



City of Culver City

Staff Report

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Item #: A-1.

CC - Introduction of an Ordinance Amending Chapter 9.11 to Prohibit the Use of Electronic Smoking Devices (E-Cigarettes) in Outdoor Dining Areas and City Parks and Recreational Areas, and Prohibit Smoking and Use of E-Cigarettes in City Hall Courtyard and Town Plaza.

Meeting Date: February 24, 2020

Contact Person/Dept: Heather Baker, Assistant 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: (E-Mail) Meetings and Agendas - City Council (02/18/20); Notify Me - Culver City News and Events; Stay Informed - Smoking and Press Organizations (02/04/20, 02/13/20 and 02/18/20); (Publication) Culver City News (02/06/20)

Department Approval: Carol Schwab (02/18/20)

RECOMMENDATION

Staff recommends the City Council introduce an Ordinance amending Chapter 9.11 to prohibit the use of electronic smoking devices (E-Cigarettes) in outdoor dining areas and City parks and recreational areas, and prohibit the smoking and use of E-Cigarettes in City Hall Courtyard and Town Plaza (Attachment 1).

BACKGROUND

The following is a chronology of the City Council's prior discussion of E-Cigarettes:

- **August 11, 2014:** City Council discussed the regulation of E-Cigarettes and whether to prohibit the use of E-Cigarettes in all places (or certain places) where smoking is already prohibited. At that time, the City Council determined there was a need for additional information regarding the impacts of E-Cigarettes, encouraged advocates to continue to send material, and acknowledged that the issue could be revisited at a later date.

- **August 10, 2015:** City Council amended Chapter 11.15, Tobacco Retailer Licensing, of the Culver City Municipal Code (CCMC) to amend the definitions of “tobacco paraphernalia” and “tobacco product” to specifically include electronic smoking devices and electronic smoking device paraphernalia, as it was unclear from the previous definitions as to whether these were subject to a tobacco retailer license. That amendment to CCMC Chapter 11.15 also added new definitions for “electronic smoking device” and “electronic smoking device paraphernalia.” The purpose of the amendment was to 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.
- **January 14, 2019:** Vice Mayor (then Council Member) Eriksson requested support to agendaize a general discussion of E-Cigarettes. Mayor (then Vice Mayor) Sahli-Wells mentioned she had been in discussions with the Los Angeles County Department of Public Health (LADPH) and USC professors regarding a potential ban of flavored E-Cigarettes and requested that a discussion of such a ban be incorporated into the requested agenda item. The City Council supported this request and directed the City Manager to bring this item to a future City Council meeting for discussion.
- **May 28, 2019:** The City Council considered the various policy options with regard to E-Cigarette usage (identifying areas where it could be prohibited) and directed staff to return with a proposed Ordinance prohibiting the use of E-Cigarettes in all outdoor public places where smoking is prohibited (City parks and recreational areas and outdoor dining areas), but declined considering a prohibition of E-Cigarettes in multi-unit housing. The City Council further directed that the definition of “Recreational Area,” which previously excluded City Hall Courtyard and Town Plaza be amended to include both locations, resulting in a prohibition of both traditional smoking and the use of E-Cigarettes in these areas. With the exception that smoking would be permissible in a designated smoking area of the City Hall Courtyard, if one is established at the discretion of the City. Such an exception is also consistent with the amended City Council Policy regarding a smoke-free environment, which is also being considered by the City Council at its February 24, 2020 meeting.
- **October 28, 2019:** The City Council adopted an Ordinance prohibiting the sale of flavored tobacco products (including flavored E-Cigarette products). The “flavor ban” goes into effect on November 27, 2020 for Tobacco Stores and May 25, 2020 for all other Tobacco Retailers. The single Hookah Lounge located in Culver City is exempt from the ban until such time as it changes ownership, and is considered a legal nonconforming use.

Pursuant to the direction from the City Council on May 28, 2019, the proposed Ordinance is presented for consideration.

DISCUSSION

Health Impacts

At the time of the City Council's discussion in 2014 staff was unable to provide the City Council with definitive answers relating to the health impacts of E-Cigarette usage, as the scientific information was limited. Since that time, a substantial amount of new information has been released from public agencies and the scientific community.

California Department of Public Health (CDPH)

In 2015, CDPH issued a Health Advisory, *Electronic Cigarettes: A Summary of the Public Health Risks and Recommendations for Health Care Professionals* (Attachment 2), discussing health risks posed by the use of E-Cigarettes which include, but are not limited to (for more detailed information see Attachment 2):

- Heated e-liquid (used in E-Cigarettes) forms an aerosol, which is absorbed through the blood stream and delivered directly to the brain and all body organs.
- In addition to nicotine, e-liquids contain other toxic chemicals known to cause cancer, birth defects and other reproductive harm.
- E-Cigarette emissions are also a health concern for those exposed to secondhand aerosol (exposure to secondhand aerosol results in nicotine absorption at levels comparable to secondhand smoke).
- Using a nicotine-containing E-Cigarette for five minutes causes similar lung irritation, inflammation and effect on blood vessels as smoking a traditional cigarette, which may increase the risk of a heart attack.
- Exposure to and use of nicotine products by adolescents is of particular concern because it is a critical period for brain growth and development.

CDPH's *State Health Officer's Report on E-Cigarettes: A Community Health Threat* (2015) also provides additional information regarding health risks (Attachment 3).

The National Academies of Sciences, Engineering, and Medicine (NASEM)

In 2018, NASEM issued a report *Public Health Consequences of E-Cigarettes* with the following findings¹:

- There is conclusive evidence that:
 - E-Cigarette use increases airborne concentrations of particulate matter and nicotine in indoor environments compared with background levels.
 - Except for nicotine, under typical conditions of use, exposure to potentially toxic substances from e-cigarettes is significantly lower compared with combustible tobacco cigarettes.
 - Exposure to nicotine from e-cigarettes is highly variable and depends on product characteristics (including device and e-liquid characteristics) and how the device is operated.
 - In addition to nicotine, most e-cigarette products contain and emit numerous potentially toxic substances.
 - Other than nicotine, the number, quantity, and characteristics of potentially toxic substances emitted from e-cigarettes are highly variable and depend on product characteristics (including device and e-liquid characteristics) and how the device is operated.
 - E-cigarette devices can explode and cause burns and projectile injuries. Such risk is

- significantly increased when batteries are of poor quality, stored improperly, or modified by users.
- Intentional or accidental exposure to e-liquids (from drinking, eye contact, or dermal contact) can result in adverse health effects including but not limited to seizures, anoxic brain injury, vomiting, and lactic acidosis.
 - There is substantial evidence that:
 - Nicotine intake from e-cigarette devices among experienced adult e-cigarette users can be comparable to that from combustible tobacco cigarettes.
 - E-Cigarette use increases risk of using combustible tobacco cigarettes among youth and young adults.
 - E-Cigarette aerosols can induce acute endothelial cell dysfunction, although the long-term consequences and outcomes with long-term exposure to e-cigarette aerosol are uncertain.
 - E-Cigarette use results in symptoms of dependence on e-cigarettes.
 - Some chemicals present in e-cigarette aerosols (e.g., formaldehyde, acrolein) are capable of causing DNA damage and mutagenesis.
 - Heart rate increases shortly after nicotine intake from E-Cigarettes.

Center for Disease Control and Prevention

On February 11, 2020, the Centers for Disease Control and Prevention (CDC) reported that as of February 4, 2020, a total of 2,758 lung injury hospitalizations or deaths associated with using E-Cigarette, or vaping, products have been reported to CDC from all 50 states, the District of Columbia, and two U.S. territories (Puerto Rico and U.S. Virgin Islands); and 64 deaths have been confirmed in 28 states and the District of Columbia.²

Of the reported injuries and deaths, 37 cases, including one death, have been reported in Los Angeles County.³

Claims Regarding E-Cigarettes as a Smoking Cessation Tool

Notwithstanding the available information on the health risks of E-Cigarettes, there remains a claim they are an effective tool for smokers to quit smoking cigarettes (similar to the nicotine patch or gum). Some of the recent research has concluded E-Cigarettes are not effective smoking cessation devices, and has found that, among smokers, those using E-Cigarettes are less likely to quit smoking than persons who do not use E-Cigarettes.⁴

Current Law

City Regulations: Existing Culver City law does not regulate the use of E-Cigarettes; however, CCMC Chapter 11.15 requires a retailer selling E-Cigarettes to have a tobacco retailer license and prohibits the sale of E-Cigarettes to minors. In addition, the City Council recently adopted a prohibition on the sale of flavored tobacco products, including E-Cigarettes, which goes into effect later this year. Currently, the use of E-Cigarettes is not prohibited in areas where smoking is

prohibited. Smoking is prohibited in the following areas within the City:

- City parks and recreational areas;
- Outdoor dining areas;
- Multi-unit housing; and
- Other areas where smoking is prohibited by state or federal law.

Federal and State Law: The following is an up-to-date summary of existing federal and state laws and policies that pertain to the regulation and use of E-Cigarettes:

- State law prohibits the sale (or otherwise furnishing of) E-Cigarettes to persons under 21 years of age.
- State law prohibits the use of E-Cigarettes in places where smoking is prohibited under state law (e.g. workplace).
- Federal law, which prohibits smoking on airplanes, has been interpreted to apply to E-Cigarettes.
- Certain branches of the military have policies that their existing regulations governing tobacco use apply to E-Cigarettes.
- The 2009 Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), which provides the U.S. Food and Drug Administration (FDA) the authority to regulate the manufacturing and marketing of tobacco products, did not explicitly include E-Cigarettes when it was adopted. However, in 2016, the FDA finalized a rule extending its regulatory authority to cover all tobacco products, including E-Cigarettes, as part of its goal to improve public health.⁵ FDA regulates the manufacture, import, packaging, labeling, advertising, promotion, sale, and distribution of E-Cigarettes, but not the use.
- The FDA has not approved E-Cigarettes for smoking cessation.

Cities within Los Angeles County

The following cities within Los Angeles County prohibit the use of E-Cigarettes in certain places:

1. Parks: A total of 42 Los Angeles County cities have adopted ordinances that prohibit E-Cigarettes in parks, including, but not limited to, the cities of:
 - Beverly Hills
 - Hermosa Beach
 - Lawndale
 - Long Beach
 - Los Angeles
 - Manhattan Beach
 - Palos Verdes Estates
 - Santa Monica
 - Torrance

In addition, in May 2019, Los Angeles County expanded its outdoor smoking ban to include use of E-Cigarettes.

2. Outdoor Dining Areas: A total of 20 Los Angeles County cities have adopted ordinances that prohibit E-Cigarettes in outdoor dining areas, including, but not limited to, the cities of:
 - Beverly Hills

- Hermosa Beach
- Long Beach
- Los Angeles
- Manhattan Beach
- Santa Monica

For a complete list of cities see LADPH's matrix (Attachment 4).

Proposed Ordinance

The following are the key changes to Chapter 9.11, as reflected in the proposed Ordinance:

- Section 9.11.100, *Purpose*, has been amended to reference E-Cigarettes and their health impacts;
- Section 9.11.105, *Definitions*, has been amended to: (1) include new definitions for Designated Smoking Area, Electronic Smoking Device and Electronic Smoking Device Paraphernalia; and (2) amend the definitions of Park or Recreational Area, Smoking or to Smoke, Tobacco Paraphernalia and Tobacco Product.
- Section 9.11.115, *Smoking Prohibited in City Parks and Recreational Areas*, has been amended to allow for an exception for smoking in a Designated Smoking Area of the City Hall Courtyard, if one is established by the City.

Enforcement

If the City Council introduces and adopts the proposed Ordinance to prohibit the use of E-Cigarettes in outdoor dining and City parks and recreational areas, including City Hall Courtyard and Town Plaza, enforcement would be handled in the same manner as traditional smoking violations. Currently smoking violations are handled on a complaint basis and the Police Department incorporates educating the public on the law when responding.

FISCAL ANALYSIS

There is no fiscal impact associated with the introduction of the proposed Ordinance.

ATTACHMENTS

1. 2020-02-24_ATT - Proposed Ordinance Prohibiting E-Cigarettes
2. 2020-02-24_ATT - 2015 CDPH Health Advisory
3. 2020-02-24_ATT - State Health Officer's Report on E-Cigarettes
4. 2020-02-24_ATT - Los Angeles Cities Matrix Regarding E-Cigarettes Usage Regulations

MOTION

That the City Council:

Introduction of an Ordinance amending Chapter 9.11 of the Culver City Municipal Code to prohibit the use of electronic smoking devices (E-Cigarettes) in outdoor dining areas and City parks and recreational areas, and prohibit smoking and use of E-Cigarettes in City Hall Courtyard and Town Plaza.

NOTES

- ¹ National Academies of Sciences, Engineering, and Medicine. (2018). *Public health consequences of e-cigarettes*. National Academies Press.
<https://www.nap.edu/read/24952/chapter/2#6> <<https://www.nap.edu/read/24952/chapter/2>>
- ² Centers for Disease Control and Prevention, *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products*, posted February 11, 2020,
https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html (accessed February 17, 2020).
- ³ County of Los Angeles Department of Public Health, *The Dangers of Vaping*,
<https://admin.publichealth.lacounty.gov/sapc/public/vaping-faq.htm> (accessed February 17, 2020).
- ⁴ Barrington-Trimis et al. *E-cigarette Use and Subsequent Smoking Frequency Among Adolescents*. *Pediatrics*. 2018;142; Kalkhoran S, Glantz SA. *E-cigarettes and smoking cessation in real-world and clinical settings: a systematic review and meta-analysis*. *The Lancet Respiratory Medicine*. 2016;4(2):116-28.
- ⁵ U.S. Food & Drug Administration, *Vaporizers, E-Cigarettes, and other Electronic Nicotine Delivery Systems (ENDS)*,
<https://www.fda.gov/tobacco-products/products-ingredients-components/vaporizers-e-cigarettes-> (accessed February 17, 2020).