



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Public Health
Department No.: 041
For Agenda Of: July 7, 2015
Placement: Department
Estimated Time: 1 hour
Continued Item: Yes
If Yes, date from: June 2, 2015
Vote Required: Majority

TO: Board of Supervisors
FROM: Board Member & Department Director
Contact Info: Second District, Supervisor Janet Wolf, Chairperson
Takashi Wada, MD, MPH, Public Health Director/Health Officer
Mary O’Gorman, Second District Chief of Staff, 568-2191
Dawn M. Dunn, MPH, Tobacco Prevention Program, 681-5407
SUBJECT: Consideration of Amendments to County Code, Chapter 37 – Tobacco Control

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence Human Resources

As to form: Yes

Recommended Actions: That the Board of Supervisors considers the following recommendations regarding amendments to the Tobacco Control Ordinance:

1. Introduce Ordinance amendments (first reading) amending Chapter 37 of the Santa Barbara County Code – Tobacco Control Ordinance to include tobacco products and electronic smoking devices to existing regulations and expand these regulations (Attachment 4).
2. Read the titles and waive the reading of the Ordinances in full.
3. Continue to the administrative agenda on July 21, 2015 to consider adoption of Ordinance Amendments (second reading) amending Chapter 37 of the Santa Barbara County Code – Tobacco Control Ordinance (Attachment 4).
4. Determine that adoption of the Ordinance is exempt from California Environmental Quality Act (CEQA) review pursuant to CEQA guidelines section 15307 and 15308, in that the actions are for the protection of natural resources and the environment.

Summary Text:

The Board is being asked to consider the adoption of amendments to Chapter 37 of the County Code that would increase restrictions on smoking and the use of tobacco products in enclosed and unenclosed public places and places of employment. The proposed changes and existing restrictions related to

smoking and tobacco products also apply to the use of electronic smoking devices and the manner in which these products are sold and distributed.

Background:

In the last 50 years since the United States (U.S.) Surgeon General published the first Report linking smoking and disease, 31 subsequent Reports have been released. Each has concluded that cigarette smoking has caused an enormous, avoidable public health crisis. The scientific evidence is incontrovertible: inhaling tobacco smoke, mainly from cigarettes, leads to death and disease and negatively affects virtually every organ in the body. Secondhand smoke exposure also causes illness and death in healthy nonsmokers. The separation of smokers and nonsmokers doesn't eliminate these risks.

In addition to the public health threats from the byproducts of combustible tobacco – electronic cigarettes, a new nicotine delivery system has emerged which are likely to pose their own health and safety concerns. Electronic cigarettes go by many names, e.g., e-cigs, hookah pens, personal vaporizers, etc. All electronic (e) cigarettes are battery powered devices that allow users to inhale a vapor containing nicotine or other substances. “Smoking” this type of device is known as “vaping”. These products will be referred to as electronic smoking devices (ESDs), whether they deliver nicotine or other substances and may be used synonymously with e-cig or cigarette.

The use of electronic cigarettes and vaporizing devices has skyrocketed. Of paramount concern is the increase in youth use. According to a press release by the Campaign for Tobacco-free Kids (January 2015) calls jumped 156% since 2011 with the data for each consecutive year as listed (271, 460, 1,543 & 3,957) and the death of a child was reported in New York in December 2014. At least 16 renowned health and civic organizations have developed position papers on ESDs, which recommend tobacco control best practices. Proposed amendments are in line with these documents.

Electronic smoking devices have not been approved by the U. S. Food and Drug Administration (FDA) for smoking cessation. U.S. Public Health Services Clinical Practice Guidelines: Treating Tobacco Use and Nicotine Dependence remains the preeminent authority of best practice for cessation – and they recommend the use of one or more of the seven FDA approved medications. Additionally, the FDA has expressed concerns about the safety of ESDs following their own testing in which they reported that some devices contain toxins and carcinogens. Subsequent scientific studies have also raised concern about the safety of electronic smoking devices to bystanders who involuntarily inhale their emissions. All this research is in its infancy, but it is clear that more findings are needed prior to making conclusions that these products are harmless. With limited data, caution is recommended by leading agencies.

In considering the proposed changes to the existing County ordinance, an orientation to the existing state statutes is informative. California state laws related to the proposed amendments are summarized below:

- a. No smoking in most enclosed places of employment (*Labor Code, Sec. 6404.5*);
- b. No smoking within 20 feet of main entrances and exits of government buildings (*Government Code, Sec. 7596-7598*);
- c. No smoking within 25 feet of a public playground or tot lot (*Health & Safety Code, Sec. 104495*);
- d. No tobacco products may be sold by means of a self-service display, except in tobacco retail shops as defined by Labor Code 6404.5 (*Business & Professions Code, Sec. 22958, 22960 & 22962 – STAKE Act*);
- e. No vending machines except in bars and must be 15 feet from the main entrance (*Business & Professions Code, Sec., 22960, 22958 & 22957 – STAKE Act*);

- f. No distribution or promotion of tobacco products or paraphernalia on property open to the public, with exceptions for adult-only venues with security and based on proximity to schools (*Health & Safety or Sec., 118950 & Code of Regulations, Title 18, Sec., 4081*); and
- g. No smoking within 25 feet of the common commerce area of certified farmers' markets that sell meat, poultry or fish products (*Health & Safety or Sec., 114349 & 114371*).

Proposed amendments to Santa Barbara County Ordinance Chapter 37, Tobacco Control are:

- Expansion of the "Findings" to reflect the research on electronic smoking devices.
- Updates of "Definitions" -- deleting eight (8), adding 13 and editing nine (9).
- Clarification of the "Purpose" for the law, primarily adding its intent to:
 - Regulate all tobacco products and electronic smoking devices locally; and
 - Emphasize the environmental protection aspects of the law.
- Organization of prohibitions and exceptions for clarity and comprehensiveness.

On May 19, 2015, the Board approved [Administrative Item A-25](#) that set a first reading (June 2) and second reading (June 16) for your consideration of amendments to Chapter 37 of the County Code. On May 20, 2015, the Board received comments about the proposed amendments from legal counsel representing the National Association of Tobacco Outlets (NATO).

The NATO comments concerned:

- Definitions of tobacco retail and electronic smoking device shops,
- Conditions applied to tobacco retail and electronic smoking device shops,
- Consideration of tobacco retail and electronic smoking devices shops as adult-only venues, and
- Expansion of smoking restrictions to the use of tobacco products and electronic smoking devices.

County Counsel recommended that the item be withdrawn from consideration on June 2nd to allow time to address NATO's comments. A memo was filed with the Clerk of the Board (May 22) requesting that this item be withdrawn and an announcement to this effect was made at your May 26th meeting.

The issues raised by NATO resulted in minor changes to the proposed amendments to Chapter 37 of the County Code (Attachment 3). Specifically, two (2) definitions and two (2) sections were amended as detailed below:

1. Revised the definitions of Electronic Smoking Device Shop (Sec. 37-3(h)) and Tobacco Retail Shop (Sec. 37-3 (w)) by replacing the word "income" with "revenue".
2. Revised the definition of the Tobacco Retail Shop (Sec. 37-3(w)) to exclude the sale of electronic smoking device products and paraphernalia from the calculation of gross revenue.
3. Revised Sec. 37-4 (a)(2)(D) to allow the sale of food and beverages in Tobacco Retail Shops and revised the conditions for allowing the use of tobacco products and electronic smoking devices in Tobacco Retail Shops. These conditions are:
 - a. No edible food or beverages are prepared on site,
 - b. Pre-packaged food or beverages may be sold for consumption offsite only, and
 - c. All persons under the minimum age for purchasing tobacco products in California are prohibited from entering the shop at all times.
4. Revised Sec. 37-4 (a)(2)(E) to allow the sale of food and beverages and the use of electronic smoking devices in Electronic Smoking Device Shops, so long as conditions a, b and c listed above, are met.

Public Health continues to recommend expansion of smoking restrictions to include all tobacco products and electronic smoking devices. These inclusive restrictions have been in effect since 2010 at County

parks, beaches and trails as per Sec. 37-5.1 and these are consistent with regulatory action in numerous counties and cities statewide.

The following grid compares the proposed and current ordinance. Similar modifications have been made to the presentation (Attachment 2) and the strikethrough version of current County Code (Attachment 3). Many provisions of the county law are considerably stronger than state statute.

Proposed Change	Current County Code
1. Regulates Smoking, Tobacco Product & Electronic Smoking Device (ESD) use	1. Regulates Smoking only, except Tobacco/ESDs are prohibited in County Parks* & few departmental sites
2. Prohibits Smoking & Tobacco/ESD use surrounding County** facilities, including parking lots	2. Inconsistent Smoking regulations outside County sites: <ul style="list-style-type: none"> • Prohibited: Courts & District Attorney & Parks* • Limited areas: Public Health, ADMHS & Social Services • 20 feet from an area/building where smoking is prohibited • Department Head & CEO may prohibit at entire site
3. Regulates Smoking & Tobacco/ESD use: <ul style="list-style-type: none"> • Prohibits in all Outdoor Dining Areas • Restrictions on Bar patios include ESD emissions 	3. Regulates Smoking: <ul style="list-style-type: none"> • Prohibits on 75% of outdoor seating areas at restaurants & restaurant-bars provided that smoke doesn't enter adjacent worksites or residences • Allows use in all bar patios provided that smoke doesn't drift into areas specified above
4. Prohibits Smoking & Tobacco/ESD use at Public Events (festivals, fairs, parades, etc.)	4. Not regulated
5. Prohibits Smoking & Tobacco/ESD use at construction sites	5. Not regulated
6. Prohibits Smoking & Tobacco/ESD use at common outdoor areas of multi-unit residences (pools, tot lots, etc.)	6. Not regulated
7. Requires Tobacco/ESD Products & Paraphernalia to be behind counter or out of customer reach where they are sold	7. Requires Tobacco Products & Paraphernalia to be behind counter or out of customer reach where they are sold, except in tobacco retail shops as defined by state law
8. Prohibits free distribution & promotion of Tobacco/ESD Products & Paraphernalia on property open to the public	8. Regulated by the State (See "f" in list of state laws above)
9. Specifies food-service restrictions in Tobacco Retail Shops & ESD Retail Shops	9. Implies food-service restrictions in tobacco retail shops based on Labor Code 6404.5 mandates

* County Parks exceptions are Lake Cachuma, Jalama Beach & within 30 feet of a Park Employee residence. Tobacco products and electronic smoking devices that contain nicotine are also included in these prohibitions.

** Three local unions (SEIU Local 620, 721 and Deputy Sheriff's Association) have met and conferred over this issue. Certain employees will be exempt from elements of this provision under specific circumstances.

The recommended actions are designed to prohibit electronic smoking device use in traditionally smoke-free environments and limit ease of access in retail settings. Based on the evidence, the proposed changes to Chapter 37 are necessary to protect nonusers, including children and vulnerable populations, from passive inhalation of chemicals and are aligned with the goals of the County of Santa Barbara.

Fiscal and Facilities Impacts:

Budgeted: Yes **Fiscal Analysis:**

Narrative: There is no General Fund impact with the approval of this action. Approval of this action would generate the need for signage at specific county sites. The estimated cost of \$7,200 is currently included in the Tobacco Prevention program of the Public Health Department’s adopted FY 15-16 budget.

Key Contract Risks:

N/A

Staffing Impacts:

Legal Positions:
0

FTEs:
0

Special Instructions:

1. Request the Planning and Development Department to post the Notice of Exemption (Attachment 5) for the ordinance in the County Planning and Development Department at least six (6) days prior to consideration of the activity by the Board of Supervisors to comply with the County CEQA guidelines.
2. Request the Clerk of the Board to publish in a newspaper, within 15 days of passage of the ordinance, the ordinance along with names of members voting for and against the ordinance, in accordance with Government Code section 25124(a).
3. Please provide one adopted ordinance and a copy of the minute order. When ready for pick-up, please contact PHDCU@sbcphd.org.

Attachments:

1. Notice of Public Hearing (Attachment 1)
2. PowerPoint presentation on proposed amendments to Chapter 37 and electronic smoking devices (Attachment 2)
3. Mark-Up Version of County Code, Chapter 37 (Attachment 3)
4. Ordinance amending Santa Barbara County Code, Chapter 37 – Tobacco Control Ordinance (Attachment 4)
5. CEQA Notice of Exemption (Attachment 5)

Authored by:

Dawn M. Dunn, M.P.H., Tobacco Prevention Settlement Program Coordinator

cc:

Jerry Czuleger, Senior Deputy County Counsel
Bob MacLeod, Employee Relations Division, Human Resources
Sam Gross, Chief Deputy, Sheriff Department