



AN ORDINANCE ADDING PROVISIONS TO TITLE 3, DIVISION 2 OF THE SAN DIEGO COUNTY REGULATORY CODE REGARDING SMOKING RELATED PROHIBITIONS IN THE UNINCORPORATED AREA OF THE COUNTY

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*Health Services Advisory Board
January 7, 2020*





On October 15, 2019, the Board of Supervisors (3-2) authorized staff to return to the Board in the next 60 days with recommendations for Ordinances pertaining to:



Prohibit sale or distribution of flavored smoking products



One-year moratorium on sale or distribution of all electronic smoking devices



Smoke-free outdoor dining



Public Health Services requests that the Health Services Advisory Board support the recommendation approach and the added provisions in the Ordinance.



RECENT DEVELOPMENTS



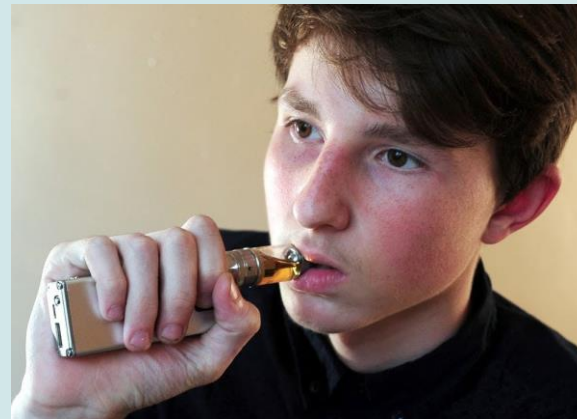
December 20,
2019,

- President Trump signed legislation to raise the federal minimum age of sale of tobacco products from 18 to 21 years nationally, but California has adopted this policy in 2016.



January 2, 2020

- The U.S. Food and Drug Administration (FDA) issued a policy for enforcement against flavored cartridge-based e-cigarettes products (other than tobacco and menthol), to be effective within 30 days.



January 6, 2020

- Senator Jerry Hill has introduced **SB 793** to ban sales of flavored tobacco products, including mint and menthol products.





On January 2, 2020, the U.S. Food and Drug Administration (FDA) issued a policy for enforcement against flavored cartridge-based e-cigarettes products (other than tobacco and menthol), to be effective within 30 days.

Policy/Ordinance	Features
<p>FDA Policy</p>	<p>The FDA policy includes:</p> <ul style="list-style-type: none"> • Flavored cartridge-based e-cigarettes “that appeal to kids” <p>The FDA policy does NOT include:</p> <ul style="list-style-type: none"> • Tobacco or menthol flavored e-cigarette products • Other e-cigarette devices that are not cartridge-based <p>The policy is NOT a ban, but a prioritization of existing enforcement authority</p>
<p>Unincorporated Area of San Diego County – Proposed Ordinance</p>	<p>Today’s proposed ordinance provides protections beyond the FDA policy and includes bans of:</p> <ul style="list-style-type: none"> • ALL flavored smoking products • ALL electronic smoking devices, regardless of type

CURRENT STATUS






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Prohibition Area	FDA	County
Flavors	<ul style="list-style-type: none">• Prioritizes enforcement of flavored cartridge-based e-cigarette products “that appeal to kids,” excluding tobacco or menthol.	<ul style="list-style-type: none">• Ban sale or distribution ALL flavored smoking products, including menthol, at the retail level.
Devices	<ul style="list-style-type: none">• Prioritizes enforcement of all other Electronic Nicotine Delivery System (ENDS) products for which the manufacturer has failed to take adequate measures to prevent minors’ access.• Any ENDS product that is targeted to minors or likely to promote use of ENDS by minors.	<ul style="list-style-type: none">• Ban sale or distribution of ALL e-cigarette devices for one-year, at the retail level.

CURRENT STATUS



Recommendation	Current Assessment
 <p>1A. Prohibit the sale and distribution of flavored smoking products</p>	<ul style="list-style-type: none">• No current enforcement program exists in the unincorporated area• 61 CA cities and counties have flavor bans (as of 12/20/19)• Imperial Beach City Council unanimous vote on the first reading in support of flavored tobacco products ban (12/4/19)• El Cajon's motion to adopt a flavor ban failed 2-3 (11/23/19)
 <p>1B. One-year moratorium on the sale and distribution of all electronic smoking devices</p>	<ul style="list-style-type: none">• No current enforcement program exists in the unincorporated area• 13 CA cities and counties have electronic smoking device bans
 <p>1C. Smoke-free outdoor dining</p>	<ul style="list-style-type: none">• No current enforcement program in the unincorporated area• 9 jurisdictions in San Diego County currently have smoke-free outdoor dining (SFOD) protections• Imperial Beach City Council unanimous vote on the first reading in support of SFOD (12/4/19)• La Mesa first reading of SFOD anticipated for 1/14/20



After the October 15, 2019 Board action to return in 60 days, the following approach was taken:

- **Convened a workgroup consisting of:**
 - Health and Human Services Agency (PHS, BHS, PIO)
 - Land Use and Environment Group (DEH, PDS)
 - Public Safety Group (Sheriff's Department, DA's Office)
 - County Counsel (HHSA, LUEG)

- **Conducted extensive research and assessments on current state**
 - Conducted assessments on various jurisdictions in and outside the County
 - Conducted Request for Information (RFI) to collect information on industry standard practices on staffing, enforcement, compliance monitoring, etc.

- **Met with multiple stakeholders**





- **Revised the Ordinance and added proposed provisions to Title 3, Division 2 of the San Diego County Regulatory Code Regarding Smoking Related Prohibitions in the Unincorporated Area of the County**

ORDINANCE NO. _____(N.S.)

AN ORDINANCE ADDING PROVISIONS TO TITLE 3, DIVISION 2 OF THE SAN DIEGO COUNTY REGULATORY CODE REGARDING SMOKING RELATED PROHIBITIONS IN THE UNINCORPORATED AREA OF THE COUNTY

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

Section 1. Title 3, Division 2 of the San Diego County Regulatory Code is amended to add Chapter 8.7 as follows:

SEC. 32.871. FINDINGS AND INTENT.

- Smoking is the leading cause of preventable death in the United States and California. Smoking kills more than 480,000 Americans each year, including secondhand smoke that kills approximately 41,000 Americans who do not smoke.
- The United States Surgeon General concluded in 2006 that there is no safe level of exposure to secondhand smoke.
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure.
- The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm.
- Secondhand smoke is responsible for as many as 7,300 deaths from lung cancer and 34,000 deaths from heart disease among adult nonsmokers each year in the United States. Secondhand smoke is particularly hazardous to individuals with cardiovascular disease, and individuals with impaired respiratory function, including those with asthma or obstructive airway disease.
- Exposure to secondhand smoke can occur at significant levels outdoors, and secondhand exposure can reach levels attained indoors depending on direction and amount of wind and number and proximity of smokers.
- Californians working in the service and hospitality industry have much greater exposure to secondhand smoke when there is an outdoor dining area at their workplace because State law does not regulate smoking in outdoor dining areas to the same extent as indoor dining areas.
- Aerosols created by electronic smoking devices contain varying concentrations of particles and chemicals; some studies found particle sizes and nicotine concentrations similar to, or even exceeding, conventional cigarette smoke.
- For the reasons stated above, smoking in and around public outdoor dining areas is a public nuisance.
- It is the intent of the Board to provide for the public health, safety, and welfare, by reducing secondhand smoke exposure in public outdoor dining areas.

SEC. 32.872. DEFINITIONS.



- 1A. Prohibit the sale and distribution of all flavored products for “smoking” as defined by State law.***
- 1B. Establish a one-year moratorium on the sale and distribution of all electronic smoking devices.***
- 1C. Prohibit “smoking” as defined by State law, in outdoor dining patio areas, and a buffer zone outside of outdoor dining patio areas.***



1A. Prohibit the sale and distribution of all flavored products for “smoking” as defined by State law.

1B. Establish a one-year moratorium on the sale and distribution of all electronic smoking devices.

1C. Prohibit “smoking” as defined by State law, in outdoor dining patio areas, and a buffer zone outside of outdoor dining patio areas.

PERMITTED FOOD FACILITIES IMPACTED BY SMOKE-FREE OUTDOOR DINING



“Outdoor dining area” means any portion of a permitted food facility that contains areas designated, established, or regularly used for consuming food or drink outdoors, in a covered area, or otherwise outside the confines of the interior premises. The ordinance will affect establishments such as:

Restaurants/bars

Temporary food facilities

Food carts

Food trucks

Of the 941 total permitted food facilities in the unincorporated area, staff identified 365 permitted food facilities that include an outdoor patio area on their premises as of 1/2/20.

RECOMMENDATION #1C: SMOKE-FREE OUTDOOR DINING



Recommendation	Implementation
<p data-bbox="30 425 820 933"><i>1C. Prohibit “smoking” as defined by State law, in outdoor dining patio areas, and a buffer zone outside of outdoor dining patio areas.</i></p> <p data-bbox="81 1093 766 1143">With exemption for hookah</p>	<p data-bbox="856 348 1778 562">Education and Outreach / Complaint-based Enforcement (March 1, 2020+)</p> <ul data-bbox="856 629 2507 1248" style="list-style-type: none">• As of 1/2/20, 365 permitted food establishments with outdoor dining areas identified in unincorporated area within the County.• Complaint-based enforcement after education period with tiers of enforcement.• All complaints will be reviewed and followed up by staff for evidence of violation.• If found in violation, the proposed enforcement structure includes:<ul data-bbox="952 1072 2142 1248" style="list-style-type: none">• 1st violation: \$100 fine• 2nd violation within 1 year: \$200 fine• Each additional violation within 1 year: \$500 fine



- Recommendation #1C: Smoke-Free Outdoor Dining
 - The industry standard practice is **complaint-based enforcement**.
 - The Smoke-Free Outdoor Dining ordinance implementation is not contingent on the flavored smoking products ban and electronic smoking device ban.





- 1A. Prohibit the sale and distribution of all flavored products for “smoking” as defined by State law.***
- 1B. Establish a one-year moratorium on the sale and distribution of all electronic smoking devices.*
- 1C. Prohibit “smoking” as defined by State law, in outdoor dining patio areas, and a buffer zone outside of outdoor dining patio areas.*

RECOMMENDATION #1A: FLAVORED SMOKING PRODUCTS



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Recommendation

Phases of Implementation

1A. Prohibit the sale and distribution of all flavored products for “smoking” as defined by State law.

With exemption for hookah

Phase 1: Education and Outreach (March 2020 – June 2020)

- Education and outreach to retailers (n≈366)
 - Based on the California Department of Tax and Fee Administration, the state licensing body of tobacco retailers,
 - List of gas stations from County of San Diego Agriculture, Weights, and Measures, and
 - Liquor licenses from CA Dept of Alcoholic Beverage Control

Phase 2: Tobacco Retail Licensing Program or other option(s) for enforcement (July 2020+)

Proposed enforcement activities:

- Complaint-based enforcement after education period with tiers of penalties
- Verify state license
- Proactively inspect stores (n≈366)
- Decoy operations
- Create database of retailers



1A. Prohibit the sale and distribution of all flavored products for “smoking” as defined by State law.

1B. Establish a one-year moratorium on the sale and distribution of all electronic smoking devices.

1C. Prohibit “smoking” as defined by State law, in outdoor dining patio areas, and a buffer zone outside of outdoor dining patio areas.

RECOMMENDATION #1B: ONE-YEAR MORATORIUM



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Recommendation

1B. Establish a one-year moratorium on the sale and distribution of all electronic smoking devices.

Phases of Implementation

Phase 1: Education and Outreach (March 2020 – June 2020)

- Education and outreach to retailers (n≈366)
 - Based on the California Department of Tax and Fee Administration, the state licensing body of tobacco retailers,
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- Complaint-based enforcement after education period with tiers of penalties
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- Proactively inspect stores (n≈366)
- Decoy operations
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1. One year from the effective date of the ordinance, which would be February 28, 2021; OR
2. The health officer to issue a public notice at the termination of the Centers for Disease Control and Prevention's investigation regarding whether this condition has been met.





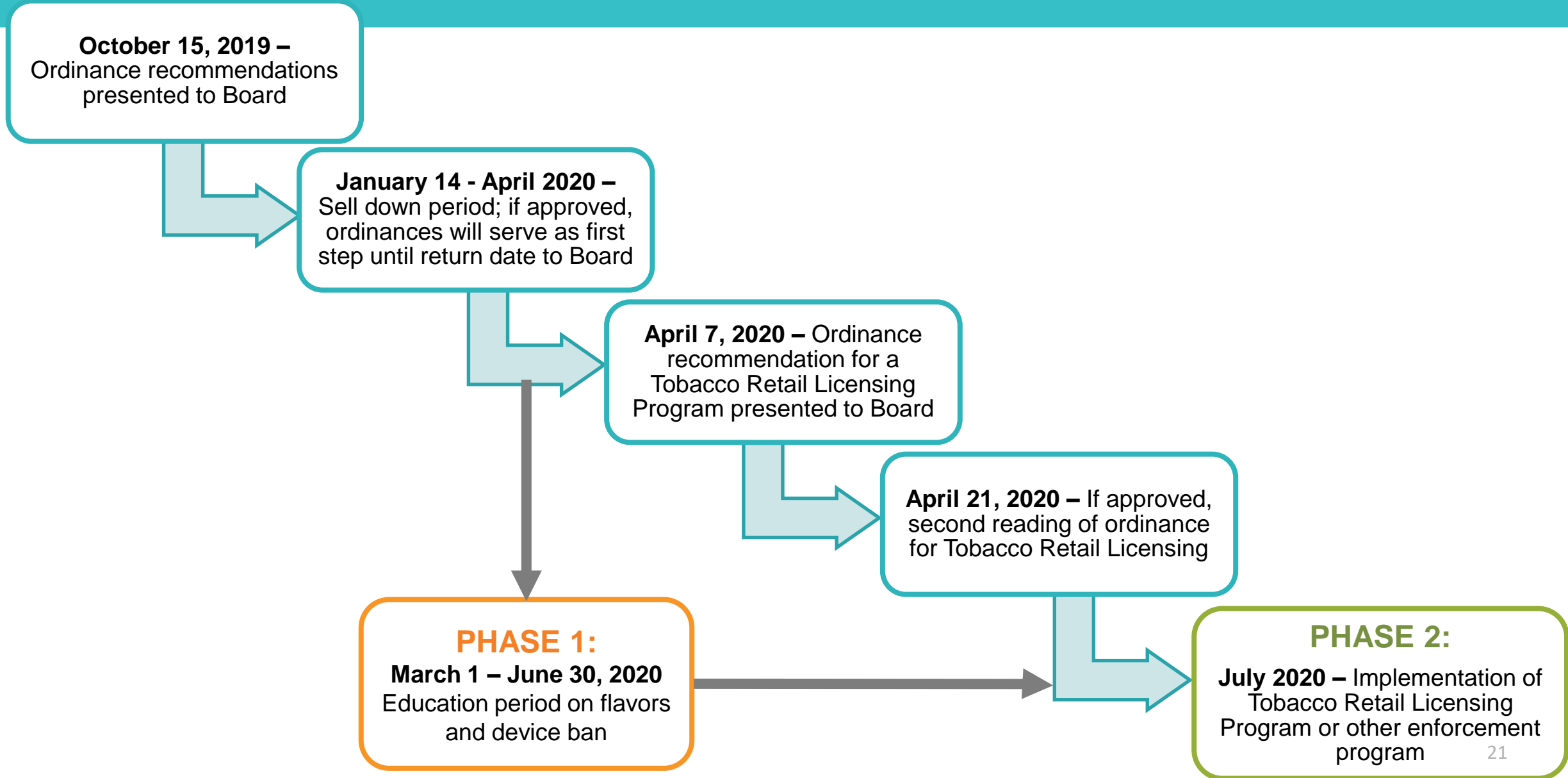
The Board of Supervisors also authorized staff to return to the Board in 180 days with recommendations pertaining to:



Tobacco retail licensing

- Today's proposed ordinance recommendations can serve an initial first step, with the long-term enforcement issues to be addressed at the 180-day return date in April 7, 2020.
- On that date, if the recommendation for a tobacco retail licensing program is approved, the program may be supported by cost-recovery based fees.

SUMMARY TIMELINE & NEXT STEPS





- **If approved, County staff** will return for a second reading on January 28, 2020.

- **County staff will continue to:**
 - Implement a vaping public awareness campaign in coordination with the California Department of Public Health.

- County staff will return to the Board in April 7, 2020 with recommendations for a **Tobacco Retail Licensing** program.





- **Tobacco use** is one of the three behaviors that contribute to four diseases that cause over 50% of all deaths worldwide.
- The proposed ordinance recommendations support the *Live Well San Diego* vision and the County's efforts to improve the public health of San Diego County by implementing comprehensive policies that protect the public's health from the harms of smoking and exposure to secondhand smoke.



Public Health Services requests that the Health Services Advisory Board support the recommendation approach and the added provisions in the Ordinance.



Thank You and Questions



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