



STAFF REPORT

Meeting Date: February 18, 2014
To: Honorable Mayor & City Council
From: Michelle Tse, Senior Management Analyst
Subject: E-Cigarette and Smoking Policy Recommendation
Attachments: None

INTRODUCTION

At the November 5, 2013 Formal Session, the City Council directed the Health & Safety Commission ("Commission") to review and provide policy recommendations on the sale and use of electronic cigarettes ("e-cigarettes") and tobacco products. After an extensive review and discussion, the Commission is recommending that (1) e-cigarettes be regulated similarly to tobacco products within the City; and (2) the City's smoking regulations be expanded to prohibit smoking at public plazas, outdoor service lines, farmers markets, and outdoor public gathering events, special events, parades and fairs.

DISCUSSION

Based on the Commission's recommendation that e-cigarettes be regulated similarly to tobacco products, city regulations and policies would need to be amended to include e-cigarettes. The following is a summary of how e-cigarettes would be regulated in the city:

- ***Open air dining:*** Smoking of e-cigarettes would be prohibited in all open air dining areas located on private or public property, including public right of ways. Smoking is prohibited within five feet of an open air dining area, except while actively passing on the way to another destination. However, as with current tobacco products, smoking shall be allowed in up to 25% of contiguous deck space surrounding hotel swimming pools.
- ***Prohibition of e-cigarette vending machines:*** Sales of e-cigarettes in self-serving vending machines would be prohibited.
- ***"No Smoking" regulation at city parks and recreational facilities:*** The City's Recreation and Parks Rules & Regulations would prohibit e-cigarette use in all city parks and recreational facilities.
- ***Annual tobacco/e-cigarette retail permit process:*** E-cigarette retailers in the city would need to obtain a valid local retailer permit prior to commencing sales of e-cigarette products.

- **Regulations on e-cigarette sales establishments:** E-cigarette sales establishments would be subject to the same requirements as any other tobacco retail store in the City.

State smoking regulations, as currently written, only regulate the sale of e-cigarettes to minors. Otherwise, State law does not regulate e-cigarettes as extensively as it does tobacco products. As such, the Commission is recommending that similar smoking laws be incorporated into the City's regulations to regulate e-cigarette use in the City. The City Attorney has verified that e-cigarette use in the following areas are not pre-empted by State law and may be regulated by local ordinance:

- **Workplaces.** E-cigarette use would be prohibited in enclosed places of employment where smoking of tobacco products is prohibited by State law.
- **Multi-unit residences.** Allows landlords to prohibit e-cigarette use in the same manner as tobacco products by State law.
- **City buildings.** E-cigarette use would be prohibited in and around city buildings. This excludes state and federal buildings.
- **Tot lots and playgrounds.** E-cigarette use would be prohibited in and around playgrounds and tot lots where smoking of tobacco products is prohibited by State law.
- **Day care facilities.** E-cigarette use would be prohibited at daycare facilities where smoking of tobacco products is prohibited by State law.
- **City owned transit systems and city vehicles.** E-cigarette use would be prohibited in city-owned public transit systems and in city vehicles where smoking of tobacco products is prohibited by State law.

The City does not have jurisdiction or may be pre-empted by State law from regulating e-cigarette use in vehicles traveling on public streets, non-City owned public transit systems and stations, and non-City owned youth buses and public paratransit vehicles. Additionally, the Los Angeles County Metropolitan Transportation Authority ("Metro") has jurisdiction over its regional transportation system and stations.

State law generally prohibits tobacco use in schools. The Beverly Hills Unified School District ("BHUSD") Board implemented a Tobacco-Free School Policy in 2009, which prohibits tobacco use amongst its employees, students and visitors during regular school hours and at any BHUSD-sponsored community events held on school properties. On January 21, 2014, the BHUSD Board expanded the Tobacco-Free School Policy to prohibit e-cigarette use on school properties.

The issue and potential impact to enact a complete ban on tobacco sales in the City was reviewed by the Commission. There are legal issues relating to such a complete ban. The Commission did not consider banning tobacco sales in the city.

Most recently, CVS/pharmacy announced it will stop selling cigarettes and other tobacco products at its stores by October 1, 2014. This was a public health decision made by CVS and other businesses may or may not follow suit.

The Commission also reviewed options to expand the City's smoking regulations by reviewing regulations in other cities. It is recommended that the City's regulations be expanded to prohibit smoking at public plazas, outdoor service lines, farmers markets, and outdoor public gathering events, special events, parades and fairs. The following is a summary with working definitions for proposed additional areas where smoking of both tobacco products and e-cigarettes would be prohibited.

- **Public Plaza:** Any open courtyard or space located on a street or between buildings and accessible to the general public. This does not include alleys.
- **Outdoor Service Lines:** Any outdoor area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction whether or not such service or transaction includes the exchange of money including for example, ATMs, bank teller windows, telephones, ticket lines, information kiosks, and take-out counters.
- **Farmers Markets:** Any food market at which local farmers sell fruit and vegetables and other items such as meat, cheese, and bakery products directly to consumers, whether on public or private property.
- **Outdoor Public Gathering Events, Public Special Events, Parades and Fairs:** Events held in an unenclosed area where members of the general public may attend, view, or participate in the event.

The Commission felt that by expanding the City's smoking regulations to these areas, it would convey an effective anti-smoking/anti-vaping message to the community and also be enforceable given current resources.

As part of the Commission's discussion about options to expand smoking regulations, the Commission inquired whether the City's existing open air dining ordinance could be amended to prohibit smoking beyond the five feet (5'). The ordinance, as currently worded, prohibits smoking within five feet (5') of an open air dining area, except while actively passing by. Research by staff revealed that the smallest sidewalk in the City measures 11' feet wide. To expand the "no smoking" zone beyond the 5' width from an open dining area could potentially pose a safety hazard, since that may force smokers/vapers off the sidewalk and onto the street.

FISCAL IMPACT

If the City Council approves the e-cigarette regulation ordinance, the Commission suggested a public education and outreach campaign to inform the community about changes to the City's smoking regulations. Efforts will include working with the Chamber of Commerce, issuing press releases, utilizing social media outlets, city website, postcard mailings for both residents and business, and tent cards for businesses to use as part of the outreach campaign. A preliminary cost estimate for the printing, mailing and other outreach materials is approximately \$20,000. The expenses would be covered by the Policy & Management department budget.

If the Council wishes to expand the smoking regulations, the outreach will be scheduled so that efforts will educate the public about both e-cigarette and expanded smoking regulations that will be going into effect.

RECOMMENDATION

If the City Council agrees with the Health & Safety Commission's recommendation to regulate the use and sales of e-cigarettes, staff will introduce the first reading of the

ordinance, during the evening formal session. The second reading of the ordinance will be scheduled for the March 4, 2014 formal meeting. If adopted by the City Council, this ordinance will be effective June 1, 2014 to allow for outreach and public education efforts to be completed prior to the ordinance's effective date.

Staff is seeking City Council direction on whether to proceed with drafting an ordinance to expand City regulations to prohibit tobacco and e-cigarette use in public plazas, outdoor service lines, Farmers Market, outdoor public gathering events, special events, parades and fairs. If so, the ordinance on expanded smoking regulations will be brought back for introduction to the City Council during the next meeting.

Mahdi Aluzri 
Approved By
