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## SANTA BARBARA COUNTY'S SALES RESTRICTION OF FLAVORED TOBACCO PRODUCTS: AN E-CIGARETTE POLICY CASE STUDY

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*On December 17, 2019, Santa Barbara County voted to amend the county's tobacco retail license, and to prohibit the retail sale of all flavored tobacco products, including e-cigarettes, in all unincorporated areas of the county.*

### COMMUNITY SNAPSHOT

Located on the Central Coast of California, Santa Barbara County has often been described as the American Riviera. This beautiful region contains eight incorporated cities, such as the county seat of Santa Barbara and its largest city, Santa Maria, as well as 13 unincorporated areas.<sup>1</sup> Known for its wine, agriculture, and tourism, the county's economy also includes software development, health care, engineering, manufacturing, and other industries. As of 2019, the county's population was 446,499, with slightly more than a third of the residents living in unincorporated communities.<sup>2</sup>

### BACKSTORY

Before Santa Barbara County adopted its recent tobacco control measure, California's public health community was concerned about the impact of tobacco products, including e-cigarettes, on residents – especially youth. In 2019, 18.2 percent of high school students in California used electronic vapor products on at least one day in the past 30 days.<sup>3</sup> At this time, over 73 percent of youth nationally who used tobacco products started out using flavored products, and over 80 percent of those who used electronic vapor products used flavored e-cigarettes.<sup>4</sup> Moreover, by November 2019, a total of 2,172 e-cigarette, or vaping, product use-associated lung injury (EVALI) cases had been reported in the U.S. – with 200 cases from California – raising national alarm about youth access to e-cigarettes.<sup>5</sup>



California cities and counties joined localities across the country in passing laws to regulate the sale of e-cigarettes. Many of the laws passed at this time were flavored sales restrictions that included flavored e-cigarettes.<sup>6</sup> On December 3, 2019, in an effort to reduce youth access to addictive nicotine products, Santa Barbara County’s most populous city—Santa Maria—adopted regulations prohibiting licensed tobacco retailers from selling flavored tobacco products, including e-cigarettes.<sup>7</sup> The city’s new regulations also included minimum pack and price requirements, and prohibitions on tobacco product coupons and the sale of tobacco in pharmacies.<sup>8</sup> The city prioritized education before and after the law took effect, so community members, retailers, and enforcement agents all understood the regulations and the implementation process.<sup>9</sup>

Meanwhile, the Santa Barbara County Public Health Department was also considering regulatory options to address the rise in youth use of e-cigarettes. Santa Maria, a relatively conservative community, took many by surprise by passing such comprehensive regulations of tobacco retail licenses. This city’s initiative helped galvanize interest in county-level measures.

#### Key Takeaways

- In 2019, 18.2 percent of high school students in California used electronic vapor products on at least one day in the past 30 days.
- In November 2019, 2,172 e-cigarette, or vaping, product use-associated lung injury (EVALI) cases were reported in the U.S. - with 200 cases from California.
- On December 3, 2019, Santa Maria began requiring tobacco retailers to obtain a license that prohibited the sale of flavored tobacco products, including e-cigarettes.

## SANTA BARBARA COUNTY’S ORDINANCE

On December 10, 2019, the Santa Barbara County Board of Supervisors voted 4 to 1 to introduce an ordinance that banned the retail sale of flavored tobacco products, including flavored e-cigarettes, in all unincorporated areas of the county.<sup>10</sup> The proposed ordinance, which amended the county’s Chapter 37A – License of Tobacco Retailers, also prohibited the redemption of coupons and discounts for tobacco products, and prohibited county retailers from delivering tobacco products to customers.<sup>11</sup>

Before the public hearing on the ordinance, the Health Department spent approximately nine months educating the community about vaping and potential local tobacco control policies, and encouraging individuals to join the county’s tobacco control coalition. Outreach was directed to parents, teachers, pediatricians, youth directors, and other stakeholders. Staff also compiled data from studies on the tobacco industry’s use of candy-like flavors and menthol, and packaging that resembles popular children’s snacks – all to appeal to youth. The Health Department presented this information at the hearing, as well as data that debunked the idea that flavored e-cigarettes reliably help adults quit smoking.<sup>12</sup>



More than 30 people spoke at the hearing, including parents, teachers, children, and youth, many of whom held signs asking the board to approve the proposal. Among the speakers was the Health Department's Tobacco Prevention Program coordinator. She displayed images of vaping devices, refillable pods, and flavored vaping liquids in packaging that resembled toaster pastries, ice cream, and apple juice, and accused tobacco companies of predatory marketing to youth.<sup>13</sup> She also showed vaping devices that resembled pens, USB flash drives, credit cards, and smartwatches, all of which can be easily concealed in hoodies and gloves, allowing students to vape undetected in class.

One special education teacher displayed several vaping devices confiscated at the high school where he taught, including an item that resembled a yellow highlighter. He pointed out that students who vape in his class appear more irritated and unfocused, and told of one student who went to the restroom to vape, returned to his seat and passed out, disrupting the whole class.<sup>14</sup>

The high participation and support for the proposal at the hearing was the direct result of the Health Department's work at capacity building within the community and efforts to encourage individuals to engage in public policy. The majority of speakers at the hearing supported the proposed amendment. Only a handful of attendees – a few retail store owners and employees – opposed the proposal.<sup>15</sup> For instance, one shop owner insisted that the state had already sent cease-and-desist letters to stores that sold e-cigarettes with deceptive packaging, and that these products were no longer on her shelves.<sup>16</sup> The majority of the Board, however, was not swayed by the opposition's arguments.

“The high participation and support for the proposal at the hearing was the direct result of the Health Department's work at capacity building within the community.”



“Vanessa Ramirez Garcia with Future Leaders of America gives emotional testimony to Santa Barbara County Supervisors about classmates addicted to vaping on Tuesday in Santa Barbara.” Credit: Santa Ynez Valley News<sup>17</sup>

On December 17, 2019, the Santa Barbara County Board approved the proposed ordinance.<sup>18</sup> The law contained several significant requirements that affected all licensed tobacco retailers in the unincorporated areas of the county.<sup>19</sup> As of January 17, 2020, the tobacco retailers could no longer:

- Sell flavored tobacco products (including electronic smoking devices and e-liquid, as well as flavored cigars, little cigars/cigarillos, smokeless tobacco, shisha, e-hookah, or hookah products, filters, rolling papers, and blunt/hemp wraps)
- Use coupons, discounts, or similar deals that result in the sale of tobacco products for less than their full retail price
- Price a pack of cigarettes (20 cigarettes) at less than \$10
- Sell large cigars in packs of fewer than 5 cigars for less than \$5 per cigar or sell little cigars in packs of less than 20 cigars for less than \$10 per package<sup>20</sup>

The ordinance also prohibited retailers from delivering tobacco products to customers via phone, online, mail, or other “not-in-person” orders.

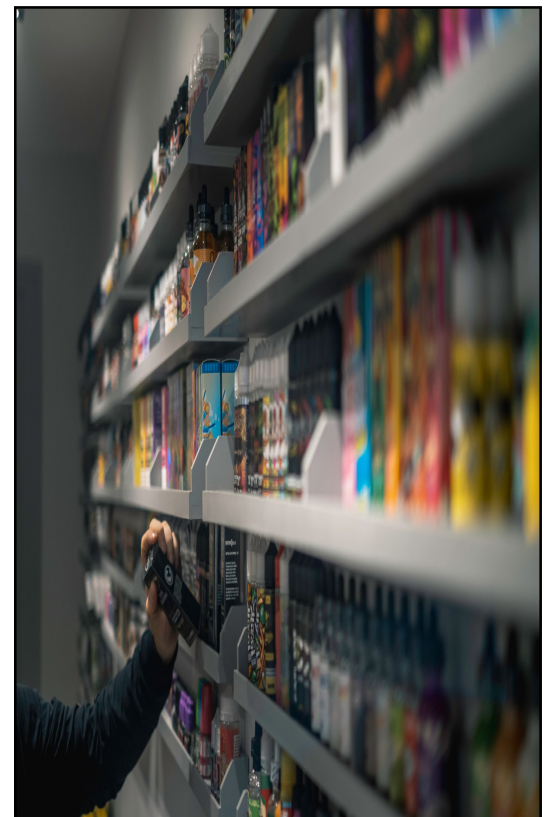
#### Key Takeaways

- On December 17, 2019, the Santa Barbara County Board approved an ordinance that banned the retail sale of flavored tobacco products, including flavored e-cigarettes.
- The Santa Barbara County Public Health Department spent approximately nine months educating the community, including parents, teachers, pediatricians, and other stakeholders, about vaping and potential local tobacco control policies.
- Stakeholders were vocal in arguments made both for and against the ordinance, with shop owners testifying against the ordinance, and teachers and health departments testifying for the ordinance.

## IMPLEMENTATION

Unlike many other California communities that passed similar sales restrictions that took effect six months after passage, the Santa Barbara County Board determined that the ordinance should go into effect 30 days after it was passed, which was January 17, 2020. Retailers were given 90 days to sell out their stock of flavored tobacco products, with ordinance enforcement to begin on March 17, 2020. This abbreviated implementation schedule differed from schedules in other communities around the country, including California. A longer implementation period would have provided the Health Department more time to educate the community and retailers about the rationale for the new ordinance and explain its requirements.

As soon as the ordinance was passed, representatives from the Santa Barbara County Public Health Department began contacting each of the approximately 66 licensed tobacco retailers in the jurisdiction. By certified letter, phone call, and in-person visit, the Health Department notified each retailer of the new law and advised them that in three months – by March 17, 2020 – they would no longer be able to sell flavored tobacco products, including flavored e-cigarettes. In their first phone call to retailers, within a day of the ordinance’s passing, Health Department staff recommended that retailers stop all current and future orders of banned products, in an effort to stall growing inventory volume and minimize left-over product. The Health Department disseminated information about the ordinance via press releases, guidance, and a fact sheet in both English and Spanish. Staff also prepared educational materials that included links to an online map to help retailers determine if they were located in an unincorporated area affected by the law, and disseminated lists and sample images of tobacco products that could and could not be sold.





On March 17, 2020, Santa Barbara County enforced the ordinance. Despite the retailers’ concerns about the shortened timeline, the Health Department reported high compliance among tobacco retailers in the county, thanks largely to the educational efforts of the Health Department before and during implementation. The county sheriff, who serves as the tobacco enforcement deputy, began doing compliance checks among retailers in the fall and winter of 2020, since the pandemic slowed action before that time. The sheriff was knowledgeable about the policy and tobacco products, and was able to work with retailers who still had inventory on their shelves and to explain the importance of removing these products immediately. In the first year of ordinance implementation, approximately one-third of the county’s tobacco retailers received warnings for possible violation of the ordinance, but only one retailer received a citation.

## CHALLENGES

The main obstacle in the implementation process was the shortened timeline, which led to concern among many retailers who needed to deplete their inventory of unsold flavored tobacco products in just three months. Furthermore, the ordinance took effect just as the COVID-19 pandemic was beginning, which exacerbated the implementation process. Retailers asked several questions during this time, particularly about how to dispose of their stock of e-cigarettes and related products. For example, they asked whether licensed distributors could take back returned products, whether retailers could move products that were distributed to another retailer outside the county, and whether retailers could ship back unused e-cigarette products to an original manufacturer as “retrograde material.”<sup>21</sup>

Other issues were raised about the proper disposal of unsold e-cigarettes and e-liquids. Because these products typically contain nicotine, they are classified as hazardous waste and under both federal and state law need to be handled and disposed of safely. The Health Department consulted with state and national public health legal and regulatory authorities, including the Public Health Law Center, and provided retailers with the information they needed to address their concerns and properly dispose of their products at a hazardous waste facility.<sup>22</sup>

“*The ordinance took effect just as the COVID-19 pandemic was beginning, which exacerbated the implementation process.*”

### Key Takeaways

- On March 17, 2020, retailers of the new law were no longer able to sell flavored tobacco products, including flavored e-cigarettes.
- Santa Barbara County Public Health Department staff disseminated guidance, including press releases, bilingual fact sheets, and an online map to help retailers determine if they were located in an area affected by the law.
- One implementation obstacle was the shortened timeline, as many retailers needed to sell off their inventory of flavored tobacco products in just three months.
- In fall 2020, the county sheriff began doing compliance checks. In the first year of the ordinance, approximately one-third of the county’s tobacco retailers received warnings for possible ordinance violations, but only one retailer received a citation.

## CONCLUSION AND RECOMMENDATIONS

The Santa Barbara County tobacco retailer ordinance is an example of a comprehensive sales restriction adopted by a county and supported by a community concerned about the rise in youth e-cigarette use and the marketing tactics used by the tobacco and e-cigarette industries to entice youth.

The ordinance was comprehensive and the implementation aggressive. The Health Department staff scrambled to educate tobacco retailers and the public about the new policy before it took effect, and their packets of educational materials and personal meetings with retailers were useful and appreciated by the retail, public health, and law enforcement communities. Although implementation appears to have been successful, a longer timeframe between ordinance passage and date of enforcement might have resulted in a smoother transition for retailers and public health officials. A lengthier implementation period might also have given the Health Department more time to publicize the ordinance, educate retailers and the community, prepare materials, and establish procedures for receiving, tracking, and responding to questions and comments.



## ACKNOWLEDGMENTS

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## IMAGE SOURCES AND CREDITS

**PAGE 1.** Photo by Yifan Maw on Unsplash. **PAGE 2.** iStock iStockPhoto. Stock Photo ID: 1203020454. Photo Credit: Kirkikis. **PAGE 3.** Photo provided by [Santa Ynez Valley News](#) **PAGE 4.** Photo by @eliquidsUK on Unsplash. **PAGE 5.** Photo provided by [City of Santa Barbara](#). **PAGE 6.** Photo by Sven Kuciik on Unsplash.

## REFERENCES

- 1 These unincorporated communities include Burton Mesa, Casmalia, Cuyama, Eastern Goleta Valley, Gaviota, Isla Vista, Los Alamos, Los Olivos, Montecito, Orcutt, Santa Ynez, Summerland, and Vandenberg Village.
- 2 U.S. Census, *Quick Facts, Santa Barbara County, California* (2019), <https://www.census.gov/quickfacts/santabarbaracountycalifornia>.
- 3 Centers for Disease Control & Prevention, *Youth Risk Behavioral Surveillance System* (2019), <https://www.cdc.gov/healthyyouth/data/yrbs/data.htm>. In comparison, in 2019, an estimated 34.2 percent of all U.S. high school students reported frequent use of e-cigarettes. Karen Cullen et al., *E-Cigarette Use Among Youth in the United States, 2019*, JAMA NETWORK (2019), <https://jamanetwork.com/journals/jama/fullarticle/2755265>.
- 4 See Truth Initiative, *Flavored Tobacco Use Among Youth and Young Adults* (2021), <https://truthinitiative.org/research-resources/emerging-tobacco-products/flavored-tobacco-use-among-youth-and-young-adults>; Teresa Wang et al., *E-cigarette Use Among Middle and High School Students – U.S.*, 9 MORBIDITY & MORTALITY WKLY REP. 1310-12 (2020), [https://www.cdc.gov/mmwr/volumes/69/wr/mm6937e1.htm?s\\_cid=mm6937e1\\_w](https://www.cdc.gov/mmwr/volumes/69/wr/mm6937e1.htm?s_cid=mm6937e1_w).
- 5 TobaccoFree CA, *EVALI: What You Need to Know* (2021), <https://tobaccofreeca.com/e-cigarettes/evali>.
- 6 See, e.g., Public Health Law Center, *U.S. Sales Restrictions of Flavored Tobacco Products* (2021), <https://www.publichealthlawcenter.org/sites/default/files/resources/US-sales-restrictions-flavored-tobacco-products.pdf>.
- 7 See Law and Policy Partnership to End the Commercial Tobacco Epidemic, *Santa Maria's Tobacco Retailer Licensing Program: A Case Study* (2021) [hereinafter Santa Maria case study], <https://www.publichealthlawcenter.org/sites/default/files/resources/Santa-Maria-TRL-Case-Study.pdf>.
- 8 Santa Maria Municipal Code, Chap. 13, Title 6 (Sec. 6-13.01 to 6-13.16), [http://www.qcode.us/codes/santamaria/view.php?topic=6-6\\_13&showAll=1&frames=on](http://www.qcode.us/codes/santamaria/view.php?topic=6-6_13&showAll=1&frames=on).
- 9 See Santa Maria case study, *supra* note 6.
- 10 Mike Hodgson, *Santa Barbara County Supervisors Vote to Ban flavored Tobacco Products, Menthol Cigarettes, Discounted Products*, SANTA MARIA TIMES, Dec. 10, 2019, [https://santamariatimes.com/news/local/govt-and-politics/santa-barbara-county-supervisors-vote-to-ban-flavored-tobacco-products-menthol-cigarettes-discounted-products/article\\_d1e6ddf4-3ef3-5523-9047-0204d846b384.html](https://santamariatimes.com/news/local/govt-and-politics/santa-barbara-county-supervisors-vote-to-ban-flavored-tobacco-products-menthol-cigarettes-discounted-products/article_d1e6ddf4-3ef3-5523-9047-0204d846b384.html).
- 11 This includes products that are ordered by phone, mail, online, or other means not in the presence of the buyer and delivered by common carrier, or other method of remote delivery when the seller is not in the physical presence of the buyer.
- 12 See Ryan Fish, *Santa Barbara County Approves Ban on Flavored Tobacco Products*, keyt.com, Dec. 10, 2019, <https://keyt.com/health/2019/12/10/santa-barbara-county-approves-ban-on-flavored-tobacco-products>.
- 13 See Hodgson, *supra* note 9.
- 14 *Id.*
- 15 *Id.*
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- 19 See, e.g., Santa Barbara County Public Health Dep't., *Santa Barbara County Tobacco Ordinance Changes* (2020); Santa Barbara County Public Health Dep't., *New Tobacco Retail Ordinance Starting January 17, 2020* (2020).
- 20 Santa Barbara County Public Health Department (on file) (2021).
- 21 Answers to these and related questions are jurisdiction-specific and depend on local and state laws and regulations.
- 22 See, e.g., Public Health Law Center, *Disposing of E-Cigarette Waste* (2019), <https://www.publichealthlawcenter.org/sites/default/files/resources/Disposing-of-E-Cigarette-Waste-Publication.pdf>; U.S. Food & Drug Admin., *Tips for Disposing of E-Cigarettes and E-Liquid Waste*, <https://www.fda.gov/tobacco-products/products-ingredients-components/tips-safe-disposal-e-cigarettes-and-e-liquid-waste>.