

ORDINANCE NO. 2014-04

AN ORDINANCE OF THE CITY OF SANTA CRUZ AMENDING SECTION 6.04.040, 6.06.010, 6.06.020, 6.06.030, 6.07.010, 6.07.020, 6.07.030, 6.07.060 AND 6.07.140 OF THE SANTA CRUZ MUNICIPAL CODE PERTAINING TO THE REGULATION OF E-CIGARETTES AND LOCAL LICENSING OF TOBACCO RETAILERS

BE IT ORDAINED by the City Council of the City of Santa Cruz as follows:

SECTION 1. FINDINGS.

- A. It is the intent of the city of Santa Cruz in adopting this ordinance to eliminate the use of electronic cigarettes (e-cigarettes) in locations where smoking of tobacco and other related products are prohibited, eliminate the sale of e-cigarettes to minors in order to reduce their use of these products and prohibit future tobacco and e-cigarette retailing near schools and high-risk alcohol outlets.
- B. Whereas the city of Santa Cruz has an obligation to protect the public health and safety of our residents, particularly minors, the city of Santa Cruz does find the following:
1. E-cigarettes are devices designed to look similar to cigarettes in shape, size and general appearance, and typically contain nicotine and other chemicals. They are advertised as a guilt-free alternative to smoking and a method to circumvent smoking bans.
 2. The United States Food and Drug Administration (FDA) is concerned that e-cigarettes, by virtue of the fact that they appeal to youth because of their high-tech design and assurances of no health risks, can increase nicotine addiction among young people. The FDA is further concerned that e-cigarette use may lead youth to try other tobacco products, including conventional cigarettes, which are known to cause disease and death and lead to premature death.
 3. The FDA finds that e-cigarette products may contain ingredients that are known to be toxic to humans, including nitrosamines and diethylene glycol which is used in anti-freeze.
 4. The potential health effects of bystanders from breathing or absorbing vapors from e-cigarette users through their skin is not well understood at this time; more research and studies are required before definitive finds can be made in this regard.
 5. Many e-cigarette vendors advertise that their products as safe and effective tobacco cessation devices, despite the fact that the FDA has not approved these devices as cessation aids.
 6. The use of e-cigarettes in locations where tobacco smoking is prohibited make it difficult to enforce no-smoking laws and could increase social acceptance of smoking.

7. Neither the state nor federal law restricts the use of e-cigarettes, with the exception of the prohibition of sales of e-cigarettes to minors. However, state law permits local agencies to pass and enforce laws regulating the distribution of e-cigarettes that are stricter than state law. Approximately 50 cities and counties in California require retailers to obtain a license to sell electronic cigarettes.
8. Tobacco retail outlets near schools may entice minors to attempt to purchase tobacco products. In addition, these outlets typically require a commitment of police resources that are typically greater than other regulated retail establishments.

SECTION 2. Section 6.040.040 of the Santa Cruz Municipal Code is hereby amended to read as follows:

“6.04.040 DEFINITIONS.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

- (a) “Bar” means an enclosed and separately ventilated area which is devoted to the service of alcoholic beverages for consumption by guests on the premises and in which the service of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term “bar” shall not include the restaurant dining area. A “bar,” for the purpose of this definition, does not include any establishment where tobacco smoke can filter into a restaurant through a passageway or any other means.
- (b) “Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
- (c) “City health officer” means the director of the county health department or her or his designee, serving as the city’s health officer pursuant to California Health and Safety Code Section [476](#), Section [901](#) of the Santa Cruz City Charter, and Chapter [6.80](#).
- (d) “E-Cigarette” means any electronically or battery-operated device, often shaped like a cigarette, containing a nicotine-based liquid, sometimes flavored, that is vaporized and inhaled, and which is used to simulate the experience of smoking tobacco or other combustible substances.
- (e) “Employee” means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services to a nonprofit entity.

(f) “Employer” means any person, partnership, corporation, public agency, or nonprofit entity, which employs the services of one or more individual persons.

(g) “Employment” shall be defined as in Labor Code Section [6303\(b\)](#).

(h) “Enclosed area” means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passageways) and which extends from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, “office landscaping” or similar structures.

(i) “Place of employment” means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and rest rooms, conference rooms and classrooms, employee cafeterias and hallways. A private residence is not a place of employment unless it is used as a child care, health care, board and care, or community foster care facility.

(j) “Public place” means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to banks, educational facilities, places of employment, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a public place.

(k) “Restaurant” means any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests or employees; any kitchen in which food is prepared on the premises for serving elsewhere, including catering facilities. The term “restaurant” shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a “bar” as defined in subsection (a).

(l) “Retail tobacco store” means a retail store where the majority of its sales are from tobacco products and smoking accessories and in which the sale of other products is merely incidental.

(m) “Service line” or “service area” means any indoor or outdoor line or area at which one or more persons are waiting for or receiving services or entertainment of any kind, whether or not such service or entertainment involves the exchange of money. Service area includes any outdoor dining area or cafe unless a smoking area is established in a portion of said outdoor dining area or cafe which is separated from the nonsmoking area by a solid partition no lower than eight feet in height.

(n) “Smoking” means inhaling, exhaling, burning or carrying any lighted or operating cigar, cigarette, e-cigarette, weed, plant or other combustible or vaporized substance in any manner or in any form.

(o) “Sports arena” means auditoriums where sporting events are conducted from time to time; gymnasiums; health spas; indoor or outdoor swimming pools; skating rinks; bowling alleys; and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sporting events.

(p) “Nonprofit entity” means any corporation, unincorporated association, or other entity created for charitable, philanthropic, educational, character building, political, social, or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a “nonprofit entity” within the meaning of this subsection.”

SECTION 3. Section 6.06.010 of the Santa Cruz Municipal Code is hereby amended to read as follows:

“6.06.010 PURPOSE.

The purpose of this chapter is to promote the welfare of minors by discouraging the commercial exploitation of potential underage tobacco users and by discouraging actions that promote the unlawful sale of tobacco products to minors as well as the unlawful purchase or possession of tobacco products by minors, the sale and/or distribution of e-cigarettes to minors and the possession of e-cigarettes by minors.”

SECTION 4. Section 6.06.020 of the Santa Cruz Municipal Code is hereby amended to read as follows:

“6.06.020 DEFINITIONS.

A. “Person” means any individual, firm, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or other legal entity.

B. “Retail tobacco store” means a retail store where at least fifty percent of the annual gross receipts are from the sale of tobacco products and smoking accessories and in which the sale of other products is merely incidental.

C. “Self-service display” means an open display of tobacco products which is accessible without the intervention of a vendor, including, but not limited to a rack, shelf, or counter-top display.

D. “Tobacco product” means any substance containing any tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and smokeless tobacco.

E. “Vendor-assisted sale” means a purchase requiring a direct, face-to-face exchange between the vendor and the customer, in which the vendor does not transfer possession of the product to the customer until the purchase is completed.

F. “E-Cigarette” means any electronically or battery-operated device, often shaped like a cigarette, containing a nicotine-based liquid, sometimes flavored, that is vaporized and inhaled, and which is used to simulate the experience of smoking tobacco or other combustible substances.”

SECTION 5. Section 6.06.030 of the Santa Cruz Municipal Code is hereby amended to read as follows:

“6.06.030 RESTRICTIONS ON TOBACCO MERCHANDISING.

A. It shall be unlawful to sell, permit to be sold, or offer for sale any tobacco or e-cigarette product by means of self-service merchandising or by any means other than a vendor-assisted sale. This prohibition shall not apply to a retail tobacco store, or a vending machine authorized by Chapter [6.05](#) of this code.

B. It shall be unlawful to sell or otherwise distribute e-cigarettes to minors.

C. It shall be unlawful for minors to possess or smoke/inhale e-cigarettes.”

SECTION 6. Section 6.07.010 of the Santa Cruz municipal Code is hereby amended to read as follows:

“6.07.010 DEFINITIONS.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) “Chief of police” shall refer to the city of Santa Cruz chief of police or the person designated by the chief of police.

(b) “Drug paraphernalia” shall have the definitions set forth in California Health and Safety Code Section [11014.5](#), as that section may be amended from time to time.

(c) “E-Cigarette” means any electronically or battery-operated device, often shaped like a cigarette, containing a nicotine-based liquid, sometimes flavored, that is vaporized and inhaled, and which is used to simulate the experience of smoking tobacco or other combustible substances.

(d) “Person” shall mean any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(e) “Proprietor” shall mean a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.

(f) “Tobacco paraphernalia” shall mean cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

(g) “Tobacco product” shall mean:

(1) Any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; or

(2) 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 product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco-product dependence.

(h) “Tobacco retailer” shall mean any person or business which sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, tobacco paraphernalia or e-cigarettes, or who distributes free or low-cost samples of tobacco products, tobacco paraphernalia or e-cigarettes. “Tobacco retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, tobacco paraphernalia or e-cigarettes sold, offered for sale, exchanged, or offered for exchange.”

SECTION 7. Section 6.07.020 of the Santa Cruz Municipal Code is hereby amended to read as follows:

“6.07.020 TOBACCO RETAILER LICENSE – VIOLATIONS.

(a) It shall be unlawful for any person to act as a tobacco retailer, or to display or advertise the sale of tobacco products, tobacco paraphernalia or e-cigarettes, without obtaining and maintaining a valid tobacco retailer’s license pursuant to this chapter for each location at which that activity is to occur.

- (b) Tobacco retailing by persons on foot or from vehicles is prohibited.
- (c) Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- (d) In the course of tobacco retailing or in the operation of a business or maintenance of a location for which a tobacco retailer's license has been issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to violate any local, state or federal law applicable to tobacco products, tobacco paraphernalia, tobacco retailing, narcotics or e-cigarettes."

SECTION 8. Section 6.07.030 of the Santa Cruz Municipal Code is hereby amended to read as follows:

"6.07.030 LIMITS ON TOBACCO RETAIL LICENSE.

- (a) No license shall be issued to authorize tobacco retailing at other than a fixed business place.
- (b) No license shall be issued to authorize tobacco retailing at any location for which a tobacco retailer license suspension is in effect or during a period of ineligibility following a revocation.
- (c) After May 8, 2014, no license shall be issued to authorize tobacco retailing at any location, measured from the nearest property line, that is within 600 feet of a high-risk alcohol outlet, as defined at Section 24.22.437 of this code, or that is within 1,000 feet of a school, as referenced at Section 5.54.040(6) of this code. This prohibition shall not apply to a license applicant whose application seeks authorization to conduct tobacco retailing at a location where such retailing was taking place as of January 1, 2014 and has continued without interruption at that location since May 8, 2014."

SECTION 9. Section 6.07.060 of the Santa Cruz Municipal Code is hereby amended to read as follows:

"6.07.060 LICENSE RENEWAL AND EXPIRATION.

- (a) A tobacco retailer license is invalid unless the appropriate fee has been paid in full and the term of the license has not expired. The term of a tobacco retailer license is one year beginning each fiscal year on January 1st and ending on December 31st of the same year. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license and submit the license fee no later than thirty days prior to expiration of the term.
- (b) A tobacco retailer's license that is not timely renewed shall expire at the end of its term. To reinstate a license that has expired, or to renew a license not timely renewed pursuant to subsection (a), the proprietor must:

- (1) Submit the license fee.
- (2) Submit a signed affidavit affirming that the proprietor:

(i) Has not sold and will not sell any tobacco product, tobacco paraphernalia or e-cigarettes after the license expiration date and before the license is renewed; or

(ii) Has waited the appropriate ineligibility period established for tobacco retailing without a license, as set forth in Section [6.07.090\(b\)](#), before seeking renewal of the license.”

SECTION 10. Section 6.07.140 of the Santa Cruz Municipal Code is hereby amended to read as follows:

“6.07.140 TOBACCO RETAILING WITHOUT A LICENSE – SEIZURE.

(a) Tobacco products, tobacco paraphernalia and e-cigarettes offered for sale or exchange in violation of this chapter are subject to seizure by the chief of police, or any peace officer, and shall be forfeited after the licensee and any other owner of the tobacco products, tobacco paraphernalia or e-cigarettes seized is given reasonable notice and an opportunity to demonstrate that the tobacco products, tobacco paraphernalia or e-cigarettes were not offered for sale or exchange in violation of this chapter.

(b) Forfeited tobacco products, tobacco paraphernalia and e-cigarettes shall be maintained and destroyed pursuant to the police department’s policy for seized evidence.

SECTION 11. SEVERANCE.

SECTION 12. This ordinance shall take effect and be in force thirty (30) days after final adoption.

PASSED FOR PUBLICATION this 25th day of March, 2014 by the following vote:

AYES: Councilmembers Bryant, Terrazas, Comstock, Mathews, Posner; Vice Mayor Lane; Mayor Robinson.

NOES: None.

ABSENT: None.

DISQUALIFIED: None.

APPROVED: ss/Lynn Robinson, Mayor

ATTEST: ss/Bren Lehr, City Clerk Administrator

ORDINANCE NO. 2014-04

PASSED FOR FINAL ADOPTION this _____ day of _____, 2014
by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk Administrator

This is to certify that the above
and foregoing document is the
original of Ordinance No. 2014-04
and that it has been published or
posted in accordance with the
Charter of the City of Santa Cruz.

City Clerk Administrator