

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

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| Meeting Date: 07/27/15  | Item Number: <u>A-3</u>   |
| <b>CITY COUNCIL AGENDA ITEM: Introduction of an Ordinance Amending Section 11.15.010, Definitions, of Chapter 11.15, Tobacco Retailer Licensing, of the Culver City Municipal Code, to Require a Tobacco Retailer License for the Sale of Any Electronic Smoking Device or Electronic Smoking Device Paraphernalia.</b>   |   |
| Contact Person/Dept.: Jeff Muir, Chief Financial Officer; and Heather Baker, Assistant City Attorney  | Phone Number: 310-253-5865; 310-253-5660  |
| Fiscal Impact: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>  | General Fund: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>                 |
| Public Hearing: <input type="checkbox"/>  | Action Item: <input checked="" type="checkbox"/> Attachments: <input checked="" type="checkbox"/> |
| Commission Action Required: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Date: _____   |   |
| Public Notification: <b>EMAIL:</b> Meetings and Agendas – City Council (07/14/15 and 07/22/15); Timely Topics – Smoking (07/14/15 and 07/20/15); Approximately 29 Tobacco Retailer Licensees (07/14/15 and 07/20/15); County of Los Angeles Department of Health Services (07/14/15 and 07/20/15), Culver City Chamber of Commerce (07/14/15 and 07/20/15); 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) (07/21/15); <b>USPS:</b> Approximately 59 Tobacco Retailer Licensees (07/15/15).  |   |
| Department Approval:<br>Jeff Muir (07/22/15)<br>Carol Schwab (by H. Baker) (07/22/15)   | City Attorney Approval:<br>Carol Schwab (by H. Baker) (07/22/15)                                  |
| Chief Financial Officer Approval:<br>Jeff Muir (07/22/15)   | City Manager Approval:<br>John M. Nachbar (07/22/15)  |
| <p><b><u>RECOMMENDATION:</u></b></p> <p>Staff recommends the City Council introduce an ordinance amending Section 11.15.010, Definitions, of Chapter 11.15, Tobacco Retailer Licensing, of the Culver City Municipal Code (CCMC), to require a tobacco retailer license for the sale of any electronic smoking device or electronic smoking device or paraphernalia.</p> <p><b><u>BACKGROUND:</u></b></p> <p>On July 13, 2009, the City Council adopted an ordinance establishing a tobacco retailer licensing program (TRL Ordinance). The TRL Ordinance: (1) requires all sellers of tobacco products and tobacco paraphernalia to have and display a tobacco retailer license; (2) prohibits tobacco product and paraphernalia sales to minors; (3) provides for suspension and revocation procedures and penalties; and</p> |   |

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(4) establishes the funding of the administration, enforcement, and education of the program by an annual license fee.

At the time of adoption of the TRL Ordinance, the regulation of electronic smoking devices was not contemplated or discussed. Electronic smoking devices, commonly known as electronic cigarettes, e-cigarettes, e-cigars, e-cigarillos, e-pipes, e-hookahs, and electronic nicotine delivery systems, etc. (collectively, “E-Cigarettes”) are battery operated devices designed to deliver nicotine, flavor, and/or other substances through a vapor inhaled by the user.

Since the time of adoption of the TRL Ordinance, the use of E-Cigarettes has increased significantly, as evidenced by the following statistics issued by the California Department of Public Health<sup>1</sup>:

- Among children ages 0 to 5 years old, E-Cigarette poisonings increased sharply from seven in 2012 to 154 in 2014.
- By the end of 2014, E-Cigarette poisonings of young children tripled in one year, making up more than 60% of all E-Cigarette poisoning calls.
- Nationally, the use of E-Cigarettes by high school students tripled in two years.
- In California, use of E-Cigarettes among young adults ages 18 to 29 tripled in one year.

On February 23, 2015, the City Council directed City staff to return with an amendment to the TRL Ordinance to require a tobacco retailer license for the sale of E-Cigarettes and prohibit the sale of E-Cigarettes to minors.

**DISCUSSION:**

The proposed ordinance (Attachment 1) amends the following definitions set forth in CCMC 11.15.010 to clearly state that the TRL Ordinance shall apply to electronic smoking devices and electronic smoking device products:

- **TOBACCO PARAPHERNALIA.** Cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other instrument or paraphernalia designed for the smoking, preparation, storing, ingestion or consumption of Tobacco Products. For purposes of this Chapter, Tobacco Paraphernalia includes an Electronic Smoking Device and Electronic Smoking Device Paraphernalia.

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<sup>1</sup> California Department of Public Health, California Tobacco Control Program, *State Health Officer's Report on E-Cigarettes: A Community Health Threat*, Sacramento, CA, January 2015.

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- **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. Except as otherwise provided herein, Tobacco Product does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. For purposes of this Chapter, Tobacco Product includes an Electronic Smoking Device and Electronic Smoking Device Paraphernalia.

In addition, the proposed Ordinance would add the following new definitions:

- **ELECTRONIC SMOKING DEVICE.** An electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. Electronic Smoking Device includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.
- **ELECTRONIC SMOKING DEVICE PARAPHERNALIA.** Cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, Electronic Smoking Device batteries, Electronic Smoking Device chargers, and any other item specifically designed for the preparation, charging, or use of Electronic Smoking Devices.

These changes to the existing TRL Ordinance will make it clear that: (1) a retailer engaged in the sale of E-Cigarettes must obtain a tobacco retailer license; and (2) the sale of E-Cigarettes to minors is unlawful.

**FISCAL ANALYSIS:**

Adoption of the proposed Ordinance would have a minor financial impact. To the extent that a retailer of E-Cigarettes and related products does not sell tobacco products, they may not currently have a tobacco retailer license and would now be required to obtain one. This could increase the amount of revenue collected for the additional tobacco retailer license fees. However this would be offset by the

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increased cost of administration and enforcement related to the additional licenses, which costs are borne entirely by license fees collected.

**ATTACHMENTS:**

Proposed Ordinance

**MOTION:**

That the City Council:

Introduce an Ordinance amending Section 11.15.010, Definitions, of Chapter 11.15, Tobacco Retailer Licensing, of the Culver City Municipal Code (CCMC), to require a tobacco retailer license for the sale of any electronic smoking device or electronic smoking device paraphernalia.