



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: January 31, 2017

TO: Ordinance Committee

FROM: City Administrator's Office

SUBJECT: Options to Expand Smoke-Free Outdoor Public Areas

RECOMMENDATION:

That Ordinance Committee 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:

Executive Summary

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 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. On November 22, 2016, the Ordinance Committee conducted a public hearing and received input from affected businesses, community organizations, and residents. The Ordinance Committee expressed interest in banning smoking in the following locations: Stearns Wharf, parks, beaches, trails, community centers, outdoor recreation facilities and library areas, and public parking structures and lots. The next Ordinance Committee discussion will focus on more options related to the harbor, golf course, public parking lots, sidewalks, paseos, entryways to public buildings, and outdoor patio areas for restaurants and bars.

Background

State smoking laws currently focus on workplaces, schools, health facilities, playgrounds, and government buildings with few restrictions on outdoor smoking. As of June 9, 2016, new state laws went into effect that prohibit the use of electronic smoking or "vaping" devices anywhere cigarette smoking is not allowed (Business and Professions Code Section 22950.5 (c)). Furthermore, smoking was redefined to include smoking marijuana. With the passage of the Adult Use of Marijuana Act (Proposition 64), 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) 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, lower the risk of fires, and help reduce cigarette butt litter and associated clean-up costs. Conversely, 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 American Lung Association guidelines, the following areas currently allow smoking and could 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. Smoking is allowed on designated areas of the Municipal Golf Course.	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, concerts, and other events open to the public. The Downtown Farmer's Market is smoke-free by association policy.	No restrictions.
Worksites	No ordinance restrictions on outdoor places of employment such as construction sites.	No restrictions.

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.

Smoking Laws in Other Cities

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, Pasadena, 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 unique 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, and bars. 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 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 by directly prohibiting smoking on sidewalks or 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.

Definition of Smoking

To clarify how smoking will be defined in the ordinance revisions, the following definition is proposed:

“Smoke or Smoking. The carrying or holding of a lighted or activated pipe, cigar, cigarette, electronic smoking device, or any other lighted or activated smoking product or equipment used to burn any tobacco products, marijuana, weed, plant, or any other combustible substance. Smoking includes emitting or exhaling the fumes or vapor of any pipe, cigar, cigarette, electronic smoking device, or any other lighted smoking equipment used for burning any tobacco product, marijuana, weed, plant, or any other combustible substance.”

Options for Smoke-Free Public Areas

After a careful review of different approaches used in other cities and gathering input from the public, staff from affected departments evaluated options that would be most effective and feasible to implement in Santa Barbara. The following factors were used to review different approaches:

- a) Impact on Litter and Clean-up Costs
- b) Fire Risk
- c) Ease of Enforcement
- d) Presence of Smoke and Impact to the Non-Smoking Public
- e) Impact to Smoking Residents, Employees, or Visitors

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 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.

If the Ordinance Committee recommends designating outdoor recreational facilities as smoke-free, staff would recommend allowing an exception for designated smoking areas of the Municipal Golf Course. Smoking is currently prohibited on the driving range, practice area, restaurant and around the pro shop building. A golf course is a large, programmed and monitored space where typically groups of no more than four people are playing any one hole at a time and are often hundreds of yards from any other group of golfers as they progress through the course. This limited proximity to others and the nature of the open space limit the effect on non-smokers. Cigarette butt litter is not prevalent and the course is not considered a high fire hazard area. Cities such as Victorville, Anaheim and Walnut Creek that prohibit smoking in parks allow smoking on their public golf courses.

Staff also supports prohibiting smoking in public parking lots and structures in the downtown and waterfront areas to reduce litter and clean-up costs.

With regard to sidewalks, paseos, public entryways, and outdoor restaurant and bar patios, there are many possible smoking restrictions that could be enacted to reduce the impacts of smoke on pedestrians and prevent litter. While some policies have been implemented in other cities, they are considered difficult to enforce, unlikely to curtail smoking, or ineffective in reducing litter. If the Ordinance Committee wishes to create a smoke-free environment for pedestrians and significantly reduce litter, the smoking ordinance can be revised to prohibit smoking on City-owned public walkways citywide. Since businesses with outdoor patios have expressed an interest in either allowing smoking or maintaining a smoke-free space, the City's proposed ordinance could either:

- 1) Maintain the status quo restriction for smoke-free outdoor restaurant patios before 10 PM and allow smoking on 25% of patios after 10 PM; allow smoking at all times on bar patios,
- 2) Implement a variation of the current smoking law (above), or
- 3) Not regulate outdoor restaurant and/or bar patios and encourage individual businesses to create their own smoking rules for outdoor patios.

Maintaining the status quo restriction for restaurants might be confusing because it's not always clear how restaurants should identify 25% of seating space. If businesses develop their own policies and choose to allow smoking, they will be responsible for educating patrons, enforcing their own policies, and cleaning up litter. If businesses created their own smoking rules for patios, residents and out-of-town visitors would also be responsible for finding patios where smoking is allowed instead of adhering to a consistent rule.

Over 40 businesses have outdoor dining permits where they lease the sidewalk space adjacent to their business for outdoor seating. If smoking is prohibited on public sidewalks, an exception could be created for businesses where the leased outdoor patio space would not be considered sidewalk area for purposes of the smoking ordinance.

If the Ordinance Committee wishes to prohibit smoking on sidewalks, this smoke-free designation should extend to all public walkways to be consistent citywide and include Stearns Wharf and the Harbor. Within the Harbor area, staff recommends allowing smoking on private boats and adjacent docks which are considered private living areas and not open to the general public.

Public events, farmer's markets, parades, and concerts that take place on sidewalks and parks can also be specifically included within the smoke-free areas of sidewalks and parks.

Education and Enforcement

To implement a new ordinance on smoke-free areas, staff will conduct a comprehensive public outreach effort with local businesses, community organizations, residents, and visitors to help everyone affected understand the new smoking law. Signage will be updated in certain locations as appropriate. Personal responsibility will be emphasized to encourage members of the public to ask a smoker to extinguish the smoking material.

Enforcement will take the form of citations being issued to violator(s) of the ordinance. In addition to police officers, other city employees authorized to issue citations for violations of the municipal code will enforce the new smoking regulations. These staff members include Community Service Officers, Park Rangers, and Harbor Patrol Officers.

Next Steps

With final direction from the Ordinance Committee on areas to designate smoke-free, staff will return with draft ordinance language for final approval and then return to Council to introduce and adopt ordinance amendments.

- ATTACHMENTS:**
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 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.

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)