

ORDINANCE NO. _____
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

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ORDINANCE AMENDING SECTIONS 4.96.030 AND 4.96.140 OF CHAPTER 4.96 OF TITLE 4 OF THE SAN MATEO COUNTY ORDINANCE CODE TO (1) ADD THE DEFINITION OF “SMOKE”, (2) TO AMEND THE DEFINITIONS OF “SMOKING” AND “TOBACCO PRODUCT” TO INCLUDE ELECTRONIC CIGARETTES AND OTHER PRODUCTS, (3) TO AMEND DEFINITIONS OF MULTI-UNIT RESIDENCES AND MULTI-UNIT RESIDENCE COMMON AREAS, (4) TO AMEND VARIOUS SECTIONS OF CHAPTER 4.96 TO PROVIDE FOR ENFORCEMENT BY HEALTH SYSTEM CHIEF OR DESIGNEES, AND (5) TO AMEND SECTION 4.98.100 OF CHAPTER 4.98 TO ADD DEFINITIONS OF “TOBACCO” AND “TOBACCO PRODUCTS”.

The Board of Supervisors of the County of San Mateo, State of California,

ORDAINS as follows:

SECTION 1. FINDINGS. The Board of Supervisors of the County of San Mateo hereby finds and declares as follows:

WHEREAS, the use of electronic smoking devices is a recent trend that is proliferating in the County of San Mateo. This trend is undermining the County's smoke-free air laws and exposing the public to secondhand electronic smoking device vapors which have not been scientifically proven as safe; and

WHEREAS, electronic smoking devices, commonly referred to as “e-cigarettes,” “e-cigars,” “e-cigarillos,” “e-pipes,” “e-hookahs,” are electronic devices often made to look like conventional tobacco products in shape, size and color; and

WHEREAS, electronic smoking devices are designed to be used in the same manner as conventional tobacco products with the user exhaling a smokelike vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products; and

WHEREAS, a study published in the Journal of Environment and Public Health suggests that electronic smoking devices “may have the capacity to ‘re-normalize’ tobacco use in a demographic that has had significant denormalization of tobacco use previously”; and

WHEREAS, nicotine is a highly addictive neurotoxin and is included in the Prop 65 list of Chemicals Known to the State to Cause Cancer or Reproductive Toxicity. Nicotine is known to cause birth defects and is particularly dangerous for vulnerable

populations including children, pregnant women and people with cardiovascular conditions; and

WHEREAS, a recent scientific study confirmed that electronic smoking devices that contain nicotine also emit nicotine in the released vapor and involuntarily expose nonsmokers to nicotine; and

WHEREAS, a recent study found a total of 22 elements in vapors produced by electronic smoking devices, and three of these elements (lead, nickel, and chromium) appear on the FDA's "Harmful and Potentially Harmful Chemicals List; and

WHEREAS, a study published in the American Journal of Public Health found similar results to those identified in FDA testing and concluded that the electronic smoking devices tested demonstrated poor quality control, toxic contaminants, misrepresentation of the nicotine delivered and insufficient evidence of the overall public health benefit; and

WHEREAS, the San Mateo County Health System supports amending local smoke-free policies to include e-cigarettes because studies indicate that e-cigarettes pose potential dangers for users, as well as for non-users who passively inhale these chemical vapors; and

WHEREAS, manufacturers of electronic smoking devices have not submitted clinical studies about the safety and efficacy of these products to the FDA; and, therefore, consumers currently have no way of knowing what types or concentrations of potentially harmful chemicals they are inhaling and exhaling when they use these products; and

WHEREAS, the County is supportive of tobacco cessation programs and modalities that have proven efficacy and utilize safe FDA-approved products, but to date, electronic smoking devices are not an FDA-approved smoking cessation device; 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; and

WHEREAS, the confusion caused by the visual similarity between electronic smoking devices and traditional tobacco products may impact individuals and the owners of establishments seeking to comply with the County's smoke-free laws and will threaten the County's enforcement of these laws; and

WHEREAS, the use of electronic smoking devices in smoke-free locations

threatens to reverse the progress that has been made in establishing the social norm that smoking is not permissible in public places or places of employment; and

WHEREAS, the use of electronic smoking devices in smoke-free locations may increase the social acceptability and appeal of smoking, particularly for youth, undermining the progress that has been made over the years in discouraging smoking; and

WHEREAS, prohibiting the use of electronic smoking devices in smoke-free locations will protect traditionally smoke-free locations such as daycare centers, schools, libraries, public parks, playgrounds and beaches and will prevent people, including children, from involuntarily inhaling nicotine and potentially harmful chemicals scientifically proven to exist in the secondhand vapor of electronic smoking devices; and

WHEREAS, in order to protect the health, welfare and safety of County residents and visitors by protecting them from exposure to the secondhand byproducts of electronic smoking devices, facilitating uniform enforcement of smoke-free air laws, reducing the potential for re-normalizing smoking where tobacco use is prohibited, and protecting youth from observing behavior that could encourage them to smoke, the County has decided to legislatively prohibit the use of electronic smoking devices in all areas where the smoking of tobacco products is currently prohibited.

WHEREAS, this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, as it is not a “project” as it has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (14 Cal. Code Regs. § 15378(a).) Further, the ordinance is exempt from CEQA as there is no possibility that the ordinance or its implementation would have a significant effect on the environment. (14 Cal. Code Regs. § 15061(b)(3).) The ordinance is also categorically exempt because it is an action taken by a regulatory agency to assume the maintenance, restoration, enhancement or protection of the environment. (14 Cal. Code Regs. § 15308.) The Director of Community Development shall cause a Notice of Exemption to be filed as authorized by CEQA and the CEQA guidelines.

SECTION 2. Section 4.96.030 of Chapter 4.96 of Title 4 of the San Mateo County Ordinance Code is hereby amended to read as follows:

CHAPTER 4.96.030 Definitions.

For the purpose of this Chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section have the meanings given to them in this section.

- (a) “Enclosed” means closed in by a roof and four (4) walls with appropriate openings for ingress and egress. For purposes of this Chapter, a County of San Mateo owned multilayer parking structure shall be considered an enclosed structure.
- (b) “Landlord” means any person who owns property let for residential use, any person who lets residential property, and any person who manages such property, except that landlord does not include sublessors.
- (c) “Multi-unit residence” means residential property containing two or more units with one or more shared or abutting walls, floors, ceilings or shared ventilation systems including, but not limited to, a common interest development, condominium, townhouse, duplex and apartment or other rental complex. A multi-unit residence does not include property owned by the state or federal government or the following specifically excluded types of housing:
- 1) A hotel or motel that meets the requirements set forth in California Civil Code section 1940 (b)(2);
 - 2) A residential care facility or assisted living facility governed by federal or state community care licensing regulations;
 - 3) A detached, single-family residence; and/or
 - 4) A detached, single-family home with a detached or attached in-law or second unit when permitted pursuant to Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the County adopted pursuant to those sections.
- (d) “Multi-unit residence common areas” means every enclosed area or unenclosed area of a multi-unit residence accessible and usable by residents of different units including, but not limited to, halls and paths, lobbies, courtyards, elevators and stairs, community rooms, playground areas, gym facilities, swimming pool areas, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.
- (e) “Public place” means any enclosed area to which the public is invited or in which the public is permitted. A private residence is not a public place.
- (f) “Roadway” means that portion of the public right-of-way designed and ordinarily used for motor vehicle travel. “Roadway” does not include sidewalks, curbs, driveways, medians, or other areas adjacent to public streets.

- (g) “Self service display” means an open display of tobacco products that the public has access to without the intervention or assistance of an employee.
- (h) “Smoke” (noun) means any vapors, gases, particles or other by-products released as a result of combustion or electrical ignition, when the apparent or usual purpose of the combustion or electrical ignition is human inhalation of the byproducts, except when the combusting or igniting material both contains no tobacco or nicotine and the usual purpose of inhalation is solely olfactory such as with the burning of incense. *Smoke* does not include combustion of substances regulated by the U.S. Food & Drug Administration and used for medical or therapeutic purposes. *Smoke* specifically includes but is not limited to gases, particles, vapors or other by-products released by electronic cigarettes, tobacco cigarettes, herbal cigarettes, marijuana cigarettes and any other type of cigarette, pipe or other implement for the purpose of inhalation of vapors, gases, particles or other by-products released as a result of combustion or ignition.
- (i) “Smoking” or to “smoke” (verb) means possessing a lighted or ignited tobacco or nicotine product or paraphernalia; or engaging in an act that generates smoke (including, but not limited to, possessing a lighted or ignited pipe, hookah pipe, cigar, or cigarette of any kind including but not limited to an electronic cigarette); or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind including but not limited to an electronic cigarette.
- (j) “Tobacco”, “Tobacco Product,” “Tobacco or Smoking Product,” or “Tobacco or Nicotine Product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco which can be used for smoking, chewing, inhalation or other means of ingestion; and any electronic cigarette or other electronic device used to generate smoke; 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 in treating nicotine or tobacco dependence.
- (k) “Unit” means a personal dwelling space for one or more persons, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area, such as, for example, a private balcony, porch, deck, or patio.
- (l) “Vendor assisted” means that only a store employee has access to the tobacco product and assists the customer by supplying the product.

SECTION 3. Section 4.96.140 of Chapter 4.96 of Title 4 of the San Mateo County Ordinance Code is hereby amended to read as follows:

4.96.140 Health System Chief.

Enforcement of this ordinance shall be implemented by the Health System Chief and/or his/her designees. The Health System shall have the right, in connection with any regular annual inspection of a business located in the unincorporated area of the County, to require that the owner, manager, operator or other person having control of such establishment certify that all applicable requirements of this Chapter have been complied with.

SECTION 4. Section 4.96.150 of Chapter 4.96 of Title 4 of the San Mateo County Ordinance Code is hereby amended to read as follows:

4.96.150 Initiation of enforcement.

Any person may initiate enforcement of this ordinance by notifying the Health System Chief or his/her designee of any violation.

SECTION 5. Section 4.96.200 of Chapter 4.96 of Title 4 of the San Mateo County Ordinance Code is hereby amended to read as follows:

4.96.200 Enforcement.

The Health System Chief or his/her designee is hereby authorized to institute and pursue, in the name of the County, pursuant to the provisions of section 25132 of the Government Code, enforcement of the infractions before the Court.

SECTION 6. Section 4.96.240 of Chapter 4.96 of Title 4 of the San Mateo County Ordinance Code is hereby amended to read as follows:

4.96.240 Exemptions.

Any owner or manager of a business or establishment subject to this ordinance may apply to the Health System Chief or his/her designee for an exemption or modification to any provision of this ordinance due to unusual circumstances or conditions.

- (a) Such exemption shall be granted only if the Health System Chief or his/her designee finds from the evidence presented by the applicant for exemption that due to such unusual circumstances or conditions it would cause a substantial impairment of the function of the establishment or business to carry out some or all of the provisions of this ordinance.
- (b) The applicant for an exemption shall pay the fee prescribed by the Health System Chief to cover the cost of the hearing and noticing of hearing.

SECTION 7. Section 4.96.250 of Chapter 4.96 of the San Mateo County Ordinance Code is hereby amended to read as follows:

4.96.250 Continuing program.

The Health System Chief or his/her designee shall engage in a continuing program to inform and clarify the purposes of this ordinance to citizens affected by it, and to guide owners, operators and managers in their compliance.

SECTION 8. Section 4.96.260 of Chapter 4.96 of Title 4 of the San Mateo County Ordinance Code is hereby amended to read as follows:

4.96.260 Local operating procedures.

The Health System Chief or his/her designee shall annually request such governmental and educational agencies having offices within the unincorporated area of the County of San Mateo to establish local operating procedures to cooperate and comply with this ordinance. In Federal, State, school districts and special districts within the County of San Mateo, the Health System Chief shall urge enforcement of their existing no smoking prohibitions and request cooperation with this ordinance.

SECTION 9. Section 4.96.340 of Chapter 4.96 of Title 4 of the San Mateo County Ordinance Code is hereby amended to read as follows:

4.96.340 Enforcement of Labor Code section 6404.5.

- (a) Authority. The provisions of Labor Code section 6404.5, governing smoking in enclosed places of employment, shall be enforced by deputies employed by the San Mateo County Sheriff and by employees of the Health System as designated by the Chief of the Health System provided, however, that employees designated by the Chief of the Health System with the authority to enforce Labor Code section 6404.5 may only issue citations to employers and not to patrons, customers, consumers or other guests.
- (b) Health System Employees as Public Officers. In the performance of their duties of monitoring and enforcing compliance with the provisions of Labor Code section 6404.5, all persons authorized by the Chief of the Health System to engage in such enforcement activities shall have the power, authority and immunity of a public officer to issue citations.
- (c) Training Program. The Chief of the Health System, in coordination with the Sheriff, shall establish and cause to be administered an enforcement training program designed to instruct each employee so authorized by this section to exercise citation authority. Such training shall include guidance and instruction regarding the evidentiary prerequisites to proper prosecution of violation thereof,

and the appropriate procedures for issuing citations.

SECTION 10. Section 4.98.100 of Chapter 4.98 of Title 4 of the San Mateo County Ordinance Code is amended to be numbered and titled and to read as follows:

4.98.100 Requirement for a permit; Definition of “Tobacco” and “Tobacco Products”.

- a) It shall be unlawful for any retailer, individual, or entity to, and no such retailer, individual or entity shall, sell or offer for sale any tobacco products without first obtaining and maintaining a valid tobacco retailer’s permit from San Mateo County for each location where such sales are conducted. Permits are valid for one year and shall be renewed annually.
- b) As used in this Chapter, the terms “tobacco” or “tobacco products” shall be defined as set forth by subsection (j) of section 4.96.030 of Chapter 4.96 of this Code.

SECTION 11. Chapters 4.96 and 4.98 of Title 4 of the San Mateo County Ordinance Code shall remain in full force and effect except as expressly amended herein.

SECTION 12. This Ordinance shall be effective thirty (30) days from the passage date thereof.