

**City of Culver City, California
Agenda Item Report**

Meeting Date: 08/11/14		Item Number: <u>A-2</u>	
CITY COUNCIL AGENDA ITEM: Discussion of Regulation of Electronic Cigarettes (E-Cigarettes) and Direction to Staff.			
Contact Person/Dept.: Heather Baker/City Attorney		Phone Number: (310) 253-5660	
Fiscal Impact: Yes ☐ No ☒		General Fund: Yes ☐ No ☒	
Public Hearing: ☐		Action Item: ☒ Attachments: ☒	
Commission Action Required: Yes ☐ No ☒		Date: _____	
Public Notification: PUBLICATION: Culver City News (07/10/14 and 07/24/14); EMAIL: Meetings and Agendas – City Council (07/10/14, 07/29/14 and 08/06/14); Meetings and Agendas – Smoking – Multi-Unit Housing (07/10/14, 07/29/14 and 08/04/14); Approximately 153 Property Owners and 8 Homeowners’ Associations of Multi-Unit Housing (07/10/14, 07/29/14 and 08/04/14); County of Los Angeles Department of Health Services (07/10/14, 07/29/14 and 08/04/14), Culver City Chamber of Commerce (07/10/14, 07/29/14 and 08/06/14); Coalition for Smoke-Free Living in Culver City (07/10/14, 07/29/14 and 08/04/14); California Apartment Association – Los Angeles (07/10/14, 07/29/14 and 08/04/14); and Coalition for a Tobacco Free LA County (comprised of over 70 organizations – this notification was emailed courtesy of the County of Los Angeles Department of Health Services) (07/29/14 and 08/05/14); USPS: 348 Property Owners of Multi-Unit Housing; 17 Homeowners Associations (08/01/14).			
Department Approval: Carol Schwab (by H. Baker) (08/07/14)		City Attorney Approval: Carol Schwab (by H. Baker) (08/07/14)	
Chief Financial Officer Approval: Jeff Muir (08/07/14)		City Manager Approval: John Nachbar (08/07/14)	
<u>RECOMMENDATION:</u> Staff recommends the City Council discuss the regulation of electronic smoking devices and provide direction to staff as deemed appropriate. <u>BACKGROUND:</u> During the course of this year’s budget presentations, the City Council directed staff to return with a discussion of the regulation of e-cigarettes. <u>DISCUSSION:</u> ¹ <i>Definition, History and Health Impacts</i> <u>Definition and History:</u> Electronic smoking devices (also known as “electronic cigarettes,” “e-cigarettes,” “electronic nicotine delivery systems,” “e-cigars,” “e-cigarillos,” “e-pipes,” “e-			

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hookahs,” “hookah pens,” etc.) are battery operated devices, often designed to look like and be used in a similar manner to conventional tobacco products, such as cigarettes, cigars and pipes. These devices are used to inhale a vaporized liquid solution (typically made up of propylene glycol or glycerin, nicotine, and flavored chemicals). Electronic smoking is often referred to as “vaping” because the device produces a chemical vapor that is inhaled by the user and exhaled into the environment.

E-cigarettes were introduced in China in around 2003 and entered the U.S. market around 2008. During the past few years their popularity in this country has grown exponentially, especially among young people. For example, between 2011 and 2012 their use among American youth more than doubled according to the Centers for Disease Control and Prevention. The most common users are those who also smoke cigarettes.

The marketing and advertising of e-cigarettes is expanding rapidly. They are promoted in television, radio, online and print advertisements. Unlike with cigarettes, there are no restrictions or regulations on e-cigarette advertising. Much of the advertising is directed at children, using social media and celebrities and featuring flavors such as Cotton Candy and Gummi Bear. Since 2013, e-cigarettes have been the subject of frequent media coverage, public discussion and increasing scientific research. At the same time many local and state governments are moving to regulate e-cigarettes in a similar fashion to traditional tobacco products.

Health Impacts:

One of the most debated issues regarding e-cigarettes is their status as either smoking cessation devices or tobacco products and the associated health impacts. There is an enormous amount of information available on both sides of the debate. Staff has limited the amount of resources referenced to a few of the available articles, studies and/or publications for the City Council’s information in order not to overwhelm the discussion.

On May 12, 2014, the American Heart Association (AHA) published a comprehensive analysis of prior scientific studies on electronic cigarettes, entitled *E-Cigarettes: A Scientific Review*, authored by researchers at the University of California, San Francisco (UCSF) and published in the AHA’s journal *Circulation* (“Scientific Review”). This Scientific Review can be viewed on the AHA’s website at the following link: <http://circ.ahajournals.org/content/129/19/1972.full>. The Scientific Review is a condensed version of a larger meta-study previously prepared for the World Health Organization and is the first-ever comprehensive assessment of peer-reviewed published research on the subject of e-cigarettes. The conclusions of the Scientific Review are discussed later in this report as they pertain to the various claims raised by proponents of e-cigarettes and proponents of regulating e-cigarettes. (This Scientific Review was also included by Santa Monica staff in its report to its city council during their recent consideration of this issue.)

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On the other side of the debate, there was a recent article in *Time* magazine on July 31, 2014, that references new research that concludes that the benefits of electronic cigarettes outweigh the harms (<http://time.com/tag/electronic-cigarettes/>). The article cites a study conducted by the Queen Mary University of London, which was published in the journal *Addiction*, which study concluded that "Health professionals may consider advising smokers unable or unwilling to quit through other routes to switch to [e-cigarettes] as a safer alternative to smoking and a possible pathway to complete cessation of nicotine use."

The debate over health impacts continues and, as of the writing of this report, staff is unable to provide the City Council with definitive answers in this regard.

Existing Law²

Existing federal and state laws have certain limited provisions relating to electronic smoking devices.

- Health and Safety Code §119405: It is unlawful to sell or otherwise furnish an electronic cigarette to a person under 18 years of age. "Electronic cigarette" is defined as a device that can provide an inhalable dose of nicotine by delivering a vaporized solution.
- U.S. Department of Transportation Interpretation: The US DOT has interpreted existing federal regulations that prohibit smoking on airplanes to apply to electronic smoking devices.
- U.S. Air Force and U.S. Navy³: These branches of the military have stated that their existing regulations governing tobacco use will apply to electronic smoking devices.

Federal law (the 2009 Family Smoking Prevention and Tobacco Control Act), which regulates the manufacturing and marketing of tobacco products, does not apply to electronic smoking devices. In addition, electronic smoking devices have not been approved by the Food and Drug Administration (FDA) for smoking cessation.

However, federal policy regarding the regulation of e-cigarettes is in transition. On April 25, 2014, the FDA issued a proposed rule that would extend the FDA's authority to regulate additional tobacco products, including e-cigarettes. The proposed rule can be reviewed at:

<http://www.regulations.gov/#!documentDetail;D=FDA-2014-N-0189-0001>

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Culver City Regulation of E-Cigarettes

The City Council agendaized this matter to discuss the policy issue of whether or not to regulate e-cigarettes. The main questions to be considered are:

1. Whether to require retailers to obtain a tobacco retailer license for the sale of e-cigarettes?
2. Whether to prohibit the use of e-cigarettes in all places (or certain places) where smoking is already prohibited?

Current Municipal Code Provisions:

The Culver City Municipal Code (CCMC) does not include any express prohibitions, restrictions or permissions relating to e-cigarettes. However, in researching the issue of e-cigarette regulation and preparing this agenda item, staff discovered that the City's current definitions for "tobacco paraphernalia" and "tobacco product" as set forth in the CCMC are arguably broad enough to include electronic cigarettes for purposes of the City's tobacco retail licensing provisions.⁴

The definitions of "tobacco paraphernalia" and "tobacco product" appear in the tobacco retailer licensing provisions (CCMC Section 11.15.010) and the smoking regulations (CCMC Section 9.11.105) as follows (emphasis added):

Tobacco Paraphernalia: "Cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and ***any other item designed for the smoking, preparation, storing, or consumption of tobacco products.***"

Tobacco Product: "Any substance containing tobacco leaf, including but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; 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 specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence."

As discussed earlier in the report the reference to products specifically approved by the FDA for use in treating nicotine or tobacco dependence does not e-cigarettes.

Staff does not believe and the research has not shown that the same holds true for the City's smoking regulations, as the definition of "smoking" or "to smoke" (as set

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forth in CCMC Section 9.11.105) requires the “lighting” of the tobacco paraphernalia or tobacco product, as follows (emphasis added):

Smoking or To Smoke: “The possession of a ***lighted tobacco product, lighted tobacco paraphernalia***, or any other lighted weed or plant, including a lighted pipe, cigar, hookah pipe, or cigarette of any kind; and the ***lighting of a tobacco product, tobacco paraphernalia***, or any other weed or plant, including a pipe, cigar, hookah pipe, or cigarette of any kind.”

Therefore, although an argument may be made that the City’s tobacco retail licensing provisions applies to e-cigarettes, the City’s smoking regulations do not apply to e-cigarettes. In addition, it does not appear that it was the City Council’s intent to apply these regulations to e-cigarettes, as the issue of electronic smoking devices was not discussed, and these devices were not common, at that time.

Staff recommends these definitions be updated to reflect whatever policy decision the City Council makes with regard to the regulations of electronic smoking devices. If the City Council decides to regulate e-cigarettes, the definitions should be modified to specifically include electronic smoking devices. If the City Council determines not to regulate these devices, the definitions should be modified to specifically exclude them.

Public Debate over the Regulation of E-Cigarettes:

- ***Proponents of e-cigarettes*** view them as less hazardous alternatives to combustible cigarettes and generally cite two main arguments in favor of the devices:
 - Claims that e-cigarettes are an effective tool for smokers to quit smoking cigarettes (similar to the nicotine patch or gum); and
 - Claims that the vapor from e-cigarettes contains fewer dangerous chemicals than cigarette smoke and is, therefore, safer than conventional cigarettes, both for the user and for those nearby (some claim they only release “water vapor” so they pose no risk at all).
- ***Proponents of regulating e-cigarettes*** cite several reasons for the need to regulate:
 - Gateway products to tobacco use and nicotine addiction.
 - Marketed to children and leads to increased smoking of traditional cigarettes by children.
 - Liquid solution available in a variety of flavors that appeal to youth (e.g. bubblegum, chocolate, mint), and can be purchased at mall kiosks, where young people often congregate, as well as online, where safeguards against youth access can be breached more easily than in face-to-face purchases.

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- Marketing is completely unregulated, therefore, consumers have no way to know the types and levels of various chemicals contained in e-cigarettes.
- Liquid solutions have addictive levels of nicotine, sometimes 20 mg or higher and contain potentially life-threatening carcinogens and toxic chemicals.
- Potential to “renormalize” tobacco use, if they are allowed in places where the use of tobacco products has previously been prohibited (e.g. workplaces, restaurants, bars).
- Visually similar to cigarettes, thereby creating problems in locations where smoking is currently prohibited including: (a) making enforcement of no-smoking laws difficult; (b) undermining compliance with smoking laws by giving the visual impression that the laws are being violated; and (c) undermining efforts to reduce smoking in general.
- Potential health risks are still unknown and, until they are proven safe, their use should be restricted similarly to that of traditional tobacco products.

Scientific Research as Applied to Public Debate

- ***E-cigarettes as a cessation tool.*** The Scientific Review, discussed earlier in this report, estimated that e-cigarette manufacturers make this claim on more than half of the products being sold. There is anecdotal evidence that e-cigarettes do enable some cigarette smokers to quit. However, thus far no scientific studies have proven their efficacy for that purpose. The UCSF meta-analysis, after reviewing all available peer-reviewed studies on the subject, concluded that claims of e-cigarettes as a smoking cessation tool were not supported by the evidence. When they pooled the available data from prior studies the UCSF researchers found that e-cigarette users actually had “significantly lower odds of quitting smoking cigarettes,” by more than 30 percent. In 2012, the World Medical Association stated that e-cigarettes “are not comparable to scientifically-proven methods of smoking cessation” and that “neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established.”
- ***Electronic cigarettes are safer than traditional tobacco products.*** There are numerous studies that claim that e-cigarettes are safer than cigarettes. The Scientific Review notes that “[t]oxins in the e-cigarette aerosol [are] at much lower levels compared with the conventional cigarette emissions.” However, this same study points out that “e-cigarette aerosol is not merely ‘water vapor’ as is often claimed in the marketing for these products” and that “only a few studies have directly investigated the health effects of exposure to e-cigarette aerosol, but some demonstrate the ability of e-cigarette aerosol exposure to result in biological effects.” The conclusion was that “[l]ong-term

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biological effects are unknown at this time because e-cigarettes have not been in widespread use long enough for assessment.”

- **Hazards of e-cigarettes.** Without comparing the health hazards of e-cigarettes to the hazards of traditional tobacco products, there is increasing evidence to support the argument that e-cigarettes may be hazardous to the health of both users and those nearby. The U.S. Centers for Disease Control recently reported a sharp rise in emergency calls to poison centers due to exposure to e-cigarette liquids contemporaneous with the rise in e-cigarette use: such emergency calls rose from around one per month in 2010, to 215 per month in 2014. A 2013 study found a total of 22 different elements in the vapors of electronic smoking devices, three of which appear on the FDA’s list of harmful and potentially harmful chemicals. The Los Angeles County Department of Public Health in 2013 voiced its support for local governments’ inclusion of e-cigarettes in tobacco laws since “studies indicate that [they] pose potential dangers for users, as well as for non-users who passively inhale these chemical vapors.”

Other Counties’ and Cities’ Regulations⁵

There are several policy issues that various counties and cities throughout the State of California have addressed relating to e-cigarettes: 1) tobacco retail licensing; 2) prohibition of e-cigarettes in public places where smoking is banned; 3) use of e-cigarettes in indoor workplaces; and 4) temporary moratoriums on new e-cigarette shops. This report will focus on regulations adopted by other Los Angeles County cities.

1. Tobacco Retail Licensing: The most common type of regulation relating to electronic cigarettes pertains to the sale of e-cigarette devices. Since 2004, the following 19 Los Angeles County cities have adopted regulations to require a tobacco retail license for the sale of electronic smoking devices:

- Burbank
- Lomita
- Compton
- Glendale
- Inglewood
- Gardena
- Baldwin Park
- South Pasadena
- Calabasas
- Montebello
- Palmdale
- Hawaiian Gardens
- Malibu

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- Huntington Park
- El Monte
- Lynwood
- Temple City
- Los Angeles
- Long Beach

Most recently, in June 2014, the Santa Monica City Council voted to direct staff to prepare an ordinance for the Council's consideration, which would include electronic smoking devices within the definition of "smoke" and "smoking" for purposes of Santa Monica's existing smoking laws.

2. Public Places Where Smoking is Banned: Since 2010 a total of eight Los Angeles County cities have adopted ordinances that prohibit e-cigarettes in public places where smoking is prohibited, including the cities of:
 - Los Angeles
 - Huntington Park
 - Compton
 - Long Beach
 - Beverly Hills
 - Alhambra
 - Lakewood
 - Pico Rivera
3. Indoor Workplaces: In 2013, the City of Lakewood adopted an ordinance prohibiting the use of e-cigarettes in restaurants and other select establishments, such as government buildings.
4. Temporary Moratorium: In 2013, the following five cities adopted temporary moratoria on new e-cigarette shops:
 - Norwalk
 - Duarte
 - Bellflower
 - Cerritos
 - Alhambra

FISCAL ANALYSIS:

There is no fiscal impact to discussing this item. If an ordinance were to be adopted by the City Council, the additional regulations prohibiting the use of e-cigarettes may require increased enforcement activity by the Enforcement Services Division, the Police Department and the City Attorney's Office. In addition, staff time would be required to: 1) prepare and disseminate information about the newly adopted regulations; and 2) implement the provisions of the ordinance, which could be

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significant depending on the scope of the regulations. These costs cannot be easily quantified at this time. If the City Council directs staff to return with a proposed ordinance and provides policy direction as to the scope of the regulations, staff may be able to return with an estimate of these costs. The more comprehensive the regulations, the more staff time that could be involved with educating, implementing and enforcing those regulations.

ATTACHMENTS:

None.

MOTION:

That the City Council:

Discuss the regulation of electronic cigarettes and provide direction to staff as deemed appropriate.

¹ Information contained in this section of the staff report was gathered from the following resources:

- U.S. Department of Health and Human Services, U.S. Food and Drug Administration, <http://www.fda.gov/newsevents/publichealthfocus/ucm172906.htm>
- *Tips and Tools for Regulating E-Cigarettes* (May 2011), Tobacco Control Legal Consortium, <http://publichealthlawcenter.org/sites/default/files/resources/TCLC-Guide-Reg%20E-Cig-Devices-2013.pdf>
- *Regulating Toxic Vapor, A Policy Guide to Electronic Smoking Devices* (June 2014), ChangeLab Solutions, http://changelabsolutions.org/sites/default/files/Regulating_Toxic_Vapor-FINAL-20140630.pdf
www.changelabsolutions.org (formerly Public Health Law & Policy Technical Assistance Legal Center). ChangeLab Solutions (CLS) is a non-partisan, neutral organization (not a lobbying organization) funded by Prop 99 (one of the cigarette taxes) and comprised of legal experts in the area of smoking laws. Part of the Prop 99 money is specifically earmarked toward legal assistance for local communities in addressing smoking and tobacco control issues, which is how/why CLS was created.
- City of Santa Monica City Council Report dated June 24, 2014, Agenda Item 8-B, <http://www.smgov.net/departments/council/agendas/2014/20140624/s2014062408-B.htm>

² *Tobacco Laws Affecting California 2012*, ChangeLab Solutions, www.changelabsolutions.org.

³ Air Force Instruction 40-102, 26 March 2012, Medical Command, Tobacco Use in the Air Force; and Department of the Navy, Bureau of Medicine and Surgery, BUMED Instruction 6200.12A, Comprehensive Tobacco Control for Navy Medicine.

⁴ CCMC Chapter 11.15 requires all tobacco retailers to obtain a Tobacco Retailer License from the City in order to sell, exchange or offer to sale or exchange tobacco products and tobacco paraphernalia.

⁵ *Local and County E-Cigarette Ordinances in California* (March 2014), County of Los Angeles Public Health Tobacco Control & Prevention Program.