



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** October 4, 2016

**TO:** Mayor and Councilmembers

**FROM:** City Administrator's Office

**SUBJECT:** Options to Update Smoking Ordinances Regarding Prohibited Smoking Areas and Tobacco Retailing

### **RECOMMENDATION:**

That Council provide direction to staff on whether to work with the Ordinance Committee to prepare amendments to the smoking ordinance to expand areas where smoking is prohibited under Municipal Code Section 9.20 on Smoking Prohibited in Certain Public Areas and Section 9.21 on Regulation of Tobacco Retailers.

### **DISCUSSION:**

During recent budget review hearings, Councilmembers expressed interest in expanding the public areas where smoking is prohibited. Last updated in 2002, the City's smoking ordinance is no longer consistent with State laws that now include more areas where smoking is prohibited and address electronic smoking devices and medical marijuana.

In 2002, the City updated its smoking laws to expand the number of outdoor areas where smoking is prohibited with a specific focus on restricting smoking in outdoor restaurant and bar seating areas. Smoking was further prohibited in service lines and boarding areas of public transit depots and bus stops. These amendments involved significant public input from the County Tobacco Prevention Control Program, Downtown Santa Barbara, the Old Town Bar and Restaurant Association, the California Restaurant Association, the California License and Beverage Association, the Metropolitan Transit District, and the Amtrak Railroad Depot. At that time, Council updated its smoking areas to achieve a balance between encouraging a smoke-free environment for the public and not posing a significant burden to the smoking public and businesses impacted by the ordinance.

In conjunction with the smoking ordinance update, a tobacco retail license was introduced to require businesses selling tobacco products to obtain an annual license. If a business was cited for selling tobacco products to minors, businesses would receive a warning letter initially and face suspension of the license for subsequent violations. There are currently 119 licensed tobacco retailers in the City, ranging from convenience stores to gas stations, paying a \$30 license fee on annual basis.

Options to Expand Smoking Restrictions

Many cities are updating their smoking laws to expand smoke-free areas and include emerging smoking issues. The American Lung Association releases grades each year on leadership in adopting policies to protect and improve community health. Santa Barbara received a “D” grade in this annual review. The Santa Barbara County Public Health Department recently prepared a summary of tobacco control restrictions in Santa Barbara County that shows different approaches by city (see Attachment). Based on a review of the Lung Association guidelines and laws in comparable or nearby cities, the following areas could be designated as smoke-free.

<b>Area</b>	<b>Possible Areas to Prohibit Smoking</b>	<b>State Law</b>
Dining Areas	All outdoor restaurant and bar seating areas at all times. Current ordinance allows smoking on 25% of outdoor seating for restaurants and bars and 100% of these areas after 10 p.m.	No restrictions on outdoor dining areas (indoor smoking is prohibited).
Entryways	Places within a certain distance of doors, windows, and other openings into enclosed areas where smoking is not allowed.	Smoking prohibited within 20 feet of entrances or windows of public buildings.
Public Events	Festivals, farmer’s markets, parades, concerts, and other events open to the public.	No restrictions.
Recreation Areas	Beaches, parks, sports fields, and recreation and library facilities. Current ordinance prohibits smoking in wildland urban interface areas. Through administrative authority, smoking is not allowed in library facilities or open space parks, including Franceschi, Hale, and Parma. Smoking is not allowed in the Douglas Family Preserve by Council-adopted Management Plan.	Smoking prohibited within 25 feet of playgrounds.
Waterfront Areas	Stearns Wharf and Harbor.	No restrictions.
Parking Structures and Lots	Parking structures and lots.	Smoking is prohibited in enclosed parking structures.
Sidewalks in Commercial Areas	Sidewalks in the downtown area, commercial corridors, and outdoor shopping centers.	No restrictions.
Worksites	Outdoor places of employment such as construction sites.	No restrictions.

Multi-unit Housing	Multi-unit apartment buildings and condominiums. Indoor and outdoor common areas of multi-unit housing. By Housing Authority policy, all multi-unit low income or senior housing units under the control of the Housing Authority, except El Carrillo are designated non-smoking.	Smoking prohibited in indoor common areas if considered places of employment.
--------------------	---	---

Options to Reduce Access to Tobacco Products

While Santa Barbara has an annual tobacco retail license fee of \$30 per establishment, Council can consider whether to update the license fee. Other communities have adopted higher tobacco retail license fees that help cover the cost of license administration, enforcement efforts, and compliance checks to ensure tobacco products are not sold to minors.

Council may also wish to consider other tobacco retail restrictions to prevent youth and other new users from accessing tobacco products, including but not limited to the following:

- Sale of tobacco products at pharmacies where health products are sold;
- Sale of individual cigars;
- Sale of flavored tobacco products; and
- Location of tobacco retailers within a designated distance from schools, youth centers, and parks.

Based on Council direction, staff will prepare appropriate amendments to smoking ordinances for review by the Ordinance Committee and return to Council to adopt ordinance amendments.

**ATTACHMENT:** Table of Tobacco Control Ordinances in Santa Barbara County, prepared by the Santa Barbara County Public Health Department, September 2016

**PREPARED BY:** Nina Johnson, Senior Assistant to the City Administrator

**SUBMITTED BY:** Paul Casey, City Administrator

**APPROVED BY:** City Administrator's Office



## Table of Tobacco Control Ordinances in Santa Barbara County—September 2016

The table shows local laws restricting smoking/tobacco or electronic smoking device (ESD) use, sales or circumstances.

**Legend:** X = strong prohibition    x = restriction has exceptions    ~ = Only at Housing Authorities    Exceptions are detailed on next page.

Jurisdiction	Effective Date	Products Restricted	Secondhand Smoke and/or Electronic Smoking Device (ESD) Emissions <i>Outdoor Areas Only</i>								Sales & Distribution of Tobacco/ESD Products			Other		Grades ALA Report Card	
			Dining Areas	Entryways (20 ft. or more)	Public Events	Recreation Areas	Service Areas	Sidewalks	Worksites	Multi-Unit Housing	Self-Service Display	Tobacco/ESD Shops	Tobacco Retail License	Smoke Drift	Nuisance		
										Inside Units	Outside Common Areas	State law 06/16 X if local		X = zoning near schools (1000 ft.)		The American Lung Association grades states and counties on tobacco control policies yearly.	
Carpinteria	2011	Tobacco	X	X	X	X	X	x	X		X	X	X	X	x	X	B
Santa Barbara City	2002	Smoking	x				X			~		X		x			D
Goleta	2014	Tobacco/ESD	x	x		x	X		X			X	X	X			C
Santa Barbara County (Unincorporated Areas)	2015	Tobacco/ESD	x	X	X	x	X			~	X	X	X	X	X		B
Buellton	2012	Tobacco/ESD	x	x		x	x					X					D
Solvang	2014											X					F
Lompoc	2014	Tobacco/ESD				x						X					F
Santa Maria	2014	Smoking/ESD		X		X						X					F
Guadalupe												X					F

Federal & state laws apply in all jurisdictions and as of June 6, 2016, these laws restrict or regulate all tobacco products, including electronic smoking devices (ESD).

Laws can be referenced at <https://www.cdph.ca.gov/programs/tobacco> & <http://sbcphd.org/tobacco> or contact (805)-681-5407 or [phdtobacco@sbcphd.org](mailto:phdtobacco@sbcphd.org).

## Definitions

**Dining Areas**—defined as outdoor seating at restaurants, restaurant/bar combinations, stand-alone bars, etc.

- × **SB City:** Exempts bars; allows smoking at 25% of outdoor seating at restaurants & after 10 PM
- × **Goleta:** Exempts bars; allows tobacco and ESD use at 25% of outdoor seating at restaurants & after 10 PM
- × **SB County:** Except at bars, unless there is smoke or ESD emission drift to adjacent businesses and residences
- × **Buellton:** Exempts bars; allows smoking at 25% of outdoor seating at restaurants

**Entryways**—defined as within a certain distance of doors, windows, & openings into enclosed areas.

- × **SB City:** Employees may not smoke within a “reasonable distance” of doors/windows
- × **Goleta & Buellton:** No smoking, tobacco, or ESD use or ashtrays within 20 feet of places of employment and specific public places
- × **Santa Maria:** No smoking, tobacco or ESD use within 20 feet of public places & City parking areas, except by conditional use permit

**Recreation Areas**—defined as parks, beaches, trails, sports fields, etc.

- × **SB County & Goleta:** Smoking, tobacco, and ESD use is prohibited, except at camping parks (*Lake Cachuma and Jalama Beach*) and within 30 feet of ranger’s residences at these camping parks
- × **Buellton:** Smoking, tobacco, and ESD use prohibited at parks
- × **Lompoc:** Smoking, tobacco, and ESD use is prohibited, but the City Administrator can allow smoking in designated areas for events
- × **Santa Maria:** Smoking, tobacco and ESD use prohibitions at recreations areas and plazas.

**Service Areas**—defined as bus stops, transit centers, ATM, or retail lines, etc. *SB City law does not apply to free-standing benches.*

**Public Events**—defined as farmer’s markets, fairs, parades, festivals, etc.

**Worksites**—defined as outdoor working area, such as construction sites, etc.

**Multi-Unit Housing**—defined as shared air space in residential settings, like apartments or condos, etc. Smoke drift can be from inside neighboring units or adjoining balconies and/or from outdoor common areas, like pools or playgrounds, etc.

- ~ **SB City Housing Authority:** Smoking prohibited in publicly owned/operated housing, inside and out, except in designated areas & at a few exempted properties. Some of the exempted sites have opted to go smoke-free voluntarily. Vaporizing products are not regulated.
- ~ **SB County Housing Authority:** Smoking prohibited in publicly owned/operated units, but existing smokers are “grandfathered” in.
- Private Housing:** Numerous private properties have instituted smoke-free requirements, local examples are available.

**Tobacco Retail License (TRL)**—a local permit issued to a business owner that retails tobacco products. Local governments set fees for this permit and the conditions for its annual renewal, along with penalties for violating local or state tobacco-related laws. These can also be used to limit location of sites (i.e., ban near schools, youth centers, etc.), further define tobacco use inside, etc.

- × **SB City:** The TRL ordinance does not meet the criteria for an effective TRL. Its main shortfall is that the \$30 annual fee does not cover the cost of administering and enforcing it, thus it is not enforced. It does not regulate “vape” shops as written. *Note:* Other local TRL fees range from \$379 to \$543 per year, with TRL programming handled for \$379 per retailer by County Public Health Department.

**Sources:** [Comprehensive Outdoor Secondhand Smoke Ordinances](#), American Lung Association’s Center for Tobacco Policy & Organizing, June 2016  
[Matrix of Strong Local Smokefree Multi-Unit Housing Ordinances](#), American Lung Association’s Center for Tobacco Policy & Organizing, June, 2015