

SANTA BARBARA COUNTY CODE – CHAPTER 37 – SMOKING, TOBACCO PRODUCT AND ELECTRONIC SMOKING DEVICE CONTROL ORDINANCE

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

This Ordinance, 2015 Ordinance No. XXXX, 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.

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 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^{xxvi}.

Sec. 37-2 PURPOSE.

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;
- (e) Regulate the manner in which tobacco products and electronic smoking devices and related paraphernalia are sold;
- (f) Guarantee the right to breathe air free of smoke or emissions from tobacco products and electronic smoking devices, specifically recognizing that the need to breathe has priority over the desire to smoke, use tobacco products or electronic smoking devices; and
- (g) Designate the enforcing agency for this Chapter and for Labor Code Section 6404.5 and other pertinent state and federal regulations.

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.
- (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.
- (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.
- (e) "Dining Area" 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".
- (k) "Enclosed Area " means an area in which outside air cannot circulate freely to all parts, and includes an area that has:
 - (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^{xxvii}:
- (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, “Business”, cooperative association, corporation, personal representative, receiver, trustee, assignee or any other legal entity except the County of Santa Barbara.
- (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.
- (q) “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: parks; picnic areas; gardens; playgrounds; athletic or sports fields, arenas or venues; golf courses; walking or bike paths; hiking or horseback riding trails; swimming pools; skating rinks, skateboard and amusement parks; and beaches.
- (r) "Self-Service Display" means an open point of sale or promotional display of “Tobacco Products”, “Tobacco Product Paraphernalia”, “Electronic Smoking Devices” or “Electronic Smoking Device Paraphernalia” that the public has access to without the intervention of an “Employee”. A vending machine is a form of “Self-Service Display”.
- (s) "Service Area" means any 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” to receive 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) “Smoking” means inhaling, exhaling, burning or carrying any lighted, heated or ignited “Tobacco Products”, “Tobacco Product Paraphernalia”, “Electronic Smoking Devices” or “Electronic Smoking Device Paraphernalia” or any plant 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".

(v) "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" does not include any cessation product 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.

(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".

ARTICLE III. APPLICATION OF ORDINANCE IN ENCLOSED AND UNENCLOSED PLACES OF EMPLOYMENT.

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

(a) Smoking and the use of Tobacco Products and Electronic Smoking Devices is 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;
 - (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;
 - (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. 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 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 Section 1596.795 of Health and Safety Code.

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

- (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,
- (1) Unenclosed Service Areas;
 - (2) Unenclosed Areas surrounding buildings and facilities that are owned, leased, or operated by the County, including vehicles and parking lots.
 - (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)(4)(B).
 - (4) Unenclosed Places of Employment as follows:
 - (A) Unenclosed Dining Areas;
 - (B) 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 provided that smoke or emissions from the Unenclosed Areas do not enter adjacent Enclosed Places of Employment or residences.
 - (5) Unenclosed Recreational Areas, except in the following areas:
 - (A) Camping Parks; and
 - (B) Within 30 feet of any residence of a County Park 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 or that facilitates physical activity including, but not limited to, playgrounds, tennis courts, swimming pools and sandboxes.

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

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

- (a) It shall be a violation of this Chapter for a Business where 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 Area where Smoking, 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 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 “No Smoking, Use of Tobacco Products or Electronic Smoking Devices” or “Smoking, and Tobacco and Electronic Smoking Device-Free” sign at main points of ingress to the area and other points, as needed. 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 graphic 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 distance requirements set forth in Sec. 37-5, wherever possible. 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 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 V. 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.

ARTICLE VI. ENFORCEMENT AND PENALTIES.

Sec. 37-8. ENFORCEMENT.

- (a) The County Health Officer or his/her designee shall enforce and implement this Chapter, and shall aid city administrators/managers within the County in their duties with similar ordinances. The 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)(5) 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. 37-9. PENALTIES.

- (a) 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:
- (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. 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.

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

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

APPROVED AS TO FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: _____
Deputy County Counsel

By: _____
Deputy

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

By: _____
Director

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- ⁱ Repace JL. “Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles.” *William Mitchell Law Review*, 34(4): 1621–1638, p. 1626, 2008. Available at: <http://publichealthlawcenter.org/sites/default/files/resources/tclc-symposium-repace.pdf>
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- ⁱⁱⁱ American Heart Association, 2014. *Electronic Cigarettes: A Policy Statement from the American Heart Association* <http://circ.ahajournals.org/content/130/16/1418.full.pdf+html>
- ^{iv} Popova L, Ling PM. *Alternative tobacco product use and smoking cessation: a national study*. American Journal of Public Health. May 2013; 103 (5):923-930.
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