



# CITY OF CARLSBAD – AGENDA BILL

AB#	21,446	PROHIBITION OF ELECTRONIC CIGARETTES WHEREVER SMOKING IS PROHIBITED	DEPT. DIRECTOR	
MTG.	12/3/13		CITY ATTY.	CB
DEPT.	CA		CITY MGR.	MA

**RECOMMENDED ACTION:**

Introduce ordinance CS-237 amending Sections 6.14.020 and 11.32.110 of the Carlsbad Municipal Code and adding Chapter 6.18 to the Carlsbad Municipal Code to prohibit the use of electronic cigarettes wherever smoking is prohibited.

**ITEM EXPLANATION:**

Electronic cigarettes or “e-cigarettes” are battery-powered devices which allow the user to inhale water vapor without producing fire, smoke, ash or carbon monoxide. They are designed to resemble traditional cigarettes and may contain nicotine, other chemicals and flavoring but do not contain tobacco. E-cigarettes are becoming increasingly popular.

Currently there is very little federal or state regulation or control of e-cigarettes. Most laws and regulations currently relate to the use of tobacco or the smoke generated from traditional tobacco related products. E-cigarettes produce water vapor, not smoke and do not contain tobacco. The overall health risks and benefits of e-cigarettes have not been widely studied and are the topic of some debate. Proponents of e-cigarettes generally argue that the use of e-cigarettes aids smokers in quitting since they are able to inhale nicotine through a cigarette-like device and that the adverse health effects of smoking come from the tobacco plant which is not present in e-cigarettes. This claim has not been fully substantiated by scientific studies.

Despite the potential use of e-cigarettes as an aid to quitting smoking, there are significant health concerns related to e-cigarettes. In particular, a limited analysis by the Food and Drug Administration found that e-cigarettes do contain carcinogens, including nitrosamines as well as toxic chemicals such as diethylene glycol (<http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm>). E-cigarettes may also be particularly appealing to young consumers due to the added colors and candy-like flavoring contained in many e-cigarettes. Consequently, e-cigarettes may serve as an introduction to smoking and nicotine addiction. Although e-cigarettes do not produce the same smoke as traditional cigarettes, they do produce a cloud of vapors containing unknown substances and sometimes produce an unpleasant odor. The possible health effects of bystanders breathing or absorbing these vapors through their skin is unknown.

The federal government and California legislature are both in the process of developing laws and regulations related to e-cigarettes. In the meantime, enforcement of various State laws and City ordinances which prohibit smoking is made more complicated since e-cigarettes can resemble tobacco

DEPARTMENT CONTACT: Celia Brewer 760-434-2891 attorney@carlsbadca.gov

<b>FOR CLERK USE.</b> COUNCIL ACTION:	APPROVED	<input checked="" type="checkbox"/>	CONTINUED TO DATE SPECIFIC	<input type="checkbox"/>	_____
	DENIED	<input type="checkbox"/>	CONTINUED TO DATE UNKNOWN	<input type="checkbox"/>	
	CONTINUED	<input type="checkbox"/>	RETURNED TO STAFF	<input type="checkbox"/>	
	WITHDRAWN	<input type="checkbox"/>	OTHER – SEE MINUTES	<input type="checkbox"/>	
	AMENDED	<input type="checkbox"/>	REPORT RECEIVED	<input type="checkbox"/>	

cigarettes. Allowing the use of e-cigarettes in locations where traditional cigarettes are otherwise banned may lead to confusion and uncertainty. In order to aid enforcement of the City's bans on smoking and further promote a smoke-free environment for youth in Carlsbad, it is recommended that the use of e-cigarettes be banned in any location where any federal, state or City law currently bans smoking.

**FISCAL IMPACT:**

There would be no fiscal impact of implementing a prohibition on the use of e-cigarettes where smoking is banned as the City is already enforcing the smoking ban.

**ENVIRONMENTAL IMPACT:**

Pursuant to Public Resources Code Section 21065, this action does not constitute a "project" within the meaning of CEQA in that it has no potential to cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and therefore does not require environmental review.

**EXHIBITS:**

1. Ordinance CS-237
2. Redline of Carlsbad Municipal Code sections 6.14.020 and 11.32.110

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ORDINANCE NO. CS-237

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, AMENDING SECTIONS 6.14.020 AND 11.32.110 OF THE CARLSBAD MUNICIPAL CODE AND ADDING CHAPTER 6.18 TO THE CARLSBAD MUNICIPAL CODE TO PROHIBIT THE USE OF ELECTRONIC CIGARETTES WHEREVER SMOKING IS PROHIBITED

WHEREAS, electronic cigarettes or "e-cigarettes" are designed to resemble traditional cigarettes but do not contain tobacco; and

WHEREAS, there is currently minimal federal or state regulation or control of the use e-cigarettes; and

WHEREAS, there are significant health concerns regarding the use of e-cigarettes; and

WHEREAS, the use of e-cigarettes in locations where other types of cigarettes, pipes and cigars are prohibited may cause confusion and uncertainty and make it more difficult to enforce bans on smoking; and

WHEREAS, the City Council of the City of Carlsbad wishes to promote a smoke-free environment for youth in the City of Carlsbad.

NOW, THEREFORE, the City Council of the City of Carlsbad ordains as follows that:

SECTION 1: That section 6.14.020 of the Carlsbad Municipal Code is amended to read as follows:

**6.14.020 Definitions.**

(a) "Enclosed dining area" as defined in this chapter shall mean an area enclosed by a roof and walls with appropriate openings for ingress and egress.

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(b) "Public place" as defined in this chapter shall mean any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.

(c) "Reasonable distance" as defined in this chapter shall mean a distance of twenty feet in any direction from an area in which smoking is prohibited.

(d) "Smoke" or "smoking" as defined in this chapter shall mean and include (1) the carrying of a lighted pipe, or lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar or cigarette of any kind; or (2) the use of an electronic cigarette as defined in California Health & Safety Code Section 119405 ("e-cigarette") or a similar device intended to emulate smoking, which permits a person to inhale vapors or mists that may or may not include nicotine.

(e) "Unenclosed dining area" as defined in this chapter shall mean any dining area, which is not an enclosed dining area, including streets and sidewalks, which is available to or customarily used by the general public, an employee, or any invitee, and which is designed, established, or regularly used for consuming food or drink.

SECTION 2: That Title 6 of the Carlsbad Municipal Code is amended with the addition of Chapter 6.18 to read as follows:

**CHAPTER 6.18**

**ELECTRONIC CIGARETTES**

**6.18.010 Electronic Cigarettes—Prohibited wherever smoking is prohibited.**

In any location where the smoking of pipes, cigars or cigarettes is prohibited by any federal, state or local law, it shall also be unlawful for any person to use an electronic cigarette as defined in California Health & Safety Code Section 119405 ("e-cigarette") or a similar device intended to emulate smoking, which permits a person to inhale vapors or mists that may or may not include nicotine. The provisions of this chapter do not apply in any circumstance where federal or state law regulates smoking or the use of e-cigarettes, if the federal or state law is more restrictive.

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SECTION 3: That section 11.32.110 of the Carlsbad Municipal Code is amended to read as follows:

**11.32.110 Smoking in public parks and beaches—Prohibited.**

It is unlawful for any person to smoke, including emitting or exhaling the fumes of any pipe, cigar, cigarette or any other lighted smoking equipment used for burning any tobacco product, weed or plant, or carry or hold a lighted pipe, cigar, cigarette or other lighted smoking products used for burning any tobacco product, weed or plant in a public park or public beach except in areas designated by the city manager, and indicated by signage, as smoking areas. In any location where smoking is prohibited, it shall also be unlawful for any person to use an electronic cigarette as defined in California Health & Safety Code Section 119405 ("e-cigarette") or a similar device intended to emulate smoking, which permits a person to inhale vapors or mists that may or may not include nicotine. The provisions of this chapter do not apply in any circumstance where federal or state law regulates smoking or the use of e-cigarettes, if the federal or state law is more restrictive.

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EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption; and the city clerk shall certify the adoption of this ordinance and cause the full text of the ordinance or a summary of the ordinance prepared by the City Attorney to be published at least once in a newspaper of general circulation in the City of Carlsbad within fifteen days after its adoption.

INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City Council on the 3rd day of December, 2013, and thereafter

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad on the \_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote, to wit:

- AYES:
- NOES:
- ABSENT:

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
CELIA BREWER, City Attorney

\_\_\_\_\_  
MATT HALL, Mayor

ATTEST:

\_\_\_\_\_  
BARBARA ENGLESON, City Clerk

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**6.14.020 Definitions.**

- (a) "Enclosed dining area" as defined in this chapter shall mean an area enclosed by a roof and walls with appropriate openings for ingress and egress.
- (b) "Public place" as defined in this chapter shall mean any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.
- (c) "Reasonable distance" as defined in this chapter shall mean a distance of twenty feet in any direction from an area in which smoking is prohibited.
- (d) "Smoke" or "smoking" as defined in this chapter shall mean and include (1) the carrying of a lighted pipe, or lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar or cigarette of any kind; or (2) the use of an electronic cigarette as defined in California Health & Safety Code Section 119405 ("e-cigarette") or a similar device intended to emulate smoking, which permits a person to inhale vapors or mists that may or may not include nicotine.
- (e) "Unenclosed dining area" as defined in this chapter shall mean any dining area, which is not an enclosed dining area, including streets and sidewalks, which is available to or customarily used by the general public, an employee, or any invitee, and which is designed, established, or regularly used for consuming food or drink.

**11.32.110 Smoking in public parks and beaches—Prohibited.**

It is unlawful for any person to smoke, including emitting or exhaling the fumes of any pipe, cigar, cigarette or any other lighted smoking equipment used for burning any tobacco product, weed or plant, or carry or hold a lighted pipe, cigar, cigarette or other lighted smoking products used for burning any tobacco product, weed or plant in a public park or public beach except in areas designated by the city manager, and indicated by signage, as smoking areas. In any location where smoking is prohibited, it shall also be unlawful for any person to use an electronic cigarette as defined in California Health & Safety Code Section 119405 ("e-cigarette") or a similar device intended to emulate smoking, which permits a person to inhale vapors or mists that may or may not include nicotine. The provisions of this chapter do not apply in any circumstance where federal or state law regulates smoking or the use of e-cigarettes, if the federal or state law is more restrictive.



REGULATION OF ELECTRONIC CIGARETTES

Item # 7

Date: 12/3/13

**Distribution:**

City Clerk	<u>✓</u>
Asst. City Clerk	<u>✓</u>
Deputy Clerk	<u>✓</u>
Book	<u>✓</u>

**Background**

E-cigarettes are battery-powered devices which allow the user to inhale water vapor without producing fire, smoke, ash or carbon monoxide. They are designed to resemble traditional cigarettes and may contain nicotine, other chemicals and flavoring. E-cigarettes are one of a variety of non-cigarette tobacco-related products available today. Other such products include:

- **Dissolvable Tobacco Products:** Flavored, smokeless tobacco products which resemble candy and dissolve in the users mouth.
- **Snus (rhymes with "moose"):** A spit-free form of snuff which is contained in a small pouch similar to a tea bag that the user places between his/her gum and lower lip.
- **Water Pipes, "Hookahs" or "Sheishas":** Devices in which tobacco or other substances are heated, the smoke passes through water and is then drawn through a rubber hose to a mouthpiece and inhaled by the user. Although hookahs have been used for centuries in the Middle East they have recently been gaining popularity in the United States.

Many of the laws written specifically to control the sale and use of traditional tobacco products do not apply to e-cigarettes or these other tobacco-related products even though there are health concerns related to their use. This memo provides an overview of some of the legal issues related to e-cigarettes as well different laws and regulations which have been implemented at a local, state and federal level to address them.

There is no clear consensus on the degree of the potential health risks associated with e-cigarettes. The Food and Drug Administration ("FDA") has raised concerns regarding the quality of e-cigarettes as it has found inconsistent levels of nicotine in the products. Of particular concern to anti-smoking advocates is that e-cigarettes are more appealing and accessible to youth and can be a gateway to smoking and cause nicotine addiction. E-cigarette proponents, however, argue that the cancer risk from inhaling nicotine in water vapor is nonexistent or at least significantly less than the risk from smoking tobacco and that e-cigarettes can be an aid for people attempting to quit smoking.



**City Attorney**

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### **Federal Regulation of E-Cigarettes**

In 2009 Congress passed the Tobacco Control Act ("TCA") which provided the FDA with authority to regulate tobacco products. It defines tobacco products to include all consumption products derived from tobacco except for those that qualify as drugs, devices or drug-device combinations which are more strictly regulated by the FDA under the Federal Food, Drug and Cosmetic Act ("FDCA"). Initially the FDA attempted to regulate e-cigarettes according to the stricter drug/device provisions of the FDCA which is how nicotine patches and gum are currently regulated. An e-cigarette distributor successfully challenged the FDA in court and the court found that e-cigarettes could be regulated as tobacco products and "are not drugs or devices" unless specifically marketed for therapeutic purposes, such as purporting to help people quit smoking. The FDA has chosen not to appeal that decision and is regulating e-cigarettes accordingly. The FDA has not officially approved any e-cigarette and does not recommend e-cigarettes as an aid to quit smoking.

### **California Statewide Regulation of E-Cigarettes**

Most of the laws in California which regulate smoking and the sale of cigarettes relate specifically to tobacco products and were not written to address e-cigarettes. However, California does have some laws which regulate e-cigarettes on a statewide level. Health & Safety Code § 119405 prohibits the sale of electronic cigarettes to minors. California Education Code § 48601 prohibits any school in California from permitting its students to use nicotine products while on campus or attending school-sponsored activities. The California Attorney General has also entered into settlement agreements with two e-cigarette manufacturers in which those manufacturers agreed to make their websites age-restricted, not to use flavors appealing to young people, not to make misleading claims about their products and to place warning labels on their products.

Currently the State Legislature is considering SB 648 which proposes to prohibit e-cigarettes anywhere in the state where smoking is banned but it has not yet passed a law to that effect.

### **Other States and Local Jurisdictions Regulation of E-Cigarettes**

Beginning with the state of New Jersey in 2010, several jurisdictions outside of California have banned the sale of e-cigarettes to minors and the use of e-cigarettes in public places similar to bans in place for smoking regular cigarettes or other tobacco products. Jurisdictions which have such bans in place include: the state of Utah, several cities and

counties in the states of New York, Massachusetts, Georgia, Washington and Kentucky, and all Air Force military installations.

Within California several local jurisdictions have also considered or instituted bans on the use of e-cigarettes anywhere where smoking is currently banned. Jurisdictions where e-cigarettes are banned anywhere cigarettes are banned include: San Francisco, Petaluma, Contra Costa County, Marin County, and San Francisco International Airport. Petaluma's smoking ordinance, for example, defines smoke to include "vapor released by the ignition of e-cigarettes" and smoking to include possession of "an operating e-cigarette." The ordinance then bans "smoking" in certain areas. Petaluma's ordinance was passed in January 2013 and has not been challenged in the courts. Carlsbad's ordinances related to smoking do not currently include e-cigarettes but could be amended to incorporate a prohibition on the use of e-cigarettes anywhere where smoking tobacco is currently prohibited.

### **Other Methods to Regulate E-Cigarettes**

The most frequent method of regulating e-cigarettes appears to be instituting a ban on the use of e-cigarettes anywhere smoking is banned. There are, however, additional avenues of regulation which could be utilized to regulate e-cigarettes.

#### *Taxation*

E-cigarettes are significantly less expensive than traditional tobacco cigarettes because e-cigarettes can be sold individually rather than in packs and are not subject to all of the same taxes. The lower cost makes e-cigarettes more appealing and accessible to young consumers. Lobbying the state and federal government to institute taxes on e-cigarettes or amend current tax laws to include e-cigarettes with other tobacco products could raise the cost and make them less accessible to young people.

#### *Flavoring*

E-cigarettes are frequently sold in a variety of flavors including fruit and candy flavors which can increase their appeal to young people. The TCA already bans most flavoring from being added to traditional tobacco cigarettes. Although the federal government has the sole authority to regulate tobacco products, the City could place restrictions on the sale of flavored e-cigarettes. Courts in New York and Rhode Island have held that local governments may enact laws restricting the sale of flavored non-cigarette tobacco products, such as cigars and chewing tobacco. See *U.S. Smokeless Tobacco Mfr. Co. v. City of New York*, 708 F.3d 428 (2d Cir. 2013); *Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence*, No. 12-96 (D.R.I. Dec. 10, 2012), appeal docketed, No. 13-1053 (1st Cir. Jan. 10, 2013). Both courts found that the local laws were not preempted by the

TCA. Tobacco manufacturers and distributors are currently appealing the Rhode Island decision.

#### *Warning Signs*

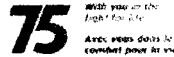
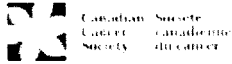
The TCA does not require any warning labels regarding the health risks associated with e-cigarettes. Local jurisdictions could require the posting of health warning signs wherever e-cigarettes are sold. An ordinance to this effect, however, would need to be carefully drafted to comply with the First Amendment.

#### *Marketing and Sale Restrictions*

State and local jurisdictions are preempted by Federal law from regulating traditional cigarette advertising. Local jurisdictions could, however, place restrictions on the sale and advertising of e-cigarettes and other non-cigarette tobacco-related products. Although the Supreme Court rejected a series of broad regulations on tobacco advertising in Massachusetts on First Amendment grounds, it did suggest that regulations targeting “particular advertising and promotion practices that appeal to youth” could be acceptable. *Lorillard Tobacco Co. v. Reilly* (2001) 533 U.S. 525, 563. In the same case, the Supreme Court found that restrictions on the sale of tobacco-related products which bar the use of self-service displays and require that tobacco-related products be placed out of the reach of consumers in a location accessible only to salespersons were valid regulations which serve the purpose of preventing access to tobacco by minors. Similar sales restrictions may also be effective for e-cigarettes.

#### *Outright Ban*

A local jurisdiction could also institute a complete ban on the sale of e-cigarettes based on the poorly understood health effects, potentially addictive nature and minimal federal regulation of these products. No other jurisdiction appears to have attempted this type of ban with regard to e-cigarettes but it has been done for other tobacco products such as *bidis* (a cigarette wrapped in a tendu leaf typically available in candylime flavors) the sale of which is currently banned in California (Penal Code §308.1) and many other states.



**PRESS RELEASE**

**The Canadian Cancer Society’s lab tests and exclusive survey:  
Electronic cigarettes have misleading labels and are gaining popularity among youths**

**Montreal, September 11, 2013** — The Canadian Cancer Society (CCS) – Quebec Division is taking advantage of the issue of an electronic cigarette advisory today by the *Institut national de la santé publique du Québec* to make public tests it commissioned from the *Université de Montréal’s* Regional Centre for Mass Spectrometry. Of the 13 products tested, nine were found to have considerable irregularities and only four conformed to their labels. Even more worrying is that products labelled as “nicotine-free” hardly passed the test because two-thirds (6/9) were in fact found to contain it.

**Report on the presence of nicotine in 13 electronic cigarette brands\***

Type	Brand	Tested positive for nicotine	Misleading label
<b>Labelled as nicotine-free</b>	EVO		
	<b>Smoke NV menthol</b>	<b>x</b>	<b>x</b>
	<b>Esha</b>	<b>x</b>	<b>x</b>
	<b>Vapur</b>	<b>(x)**</b>	<b>x</b>
	Ezee cig		
	Smoke NV disposable		
	<b>Vapo-T</b>	<b>x</b>	<b>x</b>
	<b>Mini cigarette- café</b>	<b>x</b>	<b>x</b>
	<b>Mini cigarette- Marlbo</b>	<b>x</b>	<b>x</b>
<b>Labelled as containing nicotine</b>	<b>SlimLady</b>	<b>x</b>	<b>x</b>
	<b>CigBull soft- 300 puffs</b>	<b>x</b>	<b>x</b>
	CigBull soft – 800 puffs	<b>x</b>	
	<b>Kit decouverte (EC508)</b>	<b>x</b>	<b>x</b>

\* Lab tests carried out by the Université de Montréal’s Regional Centre for Mass Spectrometry. Report dated January 15, 2013.

\*\* traces of nicotine

In addition, a CCS-commissioned survey conducted by Leger Marketing on a sample of 2,000 respondents has established beyond doubt that the popularity of electronic cigarettes is soaring among youths. Nearly a quarter of 18-24 year olds have used electronic cigarettes during the course of the past year, while in the general population, it is only 9%. A proportion as high as 60% of youths report having used them for fun or out of curiosity, with the desire to quit smoking coming far behind. “These figures explode the myth that electronic cigarettes are made for smoking cessation. At the CCS, we are extremely concerned about a gadget that seems so attractive to youths, whether smokers or not. It is critical to better regulate this product,” says Mélanie Champagne, Director, Public Issues, CCS – Quebec Division.

So, the CCS wants the government to include a provision to regulate electronic cigarettes in the *Tobacco Act* to:

- Ban their sale to minors
- Control their advertising/promotion
- Regulate product ingredients and emissions
- Ban electronic cigarettes from being smoked in public places where tobacco is not allowed

"Manufacturers and distributors claim that these new products contain no nicotine and that they only produce a harmless vapour, but we see clearly that it's not true," says Ms. Champagne. "Nobody knows the exact composition of these products. And even if we don't have exact figures yet, many parents tell us that their children are trying out these products for fun, to imitate adults."

Much to the disappointment of tobacco companies, which are buying up small electronic cigarette manufacturers one by one, these products pose a health risk. Besides, researchers and public health organizations do not consider electronic cigarettes a tobacco replacement product for smoking cessation. According to the Health and Social Services Ministry website, "Products containing nicotine or claiming to be a quit smoking aid must be licensed to be sold in Canada. Until now, no electronic cigarette has received such licensing."

#### **E-cigarettes in Quebec: it's the Far West!**

- Non-regulated and non-tested, they are sold in very accessible shops like Dollarama, convenience stores, and pharmacies
  - Most of the time, they are flavoured to make them more attractive to youth
  - Their long-term effects are not known and no recognized and independent health body has recommended them as an effective quit smoking aid
  - They are highly publicized and "renormalize" smoking, which risks diminishing the gains made in the fight against tobacco

For 75 years, the Canadian Cancer Society has been with Canadians in the fight for life. All these years, we have been relentless in our commitment to prevent cancer, fund research, and support people touched by the disease. From this foundation, we will work with Canadians to change cancer forever so fewer Canadians are diagnosed with the disease and more survive. To know more about cancer, visit our website at [cancer.ca](http://cancer.ca) or call our Cancer Information Service at **1 888 939-3333**.

Information:

Mélanie Champagne, Director, Public Issues  
Canadian Cancer Society – Quebec Division  
[mchampagne@quebec.cancer.ca](mailto:mchampagne@quebec.cancer.ca)  
514 651-1470

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*The information that the Canadian Cancer Society provides does not replace your relationship with your doctor. The information is for your general use, so be sure to talk to a qualified healthcare professional before making medical decisions or if you have questions about your health. We do our best to make sure that the information we provide is accurate and reliable but cannot guarantee that it is error-free or complete. The Canadian Cancer Society is not responsible for the quality of the information or services provided by other organizations and mentioned on [cancer.ca](http://cancer.ca), nor do we endorse any service, product, treatment or therapy.*



## E-Cigarettes

On April 25, 2011, the U.S. Food and Drug Administration (FDA) announced that e-cigarettes will be regulated as tobacco products unless the products are marketed as therapeutic, making a claim that e-cigarettes can help someone quit smoking for example. While FDA made the initial announcement that it intends to regulate most e-cigarettes as tobacco products, much more research is needed about the potential health effects of e-cigarettes. The American Lung Association urges the Obama Administration and FDA to move forward without delay to begin overseeing these products to determine the public health impacts of their use.

### What is an E-Cigarette?

- According to the FDA, electronic cigarettes, or e-cigarettes, are devices that allow users to inhale a vapor containing nicotine or other substances.<sup>1</sup>
- Unlike traditional cigarettes, e-cigarettes are generally battery-operated and use an atomizer to heat a refillable cartridge that then releases a chemical-filled vapor.
- E-cigarettes are often available in flavors that may appeal to children and teens, including cotton candy, chocolate, strawberry and mint.<sup>2</sup>

### What are the Health Effects of E-Cigarettes?

- The health consequences of the use of e-cigarettes and the vapor that they give off are unknown. There is currently no scientific evidence establishing the safety of e-cigarettes. No brand of e-cigarettes has been submitted to the FDA for evaluation of their safety.<sup>3</sup>
- In initial lab tests conducted in 2009, FDA found detectable levels of toxic cancer-causing chemicals, including an ingredient used in anti-freeze, in two leading brands of e-cigarettes and 18 various cartridges.<sup>4</sup> The lab tests also found that cartridges labeled as nicotine-free had traceable levels of nicotine.
- There is no evidence that shows the vapors emitted by e-cigarettes are safe for non-users to inhale. The use of e-cigarettes in public places and workplaces may also complicate efforts to enforce and comply with smokefree laws. Because e-cigarettes have not been thoroughly evaluated, the American Lung Association supports prohibiting the use of e-cigarettes under smokefree laws.
- Further research is needed to understand whether e-cigarettes are marketed at kids, whether current smokers are switching to these products instead of quitting or are using them in conjunction with regular cigarettes.

### Can E-Cigarettes Help Someone Quit Smoking?

- The FDA has not approved e-cigarettes as an effective method to help smokers quit. The U.S. Public Health Service has found that the seven therapies approved by the U.S. Food and Drug Administration in combination with individual, group or phone cessation counseling is the most effective way to help smokers quit. Until and unless the FDA approves a specific e-cigarette for use as a tobacco cessation aid, the American Lung Association does not support any direct or implied claims that e-cigarettes help smokers quit.

June 2013

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<sup>1</sup> U.S. Food and Drug Administration. "E-Cigarettes: Questions and Answers." September 9, 2010. Available at:

<http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm225210.htm>.

<sup>2</sup> U.S. Food and Drug Administration. "FDA Warns of Health Risks Posed by E-Cigarettes." July 23, 2009. Available at:

<http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm173401.htm>.

<sup>3</sup> U.S. Food and Drug Administration. "FDA and Public Health Experts Warn About Electronic Cigarettes." July 22, 2009. Available at:

<http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2009/ucm173222.htm>.

<sup>4</sup> U.S. Food and Drug Administration. "Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA." July 22, 2009. Available at:

<http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm>.



Centers for Disease Control and Prevention

CDC 24/7: Saving Lives. Protecting People.™

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## Press Release

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Embargoed Until: Thursday, Sept. 5; 1:00 p.m. ET

Contact: [Media Relations \(http://www.cdc.gov/media\)](http://www.cdc.gov/media)

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### 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.fda.gov/tobaccoproducts/default.htm)   [\(http://www.cdc.gov/Other/disclaimer.html\)](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) (<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](http://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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## POSITION STATEMENT ELECTRONIC CIGARETTES (E-CIGARETTES)

The National Association of Local Boards of Health (NALBOH) supports new interventions that are designed to help smokers quit. Currently, little scientific evidence is available to illustrate that electronic cigarettes (e-cigarettes) are effective cessation devices. Additionally, in 2010 a court ruled that e-cigarettes could not be regulated as drugs or drug delivery devices; this is how other cessation products such as nicotine gum and nicotine replacement therapies are regulated.<sup>1</sup>

E-cigarettes are battery-operated products designed to deliver nicotine, flavor (candy-, mint-, menthol-, and fruit-flavored), and other chemicals through a vapor inhaled by the user.<sup>2</sup> The e-cigarette typically has an LED light to mimic the glow of a burning cigarette, a lithium-ion rechargeable battery, an atomizer to vaporize a nicotine solution, and a cartridge filled with liquid nicotine or other chemicals/flavors.<sup>1</sup> Most e-cigarettes are designed to resemble other tobacco products including conventional cigarettes, cigars, and pipes. Some e-cigarettes are even designed to appear as everyday objects including pens and USB memory sticks.<sup>2</sup> A recent survey conducted by the Centers for Disease Control and Prevention estimates the use of e-cigarettes among Americans has quadrupled from 2009 to 2010, resulting in nearly 3 million current adult users.<sup>3</sup>

E-cigarettes were first marketed in China in 2004 and have since become a worldwide product largely due to Internet sales.<sup>4</sup> In addition to online sales, e-cigarettes are also available for sale at American mall kiosks, gas stations, and novelty stores. Both of these sales venues allow youth to breach current restriction laws and purchase the product more readily.<sup>4, 5</sup> Because e-cigarettes are not taxed as tobacco products, they may be particularly attractive to price-sensitive youth.

Manufacturers of e-cigarettes claim the product is safer, more convenient, and more affordable than current tobacco products. However, the science behind these safety claims is limited. In fact, public health authorities generally agree on the need for more clinical studies on these products. At least one study has found that e-cigarette users inhale as much nicotine as smokers of traditional cigarettes.<sup>6</sup> Also, the Food and Drug Administration (FDA), the federal agency responsible for regulating tobacco products, reported its laboratory analysis of e-cigarettes indicated carcinogens (cancer-causing agents) and toxic chemicals such as diethylene glycol (ingredient found in antifreeze).<sup>7</sup> The safety of the product is also dependent on the amount of nicotine inhaled in each "puff"<sup>7</sup> and the quality/components of the cartridge. Due to the current design and regulation of the e-cigarette, users can refill their own cartridges with higher doses of nicotine or other harmful substances including marijuana hash oil.<sup>8</sup>

Due to the similar appearances between e-cigarettes and traditional tobacco products, it can also be difficult to quickly decipher between the products in public environments. This challenge may make it more difficult for business owners and officials to enforce new or existing smoke-free air laws.<sup>9</sup> People may become confused about the legality of using tobacco products in smoke-free environments.

In April 2011, the FDA announced its intention to develop e-cigarette regulations.<sup>10</sup> Until the FDA can enact strict legislation to regulate the sale and use of e-cigarettes and complete research on the product's health impact, the National Association of Local Boards of Health (NALBOH) encourages boards of health to support and/or adopt the following legislative measures in their communities:

- Use broadly-defined language to include e-cigarettes in smoke-free legislation for indoor and outdoor venues
- Amend existing definitions of “smoke” or “smoking” to include e-cigarettes and e-cigarette vapor
- Oppose legislation that exempts e-cigarettes from the smoking policy/regulation
- Prohibit the sale of e-cigarettes to minors
- Ban the sale of e-cigarette components that may appeal to minors (e.g., flavored cartridges)
- Require tobacco retailer licenses to sell e-cigarettes
- Establish proper enforcement procedures for e-cigarette policies and regulations
- Prohibit e-cigarette manufacturers and retailers from stating unsubstantiated marketing claims about the safety and benefits of the product<sup>4</sup>

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#### Approval Process:

*NALBOH position statements are reviewed and approved by the Chronic Disease and Tobacco Use Prevention and Control Subcommittee, Education & Training Committee, and Board of Directors. The position statements relate to specific issues that are time sensitive or are in the process of being defined for NALBOH policy. Position statements are not voted on by the full NALBOH membership or other committees.*

*Reviewed and approved by: NALBOH Board of Directors – March 2012*



**ChangeLab Solutions**

Law & policy innovation for the common good.

— **Vapor** inhaled by the user and exhaled into the environment

— **Cartridge** contains a nicotine solution; typically also serves as the mouthpiece for inhaling vapor

— **Atomizer** creates vapor from the nicotine solution in the cartridge

— **Battery** is rechargeable, typically lithium-ion

— **LED light** comes on during inhalation to mimic the glow of a traditional cigarette

## Electronic Cigarettes: How They Are – and Could Be – Regulated

Electronic cigarettes, or e-cigarettes, are essentially nicotine-delivery products, relatively new to the market with a growing following. The battery-powered devices provide inhaled doses of nicotine through a vaporized solution contained in cartridges inserted into the apparatus. No smoke or combustion is involved; the device emits a vapor when used. For this reason, e-cigarette use is sometimes referred to as “vaping.” E-cigarettes may be legally sold in the United States under federal law.

After a federal court ruled the Food and Drug Administration (FDA) does not have the authority to regulate e-cigarettes as drugs or drug delivery devices,<sup>1</sup> in April 2011 the FDA announced plans to regulate e-cigarettes as a tobacco product under the Tobacco Control Act.<sup>2</sup>

The Tobacco Control Act expressly allows state and local governments to regulate the sale and use of tobacco products, and authorizes them to enact measures that are more restrictive than federal law.<sup>3</sup> This fact sheet explains what the FDA’s decision means, and what additional steps state and local governments can take.

### FDA’s Initial Attempt to Regulate E-Cigarettes

In 2008, the FDA moved to establish authority over e-cigarettes as drugs or drug delivery devices by blocking new e-cigarette shipments into the United States. (The FDA has authority to regulate “drugs,” “devices,” or drug/device combinations through the Food, Drug and Cosmetic Act.<sup>4</sup>)

In response, an e-cigarette manufacturer sued the FDA in federal court, claiming that the agency did not have authority over e-cigarettes as drugs or drug delivery devices and therefore could not stop the shipments.

In 2010, the court ruled in favor of the manufacturer, holding that the FDA may not regulate e-cigarettes as drugs or drug delivery devices if they are not marketed as tobacco cessation aids (such as nicotine gum or patches). However, the court found that the FDA *does* have the authority to regulate e-cigarettes as tobacco products.

### Limitations on New FDA Regulations

The FDA decided not to appeal the decision to the U.S. Supreme Court, instead announcing that it plans to issue regulations on e-cigarettes as a tobacco product under the Tobacco Control Act. Although the FDA has the authority to create restrictions on e-cigarettes, there are substantial limits to what it can do.

First, issuing a regulation is a lengthy process requiring several steps: drafting the regulation, providing a public comment period, and considering the submitted comments before issuing a final regulation. Given this process, it is uncertain when the regulations would take effect and how broad in scope they may be. (For more information about the federal regulatory process, see our fact sheet “Getting Your Voice Heard: Commenting on Federal Regulations.”)

*In April 2011, the FDA announced plans to regulate e-cigarettes as a tobacco product under the 2009 Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act). This fact sheet explains what this announcement means, and what steps state and local governments can take to restrict e-cigarette sales and use.*



Second, any regulations issued by the FDA would not ban the *use* of e-cigarettes (i.e., where people can “smoke” or “vape” e-cigarettes) and it’s unknown whether the FDA would propose banning or otherwise limiting the *sale* of e-cigarettes.

Third, any proposed new regulation at the federal level would almost certainly be met with vigorous opposition from the e-cigarette industry, which may weaken or even defeat the regulation. The industry may not oppose local regulations as vigorously.

**State and Local Government Options**

In contrast to the limitations the FDA faces, state and local governments have much more freedom to create their own restrictions on e-cigarettes.<sup>5</sup> Some state and local governments have already passed laws to prohibit the sale of e-cigarettes to minors, and they have the power to go much further. (See the chart on the next page.)

**Limiting use and exposure**

Many communities are interested in limiting the public’s exposure to secondhand e-cigarette vapor. The FDA has found that e-cigarette cartridges contain carcinogens and toxic chemicals, such as diethylene glycol, an ingredient used in antifreeze.<sup>6</sup> Bystanders could be exposed to those chemicals if they inhale e-cigarette vapor exhaled by someone else.

In many cases, a local government can limit potential exposure to these chemicals simply by amending the definitions of *smoke* and *smoking* in local smokefree laws to include e-cigarettes and e-cigarette vapor. For communities interested in amending a local law to prohibit the use of e-cigarettes in places where smoking is prohibited, see our model **smokefree housing, recreational areas, and beaches** ordinances contain language that could be adapted for that purpose. Alternatively, communities may create new laws specifically to limit where e-cigarettes may be used.

**Restricting sales**

State and local governments can also set restrictions on the *sale* of e-cigarettes, including banning them entirely, limiting availability to individuals over a certain age, or banning certain types or components, such as candy-flavored cartridges, that may be attractive to children.

Another approach is to regulate who may sell e-cigarettes by requiring such businesses to have a tobacco retailer license in order to sell e-cigarettes. This helps state and local governments ensure that retailers comply with restrictions on e-cigarette sales, as well as regulations on the sale of other tobacco products like traditional cigarettes, cigars, and smokeless tobacco. For more information about tobacco retailer licensing, see “**License to Kill? Tobacco Retailer Licensing as an Effective Enforcement Tool,**” as well as our model **tobacco retailer licensing ordinance**.

**How We Can Help**

Our staff can consult with individual communities to help customize a new law restricting the use or sale of e-cigarettes. To contact us, go to [www.changelabsolutions.org/tobaccoquestions](http://www.changelabsolutions.org/tobaccoquestions).

This document is one in a series of FDA Law Notes addressing issues around the 2009 law. All of the FDA Law Notes are available at [www.changelabsolutions.org/tobacco-control](http://www.changelabsolutions.org/tobacco-control).

*ChangeLab Solutions formerly existed under the name Public Health Law & Policy (PHLP), which included the Technical Assistance legal Center (TALC). Any references to PHLP or TALC in this publication should now be understood to refer to ChangeLab Solutions.*

*ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state. This material was made possible with funds received from the California Department of Public Health under contract #09-11182.*

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*For more about the state of the law with regard to e-cigarettes, see the chart on page 3, which lists some examples of jurisdictions that have adopted laws governing the use and/or sale of e-cigarettes. The information contained in the chart is current as of July 2011. Note that the list is not exhaustive, so additional jurisdictions may have laws affecting e-cigarettes.*

## E-Cigarette Law at a Glance

This chart outlines federal, state, and local restrictions on e-cigarette use and sales, as well as further regulatory opportunities at the state and local level.

	Federal Law	State and Local Law <sup>7</sup>	Policy Options for State/Local Governments
<b>Limiting Use and Exposure</b>	<p>ChangeLab Solutions is aware of only two existing federal restrictions on e-cigarettes. The U.S. Department of Transportation interprets existing federal regulations against smoking on airplanes to apply to e-cigarettes.</p> <p>The U.S. Air Force stated that e-cigarette use would be governed by the same regulations that limit the use of tobacco products in the Air Force, including prohibitions on their use in workplaces and public spaces that are not designated smoking areas.<sup>8</sup></p>	<p>Several state and local governments limit e-cigarette use in public places, including:</p> <ul style="list-style-type: none"> <li>• New Jersey<sup>9</sup></li> <li>• Savannah, GA<sup>10</sup></li> <li>• Bardstown, KY<sup>11</sup></li> <li>• Bullitt County, KY<sup>12</sup></li> <li>• Glasgow, KY<sup>13</sup></li> <li>• Madison County, KY<sup>14</sup></li> <li>• Suffolk County, NY<sup>15</sup></li> <li>• King County, WA<sup>16</sup></li> <li>• Tacoma, WA<sup>17</sup></li> </ul>	<p>Just as they may regulate the use of cigarettes and other tobacco products, state and local governments may pass their own laws to regulate where e-cigarettes can be used to protect the public from exposure to secondhand e-cigarette vapors.</p> <p>For example, they may pass laws to prohibit the use of e-cigarettes in:</p> <ul style="list-style-type: none"> <li>• public buildings</li> <li>• schools</li> <li>• workplaces</li> <li>• entryways</li> <li>• bus stops</li> <li>• recreational areas</li> <li>• public events</li> <li>• multi-unit housing complexes</li> </ul>
<b>Restricting Sales</b>	<p>Does not prohibit the sale of e-cigarettes to minors.</p> <p>Does not regulate the types of e-cigarette cartridges that may be sold.</p> <p>Does not require retailers of e-cigarettes to be licensed.</p>	<p>Some state and local governments prohibit the sale of e-cigarettes to minors including:</p> <ul style="list-style-type: none"> <li>• California<sup>18</sup></li> <li>• Colorado<sup>19</sup></li> <li>• Minnesota<sup>20</sup></li> <li>• New Hampshire<sup>21</sup></li> <li>• New Jersey<sup>22</sup></li> <li>• Tennessee<sup>23</sup></li> <li>• City of Spokane, WA<sup>24</sup></li> <li>• King County, WA<sup>25</sup></li> <li>• Spokane County, WA<sup>26</sup></li> <li>• Spokane Valley, WA<sup>27</sup></li> <li>• Suffolk County, NY<sup>28</sup></li> <li>• Tacoma, WA<sup>29</sup></li> </ul>	<p>Just as they may regulate the sale of traditional cigarettes and tobacco products, state and local governments may pass their own laws to regulate how e-cigarettes can be sold.</p> <p>For example, state and local governments may pass laws that:</p> <ul style="list-style-type: none"> <li>• prohibit the sale of e-cigarettes entirely within their jurisdiction</li> <li>• prohibit the sale of e-cigarettes to minors</li> <li>• prohibit the sale of flavored e-cigarette cartridges</li> <li>• require retailers to obtain a license to sell e-cigarettes</li> </ul>

<sup>1</sup> *Sottera, Inc. v. FDA*, No. 10-5032 (D.C. Cir. 2010). The ruling does not necessarily apply to all e-cigarettes on the market. If an e-cigarette company markets its products as a smoking cessation aid, the FDA may still have the authority to regulate it as a drug or drug delivery device.

<sup>2</sup> An explanation of the FDA's decision not to appeal the Sottera decision is available at: [www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm](http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm).

<sup>3</sup> 21 U.S.C. 387p.

<sup>4</sup> 21 U.S.C. § 321(g) and (h).

<sup>5</sup> 21 U.S.C. 387p.

<sup>6</sup> An FDA press announcement warning of the hazards of e-cigarettes is available at: [www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm).

<sup>7</sup> See [www.njgasp.org/E-Cigs\\_White\\_Paper.pdf](http://www.njgasp.org/E-Cigs_White_Paper.pdf) for more information about jurisdictions that have regulated the use and/or sale of e-cigarettes, produced by New Jersey GASP.

<sup>8</sup> Memorandum from the U.S. Air Force Surgeon General, Charles B. Green to ALMAJCOM/CV regarding electronic cigarette use (Aug. 17, 2010). Available at: [www.af.mil/shared/media/document/AFD-100818-044.pdf](http://www.af.mil/shared/media/document/AFD-100818-044.pdf).

<sup>9</sup> N.J. Stat. Ann. § 26:3D-57 (2010).

<sup>10</sup> Savannah, Ga., Code of Ordinances div. II, § 9-3017 (2010).

<sup>11</sup> Bardstown, Ky., Code of Ordinances tit. XI, ch. 123 (2010).

<sup>12</sup> Bullitt County Board of Health Reg. No. 10-01 (2011).

<sup>13</sup> Citation: Glasgow, Ky., Code of Ordinances § 38.01 (2010).

<sup>14</sup> Madison County Health Reg.700 (2011).

<sup>15</sup> Suffolk County, N.Y., Admin. Code §§ 754-1-754-4 (2009).

<sup>16</sup> King County, Wash. Board of Health Code § 19.12.100 (2010).

<sup>17</sup> Tacoma-Pierce County, Wash. Env'tl. Health Code Ch. 9 § 9 (2011).

<sup>18</sup> Cal. Health and Safety Code §119405 (2011).

<sup>19</sup> Colo. Revised Stat. § 18-13-121 (2011).

<sup>20</sup> Minn. Tobacco Modernization and Compliance Act of 2010 § 609.6855 (2010).

<sup>21</sup> State of New Hampshire Statutes, Title X, §126-K:4 (2010).

<sup>22</sup> N.J. Stat. Ann. § 2C:33-13.1 (2010).

<sup>23</sup> 2011 Tennessee Laws Pub. Ch. 501 (2011).

<sup>24</sup> Spokane, Wash., Mun. Code §§ 10.08.500-590 (2011).

<sup>25</sup> Tacoma-Pierce County, Wash. Env'tl. Health Code Ch. 9 § 6 (2011).

<sup>26</sup> Spokane County, Wash., Ordinance No. 11-0135 (2011).

<sup>27</sup> Spokane Valley, Wash., Mun. Code §§ 7.40.010-090 (2011).

<sup>28</sup> Suffolk County, N.Y., Admin. Code § 792-9 (2009).

<sup>29</sup> King County, Wash. Board of Health Code § 19.12.060 (2010).



## "E-CIGARETTE OR DRUG DELIVERY DEVICE?"

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### Schroeder Institute Researchers Raise Questions About Safety, Usage and Future Implications of New Nicotine Delivery Products

Release Date:

July 20, 2011

Washington, D.C. - Devices marketed as "electronic cigarettes" are in reality crude drug delivery systems for refined nicotine, posing unknown risks with little new benefits to smokers, according to tobacco control experts.

In a "Perspective" published today in the New England Journal of Medicine, researchers from the Legacy's Steven A. Schroeder National Institute for Tobacco Research and Policy Studies explore the current regulatory climate around electronic cigarettes ("e-cigarettes") and their safety. The authors, Nathan K. Cobb, MD, a pulmonologist and assistant professor at Georgetown University Medical Center, and David B. Abrams, PhD, executive director of the Schroeder Institute, also question future implications for physicians, policy makers and e-cigarette users.

E-cigarettes are constructed to mimic real cigarettes in size and appearance, but contain no tobacco and are not cigarettes at all. In reality they are delivery devices for refined nicotine, having more in common with inhalers used to treat asthma or other delivery devices for both approved and illicit drugs. Though individual brands

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vary in construction, the products generally produce a propylene glycol mist containing nicotine along with flavorings and other chemicals.

Currently, three interrelated products are being sold: the delivery device itself; cartridges that can contain up to 20 mg of nicotine; and refill kits that allow consumers to fill used cartridges with replacement nicotine solution. Some refill bottles, easily obtained over the Internet, contain enough nicotine to kill an adult if accidentally ingested.

The U.S. Food and Drug Administration (FDA) announced April 25, 2011, that it would regulate e-cigarettes as "tobacco products" and not as "drug-delivery devices." That action came after federal courts blocked the agency from regulating the products as drug-delivery devices. The courts maintained that, under the 2009 Family Smoking Prevention and Tobacco Control Act (FSPTCA), the FDA must regulate as tobacco products any product that contains nicotine from tobacco and that makes no claims to be therapeutic. These decisions together, the authors note, "upend[ed] the status quo" by having the effect of allowing the sale of unregulated refined nicotine directly to consumers, unless and until the FDA takes further action. "The court's decision that e-cigarettes should be regulated as tobacco products and not as drug-delivery devices has substantially delayed the FDA regulatory process that normally protects the public health. It has the practical effect of allowing manufacturers to sell potentially dangerous refined nicotine products directly to consumers," said Cobb. "It is entirely possible that future modifications to the products will improve the efficiency of nicotine delivery and could dramatically increase the risks of addiction, abuse and serious overdose."

While most devices and nicotine fluids are produced by small manufacturers, Cobb and Abrams note that the fact that leading cigarette manufacturers Philip Morris International and British American Tobacco recently purchased sophisticated nicotine inhaler technologies may be an indication that both companies are developing next generation nicotine delivery devices of their own.

Abrams, a professor at Johns Hopkins Bloomberg School of Public Health added "Any refined nicotine product, whether used for smoking cessation and tested and approved by the FDA (like the Nicotrol inhaler) or a new product designed for 'reduced or modified' risk, can and must be tested and strictly regulated before being

introduced to the market".

The authors argue that a comprehensive approach to regulating products containing refined nicotine is needed to protect the public's health and should involve Congress, the courts and the FDA.

In this piece, Cobb and Abrams discuss several safety concerns:

¢ Testing of cartridges reveals poor quality control, variability in nicotine content among brands, and deviations between label claims and cartridge content.

¢ The devices do not reliably deliver nicotine, and have not been sufficiently evaluated in scientific studies the way the FDA requires of other drugs and devices used for smoking cessation. Smokers attempting to use e-cigarettes as quitting aids will most likely find them ineffective due to the fluctuating nicotine content and unpredictable delivery.

¢ Manufacturers sell cartridges with a range of up to 20 milligrams of nicotine. However, refill kits allow consumers to fill used cartridges with replacement solutions at much higher doses. In fact, the devices are not limited to delivering nicotine. The paper notes that instructions for filling cartridges with marijuana hash oil can be easily accessed on the Internet.

¢ The safety of inhaling propylene glycol over an extended period of time has not been studied in humans.

¢ E-cigarettes may serve as a "bridge product" that smokers use in places where traditional tobacco smoking is prohibited, thus perpetuating their addiction and use of real cigarettes. Additionally, they may be used as a 'starter' product for young people considering smoking, especially since the cartridges can be purchased over the Internet with tempting flavoring like grape and chocolate.

In their conclusion, Cobb and Abrams counter the argument made by e-cigarette advocates that taking the devices off the market could mean current users would be forced to return to traditional tobacco products. Instead, the two researchers point to the multiple pharmaceutical-grade nicotine products on the market that have been regulated, approved and deemed safe and effective by the FDA, including patches, gums, lozenges, nasal sprays and even an FDA-approved inhaler. The two researchers also state that current users should pursue research-proven effective cessation tools, such as nicotine replacement products, telephone quit lines, and Web-based cessation



services, as well as non-nicotine pharmacotherapies like bupropion and varenicline. For Legacy's e-cigarettes fact sheet, please visit the following page:

**[http://www.legacyforhealth.org/PDFPublications/ECIGARETTE\\_0909 temp](http://www.legacyforhealth.org/PDFPublications/ECIGARETTE_0909_temp)**.

Legacy is dedicated to building a world where young people reject tobacco and anyone can quit. Located in Washington, D.C., the national public health organization helps Americans live longer, healthier lives. Legacy develops programs that address the health effects of tobacco use, especially among vulnerable populations disproportionately affected by the toll of tobacco, through grants, technical assistance and training, partnerships, youth activism, and counter-marketing and grassroots marketing campaigns. The foundation's programs include truth, a national youth smoking prevention campaign that has been cited as having contributed to significant declines in youth smoking; EX, an innovative public health program designed to speak to smokers in their own language and change the way they approach quitting; and research initiatives exploring the causes, consequences and approaches to reducing tobacco use. The American Legacy Foundation was created as a result of the November 1998 Master Settlement Agreement (MSA) reached between attorneys general from 46 states, five U.S. territories and the tobacco industry. Visit <http://www.legacyforhealth.org/>.

Legacy is equipped with a VideoLink ReadyCam,, television studio system, providing journalists with faster, easier access to the nation's leading tobacco prevention and cessation experts. From this in-house broadcast studio, Legacy can offer immediate access to its experts to comment on breaking news, new research publications, or any news related to youth smoking prevention, adult quit smoking programs, or any issue related to smoking. The studio is connected directly to the Vyvx fiber network and is always available for live or pre-taped interviews. To arrange an interview, please contact Julia Cartwright at 202-454-5596.

#### About Georgetown University Medical Center

Georgetown University Medical Center is an internationally recognized academic medical center with a three-part mission of research, teaching and patient care (through MedStar Health). GUMC's mission is carried out with a strong emphasis on public service and a dedication to the Catholic, Jesuit principle of cura personalis

-- or "care of the whole person." The Medical Center includes the School of Medicine and the School of Nursing & Health Studies, both nationally ranked; Georgetown Lombardi Comprehensive Cancer Center, designated as a comprehensive cancer center by the National Cancer Institute; and the Biomedical Graduate Research Organization (BGRO), which accounts for the majority of externally funded research at GUMC including a Clinical Translation and Science Award from the National Institutes of Health. In fiscal year 2009-2010, GUMC accounted for nearly 80 percent of Georgetown University's extramural research funding.

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Contact: Julia Cartwright, 202.454.5596, [jcartwright@legacyforhealth.org](mailto:jcartwright@legacyforhealth.org); Karen Mallet, 215.514.9751, [km463@georgetown.edu](mailto:km463@georgetown.edu)

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The American Legacy Foundation is a national, independent, public health foundation located in Washington, D.C. It was created as a result of the November 1998 Master Settlement Agreement. The American Legacy Foundation collaborates with organizations interested in decreasing tobacco consumption among all ages and populations nationwide and has established goals to reduce youth tobacco use, decrease exposure to secondhand smoke, increase successful quit rates, and reduce disparities in access to prevention and cessation services and in exposure to secondhand smoke. For more information about the American Legacy Foundation, visit [www.americanlegacy.org](http://www.americanlegacy.org).

Contact Information: Julia Cartwright (202) 454-5596

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## U.S. State and Local Laws Regulating Use of Electronic Cigarettes As of October 1, 2013

The following list includes states and municipalities that have enacted laws regulating where electronic cigarette use (e-cigarettes) is prohibited. E-cigarettes are battery-powered devices that are designed to mimic cigarettes by vaporizing a nicotine-laced liquid that is inhaled by the user. The use of e-cigarettes in workplaces and public places is a significant public health concern, not only because of their unregulated constituents and the potential health impact of the vapor on users and bystanders, but also because e-cigarette use causes public confusion as to where smoking is allowed, resulting in compliance problems with smokefree laws.

Most local and state smokefree laws were enacted before e-cigarettes were on the market, so while such laws do not explicitly mention e-cigarettes, it should not be assumed that their use is permitted. Existing smokefree laws are often interpreted to prohibit e-cigarette use in their smokefree provisions.

NOTE: In the 100% Smokefree Venues column, the following abbreviations are used: W=non-hospitality workplaces; R=restaurants; B=bars; G=gambling facilities.

For more information, please visit [ANR's e-cigarettes page](#).

### State Laws Regulating Use of E-cigarettes

#### State Laws Restricting E-cigarette Use in 100% Smokefree Venues

Other state laws that do not explicitly address e-cigarettes might be interpreted as prohibiting the use of e-cigarettes in existing smokefree provisions.

State	Use of E-cigarettes Prohibited	100% Smokefree Venues in Which Use of E-cigarettes Prohibited	Use of E-cigarettes Specifically Permitted	Permitted In:
1. North Dakota	Yes	WRBG	No	
2. New Jersey	Yes	WRB	No	
3. Utah	Yes	WRB	Yes	Retailers that sell e-cigarettes, until 7/1/17.

## State Laws Regulating E-cigarette Use in Other Venues

State	Use of E-cigarettes Prohibited	Prohibited In:	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
1. Arkansas	Yes	Use of e-cigarettes prohibited on school district property.	No	
2. Colorado	Yes	Definition of tobacco product for purposes of prohibition of use on school property amended to include e-cigarettes, unless approved by FDA as cessation devices.	No	
3. Delaware	Yes	Tobacco use, including use of e-cigarettes and hookahs, prohibited in all State workplaces, including all buildings, facilities, indoor and outdoor spaces and surrounding grounds, as well as parking lots and state vehicles operated on State workplace property.	No	
4. Kansas	Yes	Tobacco use, including use of e-cigarettes, prohibited on all Dept. of Corrections property and grounds, by both employees and inmates. Per opinion of Attorney General, Indoor Clean Air Act of 2010 does not apply to e-cigarettes.	Partial	All places where smoking is prohibited per 3/12/10 law, including workplaces, restaurants, bars, gambling facilities, and public places generally.
5. Maryland	Yes	Smoking, including use of e-cigarettes prohibited on MARC commuter rail system trains.	No	
6. New Hampshire	Yes	Use of e-cigarettes prohibited in public educational facilities and on grounds thereof.	No	
7. Oklahoma	Yes	Tobacco use, including use of e-cigarettes, prohibited in all Dept. of Corrections facilities, including vehicles and grounds.	No	
8. Oregon	Yes	State agency employees prohibited from using tobacco products, including e-cigarettes, in State agency buildings and on State agency grounds adjacent to buildings.	No	

State	Use of E-cigarettes Prohibited	Prohibited In:	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
9. South Dakota	Yes	Tobacco use, including use of e-cigarettes, prohibited in Dept. of Corrections facilities and on grounds thereof, by both employees and inmates.	No	

## Local Laws Regulating Use of E-cigarettes

### Laws Restricting E-cigarette Use in 100% Smokefree Venues

State	Name	Use of E-cigarettes Prohibited	If Partial, Prohibited In:	100% Smokefree Venues in Which Use of E-cigarettes Prohibited	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
1. AK	Palmer	Yes		WRB	No	
2. AL	Anniston	Yes		WRBG	No	
3. AL	Bessemer	Yes		WRG	No	
4. AL	Clay	Yes		WRBG	No	
5. AL	Creola	Yes		WRBG	No	
6. AL	Fultondale	Yes		WRBG	No	
7. AL	Midfield	Yes		WRBG	No	
8. AL	Monroeville	Yes		WRBG	No	
9. AL	Troy	Yes		WRBG	No	
10. AL	Vestavia Hills	Yes		WRBG	No	
11. CA	Campbell	Yes		RBG	No	
12. CA	Eureka	Yes		WRBG	No	
13. CA	Fairfax	Yes		WRBG	No	
14. CA	Marin County	Partial	Use of e-cigarettes prohibited everywhere that smoking is prohibited, except in individual apartment units in multi-unit residences.	WRB	Partial	Individual apartment units in multi-unit residences.
15. CA	Mill Valley	Yes		WRB	No	
16. CA	Morgan Hill	Yes		WRB	No	
17. CA	Mountain View	Yes		WRB	No	

State	Name	Use of E-cigarettes Prohibited	If Partial, Prohibited In:	100% Smokefree Venues in Which Use of E-cigarettes Prohibited	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
18. CA	Petaluma	Yes		W	No	
19. CA	Santa Clara County	Yes		WRB	No	
20. CA	Sebastopol	Yes		WRBG	No	
21. CA	Tiburon	Yes		WRB	No	
22. CA	Union City	Yes		WRB	No	
23. FL	Clay County	Yes		WR	No	
24. GA	Chatham County	Yes		WRBG	No	
25. GA	DeKalb County	Yes		W	No	
26. GA	Savannah	Yes		WRBG	No	
27. ID	Ketchum	Yes		WRBG	No	
28. IN	Indianapolis/Marion County	Yes		WRB	No	
29. KY	Bardstown	Yes		WRBG	No	
30. KY	Glasgow	Yes		RBG	No	
31. KY	Kenton County	Yes		W	No	
32. KY	Madison County	Yes		WRBG	No	
33. KY	Manchester	Yes		WRBG	No	
34. MA	Boston	Yes		WRB	No	
35. MA	Bourne	Yes		WRB	No	
36. MA	Buckland	Yes		WRBG	No	
37. MA	Burlington	Yes		WRBG	No	
38. MA	Foxborough	Yes		WRBG	No	
39. MA	Gill	Yes		WRBG	No	
40. MA	Grafton	Yes		WRBG	No	
41. MA	Great Barrington	Yes		WRBG	No	
42. MA	Hatfield	Partial	Use of e-cigarettes prohibited everywhere that smoking is prohibited, except for smoking bars and hotels/motels.	WRBG	Partial	Smoking bars and hotels/motels.
43. MA	Haverhill	Yes		WRBG	No	
44. MA	New Bedford	Yes		WRB	No	
45. MA	North Attleborough	Yes		WRBG	No	
46. MA	Northampton	Yes		WRB	No	

State	Name	Use of E-cigarettes Prohibited	If Partial, Prohibited In:	100% Smokefree Venues in Which Use of E-cigarettes Prohibited	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
47. MA	Oxford	Yes		WRBG	No	
48. MA	Pittsfield	Yes		WRBG	No	
49. MA	Salem	Yes		WRBG	No	
50. MA	Saugus	Yes		WRBG	No	
51. MA	Shelburne	Yes		WRB	No	
52. MA	South Hadley	Yes		WRBG	No	
53. MA	Taunton	Yes		WRBG	No	
54. MA	Westminster	Yes		WRBG	No	
55. MA	Westport	Yes		WRBG	No	
56. MA	Westwood	Yes		WRBG	No	
57. MA	Whately	Yes		WRB	No	
58. MA	Winchester	Yes		WRBG	No	
59. MN	Duluth	Yes		WRBG	No	
60. MO	Creve Coeur	Yes		WRB	No	
61. MO	Jefferson City	Yes		WRBG	No	
62. MO	Washington	Yes		WRBG	No	
63. MS	Anguilla	Yes		WRBG	No	
64. MS	Arcola	Yes		WRBG	No	
65. MS	Baldwyn	Yes		WRBG	No	
66. MS	Bassfield	Yes		WRBG	No	
67. MS	Byram	Yes		WRBG	No	
68. MS	Calhoun City	Yes		WRBG	No	
69. MS	Centreville	Yes		WRBG	No	
70. MS	Coahoma County	Yes		WRB	No	
71. MS	Duncan	Yes		WRBG	No	
72. MS	Durant	Yes		WRBG	No	
73. MS	Flowood	Yes		WRG	No	
74. MS	Forest	Yes		WRBG	No	
75. MS	Georgetown	Yes		WRBG	No	
76. MS	Monticello	Yes		RBG	No	
77. MS	New Augusta	Yes		WRBG	No	
78. MS	Plantersville	Yes		WRBG	No	
79. MS	Prentiss	Yes		WRBG	No	
80. MS	Rolling Fork	Yes		WRBG	No	
81. MS	Sumner	Yes		WRBG	No	

State	Name	Use of E-cigarettes Prohibited	If Partial, Prohibited In:	100% Smokefree Venues in Which Use of E-cigarettes Prohibited	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
82. MS	Wesson	Yes		WRBG	No	
83. ND	Bismarck	Yes		WRB	No	
84. ND	Walhalla	Yes		WRBG	No	
85. NY	Suffolk County	Yes		WRB	No	
86. SC	Estill	Yes		WRBG	No	
87. SC	Yemassee	Yes		WRB	No	
88. TX	Lufkin	Yes		WRBG	No	
89. TX	San Angelo	Yes		WRB	No	
90. WA	King County	Yes		WRBG	No	
91. WV	Calhoun County	Yes		WRBG	No	
92. WV	Greenbrier County	Yes		WRBG	No	
93. WV	Lewis County	Yes		WRBG	No	
94. WV	Marshall County	Yes		W	No	
95. WV	Pleasants County	Yes		WRBG	No	
96. WV	Ritchie County	Yes		WRBG	No	
97. WV	Roane County	Yes		WRBG	No	
98. WV	Taylor County	Yes		WRBG	No	
99. WV	Wirt County	Yes		WRBG	No	
100. WV	Wood County	Yes		WRBG	No	

**State Laws Restricting E-cigarette Use in 100% Smokefree Venues: 3**  
**State Laws Restricting E-cigarette Use in Other Venues: 9**  
**Local Laws Restricting E-cigarette Use in 100% Smokefree Venues: 100**

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**City and County of San Francisco**

**Edwin M. Lee**  
Mayor



**Department of Human Resources**

**Micki Callahan**  
Human Resources Director

**DATE:** Sept. 12, 2013  
**TO:** Department Heads and Departmental Personnel Officers  
**FROM:** Micki Callahan  
Human Resources Director   
**SUBJECT:** Electronic cigarettes covered under existing City smoke-free workplace policies

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This notice is to inform all employees that, consistent with Food and Drug Administration (FDA) guidelines, the use of electronic cigarettes, or “e-cigarettes,” is subject to the existing smoke-free workplace policies that restrict the use of tobacco products in City offices, or within 20 feet of entrances, exits, or operable windows of public buildings.

E-cigarettes are nicotine-delivery products that have not been approved by the FDA and are not considered safe. Recent studies warn that the emission of fine and ultrafine inhalable liquid particles, nicotine and cancer-causing substances into the air when the user exhales may lead to adverse health effects for other individuals who share the space<sup>1</sup>.

In the interest of protecting City employees and public health, the City and County continues to enforce the smoke-free workplace policy outlined below.

**Current Smoke-Free Workplace Policy:**

In accordance with San Francisco Health Code Article 19F, Sections 1009.20 through 1009.27, and in compliance with State of California Labor Code Section 6404.5, it is the policy of the City and County of San Francisco that smoking is prohibited in enclosed areas, including all public buildings and City-owned vehicles.

City employees who smoke cigarettes, either conventional or electronic, may not do so within 20 feet of the entrances, exits, operable windows, or vents of City facilities. Employees who violate the policy may be subject to disciplinary action, up to and including termination.

Please note that some City agencies, such as public health facilities, may have stricter policies in place that prohibit the use of e-cigarettes by staff, residents or visitors *at any time*. For questions about additional restrictions on e-cigarette consumption specific to your department, contact your human resources manager.

**More Information:**

Visit the following websites for more information and the latest research on the potential hazards of electronic cigarette use:

- FDA warning: <http://www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM173430.pdf>
- FDA e-cigarette page: <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm>
- 2006 Surgeon General's Report: [The Health Consequences of Involuntary Exposure to Tobacco Smoke](#)

**Smoking Cessation Resources:**

The City's Health Service System provides resources for employees who wish to quit smoking. Visit [HSS Smoking Cessation Benefits](#) for details. Additional resources can be found at [smokefree.gov](http://smokefree.gov) or [sfsmokefree.org](http://sfsmokefree.org).

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<sup>1</sup> Williams M, Villarreal A, Bozhilov K, Lin S, Talbot P (2013). *Metal and Silicate Particles Including Nanoparticles Are Present in Electronic Cigarette Cartomizer Fluid and Aerosol*. PLoS ONE 8(3): e57987



City and County of San Francisco

Edwin M. Lee, Mayor

## San Francisco Department of Public Health

Barbara A. Garcia, MPA  
Director of Health

### San Francisco Department of Public Health

#### Policy & Procedure Detail\*

<b>Policy &amp; Procedure Title:</b> Prohibition of E-Cigarette use at DPH Facilities (OCS2)	
<b>Category:</b> Workplace Safety	
<b>Effective Date:</b> 8/26/13	<b>Last Reissue/Revision Date:</b>
<b>DPH Unit of Origin:</b> Community Health Promotion	
<b>Policy Contact - Employee Name and Title; and/or DPH Division:</b> Derek Smith; Health Program Coordinator – Tobacco Free Project; Community Health Promotion	
<b>Contact Phone Number(s):</b> (415) 581-2449 derek.smith@sfdph.org	
<b>Distribution:</b> DPH-wide <input checked="" type="checkbox"/>	<b>If not DPH-wide, other distribution:</b>

\*All sections in table required.

#### 1. Purpose of Policy

This policy is meant to protect the safety of all individuals who work at and/or visit San Francisco Department of Public Health (SFDPH) facilities, by establishing limitations on the use of electronic cigarettes (referred to in this document as “e-cigarettes”). SFDPH maintains and enforces a tobacco-free environment in all of its facilities. E-cigarettes are nicotine-delivery products that have not been approved by the Food and Drug Administration, and as such are not considered safe. This policy supports a tobacco-free standard within the SFDPH environment and clarifies that e-cigarettes are included in the already-existing tobacco usage ban. E-cigarettes are prohibited on all SFDPH premises, including those owned, rented or occupied by SFDPH.

#### 2. Policy

E-cigarettes may not be utilized by anyone in any of the enclosed areas of SFDPH’s owned, rented or occupied facilities. This includes all of SFDPH’s sites as defined in Section 3C of this policy, including but not limited to administrative offices, Laguna Honda Hospital, San Francisco General Hospital, and health clinics. The prohibition applies to enclosed areas as defined in Section 3B of this policy, including, but not limited to offices, hospital rooms, hallways, and waiting areas.

Extending upon the City and County of San Francisco health code limiting the use of traditional cigarettes, E-cigarettes may only be used at least 15 feet from entrances, windows, and vents of SFDPH facilities (or at the curb if the street is closer than 15 feet from these locations). San

**The mission of the San Francisco Department of Public Health is to protect and promote the health of all San Franciscans.**

We shall ~ Assess and research the health of the community ~ Develop and enforce health policy ~ Prevent disease and injury ~

~ Educate the public and train health care providers ~ Provide quality, comprehensive, culturally-proficient health services ~ Ensure equal access to all ~

Francisco General Hospital and Laguna Honda Hospital have further e-cigarette policies in place that prohibit the use of e-cigarettes by staff, patients, residents, or visitors anywhere on the grounds of the campus.

### 3. Definitions

- A. **E-cigarette:** Any device with a heating element, a battery, or an electronic circuit that provides nicotine or other substances to the user in a manner that simulates smoking tobacco. This term includes such devices whether they are manufactured as e-cigarettes, e-cigars, or e-pipes, or under any other product name. This policy shall not affect any laws or regulations regarding medical cannabis. Nor does this definition apply to any FDA-approved product marketed for therapeutic purposes.
- B. **Enclosed area:** (1) any covered or partially covered space having more than 50 percent of its perimeter area walled in or otherwise closed to the outside such as any fully enclosed room or suite, a covered porch with more than two walls, or (2) any space open to the sky ("uncovered") having more than 75 percent of its perimeter area walled in or otherwise closed to the outside such as a courtyard.
- C. **SFDPH Facilities:** All buildings where SFDPH staff are employed, whether owned or rented, including administrative buildings and offices, Laguna Honda Hospital, San Francisco General Hospital, health clinics, and all other locations where SFDPH holds office space.

### 4. Procedures

If a staff member witnesses the use of an e-cigarette in an enclosed area, that e-cigarette user should be notified of this policy prohibiting the use indoors and asked to take the e-cigarette outside, 15 feet from the building. If a staff member does not feel comfortable approaching the e-cigarette user or the e-cigarette user is a colleague, they should contact their supervisor to address the issue. If a member of the public informs a staff member of e-cigarette use on SFDPH property, the staff member should take action as described above. Providing a copy of the policy for the e-cigarette user may assist in this process, as e-cigarette users may be unaware of this policy. If there are further questions or if there is an ongoing problem, you may contact the [Tobacco Free Project](#).

### 5. Attachments

- a) Memo from SF Human Resources Director (9/12/2013) – *Electronic cigarettes covered under existing City smoke-free workplace policies*