



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: November 22, 2016

TO: Ordinance Committee

FROM: City Administrator's Office

SUBJECT: Update Of Smoking Ordinance To Expand Smoke-Free Outdoor Public Areas

RECOMMENDATION:

That Ordinance Committee hold a public hearing and provide direction to staff on whether to prohibit smoking in various outdoor public areas and make recommendations to the City Council on smoking ordinance amendments.

DISCUSSION:

The City's smoking ordinance was last updated in 2002 and it is no longer consistent with State laws that now include more areas where smoking is prohibited and that address electronic smoking devices and marijuana. On October 4, 2016, Council directed staff to work with the Ordinance Committee to conduct public outreach and make recommendations on outdoor public areas that should be smoke-free.

State smoking laws currently focus on workplaces and indoor areas with few restrictions on outdoor smoking. As of June 9, 2016, new state laws went into effect to prohibit the use of electronic smoking or "vaping" devices anywhere cigarette smoking is not allowed. Furthermore, smoking was redefined to include smoking marijuana. With the passage of the Adult Use of Marijuana Act (Proposition 64) that legalizes the cultivation, possession, distribution, sale, and use of non-medical marijuana, smoking marijuana is not permitted 1) while driving a vehicle, 2) in any public place other than at a business licensed for on-site consumption, and 3) at locations where smoking tobacco is prohibited.

The City's current ordinance prohibits smoking in outdoor service areas where people stand or wait for services, including bus stops and ticket or boarding areas of public transit depots. Smoking is permitted in 25% of outdoor restaurant seating areas before 10 p.m. and 100% of seating areas after 10 p.m.

Expanding smoke-free outdoor areas would limit public exposure to secondhand smoke, help reduce cigarette butt litter and associated clean-up, and lower the risk of fires.

Since smoking is prohibited in enclosed public areas, designating outdoor areas as smoke-free would reduce the number of allowable smoking areas for residents and visitors and make it more difficult to find acceptable areas to smoke. Based on a review of laws in comparable or nearby cities and of American Lung Association guidelines, the following areas currently allow smoking and could possibly be designated as smoke-free by City ordinance.

Area	Current Local Restrictions	State Law
Stearns Wharf*	By administrative policy, smoking is allowed on designated areas of Wharf.	No restrictions.
Harbor*	No restrictions.	No restrictions.
Beaches*	No restrictions.	No restrictions.
Parks, Sports Fields, Trails*	Through administrative authority, smoking is not allowed in open space parks, including Franceschi, Hale, and Parma. Current ordinance prohibits smoking in wildland urban interface areas. Smoking is not allowed in the Douglas Family Preserve by Council-adopted Management Plan.	Smoking prohibited within 25 feet of playgrounds and tot lots.
Community Centers, Recreation Facilities, and Libraries*	Through administrative authority, smoking is prohibited in outdoor library areas.	No restrictions on outdoor areas.
Public Parking Structures and Lots*	No restrictions.	Smoking is prohibited in enclosed parking structures.
Outdoor Patio Areas for Restaurants	Current ordinance allows smoking on 25% of outdoor seating for restaurants and 100% of these areas after 10 p.m.	No restrictions on outdoor dining areas (indoor smoking is prohibited).
Outdoor Patio Areas for Bars	Current ordinance allows smoking on front and back outdoor patio areas at any time.	No restrictions on outdoor bar areas (indoor smoking is prohibited).
Entryways to Public Buildings	No restrictions within a certain distance of doors, windows, and other openings into enclosed areas where smoking is not allowed.	Smoking is prohibited within 20 feet of entrances or windows of state, county, and city buildings.
Sidewalks in Commercial Areas and Paseos	No restrictions.	No restrictions.
Public Events	No restrictions for festivals, parades,	No restrictions.

	concerts, and other events open to the public. The Downtown Farmer's Market is smoke-free by association policy.	
Worksites	No ordinance restrictions on outdoor places of employment such as construction sites.	No restrictions.

* Indicates City-owned facilities where staff supports a ban on smoking to prevent fires and reduce litter and associated clean-up efforts.

In recent years, several local organizations have approved smoking policies for their properties that are open to the public. The following areas are considered smoke-free by administrative policy: UCSB, SBCC, Schott Center, Paseo Nuevo, Santa Barbara Zoo, and Earl Warren Showgrounds. By Housing Authority policy, all multi-unit low income or senior housing units under the control of the Housing Authority are designated non-smoking, with the exception of El Carrillo that serves individuals recovering from addiction.

City staff from affected departments have reviewed the impacts of smoking at City-owned facilities. After discussing the need to prevent fires and reduce litter and clean-up efforts, staff supports banning smoking on Stearns Wharf, the Harbor, beaches, parks, sports fields, trails, and public parking lots and structures. Staff also recommends officially prohibiting smoking by ordinance in outdoor areas of neighborhood centers, outdoor library areas, and outdoor recreation facilities, such as lawn bowling areas, tennis courts, swimming pools, and the Skate Park.

Options to Expand Smoking Restrictions

Many cities have updated their smoking laws to expand smoke-free areas and address 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 each jurisdiction (see Attachment 1). Another summary was prepared to cover visitor-serving cities in California, including Santa Monica, Ventura, and Pasadena (see Attachment 2).

Most cities that have updated their smoking ordinances have prohibited smoking in parks, beaches, piers, libraries, and recreational facilities. Cities have enacted ordinances with different approaches to ban smoking in other outdoor areas. In Carpinteria, smoking is prohibited in all public places where other persons can be exposed to secondhand smoke, including streets, sidewalks, parking lots, plazas, restaurants, bars, and other locations. However, smoking is allowed in any unenclosed area in which non-smokers are not present and, due to the time of day or other factors, it is not reasonable to expect another person to arrive.

Smoking is also permitted in smokers' outposts, which are marked, designated smoking areas installed and operated by business owners.

In the City of San Luis Obispo, smoking is prohibited in any public or private place open to the general public, including streets, sidewalks, parking lots, bars, restaurants, parks, and other locations. Similar to Carpinteria, smoking is permitted in outdoor areas where non-smokers are not present and, due to the time of day or other factors, it is not reasonable to expect another person to arrive. The San Luis Obispo ordinance also includes an exception allowing smoking in unenclosed bar areas that do not serve food if the entire smoking section is 1) limited to one clearly designated area prominently marked with signs, 2) located at least five feet from a doorway or opening to an enclosed area, and 3) smoke does not enter adjacent areas in which smoking is prohibited on the adjacent property.

Smoking on sidewalks can be addressed through restricting smoking within a certain distance of entryways to public buildings. In Santa Monica, smoking is prohibited on the Third Street Promenade and within 20 feet of entryways of any buildings open to the public. In Pasadena, smoking is not permitted within 20 feet of an entryway into an enclosed area in which smoking is prohibited, except while actively passing on the way to another destination.

The cities of Goleta and Buellton exempted bars from their smoking ordinances. The County of Santa Barbara allows smoking in outdoor bar areas, unless smoke drifts to adjacent businesses and residences. On November 3, 2016, a meeting was held with local bar owners with outdoor patios who expressed their interest in remaining exempt from future smoking restrictions on outdoor patios.

Next Steps

Based on direction from the Ordinance Committee, staff will return with information requested by the Ordinance Committee or prepare appropriate amendments to the smoking ordinance and return to Council to introduce and adopt ordinance amendments.

Staff will return to the Ordinance Committee at a future date to discuss amendments to the Tobacco Retail License Ordinance that requires businesses selling tobacco products to obtain an annual license.

- ATTACHMENT:**
1. Summary of Tobacco Control Ordinances in Santa Barbara County, prepared by the Santa Barbara County Public Health Department, September 2016
 2. Summary of American Lung Association Grades for Visitor-Serving Cities, prepared by the Santa Barbara County Public Health Department, September 2016

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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 × = 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	B
Santa Barbara City	2002	Smoking	×				X			~		X		×			D
Goleta	2014	Tobacco/ESD	×	×		×	X		X			X	X	X			C
Santa Barbara County (Unincorporated Areas)	2015	Tobacco/ESD	×	X	X	×	X			~	X	X	X	X	X		B
Buellton	2012	Tobacco/ESD	×	×		×	×					X					D
Solvang	2014											X					F
Lompoc	2014	Tobacco/ESD				×						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.

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

American Lung Association-State of Tobacco Control 2016: Comparisons for Santa Barbara City

Below is a summary of grades issued by the American Lung Association to various municipalities across California. The communities below are selected based on semblance to the City of Santa Barbara, in terms of geography, population, and industry. The communities listed are cities, unless noted. The grades shown are based on key tobacco control policies smoke-free air outdoors and in multi-unit housing, and tobacco retail licensing. Grades from all California communities may be viewed here: http://www.lung.org/local-content/california/documents/state-of-tobacco-control/2016/2016-sotc_california-full.pdf

City	SB City	Carpinteria	SB County	Santa Monica	Pasadena	Ventura	Oxnard (09/06/16)	San Luis Obispo	Monterey County
Overall Grade	D	B	B	A	A	C	B	B	C
Smokefree Outdoor Air	D	A	A	A	A	C	B	A	C
➤ Dining	2	4	2	4	4	4	4	2	2
➤ Entryways	0	4	4	4	4	0	4	4	0
➤ Public Events	0	3	4	2	4	2	4	4	0
➤ Recreation Areas	0	4	4	4	4	4	4	4	2
➤ Service Areas	4	4	4	4	4	4	4	4	4
➤ Sidewalks	0	1	0	1	1	0	1	1	1
➤ Worksites	0	1	0	0	0	0	0	1	0
Smokefree Housing	D	C	C	B	A	F	C	C	F
Tobacco Retail Licensing	F	A	A	A	A	A	C	A	A

The laws or brochures are hyperlinked to the cities' name above, if possible. Change Lab Solutions provides free, legal technical assistance under a contract with the California Public Health Department and their [comprehensive model outdoor air ordinance](#) is the basis for most local laws.

Grading Rubric: Overall Grade: A (11-12), B (8-10), C (5-7), D (2-4), F (0-1); based on grades & points from other three categories – A (4), B (3), C (2), D (1), F (0)
Smokefree Outdoor Air Grade: A (18+), B (13-17), C (8-12), D (3-7), F (0-2)
Smokefree Housing Grade: A (11+), B (8-10), C (5-7), D (2-4), F (0-1)
Reducing Sales of Tobacco Products Grade (Tobacco Retail Licensing): A (4+), B (3), C (2), D (1), F (0)