



**CITY OF SANTA CLARITA
AGENDA REPORT**

UNFINISHED BUSINESS

CITY MANAGER APPROVAL: Ken Stripling

DATE: September 22, 2015

SUBJECT: AMENDMENTS TO CHAPTER 9.50 (TOBACCO CONTROL) OF
THE SANTA CLARITA MUNICIPAL CODE

DEPARTMENT: Community Development

PRESENTER: Jessica Frank

RECOMMENDED ACTION

City Council introduce and pass to second reading an ordinance entitled, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA CLARITA, CALIFORNIA, PROTECTING PUBLIC HEALTH, SAFETY, AND WELL-BEING BY AMENDING CHAPTER 9.50 (TOBACCO CONTROL) OF THE SANTA CLARITA MUNICIPAL CODE."

BACKGROUND

On April 28, 2015, staff presented the City Council with a draft ordinance that would make amendments to Chapter 9.50 - Tobacco Control, of the Santa Clarita Municipal Code. The proposed amendments included regulating electronic cigarettes and electronic smoking devices (ESDs) the same as other forms of smoking. This includes prohibiting the use of ESDs in locations where smoking is currently prohibited, including, but not limited to, places of employment, restaurants and bars (except as explicitly allowed by state law), City facilities, City vehicles, public places, City parks, trails, and open spaces. In addition, changes were proposed to prohibit smoking in restaurants and bars, consistent with California Labor Code § 6404.5.

After receiving public comment on the item, the City Council requested changes be made to allow sampling of ESDs in vaping stores (similar to sampling allowed for tobacco products in tobacco stores), and asked that the item be continued to a date uncertain. The City Council's requested changes are reflected in Exhibit A, attached to this report. Additionally, staff has compiled information as it relates to ESDs in this report, including public complaints, pending state legislation, health impacts, the use of ESDs by children and teenagers, medical marijuana, and fire hazards for the City Council's consideration.

Public Complaints

Staff has tallied the complaints received by the City regarding the use of ESDs. There were six written complaints and a minimum of 11 verbal complaints. The complaints were primarily

regarding use of the devices on public transit and within enclosed public areas, including the mall and public libraries. The changes to the ordinance would prohibit the use of ESDs within all transit vehicles, at transit stations, and within all enclosed public areas, including shopping malls and any library.

State Legislation

The California Legislature is considering multiple bills that would regulate ESDs in some form. Specifically, two active bills have proposed regulations similar to the amendments proposed by City staff: California Assembly Bill X2 6 (ABX2 6) and California Senate Bill X2 5 (SBX2 5). As currently written, these bills propose to regulate ESDs the same as other tobacco products, and propose to prohibit the use of these devices in places of work, in or around public buildings and vehicles, in many health facilities, in public transportation vehicles, at certified farmer's markets, in schools, and within 25 feet of playgrounds. In addition, they would require child-proof packaging for all cartridges and solutions used in ESDs. Both bills were introduced as part of the Extraordinary Session on Public Health and Developmental Services in mid-July 2015. Because the measures were introduced as part of the Extraordinary Session called by Governor Brown, they are not subject to the same calendar as bills introduced during the Legislature's Regular Session. The 2015 Regular Session concluded on September 11, 2015. ABX2 6 and SBX2 5 will be considered as part of the Second Extraordinary Session this fall and could potentially carry into 2016.

Two other bills introduced during the Regular Session that were previously discussed with the City Council have been listed as inactive. One has been ordered to the inactive file (SB24) and the other was abandoned by the author due to amendments made to the bill (SB140). Both bills had largely similar regulations as those proposed in the two active bills mentioned above.

In addition, there are other two-year bills still active in the legislative process that may be brought back before the Legislature during the 2016 Regular Session that are related to tobacco and ESDs with regulations not proposed by staff. Proposed changes found in these bills include increasing the minimum smoking age from 18 to 21 and proposals to tax ESDs similar to other tobacco products.

Health Impacts

According to a 2015 study released by the California Department of Health, *State Health Officer's Report on E-Cigarettes: A Community Health Threat*, e-cigarettes do not emit water vapor, but instead a concoction of chemicals toxic to human cells in the form of an aerosol. Chemicals in the aerosol travel through the circulatory system to the brain and all organs. Mainstream and second-hand ESD aerosol has been found to contain at least ten chemicals on California's Proposition 65 list of chemicals that are known to cause cancer, birth defects, or other reproductive harm, including the following:

- Acetaldehyde
- Benzene
- Cadmium
- Formaldehyde
- Isoprene
- Nicotine

- N-nitrosornicotine
- Toluene
- Lead
- Nickle

The study also reveals that those with second-hand exposure to ESD aerosol absorb nicotine at levels comparable to passive smokers, and as a result would have the same nicotine health related impacts. Nicotine is a highly addictive neurotoxin, proven as addictive as heroin and cocaine. Health impacts from inhalation of nicotine include the following:

- Lung inflammation
- Asthma
- Decreased immune system response, and susceptibility to flu and pneumonia
- May lead to constriction of the arteries (increased blood pressure) that could result in a heart attack
- May cause an increased insulin resistance, leading to increased risk of Type-2 diabetes
- May contribute to hardening of the arteries, which could lead to a heart attack or stroke
- Long term effects of exposure to those under the age of 25 include changes to the prefrontal cortex (the part of the brain that handles decision-making)
- Exposure to pregnant women can raise the risk of life-threatening complications, reduced blood flow to the fetus, and brain development issues for the child

Citing a desire to protect the health and safety of visitors and employees from exposure to smoke and vapor, the National Park Service issued a policy on September 14, 2015, prohibiting ESDs in all places where tobacco smoking is prohibited in national parks, including all facilities and vehicles that are government-owned or leased, and within all national park concession facilities.

Contrary to claims that ESDs help smokers successfully quit traditional cigarettes, there is no scientific evidence proving these devices are viable as nicotine replacement therapy or a cessation aid. A 2014 study, *A Longitudinal Study of Electronic Cigarette Users* (Vickerman, Katrina A. and Carpenter, Kelly M. and Altman, Tamara and Nash, Chelsea M. and Zbikowski, Susan M., v.15, n.10, pp.1787-1791), found that 89% of e-cigarette users are still using them one year later. A 2013 study conducted by Jean-Francois Etter from the Institute of Social and Preventative Medicine and Chris Bullen from the National Institute for Health Innovation, *Use of Electronic Cigarettes Among State Tobacco Cessation Quitline Callers*, found that e-cigarette users are one-third less likely to quit cigarettes, indicating that e-cigarettes potentially inhibit people from successfully kicking their nicotine addiction.

ESDs and Children and Teenagers

One of the significant concerns regarding ESDs is the exposure and increased use of these devices for those under the age of 18. *The National Youth Tobacco Survey*, an annual survey conducted by the Centers for Disease Control and Prevention and the Food and Drug Administration, found an alarming increase in the usage of ESDs by teenagers and youth in 2011, 2012, and 2013. Specifically, the use of these devices tripled for high school and junior high school students during this three-year period. ESDs have become the new way to introduce and market tobacco products to the youth of America, and are now the most popular tobacco product used by high school and middle school age groups. They are marketed to children, as

they are sold in flavors such as bubble gum, cotton candy, gummy bear, and marshmallow. The study also found that in 2013, more than a quarter of a million youth who had never smoked a traditional cigarette used e-cigarettes, a threefold increase since 2011. Youth who used e-cigarettes were nearly twice as likely to try traditional cigarettes as those who never used e-cigarettes. Further, a recent study published by the Journal of the American Medical Association found that teens that used ESDs were far more likely than their peers to start smoking traditional cigarettes and other combustible tobacco products.

Further impacts to children have become a cause of great concern. The Center for Disease Control and Prevention announced more than half of the calls to Poison Control Centers related to liquid nicotine poisoning involved small children ingesting the liquid or absorbing it through their eyes or skin. Child-proof packaging and warning labels are not required, as the ESD industry is largely unregulated. In California, incidences of toxic exposure from liquid nicotine used in ESDs rose from 12 reported in 2011 to 243 reported in 2014, most of which were children under the age of six (*Los Angeles Times, August 10, 2015*). The increased reports of poisoning of children have triggered the Food and Drug Administration to move toward drawing up regulations for ESDs that include regulating the liquid nicotine they use as a tobacco product. It is anticipated the new regulations will be approved by the end of the year, requiring companies to submit applications with ingredients, potential health effects, and information on how the product is manufactured.

With the mounting evidence that ESDs are quickly becoming the primary method of nicotine delivery to youth, and considering the direct marketing the industry has aimed at children and youth, staff is recommending to restrict ESD use in places frequented by children, including indoor shopping areas, movie theatres, public facilities like the City libraries, and public-owned lands like parks, trails, and open space. The Governing Board of the William S. Hart Union High School District took action in April of this year to prohibit ESDs on all District properties due to similar concerns.

Marijuana / Drug Use

As reported by Reuters and NBC news, an increasing number of medical marijuana users are now using ESDs as a method of self-administering marijuana (hash) oil or Tetrahydrocannabinol (THC) infused wax. Users have moved away from the traditional smoking of cannabis due to the perceived lower health risks associated with ESDs compared to traditional smoking. In addition, using ESDs to administer cannabis is preferred by users as the aerosol emitted is nearly odorless and thus more convenient to use in public places, is more potent, and is longer-lasting than smoking traditional marijuana. While medical marijuana dispensaries are prohibited in the City of Santa Clarita, there are dispensaries located in nearby cities.

Of growing concern is the link between the use of hash oils and THC infused wax in ESDs by youth. A study released in September 2015, conducted by Meghan Morean, the Assistant Professor of Psychology at the Oberlin College in Ohio, found from 3,800 students surveyed at five Connecticut high schools, 30% had used both cannabis and ESDs, and 15% of those who had used cannabis did so with an ESD. This study reports that THC concentrations of vaporized hash oil and waxes can exceed that of dried cannabis by four to 30 times. Representatives from the Los Angeles Sheriff's Department will be available at the City Council meeting to provide additional comments related to their experience on this subject.

Fire Hazard

While ESDs are not combustible like traditional cigarettes, the devices operate with a battery that powers a heating element within the electronic cigarette to vaporize a liquid solution. The Federal Emergency Management Agency published a study in October 2014, *Electronic Cigarette Fires and Explosions*, which found while e-cigarettes can cause fires and explosions, incidents are rare and mostly occur while the batteries for the devices are charging. With more than 2.5 million Americans using e-cigarettes, only 25 incidents of fire related to e-cigarettes were reported to the media between 2009 and 2014.

The position of the Los Angeles County Fire Department regarding ESDs is that while they may not pose the same fire hazard as standard cigarettes, ESDs still provide a heat source and therefore may pose a fire hazard. ESDs would be regulated under Los Angeles Fire Code Section 310. This section allows the Fire Code Official to determine when hazardous environmental conditions necessitate controlled use of smoking materials. It allows the Fire Code Official to prohibit the ignition and/or use of ESDs in mountainous, brush-covered, forest-covered, or other designated areas, except in approved designated smoking areas. The use of ESDs may be prohibited in Santa Clarita's open space areas at the discretion of the Fire Code Official. Staff recommends that ESDs be regulated similar to other tobacco products and not be allowed to be used in open space areas.

SUMMARY

At the request of the City Council, staff made changes to the draft ordinance to define and allow for sampling of ESDs in any electronic smoking device store. In consideration of the information provided and the changes made at the request of the Council, staff recommends the City Council adopt the attached ordinance. The ordinance defines the use of all forms of ESDs as smoking, therefore prohibiting the use of ESDs similar to other tobacco products, and makes changes to ensure the Municipal Code section that prohibits smoking in restaurants and bars is consistent with California Labor Code § 6404.5.

Public Notification

On September 1, 2015, staff sent a notification letter regarding this item to those who provided written or verbal comments on the proposed changes to the Tobacco Ordinance at the April 28 City Council meeting. In addition, notification letters were sent to the mailing addresses for all vaping businesses that were mentioned during the public comment session for the agenda item.

ALTERNATIVE ACTIONS

Other action as determined by the City Council.

FISCAL IMPACT

None

ATTACHMENTS

Ordinance with Exhibit A