



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
Board of Supervisors



Date: September 22, 2014
Board Meeting Date: November 4, 2014
Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Supervisor Carole Groom
Supervisor Adrienne Tissier

Subject: Amendment of Various Sections of Chapter 4.96 and 4.98 of Title 4 of the San Mateo County Ordinance Code to include E-Cigarettes in Smoking and Sales Provisions.

RECOMMENDATION:

Adoption of an Ordinance amending Sections 4.96.030 and 4.96.140 of Chapter 4.96 of Title 4 of the San Mateo County Ordinance Code to (1) add the definition of "smoke," (2) to amend the definitions of "smoking" and "tobacco product" to include electronic cigarettes and other products, (3) to amend definitions of "multi-unit residences" and "multi-unit residence common areas", (4) to amend various sections of Chapter 4.96 to provide enforcement by Health System Chief or designees, and (5) to amend Section 4.98.100 of Chapter 4.98 to add definitions of "tobacco" and "tobacco products," previously introduced October 21, 2014.

BACKGROUND:

Electronic smoking devices, commonly referred to as "e-cigarettes," "e-cigars," "e-cigarillos," "e-pipes," "e-hookahs," are electronic devices often made to look like conventional tobacco products in shape, size and color. It is believed that there are more than 400 e-cigarette brands available for sale in the US. Many are designed to mimic the size, shape and use of a conventional cigarette. A battery powers a heater/atomizer that vaporizes a solution containing nicotine and flavor additives suspended in propylene glycol or glycerin. The vapor that this process produces is ingested by the user in the same way as a conventional cigarette. An indicator light at the end of the device mimics the look of a lit cigarette.

Nicotine is a highly addictive neurotoxin and is included in the Prop 65 list of Chemicals Known to the State to Cause Cancer or Reproductive Toxicity. Nicotine is known to cause birth defects and is particularly dangerous for vulnerable populations including

children, pregnant women and people with cardiovascular conditions. A recent scientific study confirmed that electronic smoking devices that contain nicotine also emit nicotine in the released vapor and involuntarily expose nonsmokers to nicotine. Another study found a total of 22 elements in vapors produced by electronic smoking devices, and three of these elements (lead, nickel, and chromium) appear on the US Food and Drug Administration's (FDA) "Harmful and Potentially Harmful Chemicals List." A study published in the American Journal of Public Health found similar results to those identified in FDA testing and concluded that the electronic smoking devices tested demonstrated poor quality control, toxic contaminants, misrepresentation of the nicotine delivered and insufficient evidence of the overall public health benefit. E-cigarettes are currently not regulated by the FDA.

While proponents of e-cigarettes tout the products as effective tobacco cessation devices, the World Medical Association has determined that electronic smoking devices "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."

Chapter 4.96 of Title 4 of the San Mateo County Ordinance Code is known as the San Mateo County smoking ordinance. It prohibits or limits smoking in public places and places of employment and reduces the initiation and maintenance of tobacco use, especially by minors, by prohibiting the distribution of tobacco products through vending machine, out-of-package sales, and self-service devices.

Chapter 4.98 of Title 4 of the San Mateo County Ordinance Code requires any retailer, individual or entity to obtain and maintain a tobacco retailer's permit in order to sell or offer for sale any tobacco products. Permits are valid for one year and shall be renewed annually.

Attachment 1 contains the list of references used in the Findings section of this Ordinance.

DISCUSSION:

A study published in the Journal of Environment and Public Health suggests that electronic smoking devices "may have the capacity to 're-normalize' tobacco use in a demographic that has had significant de-normalization of tobacco use previously." In addition to the standard cigarette shape, e-cigarettes can also be found shaped like pens, soda cans, travel drives, inhalers, and marker pens, among other designs.

The use of electronic smoking devices in smoke-free locations threatens to reverse the progress that has been made in establishing the social norm that smoking is not permissible in public places or places of employment. The use of electronic smoking devices in smoke-free locations may increase the social acceptability and appeal of smoking, particularly for youth, undermining the progress that has been made over the years in discouraging smoking.

At the federal level, the US Department of Transportation and the Air Force have enacted rules that restrict public use of e-cigarettes. As of the new year, 3 states (North Dakota, New Jersey, and Utah) prohibit the use of e-cigarettes in 100% smoke-free venues. Nine other states (not including California) prohibit e-cigarettes in specific workplaces, restaurants, bars and gaming places. Sixteen (16) jurisdictions in California have placed prohibitions on e-cigarettes, including Santa Clara, Marin, and Contra Costa Counties.

Chapter 4.96 of Title 4 of the San Mateo County Ordinance Code prohibits or limits smoking in public places and places of employment. This amendment would broaden the definition of “smoke” and “smoking” to include other materials in addition to tobacco such as e-cigarettes, marijuana and herbal cigarettes so that the existing tobacco smoking prohibitions would cover this broader range of items.

Chapter 4.96 of Title 4 of San Mateo County Ordinance Code also limits distribution of tobacco products, especially to minors, by including e-cigarettes under the definition of tobacco products and prohibiting the distribution of tobacco products through vending machine, out-of-package sales, and self-service devices.

Chapter 4.98 of Title 4 of the San Mateo County Ordinance Code includes provisions for the Tobacco Retailer’s Permit. Any retailer, individual, or entity is required to obtain and maintain a valid tobacco retailer’s permit in order to sell or offer to sell any tobacco products. This amendment would add definitions of “tobacco” and “tobacco products” for the permit provisions to include not only tobacco cigarettes but also to include anything with tobacco or nicotine, which would include e-cigarettes and other electronic smoking devices.

FISCAL IMPACT:

None