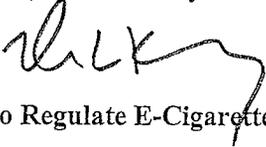




City of San Diego
MARK KERSEY
CITY COUNCILMAN, FIFTH DISTRICT

MEMORANDUM

DATE: January 9, 2014
TO: ~~Honorable Chair Marti Emerald, Public Safety & Livable Neighborhoods Committee~~
FROM: Councilmember Mark Kersey 
RE: Municipal Code Amendment to Regulate E-Cigarettes

Electronic cigarettes, commonly referred to as e-cigarettes, are relatively new products that allow users to inhale vaporized nicotine. E-cigarettes are growing in popularity – and with almost every gas station, convenience store, and traditional smoke shop now selling e-cigarettes, their usage is increasing.

Currently, there is limited research on the long-term effects of “vaping” (inhaling) atomized nicotine or the effects of second hand vapor inhalation. Although the major content of exhaled vapor is water, there is currently no regulation or oversight for the production of “smoke juice” (flavored liquid tobacco that is used in e-cigarettes), and known carcinogens have been detected in the composition of e-cigarettes as stated within several early studies conducted by the FDA.

While proponents of e-cigarettes as a cessation device argue that the vapor is an improvement over traditional smoking, vaping can still lead to nicotine addiction and could ease the transition towards other dangerous tobacco products. According to the Centers for Disease Control & Prevention, e-cigarette usage among middle and high school students has increased over 100% from 2011 to 2012. And with hundreds of smoke juice flavors ranging from Cola to Peppermint Patty, e-cigarettes appear designed to appeal to youth.

Although the federal Food & Drug Administration has the authority to regulate e-cigarettes as a tobacco product under the 2009 Family Smoking Prevention & Control Act, we should not wait for either the federal or state governments to act. Other municipalities have already taken action to regulate these products including Vista, Glendale, and Burbank.

Even though the health effects of e-cigarettes or unintentional second hand inhalation are unclear, the City of San Diego should proactively regulate e-cigarettes at the local level,

especially when it comes to protecting public health of the public, particularly of young people. For these reasons, I propose that the City Council consider amending our municipal code to do the following:

- a) Regulate the sale, possession, advertising, and promotion of e-cigarettes to minors in the City of San Diego, including a prohibition on selling e-cigarettes in vending machines so that our current policies are in comport with both State law and the guiding ordinances which regulate tobacco products in the City of San Diego;
- b) Require vendors to obtain permits for the sale of e-cigarette products;
- c) Restrict the use of e-cigarettes inside all public facilities in the City of San Diego, including Petco Park and Qualcomm Stadium.

I am requesting your Committee docket a discussion item on regulating e-cigarettes at a future meeting.

CC: Interim Mayor Todd Gloria
City Councilmembers

February 25, 2014

Council Member Marti Emerald
Chair of the Public Safety and Livable Neighborhoods Committee
San Diego City Council
202 C Street
San Diego, CA 92101

cc: Public Safety and Livable Neighborhoods Committee members

Dear Council Member Marti Emerald,

On behalf of our members in San Diego, Americans for Nonsmokers' Rights encourages the San Diego City Council to prohibit the use of electronic (e-)cigarettes and other electronic nicotine delivery devices in smokefree venues, where workers and patrons will be exposed to the secondhand aerosol they emit.

E-cigarette companies and proponents claim that the aerosol emitted is completely harmless and only contains "water vapor." However, recent research on the constituents of e-cigarettes shows that the aerosol emitted into the air contains lead, chromium, nickel, and other metals, as well as silicate particles and nicotine, so while some may believe the product is "safer," use of the product certainly isn't harmless or risk-free (see attached fact sheet). Although e-cigarettes contribute less to indoor air pollution than tobacco cigarettes, they are not emission-free.

San Diego would be in good company in prohibiting the use of e-cigarettes in enclosed public places and workplaces, including restaurants and bars. Currently, more than 100 municipalities and three states include e-cigarettes as products prohibited for use in smokefree environments, and New York City and Chicago will implement similar laws at the end of April. We would love to add San Diego to that list. Other California cities are now considering this same issue, including Los Angeles and San Francisco.

Electronic nicotine delivery devices heat and vaporize a solution containing nicotine and are often designed to mimic the look and feel of a real cigarette. They come in a variety of flavors and nicotine levels, all claiming to be a safer alternative to smoking cigarettes.

Electronic nicotine delivery devices are currently unregulated, which leaves a great deal of unknowns not only about potential health risks to the user (and non-user exposed to the secondhand aerosol), but also about product manufacturing quality and safety. The burden of proof should rest on the manufacturers to demonstrate that their products are safe.

While research shows that the levels of toxins in e-cigarette aerosol are lower than in tobacco smoke, the levels are *higher* than what are found in FDA-approved nicotine inhalers, and there is evidence that at least 10 chemicals identified in the aerosol are on the California Prop 65 list of dangerous carcinogens and reproductive toxins, including Acetaldehyde, Benzene, Cadmium, Formaldehyde, Isoprene, Lead, Nickel, Nicotine, N-Nitrosornicotine, and Toluene.

E-cigarette proponents argue that e-cigarettes are safer, healthier, and help people quit tobacco smoking. It may be true that e-cigarettes, in general, are less polluting than tobacco cigarettes, but e-cigarette still emit pollutants and toxins into the air. Given the current science base, we should take the

precautionary approach and ensure individuals are not exposed to the secondhand aerosol in smokefree environments.

E-cigarette manufacturers and proponents are using unrestrained marketing tactics, especially aimed at young adults via online media, to normalize product use and to promote e-cigarettes as a “safe” alternative to smoking and as an easy way to quit smoking. There is also a concerted effort by e-cigarette companies and proponents to prevent regulation of the product, and now that the three major U.S. tobacco companies—Altria, RJ Reynolds, and Lorillard—have bought or developed e-cigarette brands, we expect to see even more aggressive and deceptive marketing and lobbying. For instance, Los Angeles radio stations aired ads by Blu E-cigarettes, owned by Lorillard Tobacco Company, and Vuse E-cigarettes, an RJ Reynolds product, asking people to attend the City Council hearing to oppose the proposed ordinance.

The City of San Diego has the opportunity to protect public health from exposure to secondhand aerosol. We have enough science to make an intelligent decision that secondhand aerosol is not harmless, and that it is a new source of air pollution that contains ultrafine particles, toxicants, and carcinogens.

Given these facts, Americans for Nonsmokers’ Rights urges the San Diego City Council to prohibit the use of e-cigarettes and other electronic nicotine delivery devices in all smokefree places and workplaces, at all times, without exception.

Thank you for your leadership and desire to make San Diego the best place to live, work, and visit. Please feel free to contact me at 510-841-3045 if you have any questions, comments, or feedback.

Sincerely,

A handwritten signature in blue ink that reads "Cynthia Hallett". The signature is written in a cursive, flowing style.

Cynthia Hallett, MPH
Executive Director

Attachments: Electronic Cigarettes and Secondhand Aerosol fact sheet
List of Cities and States with e-cigarette laws

Americans for Nonsmokers’ Rights is a national, member-based, not-for-profit organization based in Berkeley, CA that is dedicated to helping nonsmokers breathe smokefree air since 1976.