



AGENDA REPORT

Meeting Date: March 4, 2014

Item Number: D-5

To: Honorable Mayor & City Council

From: Laurence S. Wiener, City Attorney

Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS INCLUDING ELECTRONIC CIGARETTES WITHIN THE CITY'S TOBACCO RETAILER PERMITTING AND SMOKING REGULATIONS; AND REGULATING ELECTRONIC CIGARETTE USE IN THE SAME MANNER AS TOBACCO USE UNDER CERTAIN STATE LAWS

Attachments: 1. Ordinance

RECOMMENDATION

Staff recommends that the City Council move to waive the full reading and adopt the ordinance entitled "AN ORDINANCE OF THE CITY OF BEVERLY HILLS INCLUDING ELECTRONIC CIGARETTES WITHIN THE CITY'S TOBACCO RETAILER PERMITTING AND SMOKING REGULATIONS; AND REGULATING ELECTRONIC CIGARETTE USE IN THE SAME MANNER AS TOBACCO USE UNDER CERTAIN STATE LAWS".

INTRODUCTION

The ordinance amends the definition of smoking contained in the municipal code to include e-cigarettes so that e-cigarettes will be regulated similarly to tobacco products within the City.

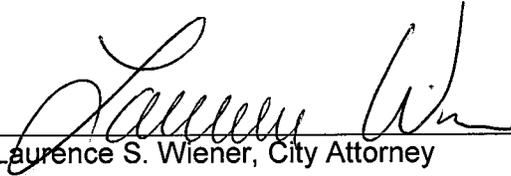
DISCUSSION

At its meeting of February 18, 2014, the City Council conducted a first reading of this ordinance and introduced it.

FISCAL IMPACT

Resources will be used to conduct a public education and outreach campaign to inform the community about the 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, and tent cards for businesses to use as part of the outreach campaign. Staff has provided a preliminary cost estimate for the printing, mailing and other outreach materials of approximately \$20,000. The expenses would be covered by the Policy & Management department budget.



Laurence S. Wiener, City Attorney

Attachment 1

ORDINANCE NO. 14-O-

AN ORDINANCE OF THE CITY OF BEVERLY HILLS INCLUDING ELECTRONIC CIGARETTES WITHIN THE CITY'S TOBACCO RETAILER PERMITTING AND SMOKING REGULATIONS; AND REGULATING ELECTRONIC CIGARETTE USE IN THE SAME MANNER AS TOBACCO USE UNDER CERTAIN STATE LAWS.

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. On February 18, 2014, the City Council considered the adoption of this Ordinance at a duly noticed public meeting and on the basis of the record thereof finds the following facts to be true:

A. Electronic cigarettes, commonly known as e-cigarettes, e-cigars, e-cigarillos, e-pipes, and e-hookahs, are battery operated devices designed to look like and be used in the same manner as conventional tobacco products. Electronic cigarettes employ the use of a cartridge, generally containing up to 20 mg of nicotine to deliver vaporized nicotine to users. Some cartridges used by electronic cigarettes can be re-filled with liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine;¹ and

B. The U.S. Food and Drug Administration ("FDA") conducted laboratory analysis of electronic cigarettes and found the following: 1) Diethylene glycol, an ingredient used in antifreeze and toxic to humans, was found in one cartridge; 2) Certain tobacco-specific nitrosamines, which are human carcinogens, were detected in half of the samples tested; 3) Tobacco-specific impurities suspected of being harmful to humans—anabasine, myosmine, and β-nicotyrine—were detected in a majority of the samples tested; 4) All but one tested cartridge

¹ Yamin, C.K., Bitton A., and Bates, D.W. "E-Cigarettes: A Rapidly Growing Internet Phenomenon." *Annals of Internal Medicine*, 153:607-609, 2010.

labeled as containing no nicotine did in fact contain low levels of nicotine; 5) Three identically labeled cartridges emitted markedly different amounts of nicotine with each puff. Nicotine levels per 100 mL puff ranged dramatically from 26.8 to 43.2 mcg nicotine; and 6) One high-nicotine cartridge delivered twice as much nicotine to users as was delivered by a nicotine inhalation product approved by the FDA for use as a smoking cessation aid which was used as a control; and

C. The FDA has raised concerns that electronic cigarettes, which are often marketed in appealing flavors, can increase nicotine addiction among young people and may lead youth to try conventional tobacco products;² and

D. The FDA has also raised concerns that electronic cigarettes are marketed and sold to young people and are readily accessible online and via mall kiosks;³ and

E. A study published in the American Journal of Public Health found similar results to the FDA testing and concluded that the electronic cigarettes tested so far have demonstrated “poor quality control; toxic contaminants, albeit at low levels; misrepresentation of the nicotine delivered; and insufficient evidence of the overall public health benefit”;⁴ and

F. Clinical studies about the safety and efficacy of electronic cigarettes for their intended use have not been submitted to the FDA, and for this reason, consumers currently have no way of knowing: 1) Whether electronic cigarettes are safe for their intended use; 2) What

² U.S. Food and Drug Administration. *E-Cigarette: Questions and Answers*. 2010. www.fda.gov/forconsumers/consumerupdates/ucm225210.htm

³ U.S. Food and Drug Administration. *News Release, FDA and Public Health Experts Warn About Electronic Cigarettes*. July 22, 2009. www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm

⁴ Cobb, N.K., Byron, J., and Abrams, D.B., et al. “Novel Nicotine Delivery Systems and Public Health: The Rise of the ‘E-Cigarette.’” *American Journal of Public Health*, 100 (12): 2340-2342, 2010.

types or concentrations of potentially harmful chemicals the products contain; and 3) What dose of nicotine the products deliver;⁵ and

G. The World Medical Association has determined that electronic cigarettes “are not comparable to scientifically-proven methods of smoking cessation” and that “neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established”;⁶ and

H. The federal law restricting the sale of tobacco products to minors currently applies only to cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco, not electronic cigarettes. 21 U.S.C. § 387a(b). However, California law prohibits the sale of electronic cigarettes to minors. Health & Safety Code § 119405. ; and

I. Between 2010 and 2011, rates of both awareness and use of unregulated electronic cigarettes by adults increased significantly;⁷ and

J. Electronic cigarettes often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products; and

K. A study published in the Journal of Environmental and Public Health suggests that electronic cigarettes “may have the capacity to ‘re-normalize’ tobacco use in a demographic that has had significant denormalization of tobacco use previously”;⁸ and

⁵ U.S. Food and Drug Administration. *FDA Warns Of Health Risk Posed By E-Cigarettes*. 2009. www.fda.gov/downloads/forconsumers/consumerupdates/UCM173430.pdf

⁶ World Medical Association. *Statement on Electronic Cigarettes and Other Electronic Nicotine Delivery Systems*. October 2012. [www.wma.net/en/30publications/10policies/e19/index.html.pdf?print-media-type&footer-right=\[page\]/\[toPage\]](http://www.wma.net/en/30publications/10policies/e19/index.html.pdf?print-media-type&footer-right=[page]/[toPage])

⁷ King, B.A., Alam, S., and Promoff, G., et al. “Awareness and Ever Use of Electronic Cigarettes Among U.S. Adults, 2010-2011.” *Nicotine and Tobacco Research*.

⁸ McMillen, R., Maduka, J., and Winickoff, .J. “Use of Emerging Tobacco Products in the United States.” *Journal of Environmental and Public Health*.

L. Recent newspaper reports from across the nation indicate that electronic cigarettes have a propensity for exploding while charging or in use. These explosions have caused severe burns and physical injuries to users. Additionally, these explosions have caused property damage; and

M. The use of electronic cigarettes in smoke free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in certain locations; and

N. The City of Beverly Hills has been among a growing list of progressive cities throughout the nation which have adopted more stringent local smoking and tobacco control ordinances to protect public health. In 2008, the City Council adopted the “90210 Fresh Air Dining Ordinance” (BHMC Title 5, Chapter 4), which banned smoking in all outdoor dining areas. In 2010, the City Council passed an ordinance to regulate tobacco retailers through an annual permitting process (BHMC Title 4, Chapter 2, Section 2101, *et seq*). These two ordinances refer to the terms “smoke,” “smoking,” and “tobacco paraphernalia,” but do not explicitly include electronic cigarettes; and

O. California law prohibits the sale of electronic cigarettes to minors. Health & Safety Code § 119405. No other state law currently regulates the sale and use of electronic cigarettes. In contrast, multiple state laws regulate tobacco sale and use. For instance, smoking tobacco use is prohibited in, among other places: public buildings; enclosed places of employment; residential units where smoking is prohibited by the landlord; playgrounds and tot lots; daycare facilities; vehicles with minors; public transit systems; and public-entity vehicles. But none of the state tobacco laws that prohibit smoking tobacco products in those locations expressly prohibit electronic cigarette vaping. The City is not expressly preempted from

regulating electronic cigarettes in the same manner as tobacco products pursuant to certain state laws; and

P. Labor Code Section 6404.5 prohibits the smoking of all tobacco products in all enclosed places of employment in the state. Enclosed places are defined to include “lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building....” Labor Code § 6404.5(b). The smoking of electronic cigarettes is not regulated by this Labor Code section and the City is not preempted from regulating the smoking of electronic cigarettes within enclosed places of employment in the City; and

Q. Civil Code Section 1947.5 provides a landlord of a residential dwelling unit may prohibit the smoking of a cigarette or other tobacco product on the landlord’s property or in any portion of the landlord’s building. Residential dwelling unit is defined as “a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.” Civil Code § 1940(c). The smoking of electronic cigarettes is not regulated by this Civil Code section and the City is not preempted from providing landlords the ability to prohibit the smoking of electronic cigarettes on their property or in any portion of their building within the City; and

R. Government Code Section 7597(a) provides in pertinent part that no “...member of the public shall smoke any tobacco product inside a public building, or in an outdoor area within 20 feet of a main exit, entrance, or operable window of a public building....” Public building is defined as “a building owned and occupied, or leased and occupied, by the state, a county, a city, a city and county, or a California community college district.” Government Code § 7596(a). Pursuant to this Government Code authority, the City has prohibited smoking in all public buildings in the City. Government Code Section 7597(b) provides a city is not preempted

from adopting and enforcing additional smoking and tobacco control ordinances, regulations, or policies that are more restrictive than the applicable standards required by Government Code Section 7596 *et. seq.* Pursuant to Government Code Section 7597(b), the City may adopt a more restrictive ordinance, regulation or policy that provides definitions for these terms, and expressly prohibits the use of electronic cigarettes in public buildings in the City; and

S. Health and Safety Code Section 104495 prohibits the smoking of tobacco products, or disposing of tobacco related waste, within 25 feet of a playground or tot lot. A playground is defined as “any park or recreational area specifically designed to be used by children that has play equipment installed, or any similar facility located on public or private school grounds, or on city, county, or state park grounds.” Health & Safety Code § 104495(a)(1). A tot lot is defined as “a designated play area within a public park for the use by children under five years of age....” Health & Safety Code § 104495(a)(2). The smoking of electronic cigarettes is not regulated by this Health and Safety Code section and the City is not expressly preempted from regulating the smoking of electronic cigarettes within 25 feet of a playground or tot lot in the City; and

T. Health and Safety Code Section 1596.795 prohibits smoking on the premises of a licensed day care center, and in a licensed family day care home during the hours of operation as a family day care home, and in those areas of the family day care home where children are present. This section also provides “[n]othing in this section shall prohibit a city or county from enacting or enforcing an ordinance relating to smoking in a family day care home if the ordinance is more stringent than this section.” Health & Safety Code § 1596.795(a). The smoking of electronic cigarettes is not regulated by this section and the City may adopt a more

stringent ordinance that expressly prohibits the use of electronic cigarettes on the premises of a licensed day care center and in a licensed family day care home in the City; and

U. Health and Safety Code Sections 118925 through 118945 prohibit the smoking of tobacco or any other plant product on any public transit system or in any vehicle of an entity receiving transit assistance from the State. A public transit system is defined as “any system of an operator which provides transportation services to the general public by any vehicle which operates on land or water, regardless of whether operated separated from or in conjunction with other vehicles.” Public Utilities Code § 99211. The City operates a public transit system and receives transit assistance from the State. Pursuant to Health and Safety Code Section 118940, the City may adopt a more restrictive ordinance to the benefit of the nonsmoker. The smoking of electronic cigarettes is not regulated by this Health and Safety Code section and the City is not expressly preempted from regulating the smoking of electronic cigarettes on the City’s public transit system or in any City vehicle.

Section 2. The City Council hereby amends Sections 4-2-2101 (“Purpose”) through 4-2-2111 (“Suspension or Revocation of Tobacco Retailer Permit”) of Article 21 (“Tobacco Retailer Permitting Regulations”) of Chapter 2 (“Regulatory Business Permits”) of Title 4 (“Regulation of Certain Types of Businesses and Activities”) of the Beverly Hills Municipal Code to read as follows:

“4-2-2102: Purpose:

In enacting this article, it is the intent of the City Council to encourage responsible tobacco and electronic cigarette retailing and to discourage violations of tobacco and electronic cigarette related laws, especially those that discourage the sale or distribution of tobacco and nicotine products to minors. There is no intent, however, to expand or reduce the degree to which the

acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

4-2-2102: Definitions:

For purposes of this article, the following words and terms shall be defined as follows:

ELECTRONIC CIGARETTE: 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 substances. The term includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an e-cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. The term does not include any inhaler prescribed by a licensed doctor.

PERMITTEE: Any proprietor holding a permit issued by the City pursuant to this article.

PERSON: Any individual, partnership, copartnership, firm, association, joint stock company, corporation, or combination of the above in whatever form or character.

PROPRIETOR: A person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share

ultimate control over the day to day operations of a business.

TOBACCO AND ELECTRONIC CIGARETTE PARAPHERNALIA: Includes cigarette papers or wrappers, pipes, electronic cigarettes and their component parts, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco or products prepared from tobacco.

TOBACCO PRODUCT: Any manufactured substance made from the tobacco plant, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco and smokeless tobacco, or products prepared from tobacco and designed for smoking or ingestion.

TOBACCO AND ELECTRONIC CIGARETTE RETAILER: Any person or business that operates a store, stand, booth, concession or other place at which the person or business sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco and electronic cigarette paraphernalia.

TOBACCO AND ELECTRONIC CIGARETTE RETAILER PERMIT: A permit issued by the City authorizing a proprietor to engage in tobacco and electronic cigarette retailing.

TOBACCO AND ELECTRONIC CIGARETTE RETAILING: The selling, offering for sale or exchanging or offering to exchange for any form of consideration tobacco, tobacco products, or tobacco or electronic cigarette paraphernalia products.

4-2-2103: Tobacco and Electronic Cigarette Retailer Permit Required:

A. It shall be unlawful for any person to act as a tobacco and electronic cigarette retailer without first obtaining and maintaining a valid tobacco and electronic cigarette retailer permit pursuant to this article for each location at which that activity is to occur.

B. Notwithstanding the provisions of Chapter 1, Article 1 of this title (“general provisions”), the issuance, suspension, and revocation of a tobacco and electronic cigarette retailer permit, and all related procedures, shall be governed solely by this article.

C. Failure to obtain a tobacco and electronic cigarette retailer permit prior to commencing the sale of tobacco products, or tobacco or electronic cigarette paraphernalia, shall constitute a separate violation of this section for each day such business is carried on without a permit.

4-2-2104: Application Process:

A. An application for a tobacco and electronic cigarette retailer permit shall be submitted in the name of each proprietor proposing to conduct tobacco and electronic cigarette retailing and shall be signed by each proprietor or an authorized agent thereof. An application is required for each location where retail tobacco or electronic cigarettes or tobacco and electronic cigarette paraphernalia sales are to occur.

B. All applications shall be submitted to the administrative services department, finance division, on a form supplied by the City and shall contain the following information:

1. The name, address, and telephone number of each proprietor;
2. The business name, address, and telephone number of the fixed location for which a tobacco and electronic cigarette retailer permit is sought;

3. The name and mailing address authorized by each applicant to receive all permit related communications and notices (the “authorized address”). Failure to supply an authorized address shall be understood to consent to the provision of notice at the business address specified in subsection B2 of this section;

4. Whether any applicant has previously been issued a permit pursuant to this article that is or was at any time suspended or revoked and, if so, the dates of the suspension period or the date of revocation;

5. Proof that the location for which a tobacco and electronic cigarette retailer permit is sought has been issued a valid state tobacco and/or electronic cigarette retailer permit, as applicable, by the California Board of Equalization; if such permits are not issued by the California Board of Equalization for electronic cigarette retailers, this proof of permit shall not be required for electronic cigarette sales.

6. Such other information as the City deems necessary for the administration or enforcement of this article.

C. All information required to be submitted in order to apply for a tobacco and electronic cigarette retailer permit shall be updated whenever the information changes. A tobacco and electronic cigarette retailer shall provide the City in writing with any updates within ten (10) business days of a change.

4-2-2105: Permit Fees:

The annual fee for a tobacco and electronic cigarette retailer permit shall be established by resolution of the City Council. A tobacco and electronic cigarette retailer permit is invalid if the appropriate fee has not been timely paid in full.

4-2-2106: Issuance and Renewal of Permit:

A. Upon receipt of both the application for a tobacco and electronic cigarette retailer permit and the permit fee, the director of administrative services or his or her designee, shall issue a tobacco and electronic cigarette retailer permit unless:

1. The application is incomplete or the information presented in the application is inaccurate or false;

2. The application seeks authorization for tobacco and electronic cigarette retailing by a proprietor who has a suspended or revoked tobacco and electronic cigarette retailer permit;

3. The application seeks authorization for tobacco and electronic cigarette retailing that is prohibited pursuant to this article, or that is unlawful pursuant to any other local, state or federal law;

4. The proprietor has not obtained a valid state tobacco and/or electronic cigarette retailer permit, as applicable, from the California Board of Equalization: if such permits are not issued by the California Board of Equalization for electronic cigarette retailers, then failure to obtain a permit from the California Board of Equalization shall not be grounds for denial of an application to sell electronic cigarettes pursuant to a tobacco and electronic cigarette permit from the City.

5. The City has information that the applicant or his or her agents or employee(s) has violated any local, state or federal tobacco or electronic cigarette control law at the location for which the permit or renewal of the permit is sought within the preceding thirty (30) day period.

B. A tobacco and electronic cigarette retailer permit shall be valid for one year and must be renewed not later than thirty (30) days prior to the expiration of the permit, but no earlier than sixty (60) days prior to the expiration of the permit. Unless revoked on an earlier date, all permits shall expire one year after the date of issuance.

C. A tobacco and electronic cigarette retailer permit that is not timely renewed shall expire at the end of its term. To reinstate a permit that has expired, or to renew a permit not timely renewed, the proprietor must:

1. Submit the permit fee plus a reinstatement fee and the application renewal form; and
2. Submit a signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product or tobacco and electronic cigarette paraphernalia after the permit expiration date and before the permit is renewed.

D. Where the permit is not approved or renewed, the director of administrative services shall notify the applicant of the specific grounds for the denial in writing. The notice of denial shall be served personally or by mail not later than five (5) calendar days after the date of the denial. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the address as it appears on the application. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States mail without extension of time for any reason. In lieu of mailing, the notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of the notice to any person designated pursuant to the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

4-2-2107: Permits Nontransferable:

A tobacco and electronic cigarette retailer permit is nontransferable and is valid only for the person(s) and location specified in the permit application. If a permittee changes business location, that permittee must obtain a new permit prior to acting as a tobacco and electronic cigarette retailer at the new location. If a business permitted to conduct tobacco and electronic cigarette retailing is sold, the new owner must obtain a permit for that location before acting as a tobacco and electronic cigarette retailer.

4-2-2108: Permit Conveys A Limited, Conditional Privilege:

Nothing in this article shall be construed to grant any person obtaining and maintaining a tobacco and electronic cigarette retailer permit any status or right other than the limited conditional privilege to act as a tobacco and electronic cigarette retailer at the location identified on the face of the permit. A tobacco and electronic cigarette retailer permit does not make the retailer a “retail or wholesale tobacco shop” for the purposes of California Labor Code Section 6404.5.

4-2-2109: Requirements for Operation:

A. It is the responsibility of each tobacco and electronic cigarette retailer to be informed of the laws affecting the issuance of a tobacco and electronic cigarette retailer’s permit.

B. The sale of tobacco products and tobacco and electronic cigarette paraphernalia from other than a fixed location, including, but not limited to, tobacco and electronic cigarette retailing

by persons on foot or from vehicles is prohibited and no permit shall be issued under this article for any such activity.

C. The display of an advertisement relating to tobacco products or tobacco and electronic cigarette paraphernalia that promotes the sale or distribution of such products from the tobacco and electronic cigarette retailer's location or that could lead a reasonable consumer to believe that such product can be obtained at that location without first obtaining and maintaining a valid tobacco and electronic cigarette retailer permit pursuant to this article, is prohibited.

D. The tobacco and electronic cigarette retailer shall prominently display the tobacco and electronic cigarette retailer permit in a publicly and readily visible location at the permitted location.

E. No person engaging in tobacco and electronic cigarette retailing shall sell or transfer a tobacco product or tobacco and electronic cigarette paraphernalia to another person who appears to be under the age of thirty (30) years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and/or possess the tobacco products or electronic cigarettes.

F. No person who is younger than the minimum age established by state law for the purchase or possession of any tobacco product or electronic cigarette shall engage in tobacco and electronic cigarette retailing.

G. It shall be a violation of the tobacco and electronic cigarette retailer permit for a permittee or his or her agent or employee to violate any local, state, or federal tobacco or electronic cigarette related law.

4-2-2110: Compliance Monitoring:

The City shall not enforce any law establishing a minimum age for tobacco product and electronic cigarette purchases or possession against a person who otherwise might be in violation of such law because of the age of a purchaser of tobacco or tobacco and electronic cigarette paraphernalia (hereinafter “youth decoy”) if the potential violation occurs when: a) the youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the City; or b) the youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Los Angeles County Health Department or the California Department of Health Services.

4-2-2111: Suspension or Revocation of Tobacco and Electronic Cigarette Retailer Permit:

A. In addition to any other remedy authorized by law, the following penalties shall be imposed if the City finds that the permittee or his or her agents or employees has or have violated any of the provisions of this article:

1. Upon a finding by the City of a first violation within any five (5) year period, the permittee shall pay a civil penalty to the City in the amount of two hundred fifty dollars (\$250.00).

2. Upon a finding by the City of a second violation within any five (5) year period, the tobacco and electronic cigarette retailer permit shall be suspended for ninety (90) days and the permittee shall pay a civil penalty to the City in the amount of seven hundred fifty dollars (\$750.00).

3. Upon a finding by the City of a third violation within any five (5) year period, the tobacco and electronic cigarette retailer permit shall be revoked and the permittee shall pay a civil penalty to the City in the amount of one thousand dollars (\$1,000.00).

B. A tobacco or electronic cigarette retailer permit shall be revoked if the City finds that either one or both of the following conditions exist:

1. One or more of the bases for denial of a permit under Section 4-2-2106 of this chapter existed at the time the application was made or at any time before the permit was issued.

2. The information contained in the permit application, including supplemental information, if any, is found to be false in any material respect.

C. In the event the City suspends or revokes a permit, written notice of the suspension or revocation shall be served upon the permittee within five (5) days of the suspension or revocation in the manner prescribed in Section 4-2-2106 of this chapter. The notice shall contain:

1. A brief statement of the specific grounds for such suspension or revocation;

2. A statement that the permittee may appeal the suspension or revocation by submitting an appeal, in writing, in accordance with the provisions of Section 4-2-2112 of this chapter, to the City Clerk, within ten (10) calendar days of the date of service of the notice; and

3. A statement that the failure to appeal the notice of suspension or revocation will constitute a waiver of all rights to an administrative appeal hearing, and the suspension or revocation will be final.

D. A permittee for whom a permit suspension is in effect must remove all tobacco products, tobacco and electronic cigarette paraphernalia and tobacco and electronic cigarette related advertising from public view at the address that appears on the suspended permit.”

Section 3. The City Council hereby amends Section 5-4-1 (“Definitions”) of Chapter 4 (“Smoking Regulations”) of Title 5 (“Public Health, Welfare, and Sanitation”) of the Beverly Hills Municipal Code to read as follows:

“5-4-1: Definitions:

ELECTRONIC CIGARETTE: 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 substances. The term includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an e-cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. The term does not include any inhaler prescribed by a licensed doctor.

ENCLOSED: Closed in by a roof and walls with appropriate openings for ingress and egress.

HOTEL: Shall have the same definition as that set forth in Title 10, Chapter 3 of this code.

NONENCLOSED: A predominantly outdoor area that does not meet the definition of “enclosed,” including, but not limited to, open air dining areas.

OPEN AIR DINING AREA: Any nonenclosed area located on private or public property made available to or customarily used by the general public that is designed, established or regularly used for consuming food and/or beverages or where food and/or beverages are served whether or not for compensation. This includes, but is not limited to, restaurants, hotels, bar standing and seating areas, patios, and coffee shops. An open air dining area does not include open air dining

areas that are immediately adjacent to and accessory to a private smokers' lounge, as that term is defined in Labor Code Section 6404.5 or its successor statute.

SMOKE, SMOKING, VAPE or VAPING: The carrying, holding, or operating of a lighted pipe, cigar, cigarette, electronic cigarette, or other kind of smoking equipment. Smoke also means the lighting, operating, emitting, or exhaling of the smoke or vapor of a pipe, cigar, cigarette, electronic cigarette or other kind of smoking equipment. Smoke also means the gaseous or vaporous products and particles created by the use of a lighted or operated pipe, cigar, cigarette, electronic cigarette or other kind of smoking equipment.”

Section 4. The City Council hereby amends Section 5-4-5 (“Prohibition of Cigarette Vending Machines”) of Chapter 4 (“Smoking Regulations”) of Title 5 (“Public Health, Welfare, and Sanitation”) of the Beverly Hills Municipal Code to read as follows:

“5-4-5: Prohibition of Cigarette or Electronic Cigarette Vending Machines:

Unless otherwise prohibited by state or federal law, no person shall install, place, operate, or maintain within the City any cigarette vending machine. “Cigarette vending machine” shall mean any self-service device which, upon insertion of money or tokens, dispenses cigarettes or electronic cigarettes without the necessity of replenishing the device between each vending operation.”

Section 5. The City Council hereby renumbers Section 5-4-6 (“Penalties and Enforcement”) of Chapter 4 (“Smoking Regulations”) of Title 5 (“Public Health, Welfare, and Sanitation”) of the Beverly Hills Municipal Code to be Section 5-4-12 and amends it to read as follows:

“5-4-12: Penalties and Enforcement:

A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the regulation under this chapter to fail to comply with its provisions.

B. It is unlawful for any person to smoke in any area restricted by the provisions of this chapter.

C. Any person who violates any provision of this chapter shall be guilty of a misdemeanor or may be prosecuted as an infraction in the discretion of the city prosecutor.

D. The city prosecutor, any peace officer and any city code enforcement officer shall have the authority to enforce the provisions of this chapter.

E. Punishment under this chapter shall not preclude punishment pursuant to any provision of law pertaining to smoking or littering. Nothing in this chapter precludes any person from seeking any other remedies, penalties or procedures provided by law. The remedies provided in this section are cumulative and in addition to any other remedies available at law or in equity.”

Section 6. The City Council hereby adds new Section 5-4-6 (“Prohibition of Smoking Electronic Cigarettes in and around Public Buildings”) of Chapter 4 (“Smoking Regulations”) of Title 5 (“Public Health, Welfare, and Sanitation”) of the Beverly Hills Municipal Code to read as follows:

“5-4-6: Prohibition of Smoking Electronic Cigarettes in and around Public Buildings:

Smoking electronic cigarettes is prohibited in and around City public buildings in the City where smoking of tobacco products is prohibited by California Government Code Section 7597 or any successor statute thereto.”

Section 7. The City Council hereby adds new Section 5-4-7 (“Prohibition of Smoking Electronic Cigarettes in Enclosed Places of Employment”) of Chapter 4 (“Smoking Regulations”) of Title 5 (“Public Health, Welfare, and Sanitation”) of the Beverly Hills Municipal Code to read as follows:

“5-4-7: Prohibition of Smoking Electronic Cigarettes in Enclosed Places of Employment:

Smoking electronic cigarettes is prohibited in all enclosed places of employment where smoking of tobacco products is prohibited by California Labor Code Section 6404.5 or any successor statute thereto.”

Section 8. The City Council hereby adds new Section 5-4-8 (“Landlord May Prohibit Smoking Electronic Cigarettes”) of Chapter 4 (“Smoking Regulations”) of Title 5 (“Public Health, Welfare, and Sanitation”) of the Beverly Hills Municipal Code to read as follows:

“5-4-8: Landlord May Prohibit Smoking Electronic Cigarettes:

A landlord may prohibit the smoking of electronic cigarettes in the same manner as the smoking of tobacco products as provided by California Civil Code Section 1947.5 or any successor statute thereto.”

Section 9. The City Council hereby adds new Section 5-4-9 (“Prohibition of Smoking Electronic Cigarettes in and around Playgrounds and Tot Lots”) of Chapter 4 (“Smoking Regulations”) of Title 5 (“Public Health, Welfare, and Sanitation”) of the Beverly Hills Municipal Code to read as follows:

“5-4-9: Prohibition of Smoking Electronic Cigarettes in and around Playgrounds and Tot Lots:

Smoking electronic cigarettes is prohibited in and around playgrounds and tot lots where smoking of tobacco products is prohibited by California Health and Safety Code Section 104495 or any successor statute thereto.”

Section 10. The City Council hereby adds new Section 5-4-10 (“Prohibition of Smoking Electronic Cigarettes in Daycare Facilities”) of Chapter 4 (“Smoking Regulations”) of Title 5 (“Public Health, Welfare, and Sanitation”) of the Beverly Hills Municipal Code to read as follows:

“5-4-10: Prohibition of Smoking Electronic Cigarettes in Daycare Facilities:

Smoking electronic cigarettes is prohibited at all daycare facilities where smoking of tobacco products is prohibited by California Health and Safety Code Sections 1596.795, 1596.890 or any successor statute thereto.”

Section 11. The City Council hereby adds new Section 5-4-11 (“Prohibition of Smoking Electronic Cigarettes on City Public Transit System and in City Vehicles”) of Chapter 4 (“Smoking Regulations”) of Title 5 (“Public Health, Welfare, and Sanitation”) of the Beverly Hills Municipal Code to read as follows:

“5-4-11: Prohibition of Smoking Electronic Cigarettes on City Public Transit System and in City Vehicles:

Smoking electronic cigarettes is prohibited on the City’s public transit system and in City vehicles where smoking of tobacco or any other plant product is prohibited by California Health and Safety Code Sections 118925 through 118945 or any successor statute thereto.”

Section 12. Any person with an existing tobacco retailer permit shall be allowed to sell electronic cigarettes. No new permit is required. If the tobacco retailer permit is renewed, at that time a tobacco and electronic cigarette retailer permit shall be required.

Section 13. CEQA. The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance will have a significant effect on the environment because the Ordinance only includes electronic cigarettes within existing City tobacco retailer permitting and smoking regulations, and existing state tobacco use laws. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

Section 14. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

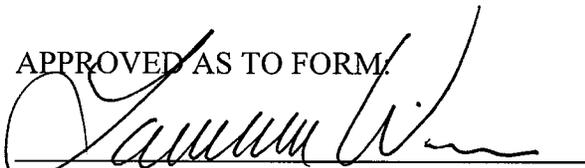
Section 15. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and the City Clerk's certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 16. Effective Date. This ordinance shall go into effect and be in full force and effect at 12:01 a.m. on June 1, 2014.

JOHN A. MIRISCH
Mayor of the City of
Beverly Hills, California

ATTEST:

BYRON POPE (SEAL)
City Clerk

APPROVED AS TO FORM:


LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY C. KOLIN
City Manager

EXHIBITS

Various online articles as referenced in the ordinance

[Home](#) [For Consumers](#) [Consumer Updates](#)

For Consumers

E-Cigarettes: Questions and Answers



[Get Consumer Updates by E-mail¹](#)

[Consumer Updates RSS Feed²](#)

Q: What are electronic cigarettes?

A: Electronic cigarettes are products designed to deliver nicotine or other substances to a user in the form of a vapor. Typically, they are composed of a rechargeable, battery-operated heating element, a replaceable cartridge that may contain nicotine or other chemicals, and an atomizer that, when heated, converts the contents of the cartridge into a vapor. This vapor can then be inhaled by the user. These products are often made to look like such products as cigarettes, cigars, and pipes. They are also sometimes made to look like everyday items such as pens and USB memory sticks, for people who wish to use the product without others noticing.

Q: What concerns does FDA have regarding electronic cigarettes?

A: FDA has not evaluated any e-cigarettes for safety or effectiveness. When FDA conducted limited laboratory studies of certain samples, FDA found significant quality issues that indicate that quality control processes used to manufacture these products are substandard or non-existent. FDA found that cartridges labeled as containing no nicotine contained nicotine and that three different electronic cigarette cartridges with the same label emitted a markedly different amount of nicotine with each puff. Experts have also raised concerns that the marketing of products such as e-cigarettes can increase nicotine addiction among young people and may lead kids to try other tobacco products. Visit FDA's Electronic Cigarettes webpage³ for additional information.

Q: What action did FDA take today on electronic cigarettes?

A: FDA issued warning letters to five distributors of electronic cigarettes for violations of the Federal Food, Drug, and Cosmetic Act (FDCA). These violations included unsubstantiated claims and poor manufacturing practices.

Q: Would it be possible for an electronic cigarette to receive FDA approval?

A: Yes. FDA issued a letter to the Electronic Cigarette Association inviting electronic cigarette firms to work in cooperation with the agency toward the goal of assuring that electronic cigarettes sold in the United States are lawfully marketed. The agency intends to regulate electronic cigarettes and related products in a manner consistent with its mission of protecting the public health.

Q: What products should people who want to quit smoking use?

A: There are a number of FDA-approved smoking cessation aids, including nicotine gum, nicotine skin patches, nicotine lozenges, nicotine oral inhaled products, and nicotine nasal spray that are available for smokers to use to reduce their dependence on nicotine. Free help is available to all smokers who want to quit at 1-800-QUIT-NOW or by visiting www.smokefree.gov⁴.

This article appears on FDA's Consumer Updates page⁵, which features the latest on all FDA-regulated products.

Posted September 9, 2010

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For More Information

- Family Smoking Prevention and Tobacco Control Act⁶
- FDA's Electronic Cigarettes web page⁷
- Letter to the Electronic Cigarette Association (PDF - 43KB)⁸

Related Consumer Updates

- Problems with Tobacco Products? Tell FDA⁹
- FDA Warns of Health Risks Posed by E-Cigarettes¹⁰
- "Light" Tobacco Products Pose Heavy Health Risks¹¹
- What Are You Smoking (or Chewing or Inhaling)?¹²
- Less Risky Tobacco Product? Only if the Science Says So¹³
- Why Do People Use Tobacco? Looking for Answers¹⁴

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Silver Spring, MD 20993
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Consumer Updates > E-Cigarettes: Questions and Answers

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News & Events

FDA NEWS RELEASE

For Immediate Release: July 22, 2009

Media Inquiries: Siobhan DeLancey, 301-796-4668, siobhan.delancey@fda.hhs.gov

Consumer Inquiries: 888-INFO-FDA

FDA and Public Health Experts Warn About Electronic Cigarettes

The U.S. Food and Drug Administration today announced that a laboratory analysis of electronic cigarette samples has found that they contain carcinogens and toxic chemicals such as diethylene glycol, an ingredient used in antifreeze.

Electronic cigarettes, also called "e-cigarettes," are battery-operated devices that generally contain cartridges filled with nicotine, flavor and other chemicals. The electronic cigarette turns nicotine, which is highly addictive, and other chemicals into a vapor that is inhaled by the user.

These products are marketed and sold to young people and are readily available online and in shopping malls. In addition, these products do not contain any health warnings comparable to FDA-approved nicotine replacement products or conventional cigarettes. They are also available in different flavors, such as chocolate and mint, which may appeal to young people.

Public health experts expressed concern that electronic cigarettes could increase nicotine addiction and tobacco use in young people. Jonathan Winickoff, M.D., chair of the American Academy of Pediatrics Tobacco Consortium and Jonathan Samet, M.D., director of the Institute for Global Health at the University of Southern California, joined Joshua Sharfstein, M.D., principal deputy commissioner of the FDA, and Matthew McKenna, M.D., director of the Office of Smoking and Health for the Centers for Disease Control and Prevention, to discuss the potential risks associated with the use of electronic cigarettes.

"The FDA is concerned about the safety of these products and how they are marketed to the public," said Margaret A. Hamburg, M.D., commissioner of food and drugs.

Because these products have not been submitted to the FDA for evaluation or approval, at this time the agency has no way of knowing, except for the limited testing it has performed, the levels of nicotine or the amounts or kinds of other chemicals that the various brands of these products deliver to the user.

The FDA's Division of Pharmaceutical Analysis analyzed the ingredients in a small sample of cartridges from two leading brands of electronic cigarettes. In one sample, the FDA's analyses detected diethylene glycol, a chemical used in antifreeze that is toxic to humans, and in several other samples, the FDA analyses detected carcinogens, including nitrosamines. These tests indicate that these products contained detectable levels of known carcinogens and toxic chemicals to which users could potentially be exposed.

The FDA has been examining and detaining shipments of e-cigarettes at the border and the products it has examined thus far meet the definition of a combination drug-device product under the Federal Food, Drug, and Cosmetic Act. The FDA has been challenged regarding its jurisdiction over certain e-cigarettes in a case currently pending in federal district court. The agency is also planning additional activities to address its concerns about these products.

Health care professionals and consumers may report serious adverse events (side effects) or product quality problems with the use of e-cigarettes to the FDA's MedWatch Adverse Event Reporting program either online, by regular mail, fax or phone.

- Online: <http://www.fda.gov/Safety/MedWatch/default.htm>¹
- Regular Mail: use postage-paid FDA form 3500 available at: <http://www.fda.gov/Safety/MedWatch/HowToReport/DownloadForms/default.htm>² and mail to MedWatch, 5600 Fishers Lane, Rockville, MD 20852-9787
- Fax: (800) FDA-0178

- Phone: (800) FDA-1088

#

For More Information

Electronic Cigarettes

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RSS Feed for FDA News Releases⁴ [what is RSS?⁵]

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4. <http://www.fda.gov/AboutFDA/ContactFDA/StayInformed/RSSFeeds/PressReleases/rss.xml>
5. <http://www.fda.gov/AboutFDA/ContactFDA/StayInformed/RSSFeeds/ucm144575.htm>

FDA Warns of Health Risks Posed by E-Cigarettes

The Food and Drug Administration (FDA) has joined other health experts to warn consumers about potential health risks associated with electronic cigarettes.

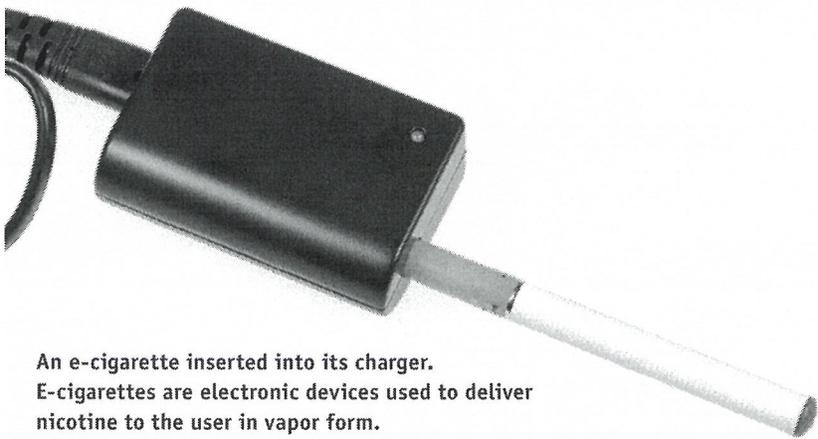
Also known as “e-cigarettes,” electronic cigarettes are battery-operated devices designed to look like and to be used in the same manner as conventional cigarettes.

Sold online and in many shopping malls, the devices generally contain cartridges filled with nicotine, flavor, and other chemicals. They turn nicotine, which is highly addictive, and other chemicals into a vapor that is inhaled by the user.

“The FDA is concerned about the safety of these products and how they are marketed to the public,” says Margaret A. Hamburg, M.D., commissioner of food and drugs.

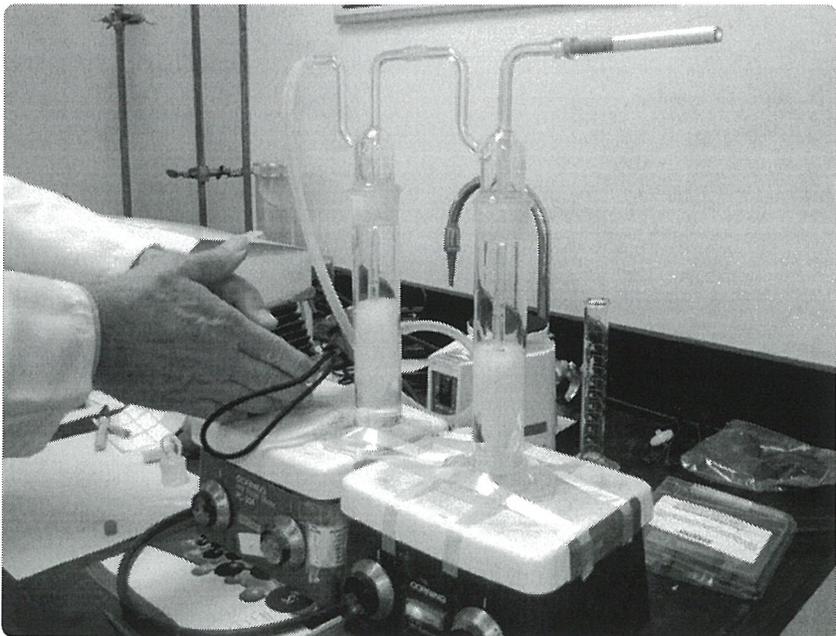
The agency is concerned that

- e-cigarettes can increase nicotine addiction among young people and may lead kids to try other tobacco products, including conventional cigarettes, which are known to cause disease and lead to premature death
- the products may contain ingredients that are known to be toxic to humans
- because clinical studies about the safety and efficacy of these products for their intended use have not been



An e-cigarette inserted into its charger. E-cigarettes are electronic devices used to deliver nicotine to the user in vapor form.

FDA



Air is drawn through an e-cigarette during a laboratory procedure that simulates a smoker taking a puff. The resulting vapor is tested.

FDA

submitted to FDA, consumers currently have no way of knowing

- whether e-cigarettes are safe for their intended use
- about what types or concentrations of potentially harmful chemicals, or what dose of nicotine they are inhaling when they use these products

The potential health risks posed by the use of e-cigarettes were addressed in a July 22, 2009, phone conference between Joshua M. Sharfstein, M.D., principal deputy commissioner of food and drugs; Jonathan Winickoff, M.D., chair of the American Academy of Pediatrics Tobacco Consortium; Jonathan Samet, M.D., director of the University of Southern California's Institute for Global Health; and Matthew T. McKenna, M.D., director of the Office on Smoking and Health at the national Centers for Disease Control and Prevention.

Conference participants stressed the importance of parents being aware of the health and marketing concerns associated with e-cigarettes. It was stated that parents may want to tell their children and teenagers that these products are not safe to use.

Of particular concern to parents is that e-cigarettes are sold without any legal age restrictions, and are available in different flavors (such as chocolate, strawberry and mint) which may appeal to young people.

In addition, the devices do not contain any health warnings comparable to FDA-approved nicotine replacement products or conventional cigarettes.

During the phone conference, which was shared with the news media, FDA announced findings from a laboratory analysis that indicates that electronic cigarettes expose users to harmful chemical ingredients.

FDA's Division of Pharmaceutical Analysis—part of the agency's Center for Drug Evaluation and Research—analyzed the ingredients in a small sample of cartridges from two leading brands of e-cigarette samples.



FDA

An FDA chemist uses a device set to the same temperature as an activated e-cigarette. This helps determine what might be inhaled by users of these products.

One sample was found to contain diethylene glycol, a toxic chemical used in antifreeze. Several other samples were found to contain carcinogens, including nitrosamines.

Agency Actions

FDA has been examining and detaining shipments of e-cigarettes at the border and has found that the products it has examined thus far meet the definition of a combination drug device product under the Federal Food, Drug, and Cosmetic Act.

The agency has been challenged regarding its jurisdiction over certain e-cigarettes in a case currently pending in federal district court.

FDA is planning additional activities to address its concerns about electronic cigarettes.

Meanwhile, health care professionals and consumers may report seri-

ous adverse events or product quality problems with the use of e-cigarettes to FDA through the MedWatch program, either online at www.fda.gov/Safety/MedWatch/default.htm or by phone at 1-800-FDA-1088.

This article appears on FDA's Consumer Updates page (www.fda.gov/ForConsumers/ConsumerUpdates/default.htm), which features the latest on all FDA-regulated products.

For More Information

FDA Press Release
www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm

E-Cigarettes: FDA Web page
www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm



WMA Statement on Electronic Cigarettes and Other Electronic Nicotine Delivery Systems

Adopted by the 63rd WMA General Assembly, Bangkok, Thailand, October 2012

INTRODUCTION

Electronic cigarettes (e-cigarettes) are products designed to deliver nicotine to a user in the form of a vapor. They are usually composed of a rechargeable battery-operated heating element, a replaceable cartridge that contains nicotine and/or other chemicals, and an atomizer that, when heated, turns the contents of the cartridge into a vapor (not smoke). This vapor is then inhaled by the user. These products are often made to look like other tobacco-derived products like cigarettes, cigars, and pipes. They can also be made to look like everyday items such as pens and USB memory sticks.

No standard definition of e-cigarettes exists and different manufacturers use different designs and different ingredients. Quality control processes used to manufacture these products are substandard or non-existent. Few studies have been done to analyze the level of nicotine delivered to the user and the composition of the vapor produced.

Manufacturers and marketers of e-cigarettes often claim that use of their products is a safe alternative to smoking, particularly since they do not produce carcinogenic smoke. However, no studies have been conducted to determine that the vapor is not carcinogenic, and there are other potential risks associated with these devices: Appeal to children, especially when flavors like strawberry or chocolate are added to the cartridges. E-cigarettes can increase nicotine addiction among young people and their use may lead to experimenting with other tobacco products.

Manufacturers and distributors mislead people into believing these devices are acceptable alternatives to scientifically proven cessation techniques, thus delaying actual smoking cessation. E-cigarettes are not comparable to scientifically-proven methods of smoking cessation. Their dosage, manufacture, and ingredients are not

consistent or clearly labelled. Brand stretching by using known cigarette logos is to be deplored.

Unknown amounts of nicotine are delivered to the user, and the level of absorption is unclear, leading to potentially toxic levels of nicotine in the system. These products may also contain other ingredients toxic to humans.

High potential of toxic exposure to nicotine by children, either by ingestion or dermal absorption, because the nicotine cartridges and refill liquid are readily available over the Internet and are not sold in child resistant packaging.

Due to the lack of rigorous chemical and animal studies, as well as clinical trials on commercially available e-cigarettes, neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established. Lack of product testing does not permit the conclusion that e-cigarettes do not produce any harmful products even if they produce fewer dangerous substances than conventional cigarettes.

Clinical testing, large population studies and full analyses of e-cigarette ingredients and manufacturing processes need to be conducted before their safety, viability and impacts can be determined as either clinical tools or as widely available effective alternatives to tobacco use.

RECOMMENDATIONS

That the manufacture and sale of e-cigarettes and other electronic nicotine delivery systems be subject to national regulatory bodies prior approval based on testing and research as either a new form of tobacco product or as a drug delivery device.

That the marketing of e-cigarettes and other electronic nicotine delivery systems as a valid method for smoking cessation must be based on evidence and must be approved by appropriate regulatory bodies based on safety and efficacy data.

That e-cigarettes and other electronic nicotine delivery systems be included in smoke free laws.

Physicians should inform their patients of the risks of using e-cigarettes even if regulatory authorities have not taken a position on the efficacy and safety of these products.

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