

**City of Brisbane  
Agenda Report**

Date: City Council Meeting of August 20, 2015  
To: Mayor and City Council  
From: Michael H. Roush, City Attorney  
Teresa L. Stricker, Deputy City Attorney  
Subject: Smoking and E-Cigarette Regulations

**CITY COUNCIL GOALS**

To ensure the efficient expenditure of City resources.

To provide general policy guidance and direction to the Health and Safety Committee, City Attorney and staff as the Committee explores possible tobacco and electronic cigarette (e-cigarette) regulations to recommend to the full Council to consider adopting.

**PURPOSE**

The purpose of this item is to update the Council about the tobacco and e-cigarette regulations the Health and Safety Committee is considering. The Committee, staff and the City Attorney seek general policy guidance from the full Council at this juncture before expending additional City resources on legal services on these issues.

The Health and Safety Committee (1) seeks to continue exploring possible regulations on the use of tobacco products and e-cigarettes in Brisbane, and (2) may wish to explore possible amendments to the City's zoning regulations to limit the number and location of "vapor lounges," commercial establishments that sell e-cigarette products and often provide a place for patrons to socialize while using e-cigarettes.

**RECOMMENDATION**

Consider whether to authorize the Health and Safety Committee to explore legislation (1) to regulate the use of tobacco products and/or e-cigarettes in Brisbane beyond the restrictions imposed under current state law, and (2) to amend the City's zoning ordinance to limit the number and/or location of vapor lounges.

**BACKGROUND**

**A. Brisbane's Current Law**

Brisbane does not currently have an ordinance regulating the use of either tobacco products or e-cigarettes, other than a requirement that retailers of tobacco products obtain a Tobacco Retailer's Permit. (Brisbane Municipal Code § 8.44.010 *et seq.*).

## B. State Law

State law prohibits the smoking of tobacco products in the following places statewide:

- Enclosed workplaces. (Labor Code § 6404.5.)
- Indoor workplaces, including restaurants and bars. (Labor Code § 6404.5.)
- Within 20 feet of main entrances, exits, and operable windows of state, county, and city buildings. (Gov't Code §§ 7596–7598, 19994.30–19994.33.)
- Playgrounds or tot lot sandbox areas. (Health & Saf. Code § 104495.)
- Day care facilities, including private residences. (Health & Saf. Code § 1596.795.)
- Cars, parked or moving, when a minor under the age of 18 is in the car. (Health & Saf. Code § 118947.)

State law also prohibits the sale of tobacco products to minors under the age of 18 and from vending machines. (Bus. & Prof. Code §§ 22950–22963.)

State law does *not* currently regulate e-cigarettes except to prohibit the sale of e-cigarettes to minors under the age of 18. (Cal. Health & Saf. Code § 119405.) Recently, Senator Mark Leno introduced Senate Bill SB-5. If passed, that bill will classify and regulate e-cigarettes as tobacco products.<sup>1</sup>

## C. San Mateo County Law

San Mateo County prohibits smoking of tobacco products *and* use of e-cigarettes in the following places:

- Enclosed structures owned or leased by the County wherever located, except private residences leased from the County
- Within thirty feet from any enclosed County-owned structure
- Enclosed areas accessible to the public
- Businesses patronized by the public and enclosed passageways between businesses
- Enclosed and unenclosed common areas in multi-unit dwellings, except in specifically designated unenclosed smoking areas
- Individual units in multi-unit dwellings
- County-owned, operated or maintained beaches, parks and trails

(San Mateo County Code §§ 4.96.040; 4.97.030, 4.97.040.)

In addition, the County prohibits the sale of both tobacco products *and* e-cigarettes in County-owned and leased buildings (*id.*, § 4.96.270), and from vending machines and self-service displays (*id.*, § 4.96.320, 4.96.330).

The County's tobacco product and e-cigarette regulations apply in Brisbane only at properties the County may own, lease or maintain. With that narrow exception, the County does not regulate the use or sale of tobacco products or e-cigarettes in Brisbane.

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<sup>1</sup> There have been several unsuccessful bills introduced at the state level in the past to regulate e-cigarettes. In 2009, then-Governor Schwarzenegger vetoed a bill that would have established a state-wide ban on sales of e-cigarettes. In 2013, the state Senate passed Senate Bill 648 to extend the state's existing restrictions on smoking and tobacco advertising to e-cigarettes. That bill, however, was never heard in the House and was later withdrawn.



#### D. Other Jurisdictions

Many jurisdictions statewide have adopted local tobacco and/or e-cigarette regulations, including numerous local entities in San Mateo County. Some jurisdictions within the County have adopted local ordinances that impose restrictions that are identical to the County's restrictions. Other jurisdictions have adopted some but not all of the County's restrictions or have adopted the County's tobacco restrictions without extending those restrictions to e-cigarettes.

On the other hand, some local governments in the County have adopted more onerous restrictions than those imposed by the County. For example, some jurisdictions have banned smoking and/or the use of e-cigarettes in the following locations:

- Sidewalks
- Outdoor eating areas
- Sports fields and arenas
- Events sponsored by the local entity
- Public transit depots
- Chemical storage areas
- Hotels and motels (in public places and/or guest rooms)
- Indoor or outdoor service lines at business establishments

San Mateo County has provided a summary smoking and e-cigarette policies adopted by various jurisdictions within the County. That summary is attached to this report.

Many jurisdictions outside of the County have also adopted smoking and e-cigarette regulations. San Francisco, for example, has adopted extensive restrictions. While San Francisco does *not* ban smoking or e-cigarette use in individual units in multi-unit dwellings, San Francisco prohibits smoking and e-cigarette use in many of the locations mentioned above as well as the following additional locations:

- Within fifteen feet of the entrances, exits, and operable windows and vents of any building
- Facilities where the business of any governmental body or agency is conducted, including hearing rooms, courtrooms or places of public assembly
- Polling places
- Health facilities
- Educational facilities
- Nonprofit establishments
- Aquariums, galleries, libraries and museums
- Child care facilities
- Facilities used for exhibiting motion pictures, drama, dance, musical performance, lectures or other entertainment
- Convention facilities
- Restaurants, bars and taverns
- Homeless shelters
- Tobacco shops
- Facilities used to conduct charity bingo games
- Farmers' markets
- Taxicabs and other motor vehicles for hire

- Service waiting areas
- City-owned vehicles
- Unenclosed areas that are open to the public if the property is a park, square, garden, sport or playing field, pier, or other property used for recreational purposes or a farmers' market
- Outdoor events on city-owned property.

(San Francisco Health Code Art. 19F, 19I, 19L.) In addition, San Francisco bans the sale of both tobacco products and e-cigarettes in pharmacies or on city-owned or controlled property. (*Id.*, Art. 19J–19K.)

#### **E. Assistance from the County and Non-Smoking Advocates**

At the request of Councilmember Lori Lui, Deputy City Attorney Teresa Stricker recently met with Shaunda Scruggs, San Mateo County's Public Health Educator, and Karen Licavoli from Breathe California, an advocacy group that worked with San Mateo County in adopting its recent tobacco and e-cigarette regulations. Ms. Scruggs and Ms. Licavoli offered to assist Brisbane should the Council wish to consider adopting tobacco and/or e-cigarette restrictions.

Ms. Scruggs provided the summary of smoking and e-cigarette policies County-wide mentioned above as well as the research that supports the County's findings about the health and safety risks associated with e-cigarette use. Those materials have been forwarded to the Committee members.

#### **DISCUSSION AND FISCAL IMPACT**

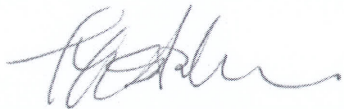
Should the Council authorize the Committee to continue exploring possible tobacco and e-cigarette regulations, the City will incur the legal fees associated with researching legal issues, drafting legislation and the associated staff report and attending Committee and Council meetings.

To the extent that the Committee proposes adopting the same, or substantially the same, regulations adopted by San Mateo County, we anticipate that a fairly minimal amount of attorney time would be required. The County's ordinances have been thoroughly vetted by County Counsel, the County has provided Brisbane with the research on which the Board of Supervisors relied in making findings about the health risks associated with e-cigarette use, and the County and non-smoking advocates have offered to assist Brisbane in the event the Council wishes to consider adopting local tobacco and/or e-cigarette regulations. Should Council decide to adopt the same regulations adopted by the County, in part or whole, we anticipate that fewer than 10 attorney hours would be spent preparing the legislation and staff report, and attending one Committee and two Council meetings on this issue.

Should, however, Council wish to adopt substantially different regulations than those adopted by the County, or adopt the County's regulations piecemeal over time like some cities have done, the amount of attorney time required may increase significantly depending on the policy direction the Council takes, the extent to which there are model regulations from other jurisdictions that Brisbane can use and the number of Committee or Council meetings on this issue requiring the City Attorney's attendance.

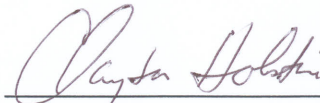
Finally, should Council wish to amend its zoning ordinance to regulate the number or location of vapor lounges in Brisbane, we anticipate that we would need to spend approximately 10-12 hours on the

necessary research, legislation and reports. This estimate does *not* include any additional attorney time spent attending Committee, Planning Commission or Council meetings to address zoning issues.



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Teresa L. Stricker, Deputy City Attorney



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Clay Holstine, City Manager

Attachment: Summary of San Mateo County Jurisdiction Smoking Policies, dated 2/5/15



# San Mateo County Jurisdiction Smoking Policies --- Last Updated: February 5, 2015

Click the underlined jurisdiction name with a "\*" symbol to access the jurisdiction's Smoking or Tobacco Retail Permit Policy.

<p><b>PARKS</b></p> <ul style="list-style-type: none"> <li>• <u>Atherton (rooms in parks)*</u></li> <li>• <u>Belmont*</u></li> <li>• <u>Burlingame</u></li> <li>• <u>Daly City*</u></li> <li>• <u>Menlo Park*</u></li> <li>• <u>South San Francisco*</u></li> <li>• <u>Unincorporated Areas*</u></li> </ul>	<p><b>BEACHES</b></p> <ul style="list-style-type: none"> <li>• <u>Daly City</u></li> <li>• <u>Pacifica*</u></li> <li>• <u>Unincorporated Areas</u></li> </ul>	<p><b>SPORTS FIELDS, ACTIVITIES, AND OTHER CITY EVENTS</b></p> <ul style="list-style-type: none"> <li>• <u>Belmont</u></li> <li>• <u>Burlingame</u></li> <li>• <u>Daly City</u></li> <li>• <u>Foster City (enclosed sports arenas and convention halls)</u></li> <li>• <u>Hillsborough (enclosed meeting/public assembly place)*</u></li> <li>• <u>Millbrae (enclosed)*</u></li> <li>• <u>Redwood City (enclosed)*</u></li> <li>• <u>San Carlos (enclosed)</u></li> <li>• <u>San Mateo (enclosed)</u></li> <li>• <u>South San Francisco</u></li> </ul>	<p><b>HOTELS/MOTELS</b></p> <ul style="list-style-type: none"> <li>• <u>Belmont (not restricted in up to 10% of hotel and motel guest rooms)</u></li> <li>• <u>Burlingame (meeting/banquet rooms during food or beverage functions or exhibit purposes)</u></li> <li>• <u>Daly City (not restricted in up to 10% of hotel and motel guest rooms)</u></li> <li>• <u>East Palo Alto (not more than 50% of lobby/registration area)</u></li> <li>• <u>Foster City (at least 50% of rooms)</u></li> <li>• <u>Menlo Park (common areas of single room occupancy hotels)</u></li> <li>• <u>Millbrae (enclosed and at least 51% lodging rooms)</u></li> <li>• <u>Redwood City (enclosed public places and meeting rooms. Smoking not regulated in rooms rented to guests)</u></li> <li>• <u>San Carlos (enclosed public places)</u></li> <li>• <u>San Mateo (public places and at least 50% lodging rooms)</u></li> <li>• <u>South San Francisco (smoking permitted in up to 65%)</u></li> </ul>
<p><b>MULTI-UNIT RESIDENCE COMMON AREAS</b></p> <ul style="list-style-type: none"> <li>• <u>Belmont</u></li> <li>• <u>Burlingame*</u></li> <li>• <u>Daly City</u></li> <li>• <u>East Palo Alto (elevators)*</u></li> <li>• <u>Foster City</u></li> <li>• <u>Menlo Park</u></li> <li>• <u>San Carlos*</u></li> <li>• <u>Unincorporated Areas</u></li> <li>• <u>South San Francisco</u></li> <li>• <u>Woodside*</u></li> </ul>	<p><b>OUTDOOR EATING AREA</b></p> <ul style="list-style-type: none"> <li>• <u>Belmont</u></li> <li>• <u>Daly City</u></li> <li>• <u>Foster City (50%)*</u></li> <li>• <u>Menlo Park</u></li> <li>• <u>San Mateo*</u></li> <li>• <u>South San Francisco (on City-owned property if designated by City Manager)</u></li> </ul>	<p><b>TICKET AREA, INDOOR OR SHELTERED BOARDING, WAITING AREAS OF PUBLIC TRANSIT DEPOTS</b></p> <ul style="list-style-type: none"> <li>• <u>Belmont</u></li> <li>• <u>Burlingame (enclosed)</u></li> <li>• <u>Daly City</u></li> <li>• <u>Foster City (enclosed)</u></li> <li>• <u>Menlo Park</u></li> <li>• <u>Millbrae (enclosed)</u></li> <li>• <u>Redwood City (maximum 50% waiting area as smoking area and separate waiting areas of equal size for smokers and nonsmokers)</u></li> <li>• <u>San Carlos</u></li> <li>• <u>San Mateo (enclosed)</u></li> <li>• <u>Woodside (enclosed)</u></li> </ul>	<p><b>SERVICE LINES</b></p> <ul style="list-style-type: none"> <li>• <u>Belmont</u></li> <li>• <u>Burlingame (indoor service lines)</u></li> <li>• <u>Daly City</u></li> <li>• <u>East Palo Alto (enclosed business establishments)</u></li> <li>• <u>Foster City (indoor service lines)</u></li> <li>• <u>Hillsborough</u></li> <li>• <u>Menlo Park</u></li> <li>• <u>Millbrae (enclosed)</u></li> <li>• <u>Redwood City (enclosed)</u></li> <li>• <u>San Carlos (enclosed)</u></li> <li>• <u>San Mateo (enclosed)</u></li> <li>• <u>Woodside (enclosed)</u></li> </ul>
<p><b>INDIVIDUAL UNITS IN MULTI-UNIT HOUSING</b></p> <ul style="list-style-type: none"> <li>• <u>Belmont (share floor or ceiling)</u></li> <li>• <u>Daly City (condos exempt)</u></li> <li>• <u>Foster City</u></li> <li>• <u>Unincorporated Areas</u></li> </ul>	<p><b>TOBACCO RETAIL PERMIT</b></p> <ul style="list-style-type: none"> <li>• <u>Brisbane*</u></li> <li>• <u>Colma*</u></li> <li>• <u>Daly City*</u></li> <li>• <u>East Palo Alto*</u></li> <li>• <u>Menlo Park*</u></li> <li>• <u>Millbrae*</u></li> <li>• <u>Pacifica*</u></li> <li>• <u>Portola Valley*</u></li> <li>• <u>Redwood City*</u></li> <li>• <u>San Bruno*</u></li> <li>• <u>San Carlos*</u></li> <li>• <u>San Mateo*</u></li> <li>• <u>Unincorporated Areas*</u></li> <li>• <u>South San Francisco*</u></li> </ul>	<p><b>CHEMICAL STORAGE AREAS</b></p> <ul style="list-style-type: none"> <li>• <u>Atherton</u></li> </ul>	
<p><b>E-CIGARETTES</b></p> <ul style="list-style-type: none"> <li>• <u>Daly City</u></li> <li>• <u>Foster City</u></li> <li>• <u>South San Francisco (City properties and Grand Ave.)</u></li> <li>• <u>Unincorporated Areas</u></li> </ul>	<p><b>SIDEWALKS</b></p> <ul style="list-style-type: none"> <li>• <u>Foster City (all sidewalks except those adjacent to single-family homes)</u></li> </ul>		