



STAFF REPORT

Date: June 16, 2014
To: Mayor and Members of City Council
From: William R. Galstan, Special Counsel
Cc: Bryan Montgomery, City Manager; Derek P. Cole, City Attorney;
Troy Edgell, Code Enforcement Coordinator; Denice Dennis,
Contra Costa Health Services Tobacco Control Project Director
SUBJECT: Ordinance Dealing with Outdoor Smoking and Use/Possession of
E-Cigarettes by Minors

FOR CONSIDERATION AT THE CITY COUNCIL MEETING OF JULY 8, 2014

Background and Analysis

This ordinance was introduced at the June 10 Council meeting with an amendment regarding possession of e-cigarettes by minors. There was a desire to allow minors to use e-cigarettes in non-public places with consent of parents (as an example, where the parent hopes to cure the minor of tobacco addiction). Mayor Pope recommended wording similar to the Penal Code provisions relating to minors possessing firearms.

Thus Section 4.19.011 has been revised to read in relevant part as follows:

The use and/or possession of any electronic cigarette or electronic cigarette paraphernalia by a minor is prohibited except when not used or possessed in a public area and with the prior written consent of a parent or legal guardian.

The language had originally prohibited use/possession anywhere within the Oakley city limits. The above language mirrors Penal Code Sec. 29615 regarding the possession of firearms by minors.

Also attached is an article from the June 16, 2014 edition of *Time* magazine regarding e-cigarettes. It notes that "e-cigarettes do emit other harmful agents, including carcinogens"; yet another article justifying the regulation of e-cigarettes to protect the public health, safety and welfare.

Recommendation

Adopt the ordinance.

Attachments

- 1) Ordinance amending Title 4, Chapter 19 of the Oakley Municipal Code
- 2) Article from the June 16, 2014 edition of *Time* magazine regarding e-cigarettes.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY
AMENDING PARAGRAPH (f) OF SECTION 4.19.004 AND ADDING ARTICLE 3
TO TITLE 4 CHAPTER 19, AND ADDING SECTION 4.19.011 TO THE
OAKLEY MUNICIPAL CODE, DEALING WITH SMOKING IN OUTDOOR
AREAS AND PROHIBITING USE AND POSSESSION OF ELECTRONIC
CIGARETTES BY MINORS**

The City Council of the City of Oakley does ordain as follows:

Section 1. Paragraph (f) of Section 4.19.004 is hereby amended to read as follows:

(f) “Smoke” and “Smoking” shall be defined as follows: “Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, except for smoke from incense. The term “smoke” includes, but is not limited to, tobacco smoke, marijuana smoke and gases, particles, and vapors from electronic cigarettes. “Smoking” means engaging in an act that generates smoke, such as, for example: possessing a lighted pipe, a lighted hookah pipe, an operating electronic cigarette as defined in Section 4.19.011, a lighted cigar, or a lighted cigarette of any kind and a lighted marijuana joint, pipe, or other implement an includes smoking marijuana for medical or recreational purposes; or lighting or igniting a pipe, a hookah pipe, a cigar or a cigarette.

Section 2. Article 3 is hereby added to the Oakley Municipal Code, to read as follows:

Article 3. OUTDOOR AREAS

4.19.202. Definitions.

For the purposes of this Article, the terms “smoke” and “smoking” shall have the same definitions as are contained in Section 4.19.004(f) of this Chapter.

4.19.204. Prohibition of Smoking at City-Owned Facilities.

Smoking, as defined in Section 4.19.004(f), is prohibited at any enclosed or outdoor area owned by the City of Oakley, including, but not limited to the following: parks, sports facilities, picnic areas, playgrounds, walking paths, hiking trails, amphitheaters, plazas, nature interpretative areas, or special-use recreational facilities such as ball fields, fishing piers, swimming pools, skateboard parks, etc. This section does not apply to smoking in privately-owned vehicles traveling on City-owned streets, nor to pedestrians on concrete sidewalks. However this Section shall apply to streets or sidewalks closed for authorized farmer’s markets, festivals or parades. The presence or absence of signs prohibiting smoking shall not be a defense to a charge of smoking in violation of this Section.

4.19.206. Prohibition of Smoking at Designated Private Facilities.

Smoking, as defined in Section 4.19.004(f), is prohibited at any outdoor area which is privately owned at the following locations: outdoor dining areas at bars and restaurants; all areas within twenty feet of doors, windows, air ducts and ventilation systems; exterior areas of shopping centers and malls; automobile or vehicle display areas; swap meets, nurseries, Christmas Tree lots, temporary outdoor sales and display areas, bus shelters, movie lines and outdoor sales areas and other similar locations. "No smoking" signs consisting of letters of not less than one inch in height, or the international "no smoking" symbol shall be conspicuously posted in every building or other place where smoking is regulated by section by the owner, operator, manager or other person having control of the place. The lack of a sign being posted shall not be a defense to a charge of smoking in violation of this section.

Section 3. Section 4.19.011 is hereby added to the Oakley Municipal Code, to read as follows:

4.19.011 Use/Possession of Electronic Cigarettes by Minors Prohibited.

The use and/or possession of any electronic cigarette or electronic cigarette paraphernalia by a minor is prohibited except when not used or possessed in a public area and with the prior written consent of a parent or legal guardian. "Electronic cigarette" means a device that can provide an inhalable dose of nicotine by delivering a vaporized solution, irrespective of whether liquid nicotine is actually being vaporized. "Electronic cigarette paraphernalia" means any part of an electronic cigarette, or any cartridge or other liquid used for the purpose of vaporizing the liquid in an electronic cigarette. The legislative findings supporting this provision and portions of Section 4.19.004 are contained in a separate Resolution adopted by the City Council.

Section 4. California Environmental Quality Act (CEQA) Finding.

This ordinance is not subject to the California Environmental Quality Act pursuant to Sec. 15060(c)(2), (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3), (the activity is not a project as defined in Sec. 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly). This is an administrative policy-making action of the City Council.

Section 5. Severability.

In the event any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 6. Effective Date and Publication.

This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary

of the proposed ordinance, posting a certified copy of the proposed ordinance in the City Clerk's Office at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on _____, 2014 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

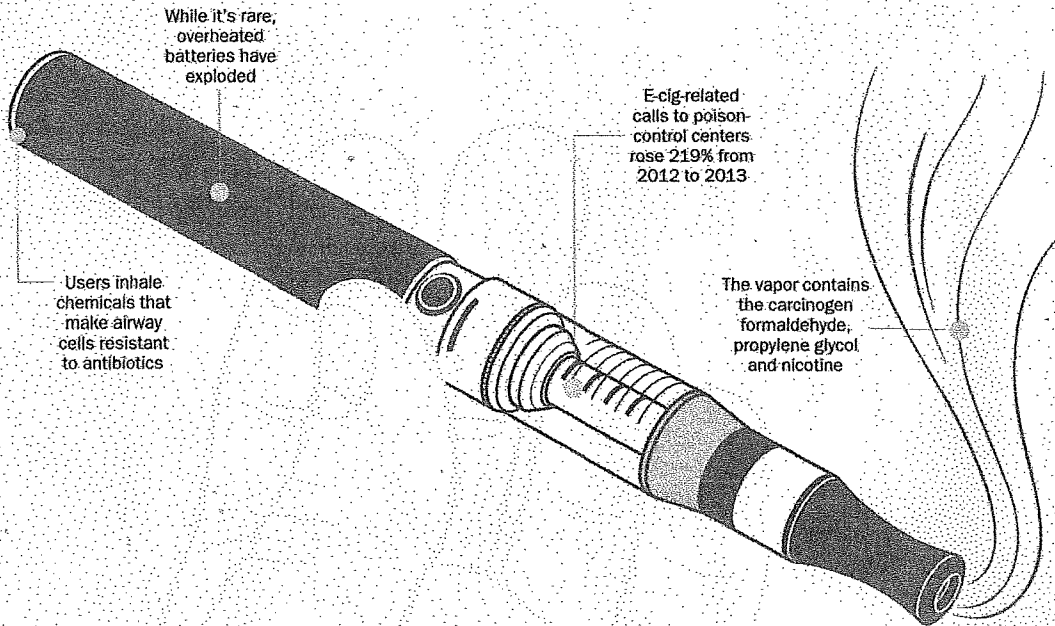
Randy Pope, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

Health



The Vapor Trail Tracking the conflicting claims about e-cigarette safety

BY ALICE PARK

A LOOK AT THE NUMBERS shows that vaping is catching on as quickly as smoking did in the 1950s. In just two years, the percentage of smokers who have tried e-cigarettes, which vaporize a liquid solution rather than burn tobacco, jumped from 2% in 2010 to 30% in 2012.

Fueling that trend are claims that e-cigs are a healthier way for people to use nicotine and that they can help smokers kick the habit. The latest report from the U.K. found that the devices were 60% more likely than nicotine patches or gum to help smokers give up cigarettes.

That seems like good news, but as with most data on e-cigs, which are not yet regulated by the Food and Drug Administration, those num-

bers may be a smokescreen. E-cigs still contain nicotine, the stuff that keeps smokers coming back for puff after puff—and according to the U.K. report, just 20% of people who used e-cigs as a cessation tool actually stopped smoking cigarettes.

And this is among people who are motivated to quit. It doesn't mean that smokers who switch to e-cigs either because they think they are safer or so they can smoke where cigarettes are banned are more likely to stop smoking. When these people are included, e-cigarettes are actually less likely to lead to quitting. And that's especially true among teens: high school students who smoke tend to use both.

"Some people likely do quit

smoking on e-cigs, but more people are being deterred from quitting or having their quit effort undermined," says Stanton Glantz of the University of California, San Francisco. The people who quit may be outnumbered by new smokers who start because of e-cigs and former smokers who light up again when their nicotine cravings are reignited by ads for the devices. And while e-cig vapor doesn't contain all the toxic by-products of burning tobacco, e-cigs do emit other harmful agents, including carcinogens.

Most experts agree that e-cigs are the lesser of two evils when compared with traditional tobacco, but they're still a delivery system for a highly addictive drug—and there is still so much we don't know.

The Checkup

HEALTH NEWS EXAMINED

Headline says: "Paleo Diets Don't Help You Lose Weight"

Science says: Researchers put the diet under a microscope and found that the foods our Paleolithic ancestors ate did not trigger the production of hormones that suppress appetite. That "I'm full" feeling comes from soluble fiber; they grazed on insoluble fiber. Modern cavemen eat the soluble kind too, though.

Not quite right



Headline says: "Pancreatic Cancer Will Soon Be Second Deadliest"

Science says: By 2030, more people with pancreatic cancer will die of the disease than those with any other kind of cancer except lung. That's because it's become more common and is hard to detect and other cancers have become more treatable.

Jury's out



Headline says: "Airplanes Are Full of Dangerous Germs"

Science says: Scientists exposed airplane surfaces to E. coli and MRSA to see how long the germs could last and which surfaces were best at transmitting them. Their findings? Some lasted eight days, and nonporous surfaces passed them on most readily.

Wash your hands!



ILLUSTRATION BY JAMISON SIMPSON FOR TIME