



City of Rohnert Park Planning Commission Report

DATE: March 24, 2016

ITEM NO: 8.1

SUBJECT: PLMC2015-0002 Amend Rohnert Park Municipal Code Title 8 Health and Safety Chapter 8.32 Use of Tobacco to include electronic cigarettes

LOCATION: NA

REQUEST: Amend Chapter 8.32 to Include Regulations for Electronic Cigarettes (E-cigarettes)

APPLICANT: City of Rohnert Park

Subject

Amend Municipal Code Chapter 8.32 Use of Tobacco to include regulations for electronic cigarettes.

Background

Electronic cigarettes (e-cigarettes) are battery powered devices that heat a liquid substance, which frequently contains nicotine or other harmful chemicals, for the purposes of inhalation by the user. When the charge from the battery warms the liquid it creates an aerosol vapor that resembles smoke from a conventional cigarette.

There are two types of e-cigarettes sold. One is a complete unit and when the liquid that vaporizes is gone the unit is no longer operable. The second type has a rechargeable battery and the user can add the type of liquid they want to vaporize. There are various companies that sell a wide variety of liquids for use in e-cigarettes.

Studies have shown that e-cigarettes are especially popular among teens and may attract young people that wouldn't otherwise smoke. In a study published in the journal Pediatrics, about 17

percent of high school aged students polled smoked only e-cigarettes, 12 percent smoked both types of cigarettes and 3 percent smoked only conventional cigarettes. ¹

Preliminary reports show that nicotine from e-cigarettes has similar negative effects associated with conventional cigarettes. Studies show that smoking e-cigarettes containing nicotine for just five minutes produces a similar amount of lung irritation, blood pressure spikes and inflammation as smoking a conventional cigarette ² (California Department of Public Health). E-cigarettes emit a variety of chemicals that are toxic to the body. Many of these chemicals are listed as carcinogens by the State of California under Proposition 65, including benzene, cadmium, lead, nickel and formaldehyde, all of which have been linked to negative health outcomes (California Department of Public Health). E-cigarettes aerosol emissions contain a variety of chemicals that are considered toxic to the body including benzene, cadmium, lead, nickel and formaldehyde. The California Department of Public Health has determined that these emissions can cause harm to secondhand inhalers in a manner similar to second hand tobacco smoke. In addition to exposure to first hand exposure to toxic chemicals and secondhand smoke, the American Lung Association also cited concerns of liquid poisoning from e-cigarettes. ³

The use of e-cigarettes is not regulated federally or on the state level like tobacco. The State of California also does not ban the use of e-cigarettes in public places such as bars or restaurants although many local governments have imposed bans within their own jurisdictions, including Los Angeles and San Francisco. Federally, there is no ban on selling e-cigarettes to minors. However, California banned the sale of e-cigarettes to minors in 2011. In January 2015, the California Department of Public Health issued a report stating that E-cigarette use is a major public health concerns.⁴ However, to date the State of California has not passed any laws regulating e-cigarettes in public places such as bars or restaurants other than prohibiting the sale to minors. Many local governments have imposed bans within their own jurisdictions, including Los Angeles and San Francisco.

Most local and state smokefree laws were enacted before e-cigarettes were on the market so it is not clear whether smoke free laws apply to e-cigarettes. This is certainly the case in Rohnert Park. Rohnert Park's smoke free law, Rohnert Park Municipal Code ("Municipal Code") Chapter 8.32, was enacted before e-cigarettes came onto the market, and does not expressly apply to e-cigarettes.

Proposal

Chapter 8.32 Use of Tobacco regulates the sale and use of tobacco and tobacco products in Rohnert Park. However, e-cigarettes are not included under Chapter 8.32. The intent of this Municipal Code amendment is to include regulations for e-cigarettes in Chapter 8.32. This will require the following changes to the Code:

Findings (Chapter 8.32.020)

Several findings will be added to support the inclusion of e-cigarettes:

- G. As aerosol emissions from electronic smoking devices have been found to contain as least ten chemicals that are on California's list of chemicals known to cause cancer, birth defects, or other reproductive harm, including acetaldehyde benzene, cadmium, formaldehyde, isoprene, lead, nickel, nicotine, N nitrosonornicotine, and toluene, second hand exposure to e-cigarette aerosol is a health concern.
- H. People exposed to aerosol emissions from electronic smoking devices absorb nicotine, a substance that can cause cancer, birth defects, or reproductive harm, at levels comparable to second hand smoke, and are also exposed to volatile organic compounds and other particulate matter that can lead to tissue inflammation.
- I. Non-smokers who suffer from allergies, respiratory disease, or the negative effects of breathing secondhand tobacco smoke or aerosol emissions from electronic smoking devices may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions.

Definitions (Chapter 8.32.030):

Add the following definition of "Electronic Smoking Device or Electronic Cigarette"

E. "Electronic Smoking Device or Electronic Cigarette" (e-cigarettes) means an electronic and/or battery operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substance.

Change the definition of "Smoking" to read:

L. "Smoking" means and includes (1) inhaling or exhaling upon burning or carrying any lighted smoking equipment for tobacco, nicotine or any other plant or product used for personal habit commonly known as smoking (2) inhaling or exhaling upon, vaporizing or otherwise using any electronic smoking device.

Include the following in the definition of "Tobacco Product":

N. "Tobacco Product" means any product containing tobacco leaf, including but not limited to, bidis, chewing tobacco, cigarettes, e-cigarettes, cigars, dipping tobacco, pipe tobacco, snuff, or any other preparation of tobacco.

Prohibition on smoking in enclosed areas (Chapter 8.32.040):

This Chapter prohibits smoking in the following enclosed areas:

- Any place of employment.

- Multi-unit residential developments including enclosed common areas such as a laundry room, lobby or community center.
- Any elevator, public restroom, service line (i.e.ATM), bus, limousine, taxi cab, train or other public transportation vehicle.
- Any vehicle that is occupied by a minor (person under the age of eighteen years of age).
- On the premises of a licensed day care center and in a licensed family day care home.
- On the premises of a licensed, long-term, health care facility.

By adding the definitions above of Electronic Smoking Device or Electronic Cigarette to MC 8.32.030, vaping would be considered smoking and included in the prohibitions in enclosed areas.

Prohibition on smoking in unenclosed areas (Chapter 8.32.050)

Smoking is prohibited in specific unenclosed areas in Rohnert Park:

- Multi-unit residential development common areas, including but not limited to: pools, walkways, gardens, play areas.
- Any service line (i.e. ATM), bus stop, taxi stand or phone booth.
- Within twenty feet of the exit, entrance, or operable window of any city owned building, except while actively passing on the way to another destination.
- Within twenty feet of the exit, entrance, or operable window of any private building or structure that is posted as nonsmoking, except while actively passing on the way to another destination.
- Within twenty-five feet of a public playground or tot lot (sandbox) areas.
- Any business or place of employment in which food is being consumed or where setup, service, and cleanup functions are occurring, including but not limited to: dining areas, farmers markets, concerts, fairs and other such events.
- On the premises of a licensed day care center or licensed family care home.

By adding a definition of Electronic Smoking Device or Electronic Cigarette to 8.32.030 the use of e-cigarettes (“vaping”) would be included in the prohibitions in unenclosed areas.

Exceptions (Chapter 8.32.060):

There are several exemptions to prohibition of smoking in enclosed and unenclosed areas as follows:

- Certain private smokers' lounges attached to tobacco stores.
- Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.
- Owner occupied private residences.
- Designated portions of multi-unit residential developments.

A private residence and a portion of an outdoor area of a multi-unit residential development may be designated as a smoking area provided it is located at least twenty-feet from any indoor area where smoking is prohibited and may not include any outdoor area primarily used by children.

E-cigarettes would also be included in the exceptions above.

Exceptions (Chapter 8.32.060 A. 1. Iii):

Under exemptions there is required separation of a tobacco store and a school, religious assembly, public facility, multi-unit residential development or another tobacco store. A portion of the outdoor area of a multi-unit residential development may also be designated as a smoking area depending of its location within the development.

E-cigarettes would be included in the above exemptions.

Correction to Chapter 8.32.050 of the Code:

Under 8.32.050 Prohibition on smoking in unenclosed areas. A. 5. the end phrase in 5. (**"except while actively passing on the way to another destination"**) is repeated twice. This is a typographical error and should be corrected. It does not change the meaning of MC 8.32.050(A)(5).

Staff Analysis

Rohnert Park's Use of Tobacco requirements were adopted in 2009. They are fairly extensive in protecting non-smokers and minors from cigarette and tobacco smoke while still protecting smoker's rights to smoke in their own single-family home, designated apartment unit and in designated smoking areas. There are currently no Federal regulations regarding E-cigarettes and no California State Regulations other than prohibiting the sale of cigarettes and e-cigarettes to anyone under the age of 18 years. However, 122 cities and counties in California have already prohibited the use of e-cigarettes in some indoor and outdoor spaces. Until and if the Federal Government and State of California come up with E-cigarette regulations, the City must rely on

Chapter 8.32 Use of Tobacco. The intent of the Code modification is not an attempt to evaluate the impact of the use of E-cigarettes on the user or the general public. It simply places, e-cigarettes under the same rules and regulations as other tobacco products sold and used in the City.

E-cigarettes do not result in tobacco smoke, however, they do create a vapor when the user exhales called vaping. Like cigarette smoke, the vapor can carry in the air and may be inhaled by near-by non-smokers and minors. Applying the regulations under Chapter 8.32 to E-cigarettes will provide for the health, safety and welfare of individuals residing, working or visiting in the City of Rohnert Park.

Environmental Determination

No CEQA analysis is required for this project since it will have no impact on the environment and is exempted under 15061 (b)(3) of the “general rule exemption” and Section 15308 Actions by Regulatory Agencies for the Protection of the Environment.

Findings

The recommended findings to approve the amendment to the Zoning Ordinance are included in the attached resolution.

Public Notification

Since this is a change to the Municipal Code a public hearing is required before the Planning Commission and the City Council. This item has been duly noticed by publication in the Community Voice for amendment to the Municipal Code.

¹ Journal Pediatrics 12/2014

² California Department of Public Health Advisory

³ See American Lung Association’s Smoking Facts: E-Cigarettes and Lung Health. Available online at <http://www.lung.org/stop-smoking/smoking-facts/e-cigarettes-and-lung-health.html>

⁴ State Health Officer’s Report on E-Cigarettes: A Community Health Threat. Available online at: <https://www.cdph.ca.gov/programs/tobacco/Documents/Media/State%20Health-e-cig%20report.pdf>

Staff Recommendation

Based on the analysis and findings of this report and the attached resolution, Staff recommends that the Planning Commission, by motion, adopt Resolution No. 2016-0 to recommend to the City Council of this text amendment to Chapter 8.32 Use of Tobacco of the Municipal Code.

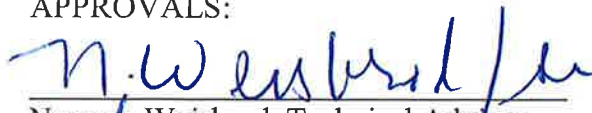
Attachments:

Planning Commission Resolution No. 2016-08

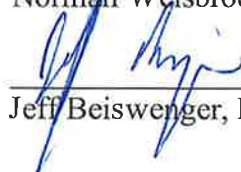
Chapter 8.32 Use of Tobacco Regulations Found in the Municipal Code

E-cigarettes: Challenges and Opportunities for California (Board of Equalization)

APPROVALS:



Norman Weisbrod, Technical Advisor



Jeff Beiswenger, Planning Manager

3.18.16
Date

3/18/16
Date

RESOLUTION NO. 2016-08

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ROHNERT PARK, CALIFORNIA RECOMMENDING TO THE CITY COUNCIL AMENDMENT OF THE MUNICIPAL CODE CHAPTER 8.32, USE OF TOBACCO TO INCLUDE REGULATIONS FOR ELECTRONIC CIGARETTES

WHEREAS, the applicant, the City of Rohnert Park, filed Planning Application No. PLMC2015-0002 proposing to amend the Rohnert Park Municipal Code (“RPMC”) by amending Chapter 8.32 Use of Tobacco;

WHEREAS, the proposed amendments to Chapter 8.32 Use of Tobacco will include E-cigarettes under the regulations of Chapter 8.32 to provide for the health, safety and welfare of individuals residing, working or visiting in the City of Rohnert Park;

WHEREAS, the proposed changes to Chapter 8.32 Use of Tobacco are attached hereto as Exhibit A;

WHEREAS, on March 24, 2016 the Planning Commission held a public hearing at which time interested persons had an opportunity testify either in support of or opposition to the proposal;

WHEREAS, pursuant to California State Law and the Rohnert Park Municipal Code, a public notice was published in the Community Voice for a minimum of 10 days prior to the first public hearing; and

WHEREAS; the Planning Commission has reviewed and considered the information contained in Planning Application No. PLMC2015-0002 for the proposed amendments to Chapter 8.32 Use of Tobacco of the Municipal Code.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Rohnert Park makes the following findings, determinations and recommendations with respect to the proposed amendments to Chapter 8.32 Use of Tobacco of the Municipal Code;

Section 1. The above recitations are true and correct.

Section 2. Findings. Findings for Enactment of Amendments to Chapter 8.32 Use of Tobacco of the Municipal Code. The Planning Commission hereby makes the following findings concerning Chapter 8.32 Use of Tobacco of the Municipal Code:

1. *That the proposed amendments to the Municipal Code are consistent with the General Plan 2020.*

Criteria Satisfied. The proposed amendments to Chapter 8.32 Use of Tobacco of the Municipal Code will provide for the health, safety and welfare of individuals residing, working or visiting in the City of Rohnert Park and is consistent with the General

Plan 2020 Goal of continuing to work toward improving air quality ... and the health of city residents.

2. *That the proposed amendment to the Zoning Ordinance will be beneficial to the public health, safety or welfare.*

Criteria Satisfied. The proposed amendment to Chapter 8.32 Use of Tobacco will provide for the health, safety and welfare of individuals residing, working or visiting in the City of Rohnert Park by decreasing exposure to electronic cigarettes.

Section 3. Environmental Clearance

No CEQA analysis is required for this project since it will have no impact on the environment and is exempted under 15061 (b)(3) of the "general rule exemption."

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Commission does hereby recommend that the City Council adopt Findings stated hereinabove and adopt amendment the RPMC to amend Chapter 8.32 Use of Tobacco, in the form provided in **Exhibit A.**

DULY AND REGULARLY ADOPTED on this 24th day of March 2016 by the City of Rohnert Park Planning Commission by the following vote:

AYES: _____ NOES: _____ ABSENT: _____ ABSTAIN: _____

ADAMS _____ BLANQUIE _____ BORBA _____ GIUDICE _____ HAYDON _____

John Borba, Chairperson, Rohnert Park Planning Commission

Attest: _____
Susan Azevedo, Recording Secretary

EXHIBIT A

Attached

Chapter 8.32

Use of Tobacco

8.32.010 Purpose.

The purpose of this Chapter is to provide for the health, safety, and welfare of individuals residing, working or visiting in the City of Rohnert Park by regulating the location and use of tobacco and tobacco products and their effects on individuals.

8.32.020 Findings.

- A. Numerous studies have determined that tobacco smoke is a major contributor to indoor air pollution.
- B. The Surgeon General of the United States has documented that breathing secondhand smoke is a significant health hazard, particularly to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function.
- C. Breathing secondhand smoke has been determined to be a health hazard by increasing the incidence of lung cancer, bronchitis, and respiratory infection while decreasing exercise tolerance and respiratory function.
- D. Non-smokers who suffer from allergies, respiratory diseases, or the negative effects of breathing secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions.
- E. Persons, particularly employees, have a right to a smoke free environment if they desire.
- F. Secondhand smoke exposure causes as many as 300,000 children in the United State to suffer from lower respiratory tract infections, exacerbates childhood asthma, and increases the risk of acute chronic, middle ear infections.
- G. As aerosol emissions from electronic smoking devices have been found to contain as least ten chemicals that are on California's list of chemicals known to cause cancer, birth defects, or other reproductive harm, including acetaldehyde benzene, cadmium, formaldehyde, isoprene, lead, nickel, nicotine, N nitrosonornicotine, and toluene, second hand exposure to e-cigarette aerosol is a health concern.
- H. People exposed to aerosol emissions from electronic smoking devices absorb nicotine, a substance that can cause cancer, birth defects, or reproductive harm, at levels comparable to second hand smoke, and are also exposed to volatile organic compounds and other particulate matter that can lead to tissue inflammation.
- I. Non-smokers who suffer from allergies, respiratory disease, or the negative effects of breathing secondhand tobacco smoke or aerosol emissions from electronic smoking devices may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions.

8.32.030 Definitions.

- A. "Business" means the sole proprietorship, partnership, joint venture, corporation, association, nonprofit or other entity formed for public interest or profit-making purposes or that has an employee as defined in this section.
- B. "Employee" means any person who is employed; retained as an independent contractor by an employer, as defined in this section; or any person who volunteers his or her services for any employer, association, business, nonprofit or volunteer entity.
- C. "Employer" means any person, partnership, corporation, association, nonprofit, or other entity who employs or retains the services of one or more persons or supervises volunteers.
- D. "Enclosed" means closed in by a roof and four walls (with the appropriate openings for egress and ingress). This would include but not be limited to lobbies, lounges, waiting areas, elevators, hallways, restrooms, stairwells, common areas (e.g., laundry and recreation rooms within a multi-unit residential development), that are a structural part of the building.
- E. "Electronic Smoking Device or Electronic Cigarette" means an electronic and/or battery operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substance.
- F. "Food" means any raw or processed substance, beverage (including frozen or liquid water) or ingredient intended to be used as food, drink, confection, or condiment for human consumption.
- G. "Head Shop" means a retail outlet that receives 90% or more of its gross revenues from the sale of paraphernalia related to the consumption of cannabis, other recreational drugs and/or new age herbs. Products typically include but are not limited to, water pipes, bongs, roach clips, pipes, rolling papers, rolling machines, and whipped cream chargers containing nitrous oxide.
- H. "Hookah Bar" means a business location that provides for the ingestion, inhalation or consumption of tobacco or tobacco products by way of an apparatus which includes, but is not limited to the following parts: a water vessel, a bowl for holding combustible tobacco or tobacco products and an inhalation hose or tube.
- I. "Multi Unit Residential Development" means a development consisting of residential condominiums, townhouses, rowhouses or apartments, represented by one common property management group or Home Owners Association and providing for-sale, for-lease or for-rent units with complete and independent living facilities for one or more persons.
- J. "Place of Employment" means any area under the control of an employer or business where an employee can be found to frequent during the course of a work day. For example, cafeterias, conference rooms, lobbies, lounges (break rooms), elevators, hallways, restrooms, stairwells, vehicles and work areas.
- K. "Private Smokers' Lounge" means an area that is attached to and incidental to a tobacco store that may be occupied by persons eighteen (18) years of age or older who intend to ingest or inhale any smoking tobacco or tobacco product by means of a pipe, cigar, cigarette or any other method. Private

smokers' lounges do not include hookah bars which are prohibited in the City of Rohnert Park pursuant to Municipal Code, Chapter 8.33 (*Prohibition of Head Shops, Hookah Bars, Tobacco Vending Machines and Self-Service Displays*).

- L. "Smoking" means and includes (1) inhaling or exhaling upon burning or carrying any lighted smoking equipment for tobacco, nicotine or any other plant or product used for personal habit commonly known as smoking (2) inhaling or exhaling upon, vaporizing or otherwise using any electronic smoking device.
- M. "Tobacco Paraphernalia" means cigarette papers or wrappers, blunt wraps, pipes, holders, cigarette rolling machines or other instruments or things designed for the smoking or ingestion of tobacco or tobacco products.
- N. "Tobacco Product" means any product containing tobacco leaf, including but not limited to, bidis, chewing tobacco, cigarettes, e-cigarettes, cigars, dipping tobacco, pipe tobacco, snuff, or any other preparation of tobacco.
- O. "Tobacco Store" means a retail or wholesale business, with or without an attached private smokers' lounge, that meets all of the following requirements:
 - 1. Primarily sells tobacco, tobacco products and tobacco paraphernalia. Does not include merchandise that is generally associated with a head shop which is prohibited in the City of Rohnert Park;
 - 2. Generates more than sixty percent (60%) of its gross revenues annually from the sale of tobacco, tobacco products and tobacco paraphernalia;
 - 3. Prohibits any person who is under the age of eighteen (18) years of age from being present or entering the premises unless accompanied by the minor's parent or legal guardian; and
 - 4. Does not sell food (including alcoholic beverages) for consumption on the premises.

8.32.040 Prohibition on Smoking in Enclosed Areas.

- A. Smoking shall be prohibited in the following enclosed areas unless specifically exempted pursuant to section 8.32.060 of this Chapter (*Exceptions*).
 - 1. Any place of employment.
 - 2. Multi unit residential developments as follows:
 - a. Enclosed common areas, including but not limited to a laundry room, lobby or community center;
 - b. At least 75% of the units constructed after June 1, 2009, including private outdoor spaces associated with the units, such as balconies, patios and decks, shall be designated and maintained as non-smoking. Non-smoking units shall be grouped together to the maximum extent practical;
 - c. At least 50% of any units constructed before June 1, 2009, including private outdoor spaces associated with the units, such as balconies, patios and decks, shall be designated and maintained as non-smoking. Non-smoking units shall be grouped together to the maximum extent practical;

- i. Any existing multi unit residential development has until June 1, 2011 to comply with the provisions herein;
 - ii. Any unit which has been designated non-smoking shall not be subject to the restrictions of this Chapter as long as the unit is occupied continually by the same resident who occupied the unit on June 1, 2009 and until such time the resident voluntarily vacates the unit; and
 - d. Every landlord/property manager shall maintain a list of designated non-smoking units and a site plan identifying the relative position of smoking and non-smoking units. The site plan shall also identify the location of any designated smoking areas. A copy of this list and site plan shall accompany every new lease or agreement for occupancy of a unit within a multi-unit residential development. If a copy of the list and site plan do not accompany the lease or agreement then the unit shall be a non-smoking unit.
- 3. Any elevator, public restroom, service line (i.e. ATM), bus, limousine, taxi cab, train, or other public transportation vehicle.
 - 4. Any vehicle that is occupied by a minor (person under the age of 18 years of age).
 - 5. On the premises of a licensed day care center and in a licensed family day care home.
 - 6. On the premises of a licensed, long-term, health care facility.

8.32.050 Prohibition on Smoking in Unenclosed Areas.

- A. Smoking shall be prohibited in the following unenclosed areas unless regulated by more restrictive state or federal law, in which case the state or Federal law applies; or specifically exempted under section 8.32.060 of this Chapter.
 - 1. The strip of land which is located approximately one hundred (100) feet south of the boundary of University Park Subdivision, immediately adjacent to the north boundary of Rancho Cotati High School, and within the strip from between the eastern most curb of Snyder Lane to the western most property line of Sonoma State University and better known by the Sonoma County Assessor's Office as: APN's 158-230-065; -066, -069 and 158-220-074 and -075.
 - 2. Multi unit residential development common areas, including but not limited to: pools, walkways, gardens, play areas.
 - 3. Any service line (i.e., ATM), bus stop, taxi stand or phone booth.
 - 4. Within twenty (20) feet of the exit, entrance, or operable window of any City owned building, except while actively passing on the way to another destination.
 - 5. Within twenty (20) feet of the exit, entrance, or operable window of any private building or structure that is posted as nonsmoking, except while actively passing on the way to another destination.
 - 6. Within twenty-five (25) feet of a public playground or tot lot (sandbox) areas.

7. Any business or place of employment in which food is being consumed or where setup, service, and cleanup functions are occurring, including but not limited to: dining areas, farmers markets, concerts, fairs and other such events.
8. On the premises of a licensed day care center or licensed family day care home.

8.32.060 Exceptions.

- A. The following are exceptions to the smoking prohibitions in enclosed and unenclosed areas.
 1. A private smokers' lounge attached to a tobacco store, subject to the following:
 - i. The tobacco store must have a conditional use permit and be located on a site that is zoned for "C-R" - Regional Commercial land uses;
 - ii. The Tobacco Store shall have a minimum separation of five hundred (500) feet between the use and a school, religious assembly, public facility, multi-unit residential development or another Tobacco Store; and
 - iii. The Tobacco Store shall not include a head shop or hookah bar. The City of Rohnert Park prohibits head shops and hookah bars pursuant to Municipal Code, Chapter 8.33 (*Prohibition of Head Shops, Hookah Bars, Tobacco Vending Machines and Self-Service Displays*).
 2. Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.
 3. A private residence, unless expressly prohibited by sections 8.32.040 (*Prohibition on Smoking in Enclosed Areas*) and 8.32.050 (*Prohibition on Smoking in Unenclosed Areas*) e.g., licensed day care facility, licensed health care facility or multi unit residential development.
 4. A portion of the outdoor area of a multi-unit residential development may be designated as a smoking area subject to the following provisions:
 - i. Must be located at least 20 feet from any indoor area where smoking is prohibited;
 - ii. Must not include, and must be at least 20 feet from any outdoor area primarily used by children including, but not limited to, areas improved or designated for play or swimming;
 - iii. Must have a clearly marked perimeter;
 - iv. Must be identified by conspicuous signs; and
 - v. Must not overlap with any area in which smoking is otherwise prohibited by this Chapter
 5. Public sidewalks unless otherwise prohibited.

8.32.070 Duty of Employers and Businesses

- A. No employer or business entity shall knowingly or intentionally permit or engage in the smoking of tobacco or tobacco products in an area that is

- under the employer's or business entity's control and in which smoking is prohibited.
- B. No employer or business entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as without limitation, ash trays or cans within an area which is under the control of the employer or business entity and in which smoking is prohibited.
 - C. Any employer or business entity that permits a nonemployee access to its place of employment or business on a regular basis has not acted knowingly or intentionally if it has taken the following reasonable steps to prevent smoking by a nonemployee:
 - 1. Posted clear and prominent signs, as follows:
 - a. Where smoking is prohibited throughout the building or structure, a sign stating "No Smoking" shall be posted. The "No Smoking" sign shall be of letters that are a minimum of one inch in height or the international "no smoking" symbol. The sign shall be clearly and conspicuously posted on the exterior of every building or other place where smoking is controlled by this Chapter, by the owner, operator, manager, or other person having control of such building or other place. The sign shall include the distance limitations contained in sections 8.32.050 (A) (4) and (5) of this Chapter as applicable; and
 - b. Where smoking is permitted in designated areas of the building or structure, a sign stating "Smoking Is Prohibited Except in Designated Areas" shall be posted at each entrance to the building or structure.
 - 2. Has requested, when appropriate, that a nonemployee who is smoking refrain from smoking.
 - D. Any business, person, or other establishment which sells tobacco products for consumption shall post plainly visible signs at each point of purchase of tobacco products in compliance with the requirements of state law.
 - E. It is unlawful for any business, person, or other establishment to sell, offer to sell, or permit to be sold any tobacco product to a minor individual eighteen (18) years of age or younger. Identification shall be requested unless there is reasonable basis to determine that the buyer is not a minor.
 - F. Notwithstanding any other provision of this Chapter, any employer, business entity or person who controls any area may declare that any part of such area in which smoking would otherwise be permitted to be a nonsmoking area.

8.32.080 Nonretaliation.

No person or employer shall discharge, refuse to hire, or in any manner, retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this Chapter.

8.32.090 Violations and Penalties.

- A. Any violation of any prohibition of this Chapter is an infraction, punishable by a fine not to exceed that which is set by Municipal Code Chapter 1.16 (*General Provisions*).
- B. Smoking in any area where smoking is prohibited by this Chapter constitutes a public nuisance and may be abated as such including the application of any of the enforcement remedies provided in the City of Rohnert Park's Municipal Code or under any applicable state or federal statute or pursuant to any other lawful power the City may possess.
- C. Any private person who claims violation of this Chapter may bring a civil action for damages or for injunctive relief in accordance with applicable laws governing such civil actions.

8.32.100 Interpretation.

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by state or federal law.

8.32.110 Effective Date.

The provisions of this Chapter shall be effective thirty days (30) from and after the date of its adoption and publication or posting as required by law.

E-Cigarettes:

Challenges and Opportunities for California



A Report on the Regulatory, Tax Policy and Health Dangers of Nicotine's Newest Hook

FIONA MA, CPA

Member, California State Board of Equalization

Sacramento Office

1215 K Street, Suite 1700
Sacramento, CA 95814
Office: 1-916-445-4081
Fax: 1-916-324-2087

San Francisco District Office

455 Golden Gate Avenue,
Suite 10500
San Francisco, CA 94102
Office: 1-415-557-3000
Fax: 1-415-557-0287





Dear Legislator,

As part of the Legislature's deliberations on the availability, sale and popularity of "E-cigarettes" in California, and the several bills that have been introduced addressing these products, my office has released the enclosed report studying the scope of the industry, as well as the current state of regulation and taxation on these devices.

What is truly shocking about E-cigarettes is the total lack of regulation at the state and federal level. Unlike traditional tobacco cigarettes, there are no bans on marketing—including advertisements and product tie-ins that are clearly and overtly aimed at children. This is particularly insidious, considering the emerging body of research demonstrating that these devices are neither safe nor harmless—in fact, E-cigarettes contain dangerous chemicals like formaldehyde, cadmium, and nickel.

Perhaps the most important element that the Legislature needs to consider is the fact that in the eyes of the law, selling an E-cigarette device is no different than selling an iPod. Sales and use tax is paid by the consumer, but unlike other tobacco and nicotine products, the state does not recoup any additional revenues that can be used to offset the long-term costs the state incurs in providing healthcare to those who use these dangerous substances.

My office is ready and eager to assist you in your deliberations. There are a number of important challenges in regulating and taxing E-cigarette devices, and we are happy to facilitate further study and information as you debate these important questions.

In Peace and Friendship,

A handwritten signature in black ink, appearing to be "Fiona Ma", is written above the printed name.

Fiona Ma, Second District
Board of Equalization

E-cigarettes:

E-cigarettes are battery powered devices that heat a liquid substance, which frequently contains nicotine and other harmful chemicals, for the purposes of inhalation by the user. When the charge from the battery warms the liquid it creates a vapor that resembles smoking a conventional cigarette. The liquid used in E-cigarettes comes in a variety of different flavors and is commonly referred to as “e-juice.” Some E-cigarettes, predominately those produced by major tobacco companies, supply the e-juice in sealed cartridges. However, vaporization pens are widely sold where a smoker can apply their own e-juice into the device. The use of E-cigarettes has skyrocketed since they were first introduced in the United States in 2007.

There is widespread debate about the health benefits of E-cigarettes. Tobacco companies claim that E-cigarettes are not as harmful as conventional cigarettes and that E-cigarettes can be used to curb cigarette smoking. However, these claims are refuted by strong scientific evidence that claims that E-cigarettes can be just as harmful as conventional cigarettes. In addition, claims that use of E-cigarettes curbs conventional smoking rates are, at best, limited, with numerous studies finding no demonstrable link between the use of E-cigarettes and smoking cessation.

E-cigarettes are marketed just as conventional cigarettes were before federal bans were instituted in 1970, meaning E-cigarette companies are free to advertise on television, radio, and print media. Numerous health advocates have cautioned that E-cigarette marketing is targeted very appealingly to minors. There is very little regulation at either the federal or state level for E-cigarettes.

Health Effects of E-cigarettes:

Nicotine is a highly addictive toxin whose addictive properties rival hard drugs like heroin or cocaine. Nicotine usage is responsible for a litany of health problems. For example, nicotine adversely affects the human cardiovascular system. Nicotine constricts blood vessels, which raises blood pressure and pulse rates. Nicotine adversely affects maternal and fetal health. Nicotine usage has been linked to premature births, low birth weights and stillbirths.

Preliminary reports show that nicotine from E-cigarettes has similar negative effects associated with conventional cigarettes. Studies show that smoking E-cigarettes containing nicotine for just five minutes produces a similar amount of lung irritation, blood pressure spikes and inflammation as smoking a conventional cigarette¹.

¹ Champan, Ron, MD, MPH, California Department of Public Health, State Health Officers Report on E-cigarettes, A Community Health Threat, (pg. 5).

There is a common misconception that E-cigarettes don't emit harmful chemicals. However, E-cigarettes emit a variety of chemicals that are toxic to the body. Many of these chemicals are listed as carcinogens by the State of California (Proposition 65) including benzene, cadmium, lead, nickel, and formaldehyde, all of which have been linked to negative health outcomes².

Another common misconception about the use of E-cigarettes is that they can be used to help smokers quit smoking entirely. This purported claim of E-cigarettes has already been used in advertisements for E-cigarette products. However, there is a lack of strong evidence that E-cigarettes are more effective in assisting smokers in quitting the habit. Recent studies show that 89 percent of E-cigarette smokers are still smoking a year later,³ a similar finding to other smoking-cessation therapies that incorporate nicotine (such as nicotine patches or gums).

In addition, accidental cases of poisoning of children aged five years or younger has increased dramatically, from 7 in 2012, to 154 in 2014⁴. E-cigarette liquids are available in a wide variety of flavors that appeal to small children. For example, e-juices are sold in a variety of different of candy flavors.⁵

Regulation:

E-cigarettes are not regulated federally or on the state level like tobacco. In fact, E-cigarettes are for the most part unregulated. There are no federal bans on E-cigarette advertising, or where E-cigarettes can be sold. The State of California also does not ban the use of E-cigarettes in public places, such as bars or restaurants, although many local governments have imposed bans within their own jurisdictions, including Los Angeles and San Francisco. Neither federal law nor California law treats E-cigarettes as tobacco products. Federally, there is no ban on selling E-cigarettes to minors. Many states also don't have bans on selling E-cigarettes to minors.

California banned the sale E-cigarettes to minors in 2011⁶. In January 2015, the California Department of Public Health issued a report stating that E-cigarette use is a major public health concern. Currently there are pending legislative proposals in California to regulate the use of E-

² Champan, Ron, MD, MPH, California Department of Public Health, State Health Officers Report on E-cigarettes, A Community Health Threat, (pg. 6); State of California Environmental Protection Agency, *Chemicals Known to The State To Cause Cancer Or Reproductive Toxicity*. January 23, 2015 (Online)

³ Champan, Ron, MD, MPH, California Department of Public Health, State Health Officers Report on E-cigarettes, A Community Health Threat, (pg. 3).

⁴ Champan, Ron, MD, MPH, California Department of Public Health, State Health Officers Report on E-cigarettes, A Community Health Threat, (i).

⁵ Champan, Ron, MD, MPH, California Department of Public Health, State Health Officers Report on E-cigarettes, A Community Health Threat, (pg. 3).

⁶ California Health and Safety Code, Section 119405

cigarettes. Senator Mark Leno has introduced legislation to ban the use of E-cigarettes in public places where tobacco use is banned⁷. This ban would include bars, restaurants, hospitals, etc. In addition, Senator Jerry Hill introduced legislation this year that would require retailers to apply for a license to sell E-cigarettes. Senator Hill's legislation would also require that e-juices for E-cigarettes be stored in child-proof packaging⁸.

Marketing:

Since federal legislation was enacted in 1970, conventional cigarette advertising in television and radio has been banned in the United States⁹. Cigarette advertising is also banned in many nations around the world. However, E-cigarette advertising currently does not have the same regulations. E-cigarette ads have been shown on many popular television programs. For example, the E-cigarette company NJOY ran commercials during the 2013 Super Bowl. E-cigarette companies also heavily advertise on social media sites like, Facebook and YouTube.

E-cigarette advertising employs many of the same techniques that large tobacco companies used before the 1970 advertising ban. E-cigarette advertising tends to promote the idea that smoking E-cigarettes is fun, cool, and sexy. Much of E-cigarette advertising is directed towards teens. For example, cartoon characters like "Hello Kitty" have been used to advertise E-cigarettes. Also, many of the e-juices on the market sell a variety of candy flavored liquid. Most E-cigarette companies publicly condemn marketing toward youth; nevertheless, marketing industry data suggests that E-cigarette advertising strategies are reaching children and teenagers. For example, 73 percent of youth 12-17 years of age were exposed to E-cigarette advertising by the company Blu¹⁰.

The major E-cigarette brands are owned by large tobacco companies. R.J. Reynolds currently owns the VUSE E-cigarette; Lorillard Tobacco Company owns Blu; and Phillip Morris owns HeatSticks¹¹. For example, as of 2013, Lorillard Tobacco Company owns 49% of the market share in the E-cigarette industry. HeatSticks is the first brand to heat leaf tobacco to create a vapor. One issue of particular note is the efforts of R.J. Reynolds' petition to the U.S. Food and Drug Administration (FDA) to ban E-cigarette systems that use e-juices, which can be added by the smoker. R.J. Reynolds claims that E-cigarette systems where the smoker can add e-juice are dangerous because those types of e-juices don't have the health regulations a major tobacco company would have. R.J. Reynolds also argues that pre-loaded cartridges in E-cigarettes allow

⁷ Senate Bill 140, Senator Mark Leno (2015)

⁸ Senate Bill 24, Senator Jerry Hill (2015)

⁹ 15 United States Code, Sections 1330-1336

¹⁰ Champan, Ron, MD, MPH, California Department of Public Health, State Health Officers Report on E-cigarettes, A Community Health Threat, (pg. 8).

¹¹ Forbes, *E-cigarettes Are Smoking Hot-Four Ways To Invest In Them* "December, 5, 2013

companies to control what flavor of e-juices they offer; thereby limiting marketing towards minors¹².

Legislative Remedies:

There are a variety of different options Legislators have to tax E-cigarettes. The first option is to define E-cigarettes as tobacco. However, this option would require a four-fifths vote by both houses of the state Legislature. The four-fifths vote requirement is mandated by the Tobacco Tax and Health Protection Act of 1988 (Proposition 99)¹³.

The second option would be to create a special category absent of tobacco for E-cigarettes and ancillary E-cigarette products and apply a new tax for E-cigarettes. This option would require a two-thirds vote in both houses of the state Legislature¹⁴. The third option would involve the state Legislature placing an initiative to amend the state Constitution to tax E-cigarettes. As in option 2, this would take a two-thirds vote by both houses of the state Legislature. However, the Governor does not sign initiatives proposed by the state Legislature¹⁵. Options 1 and 2 require a signature by the Governor.

The fourth option would be for the state Legislature to issue fees for permits to sell E-cigarettes. This option would only require a majority vote of each house of the state Legislature. This option would generate lower amounts of revenue than taxing E-cigarettes.

Conclusion:

The collective findings of peer-reviewed studies clearly demonstrate that E-cigarette usage is harmful to its users. E-cigarettes are not particularly more effective than other smoking cessation methods like nicotine gum or patches with a low quit rate around 7 percent. Marketing for E-cigarettes closely resembles the marketing of Big Tobacco companies before federal regulation. Big tobacco companies predominately control the E-cigarette market. In addition, marketing of E-cigarettes is very appealing to minors.

Policy makers must weigh the consequences of the continued, unregulated sale and marketing of E-cigarettes. California has made tremendous strides in reducing the number of active smokers. In 1984, approximately one quarter of all Californians were smokers; today, that number has been dramatically reduced to less than 12 percent of the population. The continued prevalence of E-cigarettes represents a pathway to reversing decades of progress in smoking cessation efforts.

¹² Winston-Salem Journal, *Reynolds American wants FDA to ban vapor e-cigs*, September 7, 2014

¹³ Section 12, Article XIII (B), California Constitution

¹⁴ Section 2, Article XIII(A), California Constitution

¹⁵ Section 1, Article XVIII, California Constitution

In addition, E-cigarette sales are not presently taxed in the same way that alcohol, tobacco or other similar products are taxed. Retailers of E-cigarettes need only remit the sales tax on the products, which is counterproductive for two primary reasons. First, it means that state policy is inconsistent with the intent of anti-smoking legislation like Proposition 10 (the Children and Families First Act) which was passed by the voters in 1998 and increased tobacco taxes by \$0.50 per pack of cigarettes to fund smoking cessation and children's health programs. Had E-cigarettes been on the market in 1998, they would have almost certainly fallen under the purview of Proposition 10. Second, failing to tax E-cigarettes means that the state is not capturing revenues which would otherwise offset the costs associated with the presence of E-cigarettes in California (e.g. increased costs to law enforcement for theft; future healthcare treatment costs).

This presents the Legislature and the Governor with the unique opportunity to generate revenues, build on California's success in curbing smoking, and establish a national standard for the regulation of sales, marketing and distribution of a product with demonstrated long-term health consequences. Notwithstanding the questions of regulation on the sales and marketing of E-cigarettes and their attendant products and accessories, implementing a tax could generate tens of millions of dollars per annum, increasing the available funding for crucial programs. Further economic studies need to be conducted to accurately estimate potential tax revenue from E-cigarettes.

California should continue the progress that has been made on tobacco cessation efforts, and implement a regulatory scheme and tax structure to control the sale of E-cigarettes. Particular emphasis with respect to the issues of accessibility to minors and capturing revenues that are not presently being captured, is a crucial state challenge; one that policy makers must address.

