



## **CITY OF SALINAS COUNCIL STAFF REPORT**

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**DATE:** JUNE 8, 2021

**DEPARTMENT:** SALINAS CITY COUNCIL

**FROM:** CHRISTOPHER A. CALLIHAN, CITY ATTORNEY

**TITLE:** AN ORDINANCE RESTRICTING THE SALE OF ELECTRONIC  
CIGARETTE PRODUCTS AND FLAVORED TOBACCO  
PRODUCTS

**RECOMMENDATION MOTION:**

A motion to adopt an ordinance amending Article XI of Chapter 16 of the Salinas Municipal Code regarding the use of electronic cigarettes and making minor amendments to update and to modernize the City's smoking regulations.

**RECOMMENDATION:**

It is recommended that the City Council adopt the proposed ordinance.

**EXECUTIVE SUMMARY:**

The city of Salinas has been a participating member in the Blue Zones Project, a community-wide well-being improvement initiative supported by the Salinas Valley Memorial Healthcare System, Montage Health, and Taylor Farms. The Blue Zones Project encourages changes in the community that lead to healthier options with a goal of lowered healthcare costs, improved productivity, and a higher quality of life.<sup>1</sup>

As a part of the City's participation in the Blue Zones Project, the Mayor and Council member McShane, working with Kendra Howell, Sr. Policy Lead for the Blue Zones Project Monterey County and Government Affairs Manager for the Salinas Valley Memorial Healthcare System, requested that an ordinance be prepared to update the City's smoking regulations to include electronic cigarettes; and ordinance that would amend the City Code to treat and to regulate

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<sup>1</sup> montereyocounty.bluezonesproject.com

smoking an electronic cigarette product in the same manner as a traditional tobacco product. Citing the negative health consequences and the increasing rates of tobacco use among youth as a result of electronic cigarettes, as well as the City's commitment to the Blue Zones Project and its desired outcomes, the proposed ordinance restricts the use electronic cigarette products in the same manner as it restricts traditional tobacco products. The proposed ordinance also updates and modernizes other provisions of the City's smoking regulations.

## DISCUSSION:

### *Electronic Cigarettes (e-cigarettes)*

Vapes, vaporizers, vape pens, hookah pens, electronic cigarettes (e-cigarettes or e-cigs) and e-pipes are some of the many terms used to describe electronic nicotine delivery systems (ENDS). These items are collectively and generally referred to in this Report as e-cigarettes. These products use an "e-liquid" that may contain nicotine, as well as varying compositions of flavorings and other ingredients. The liquid is heated to create an aerosol that the user inhales. e-cigarettes may be manufactured to look like conventional cigarettes, cigars, or pipes. Some resemble pens or USB flash drives. Larger devices may resemble cell phones and bear no little or no resemblance to cigarettes.

According to the 2019 National Youth Tobacco Survey of the United States Food and Drug Administration (FDA), e-cigarettes have become the top choice among youth with over 5 million currently (within the past 30 days) using e-cigarettes, compared to over 3.6 million in 2018. Nearly 1 million youth reported using e-cigarettes daily, with about 1.6 million youth using the product frequently (on 20 or more days per month). Between 2011 and 2019, e-cigarette use among high school students rose 27.5% and among middle school students rose 10.5%, while cigarette use among high school students decreased by 5.8% and among middle school students by 2.3% over that same time period.<sup>2</sup> The use of e-cigarettes, particularly those with high levels of nicotine, place youth at risk for developing nicotine addiction. Nicotine exposure during adolescence could harm brain development. Additionally, youth who use e-cigarettes are more likely to start smoking cigarettes. Further, e-cigarette aerosol may expose users to other harmful substances such as heavy metals, volatile organic compounds, and ultrafine particle that could harm the lungs.<sup>3</sup>

The FDA is required by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) to regulate the manufacture, distribution, and marketing of tobacco products. Among

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<sup>2</sup> Youth Tobacco Use: Results from the National Youth Tobacco Survey. United States Food and Drug Administration. <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey>

<sup>3</sup> Id.

the FDA’s responsibilities under the Tobacco Control Act is to premarket review all “new tobacco products.” New tobacco products are defined in Section 910a of the Tobacco Control Act as “any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of February 15, 2007.” Almost all e-cigarettes that are sold today entered the market after 2007 and are thereby subject to premarket review by the FDA, though they have not been reviewed by the FDA to determine if they are appropriate for public health.<sup>4</sup> The FDA has, in fact, stated that it “has not banned any class of tobacco products, including e-cigarettes [and they] expect that many products will remain on the market while manufacturers apply for authorization to market their products.”<sup>5</sup>

In California, individuals must be at least 21 years of age to buy tobacco products (including vaping devices).<sup>6</sup> E-cigarettes are covered under California’s smokefree laws, meaning like traditional tobacco products, e-cigarettes are prohibited in many spaces including workplaces, restaurants, bars, and movie theaters.

The proposed ordinance restricts the use of e-cigarettes within the city of Salinas in the same manner as the use of traditional tobacco products is restricted. Among the illnesses reported from the use of e-cigarettes, neither the CDC nor the FDA have found a device, product, or substance that is linked to all cases.<sup>7</sup> However, a paper published by the New England Journal of Medicine suggest that many sick individuals vaped THC, a compound in marijuana, before developing an illness, either instead of or in addition to nicotine.<sup>8</sup> CDC and public-health officials confirmed this finding.<sup>9</sup> Some of the health concerns stem from the presence of an additive—vitamin E acetate—an unauthorized additive in some marijuana vaping pods. The FDA does not regulate THC vaping products because marijuana is illegal under federal law. California, however, regulates marijuana and restricts sales from licensed dispensaries to only tested, regulated products. The proposed

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<sup>4</sup> “To date, no ENDS products have been authorized by the FDA—meaning that all ENDS products currently on the market are considered illegally marketed and are subject to enforcement, at any time, in the FDA’s discretion.” Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization. January 2020. <https://www.fda.gov/media/133880/download>

<sup>5</sup> Commonly Asked Questions: About the Center for Tobacco Products. <https://www.fda.gov/tobacco-products/about-center-tobacco-products-ctp/commonly-asked-questions-about-center-tobacco-products#4>

<sup>6</sup> Stop Tobacco Access to Kids Enforcement (STAKE) Act. California Business and Professions Code section 22950, et seq.

<sup>7</sup> Is Vaping Marijuana Safe? Death and Lung Disease Linked to E-Cigs Call that Into Question. Ducharme, Jamie. Time Magazine September 6, 2019. <https://time.com/5670147/vaping-marijuana-lung-disease/>

<sup>8</sup> Vaping-Induced Lung Injury. Christiani, David. C., M.D., M.P.H. The New England Journal of Medicine, September 6, 2019. DOI: 10.1056/NEJMe1912032 <https://www.nejm.org/doi/full/10.1056/NEJMe1912032>

<sup>9</sup> Ducharme, Jamie.

ordinance restricts smoking of marijuana (medical or otherwise), regardless of the method by which it is smoked, in the same manner as it restricts smoking of traditional tobacco products.

CEQA CONSIDERATION:

The adoption of this proposed ordinance is not a project pursuant to CEQA Guidelines Section 15378(b)(2) which provides that a project does not include general policy and procedure making. The adoption of this proposed ordinance is also not a project pursuant to CEQA Guidelines Section 15378(b)(5) which provides that a project does not include organizational and administrative action of government which will not result in direct or indirect physical changes in the environment.

In the alternative, if the adoption of this proposed ordinance is considered a project, it is subject to exemption. It can be seen with certainty that there is no possibility that the adoption of this ordinance may have a significant effect on the environment and therefore the adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) because CEQA applies only to projects which have the potential for causing a significant effect on the environment [CEQA Guidelines Section 15061(b)(3)].

STRATEGIC PLAN INITIATIVE:

The adoption of the proposed ordinance does not directly support the City Council's four Goals for 2020-2023; however, the proposed ordinance is consistent with and supports the City's participation in the Blue Zones Project.

FISCAL AND SUSTAINABILITY IMPACT:

The City Council's adoption of the proposed ordinance is not expected to have an impact on the City's General Fund, or the Measure E or Measure G Funds.

DEPARTMENTAL COORDINATION

The City Attorney's Office did not coordinate with other City departments in the preparation of the proposed ordinance.

ATTACHMENTS:

Ordinance