

ORDINANCE PROHIBITING USE OF ELECTRONIC CIGARETTES IN AREAS WHERE
SMOKING IS PROHIBITED BY STATE LAW

October 14, 2014

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- Inside a public building, or in an outdoor area within 20 feet of a main exit, entrance, or operable window of a public building (Government Code § 7597(a));
- Within 25 feet of playgrounds or tot lot sandbox areas (Health and Safety Code § 104495(b)); and
- On the premises of a licensed day care center, or in a licensed family day care home during the hours of operation as a family day care home, and in those areas of the family day care home where children are present (Health and Safety Code § 1596.795).

A person who violates the ordinance is subject to misdemeanor criminal prosecution and/or issuance of an administrative citation.

Studies and other materials referenced in the findings contained within the proposed Ordinance are attached to this Report.

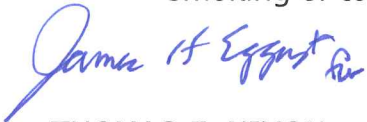
FISCAL IMPACT

Costs of enforcement upon issuance of citations.

RECOMMENDATION

It is recommended that the City Council:

- Conduct the first reading of and introduce the attached Ordinance prohibiting the use of electronic cigarettes in all locations where the smoking of tobacco products is prohibited by State law.



THOMAS F. NIXON
City Attorney

Attachment 1: Proposed Ordinance

Approved for Agenda listing



Matthew J. Fertal
City Manager

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE AMENDING TITLE 6 OF THE GARDEN GROVE MUNICIPAL CODE TO ADD CHAPTER 6.46 PROHIBITING THE USE OF ELECTRONIC CIGARETTES IN ALL LOCATIONS WHERE THE SMOKING OF TOBACCO PRODUCTS IS PROHIBITED BY STATE LAW

City Attorney Summary

This Ordinance prohibits the use of, or knowingly or intentionally permitting the use of, electronic cigarettes in all locations in the city where the smoking of tobacco products is prohibited by California State law.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE FINDS AND DETERMINES AS FOLLOWS:

WHEREAS, electronic cigarettes, commonly known as e-cigarettes, e-cigars, e-cigarillos, e-pipes, and e-hookahs, are battery operated devices, that are designed to deliver nicotine, flavor, and/or other substances through a vapor inhaled by the user¹;

WHEREAS, electronic cigarettes often mimic conventional cigarettes, cigars, or pipes 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

WHEREAS, the awareness and use of electronic cigarettes has increased significantly amongst both adults and children in recent years^{2,3,4};

WHEREAS, the World Medical Association has determined that electronic cigarettes "are not comparable to scientifically-proven methods of smoking cessation," and that "neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established"⁵;

WHEREAS, unlike conventional tobacco products, electronic cigarettes are not currently regulated by the United States Food and Drug Administration (FDA) and

¹ U.S. Food and Drug Administration. *Electronic Cigarettes (E-Cigarettes)*. Available at: www.fda.gov/newsevents/publichealthfocus/ucm172906.htm. Retrieved August 11, 2014.

² See e.g., Corey, C., Johnson, S., Apelberg, B., et al. (2013). "Notes from the Field: Electronic Cigarette Use Among Middle and High School Students - United States, 2011- 2012." *Morbidity and Mortality Weekly Report (MMWR)*, 62(35):729-730.

³ King, B.A., Alam, S., and Promoff, G., et al. (2013). "Awareness and Ever Use of Electronic Cigarettes Among U.S. Adults, 2010-2011." *Nicotine and Tobacco Research*.

⁴ Grana, R., Benowitz, N., Glantz, S., et. al., (2014). "E-Cigarettes: A Scientific Review." *Circulation - Journal of the American Heart Association*, 129:1972-1986.

⁵ World Medical Association. *Statement on Electronic Cigarettes and Other Electronic Nicotine Delivery Systems*. October 2012.

clinical studies about the safety and efficacy of electronic cigarettes for their intended use have not been submitted to the FDA; for this reason, consumers and the public currently have no way of knowing whether electronic cigarettes are safe for their intended use, what types or concentrations of potentially harmful chemicals the products contain, and/or what dose of nicotine the products deliver⁶;

WHEREAS, although potentially safer than traditional cigarettes, electronic cigarettes have been found to contain and emit chemicals and particulates that are known to be hazardous to human health, both for users and those nearby, including chemicals known to cause cancer^{7,8,9};

WHEREAS, available data and studies show that particles generated by e-cigarettes are similar in size distribution and number to the particles generated by conventional cigarettes, that users of electronic cigarettes exhale some of these particles, which exposes bystanders to "passive vaping," and that electronic cigarette emissions are not merely "harmless water vapor," as is frequently claimed in the marketing for these products, and can be a source of indoor air pollution¹⁰;

WHEREAS, electronic cigarettes are often visually similar to cigarettes, thereby creating problems in locations where smoking is currently prohibited including: (a) making enforcement of no-smoking laws difficult; (b) undermining compliance with smoking laws by giving the visual impression that the laws are being violated; and (c) undermining efforts to reduce smoking in general;

WHEREAS, 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"¹¹;

⁶ U.S. Food and Drug Administration. *FDA Warns Of Health Risk Posed By E-Cigarettes*. 2009. Available at: www.fda.gov/downloads/forconsumers/consumerupdates/UCM173430.pdf. Retrieved August 11, 2014.

⁷ U.S. Food and Drug Administration. Evaluation of e-cigarettes. May 4, 2009. Available at: www.fda.gov/downloads/drugs/scienceresearch/ucm173250.pdf. Retrieved August 11, 2014.

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 Grana, R., Benowitz, N., Glantz, S., et. al., (2014). "E-Cigarettes: A Scientific Review." *Circulation – Journal of the American Heart Association*, 129:1972-1986 (summarizing the results of several studies).

¹⁰ Grana, R., Benowitz, N., Glantz, S., et. al., (2014). "E-Cigarettes: A Scientific Review." *Circulation – Journal of the American Heart Association*, 129:1972-1986.

¹¹ McMillen, R., Maduka, J., and Winickoff, J. "Use of Emerging Tobacco Products in the United States." *Journal of Environmental and Public Health*.

WHEREAS, 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;

WHEREAS, the State of California's Tobacco Education and Research Oversight Committee (TEROC) "opposes the use of e-cigarettes in all areas where other tobacco products are banned"¹²;

WHEREAS, although Health & Safety Code Section 119405 law prohibits the sale of electronic cigarettes to minors, no other State law currently regulates the sale and use of electronic cigarettes. In contrast, multiple State laws regulate tobacco sale and use. For instance, smoking tobacco use is prohibited in, among other places: in or near public buildings (Government Code Section 7596-7598); enclosed places of employment (Labor Code Section 6404.5); playgrounds and tot lots (Health and Safety Code Section 104495); and daycare facilities (Health and Safety Code Section 1596.795). But none of the State tobacco laws that prohibit smoking tobacco products in those locations expressly prohibit electronic cigarette vaping;

WHEREAS, the City is not preempted from prohibiting the use of electronic cigarettes in places where smoking of tobacco products is prohibited by State law, and such regulation of the use of electronic cigarettes is a legitimate role of government relating to the welfare of its citizens; and

WHEREAS, it is the intent of the City Council, in enacting this Ordinance, to provide for the public health, safety, and welfare by discouraging the use of electronic cigarettes around non-users, especially children; by protecting the public from involuntary exposure to secondhand byproducts of electronic cigarettes where they work and play; by facilitating uniform and consistent enforcement of smoke-free air laws; and by reducing the potential for re-normalizing smoking in public places and places of employment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1: The above recitals are true and correct and hereby incorporated herein by reference.

SECTION 2: The City Council finds that the proposed Ordinance is not subject to the California Environmental Quality Act ("CEQA"; Cal. Pub. Resources Code

¹² State of California Tobacco Education and Research Oversight Committee. (2013). Position on Electronic Cigarettes (e-cigarettes). Available at: www.cdph.ca.gov/services/boards/teroc/Documents/Positions/TEROC%20Official%20Position%20of%20E-Cigs_June%202013_final.pdf. Retrieved August 11, 2014.

Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.) because it can be seen with certainty that there is no possibility that the Ordinance in question may have a significant effect on the environment.

SECTION 3: Chapter 6.46 is hereby added to the Title 6 of the Municipal Code to read as follows:

CHAPTER 6.46

ELECTRONIC CIGARETTE USE PROHIBITED IN CERTAIN AREAS

6.46.010 Definitions.

6.46.020 Use of Electronic Cigarettes Prohibited Where Smoking Prohibited.

6.46.010 Definitions.

As used in this Chapter, the following terms, words and phrases have the meanings as defined in this Section, unless another meaning is clearly apparent from the context:

"Electronic Cigarette" means an electronic and/or battery-operated device, the use of which may resemble smoking, that can be used to deliver an inhaled dose of nicotine or other substances. The term includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an e-cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. The term does not include any inhaler or other device specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

6.46.020 Use of Electronic Cigarettes Prohibited Where Smoking Prohibited.

A. No person shall use any electronic cigarette to deliver an inhaled dose of nicotine or other substances while located in any place where the smoking of tobacco is prohibited by State law, including but not limited to California Labor Code Section 6404.5, California Government Code Sections 7596-7598, and California Health and Safety Code Sections 1596.795 and 104495.

B. No person shall knowingly or intentionally permit another person to use an electronic cigarette in violation of Subsection A in any place or area which is under the legal or de facto control of that person and in which the smoking of tobacco is prohibited by State law.

SECTION 4: If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 5: The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.