



AGENDA REPORT

Meeting Date: April 1, 2014

Item Number: F-5

To: Honorable Mayor & City Council

From: Michelle Tse, Senior Management Analyst

Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS REGULATING TOBACCO AND ELECTRONIC CIGARETTE USE IN OUTDOOR SERVICE LINES, FARMERS MARKETS, PUBLIC PLAZAS AND OUTDOOR PUBLIC GATHERING PLACES

Attachments: 1. Ordinance

RECOMMENDATION

Staff recommends that the City Council read the ordinance titled "AN ORDINANCE OF THE CITY OF BEVERLY HILLS REGULATING TOBACCO AND ELECTRONIC CIGARETTE USE IN OUTDOOR SERVICE LINES, FARMERS MARKETS, PUBLIC PLAZAS AND OUTDOOR PUBLIC GATHERING PLACES" by title only, waive further reading and introduce this ordinance.

INTRODUCTION

At the February 18, 2014 Study Session, the City Council directed the Health & Safety Commission ("Commission") and staff to proceed with drafting an ordinance to expand the City's smoking regulations to additionally prohibit tobacco and e-cigarette use in the following areas:

- **Plazas:** Any unenclosed public place, other than a sidewalk, that is paved and permanently set aside for pedestrian use, including, for example, a courtyard, plaza, or promenade. This includes both public and private plazas.
- **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 Gatherings:** An unenclosed area where members of the general public may attend, view or participate in a gathering such as a special event, parade or fair. Smoking would be permitted at a designated area located away from the public.

In addition, the City Council adopted an ordinance during the March 4, 2014 meeting to regulate the sales and consumption of electronic cigarettes similarly to City's tobacco regulations. This proposed ordinance to expand the City's regulations will apply to both tobacco products and electronic cigarettes.

DISCUSSION

The proposed expanded smoking regulations would address the existing gaps between State and local smoking and vaping regulations. The City has not received strong opposition on this matter.

When the working definitions to expand smoking regulations were first presented to the City Council, there were no issues raised to include outdoor service lines, Farmers Markets, and outdoor public gathering places. However, the City Council did raise questions regarding plazas, specifically private plazas. Staff further evaluated this issue. Staff consulted the Chamber of Commerce, businesses, and conducted site visits.

Examples of plazas on private property include the courtyards at the United Talent Agency, Maple Plaza building, and Platinum Equity building. Staff found out that some private property owners already designate and self-regulate their plazas to be "smoke-free" by placing "no smoking" signs and/or currently have designated smoking areas located away from the public, while others do not. Furthermore, some plazas are used as outdoor dining areas so the City's fresh air dining ordinance would apply in these instances.

Examples of public plazas include the Palm Court and the Civic Center Plaza located adjacent to City Hall, as well as the courtyards located at City-owned office buildings. Currently, there are no regulations that preclude smoking in these areas.

One of the negative attributes with prohibiting smoking and vaping at plazas is that it would force smokers and vapers onto the sidewalk, unless there is a designated smoking area or alley nearby.

The currently proposed ordinance would regulate both public and private plazas. However based on additional staff assessments, three options are being presented on how smoking/vaping can be regulated as it relates to plazas:

1. **Prohibit smoking in both public and private plazas.** This approach was originally presented to the City Council and the currently proposed ordinance includes both public and private plazas. By including private plazas as part of the

ordinance, the City would be required to enforce the regulation by issuing notices to the property owners whenever there is a reported violation, and working to ensure compliance; this is similar to the enforcement method used for the fresh air outdoor dining ordinance. The City would impose the regulation on private property and does not give businesses the option to accommodate employees and clients.

2. **Prohibit smoking in public plazas and allow smoking/vaping in designated smoking areas at private plazas.** This approach would allow the City to enforce the regulation and allow businesses to designate a smoking/vaping area away from the public on their property if needed, to accommodate employees and clients.
3. **Prohibit smoking in public plazas only.** Additionally, requests can be made to private property owners to self-regulate and self-designate their plazas as smoke-free and/or designate a smoking area away from the public. This would be a similar approach to requesting businesses to voluntarily stop selling tobacco and e-cigarette products in the City. However, property owners will need to self-regulate their plazas.

Staff is seeking City Council direction on which option to use and regulate smoking in plazas. The ordinance will be revised accordingly and scheduled to appear before Council at the next meeting. If adopted, the ordinance will be effective June 1, 2014, which would allow for outreach and public education efforts to be completed prior to the ordinance's effective date.

Public Education and Outreach Efforts

The Health and Safety Commission has reviewed and is recommending the following outreach activities to notify the community about the new regulations:

- Mailings to businesses and residents
- Social media messages
- Tent cards for businesses
- Informational materials on the City website, including signage artwork that can be downloaded and used by businesses
- Partnership with the Chamber of Commerce and Conference & Visitors Bureau
- Educational video
- Press releases
- "No Smoking" signage at City-owned public plazas

The intent is that certain elements of the outreach program, such as the postcard mailings and educational video, will cover both the e-cigarette regulations and expanded smoking regulations if adopted, as part of a comprehensive outreach campaign. These outreach efforts will be completed in-house by City staff.

FISCAL IMPACT

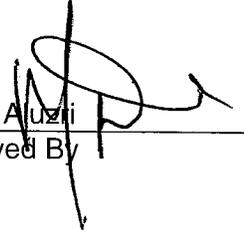
If the City Council approves the expanded smoking regulation ordinance, the Commission is recommending a public education and outreach campaign to inform the community about the changes to the City's smoking regulations. The original cost estimate of approximately \$20,000 for e-cigarette outreach will also cover outreach

expenses relating to the expanded smoking regulations. The expenses would be covered by existing FY13-14 Policy & Management department budget.

Don Rhoads
Finance Approval



Mahdi Aluzi
Approved By



Attachment 1

ORDINANCE NO. 14-O-

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
REGULATING TOBACCO AND ELECTRONIC CIGARETTE
USE IN OUTDOOR SERVICE LINES, FARMERS MARKETS,
PUBLIC PLAZAS AND OUTDOOR PUBLIC GATHERING
PLACES.

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

Section 1. On April 1, 2014, the City Council considered the introduction 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. Tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs; and

B. The Centers for Disease Control and Prevention have found that more than 480,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death;¹ and

C. The World Health Organization estimates that by 2030, tobacco will account for eight million deaths per year, making it the greatest cause of death worldwide;² and

D. The U.S. Environmental Protection Agency has found secondhand smoke to be a risk to public health and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen;³ and

¹ Centers for Disease Control and Prevention. *Tobacco-Related Mortality*. February 6, 2014.
http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality

² World Health Organization. *Tobacco Fact Sheet No. 339*. July 2013.
<http://www.who.int/mediacentre/factsheets/fs339/en/>

³ U.S. Environmental Protection Agency. *Health Effects of Exposure to Secondhand Smoke*.
<http://www.epa.gov/smokefree/healtheffects.html>

E. Secondhand smoke is responsible for an estimated 42,000 deaths among non-smokers each year in the United States, which includes 7,333 lung cancer deaths and 33,951 deaths due to heart disease;⁴ and

F. 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;⁵ and

G. 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 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

⁴ U.S. Department of Health and Human Services. *The Health Consequences of Smoking—50 Years of Progress. A Report of the Surgeon General*. 2014. http://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm

⁵ Yamin, C.K., Bitton A., and Bates, D.W. *E-Cigarettes: A Rapidly Growing Internet Phenomenon*. *Annals of Internal Medicine*, 153:607-609, 2010.

H. 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;⁶ and

I. 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;⁷ and

J. 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”;⁸ and

K. 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 types or concentrations of potentially harmful chemicals the products contain; and 3) what dose of nicotine the products deliver;⁹ and

L. The World Medical Association has determined that electronic cigarettes “are not comparable to scientifically-proven methods of smoking cessation” and that “neither their value

⁶ U.S. Food and Drug Administration. *E-Cigarette: Questions and Answers*. 2010. www.fda.gov/forconsumers/consumerupdates/ucm225210.htm

⁷ 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

⁸ 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.

⁹ U.S. Food and Drug Administration. *FDA Warns Of Health Risk Posed By E-Cigarettes*. 2009. www.fda.gov/downloads/forconsumers/consumerupdates/UCM173430.pdf

as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established”;¹⁰ and

M. 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

N. Between 2010 and 2011, rates of both awareness and use of unregulated electronic cigarettes by adults increased significantly;¹¹ and

O. 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

P. 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”;¹² and

Q. 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

¹⁰ 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])

¹¹ 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*.

¹² McMillen, R., Maduka, J., and Winickoff, .J. “Use of Emerging Tobacco Products in the United States.” *Journal of Environmental and Public Health*.

R. 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

S. 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 adopted an ordinance to regulate tobacco retailers through an annual permitting process (BHMC Title 4, Chapter 2, Section 2101, *et seq*). On March 4, 2014, the City Council adopted an ordinance to regulate electronic cigarette retailers just as the City regulates cigarette retailers, and to regulate electronic cigarettes in a manner similar to tobacco.

Section 2. The City Council hereby renumbers Section 5-4-12 (“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 5-4-16 and amends it to read as follows:

“5-4-16: 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 where smoking is prohibited by the provisions of this chapter.

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

D. Punishment under this Municipal Code 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 Municipal Code are cumulative and in addition to any other remedies available at law or in equity.”

Section 3. The City Council hereby adds new Section 5-4-12 (“Prohibition of Smoking in Outdoor Service Lines”) to Chapter 4 (“Smoking Regulations”) of Title 5 (“Public Health, Welfare, and Sanitation”) of the Beverly Hills Municipal Code to read as follows:

“5-4-12: Prohibition of Smoking in Outdoor Service Lines:

Smoking is prohibited in all outdoor service lines. For purposes of this section, an outdoor service line shall mean 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 takeout counters.”

Section 4. The City Council hereby adds new Section 5-4-13 (“Prohibition of Smoking in Farmers Markets”) to Chapter 4 (“Smoking Regulations”) of Title 5 (“Public Health, Welfare, and Sanitation”) of the Beverly Hills Municipal Code to read as follows:

“5-4-13: Prohibition of Smoking in Farmers Markets:

Smoking is prohibited in all farmers markets. For purposes of this section, a farmers market shall mean 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.”

Section 5. The City Council hereby adds new Section 5-4-14 (“Prohibition of Smoking in Public and Private Plazas”) to Chapter 4 (“Smoking Regulations”) of Title 5 (“Public Health, Welfare, and Sanitation”) of the Beverly Hills Municipal Code to read as follows:

“5-4-14: Prohibition of Smoking in Public and Private Plazas:

Smoking is prohibited in all public and private plazas. For purposes of this section, a public and private plaza shall mean any unenclosed place, other than a sidewalk, that is paved and permanently set aside for pedestrian use, including, for example, a courtyard, plaza or promenade.”

Section 6. The City Council hereby adds new Section 5-4-15 (“Prohibition of Smoking at Outdoor Public Gatherings”) of Chapter 4 (“Smoking Regulations”) of Title 5 (“Public Health, Welfare, and Sanitation”) of the Beverly Hills Municipal Code to read as follows:

“5-4-15: Prohibition of Smoking at Outdoor Public Gatherings:

Smoking is prohibited at all outdoor public gatherings, except in areas specifically set aside for smoking and designated by posted signage. For purposes of this section, an outdoor public gathering shall mean an unenclosed area where members of the general public are attending, viewing or participating in a group activity, such as a special event, parade or fair.”

Section 7. 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 adverse effect on the environment because the Ordinance only expands upon existing cigarette and electronic cigarette use restrictions. 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 8. 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 9. 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 10. Effective Date. This ordinance shall go into effect and be in full force and effect at 12:01 a.m. on June 1, 2014.

LILI BOSSE
Mayor of the City of
Beverly Hills, California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

fw  (SK)

LAURENCE S. WIENER
City Attorney

JEFFREY C. KOLIN
City Manager