

Additions are underlined.
Deletions are ~~struck through~~.
Revision markers are noted in left or
right margins as vertical lines.

ORDINANCE NO. _____

**AN ORDINANCE OF THE NAPA COUNTY BOARD OF SUPERVISORS,
STATE OF CALIFORNIA, ADDING ELECTRONIC SMOKING
DEVICES TO SECTION 8.08.020 (DEFINITIONS) IN CHAPTER 8.08
(CLEAN INDOOR AIR AND HEALTH PROTECTION) OF THE NAPA
COUNTY CODE**

WHEREAS, electronic smoking devices (e-cigarettes) heat a solution of nicotine, propylene glycol, and flavoring to deliver nicotine through inhalation of the vapors. The Food and Drug Administration does not currently regulate e-cigarettes or other vaping tools. Due to the unknown potential harm, the Centers for Disease Control and Prevention found that policies are needed to regulate e-cigarettes in a similar manner to traditional tobacco products given the addictive nature of nicotine and popularity among adolescents. There are currently no policies in place to limit use of electronic smoking devices in Napa County. Amending the Napa County Code to include electronic smoking devices in the definition of tobacco and smoke(ing) would result in banning the use of electronic smoking devices in most buildings and within certain areas where smoking traditional tobacco products is currently prohibited.

The Napa County Board of Supervisors, State of California, ordains as follows:

SECTION 1. Section 8.08.020 (Definitions) of Chapter 8.08 (Clean Indoor Air and Health Protection) of the Napa County Code is amended to read in full as follows:

8.08.020 Definitions.

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

“Bar” means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to

the consumption of such beverages. Bar shall include wine lounges and tasting rooms. 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 bar where smoke can filter into a restaurant through a passageway, ventilation system, or any other means.

“Business” means any sole proprietorship, 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.

“County” means ~~the county of~~ Napa County.

“Electronic Smoking Device” means an electronic device which can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. “Electronic Smoking Device” includes any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, electronic vape, vaporizer or any other product name or descriptor.

“Employee” means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

“Employer” means any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.

“Enclosed” means surrounded by a ceiling, floor, and solid walls which, except for doors, passageways and/or windows, extend from floor to ceiling on all sides. If an enclosed area is divided by internal partial walls or other “office landscaping,” it is still, in its entirety, enclosed.

“Non-profit 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 objectives or purposes of the entity and not to private gain. A public agency is not a “non-profit entity” within the meaning of this section.

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

“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 restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a “place of employment” unless it is used as a child care or health care facility.

“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, health facilities, shopping malls, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, hotels and motels, theaters and waiting rooms. A private residence is not a “public place.”

“Restaurant” means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, including any associated semi-enclosed eating area, and any other eating establishment which gives or offers for sale food to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term “restaurant” shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a “bar” as defined in this section.

“Retail tobacco store” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

“Self-service merchandising” means open display of tobacco products and point-of-sale tobacco-related promotional products to which the public has access without the intervention of an employee.

“Semi-enclosed” means any area covered by a solid (non-permeable) roof of any type including, but not limited to, open sided tents and kiosks.

“Service line” means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

“Smoke” means any vapors, gases, particles or other by-products released as a result of combustion, electrical ignition, or vaporization when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting, igniting or vaporizing material both contains no tobacco, nicotine, or other pharmacologically active substance where the usual purpose of inhalation is solely olfactory such as with the burning of incense. Smoke does not include combustion, electrical ignition, or vaporization of substances regulated by the U.S. Food and Drug Administration and used for medical or therapeutic purposes.

Smoke includes but is not limited to gases, particles, vapors or other by-products released by electronic smoking devices, electronic cigarettes, tobacco cigarettes, herbal cigarettes, marijuana cigarettes and any other type of cigarette, pipe or other implement for the purpose of inhalation of vapors, gases, particles or other by-products released as a result of combustion or ignition.

“Smoking” means engaging in an act that generates smoke, including, but not limited to, possessing a lighted pipe, operating an electronic smoking device or electronic cigarette, a lighted hookah pipe, a lighted cigar, or a lighted cigarette of any kind; or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind. ~~inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed or plant or other combustible substance whose smoke is~~

~~intended to be inhaled.~~

“Sports arena” means enclosed or semi-enclosed sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other structures where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

“Tobacco product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco which can be used for smoking, chewing, inhalation or other means of ingestion; and any electronic cigarette or other electronic smoking device used to generate smoke; and 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 regulated by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. ~~tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.~~

“Tobacco-related promotional product” means baseball caps, tee-shirts, gym bags, coffee mugs, lighters, sunglasses, jackets, and related items which have tobacco product advertising logos, images, characters, messages and themes printed on them.

“Tobacco retailer” means any person or governmental entity that operates a store, stand, booth, concession, or other place at which sales of tobacco products are made to purchasers for consumption or use.

“Tobacco vending machine” means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a tobacco product.

“Vendor-assisted” means only a store employee has access to the tobacco product and tobacco-related promotional product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.

SECTION 2. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Napa County Board of Supervisors hereby declares it would have passed and adopted this Ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

SECTION 3. This Ordinance shall be effective thirty (30) days from and after the date of its passage.

SECTION 4. A summary of this Ordinance shall be published at least once 5 days before adoption and at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in Napa County, together with the names of members voting for and against the same.

The foregoing Ordinance was introduced and read at a regular meeting of the Napa County Board of Supervisors, State of California, held on the ____ day of _____, 2015, and passed at a regular meeting of the Napa County Board of Supervisors, State of California, held on the ____ day of _____, 2015, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

DIANE DILLON, Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: _____ County Counsel Date: _____	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: GLADYS I. COIL Clerk of the Board of Supervisors By: _____
---	---	--

I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 1195 THIRD STREET ROOM 310, NAPA, CALIFORNIA ON _____.

_____, DEPUTY
GLADYS I. COIL, CLERK OF THE BOARD