STAFF REPORT

Meeting Date:	October 3, 2013
To:	Honorable Mayor & City Council
From:	Michelle Tse, Senior Management Analyst
Subject:	Request by Councilmember Gold to Consider Regulations on the Sales and Consumption of E-cigarettes
Attachments:	1. E-cigarette articles from the Los Angeles Times 2. Centers for Disease Control E-cigarette Press Release

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INTRODUCTION

Councilmember Gold is requesting discussion by the City Council on the use of e-cigarettes and providing direction to staff to proceed with formulating regulations on the sales and consumption of electronic cigarettes ("e-cigarettes").

DISCUSSION

The proliferation of e-cigarettes has become a growing concern for cities. Last year, one out of 10 high school students used e-cigarettes in 2012, along with nearly 3% of middle school students, according to the National Youth Tobacco Survey by the U.S. Centers for Disease Control and Prevention. These figures have nearly doubled from 2011, which translates into 1.78 million children and teens who have tried e-cigarettes.

E-cigarettes are battery-powered devices that provide inhaled doses of nicotine through a vaporized solution contained in cartridges that are available in a variety of flavors. E-cigarettes contain no tobacco and have been marketed as an alternative way of consuming nicotine. Some preliminary studies suggest that e-cigarettes emit second-hand vapor which may pose public health risks.

Cities such as Temple City, Duarte, Pico Rivera and Seal Beach have either passed a moratorium or imposed regulations to address this issue. Seal Beach, for instance, recently passed a 45-day moratorium halting e-cigarette and smoke shops; Temple City passed a zoning ordinance requiring smoke shops including the sales of e-cigarettes to be located at least 1,000 feet away from schools and parks.

E-cigarettes are currently not regulated by the Federal Drug Administration ("FDA") but the FDA has stated its intent to issue a proposed rule that would extend its tobacco product authorities to include e-cigarettes. Legislation SB 648 (Corbett) was introduced earlier in the year which if passed, would have extended restrictions and prohibitions

against smoking of tobacco products to include e-cigarettes. However, hearing on this proposed bill has been postponed.

The City of Beverly Hills has been among a growing list of progressive cities throughout the nation which have adopted more stringent local tobacco control ordinances to protect public health. In 2008, the City Council adopted the '90$_2$10 Fresh Air Dining Ordinance' which banned smoking in all outdoor dining areas and in 2010, passed an ordinance to regulate tobacco retailers through an annual permitting process. As it currently stands, these two ordinances refer to terms "smoking" and "tobacco products" which may not necessarily be broad enough to include e-cigarettes given their unique characteristics: e-cigarette use is called "vaping" since it requires inhaling vapors and e-cigarettes do not contain tobacco.

If the City Council directs staff to proceed with formulating regulations on the sales and consumption of e-cigarettes, staff will conduct a more comprehensive review on existing ordinances and programs. Activities may include the following:

1. Possibility of a moratorium on future business licenses and permits relating to e-cigarette shops and sales.

2. Review and amend the '90210 Fresh Air Dining Ordinance' to include e-cigarettes.

3. Review and amend the tobacco retailer regulatory permit ordinance to include e-cigarettes.

Depending on which items the City Council wishes to pursue, the selected items will be brought back to City Council at a future meeting for further review and consideration, along with a proposal for education and outreach activities.

FISCAL IMPACT
Fiscal impacts will be assessed as part of the development of the regulations should the City Council direct that.

RECOMMENDATION
Staff seeks direction on the extent of regulation activities based on the City Council discussion of this agenda item.

Jeffrey Kolin
Approved By

Attachment 1

latimes.com/science/la-sci-e-cigarettes-20130906,0,2387959.story

latimes.com

Electronic cigarettes growing in popularity with teens

E-cigarette use by teenagers has doubled since 2011. Health experts say the devices are being marketed to youths, putting them at risk for addiction to nicotine and regular cigarettes.

By Karen Kaplan and Monte Morin

5:00 AM PDT, September 6, 2013

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One out of 10 American high school students used electronic cigarettes in 2012, along with nearly 3% of middle school students, according to a new federal report. That's about double the rate of e-cigarette use in 2011 and translates into 1.78 million children and teens who have tried the battery-powered devices.

The sharp increase has public health experts worried. Electronic cigarettes contain the addictive chemical nicotine and traces of cancer-causing compounds called nitrosamines. The safety profile of the devices has not been fully studied, according to warnings from the Food and Drug Administration.

In addition, e-cigarettes are sold with cartridges that give them enticing flavors such as mint or chocolate, and health advocates fear they have the potential to turn teens on to regular cigarettes.

"The increased use of e-cigarettes by teens is deeply troubling," Dr. Tom Frieden, director of the Centers for Disease Control and Prevention, said in a statement. "Many teens who start with e-cigarettes may be condemned to struggling with a lifelong addiction to nicotine and conventional cigarettes."

The new study, published in Friday's edition of the CDC's Morbidity and Mortality Weekly Report, is based on data from the National Youth Tobacco Survey. It found that 1.1% of students in grades 6 through 8 were using e-cigarettes at least once a month, as were 2.8% of students in grades 9 to 12.

Among these regular e-cigarette users, 76.3% also smoked traditional cigarettes. But the report's authors — from the FDA's Center for Tobacco Products and the CDC's Office on Smoking and Health — expressed particular concern about students who had used e-cigarettes but had not yet tried conventional cigarettes. The researchers estimated that 160,000 students across the country fell into that category.

"The risk for nicotine addiction and initiation of the use of conventional cigarettes or other tobacco products" among these students is a "serious concern," they wrote.

Cigarette smoking is responsible for more than 440,000 deaths each year, including 49,400 due to secondhand smoke, according to the CDC. Tobacco use is the No. 1 cause of preventable death in the U.S., and it contributes to cancers of the lung and other organs, cardiovascular disease and respiratory ailments.

Electronic cigarettes are not regulated by the FDA, though the agency has said it plans to bring them under its jurisdiction.

The American Lung Assn. has been a consistent advocate for FDA regulation of e-cigarettes.

"When you see cotton candy, bubble gum and atomic fireball flavors, there's no question these products are being marketed directly at kids," said Erika Sward, the group's vice president for national advocacy. "I think this data really shows our concerns are real."

E-cigarette manufacturers insist that they are not marketing the devices to minors.

Tom Kiklas, the chief financial officer of the Tobacco Vapor Electronic Cigarette Assn., said a federal appeals court ruled in 2010 that e-cigarettes were not medical devices and should instead be considered tobacco products. As such, their sale to minors is prohibited by law, and it's the responsibility of retailers to ensure that buyers are of legal age, he said.

"Kids aren't supposed to be buying any tobacco product," Kiklas said.

The American Thoracic Society, like the American Lung Assn., has criticized e-cigarette manufacturers for marketing their products as a means to help people quit smoking.

"These products are not approved by the FDA as smoking cessation devices," said society spokesman Gary Ewart.

If the FDA intends to restrict access to e-cigarettes before they take off with consumers, it's probably too late. One tobacco industry analyst from Wells Fargo Securities predicts Americans will spend $1.7 billion on e-cigarettes this year.

That means public health authorities should get busy, according to the authors of the new study.

"Given the rapid increase in use and youths' susceptibility to social and environmental influences to use tobacco, developing strategies to prevent marketing, sales, and use of e-cigarettes among youths is critical," they wrote.

karen.kaplan@latimes.com

monte.morin@latimes.com

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latimes.com/local/la-me-adv-e-cigarettes-20130901,0,4121784.story

latimes.com

E-cigarettes have cities, businesses pondering action

E-cigarettes, a trendy alternative to smoking, are legal and little studied, but their use is being curbed in some places, just in case.

By Adolfo Flores and Marisa Gerber

5:25 PM PDT, August 31, 2013

Saturday was supposed to be a big day for Billy DePalma.

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He envisioned a ribbon cutting and then a steady stream of new customers perusing colorful, pen-shaped electronic cigarettes behind glass cases. They'd gawk at his impressive selection of liquid nicotine — flavors like Hubba Bubba Grape, Gummy Bear and Orange Cream Soda — as he fielded questions about the fast-growing trend of "vaping," so-called because users inhale the vapor produced when the liquid is heated.

Instead, drywall litters the floor of his dark shop. And all he can do is wait.

Days before his shop was to open, Seal Beach passed a 45-day moratorium halting any new e-cigarette and smoke shops from opening in the small beach community.

Seal Beach is one of a growing number of California cities now grappling with what to do about the booming storefront businesses.

With fresh memories of how rapidly marijuana dispensaries multiplied and generated controversy, many cities want to slow the spread of electronic cigarette stores until they can figure out the ramifications. It's a fast-growing business: A report by Wells Fargo Securities this summer estimated brick-and-mortar sales for e-cigarettes will top $1 billion this year and bring in an additional $700 million in online sales.

For many, vaping is a way to cut back on smoking. For others it's a trendy option that offers varied flavors similar to hookahs and lacks the smell left behind by cigarettes. Although businesses and cities are starting to look at e-cigarettes more closely, the devices can still be used at many more places than allow smoking.

Although the U.S. Food and Drug Administration hasn't weighed in on the effects of secondhand vapor, the essentially odorless cloud is far less noticeable than exhaled smoke.

But as with pot shops, some have raised concerns about the potential clientele of electronic cigarette stores. And an even larger debate hinges on whether the myriad restrictions that many cities impose on smokers should also apply to vapers.

For Jim Basham, Seal Beach's director of community development, the distinguishing line between pot dispensaries and vaping outlets is a bit blurry. He's seen e-cigarette stores evolve into hemp shops — and draw with them a ragtag crowd.

"You have other folks with different intentions," Basham said, "and you can have secondary adverse effects, like crime."

Collin Spencer — who owns a Temple City smoke shop where a black T-shirt emblazoned with "Star Wars'" most famous face and the words "Darth Vapor" hangs from the wall — laughs off claims that shops like his are a magnet for sketchy characters.

"They're definitely not going to be hanging outside the vapor store begging for change to get their next e-cigarette," he said of the clientele at OG Smoke Shop. "I think the idea that putting one of these in causes crime … is the most ludicrous part of the debate."

In August, Temple City passed a zoning ordinance that keeps all smoke shops, including those that sell only e-cigarettes, at least 1,000 feet from parks and schools. About a month earlier, Duarte passed an urgency ordinance that temporarily halted any new shops from opening there. And on Tuesday, the city of Pico Rivera passed an ordinance that treats the vapor devices like traditional cigarettes.

A common type of electronic cigarette sold at the stores looks more like a pen. When you press a button on the side of the gadget, it heats up the "juice," the term commonly used to describe the flavored liquids. The flavors range from tobacco to fruity and come with various levels of nicotine, including none at all. A deep drag of vapor from the device, which plugs into a USB port when it needs recharging and sells for about $30, feels almost like smoking a conventional cigarette. (A disposable version costs about $10.) Users pay to refill their liquid.

The FDA regulates only electronic cigarettes marketed for therapeutic purposes, said Stephanie Yao, a spokeswoman for the agency. She added: "Further research is needed to assess the potential public health benefits and risks of electronic cigarettes."

A 2009 FDA analysis of e-cigarettes found that they contained carcinogens and toxic chemicals, such as an ingredient used in antifreeze.

Some city officials said they want more information about the devices and their health effects.

"I'm not saying you're going to die and go to hell if you use them," said Pico Rivera Councilman Gregory Salcido, who backed the city's decision to treat the devices as regular cigarettes. "But we don't know enough about them, and as a result we're going to cover our bases."

The San Gabriel Valley has become an epicenter for vape shops.

Drive three minutes from Collin Spencer's shop and you'll find House of Vapor. Half a mile from there — right across from Temple City's City Hall — is AquaVape.

Two massive flat-screen TVs showcase the juice categories — "Alice in Vapeland," "Eliq Club" and for the nicotine-wary, "Virgin."

Before she opened her shop a couple of months ago, owner Teresa Tai had to do a fair amount of convincing.

"We went to the city and to the landlord and said, 'Hey, this isn't for marijuana,'" she said. "They thought it was a way to mask dispensaries."

Because vaporizers sometimes are used to inhale marijuana, people often correlate the two, she said, making it hard for legal vapers.

"Before, you could use it inside and stuff," she said. "Now, even bars are starting to ban vaping."

AquaVape regular Charles Vaughan — who ditched his 30-year smoking habit for e-cigarettes — chuckled as he listened in. If you don't make a scene, he said, you can still use them almost anywhere. Even on a plane.

"I vaped all the way to Hawaii and back."

With no clear statewide or federal regulations on where e-cigarettes can be used, some businesses have implemented their own policies. Starbucks, for example, does not allow their use inside its coffee shops.

Proposed legislation in California, which cleared the Senate in May, would extend existing restrictions on smoking tobacco products to e-cigarettes. That bill was recently put on hold until next year.

Many devotees swear by e-cigarettes as the best way to quit smoking.

Seal Beach tow-truck driver David Stevenson smoked for 30 years, topping out at 2 1/2 packs a day, until he and his wife switched to e-cigarettes in February. They haven't smoked a regular cigarette since July, he said.

"There was no arguing, no fighting, no bad tempers," Stevenson said. "We were still getting the nicotine, just not as much."

To him it doesn't make sense to clamp down on something he views as a healthier alternative — and something that's already so readily available.

"I can go four miles down the road," he said. "Go to Sunset Vapor in Huntington Beach, buy what I need and come right back to Seal Beach."

adolfo.flores@latimes.com

marisa.gerber@latimes.com

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Attachment 2

Press Release

Embargoed Until: Thursday, Sept. 5; 1:00 p.m. ET
Contact: Media Relations (http://www.cdc.gov/media)
(404) 639-3286

E-cigarette use more than doubles among U.S. middle and high school students from 2011-2012

More than 75 percent of youth users smoke conventional cigarettes too

The percentage of U.S. middle and high school students who use electronic cigarettes, or e-cigarettes, more than doubled from 2011 to 2012, according to data published by the Centers for Disease Control and Prevention.

The findings from the National Youth Tobacco Survey, in today's Morbidity and Mortality Weekly Report, show that the percentage of high school students who reported ever using an e-cigarette rose from 4.7 percent in 2011 to 10.0 percent in 2012. In the same time period, high school students using e-cigarettes within the past 30 days rose from 1.5 percent to 2.8 percent. Use also doubled among middle school students. Altogether, in 2012 more than 1.78 million middle and high school students nationwide had tried e-cigarettes.

"The increased use of e-cigarettes by teens is deeply troubling," said CDC Director Tom Frieden, M.D., M.P.H. "Nicotine is a highly addictive drug. Many teens who start with e-cigarettes may be condemned to struggling with a lifelong addiction to nicotine and conventional cigarettes."

The study also found that 76.3 percent of middle and high school students who used e-cigarettes within the past 30 days also smoked conventional cigarettes in the same period. In addition, 1 in 5 middle school students who reported ever using e-cigarettes say they have never tried conventional cigarettes. This raises concern that there may be young people for whom e-cigarettes could be an entry point to use of conventional tobacco products, including cigarettes.

"About 90 percent of all smokers begin smoking as teenagers," said Tim McAfee, M.D., M.P.H., director of the CDC Office on Smoking and Health. "We must keep our youth from experimenting or using any tobacco product. These dramatic increases suggest that developing strategies to prevent marketing, sales, and use of e-cigarettes among youth is critical."

Electronic cigarettes, or e-cigarettes, are battery-powered devices that provide doses of nicotine and other additives to the user in an aerosol. E-cigarettes not marketed for therapeutic purposes are currently unregulated by the Food and Drug Administration. The FDA Center for Tobacco Products (http://www.fda.gov/tobaccoproducts/default.htm) (http://www.cdc.gov/Other/disclaimer.html) has announced that it intends to expand its jurisdiction over tobacco products to include e-cigarettes, but has not yet issued regulatory rules. Because e-cigarettes are largely unregulated, the agency does not have good information

about them, such as the amounts and types of components and potentially harmful constituents.

"These data show a dramatic rise in usage of e-cigarettes by youth, and this is cause for great concern as we don't yet understand the long-term effects of these novel tobacco products," said Mitch Zeller, director of FDA's Center for Tobacco Products. "These findings reinforce why the FDA intends to expand its authority over all tobacco products and establish a comprehensive and appropriate regulatory framework to reduce disease and death from tobacco use."

Although some e-cigarettes have been marketed as smoking cessation aids, there is no conclusive scientific evidence that e-cigarettes promote successful long-term quitting. However, there are proven cessation strategies and treatments, including counseling and FDA-approved cessation medications.

Cigarette smoking remains the leading preventable cause of disease, disability, and death in the United States, responsible for an estimated 443,000 deaths each year. And for every one death, there are 20 people living with a smoking-related disease. To quit smoking, free help is available at 1-800-QUIT NOW or www.cdc.gov/tips (http://www.cdc.gov/tips).

Under the Affordable Care Act, more Americans than ever will qualify to get health care coverage that fits their needs and budget, including important preventive services such as services to quit smoking that are covered with no additional costs. Get ready today for the new Health Insurance Marketplace. Visit Healthcare.gov or call 1-800-318-2596 (TTY/TDD 1-855-889-4325) to learn more. Open enrollment in the Marketplace begins October 1 for coverage starting as early as January 1, 2014.

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Centers for Disease Control and Prevention 1600 Clifton Rd. Atlanta, GA 30333, USA
800-CDC-INFO (800-232-4636) TTY: (888) 232-6348 - Contact CDC–INFO