



## MEMORANDUM

**TO: CITY COUNCIL**

**FROM: JAMES BERGMAN, CITY MANAGER  
BEAU D. PRYOR, POLICE CHIEF**

**SUBJECT: CONSIDERATION OF ADOPTION OF AN ORDINANCE PROHIBITING THE SALE AND DISTRIBUTION OF ELECTRONIC CIGARETTES AND VAPING PRODUCTS THAT REQUIRE, BUT HAVE NOT RECEIVED A FOOD AND DRUG ADMINISTRATION ORDER APPROVING THEIR MARKETING AND AN ORDINANCE PROHIBITING THE POSSESSION OF ALL TOBACCO PRODUCTS AND PARAPHERNALIA BY PERSONS UNDER TWENTY-ONE**

**DATE: NOVEMBER 26, 2019**

**SUMMARY OF ACTION:**

Adoption of an ordinance prohibiting the sale and distribution of electronic cigarettes and vaping products and an ordinance prohibiting the possession of all tobacco products and paraphernalia by persons under twenty-one.

**IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:**

The fiscal impacts associated with this agenda item include the cost in legal services to prepare the report and ordinances and the cost of prosecuting violators over the age of eighteen. The new ordinances would also require Police Department resources to enforce the new regulations. In addition, there would be a fiscal impact to retailers of electronic cigarettes and vaping products that do business within the City of Arroyo Grande.

**RECOMMENDATION:**

It is recommended that the Council adopt an ordinance prohibiting the sale and distribution of electronic cigarettes and vaping products and an ordinance prohibiting the possession of all tobacco products and paraphernalia by persons under twenty-one.

**BACKGROUND:**

At the November 12, 2019 City Council meeting, the Council introduced an ordinance prohibiting all retail sales of electronic cigarette products and paraphernalia that have not received premarket review by the Federal Drug Administration ("FDA"). Prior to introduction, the Ordinance was modified to change the effective date from six months after its passage to three months after its passage, and to exclude internet sales. The Council also introduced an ordinance prohibiting the possession of all tobacco products and paraphernalia by persons under twenty-one.

**CITY COUNCIL**

**CONSIDERATION OF ADOPTION OF AN ORDINANCE PROHIBITING THE SALE AND DISTRIBUTION OF ELECTRONIC CIGARETTES AND VAPING PRODUCTS THAT REQUIRE, BUT HAVE NOT RECEIVED A FOOD AND DRUG ADMINISTRATION ORDER APPROVING THEIR MARKETING AND AN ORDINANCE PROHIBITING THE POSSESSION OF ALL TOBACCO PRODUCTS AND PARAPHERNALIA BY PERSONS UNDER TWENTY-ONE  
NOVEMBER 26, 2019**

**PAGE 2**

**ANALYSIS OF ISSUES:**

The Ordinances are now ready for adoption. The Ordinance prohibiting the sale and distribution of electronic cigarettes and vaping products that require, but have not received a food and drug administration order approving their marketing, will take effect three months after its passage. This will give retailers an opportunity to sell their existing stock. The Ordinance prohibiting the possession of all tobacco products and paraphernalia by persons under twenty-one will take effective thirty days after its passage.

**ALTERNATIVES:**

The following alternatives are provided for the Council's consideration:

1. Adopt the Ordinance prohibiting the sale and distribution of all electronic cigarettes and vaping products until they are approved by the FDA; and /or
2. Adopt an Ordinance prohibiting the possession of all tobacco products and paraphernalia by persons under twenty-one; or
3. Modify and reintroduce either of the Ordinances; or
4. Provide other direction to staff.

**ADVANTAGES:**

A prohibition on the sale and distribution of electronic cigarettes and vaping products that have not received premarket review by the FDA within the City of Arroyo Grande will contribute towards a reduction in access to electronic cigarette products, which have been deemed dangerous to the public health. A prohibition on possession of tobacco products and paraphernalia by persons under twenty-one will create a deterrent to persons under twenty-one to possess such products and will provide law enforcement with another tool to use to prevent persons under twenty-one from possessing tobacco products and paraphernalia.

**DISADVANTAGES:**

A prohibition on the retail sale of electronic cigarettes and vaping products and a prohibition on the possession of tobacco products and paraphernalia by persons under twenty-one could expose the City to a referendum or legal challenge.

**ENVIRONMENTAL REVIEW:**

The proposed ordinance is exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in questions may have a significant effect on the environment.

**CITY COUNCIL**

**CONSIDERATION OF ADOPTION OF AN ORDINANCE PROHIBITING THE SALE AND DISTRIBUTION OF ELECTRONIC CIGARETTES AND VAPING PRODUCTS THAT REQUIRE, BUT HAVE NOT RECEIVED A FOOD AND DRUG ADMINISTRATION ORDER APPROVING THEIR MARKETING AND AN ORDINANCE PROHIBITING THE POSSESSION OF ALL TOBACCO PRODUCTS AND PARAPHERNALIA BY PERSONS UNDER TWENTY-ONE NOVEMBER 26, 2019**

**PAGE 3**

**PUBLIC NOTIFICATION AND COMMENTS:**

Since introduction of the Ordinance on November 12, 2019, two letters have been received prior to this agenda report being published (Attachment 1). A summary of the Ordinances were published in The Tribune on Wednesday, November 20, 2019, pursuant to State law. The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

**ATTACHMENT:**

1. Correspondence from SLO County Teen Task Force and County of San Luis Obispo Health Commission

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE AMENDING CHAPTER 8.36 OF THE ARROYO GRANDE MUNICIPAL CODE TO PROHIBIT THE SALE AND DISTRIBUTION TO ANY PERSON IN ARROYO GRANDE ELECTRONIC CIGARETTES AND VAPING PRODUCTS THAT REQUIRE, BUT HAVE NOT RECEIVED, A FOOD AND DRUG ADMINISTRATION ORDER APPROVING THEIR MARKETING**

**WHEREAS**, based upon its concerns about use of tobacco products, the City Council of the City of Arroyo Grande has previously adopted Arroyo Grande Municipal Code Chapters 8.36 – Tobacco Products and Chapter 8.38 – Licensing of Tobacco Retailers; and

**WHEREAS**, the federal government has enacted numerous tobacco related laws that include, but are not limited to the Family Smoking Prevention and Tobacco Control Act ("Tobacco Control Act"), enacted in 2009, that prohibited candy and fruit-flavored cigarettes, largely because these flavored products are marketed to youth and young adults, and younger smokers were more likely than older smokers to have tried these products. Among other things, the Tobacco Control Act authorized the U.S. Food and Drug Administration ("FDA") to set national standards governing the manufacture of tobacco products, to limit levels of harmful components in tobacco products and to require manufacturers to disclose information and research relating to the products' health effects; and

**WHEREAS**, a central requirement of the Tobacco Control Act is premarket review of all new tobacco products. Specifically, every "New Tobacco Product" which is defined by federal law to be any tobacco product not on the market in the United States as of February 15, 2007, must be authorized by the FDA for sale in the United States before it may enter the marketplace; and

**WHEREAS**, a New Tobacco Product may not be marketed until the FDA has found that the product is: (1) appropriate for the protection of the public health upon review of a premarket tobacco application; (2) substantially equivalent to a grandfathered product; or (3) exempt from substantial equivalence requirements; and

**WHEREAS**, in determining whether the marketing of a tobacco product is appropriate for the protection of the public health, the FDA must consider the risks and benefits of the product to the population as a whole, including users and nonusers of the product, and taking into account the increased or decreased likelihood that existing users of tobacco products will stop using tobacco products and the increased or decreased likelihood that those who do not use tobacco products will start using them. Where there is a lack of showing that permitting the sale of a tobacco product would be appropriate for the protection of the public health, the Tobacco Control Act requires that the FDA deny an application for premarket review; and

**ORDINANCE NO.**  
**PAGE 2**

**WHEREAS**, it has been reported that nearly all electronic cigarettes and vaping products that are sold today entered the market after 2007, but have not been reviewed by the FDA to determine if they are appropriate for the public health; and

**WHEREAS**, in 2017, the FDA issued guidance that purports to give electronic cigarette manufacturers until August 8, 2022 to submit their application for premarket review. That guidance further purports to allow unapproved products to stay on the market indefinitely, until such time as the FDA complies with its statutory duty to conduct a premarket review to determine whether a new tobacco product poses a risk to public health. In March 2019, the FDA issued draft guidance in which it considered moving the premarket application deadline up by one year for certain flavored electronic cigarette products. It is not known when, if ever, this narrow adjustment will become final or will take effect; and

**WHEREAS**, on July 11, 2019, the United States District Court for the District of Maryland in the case *American Academy of Pediatrics v. FDA* issued a ruling to advance the submission deadlines for premarket review of certain tobacco products, including electronic cigarettes. As a function of that ruling, the deadline for applications for FDA premarket review of electronic cigarettes would have been shortened to May 11, 2020. However, on October 24, 2019, the Justice Department appealed the Judge's decision to shorten the product approval deadline, thus creating greater uncertainty as to when such review will occur; and

**WHEREAS**, even based on the 2017 FDA guidance, by the time electronic cigarette manufacturers will be required to submit their pre-market review applications, electronic cigarettes will have been on the market for nearly fifteen years without any FDA analysis of their safety and alleged benefit. Recent reports of illness and death caused by unregulated vaping devices is a public health crisis. In response, the City and County of San Francisco, the City of Richmond and the City of Livermore have passed Ordinances that prohibit the sale of any electronic cigarette or vaping device that has not received an order from the FDA approving their marketing. The State of Massachusetts has also enacted emergency legislation to ban the sale of all vaping products for four months in response to this public health emergency; and

**WHEREAS**, the City of Arroyo Grande is also not content to wait and do nothing given the health issues associated with unregulated electronic cigarettes and vaping devices and therefore desires to adopt an ordinance that will prohibit the sale of all electronic cigarettes and vaping devices until such devices are approved by the FDA and deemed safe.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The above recitals and findings are true and correct and are incorporated herein by this reference.

**SECTION 2.** Section 8.36.050 is hereby added to Chapter 8.36 of Title 8 of the Arroyo Grande Municipal Code, to read in its entirety as follows:

**Section 8.36.050 – Sale and Distribution of Electronic Cigarettes and Vaping Products that Require, But Have Not Received, a Food and Drug Administration Order Approving Their Marketing.**

- A. 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:

"Distribute" or "distribution" means the transfer, by any person other than a common carrier, of an electronic cigarette or vaping product at any point from the place of manufacture or thereafter to the person who sells the electronic cigarette or vaping product to an individual for personal consumption, including but not limited to such transfers by licensed tobacco retailers, ~~or through~~ excluding online transactions.

"Electronic cigarette" and "vaping product" shall mean: 1) any product intended for human consumption by inhalation regardless of nicotine content, whether for one-time use or reusable, that relies on vaporization or aerosolization, including but not limited to electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, electronic vaping product delivery pens, hookah pens, and any other similar devices that rely on vaporization or aerosolization; and 2) any component, part, or accessory of a product or device defined in 1 above, including flavored vape juices and liquids used in such devices, even if sold separately. "Electronic cigarette" and "vaping product" does not include any product that has been approved by the federal Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

"New Tobacco Product" shall have the meaning set forth in 21 U.S.C. § 387j(a)(1), as may be amended from time to time.

"Sell," "Sale," and "to Sell" mean any transaction where, for any consideration, ownership of an electronic cigarette or vaping product is transferred from one person to another, including but not limited to any transfer of title or possession for consideration, exchange, or barter, in any manner or by any means, including but not limited to such transactions by licensed tobacco retailers, ~~excluding or through~~ excluding online transactions.

In addition, "Person" and "Tobacco retailer" shall have the meanings defined in Arroyo Grande Municipal Code Section 8.38.020.

- B. Sale of electronic cigarettes and vaping products prohibited.

1. No person shall sell or distribute an electronic cigarette or vaping product in retail establishments, excluding online, ~~and through any other means~~, including all non-flavored and flavored vaping products, including mint and menthol, to a person in the City of Arroyo Grande where the electronic cigarette or vaping product is:

- a. is a New Tobacco Product;

- b. requires premarket review under 21 U.S.C. § 387j, as may be amended from time to time; and
  - c. does not have a premarket review order under 21 U.S.C. § 387j(c)(1)(A)(i), as may be amended from time to time.
- C. Violations. Persons violating any provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one thousand (\$1,000) dollars or by imprisonment in the county jail for a period not to exceed six months or by both such fine and imprisonment. Any violations of these provisions shall constitute a separate offense for each and every day during which such violation is committed or continued. In addition to any other penalty authorized by law, violations by licensed tobacco retailers shall also be subject to suspension or revocation of their license in accordance with the provisions of AGMC Section 8.38.110.”

**SECTION 3.** This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061 (b)(3) which is the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment.

**SECTION 4.** A summary of this Ordinance shall be published in a newspaper published and circulated in the City of Arroyo Grande at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. A certified copy of the full text of the proposed Ordinance shall be posted in the office of the City Clerk. Within fifteen (15) days after adoption of the Ordinance, the summary with the names of those City Council members voting for and against the Ordinance shall be published again, and the City Clerk shall post a certified copy of the full text of such adopted Ordinance.

**SECTION 5.** This Ordinance shall take effect and be in full force and effect ~~six~~three months after its passage.

**SECTION 6.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

On motion by Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, and by the following roll call vote to wit:

**AYES:**  
**NOES:**  
**ABSENT:**

the foregoing Ordinance was adopted this 26<sup>th</sup> day of November, 2019.

---

**CARON RAY RUSSOM, MAYOR**

**ATTEST:**

---

**KELLY WETMORE, CITY CLERK**

**APPROVED AS TO CONTENT:**

---

**JAMES A. BERGMAN, CITY MANAGER**

**APPROVED AS TO FORM:**

---

**TIMOTHY J. CARMEL, CITY ATTORNEY**

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE ADDING SECTION 8.36.060 TO CHAPTER 8.36 OF TITLE 8 OF THE ARROYO GRANDE MUNICIPAL CODE RELATING TO POSSESSION OF TOBACCO PRODUCTS BY PERSONS UNDER TWENTY-ONE**

**WHEREAS**, the City Council of the City of Arroyo Grande ("City") may, by ordinance, adopt rules and regulations for the preservation of the public health, safety and welfare; and

**WHEREAS**, approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation's leading cause of preventable death; and

**WHEREAS**, the tobacco industry encourages youth and young adult tobacco initiation through predatory targeting, as evidenced by the following:

- Tobacco companies target young adults ages 18 to 24 to increase their frequency of tobacco use and encourage their transition to habitual users;
- Tobacco industry documents state that if "a man has never smoked by the age of 18, the odds are three -to -one he never will. By age 24, the odds are twenty -to -one";
- The tobacco industry spends an estimated \$ 620 million annually to market Tobacco products to California residents; and

**WHEREAS** 5.6 million of today's Americans who are younger than 18 years of age are projected to die prematurely from a smoking -related illness; and

**WHEREAS**, despite the State's efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following:

- Over 67% of current and former adult smokers in California started by the age of 18 and almost 100% started by the age of 26;
- From 2013 to 2015, approximately 15% of 9th and 11th grade students in California reported using electronic smoking devices;
- In 2017, 22.8% of high school students in California had tried cigarette smoking; and

**ORDINANCE NO.**

**PAGE 2**

**WHEREAS**, the State of California, in 2016, repealed a law making possession of Tobacco products by persons under the legal smoking age illegal; and

**WHEREAS**, California Business and Professions Code Section 22964 expressly authorizes local jurisdictions to adopt stricter standards than the State with respect to the legal age to purchase or possess tobacco products; and

**WHEREAS**, the City believes that prohibiting the possession of tobacco products and electronic smoking devices by persons under the age of twenty-one will discourage such persons from using tobacco products including electronic cigarettes.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The above recitals are true and correct and are incorporated herein by this reference.

**SECTION 2.** Section 8.36.060 is hereby added to Chapter 8.36 of Title 8 of the Arroyo Grande Municipal Code, to read in its entirety as follows:

**8.36.060 – Possession of tobacco products by persons under twenty-one.**

No person under the age of twenty-one (21) shall purchase, receive, or possess any tobacco product as that term is defined in Section 8.38.020 of Chapter 8.38, which includes electronic smoking devices. Any person, upon conviction of this section, shall pay a fine of seventy-five dollars (\$75) or perform thirty (30) hours of community service work.

**SECTION 3.** A summary of this Ordinance shall be published in a newspaper published and circulated in the City of Arroyo Grande at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. A certified copy of the full text of the proposed Ordinance shall be posted in the office of the City Clerk. Within fifteen (15) days after adoption of the Ordinance, the summary with the names of those City Council members voting for and against the Ordinance shall be published again, and the City Clerk shall post a certified copy of the full text of such adopted Ordinance.

**SECTION 4.** This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage.

**SECTION 5.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**ORDINANCE NO.**  
**PAGE 3**

On motion by Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, and by the following roll call vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

the foregoing Ordinance was adopted this 26<sup>th</sup> day of November, 2019.

**ORDINANCE NO.  
PAGE 4**

---

**CAREN RAY RUSSOM, MAYOR**

**ATTEST:**

---

**KELLY WETMORE, CITY CLERK**

**APPROVED AS TO CONTENT:**

---

**JAMES A. BERGMAN, CITY MANAGER**

**APPROVED AS TO FORM:**

---

**TIMOTHY J. CARMEL, CITY ATTORNEY**

**From:** [Caren Ray Russom](#)  
**To:** [Kelly Wetmore](#)  
**Subject:** FW: The Proposed E-Cigarette Ordinance  
**Date:** Wednesday, November 20, 2019 3:08:56 PM  
**Attachments:** [TTF AG Vaping Letter 112019.pdf](#)

---

Respectfully,

**Caren Ray Russom**

**Mayor, City of Arroyo Grande**

[crayussom@arroyogrande.org](mailto:crayussom@arroyogrande.org)

Tel: 805-473-5400 | [www.arroyogrande.org](http://www.arroyogrande.org)

300 E. Branch St | Arroyo Grande | CA | 93420

---

**From:** Danijela Dornan [[ddornan@capslo.org](mailto:ddornan@capslo.org)]  
**Sent:** Wednesday, November 20, 2019 12:53 PM  
**To:** Caren Ray Russom; Kristen Barneich; Jimmy Paulding; Keith Storton; Lan George  
**Cc:** Jim Bergman; Becca Carsel  
**Subject:** The Proposed E-Cigarette Ordinance

Dear Council Members:

Attached is a letter from the San Luis Obispo County Teen Task Force regarding the City's proposed e-cigarette ordinance and information about youth possession laws. We appreciate your consideration of our concerns about the ordinance and we hope you will consider eliminating the youth possession law while adding more effective and equitable ways to protect children from these addictive devices.

Sincerely,

Danijela Dornan, Co-Chair

--



**Danijela Dornan** – *Division Coordinator*

**P:** (805) 544-4355 x480 | **F:** (805) 549-8388

Pronouns: **She/Her/Hers** [Learn More](#) | [www.capslo.org](http://www.capslo.org) | [facebook.com/capslo](https://facebook.com/capslo)

*This transmission is confidential and intended solely for the person or organization to whom it is addressed. It may contain privileged and confidential information. If you are not the intended recipient, you should not copy, distribute or take any action in reliance on it. If you have received this transmission in error, please notify me immediately by email or call (805) 544-4355.*

San Luis Obispo County Teen Task Force  
Becca Carsel and Danijela Dornan Co-Chairs  
becca@carselgroup.com, ddornan@capslo.org  
(805) 674-0776

November 20, 2019

Arroyo Grande City Council  
215 E Branch Street  
Arroyo Grande, CA 93420

Dear Councilmembers:

We are writing regarding the recent news that the Arroyo Grande City Council will consider final approval of an e-cigarette ordinance at the November 26 City Council meeting. The San Luis Obispo County Teen Task Force is a coalition of organizations that serve the youth population of our county. Participating agencies include local non-profits, government agencies, and school districts. The Task Force exists to expand supports for teens and advocate for policies that enhance their well-being and allow them to successfully transition to adulthood.

We applaud the Arroyo Grande City Council's interest in curbing the vaping epidemic among children and support the ban on e-cigarette products in the proposed ordinance, as reducing access to these products is a proven method to reduce youth smoking.

We are, however, very concerned about the inclusion in the proposed ordinance of a law that fines youth for possession of tobacco products. Research has shown that these laws are ineffective and serve to cover up the fact that smoking is addictive and is being promoted to children by a billion-dollar, legal industry. Criminalizing the behavior prevents young people from getting the help they need and encourages them to hide their addiction, while absolving the adults of responsibility for the situation.

Youth possession laws are also inherently inequitable. One example of this is the penalty itself. While a \$75 fine is very little to a child whose family has money, to a low-income child this can be an insurmountable cost. Setting the equivalent hours of community service at 30 hours values that low-income young person's labor at \$2.50 per hour, which is unconscionable. Another example is that low-income youth are less likely to have private space for smoking and so are more likely to be seen in public and cited than their wealthier counterparts. A third example is that when a young person with high-functioning parents has a contact with law enforcement, the parents provide guidance to the child in navigating the system, ensuring that the fine is paid or community service attended. But a young person with low-functioning parents, or with immigrant parents who are not familiar with or are afraid of the legal system, has no support. These children are usually from low-income families and can get caught in the system, with escalating penalties because they do not know how to navigate the system or are not able to – they may lack the transportation or money to resolve the citation.

While youth possession laws have fallen out of favor due to their ineffectiveness, there are several best practices to reduce youth smoking. These include tobacco retailer licensing policies with compliance checks, limits on advertising, minimum pricing and pack size, and restriction on flavored tobacco

products. Cessation resources are also needed, as young people find themselves addicted to these products and are unable to quit on their own.

We respectfully urge the Council to reconsider the adoption of a youth possession law and to instead broaden the proposed e-cigarette ordinance to include other best practices known to protect young people from the predatory practices of the tobacco industry. We are happy to provide further information on best practices and model policies.

Sincerely,



Becca Carsel  
Co-Chair



Danijela Dornan  
Co-Chair

---

**From:** Keith Storton  
**Sent:** Thursday, November 21, 2019 3:13 PM  
**To:** Jessica Matson  
**Subject:** Fwd: Letter of Support to the City of Arroyo Grande for a proposed update to your Smoking Ordinance - County of San Luis Obispo Health Commission  
**Attachments:** image002.png; ATT00001.htm; Letter of Support - City of Arroyo Grande - Signed.pdf; ATT00002.htm

FYI...  
~Keith~

Begin forwarded message:

**From:** Michael Coughlin <mcoughlin@co.slo.ca.us>  
**Date:** November 21, 2019 at 1:34:02 PM PST  
**To:** Caren Ray Russom <crayrussom@arroyogrande.org>, Kristen Barneich <kbarneich@arroyogrande.org>, Jimmy Paulding <jpaulding@arroyogrande.org>, Keith Storton <kstorton@arroyogrande.org>, Lan George <lgeorge@arroyogrande.org>  
**Cc:** Mary Jean Sage <mjsage@thesageassociates.com>  
**Subject:** Letter of Support to the City of Arroyo Grande for a proposed update to your Smoking Ordinance - County of San Luis Obispo Health Commission

Good Afternoon,

The County of San Luis Obispo Health Commission would like to offer you our support for your efforts in updating your smoking ordinance. Please review the attached letter of support which was unanimously approved at the last Health Commission meeting, held on Monday, November 18, 2019.

The Health Commission is a public committee which was formed to serve as an advisory board to the County Board of Supervisors and the Public Health Department. Please use the following link for more information about the Health Commission: <https://www.slocounty.ca.gov/Departments/Health-Agency/Public-Health/All-Public-Health-Services/Health-Commission.aspx>

Please also feel free to contact me with any questions you may have,

Thank you,

**Michael J. Coughlin**  
**Administrative Services Officer II**  
(p) 805-781-1563  
(f) 805-781-5543  
[mcoughlin@co.slo.ca.us](mailto:mcoughlin@co.slo.ca.us)



## COUNTY OF SAN LUIS OBISPO HEALTH COMMISSION

*Commission Members:*  
*Mary Jean Sage, Chair*  
*Jean Raymond, Vice Chair*  
*Jinah Byram*  
*Robert Campbell*  
*Tamar Sekayan*  
*Susan Warren*  
*Candace Winstead*  
*Catherine Shipp*  
*Amy Kleinman*  
*Ginger Cochran*

November 18, 2019

### City of Arroyo Grande

Caren Ray Russom, Mayor - [crayrussom@arroyogrande.org](mailto:crayrussom@arroyogrande.org)  
Kristen Barneich, Mayor Pro Tem - [kbarneich@arroyogrande.org](mailto:kbarneich@arroyogrande.org)  
Jimmy Paulding, Council Member - [jpaulding@arroyogrande.org](mailto:jpaulding@arroyogrande.org)  
Keith Storton, Council Member - [kstorton@arroyogrande.org](mailto:kstorton@arroyogrande.org)  
Lan George, Council Member - [lgeorge@arroyogrande.org](mailto:lgeorge@arroyogrande.org)

Dear Mayor and Council Members:

On behalf of the San Luis Obispo County Health Commission, we applaud and support your efforts in taking the initiative to consider and create an update to your smoking ordinance for the City of Arroyo Grande. The Health Commission consists of 11 volunteer appointees who are residents of San Luis Obispo County, of which six are consumer representatives, three are direct providers (physicians, nurses, dentists), and two are indirect providers (medical office managers and hospital administrators). The Commission advises the County Board of Supervisors and the Public Health Department on health matters in the county. This includes the current critical importance of addressing smoking, the use of flavored tobacco products, and the epidemic of teen vaping in our communities. As a Commission, we have heard directly from county agencies, local nonprofits and those who work with our teens on how vaping has affected our county and have been following the public's concern closely.

It is honorable that you care for the health and safety of your community. The passing of a new or updated ordinance will have a direct impact on the youth of your community and spare a lifetime of addiction. We commend you for acknowledging the detrimental harm tobacco has on lives and for taking the necessary steps in eliminating the sale of electronic cigarettes, paraphernalia and flavored products in your community.

We do have some concern, however, about your desire to bring forth a separate ordinance with a change to your Municipal Code that would change youth smoking and would penalize tobacco possession, use and purchase (PUP). We are concerned you will be disappointed with results of this type of legislation. The Health Commission concurs with the California Department of Education in their non-support of PUP Laws; they are costly, and they don't work. Here are reasons the Health Commission does not support PUP legislation, in accordance with national findings:

- Youth under age twenty-one who buy tobacco products often struggle with nicotine addiction. Fines and punishment can discourage this vulnerable population from getting help.

- Smoking and vaping are addictive, and quitting is hard. Effective, evidenced-based cessation programs are more likely to stop youth from using tobacco than fines and suspension from school.
- Laws that fine or penalize under-age youth who buy e-cigarettes and other tobacco products have not proven to be effective. Prevention experts support regulating the sale – not the purchase – of tobacco.
- The burden of complying with laws that ban the sale of e-cigarettes and tobacco to people under age twenty-one lies with retailers and not with youth.
- Penalizing students who purchase, use, or possess tobacco takes the focus off retailers who illegally sell tobacco products to youth under age twenty-one.
- Fining youth one at a time when caught in possession of these products takes a more punitive approach and does not address prevention; focusing instead on closely monitoring retailers can potentially curb retailers from selling to a broad number of underage clientele.
- Tobacco companies support laws that penalize young people for buying and possessing tobacco because this type of enforcement shifts blame away from predatory marketing practices that target youth.
- To prevent young people from becoming addicted to tobacco, the American Cancer Society Cancer Action Network encourages local enforcement agencies to focus on licensing requirements such as conducting annual unannounced compliance checks at stores and suspending the licenses of retailers who sell to under-age youth.

We support the view of our SLO County Tobacco Control Coalition that it is more beneficial to focus on retailers who illegally sell tobacco products to youth.

The Public Health Law Center – <https://www.publichealthlawcenter.org> – has detailed and timely information about Commercial Tobacco Use in Schools. Our SLO County Public Health Tobacco Control Program can also be helpful to you when considering tobacco/smoking ordinance implementation. Please feel free to call upon them if you need further information to support your efforts.

Again, our thanks for your efforts thus far and we look forward to seeing Arroyo Grande join the growing number of communities in our county that are helping address this epidemic of teen vaping.

Sincerely,



Mary Jean Sage, Chairperson  
SLO County Health Commission