



STAFF REPORT

Date: May 27, 2014
To: Mayor and Members of City Council
From: William R. Galstan, Special Counsel *William R. Galstan*
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 JUNE 10, 2014

Background and Analysis

At the May 13, 2014 meeting, City Council determined that the smoking regulations should, for the most part, include prohibition/regulation of e-cigarettes. Thus the attached revised ordinance has been prepared to address this change.

With the potential adoption of the attached ordinance, Oakley's smoking law will be in three parts and found in Title 4, Chapter 19 of the Oakley Municipal Code.

The first part of the regulations is the "old" section, prohibiting smoking in designated enclosed spaces, including restaurants, places of employment, etc. Because Council wishes to include e-cigarettes in the smoking prohibition, the "definition section", Section 4.19.004(f) has been revised to define smoking as including use of e-cigarettes. With the adoption of this ordinance, and the revised definition, use of e-cigarettes will be prohibited in restaurants and other designated indoor areas.

The second part of the regulations is the "recent" section dealing with multiple family units (apartments), found in Article 2 of Chapter 19. When that set of rules was adopted, Council declined to include e-cigarettes in the regulations dealing with apartments. This decision appears to continue to be a sound one, as prohibiting the use of e-cigarettes within an individual's apartment does not appear to represent a health risk or a nuisance, based on the currently-available

scientific evidence. Thus Article 2 remains unchanged, and e-cigarette use in apartments continues to be unregulated.

The third part of the regulations is the “new” section dealing with outdoor smoking, found in Article 3 of Chapter 19. Pursuant to Council’s direction, the definition of “smoking” in this Article refers back to the definition found in Article 1, treating the use of e-cigarettes the same as smoking tobacco products and prohibiting their use in parks, plazas, outdoor areas of shopping centers outdoor eating areas of restaurants, etc.

Finally, the use **and possession** of e-cigarettes by minors continues to be a part of the ordinance, and is found in Section 4.19.011 (Article 1). Staff believes that this may be the first ordinance in Contra Costa County that prohibits use or possession by minors.

Staff proposes some fairly lengthy “legislative findings” explaining the rationale for e-cigarette prohibition and regulation which can be adopted by Resolution rather than unnecessarily lengthening the ordinance itself. Thus a separate Resolution making those findings is attached. Also, reference is made to all of the materials presented to the City Council by staff on the subject of smoking at the time that Article 2 was adopted, as well as the materials presented at the May 13, 2014 meeting.

Fiscal Impact

No significant impact anticipated. Possible additional workload on Police/Code Enforcement departments.

Recommendation

- 1) Introduce the ordinance by title only;
- 2) Introduce the ordinance making amendments to Title 4, Chapter 19 of the Oakley Municipal Code dealing with smoking;
- 3) Adopt the Resolution making legislative findings regarding electronic cigarettes.

Attachments

- A) Ordinance amending Title 4, Chapter 19 of the Oakley Municipal Code;
- B) Resolution making legislative findings regarding electronic 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 throughout the City of Oakley. "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 exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that the project will not have a significant effect on the environment; therefore the project is not subject to CEQA.

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

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY MAKING
LEGISLATIVE FINDINGS REGARDING THE REGULATION OF USE OF
ELECTRONIC CIGARETTES AND PROHIBITING THE USE AND
POSSESSION THEREOF BY MINORS**

WHEREAS the Oakley City Council is updating its ordinances dealing with smoking and wishes to address the use of electronic cigarettes, which are defined in the ordinance under consideration; and

WHEREAS the use of electronic cigarettes is being studied by federal health agencies and several private health entities, but the studies are ongoing and no definitive conclusions or recommendations have as yet been made by the federal government; and

WHEREAS the City Council does not wish to expose its citizens to second-hand vapor from electronic cigarettes which may be harmful to their health;

NOW, THEREFORE, the City Council hereby makes the following legislative findings:

1. Use of electronic cigarettes often creates a nuisance to persons near the user of the electronic cigarette in that the vapor cloud can contain odors of the liquid being vaporized and unknown biologic materials from the user's body may be contained within the vapor cloud;
2. Use of electronic cigarettes exposes persons near the user to toxins, albeit fewer than are experienced with tobacco cigarettes. The level of safety of such exposure is unknown at this time. The FDA has detected diethylene glycol, a toxic chemical used in antifreeze, as a component of vapor of some e-cigarettes. Also, carcinogens called nitrosamines have been found in the vapor of some e-cigarettes. Some studies have also found formaldehyde and metal particles in e-cigarette vapor.
3. The National Association of County & City Health Officials, and the American Lung Association, both encourage local agencies to regulate e-cigarettes in the same manner as tobacco products.
4. In adopting California Health & Safety Code Sec. 119405, the state Legislature determined that the FDA studies warned the public about potential health risks associated with use of e-cigarettes, and further found

that e-cigarettes are sold with flavored cartridges to appeal to minors, and that a prohibition on sale of e-cigarettes to minors is necessary to protect the health of minors from a product with contents that have not been comprehensively studied.

5. There is a recognized danger that use of e-cigarettes by minors may be an entrance point and encourage young people to move on to smoking tobacco products;
6. E-cigarettes may tend to re-glamorize smoking in general;
7. The adoption of an ordinance regulating the use of e-cigarettes and prohibiting the use/possession of e-cigarettes by minors will help protect the public health.

The foregoing resolution was adopted at a regular meeting of the City Council of the City of Oakley held on the _____ day of June, 2014, by Councilmember _____, who moved its adoption, which motion being duly seconded by Councilmember _____, was upon voice vote carried and the resolution adopted by the following vote:

AYES:

NOES:

ABSTENTION:

ABSENT:

APPROVED:

Randy Pope, MAYOR

ATTEST:

Libby Vreonis, CITY CLERK

Date