

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY  
OF SANTA BARBARA AMENDING CHAPTER 9.20  
OF THE SANTA BARBARA MUNICIPAL CODE IN  
ITS ENTIRETY PROHIBITING SMOKING IN  
PUBLIC PLACES

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS  
FOLLOWS:

SECTION 1. Findings and Intent.

A. The City Council finds that:

1. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke is a cause of disease in nonsmokers; and

2. The U.S. Environmental Protection Agency has classified secondhand smoke as a carcinogen for which there is no safe level of exposure. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

3. Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function, bronchoconstriction, and bronchospasm; and

4. Cigarette butts are a pervasive form of litter in the City of Santa Barbara, on its streets and in its parks, beaches, and waterways, and hence constitute a public nuisance. Cigarette butts contain carcinogenic bits of non-biodegradable cellulose acetate which are toxic to wildlife and pose a risk to human health.

5. Carelessly discarded cigarettes are a major cause of fire and pose a significant threat to public safety and the community.

SECTION 2. Chapter 9.20 of Title 9 of the Santa Barbara Municipal Code is amended in its entirety to read as follows:

**9.20.010 Definitions.**

For the purposes of this Chapter, the following words and phrases shall have the meaning indicated, unless otherwise expressly stated or the context clearly indicates a different meaning:

**A. BAR.** Any business licensed or required to be licensed by the Department of Alcoholic Beverage Control for alcoholic beverage on-sale privileges as a “public premise” as defined by California Business and Professions Code section 23039.

**B. ENCLOSED AREA.** All space between a floor and ceiling which is enclosed on all sides by solid walls, or windows, or doors, which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid. For the purposes of this Chapter, the term "enclosed" shall refer to an "enclosed area."

**C. OUTDOOR DINING AREA.** Any area of the City sidewalk or public right-of-way licensed to a food service establishment pursuant to Chapter 9.95.

**D. PUBLIC PLACE.** Any area or place, publicly or privately owned, that is open to the general public regardless of fee or age requirement, which the public is invited or in which the public is permitted. For the purposes of this Chapter, a private residence is not a “public place” except when the residence is used as a child care, health care, board and care, or community foster care facility as such terms are defined

by the state Health & Safety Code.

**E. RECREATIONAL AREA OR FACILITY.** Any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged.

**F. RESTAURANT.** Any eating establishment which gives or offers for sale food to the public, which is not licensed or not required to be licensed by the Department of Alcoholic Beverage Control for alcoholic beverage on-sale privileges or is licensed by the Department of Alcoholic Beverage Control for alcoholic beverage on-sale privileges as a “bona fide eating place” as defined by California Business and Professions Code section 23038.

**G. RETAIL TOBACCO STORE.** A retail store utilized primarily for the sale of tobacco products and accessories.

**H. SELF-SERVICE DISPLAYS.** An open display of tobacco products and point-of-sale tobacco promotional products that the public has access to without the intervention of an employee.

**I. 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 or vaporize any tobacco products, marijuana, weed, plant, or 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 or vaporizing any tobacco product, marijuana, weed, plant, or any other combustible substance.

**J. TOBACCO PRODUCT.** Any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing

tobacco, dipping tobacco, bidis, blunts, clove cigarettes, or any other preparation of tobacco. "Tobacco product" includes 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, including but not limited to electronic cigarettes or electronic smoking devices. "Tobacco product" 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. TOBACCO VENDING MACHINE.** Any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, bills, trade checks, slugs or other form of legal tender or consideration.

**L. VENDOR-ASSISTED.** When a store employee has access to the tobacco product and assists a customer by supplying the product.

**9.20.020 Areas Where Smoking is Prohibited.**

**A. SMOKE-FREE AREAS AND FACILITIES.** Santa Barbara aims to be a "smoke-free" city to protect the health, safety, and well-being of city residents. Smoking shall be prohibited city-wide in public places within the City of Santa Barbara including, but not limited to, the following:

1. Public sidewalks, plazas, and paseos, except that smoking is permitted at certain times in outdoor dining areas as outlined in section 9.20.030.
2. City owned parking structures and parking lots.

3. Public transportation and public transportation depots, bus stops, and ticket areas.
4. Public parks and gardens.
5. Beaches.
6. Stearns Wharf and the Harbor.
7. Recreational areas and facilities, including, but not limited to, sports pavilions, gymnasiums, athletic fields, athletic courts, skate parks, swimming pools, trails, zoos, bowling alleys, and City operated golf courses, except that smoking is permitted in certain areas of any City operated golf course as outlined in section 9.20.030.
8. Galleries, aquariums, libraries, theaters, and museums, enclosed or not.
9. Video arcades, bingo parlors, card rooms, game rooms, pool halls, dance halls, amusement centers, and convention halls.
10. Events open to the public, including, but not limited to, farmer's markets, parades, festivals, art shows, and concerts.
11. Restaurants, except that smoking may be allowed in outdoor patio areas and outdoor dining areas after 10:00 P.M.
12. Enclosed areas of bars.
13. Retail stores and malls, enclosed or not.
14. All enclosed areas available to, and customarily used by, the general public in all businesses, nonprofit entities and public agencies patronized by the public including, but not limited to, offices, banks, laundromats, beauty and barber shops, and the common areas of hotels and motels.

15. Enclosed common areas in apartment buildings, condominiums, retirement facilities, and nursing homes.

16. Enclosed areas of child day care facilities and private residences while used as a child care, health care, board and care, and community foster care facilities as those terms are defined by state Health & Safety Code.

17. Waiting rooms, hallways, wards, patient rooms, and entrances and exits of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.

18. Polling places, enclosed or not.

19. Restrooms.

20. Elevators.

21. City facilities and all vehicles owned, leased or operated by the City.

**B. OTHER PROHIBITIONS.** Notwithstanding any other provision of this Chapter, any owner, operator, or other person who controls any establishment described in this Chapter may declare that entire establishment to be a non-smoking establishment.

**9.20.030 Areas Where Smoking is Permitted.**

**A. AREAS WHERE SMOKING IS PERMITTED.** Notwithstanding any other provision of this Chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this Chapter:

1. Private residences, except when used as a child care, health care, board and care, or community foster care facility as those terms are defined by the state Health & Safety Code.

2. Retail tobacco stores.

3. Designated hotel and motel guest rooms provided that some of the guest rooms in such hotel or motel are designated and maintained as non-smoking rooms.

4. Outdoor patio areas and outdoor dining areas of restaurants after 10:00 P.M.

5. Outdoor patio areas and outdoor dining areas of bars.

6. The teeing areas, fairways, rough, playing greens, hazard areas, and golf cart pathways connecting each hole of any City operated golf course. Smoking is prohibited in all other areas of any City operated golf course, including, but not limited to, the driving ranges, practice and teaching areas, practice green, clubhouses, restaurant and patios, pro shops, and parking lots.

**9.20.040 Hotel/Motel Signs.**

**A. REGULATIONS WITH RESPECT TO HOTEL/MOTEL SIGNS.** Every hotel and motel shall have signs posted conspicuously in the registration and lobby areas which state that non-smoking rooms are maintained and may be available; rooms designated as being non-smoking shall have signs announcing such restriction conspicuously placed within each room.

**9.20.050 Enforcement.**

**A. CITY ENFORCEMENT.** The City of Santa Barbara, in cooperation with the County Health Officer of the County of Santa Barbara, shall enforce and implement this Chapter.

**B. VIOLATIONS/PENALTIES.** Any person, business owner or proprietor, or employer of any business or establishment subject to the requirements of this Chapter

who violates any mandatory provision of this Chapter shall be guilty of an infraction punishable in accordance with Chapter 1.28 of this Code.

**C. PRIVATE RIGHT OF LEGAL ACTION.** Notwithstanding any other provision of this Chapter, a private citizen may bring legal action to enforce this Chapter.

**9.20.060 Regulation of the Sale and Distribution of Tobacco Products.**

**A. POSTING OF SIGNS.** Any person, business, tobacco retailer, or other establishment subject to this Chapter shall post STAKE Act signs at the point of purchase of tobacco products, which are in compliance with signage specifications and state:

“THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW AND SUBJECT TO PENALTIES. VALID IDENTIFICATION MAY BE REQUIRED, TO REPORT AN UNLAWFUL TOBACCO SALE, CALL 1-800-5ASK-4-ID. BUSINESS AND PROFESSIONS CODE SECTION 22952.”

**B. SALES TO MINORS.** No person, business, tobacco retailer, or owner, manager, or operator of any establishment subject to this Chapter shall sell, offer to sell or permit to be sold any tobacco product to an individual without requesting and examining identification establishing the purchaser’s age as eighteen years or greater unless the seller has some reasonable basis for determining that the buyer is at least eighteen years of age.

**C. SELF-SERVICE SALES OF TOBACCO.**

1. Sale of Tobacco Products by the Pack. It shall be unlawful for any person, business, or tobacco retailer within the City to sell, offer for sale, or display for sale any tobacco product by means of a self-service display. All tobacco products (other



than cartons of cigarettes, multi-container packages of smokeless tobacco and cigars and pipe tobacco displayed for sale pursuant to subparagraph C(2) below) shall be offered for sale exclusively by means of vendor/employee assistance.

2. Sales of Cartons, Cigars, and Pipe Tobacco. Cartons of cigarettes, multi-container packages of smokeless tobacco and cigars and pipe tobacco may be sold by means of self-service merchandising displays only when such product displays are under the direct observation of a vendor/employee. Tobacco products shall be deemed to be under direct observation of a vendor/employee only if the tobacco products themselves (and not merely the racks, shelves, kiosks, etc., where the products are displayed) are in the plain and direct view of a store employee at all times.

**D. TOBACCO VENDING MACHINES.** No person, business, tobacco retailer, or other establishment subject to this Chapter shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance, or use of, on his, her or its premises any vending machine for the purpose of selling or distributing any tobacco product. Any tobacco vending machine in use on the effective date of this Chapter shall be removed within thirty (30) days after the effective date of this Chapter.

This provision shall not apply to vending machines which are located in bars provided that such vending machines in bars must be located at least twenty-five (25) feet from any entry into the bar.

**E. OUT OF PACKAGE SALES.** No person, business, tobacco retailer or other establishment shall sell or offer for sale cigarettes or other tobacco or smoking products not in the original packaging provided by the manufacturer and with all required health warnings.

SECTION 3. Environmental Quality Act Exemption.

This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment, and Section 15060(c)(3) because the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly.