

~~AN ORDINANCE AMENDING SANTA BARBARA COUNTY CODE -- CHAPTER 37 --
TO REGULATE SMOKING, AND USE OF TOBACCO PRODUCTS IN
RECREATIONAL AREAS, AND ELECTRONIC SMOKING DEVICE TOBACCO
CONTROL ORDINANCE~~

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

~~ARTICLE:~~

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~~SECTION 1.~~

The Board of Supervisors of the County of Santa Barbara ordains as follows:

This Ordinance, 20015 Ordinance No. 4437XXXX, amends Chapter 37 of the County Code of the County of Santa Barbara, the Tobacco Control Ordinance, to read as follows:

ARTICLE I. FINDINGS AND PURPOSE

Sec. 37-1. FINDINGS~~**Sindings.**~~

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does occur at significant levels outdoorsⁱ; and

WHEREAS, irritation from secondhand smoke begins at levels as low as 4 micrograms per cubic meter, and in some outdoor situations this level can be found as far away as 13 feet from the burning cigaretteⁱⁱ; and

WHEREAS, electronic smoking devices' vapor emissions and cartridge contents have found a number of dangerous substances^{iii, iv} including chemicals known to the State of California to cause cancer^{v, vi} such as formaldehyde, acetaldehyde, lead, nickel, and chromium^{vii, viii, ix}; and

WHEREAS, exposure to vapor from electronic smoking devices may cause passive or secondhand vaping^{iii, vii, x, xi}; and

WHEREAS, the use of electronic smoking devices threatens to undermine compliance with smoke-free regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment;^{xii} and

WHEREAS, clinical studies about the safety and efficacy of electronic smoking devices have not been submitted to the FDA^{xiii, xiv}; consumers currently have no way of knowing^{xv} the concentrations of harmful chemicals these devices contain or the nicotine dose they deliver; and

WHEREAS, the California Health Officer stated that the use of electronic smoking devices has led to a new generation of young people addicted to nicotine, accidental poisonings, and involuntary exposure to secondhand aerosol emissions that impact the public's health^{xvi}; and

WHEREAS, the World Health Organization has strongly advised consumers against the use of electronic smoking devices until they are "deemed safe and effective and of acceptable quality by a competent national regulatory body"^{xvii}; and

WHEREAS, there are serious public safety concerns related to electronic smoking device use, as evidenced by an increase in calls to the United States Poison Control Center^{xviii} and an infant's death from ingesting the liquid nicotine found in electronic smoking devices^{xix}; and

WHEREAS, the World Medical Association has determined that electronic smoking devices "are not comparable to scientifically-proven methods of smoking cessation" and that "neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established"^{xx}; and

WHEREAS, use of electronic smoking devices has surpassed the use of cigarettes among teenagers^{xxi}; and

WHEREAS, over 59 jurisdictions within California require retailers to obtain a license to sell electronic smoking devices^{xxii} and at least 44 local jurisdictions in California prohibit the use of electronic smoking devices in specific locations^{xxiii}; and

WHEREAS, the use of electronic smoking devices is not associated with successful quit attempts to quit smoking^{iii, xxiv} and the FDA has not approved any electronic smoking device as a safe or effective method to help smokers quit^{xxv}; and

WHEREAS, the use of electronic smoking devices is not associated with successful quit attempts to quit smoking^{iii, xxvi} and the FDA has not approved any electronic smoking device as a safe or effective method to help smokers quit^{xxvii}; and

WHEREAS, the state smoke-free workplace law does not expressly prohibit the use of electronic smoking devices in enclosed workplaces; and

WHEREAS, as of 2014, there are at least 328 California cities and counties with local laws restricting smoking in recreational areas, 119 with smoke-free outdoor dining laws, and 45 that restrict smoking on sidewalks in commercial areas^{xxviii}.

Sec. 37-2 PURPOSEurpose. ~~The Ordinance is enacted with the specific intent to:~~

California state laws regulates where smoking is prohibited in certain enclosed places of employment (California Labor Code Section 6404.5) and in a few limited unenclosed public places (California Government Code Sections 7596-7598, California Health and Safety Code Section 104495). These state statutes do not preempt local governments from adopting stronger regulations in these places. This Chapter is enacted with the specific intent of increasing these prohibitions as generally outlined below:

- (a) Expand the prohibition of smoking in enclosed places of employment and certain unenclosed public places not regulated by the state statutes listed above;
- (b) Extend the prohibitions of this Chapter to the use of tobacco products and electronic smoking devices;
- (c) Protect the public health, safety and general welfare by prohibiting smoking and the use of tobacco and electronic smoking devices in certain enclosed and unenclosed places;
- (d) Insure a cleaner, more hygienic environment for its residents and visitors, and its natural resources, including creeks, waterways and wetlands;
 - (a) Prohibit smoking in certain public places not preempted by. California Labor Code Section 6404.5. (Labor Code 6404.5 is a comprehensive smoking regulation which prohibits smoking in most enclosed places of employment. Labor Code 6404.5 is effective January 1, 1995);
- (b)(e) Regulate the manner in which tobacco products and electronic smoking devices and related paraphernalia are sold;
- (e)(f) Guarantee the right ~~of non-smokers~~ to breathe air smoke-free ~~air of smoke or emissions from tobacco products and electronic smoking devices~~, specifically recognizing that the need to breathe smoke-free air has priority over the desire to smoke, use tobacco products or electronic smoking devices; and
- (g) Designate the enforcing agency for this ~~Chapter ordinance~~ and for Labor Code Section 6404.5 and other pertinent state and federal regulations.

~~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.

The following words and phrases, whenever used in this Chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

- (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) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity formed for profit-making or non-profit purposes.

(c) "Camping Park" means any "Recreational Area", public or private, where overnight stays are permitted and customary.

~~(e)~~(d) "Common Area" means every area of a "Multi-Unit Residence" that residents of more than one (1) Unit of that "Multi-Unit Residence" are entitled to enter or use, including but not limited to, halls, paths, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages and lots, and shared restrooms, laundry rooms, cooking areas and eating areas.

~~(d) "County" means the County of Santa Barbara.~~

~~(e) "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 including streets and sidewalks, which is available to or customarily used by the general public or an "Employee", and which is designed, established, or regularly used for consuming food or drink.

(f) "Electronic Smoking Device" means an electronic device which can be used to deliver an inhaled dose of nicotine or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar or cigarillo, electronic pipe, electronic hookah or any other product name or descriptor.

(g) "Electronic Smoking Device Paraphernalia" means cartridges, cartomizers, e-liquid, smoke juices, tips, atomizers and any other item specifically designed for the preparation, charging, or use of "Electronic Smoking Devices".

(h) "Electronic Smoking Device Retail Shop" means any "Business" that derives more than seventy-five percent (75%) of their gross revenue from the sale or exchange of "Electronic Smoking Devices" or "Electronic Smoking Device Paraphernalia".

(i) "Employee" means any "Person" who is employed or retained as an independent contractor by any "Employer" in consideration for direct or indirect monetary wages or profit, or any "Person" who volunteers his or her services for an "Employer".

(j) "Employer" means any "Business" or nonprofit entity that retains the service of one or more "Employees".

~~(f)~~(k) "Enclosed Building Area" means an area in which outside air cannot circulate freely to all parts, and includes an area that has: 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.

(1) any type of overhead cover whether or not that cover includes vents or other openings and at least three (3) walls or other vertical constraint to airflow including, but not limited

to, vegetation of any height whether or not those boundaries include vents or other openings; or

(2) four (4) walls or other vertical constraints to airflow including, but not limited to, vegetation that exceeds six (6) feet in height whether or not those boundaries include vents or other openings.

(l) "Multi-Unit Residence" means property containing two (2) or more Units, except the following specifically excluded types of housing^{xxix}:

(1) a hotel or motel that meets the requirements set forth in California Civil Code Section 1940(b)(2) or; and

(2) a single-family home with a detached or attached second dwelling Unit when permitted pursuant to California Government Code Sections 65852.150 and 65852.2 or an ordinance of the County of Santa Barbara adopted pursuant to those Sections.

(m) Nominal Cost" means the cost of any item imposed for the transfer from one (1) "Person" to another for less than the total of:

(1) Twenty-five (25%) of the fair market value of the item exclusive of taxes and government fees; plus

(2) All taxes and government fees previously paid and fees still due at the time of transfer.

(n) "Non-sale Distribution" means to give, or cause or allow to be given within the jurisdictional limits of the County a "Tobacco Product", "Tobacco Product Paraphernalia", "Electronic Smoking Device" or "Electronic Smoking Device Paraphernalia" at no cost or "Nominal Cost" to a "Person".

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

~~(g)(p)~~ "Place of Employment" means any area under the legal or de facto control of an "Employer" that an "Employee" or the general public may have cause to enter in the normal course of the operations, regardless of the hours of operation, and includes a private residence required to be licensed as family day care home under California law.

~~(h) "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.~~

~~(i)(q)~~ ~~(k)~~ "Recreational Area" means any outdoor area, owned, controlled or operated by the County of Santa Barbara and, open to the general public for recreational purposes, regardless of any fee or age requirement. The term "Recreational Area" includes, but is not limited to: parklands; including portions of parks, such as picnic areas; gardens; playgrounds; or athletic or sports fields; arenas or venues; golf courses; walking or bike paths; hiking or horseback riding trails; bike paths; horseback riding trails; swimming pools; skating rinks, athletic fields; skateboard and amusement parks; amusement parks; and beaches.

~~(j) "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.~~

~~(k) “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.~~

~~(r) (i) “Self-Service Displays” means an open display point of sale or promotional display of “Tobacco Products”, “Tobacco Product Paraphernalia”, “Electronic Smoking Devices” or “Electronic Smoking Device Paraphernalia” or and point of sale Tobacco or “Electronic Smoking Device” promotional Products or related Paraphernalia that the public has access to without the intervention of an “Employee”. A vending machine is a form of “Self-Service Display”.~~

~~(s) —(j) “Service LineArea” means any line at which publicly or privately owned area, including streets and sidewalks that is designed to be used or is regularly used by one (1) or more “Persons” are waiting for or to receiving a service, wait to receive a service, or to make a transaction, of any kind, whether or not such service or transaction involves the exchange of money. The term “Service Area” includes but is not limited to areas including or adjacent to information kiosks, ATMs, ticket lines, bus stops or shelters, or cab stands.~~

~~(t) —(k) “Smoking” means possessing inhaling, exhaling, burning or carrying any lighted, heated or ignited “Tobacco Products”, lighted “Tobacco Product Paraphernalia”, “Electronic Smoking Devices” or Electronic Smoking Device or 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) intended for human inhalation.~~

~~(u) “Tobacco Paraphernalia” shall mean cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for smoking, preparation, storing or consumption of “Tobacco Products”.~~

~~(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) —(l) “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.~~

~~(v) —(r) “Tobacco Product” means:~~

~~(1) Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including but not limited to cigarettes, cigars, cigarillos, chewing tobacco, pipe or hookah tobacco, snuff or Snus;~~

~~(2) Any “Electronic Smoking Device” that delivers nicotine to the person inhaling from the device, including but not limited to an electronic cigarette, cigar, pipe, or hookah, and;~~

~~(3) Any component, part, or accessory of a “Tobacco Product” whether or not sold separately. “Tobacco Product” 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 as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose in treating~~

~~nicotine or tobacco dependence.~~

~~(w) "Tobacco Retail Shop" means any "Business" that derives more than seventy-five percent (75%) of their gross revenue from the sale or exchange of "Tobacco Products" and "Tobacco Product Paraphernalia", excluding "Electronic Smoking Devices" and "Electronic Smoking Device Paraphernalia".~~

~~(x) "Unenclosed Area" means any area that is not an "Enclosed Area".~~

~~— (n) "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.~~

~~— (o) "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 III. APPLICATION OF ORDINANCE TO FACILITIES AND VEHICLES OWNED, LEASED, OR ADMINISTERED BY THE COUNTY IN ENCLOSED AND UNENCLOSED PLACES OF EMPLOYMENT.

Sec. 37-4. PROHIBITION OF SMOKING, USE OF TOBACCO PRODUCTS AND ELECTRONIC SMOKING DEVICES IN ENCLOSED AREAS. County Buildings and Vehicles.

~~(a) Smoking and the use of Tobacco Products and Electronic Smoking Devices shall be prohibited in Enclosed Areas of the following places within the unincorporated area of the County of Santa Barbara.~~

~~(1) Enclosed Common Areas of Multi-Unit Residences; and~~

~~(2) Enclosed Places of Employment, except the following:~~

~~(A) Sixty-five (65%) of hotel and motel guest rooms;~~

~~(B) Cabs of motor trucks; as defined in Section 410 of the Vehicle Code, or truck tractors, as defined in Section 655 of the Vehicle Code, if no non-smoking employees are present;~~

~~(C) Theatrical production sites, as a part of the production, if smoking is an integral part of the story, and the use of a fake, prop or special effect cannot convey the idea of Smoking to a reasonable member of the anticipated audience;~~

~~(A)(D) Tobacco Retail Shops may allow the use of Tobacco Products and Electronic Smoking Devices, if all the following provisions are met:~~

1. No food and beverages are prepared on site;
2. Pre-packaged food or beverages may be sold for consumption offsite only; and
3. Minors-All Persons under the minimum age for purchasing Tobacco Products in the State of California are prohibited from entering the Shop at all times.

(E) Electronic Smoking Device Retail Shops may allow the use of Electronic Smoking Devices, including Electronic Smoking Devices that contain nicotine, but not Tobacco Products, if all of the following provisions are met.

1. No food and beverages are prepared on site;
2. Pre-packaged food or beverages may be sold for consumption offsite only; and
3. All Persons under the minimum age for purchasing Tobacco Products in the State of California ~~Minors~~ are prohibited from entering the Shop at all times.

(F) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted, and;

(G) Private residences, except for private residences licensed as family day care homes, where smoking is prohibited by Health and Safety Code, See: Section 1596.795 of Health and Safety Code. and Labor Code 6404.5. (California Health Safety Code, Sec. 1596.795 & LC 6404.5 of the Health and Safety Code.)

~~Smoking is prohibited in all enclosed buildings and all vehicles, owned, leased or administered by the County. Smoking is also prohibited in the following non-enclosed areas owned, leased or administered by the County:~~

~~(A) Jails;~~

- ~~• Disposal facilities and/or disposal areas as defined in Chapter 17 of this Code;~~
- ~~• Areas in which a County department head requests and the County Administrator designate as non-smoking;~~
- ~~• Within 20 feet of any County building or area where smoking is prohibited. Ashtrays or any other receptacle used to dispose of burning tobacco products shall be prohibited within 20 feet of any County building;~~
- ~~• All non-enclosed areas at the Public Health, Alcohol, Drug and Mental Health Services and Social Service Department facilities with the exception of areas specifically designated for smoking.~~
- ~~• All non-enclosed areas in any County Court and District Attorney Office and the non-enclosed areas surrounding these buildings as designated below:~~

~~(o) Santa Barbara County Superior Court (Anacapa Division), 1100 Anacapa Street and District Attorney Office, 1105 Santa Barbara Street—smoking is prohibited on the entire city block, except for the sidewalks which surround the perimeter of the facility.~~

~~(p) Santa Barbara County Superior Court (Figueroa Division) and District Attorney Office, 118 East Figueroa Street—smoking is prohibited in all non-enclosed areas, including the front entryway area, upstairs walkways, the side alley and rear parking lot. Smoking is only permitted on the sidewalk along Figueroa Street.~~

~~(q) Santa Barbara County Superior Court, 1108 Santa Barbara Street—smoking is prohibited in all non-enclosed areas, including but not limited to the front entryway area and adjacent parking lot. Smoking is only permitted on the sidewalk along Santa Barbara Street.~~

~~(r) Santa Barbara County Superior Court (Santa Maria Division) and District Attorney Office, 312 East Cook Street—smoking is prohibited in all non-enclosed areas, including but not limited to all walkways, lawn areas and parking lot. Smoking is only permitted on the adjacent sidewalks along Cook and Miller Streets.~~

- ~~(s) Santa Barbara Juvenile Court, 4500 Hollister Avenue—smoking is prohibited in all non-enclosed areas, including but not limited to all walkways and the parking lot.~~
- ~~(t) Santa Maria Juvenile Court, 812-B West Foster Road—smoking is prohibited in all non-enclosed areas, including but not limited to all walkways and the parking lot.~~
- ~~(u) Santa Barbara County Superior Court (Santa Maria Division—Pretrial Services), 624-B West Foster Rd.—smoking is prohibited in all non-enclosed areas, including but not limited to all walkways and the parking lot.~~
- ~~(v) Santa Barbara County Superior Court (Lompoc Division) and District Attorney Office, 115 Civic Center Plaza—smoking is prohibited in all non-enclosed areas adjacent to Superior Court and District Attorney Offices.~~
- ~~(w) Santa Barbara County Superior Court (Solvang Division), 1745 Mission Drive, Suite C, Solvang—smoking is prohibited in all non-enclosed areas, including but not limited to all walkways and the parking lot adjacent to Superior Court.~~

ARTICLE IV. REGULATION OF SMOKING IN PUBLIC PLACES

Sec. 37-5. ~~Public Places.~~ PROHIBITION OF SMOKING AND USE OF TOBACCO PRODUCTS AND ELECTRONIC SMOKING DEVICES IN UNENCLOSED AREAS.

~~—Smoking shall be prohibited in the following enclosed public places and non-enclosed public places, within the unincorporated area of the County of Santa Barbara:~~

(a) Smoking and the use of Tobacco Products and Electronic Smoking Devices is prohibited in the Unenclosed Areas of the following places within the unincorporated area of the County of Santa Barbara,

~~(3)~~(1) Unenclosed Service Areas;

~~Unenclosed Places of Employment as detailed below:~~

(2) Unenclosed Areas surrounding buildings and facilities that are owned, leased, or operated by the County, including vehicles and parking lots.~~granted~~

(3) Unenclosed Areas within twenty (20) feet of a door, window, opening or vent surrounding other Enclosed Places of Employment, except as specified in Sec. 37-5 (a)(74)(B).

(4) Unenclosed Places of Employment as follows:

(A) ~~to~~ ~~e~~Constructions sites,

~~dining areas of restaurants, restaurant bar combinations and Bbars,;~~

(B) Unenclosed Dining Areas;

(C) Unenclosed Areas of a Bar, with the following exception,

(1) Unenclosed Areas of a Bar may permit Smoking, use of Tobacco Products or Electronic Smoking Devices if the Unenclosed Areas does not enter adjacent to Enclosed Places of Employment or residences.

(5) ~~B~~Unenclosed Recreational Areas, except in the following areas:

(A) Camping Parks; and

(B) Within 30 feet of any residence of a County Park ~~E~~employee that is located within a County Park.

(6) Unenclosed Places when being used for a public event, including but not limited to; a fair

farmers' market, parade, festival, or any other event open to the public, regardless of age requirement or fee.

(7) Unenclosed Common Areas of Multi-Unit Residences provided, however, that a Person with legal control over a Common Area may designate a portion of the Unenclosed Area of the Common Area as a designated Smoking, Tobacco Product or Electronic Smoking Device use area if the area meets all of the following criteria:

(A) The area must be located at least twenty (20) feet from any Enclosed Area where Smoking and the use of Tobacco Products and Electronic Smoking Devices is prohibited by this Chapter or other law; and

(B) The area must be at least five (5) feet from Unenclosed Areas primarily used by children ~~and Unenclosed Areas~~ that facilitates physical activity including, but not limited to, playgrounds, tennis courts, swimming pools and sandboxes.

~~(b) Smoking shall be prohibited within twenty feet (20) of any area or building where smoking is prohibited. Ashtrays or any receptacle used to dispose of burning tobacco products shall be prohibited within (20) feet of any building or area where smoking is prohibited. Except that, twenty five (25%) of the outdoor seating sections of restaurants and one hundred (100%) of the outdoor seating sections of bars may allow smoking with the following conditions:~~

~~(1) In the case of restaurants, smoking sections must be designated, the entire smoking section must be in the same area, and be located the furthest distance from the restaurant entrance, so as to minimize the chance of smoke entering the restaurant.~~

~~(2) Smoking in the outdoor seating sections of restaurants or bars may only take place provided that smoke does not enter adjacent worksites or residences. The smoking section of these outdoor areas must be clearly marked with signs.~~

~~(c) Buses or other means of public transit, enclosed or not and ticket, boarding and waiting areas of public transit depots, enclosed or not.~~

~~(d) Service lines, enclosed or not.~~

~~(e) Enclosed common areas in apartment buildings, condominiums, housing developments, mobile home parks, retirement facilities and nursing homes.~~

~~(f) Sports arenas, enclosed or not.~~

~~(g) Areas of the lobby in a hotel, motel, or other similar transient lodging establishment.~~

~~(h) Meeting and banquet rooms in a hotel, motel, or other transient lodging establishment similar to a hotel or motel, restaurant, or other public convention center, including the corridors and pre-function areas adjacent to and serving the meeting or banquet room.~~

~~(i) Polling places, enclosed or not.~~

~~(j) Non-enclosed facilities used for exhibiting motion pictures, stage plays, dramas, lectures, musical concerts or other similar performances, including the lobby, foyer, and concession stand areas. To the extent that the act of smoking forms part of a dramatic live stage production, this Chapter shall not be construed so as to prohibit the~~

~~smoking of non-tobacco product “stage cigarettes” or similar materials in the form of cigars or pipes.~~

~~(k) — Areas that share the same air conditioning, heating, or other ventilation systems with other areas in which smoking is prohibited.~~

~~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 V. REGULATION OF SMOKING IN PLACES OF EMPLOYMENT~~

~~Sec. 37-6. Regulation of Smoking in Places of Employment (Also see Labor Code Section 6404.5).~~

~~Smoking is prohibited in all enclosed places of employment that have one or more employees except at medical research or treatment sites if smoking is integral to the research and treatment being conducted, retail or wholesale tobacco shops and private smokers’ lounges, and cabs of motortrucks as defined in Labor Code Section 6404.5(d), provided those areas are not accessible to minors.~~

~~Smoking restrictions specified in Section 37-5a, are applicable to all places of employment where smoking is prohibited.~~

~~Any owner, operator, manager, or other person who controls any establishment described in~~

~~this Chapter may declare that entire establishment to be a non-smoking establishment. All employers shall supply a written copy of this Chapter or their business' smoking policy to any existing or prospective employee who so requests. No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights to a smoke free place of employment afforded by this Chapter or because such employee or applicant is in full compliance with this Chapter.~~

ARTICLE IV. OTHER REQUIREMENTS, PROHIBITIONS AND POSTING OF SIGNS.

Sec. 37-6. OTHER REQUIREMENTS, PROHIBITIONS AND POSTING OF SIGNS.

~~— Notwithstanding any other provision, it shall be a violation of this Chapter to use Tobacco Products or Electronic Smoking Devices any place within the unincorporated area of the County that is subject to the Smoking prohibitions in California Labor Code Sec. 6404.5.~~

- ~~(a) It shall be a violation of this Chapter for a Business in where ich Smoking, Tobacco Product and Electronic Smoking Device use is permitted to allow smoke or emissions from Tobacco Products and Electronic Smoking Devices to enter an Enclosed Areas that share the same air conditioning, heating, or other ventilation systems with other areas in where ich sSmoking, Tobacco Product and Electronic Smoking Device use is prohibited;~~
- ~~(b) No Person or Employer shall knowingly permit Smoking or the use of Tobacco Products or Electronic Smoking Devices in an area which is under the legal or de facto control of that Person or Employer and in which Smoking or the use of Tobacco Products or Electronic Smoking Devices is prohibited by this Chapter or other law;~~
- ~~(c) Nothing in this Chapter prohibits any Person or Employer with legal control over any property from prohibiting Smoking and the use of Tobacco Products and Electronic Smoking Devices on any part of such property, even if Smoking and the use of Tobacco Products and Electronic Smoking Devices is not otherwise prohibited in that area;~~
- ~~(d) The County Health Officer or his/her designee shall conduct an ongoing educational program to explain and clarify the purposes and requirements of this Chapter, as well as to provide guidance to Persons or Employers about compliance. However, lack of such education shall not be a defense to a violation of this Chapter;~~
- ~~(e) No Person or Employer shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, ash trays or ash cans, within an area under the legal or de facto control of that Person or Employer, if Smoking and the use of Tobacco Products and Electronic Smoking Devices is prohibited by this Chapter or other law. Such ash receptacles must be placed at least 20 feet or as specified in Sec. 37-5, (7) (B) from any area where Smoking and use of Tobacco Products and Electronic Smoking Devices is prohibited by this Chapter or other law. However, in areas specified in Sec. 37-5(a)(7)(B), ash receptacles must be placed at least 5 feet from Unenclosed Areas primarily used by children or that facilitate physical activity;~~
- ~~(f) No Person shall dispose of used Tobacco Product or Electronic Smoking Device waste within the boundaries of an area in which Smoking or the use of Tobacco Products or Electronic Smoking Devices is prohibited by this Chapter or other law;~~
- ~~(g) A Person or Employer that has legal or de facto control of an area in which Smoking and the~~

use of Tobacco Products and Electronic Smoking Device use is prohibited by this Chapter shall post a clear and, conspicuous ~~and unambiguous~~ “No Smoking,” Use of Tobacco Products or Electronic Smoking Devices” or “Smoking, and free” Tobacco and Electronic Smoking Device--Free” sign at each main point of main points of ingress to the area; and other points, as needed in at least one other conspicuous point within the area. The signs shall have letters of no less than one inch in height and shall include a facsimile of the international “No Smoking” symbol (consisting of a ~~pietorial graphic representation image~~ of a burning cigarette and Electronic Smoking Devices enclosed in a red circle with a red bar across it). Signs posted on the exterior of buildings to comply with this Section shall include the specified distance requirements set forth in Sec. 37-5, wherever possible. ~~For purposes of this section, the County Health Officer or his/her designee shall be responsible for the posting of signs in regulated facilities owned or leased by the County. The presence or absence of signs shall not be a defense to a charge of Smoking, Tobacco Product, or Electronic Smoking Device use in violation of any other provision of this Chapter;~~

- (h) No Person or Employer shall intimidate, threaten any reprisal, or affect any reprisal, for the purpose of retaliating against another Person who seeks to attain compliance with this Chapter; and
- (i) Each instance of Smoking or Tobacco Product or Electronic Smoking Device use is in violation of this Chapter shall constitute a separate violation. For violations other than for Smoking or Tobacco Product or Electronic Smoking Device use, each day of a continuing violation of this Chapter shall constitute a separate violation.

ARTICLE VI. REGULATION OF THE SALE AND DISTRIBUTION OF TOBACCO PRODUCTS, TOBACCO PARAPHERNALIA, ELECTRONIC SMOKING DEVICES AND ELECTRONIC SMOKING DEVICE PARAPHERNALIA.

Sec. 37-8. REGULATION OF SALE AND DISTRIBUTION OF TOBACCO PRODUCTS, TOBACCO PARAPHERNALIA, ELECTRONIC SMOKING DEVICES AND ELECTRONIC SMOKING DEVICE PARAPHERNALIA.

- (a) Self-Service Display of Tobacco Products, Tobacco Product Paraphernalia, Electronic Smoking Devices and Electronic Smoking Device Paraphernalia are prohibited, except:
- (1) Vending machines of Tobacco Products, Tobacco Product Paraphernalia, Electronic Smoking Devices and Electronic Smoking Device Paraphernalia may be allowed in Bars provided that the vending machines are located at least 25 feet from any entrance.
- ~~It shall be unlawful for any person, business, or tobacco retailer to sell, permit to be sold, or offer for sale or display for means of sale any tobacco products by means of self-service displays or by any means other than vendor-assisted sales. Except cartons of cigarettes and multi-container packages of all other tobacco products may be sold by means of self-service merchandising only when these products are under the direct surveillance of a store employee. For the purposes of this Chapter, tobacco products shall be deemed to be under the direct surveillance of an employee only if the tobacco products themselves (and not just the racks, shelves, kiosks, etc., where the products are displayed) are in plain view of a store employee at all times.~~

~~**Sec. 37-8. Vending Machines.** No person, business, tobacco retailer, or other establishment located within the unincorporated area of the County shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance, or use of, on his, her or its premises any vending machine for the purpose of selling or distributing any tobacco product. This~~

~~provision shall not apply to vending machines which are located in bars, provided that such vending machines in bars must be located at least twenty-five (25) feet from any entry into the bar.~~

ARTICLE VII. ~~POSTING OF SIGNS~~ ENFORCEMENT AND PENALTIES.

Sec. 37-98. ENFORCEMENT.

- (a) The County Health Officer or his/her designee shall enforce and implement this Chapter, and shall aid ~~the~~ city administrators/managers ~~of municipalities~~ within the County in their duties ~~under with~~ similar ordinances. ~~Additionally, T~~he County Health Officer or his/her designee shall ~~also~~ enforce the provisions of California Labor Code Section 6404.5 and other applicable state regulations.
- (b) The County Health Officer or his/her designee, county park rangers or law enforcement officers shall enforce Sec. 37-5(a)(~~45~~) ~~A~~of this Chapter regarding the regulation of Smoking and the use of Tobacco Products and Electronic Smoking Devices in Recreational Areas.
- (c) Any citizen who desires to register a complaint under this Chapter may request ~~that~~ the County Health Officer to initiate enforcement.
- (d) It shall be unlawful for any person, business or nonprofit entity to violate any of the provisions of this Chapter.

Sec. 37-910. ~~Signs-Hotels and Motels~~ PENALTIES.

~~Every hotel and motel located within the unincorporated area of the county shall have signs posted conspicuously in the registration and lobby areas which state that nonsmoking rooms are maintained and may be available; rooms designated as being nonsmoking shall have signs announcing such restriction conspicuously placed within the room.~~

- (a) Any ~~p~~Person, ~~B~~business, or owner, proprietor, manager, or operator of any establishment subject to this Chapter who violates it shall be guilty of an infraction, punishable by:
 - (1) A fine, not exceeding one hundred dollars (\$100), for the first violation;
 - (2) A fine, not exceeding two hundred dollars (\$200), for a second violation within one year; and
 - (3) A fine not exceeding five hundred dollars (\$500), for each additional violation of this Chapter within one year.
- (b) Any violation of the provisions of this Chapter is also subject to administrative fines as provided in Chapter 24A of this Code.
- (c) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.
- (d) Any violation of this Chapter is hereby declared to be a nuisance.
- (e) In addition to other remedies provided by this Chapter or by other law, any violation of this Chapter may be remedied by a civil action brought by the County Counsel, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

ARTICLE VII. ENFORCEMENT OTHER APPLICABLE LAWS.

Sec. 37-10. OTHER LAWS.

This Chapter shall not be interpreted or construed to permit Smoking and use of Tobacco Products and Electronic Smoking Devices where it is otherwise restricted by other applicable laws. Further, it is not the intent of this Chapter to regulate Smoking and use of Tobacco Products and Electronic Smoking Devices where such regulation has been preempted by the State of California.

~~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.~~

Sec. 37-11. SEVERABILITY.

If any provision, clause, sentence or paragraph of this Chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this _____ day of _____ 2015 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

COUNTY OF SANTA BARBARA

By: _____
CHAIR, BOARD OF SUPERVISORS

ATTEST:
MONA MIYASATO, COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By: _____
Deputy Clerk

<u>APPROVED AS TO FORM:</u>	<u>APPROVED AS TO FORM:</u>
<u>MICHAEL C. GHIZZONI</u>	<u>ROBERT W. GEIS, CPA</u>
<u>COUNTY COUNSEL</u>	<u>AUDITOR-CONTROLLER</u>

By: _____ By: _____
Deputy County Counsel Deputy

APPROVED:
TAKASHI M. WADA, MD, MPH
DIRECTOR
PUBLIC HEALTH DEPARTMENT

By: _____
Director

~~IX VIOLATIONS AND PENALTIES~~

~~**Sec. 37-13. Violation-Premises.** It shall be unlawful for any person who owns, manages, or operates any premises subject to regulations under this chapter to fail to comply with its provisions.~~

~~**Sec. 37-14. Violation-Individuals.** It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.~~

~~**Sec. 37-15. Penalties** Any person, business, or owner, proprietor, manager, or operator of any establishment subject to this chapter who violates it shall be guilty of an infraction, punishable by:~~

~~(a) A fine, not exceeding one hundred dollars, for the first violation;~~

~~(b) A fine, not exceeding two hundred dollars, for a second violation within one year;~~

~~(c) A fine not exceeding five hundred dollars, for each additional violation of this chapter within one year.~~

~~Any violation of the provisions of this Article by any person is also subject to administrative fines as provided in Chapter 24A of this code.~~

~~**Sec. 37-16. Separate Offense.** A separate offense is committed for each and every day, or part of a day, during which any violation is caused, committed, continued or permitted. Each offense is punishable separately from every other offense.~~

~~ARTICLE X. PUBLIC EDUCATION~~

~~**Sec. 37-17. Public Education-Purposes of Ordinance.** The county health officer, in conjunction and coordination with, where feasible, appropriate health or safety oriented community based organizations and coalitions, shall engage in a continuing program to explain and clarify the purposes of this chapter to citizens affected by it, and to guide business owners, operators, and managers in their compliance with it.~~

~~ARTICLE XI. OTHER APPLICABLE LAWS~~

~~**Sec. 37-18. Other Laws.** This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. Further, it is not the intent of this chapter to regulate smoking where such regulation has been preempted by the State of California.~~

~~**Sec. 37-19. Severability.** If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.~~

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