



**COUNTY OF SAN LUIS OBISPO
BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Health Agency – Public Health	(2) MEETING DATE 1/14/2020	(3) CONTACT/PHONE Annette Martin ASO II, 805-781-1548	
(4) SUBJECT Public meeting to consider an Ordinance amending Chapter 8.23 of the County Code to prohibit the sale of electronic smoking devices in the unincorporated areas of the County. Item introduced on December 10, 2019. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board: <ol style="list-style-type: none"> 1. Adopt the proposed Ordinance amending Title 8, Chapter 8.23 of the County to prohibit the sale of electronic smoking devices in the unincorporated areas of the County; and 2. If adopted, the Board waive the reading of the ordinance; and 3. Instruct the Clerk of the Board to publish the summary of the ordinance, previously prepared by the County Public Health Officer, in a newspaper of general circulation in the County within 15 days after adoption of the proposed ordinance by your Board, containing the names of those supervisors voting for and against the matter, which can act as an alternative publication pursuant to Government Code section 25124(b)(1), and instruct the Clerk to post a copy of the full text of the ordinance and the names of those supervisors voting for and against the ordinance on the county's website. 			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? N/A
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. _____) <input checked="" type="checkbox"/> Board Business (Time Est. <u>30 min</u>)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input checked="" type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input type="checkbox"/> N/A Date <u>12/10/2019</u>	
(17) ADMINISTRATIVE OFFICE REVIEW Morgan Torell			
(18) SUPERVISOR DISTRICT(S) All Districts			



COUNTY OF SAN LUIS OBISPO

TO: Board of Supervisors

FROM: Michael Hill, Health Agency Director
Penny Borenstein, M.D., Health Officer/Public Health Director

DATE: 1/14/2020

SUBJECT: Public meeting to consider an Ordinance amending Chapter 8.23 of the County Code to prohibit the sale of electronic smoking devices in the unincorporated areas of the County. Item introduced on December 10, 2019. All Districts.

RECOMMENDATION

It is recommended that the Board:

1. Adopt the proposed Ordinance amending Title 8, Chapter 8.23 of the County to prohibit the sale of electronic smoking devices in the unincorporated areas of the County; and
2. If adopted, the Board waive the reading of the ordinance; and
3. Instruct the Clerk of the Board to publish the summary of the ordinance, previously prepared by the County Public Health Officer, in a newspaper of general circulation in the County within 15 days after adoption of the proposed ordinance by your Board, containing the names of those supervisors voting for and against the matter, which can act as an alternative publication pursuant to Government Code section 25124(b)(1), and instruct the Clerk to post a copy of the full text of the ordinance and the names of those supervisors voting for and against the ordinance on the county's website.

DISCUSSION

Intent of Ordinance Amendment 8.23

With the meteoric rise in the uptake of youth use of electronic cigarettes, otherwise known as e-cigarettes or e-cigs, the nation, our state and our community are facing a health crisis. Since the last amendment to the ordinance, youth smoking has changed dramatically. In 2014, e-cigarettes became the most commonly used tobacco product by minors and by 2018 youth vaping (i.e., use of e-cigarettes) was deemed an epidemic by the U.S. Surgeon General. In 2018, San Luis Obispo County statistics indicated that 22% of 11th Grade students reported use of e-cigarettes in the past 30 days, with 72% of them reporting that e-cigarettes are easy or very easy to get. Primary reasons that youth cite for using these products is the appeal of having over 15,000 different varieties of flavors available on the local retail market. In April 2019, the Health Agency Tobacco Control Program and Sheriff's Office completed a tobacco retailer "sting operation" in which nine stores in the unincorporated areas of the County sold to an under-aged decoy. This 16% illegal sales rate was an increase from 14% the previous year.

In order to reduce illegal sales of tobacco products to minors, many cities and counties in California have adopted strong local tobacco retailer licensing ordinances. In August 2008, the County of San Luis Obispo's Board of Supervisors amended Chapter 8.23 of the County Code, which requires the licensure of tobacco retailers in the county. This Chapter was amended again in 2014 to relieve the District Attorney's Office of Chapter 8.23 ordinance violation prosecutions in court, and to create an administrative hearing procedure in its place that would emphasize compliance over penalty. Notwithstanding significant enforcement efforts and the fact that e-cigarettes or vaping products may not be legally sold to minors, there is no dearth of ability for youth to get their hands on a steady supply.

The ostensible dangers of use of electronic smoking devices and associated products are not limited to youth. As of December 27, 2019, there have been over 2,500 cases of a new disease called e-cigarette, or vaping, product use associated lung injury, or EVALI. As reported to the Centers for Disease Control and Prevention (CDC), cases of EVALI are from all 50 states, the District of Columbia (DC), and two U.S. territories (Puerto Rico and U.S. Virgin Islands). Fifty-five deaths have been confirmed in 27 states and DC, including five in California. While no cases have yet met the CDC case-definition in San Luis Obispo County, there have been local reports of clinical cases that appear to be consistent with EVALI. These cases are not counted by CDC because they did not result in hospitalization or death or because they had pre-existing illness. Thus, published case counts may, in fact, be only the tip of the iceberg.

It is important to note that none of the electronic devices that deliver various products, be it nicotine, cannabis, alcohol or any number of other substances that youth and adults alike choose to inhale through these devices, are licensed by the U.S. Food and Drug Administration. Those efforts have been moving slowly through the process for over a decade, but as of 2019, there is no regulatory framework in place.

Therefore, with the rapid rise in youth use of e-cigarettes and in the wake of growing reports of vaping-related lung injuries, there has been considerable public pressure to address this issue. On September 11, 2019, the White House announced the federal government plans to act to ban certain e-cigarettes. Shortly thereafter, California's Governor Newsom launched executive actions instructing state regulators to reduce youth vaping consumption by finding ways to ban illegal and counterfeit vaping products. He also set aside \$20 million for a vaping awareness campaign warning against the hazards of vaping to be placed at retailers and on advertising for e-cigarettes and accessories. This proposed County ordinance change is consistent with the federal plan and state efforts, but results can be achieved more immediately. The ordinance will serve as a stop gap against further youth nicotine addiction and potential cases of devastating lung injury among all users, while efforts continue to investigate root causes of EVALI, regulate electronic devices and products used for smoking, and see self-imposed manufacturer promises to eliminate flavorings aimed at youth come to fruition.

Proposed Amended Ordinance 8.23

The proposed changes to Chapter 8.23 of the County Code would update the current definition of tobacco products to include electronic smoking devices. In addition, the amended ordinance will include a prohibition on the sale of these devices until approved by the federal Food & Drug Administration (FDA) as safe and effective smoking cessation aids.

Health Agency Tobacco Control Program Support

There is widespread recognition that smoking is an addiction and that quitting often requires multiple attempts. The County of San Luis Obispo is somewhat distinctive in that they are one of the few counties in the state that continues to provide direct cessation services to its residents. For the past 20 years, the Health Agency Tobacco Control Program has offered free cessation services to all residents of the County to the benefit of the individuals and the community at large through the reduction of secondhand smoke. Traditionally, primarily adult smokers have attended cessation

classes. More recently, the program has been receiving requests from parents looking for resources to help their children quit vaping. The Tobacco Control Program also offers technical assistance to jurisdictions on policy options to reduce tobacco use and has received multiple requests in recent months for consultation from cities, school districts, and community-based organizations.

Attachment 1 provides a background on e-cigarettes.

OTHER AGENCY INVOLVEMENT/IMPACT

The Public Health Department has been working with the Behavioral Health Department to accommodate more youth in cessation classes. The Health Agency has also been working closely with San Luis Obispo County Office of Education, Cuesta College, and Cal Poly to ensure that schools have the resources they need to address youth vaping on school campuses. Action, as included in this introduced ordinance (as well as the proposed companion amendment to Chapter 8.22), has been requested by several cities in San Luis Obispo County as well as school districts and Tenet Healthcare hospital leadership.

County Counsel reviewed and approved the ordinance as to form and legal effect. The County Clerk published proposed Ordinance 8.23 amendment summary in a newspaper of general circulation, in accordance with Government Code section 25124.

FINANCIAL CONSIDERATIONS

According to Healthy Stores for a Healthy Community, the cost of smoking to San Luis Obispo County in 2016 was \$53 millionⁱ in healthcare expendituresⁱⁱ. By passing the proposed amendment to Chapter 8.23 of the Ordinance, the County will potentially save money over time by reducing the expenditures on public health programming, including health care expenditures averted from a reduction or elimination of e-cigarette vaping associated lung injury cases. Regarding revenue from tobacco sales, San Luis Obispo County does not have local tobacco tax; all tobacco taxes are collected by the State and reallocated to local jurisdictions for tobacco control, and other health care objectives. The State's formula for allocating tobacco funding to the local jurisdictions is based on population and not on the revenue jurisdictions generate. Therefore, the proposed amendment is not expected to reduce local revenue.

RESULTS

Approval of the proposed ordinance amendments is expected to have the following results:

- Youth smoking (vaping) rates will decrease
- Fewer cases of lung injury morbidity and mortality among county residents.

This ordinance supports the County's vision of A Healthy Community, which helps to ensure that all people in our community enjoy healthy, successful and productive lives.

ⁱ<https://healthystoreshealthycommunity.com/counties/san-luis-obispo/>

ⁱⁱ Cost of smoking • Max W, Sung HY, Lightwood J. The impact of changes in tobacco control funding on healthcare expenditures in California, 2012-2016. *Tob Control*. 2013; 22(e1): e10-e15. doi:10.1136/tobaccocontrol-2011-050130.

ATTACHMENTS

- 1 Background of E-Cigarettes

- 2 Ordinance - Chapter 8.23 Markup
- 3 Ordinance - Chapter 8.23 Clean
- 4 Tobacco Ordinances 8.22 & 8.23 PowerPoint Presentation