

CITY OF SANTA ROSA  
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL  
SUBJECT: SMOKING ORDINANCE UPDATE  
STAFF PRESENTER: ERIN MORRIS, SENIOR PLANNER  
COMMUNITY DEVELOPMENT

AGENDA ACTION: INTRODUCTION OF ORDINANCES

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ISSUE(S)

- Shall the Council introduce an ordinance to replace Chapter 9-20, titled “Prohibiting Smoking In and Around Workplaces and Public Places,” with a revised Chapter 9-20 titled “Smoking Regulations?”
- Shall the Council introduce an ordinance amending Zoning Code Section 20-70.020 (Definitions of Specialized Terms and Phrases) to include revised definitions related to tobacco/smoke shops and a definition of electronic smoking devices?



COUNCIL GOALS/STRATEGIES

City Council Goal 6 is to “Commit to Making Santa Rosa a Healthy Community Where People Feel Safe to Live, Work, and Play.” Strategic Objective #2 is to expand the City’s smoking ordinance for public/private places.

BACKGROUND

1. The Council initiated changes to the City’s smoking regulations on August 26, 2014.
2. Based on Council direction, a list of changes to the smoking regulations were developed. These included:
  - a. Prohibit smoking in attached multifamily housing, including duplexes, apartments, and condominiums and any building that contains two or more attached residential units.
  - b. Eliminate any allowance for smoking on City-owned recreational properties including parks.

- c. Prohibit smoking at all City-owned properties including (but not limited to) office buildings, recreation centers, public safety facilities, parking garages, and parking lots.
  - d. Prohibit smoking in outdoor service areas, including ATM lines, outdoor food vending, movie theater lines, bus stops and bus shelters.
  - e. Revise the definition of “smoking” in City Code Chapter 9-20 and the definition of “tobacco or smoke shop” in the Zoning Code to explicitly include use and sale of electronic smoking devices.
  - f. Increase the percentage of guest rooms within hotels and motels that must be smoke free from 50% to 75%.
  - g. Increase the reasonable distance, defined as “a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area,” from 20 feet to 25 feet.
3. Staff was also asked to research declaring second hand smoke as a nuisance.
4. Following two Community Meetings held in September and October 2014 and public input, a draft of Chapter 9-20 (Smoking Regulations) was made available to the public on October 15, 2014.
5. The Planning Commission held a public hearing and considered the Zoning Code revisions on October 23, 2014. The Commission voted 5-0-1 to recommend approval of the zoning changes.
6. A Study Session was held by the Council on December 16, 2014 to review draft Chapter 9-20 (Smoking Regulations). Council had various comments and questions. The Council requested further evaluation regarding declaring secondhand smoke a nuisance and had questions about medical marijuana use in multifamily residences and about smoking regulations in other Sonoma County cities.
7. In response to public and Council comments, additional minor revisions were undertaken. These included clarifications to landlord responsibilities in enforcement of the ordinance, updated implementation dates, and revised signage requirements. On January 12, 2015, a revised version of the draft Chapter 9-20 (Smoking Regulations) was posted on the City of Santa Rosa’s web site. On February 27, 2015, a final revised version was posted on the web site.
8. On March 31, 2015, the Council considered the revised smoking ordinance, and revisions to the Zoning Code pertaining to tobacco/smoke shops. Following presentations from City staff and the County health officer, approximately 40

speakers addressed the Council regarding the proposal. Comments were broad and varied, but generally focused on the following topics:

- a. Electronic smoking device users, and business owners and employees who sell the devices and related accessories, opposed the proposal to restrict the use of electronic smoking devices in multifamily residential settings, and requested the ordinance be revised to allow the products to be sampled within tobacco/smoke shops that sell the devices.
  - b. Landlords and property managers generally supported the proposed regulations but requested two changes: 1) additional time to implement the new regulations in common areas; 2) revisions to the landlord responsibilities section of the ordinance to clearly indicate which steps a landlord needs to take to be deemed in compliance with the law.
  - c. Most speakers supported the proposed regulations to not allow conventional smoking in public and private places. A few speakers spoke in opposition to the restrictions.
9. The Council discussed the smoking ordinance at length, and provided the following unanimous (6-0-1) direction to staff:
- a. Allow use of medical cannabis via electronic smoking devices in multifamily settings, and do not allow it in public places, consistent with the proposed ordinance language from the staff report.
  - b. Allow use of electronic smoking devices in tobacco/smoke shops provided that no one under the age of 18 is permitted in the store;
  - c. Prohibit use of electronic smoking devices in public places and within a reasonable distance (25 feet) of such places;
  - d. Provide additional information and options related to use of electronic smoking devices in multifamily settings;
  - e. Revise the ordinance to create a safe harbor for multifamily landlords by identifying specific steps they must take to be deemed in compliance; and
  - f. Extend the implementation time for smoke free multifamily common areas by 60 days.

These changes have been incorporated into a revised ordinance dated May 22, 2015.

10. The Council voted (4-2-1) to treat the emissions from electronic smoking devices ("vapor") the same as unwanted secondhand smoke by declaring such emissions a nuisance. This is already included in the February and May drafts of the ordinance, since the proposed definition of "smoke" includes emissions from

electronic smoking devices. Based on concerns about how this provision would be implemented if the Council elects to modify the proposed ordinance to allow use of electronic smoking devices in certain settings, staff has provided additional analysis of this issue in the Analysis section of this staff report.

11. The Council did not discuss any changes to the Zoning Code text amendment pertaining to tobacco/smoke shops. The text of the draft zoning ordinance remains unchanged from October 2014.
12. Following the March 31, 2015 Council meeting, Community Development and City Attorney's Office staff worked together to develop a revised ordinance to integrate the medical cannabis exemption, allow use of electronic smoking devices in tobacco/smoke shops, provide a "safe harbor" for landlords implementing the ordinance, and extend the implementation date for multifamily common areas. The revised ordinance, dated May 22, 2015, has been available on the City's web page.

## ANALYSIS

### 1. Secondhand Effects of Emissions from Electronic Smoking Devices

The Council requested additional information about the secondhand effects of emissions from electronic smoking devices, in particular how "vapor" emitted from an electronic smoking device compares with the characteristics of secondhand smoke.

Staff contacted Dr. Stanton Glantz, Professor of Medicine at the University of California in San Francisco, and he provided a copy of a research paper titled "E-Cigarettes – A Scientific Review," published in *Circulation* and dated May 13, 2014. This report originated from the Center for Tobacco Control Research and Education and University of California at San Francisco.

The report, which is attached to this staff report, documents the following findings from researchers, primarily from studies conducted in 2013:

- Electronic smoking devices do not burn or smolder the way conventional cigarettes do, so they do not emit when not actively being used.
- Emissions from electronic smoking devices are not merely water vapor but rather an aerosol of ultrafine particles that contains various chemicals and ultrafine particles. Bystanders are exposed to this aerosol when exhaled by the user of an electronic smoking device.
- Electronic smoking device emissions do not contain carbon monoxide, a key combustion element of conventional cigarette smoke.

- Both electronic smoking devices emissions and conventional smoke contain fine particles.
- Nonusers of electronic smoking devices sitting within an enclosed environment (test chamber) filled with emissions from electronic smoking devices at a particle-density resembling a smoky bar absorbed a similar amount of nicotine as can be absorbed through exposure to secondhand smoke.
- A study of indoor pollution from people using electronic smoking devices over a 2-hour period in a realistic environment modeled on a café found elevated nicotine and chemical levels, including chemicals identified as probable carcinogens by the International Agency for Research on Cancer, in the room air.
- Another study compared the level of toxins and nicotine in electronic smoking device emissions to conventional cigarettes, and found that the level of toxins emitted into the air was much lower than those from conventional cigarettes.
- There is evidence that frequent low or short-term levels of exposure to fine and ultrafine particles from tobacco smoke or air pollution (such as emissions from electronic smoking devices) can contribute to pulmonary and systemic inflammatory processes and increase the risk of cardiovascular and respiratory disease and death.

#### Mobility of Secondhand Emissions

There are various studies that prove that smoke moves between units through walls and ventilation systems, which form the basis of the Council's decision to prohibit smoking within attached multifamily housing units. The Council discussed whether or not emissions from electronic smoking devices have similar mobility, and asked staff to research the matter further.

The "Electronic Smoking Devices – A Scientific Review" document includes a chart on Page 1977 that depicts that the particles associated with electronic smoking device emissions behave similarly to those from conventional cigarettes in terms of density and distribution. The research paper states that "the particles within emissions from electronic smoking devices are similar to those of conventional cigarettes. The particles are small enough to reach deep into the lungs and cross into the systemic circulation... Tests on e-cigarettes show much lower levels of most toxicants, but not particles, than conventional cigarettes."

#### Staff Conclusion

Based on review of current research, staff concludes that there are still some unknowns regarding the health effects and toxicity of the ultrafine particles

emitted from electronic smoking devices. It is not clear whether these particles have health effects and toxicity similar to the ambient fine particles generated by conventional cigarette smoke or secondhand smoke, but there is evidence that frequent low or short-term levels of exposure to fine and ultrafine particles from electronic smoking devices can contribute to health problems.

The researchers associated with the UCSF report recommended being protective of public health by restricting use of electronic smoking devices until more is known regarding health effects. Other cities and states are taking this approach. According to Americans for Nonsmokers' Rights (ANR), 354 municipalities and three states include electronic smoking devices as products that are prohibited from use in smoke-free environments as of April 2, 2015.

2. Options for Regulating Use of Electronic Smoking Devices in Attached Multifamily Housing

The Council expressed agreement regarding prohibiting conventional smoking in multi-family housing, as recommended by staff, with a few changes. Specifically, the draft ordinance reviewed by the Council in March was updated to integrate an exception for medical cannabis use (via electronic smoking devices) in multifamily settings, extended the implementation date for smoke-free multifamily common areas to match other implementation dates, and includes revised landlord responsibilities for implementation of the regulations.

Based on the studies of vapor and its potential health impacts, staff is recommending not allowing use of electronic smoking devices in multifamily dwellings where smoking is also prohibited. This option, along with other options for addressing use of electronic smoking devices, is analyzed below.

**Option 1 (Staff recommendation): Do not allow use of electronic smoking devices in attached multifamily housing settings wherever smoking is prohibited.**

If the current draft ordinance is adopted, the use of electronic smoking devices would be prohibited on residential properties containing two or more units with one or more shared walls, floors or ceilings, except in designated outdoor smoking areas that meet specific separation requirements. The use of an electronic smoking device by a qualified medical cannabis patient would be allowed. This proposal would result in indoor and outdoor environments that are generally free of emissions from electronic smoking devices.

This recommendation is supported by studies that document that electronic smoking devices generate a quantity and density of ultrafine particles, similar in size to smoke particles, containing chemicals that are hazardous to health and transmitting nicotine to nonusers, as detailed in the previous section of this report.

**Option 2 (Allow Use in Multifamily Residential): Do not regulate use of electronic smoking devices in attached multifamily settings**

Should the Council wish to allow the use of electronic smoking devices in attached multifamily residential settings, this could be accomplished by replacing Section 9-20.070(F) with the following language, and add the same language to Sections 9-20.080 and 9-20.090.

(F) Notwithstanding any other provision of this chapter, use of an electronic smoking devices is not included in the definition of smoking for the purposes of this section.

This option would allow use of electronic smoking devices inside and outside of attached multifamily units. It would not preclude property owners or managers from banning use of the devices if desired by the owner or their tenants. This would result in secondhand exposure. Should the Council later decide to ban use of electronic smoking devices based on new scientific evidence, it would be relatively easy to update the ordinance by deleting the exception language.

**Option 3 (Allow Indoor Use Only): Allow use of electronic smoking devices inside of multifamily units only**

Should the Council wish to allow use of electronic smoking devices inside of individual attached multifamily units, this would allow users of the devices the ability to use them inside and generally contain the vapor within the individual unit. However, this may result in secondhand exposure.

To allow use of electronic smoking devices inside of units only, the following language could be incorporated into the draft ordinance:

Notwithstanding any other provision of this chapter, use of an electronic smoking devices is allowed within individual residential units.

**Option 4 (Allow Outdoor Use Only): Allow use of electronic smoking devices in outdoor areas only**

Should the Council wish to allow use of electronic smoking devices in outdoor common areas of attached multifamily housing developments while prohibiting it indoors, this would allow users of the devices to use the devices in open space areas, parking lots, and other common areas of multifamily housing. This would allow the emissions from the devices to be dispersed into the air, which would reduce the concentration of the particles emitted from the devices but may result in secondhand exposure.

To allow the use of electronic smoking devices outside of units only while minimizing vapor intrusion into homes, the following language could be incorporated into Section 9-20.070 of the draft ordinance:

(G) Notwithstanding any other provision of this chapter, use of an electronic smoking devices is allowed in the outdoor common areas of attached multifamily residential developments provided that use of electronic smoking devices is prohibited within a reasonable distance from areas where use of the devices is prohibited.

The “reasonable distance” requirement would mean that electronic smoking devices could only be used outdoors at least 25 feet away from buildings.

### 3. Landlord Responsibilities

The draft ordinance reflects revisions intended to address the concerns of the California Apartment Association and local landlords. Specifically, the ordinance includes a list of steps that a landlord must take to implement the regulations, and then states that landlords who implement the steps are found in compliance with the ordinance. These steps include posting signs, notifying tenants of complaints and encouraging compliance, and annually notifying tenants regarding the smoking prohibitions and the location, if any, of a designated smoking area on the property.

Staff reached out to the California Apartment Association, and local landlords, and shared the latest draft ordinance. Landlords requested two minor changes to the ordinance:

- Landlords who manage HUD-funded multifamily units expressed concern about amending HUD leases to add the smoking prohibitions, due to specific federal requirements for such leases. This has been addressed in the attached document, “Recommended Changes to Section 9-20.080” by adding language clarifying that smoking prohibitions can be added to the property’s “house rules” as long as they are incorporated and made part of the lease. The change has been incorporated into the draft ordinance.
- Landlords requested clarification regarding the form of the annual notification to tenants regarding the smoking prohibitions. Based on how the ordinance is currently written, notification could occur through notices mailed to each tenant, emailed notices to each tenant, or hand delivery of a notice to each tenant. The key success factor is that each tenant receives a copy of the notice.
- In consideration of comments received about the annual notification, staff is recommending that the ordinance require annual notification for the first three years following ordinance adoption. This has been incorporated into the draft ordinance.



4. Timing of Ordinance

As drafted, the smoking ordinance would be implemented as follows:

Date	Action
June 30, 2015	City Council introduces ordinance
July 7, 2015	Second reading of ordinance
July 7, 2015 to August 6, 2015	30 day waiting period
August 7, 2015 <i>Effective date of ordinance</i>	The following areas are required to be smoke free: <ul style="list-style-type: none"><li>• City parks and recreation lands</li><li>• City owned properties and facilities</li><li>• Outdoor service areas, i.e. bus stops and ATM lines</li><li>• 75% hotel/motel rooms</li></ul>
October 6, 2015 <i>60 days after ordinance is effective</i>	<ul style="list-style-type: none"><li>• Multifamily common areas</li><li>• Multifamily residences that are on a month-to-month lease/agreement or owner-occupied transition to smoke-free at earliest date possible, by no later than October 6, 2015 (60 days).</li><li>• All new units must be smoke free including new housing and units that are rented or leased for the first time.</li></ul>
August 7, 2015 – August 7, 2016 <i>One year time period from date ordinance is effective</i>	<ul style="list-style-type: none"><li>• Smoke-free provisions added to leases and rental agreements as existing leases/agreements expire.</li></ul>

5. Secondhand Smoke as a Nuisance

Consistent with Council direction on March 31, 2015, the draft ordinance includes a declaration that secondhand smoke is a nuisance. This provision is intended to allow anyone within the City of Santa Rosa affected by unwanted secondhand smoke to pursue private action to abate secondhand smoke. The language, which was selected by the Council at the March meeting and incorporated into the draft ordinance, is as follows:

**9-20.160 Secondhand smoke – declaration of nuisance.** Secondhand smoke constitutes a nuisance. Notwithstanding any other provisions of this chapter, a private citizen may bring a legal action to abate secondhand smoke as a nuisance.

There are numerous studies that document the health harm caused by exposure to secondhand smoke. The definition of “smoke” proposed in the ordinance includes both conventional smoke and the emissions from electronic smoking devices. This is helpful for other sections of the ordinance. However, studies of the short- and long-term effects of second hand vapor are underway but inconclusive at the time of this ordinance update. Staff recommends that the Council exclude unwanted secondhand vapor from the nuisance declaration until there are further studies documenting harm from secondhand exposure. The following language was added to Section 9-20.160:

For the purposes of this section, the definition of smoke does not include emissions from electronic smoking devices.

## RECOMMENDATION

It is recommended by the Community Development Department that the Council introduce an ordinance replacing Chapter 9-20 (Smoking in and Around Workplaces and Public Places) with Chapter 9-20 (Smoking Regulations). It is further recommended by the Community Development Department and the Planning Commission that the Council introduce an ordinance to amend Chapter 20-70.020 (Definitions of Specialized Terms and Phrases) of the Zoning Code to include revised definitions related to tobacco/smoke shops and a definition of electronic smoking devices.

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### Attachments:

- Attachment 1 – Draft Chapter 9-20 Smoking Regulations – dated May 22, 2015
- Attachment 2 – Recommended Changes to Section 9-20.080
- Attachment 3 – Draft Revised Zoning Code Definitions
- Attachment 4 – Report: E-Cigarettes – A Scientific Review,” published in Circulation and dated May 13, 2014
- Attachment 5 – Report: Electronic Smoking Devices and Secondhand Aerosol
- Attachment 6 – City Council Meeting Minutes – March 31, 2015, December 16, 2014, August 26, 2014
- Attachment 7 – Planning Commission Resolution No. 11687
- Attachment 8 – Planning Commission Minutes – October 23, 2014
- Attachment 9 – [Hyperlink to March 31, 2015 Council staff report](#)