

ORDINANCE NO. 10338 (NEW SERIES)

AN ORDINANCE AMENDING COUNTY OF SAN DIEGO
ADMINISTRATIVE CODE ARTICLE III TO REGULATE
THE USE OF ELECTRONIC SMOKING DEVICES IN AND AROUND
COUNTY FACILITIES, COUNTY PUBLIC BUILDINGS
AND OTHER LOCATIONS

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1: Section 64 of Article III of the County of San Diego Administrative Code is hereby amended to read as follows:

SEC. 64. PROHIBITION ON USE OF ELECTRONIC SMOKING DEVICES IN AND
AROUND COUNTY FACILITIES, COUNTY PUBLIC BUILDINGS AND OTHER LOCATIONS.

(a) Findings and Intent.

- (1) Credible studies have demonstrated that there are health concerns regarding the use of electronic smoking devices by users of the devices and bystanders.
- (2) The Centers for Disease Control and Prevention has reported that from 2011-2012, the use of electronic cigarettes by U.S. middle and high school students more than doubled.
- (3) Despite the potential use of electronic smoking devices as an aid to quitting smoking, the products are not approved by the U.S Food and Drug Administration (FDA) for smoking cessation or treatment of any health concerns. An analysis by the FDA found that e-cigarettes do contain carcinogens, including nitrosamines as well as toxic chemicals such as diethylene glycol. Although electronic smoking devices do not produce the same smoke as conventional tobacco product cigarettes, they do produce a cloud of vapors containing unknown substances and sometime produce unpleasant odors. The possible health effects of bystanders breathing or absorbing these vapors through their skin is unknown.
- (4) Nicotine is contained in most electronic smoking devices. Nicotine is a highly addictive neurotoxin included in the Proposition 65 list of Chemicals Known to the State to Cause Cancer or Reproductive Toxicity and is known to cause birth defects. Nicotine is a component of the emissions from electronic smoking devices containing nicotine and involuntarily exposes non-users to nicotine.

- (5) Scientific studies and FDA testing demonstrated that the solutions in electronic smoking devices contained toxic chemicals and that labelling often misrepresented nicotine content contained in the devices.
- (6) There are products approved by the FDA for smoking cessation. To date, scientific studies have not demonstrated the benefit of electronic smoking devices for smoking cessation and these devices are not approved by the FDA for smoking cessation.
- (7) With certain exceptions, state law prohibits smoking inside an enclosed space at a place of employment.
- (8) With certain exceptions, state law prohibits smoking inside public buildings or in an outdoor area within a minimum of 20 feet of a main exit, entrance, or operable window of a public building.
- (9) The use of electronic smoking devices in locations where the smoking of tobacco is prohibited may cause confusion and uncertainty, and make it more difficult to enforce smoke free environments and other prohibitions on smoking tobacco.
- (10) It is the intent of the County Board of Supervisors in enacting the Ordinance that adds this Section to the Administrative Code to provide for the public health, safety and welfare, by prohibiting the use of electronic smoking devices in locations where state law or regulation prohibits the use and smoking of tobacco products.

(b) Definitions.

For purposes of this section:

“Electronic smoking device” is defined as an electronic and/or battery operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. “Electronic smoking device” includes any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. “Electronic smoking device” does not include any product specifically approved by the U.S. Food and Drug Administration for use in mitigation, treatment, or prevention of disease.

“Enclosed space” is defined as set forth in state law, Labor Code section 6404.5 and includes lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building.

“Place of employment” is defined as set forth in state law, Labor Code section 6404.5.

“Public building” is defined as a building owned and occupied, or leased and occupied, by the County as set forth in Government Code section 7596.

“Smoking” or “Smoke” for the purpose of this section is defined as the use of an electronic smoking device intended to emulate smoking, which permits a person to inhale vapors, mists or aerosol that may or may not contain nicotine.

(c) Prohibition on Use of Electronic Smoking Devices.

(1) Enclosed Spaces at County Places of Employment.

No person shall engage in the smoking of an electronic smoking device in an enclosed space at a County place of employment. This prohibition shall include County owned and County leased property.

(2) County Public Buildings.

No person shall engage in the smoking of an electronic smoking device inside a County public building, or in an outdoor area within 20 feet of a main exit, entrance, or operable window of a County public building

(3) Other Locations Where Smoking Tobacco is Prohibited by State Statute or Regulation.

No person shall engage in the smoking of an electronic smoking device in any other location where smoking tobacco is prohibited by any state statute or regulation.

(d) Violations and Enforcement.

Any violation of the prohibitions set forth in subdivision (c) is an infraction, punishable by a fine not to exceed one hundred dollars (\$100) for a first violation, two hundred dollars (\$200) for a second violation within one year, and five hundred dollars (\$500) for a third and for each subsequent violation within one year.

This section shall be enforced in the same manner (1) as the state law prohibitions against the smoking of tobacco products contained in Labor Code section 6404.5, Government Code sections 7596-7598 and in the same manner as any other state law or regulation which prohibits the smoking of tobacco products; and (2) at the option of the County, as provided for in County Administrative Code section 81.6.

(e) Construction/Interpretation.

This section shall in all respects be construed and interpreted in the same manner as the state law prohibitions against the smoking of tobacco products contained in Labor Code section

6404.5, Government Code sections 7596-7598 and in the same manner as any other state law or regulation which prohibits the smoking of tobacco products.

Section 2: Effective Date. This ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days after the date of adoption of this ordinance, a summary shall be published once with the name of those members voting for and against the same in the newspaper of general circulation published in the County of San Diego.

Approved as to Form and Legality
County Counsel

By Stephen R. Magruder,
Senior Deputy

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 20th day of May, 2014.