTS IN
RECREATIONAL AREAS**

The Board of Supervisors of the County of Santa Barbara does ordain as follows:

SECTION I. FINDINGS. The Board of Supervisors of the County of Santa Barbara hereby finds and declares as follows:¹

WHEREAS, tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs, as evidenced by the following:

- more than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death;² and
- secondhand smoke is responsible for an estimated 38,000 deaths among non-smokers each year in the United States, which includes 3,000 lung cancer deaths and 35,000 deaths due to heart disease;³ and
- secondhand smoke exposure causes as many as 300,000 children in the United States under the age of 18 months to suffer lower respiratory tract infections, such as pneumonia and bronchitis;⁴ exacerbates childhood asthma; and increases the risk of acute, chronic, middle-ear infections in children;⁵ and

¹ Each of the authorities identified in this model ordinance is available on-line or may be obtained from the Technical Assistance Legal Center at the address, phone, and e-mail address indicated on the title page of this model ordinance.

² U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Annual Smoking – Attributable Mortality, Years of Potential Life Lost, and Economic Costs – United States 1995-1999* MORBIDITY AND MORTALITY WEEKLY REPORT, 51(14), at 300-303 (2002), available at <http://www.cdc.gov/mmwr/PDF/wk/mm5114.pdf> (last accessed October 11, 2006).

³ Nat'l Cancer Inst., *NCI Health Information Tip Sheet for Writers: Secondhand Smoke* (2005), at <http://www.cancer.gov/newscenter/tip-sheet-secondhand-smoke> (last accessed October 11, 2006).

⁴ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002*, at 2 (2004), available at http://www.cdc.gov/nccdphp/aag/aag_osh.htm (last accessed October 18, 2006).

⁵ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Exposure to Environmental Tobacco Smoke and Cotinine Levels — Fact Sheet* (2004), available at http://www.cdc.gov/tobacco/research_data/environmental/factsheet_ets.htm (last accessed October 18, 2006).

- the United States Environmental Protection Agency has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen;⁶ and
- the U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke;⁷ and
- the California Air Resources Board has put 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;⁸ and
- the California Environmental Protection Agency has 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;⁹ and
- the medical and economic costs to nonsmokers suffering from lung cancer or heart disease caused by secondhand smoke are nearly \$6 billion per year in the United States;¹⁰ and
- the total annual cost of smoking in California was estimated at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone;¹¹ and

WHEREAS, creating smoke-free areas helps protect the 86% of Californians who are non-smokers;¹² and

WHEREAS, cigarette butts pose a health threat to young children, as evidenced by the following:

⁶ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Exposure to Environmental Tobacco Smoke and Cotinine Levels — Fact Sheet* (2004), available at http://www.cdc.gov/tobacco/research_data/environmental/factsheet_ets.htm (last accessed October 18, 2006).

⁷ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* 11 (2006), available at <http://www.surgeongeneral.gov/library/secondhandsmoke/report/chapter1.pdf> (last accessed Sept. 19, 2006).

⁸ Cal. Air Resources Bd., Resolution 06-01, at 5 (Jan. 26, 2006), available at <http://www.arb.ca.gov/regact/ets2006/res0601.pdf> (last accessed Oct. 6, 2006).

⁹ Cal. Env'tl. Prot. Agency, Office of Env'tl. Health Hazard Assessment, *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity*, at 8 and 17 (Aug. 11, 2006), available at http://www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf (last accessed Oct. 6, 2006).

¹⁰ American Academy of Actuaries, *Costs Associated with Secondhand Smoke*, October, 2006, available at http://www.actuary.org/pdf/health/smoking_oct06.pdf (last accessed October 11, 2006).

¹¹ Wendy Max, Dorothy P. Rice, Xiulan Zhang, Hai-Yen Sung, Leonard Miller, Cal. Dept. of Health Servs., *The Cost of Smoking in California, 1999*, at 76 (2002), available at <http://www.dhs.ca.gov/tobacco/documents/pubs/CostOfSmoking1999.pdf> (last accessed October 18, 2006).

¹² Tobacco Control Section, Cal. Dep't of Health Servs., *Adult Smoking Prevalence*, at 1, available at <http://www.dhs.ca.gov/tobacco/documents/pubs/AdultSmoking06.pdf> (last accessed October 18, 2006).

- in 2004, American poison control centers received nearly 8,000 reports of children poisoned by the ingestion of cigarette butts;¹³ and
- children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;¹⁴ and

WHEREAS, cigarette butts are a major and persistent source of litter, as evidenced by the following:

- it is estimated that over two billion cigarette butts are discarded every day worldwide, and that Americans alone discard more than 175 million pounds of cigarette butts every year;¹⁵ and
- cigarette butts are often cast onto sidewalk and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons and ultimately the ocean;¹⁶ and
- cigarette butts, made of plastic cellulose acetate, take approximately 15 years to decompose;¹⁷ and

WHEREAS, smoking is a leading cause of fires and deaths from fires, resulting in an estimated cost of nearly \$7 billion in the United States in 1998, and¹⁸

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions;¹⁹ and

WHEREAS, there is no Constitutional right to smoke;²⁰ and

[DO NOT PUBLISH FINDINGS]

¹³ Am. Ass'n of Poison Control Ctr. *Annual Report of the Toxic Exposure Surveillance System* at 645 (2004), available at <http://www.aapcc.org/Annual%20Reports/04report/AJEM%20-%20AAPCC%20Annual%20Report%202004.pdf> (last accessed October 23, 2006).

¹⁴ U.S. Dep't of Health and Human Servs., Center for Disease Control and Prevention, *Ingestion of Cigarettes and Cigarette Butts by Children – Rhode Island, January 1994-July 1996*, MORBIDITY AND MORTALITY WEEKLY REPORT, 46(06), at 125-128 (1997), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm> (last accessed October 18, 2006).

¹⁵ Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, at <http://www.surfridersd.org/hotyb.php> (last accessed October 18, 2006).

¹⁶ Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, at <http://www.surfridersd.org/hotyb.php> (last accessed October 18, 2006).

¹⁷ Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, at <http://www.surfridersd.org/hotyb.php> (last accessed October 18, 2006).

¹⁸ University of California Medical Center, News Release of data from, *Prevention Medicine, August 2000*, http://www.ucdmc.ucdavis.edu/news/smokingdisaster_costs.html, (last accessed February 11, 2010).

¹⁹ CAL. HEALTH & SAFETY CODE § 104495 (West 2003).

²⁰ Technical Assistance Legal Ctr., Pub. Health Inst., *There Is No Constitutional Right to Smoke* (2004), available at http://talc.phlaw.org/pdf_files/0051.pdf (last accessed October 20, 2006).

NOW THEREFORE, it is the intent of the Board of Supervisors, in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-smoking individuals, especially children; by protecting the public from exposure to tobacco and secondhand smoke where they play, exercise, and relax; by protecting the public from tobacco-related litter; by reducing the potential for children to wrongly associate smoking and tobacco with a healthy lifestyle; and by affirming and promoting a healthy family atmosphere in the County's recreational areas.

SECTION II. Santa Barbara Code Chapter 37, Sec. 37-3, Sec. 37-9 and Sec. 37-11 are amended and Sec. 37-5.1 is added to read as follows:

Article II. Definitions.

Sec. 37-3. Definitions.

(a) "Bar" means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental. When located within a building in conjunction with another use, including a restaurant, "bar" includes only those areas used primarily for the sale and service of alcoholic beverages. "Bar" does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

(b) "Camping Park" means any recreational area, public or private, where overnight stays are permitted and customary.

(c) "County" means the County of Santa Barbara.

(d) "County health officer" means the county health officer or the duly authorized designee of the county health officer.

(e) "Dining area" means any enclosed area containing a counter, or tables upon which food is served.

(f) "Enclosed building" means all space between a floor and ceiling which is enclosed on all sides by solid walls, or windows, or doors, which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid.

(g) "Park Employee Residence" means living quarters for Santa Barbara County Parks Department employees, located on County Park property.

(h) "Parking Area" means a parking lot or any other area designated or primarily used for parking vehicles of Persons accessing a Recreational Area.

(i) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity except the County of Santa Barbara.

(j) “Private smokers’ lounge” means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes.

(k) “Recreational Area” means any outdoor area, owned or operated by the County of Santa Barbara, open to the general public for recreational purposes, regardless of any fee or age requirement, including, but not limited to: parklands, including portions of parks, such as picnic areas, playgrounds, or sports fields; walking paths; gardens; hiking trails; bike paths; horseback riding trails; athletic fields; skateboard parks; amusement parks; and beaches.

(l) “Restaurant” means any coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria or eating establishment, boardinghouse, or guest house, which gives or offers for sale food to the public, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined previously in this section.

(m) “Retail or wholesale tobacco shop” means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.

(n) “Self-service display” means open display of tobacco products and point-of-sale tobacco promotional products that the public has access to without the intervention of an employee.

(o) “Service line” means any line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

(p) “Smoking” and to “Smoke” means possessing a lighted Tobacco Product, lighted Tobacco Paraphernalia, or any other lighted weed or plant (including a lighted pipe, cigar, hookah pipe, or cigarette of any kind), and means the lighting of a Tobacco Product, Tobacco Paraphernalia, or any other weed or plant (including a pipe, cigar, hookah pipe, or cigarette of any kind).

(q) “Sports arena” means outdoor or non-enclosed sports pavilions, stadiums, swimming pools, roller rinks, and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events, including the concession-stand areas thereof.

(r) “Tobacco Product” means any substance containing tobacco leaf, and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

(s) “Tobacco vending machine” means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, bills, trade checks or slugs.

(t) “Vendor-assisted” means that only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.

Article IV. Regulation of Smoking in Public Places and Recreational Areas

Sec. 37-5.1 Regulation of Smoking and use of Tobacco Products in Recreational Areas

(a) No Person shall Smoke or use Tobacco Products anywhere in a Recreational Area, except as provided in subsection (c) below.

(b) Nothing in this article shall be construed to prohibit Smoking or use of Tobacco Products in any area in which such Smoking or use of Tobacco Products is already prohibited by state or federal law unless the applicable state or federal law does not preempt additional local regulation.

(c) Smoking and use of Tobacco Products is only permitted in the following locations:

(1) Camping Parks

(2) Within 30 feet of any Park Employee Residence

(d) Other requirements and prohibitions:

(1) No ash can, ashtray, or other Smoking or Tobacco Product waste receptacle shall be placed in any area in which Smoking and the use of Tobacco Products are prohibited by this Section.

(2) No Person shall knowingly permit Smoking or use of Tobacco Products in an area under the Person’s legal or de facto control in which Smoking and use of Tobacco Products are prohibited by this Section.

(3) The presence of Smoking or Tobacco Product waste receptacles in violation of subsection (1) above and the absence of signs required by Article VII shall not be a defense to a violation of any provision of this Section.

(4) No Person shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another Person who seeks to attain compliance with this Section.

(5) Each instance of Smoking or use of Tobacco Products in violation of this Section shall constitute a separate violation. Each day of a continuing violation of this Section shall constitute a separate violation.

Article VII. Posting of Signs

Sec. 37-9. Signs.

"Smoking" or "no smoking" signs, whichever are appropriate, with letters of not less than one inch in height, or the international "no smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted at each entrance to every building or other place where smoking is regulated by this chapter, by the owner, operator, manager or other person having control of such building or other place. For Recreational Areas such signs shall be clearly and conspicuously posted and maintained at all main entrances to a Recreational Area and additional signs shall be posted in a quantity and manner reasonably likely to inform individuals occupying the Recreational Area that Smoking and use of Tobacco Products are prohibited within the area.

Article VIII. Enforcement

Sec. 37-11. County health officer.

(a) The county health officer or his/her designee shall enforce and implement the ordinance codified in this chapter, and shall aid the city administrators/managers of municipalities within the county in their duties under similar ordinances. Additionally, the county health officer or his/her designee shall enforce the provisions of Labor Code Section 6404.5.

(b) The county health officer or his/her designee, county park rangers or law enforcement officers shall enforce Sec. 37-5.1 of this Chapter regarding the Regulation of Smoking and use of Tobacco Products in Recreational Areas.

All other provisions of Chapter 37 shall remain in effect.

SECTION III. STATUTORY CONSTRUCTION & SEVERABILITY.

It is the intent of the Board of Supervisors of the County of Santa Barbara to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance.

SECTION IV.

This ordinance shall take effect and be in force thirty (30) days from the date of its passage; and before the expiration of fifteen (15) days after its passage it, or a summary of it, shall be published once, in the Santa Barbara News Press, the Santa Maria Times and the Lompoc Record, which are newspapers of general circulation, published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED this day of , 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chair, Board of Supervisors

ATTEST:

MICHAEL BROWN
CLERK OF THE BOARD

By _____
Deputy

[DO NOT PUBLISH APPROVAL]

TAKASHI MICHAEL WADA, MD, MPH
DIRECTOR/HEALTH OFFICER
PUBLIC HEALTH DEPARTMENT

DANIEL C. HERNANDEZ
DIRECTOR
PARKS DEPARTMENT

By _____

By _____

APPROVED AS TO FORM:

DENNIS A. MARSHALL,
COUNTY COUNSEL

By _____
Deputy County Counsel