




Office of the City Manager

08

CONSENT CALENDAR

April 7, 2015

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Jane Micallef, Director, Health, Housing & Community Services Department
Subject: Amendment to BMC Chapter 9.80 – Tobacco Retailers

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Sections 9.80.010, 9.80.020 and 9.80.035, and adding Sections 9.80.037 and 9.80.095, effective January 1, 2016, to:

1. Require a Tobacco Retail License (TRL) to sell Electronic Nicotine Delivery Systems (ENDS);
2. Prohibit sale of all tobacco products within a 1,000 foot buffer zone around schools and public parks, with a grace period of one to two years to minimize economic hardship; and
3. Define violation of Chapter 9.80 as a public nuisance.

SUMMARY

Since 2010, Council has taken multiple actions to protect Berkeley youth from the negative impacts of tobacco by adopting ordinances prohibiting smoking in multi-unit housing and prohibiting the use of ENDS in all places smoking is prohibited. To further protect youth, the recommendations in this report serve to create a tobacco free buffer zone around schools and parks by prohibiting the issuance of TRLs within the buffer zone. This will restrict the sale of conventional tobacco products and ENDS in areas frequented by youth. This recommendation has received strong support from the Community Health Commission. The California Department of Public Health recently issued a Health Advisory detailing the many adverse effects of electronic cigarettes and the public health risks posed by the marketing, sale and use of ENDS especially to children and teens.

FISCAL IMPACTS OF RECOMMENDATION

Retailers who currently sell ENDS, but do not also sell conventional tobacco products, will be newly required to obtain TRLs. The number of such retailers is unknown, but is expected to be small and therefore any revenue generated would be minimal.

Revenue generated for the City from TRLs will be impacted. Each TRL generates \$498 of annual revenue. Preliminary information suggests that revenue will decrease due to

loss of TRLs issued to retailers within 1,000 feet of schools and public parks if all TRLs in the buffer zone are prohibited. Approximately 80% of licensed tobacco retailers in Berkeley operate within 1,000 feet of a school or public park. Currently the City has 85 active TRLs (excluding pharmacies). Elimination of 80% of these would result in an annual revenue reduction of approximately \$33,864.

Reduction in retail sales of tobacco products near schools and parks will result in reduction of local sales tax revenue of unknown amount.

Outreach and education costs related to implementing these ordinance amendments can be funded through ongoing State and county tobacco grants in the Public Health Division (PHD). Staff time for enforcement can be incorporated into the existing work of the Environmental Health Division.

CURRENT SITUATION AND ITS EFFECTS

Since 2010, Council has taken multiple actions to protect Berkeley youth from the negative impacts of tobacco by adopting ordinances prohibiting smoking in multi-unit housing and prohibiting the use of ENDS in all places where smoking is prohibited. Council has also provided direction to the City Manager to further protect youth by considering measures that restrict tobacco sales, particularly the sale of flavored tobacco, in areas frequented by youth and that regulate the sale of ENDS (See Attachments 3-5).

The proposed amendments and additions to the City's tobacco retail ordinance are responsive to Council's directions. Section 9.80.020 is amended to include definitions of "Electronic nicotine delivery system," "School," and "Public park" and to expand and clarify the definition of "Tobacco product" to include ENDS as well as both traditional tobacco products (i.e. cigarettes, cigars, etc.) and "Tobacco paraphernalia." Section 9.80.035 is amended to prohibit the issuance or renewal of TRLs to all tobacco product retailers within 1,000 feet of any school or public park (Attachment 9). The ordinance includes a grace period provision to reduce economic hardship for specified types of retailers, many of which are small businesses, by allowing them to apply for a one-time license or license renewal to sell down existing inventory of these products. The ordinance also provides a limited subgroup of retailers that meet specific criteria an additional one time TRL (not to exceed 12/31/17). This additional grace period allows businesses primarily engaged in the sale of tobacco products (such as smoke shops and vaping shops) with long-term leases additional time to sell current inventory, adjust their business plans or relocate their businesses.

Section 9.80.037 is added to exempt medical cannabis dispensaries from the requirement for a TRL for the sale of non-tobacco/nicotine containing tobacco paraphernalia (such as papers/rolling machines) or electronic paraphernalia (such as refillable e-cigarettes) to dispensary members. Section 9.80.095 is added to define violation of Chapter 9.80, including the sale of tobacco products within 1000 feet of schools and public parks in violation of the ordinance, as a public nuisance.

At the regularly scheduled meeting of the Community Health Commission (CHC) on 2/26/15, the Commission took the following action:

1. M/S/C (Rosales/Stein) We wholeheartedly support Council's direction to strengthen youth tobacco prevention. Therefore we strongly support, in its totality, the staff recommendation to amend BMC sections 9.80.020 and 9.80.035 and to add sections 9.80.037 and 9.80.095 as to be brought to Council on 4/7/15.

Ayes: Commissioners Chen, Franklin, Namkung, Nathan, Rosales, Shaw, Soichet, Speich, Stein, Thornton. A. Wong, and M. Wong
Noes: None
Abstain: None
Absent from vote: Commissioner Lee
Excused: Commissioner Kwanele

Motion passed.

BACKGROUND

Tobacco sales near schools and targeting of youth

According to the Surgeon General of the United States, approximately 90% of adult smokers started by age 18 and almost no one begins smoking after age 21¹. The United States Food and Drug Administration (FDA) has declared smoking to be “fundamentally a pediatric disease².” In a 2013 survey conducted by City of Berkeley Public Health Division staff, individually packaged tobacco products like “Swisher Sweets” could be purchased for under \$1 in over 90% of tobacco retailers. This same study revealed that over 86% of candy, mint and liquor flavored non-cigarette tobacco products in Berkeley are sold within 1,000 feet of K-12 schools. A June 2014 public opinion poll conducted by City of Berkeley Public Health Division staff in Berkeley demonstrated strong support (81%) for banning sales of tobacco products near schools³.

Tobacco retail density around schools has been shown to have a significant impact on the prevalence of youth experimental tobacco use, contributing to higher prevalence of youth smoking in neighborhoods with high tobacco retail density.⁴ These effects are

¹ U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

² Hilts, Philip J. “FDA Head Calls Smoking a Pediatric Disease.” The New York Times 9 Mar. 1995.

³ In-person poll of Berkeley community members (did not include merchants), n=125 total respondents

⁴ Henriksen, L, Feighery, E., Schleicher, N., Cowling, D., Kline, R., Fortmann, S. Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near schools? Preventative Medicine 47 210-214, 2008.

seen primarily in urban areas, especially among high school students.⁵ Adolescents frequently visit tobacco outlets near schools and are routinely exposed to tobacco advertising.^{6, 7} Stores within 1,000 feet of schools contain more cigarette advertising than do those farther away.^{8, 9}

Additionally, a University of Michigan national survey of substance use by students in 8th, 10th and 12th grade found that more teens use e-cigarettes than traditional tobacco cigarettes or any other tobacco product—the first time a U.S. national study shows that teen use of e-cigarettes surpasses use of tobacco cigarettes. The 2014 survey asked more than 40,000 students in about 400 secondary schools whether they had used an e-cigarette or a tobacco cigarette in the past 30 days. More than twice as many 8th- and 10th-graders reported using e-cigarettes as reported using tobacco cigarettes. Specifically, 9 percent of 8th-graders, 16 percent of 10th graders, and 17 percent of 12th-graders reported e-cigarette use.¹⁰

Retail licensing for electronic smoking devices

E-cigarettes pose health risks to both their users and those exposed to their use. These risks are related to several characteristics of e-cigarettes:

- “Gateway” to conventional tobacco products
- Unregulated status
- Content of e-cigarette vapor
- Nicotine addiction
- Re-normalizing of smoking behavior.

These health risks are described in detail in the State Health Officer’s Report on E-Cigarettes and the State Health Advisory of January 28, 2015 (Attachments 6 & 7). Most significantly, public use of e-cigarettes threatens to re-normalize smoking behavior and thus to undo decades of public health success in decreasing smoking rates across the country and in the Berkeley community.

⁵ McCarthy, W., Mistry, R., Lu, Y., Patel, M. et al. Density of Tobacco Retailers Near Schools: Effects on Tobacco Use Among Students. *American Journal of Public Health* 99(11) 2006-2013, 2009.

⁶ Feighery, E.C., Henriksen, L., Wang, Y., Schleicher, N.C., Fortmann, S.P. An evaluation of four measures of adolescents’ exposure to cigarette marketing in stores. *Nicotine & Tobacco Research*. 8, 751–759, 2006.

⁷ Henriksen, L., Feighery, E.C., Schleicher, N.C., Haladjian, H.H., Fortmann, S.P., Reaching youth at the point of sale: cigarette marketing is more prevalent in stores where adolescents shop frequently. *Tobacco Control* 13, 315–318, 2004.

⁸ Pucci, L.G., Joseph Jr., H.M., Siegel, M., Outdoor tobacco advertising in six Boston neighborhoods: evaluating youth exposure. *American Journal of Preventive Medicine*. 15, 155–159, 1998.

⁹ Rogers, T., Feighery, E.C., Tenca_, E., Butler, J., Weiner, L. Community mobilization to reduce point-of-purchase advertising of tobacco products. *Health Education Quarterly*. 22, 427–442, 1995.

¹⁰ Johnston, L. D., O’Malley, P. M., Miech, R.A., Bachman, J. G., & Schulenberg, J. E.. Monitoring the Future national results on adolescent drug use: Overview of key findings, 2014. Ann Arbor, Mich.: Institute for Social Research, the University of Michigan. 2015.

On October 21, 2014 Council adopted an ordinance restricting the use of electronic smoking devices in the same manner as conventional cigarette-smoking is restricted. Regulating retail sales of e-cigarettes similarly recognizes that the health risks posed by electronic products are such that they warrant the same level of regulation as conventional tobacco products.

ENVIRONMENTAL SUSTAINABILITY

By restricting tobacco sales near schools and parks, this recommendation will potentially reduce tobacco waste. Tobacco waste is toxic and makes up 34 percent of the total litter collected in California. It is a significant component of storm drain debris and contributes to stormwater pollution that negatively impacts water quality and wildlife in the San Francisco Bay.

RATIONALE FOR RECOMMENDATION

All tobacco products pose health risks to school-age youth. Therefore, staff recommends that Council prohibit the licensing of retail sales of all tobacco products, including electronic products, near schools and parks. This will reduce youth access to and exposure to tobacco products, consistent with Council's recommendation, with the expectation that it will ultimately reduce tobacco product use by minors.

E-cigarettes and related products are aggressively marketed to youth and are gateway products to nicotine use and addiction. The recommendation to require TRLs for ENDS is consistent with the recently adopted BMC amendments to regulate electronic smoking devices in the same way as conventional tobacco products, and similarly strengthens protections for youth.

ALTERNATIVE ACTIONS CONSIDERED

The referral from Councilmembers Moore and Anderson (Attachment 4) proposed the consideration of a school buffer zone only for all flavored tobacco products (including menthol)¹¹. However, differential licensing and enforcement for flavored, menthol, and non-flavored tobacco products was deemed prohibitively complex and likely to impede effective implementation. Public Health does not differentiate between flavored and non-flavored tobacco products, as use of tobacco products of all types is harmful.

Staff considered and rejected a school buffer zone of 500 feet (Attachment 4). Five hundred feet is approximately 1-2 blocks, and would present only a minor barrier to the tobacco retail environment that is within easy walking distance of schools and parks. One thousand feet is approximately 3-4 blocks and presents a more significant barrier. Furthermore, in the aforementioned 2013 survey conducted by City of Berkeley Public Health Division staff, over 86% of candy, mint and liquor flavored non-cigarette tobacco products in Berkeley are sold within 1,000 feet of K-12 schools (Attachment 8).

¹¹ Flavored tobacco products are a subset of all tobacco products – both conventional and electronic – and include cigarettes, e-cigarettes, and other tobacco products. These products are marketed heavily to youth.

Councilmembers Arreguin and Moore's referral (Attachment 5) to the Planning Commission was to consider revising the zoning ordinance to expand the buffer zone around schools and public parks in which all new uses involving tobacco sales would be prohibited. (Currently, only new "smoke shops" are prohibited within 1,400 feet of schools and parks.) Staff recommends instead that the Council amend the BMC ordinance regarding TRLs, because TRLs are renewed annually and apply to both current license holders and new businesses. This approach allows for broader and more rapid implementation of the buffer zone and obviates the necessity for any amendment to the Zoning Ordinance.

Staff considered and rejected a buffer zone around churches, day care centers, etc. (Attachment 3). Such establishments are more transient in nature and would not significantly increase or decrease the impact of the current buffer zone proposal. Enforcement around these establishments was deemed prohibitively complex and likely to impede effective implementation.

Staff also considered banning the sales of tobacco products altogether. Staff determined that the proposed approach best achieves a balance of focusing on restrictions most immediately beneficial to youth while reducing the financial burden on local businesses and the financial impact on the City. Elimination of 100% of current TRLs would result in annual revenue reduction of approximately \$42,330 and reduction of local sales tax revenue of unknown amount.

CONTACT PERSON

Janet Berreman, Health Officer, 981-5301

Attachments:

1. Ordinance (clean copy)
2. Ordinance (track changes)
3. 2010-07-13 Referral to City Manager and Community Health Commission Tobacco Free School Zones
4. 2014-02-25 Strengthen Youth Tobacco Prevention
5. 2014-09-09 referral to Planning Commission Tobacco
6. CDPH State Health Officer's Report on E-cigarettes
7. CDPH Health Advisory on E-Cigarettes
8. California Healthy Stores Healthy Community Survey Report – City of Berkeley
9. Buffer zone map

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTIONS 9.80.010, 9.80.020, AND 9.80.035 AND ADDING SECTIONS 9.80.037 and 9.80.095 TO DEFINE TOBACCO PRODUCTS TO INCLUDE ELECTRONIC NICOTINE DELIVERY SYSTEMS, TO PROHIBIT SALES OF TOBACCO PRODUCTS WITHIN 1000 FEET OF SCHOOLS AND PUBLIC PARKS, AND TO DECLARE VIOLATION OF CHAPTER 9.80 TO BE A PUBLIC NUISANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Legislative findings:

A. The City Council hereby finds that:

1. Children are particularly influenced by cues suggesting that smoking is acceptable;¹
2. The density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased youth smoking rates;²
3. A study of California high school students found that the prevalence of smoking was higher at schools in neighborhoods with five or more tobacco outlets than at schools in neighborhoods without tobacco outlets;³
4. A California study found that the density of tobacco retailers near schools was positively associated with the prevalence of students reporting experimental smoking;⁴
5. Electronic smoking devices and other unapproved nicotine delivery products have a high appeal to youth due to their high tech design and availability in child friendly flavors like cotton candy, bubble gum, chocolate chip cookie dough and cookies and cream milkshake;
6. A CDC study showed that in 2011 4.7% of all high school students had tried e-cigarettes and that in 2012 that percentage more than doubled to 10.0% of all high school students;⁵

¹ DiFranza JR, Wellman RJ, Sargent JD, et al. 2006. "Tobacco Promotion and the Initiation of Tobacco Use: Assessing the Evidence for Causality." *Pediatrics* 6: e1237-e1248.

² Henriksen L, Feighery EC, Schleicher NC, et al. 2008. "Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventive Medicine* 47: 210-214.

³ Henriksen L, Feighery EC, Schleicher NC, et al. 2008. "Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventive Medicine* 47: 210-214.

⁴ McCarthy WJ, Mistry R, Lu Y, et al. 2009. "Density of Tobacco Retailers Near Schools: Effects on Tobacco Use Among Students." *American Journal of Public Health*, 99(11): 2006-2013.

⁵ Centers for Disease Control. "E-cigarette use more than doubles among U.S. middle and high school students from 2011-2012." CDC Press Release, September 2013.

7. 6.8% of all youth between 6th and 12th grade report trying electronic smoking devices, according to an MMWR report;⁶ and

8. A University of Michigan national survey of substance use by among students in 8th, 10th and 12th grade found that more teens use e-cigarettes than traditional, tobacco cigarettes or any other tobacco product—the first time a U.S. national study shows that teen use of e-cigarettes surpasses use of tobacco cigarettes. Specifically, 9 percent of 8th-graders, 16 percent of 10th graders, and 17 percent of 12th-graders reported e-cigarette use.⁷

9. Approximately 80% of licensed tobacco retailers in Berkeley operate within 1000 feet of a school. Block lengths vary, but 500 feet is approximately 1-2 blocks and 1000 feet is approximately 3-4 blocks.

10. Overall, studies suggest that youth who may have otherwise never smoked cigarettes are now getting hooked on nicotine due to e-cigarettes, and that adolescents who use e-cigarettes are more likely to progress from experimenting with cigarettes to becoming established smokers.⁸

11. According to the Surgeon General of the United States, approximately 90% of adult smokers started by age 18 and almost no one begins smoking after age 21.⁹

Section 2. That Berkeley Municipal Code Section 9.80.010 is hereby amended to read as follows:

9.80.010 Purpose.

The purposes of this chapter are to reduce minors' access and exposure to tobacco products and to discourage violations of tobacco-related laws that prohibit or discourage the sale or distribution of tobacco products to minors and that prohibit the display of tobacco products within reach of the public, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalty provided therefore.

Nothing in this chapter shall be construed to grant any person obtaining and maintaining

⁶ Corey, C., Johnson, S., Apelberg, B., et al. (2013). "Notes from the Field: Electronic Cigarette Use Among Middle and High School Students - United States, 2011- 2012." *Morbidity and Mortality Weekly Report (MMWR)*. 62(35):729–730.

⁷ Johnston, L. D., O'Malley, P. M., Miech, R.A., Bachman, J. G., & Schulenberg, J. E.. Monitoring the Future national results on adolescent drug use: Overview of key findings, 2014. Ann Arbor, Mich.: Institute for Social Research, the University of Michigan, scheduled for publication January 2015.

⁸ California Department of Public Health. *Electronic Cigarettes: A Summary of the Public Health Risks and Recommendations for Health Care Professionals Health Advisory*. January 28, 2015.

⁹ U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

a tobacco retailer's license any status or right other than the right to act as a tobacco retailer at the location in the City identified on the face of the permit, subject to compliance with all other applicable laws and ordinances. Nothing in this chapter shall be construed to render inapplicable, supercede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on indoor smoking made applicable to business establishments by California Labor Code Section 6404.5.

Section 3. That Berkeley Municipal Code Section 9.80.020 is hereby amended to read as follows:

9.80.020 Definitions.

The following words and phrases, whenever used in this article, shall have the meanings defined in this section unless the context clearly requires otherwise:

A. "Electronic nicotine delivery system" means any electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances, including but not limited to electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, electronic hookahs, or any other product name or descriptor, and inclusive of any items specifically designed for the preparation, charging, or use of any such electronic and/or battery-operated device, including but not limited to e-liquid, smoke juice, cartridges, cartomizers, atomizers, and tips.

B. "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

C. "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-to-day operations of a business.

D. "Public park" means any public property within the boundaries of the City of Berkeley used as a playground, park, community garden or open space, as specified by City Council Resolution from time to time.

E. "School" means a building or group of buildings and associated grounds used for educational and/or classroom purposes operated by the Berkeley Unified School District (BUSD) and/or other public or private educational institutions offering a general course of study at primary, secondary or high school levels (grades K through 12) which is equivalent to the courses of study at such levels offered by the BUSD, as specified by

City Council Resolution from time to time. Pre-school, vocational or trade programs shall be considered schools only when incidental to the primary use as a school as defined herein. Excluded from this definition are buildings operated by public or private education institutions in which the total student enrollment is less than 25 students and private residences at which students participate in home-based or independent study programs.

F. "Tobacco paraphernalia" means items or instruments designed for the consumption, or preparation for consumption, of any substance containing tobacco leaf or derived from tobacco, including but not limited to cigarette papers or wrappers, pipes, and cigarette rolling machines.

G. "Tobacco product" means any of the following: (1) any substance containing, made of, or derived from tobacco or nicotine including but not limited to cigarettes, cigars, cigarillos, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or shisha; (2) any electronic nicotine delivery system, or (3) any tobacco paraphernalia. "Tobacco product" does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

H. "Tobacco retailer" means any person or business that operates a store, stand, booth concession or other place at which the sales of tobacco products are made to purchasers for personal consumption or use.

Section 4. That Berkeley Municipal Code Section 9.80.035 is hereby amended to read as follows:

9.80.035 Limits on eligibility for a tobacco retailer license.

A. No new tobacco retailer license may be issued to a pharmacy.

B. No existing tobacco retailer license may be renewed by a pharmacy.

C. No new tobacco retailer license may be issued to authorize the sale of tobacco products within one thousand (1000) feet of any school or public park as measured by a straight line from the nearest point of the property line of the parcel on which the school or public park is located to the nearest point of the property line of the parcel on which the business is located.

D. No existing tobacco retailer license may be renewed to authorize the sale of tobacco products within one thousand (1000) feet of any school or public park as measured by a straight line from the nearest point of the property line of the parcel on which the school or public park is located to the nearest point of the property line of the parcel on which the business is located.

E. A tobacco retailer lawfully operating prior to March 1, 2015 that is ineligible to apply for or renew a tobacco retailer's license due to the proximity to a school or public

park as specified in subdivisions C or D may apply, no later than close of business October 30, 2015, for a one-time license or license renewal not to exceed one year in duration (through December 31, 2016), if:

1. The tobacco retailer falls into one of the following categories of businesses as defined in Sub-Title 23F: gasoline/automobile fuel station, smoke shop, alcoholic beverage sales, food products stores, gift/novelty shop, retail products store -Stationery, Cards and Paper Goods, and retail products store – variety; or

2. The tobacco retailer does not fall into one of the business categories in subdivision E.1 above, but can establish that the sale of tobacco products accounts for more than 25% of its calendar year 2014 gross receipts.

F. A lawfully operating tobacco retailer that received a license or license renewal under subdivision E, and makes an adequate showing as determined by the City Manager or his or her designee that a license renewal is reasonably necessary based on the criteria listed below, may apply, no later than close of business October 31, 2016, for a license renewal for an additional one-year period (not to exceed December 31, 2017), if:

1. The business meets the definition of a smoke shop in Sub-Title 23F or was engaged primarily in the sale of electronic nicotine delivery systems prior to March 1, 2015; and

2. The proprietor is subject to a written long-term lease entered into prior to March 1, 2015, with a term running to December 31, 2017 or beyond with no right to early termination.

G. A map identifying the areas falling within 1000 feet of schools and public parks shall be adopted by the City Council by resolution, and may be amended from time to time.

Section 5. That Berkeley Municipal Code Section 9.80.037 is hereby added to read as follows:

9.80.037 Medical cannabis dispensary.

Sale by a dispensary to its members of tobacco paraphernalia or electronic paraphernalia does not require a tobacco retailer license. “Electronic paraphernalia” for purposes of this section only means an electronic and/or battery-operated device, the use of which may resemble smoking, which does not contain tobacco or nicotine and can be used to deliver an inhaled dose of medical cannabis, including but not limited to any device manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

Section 6. That Berkeley Municipal Code Section 9.80.095 is hereby added to read as follows:

9.80.95 Public Nuisance.

A. Any tobacco retailer violating this Chapter is a public nuisance, subject to abatement under BMC Chapter 1.24 and 1.26.

B. Any tobacco retailer selling any tobacco product within 1000 feet of a school or public park is a public nuisance. Such tobacco product sales shall be terminated over a reasonable period, as set forth in Section 9.80.035, subdivisions E and F.

Section 7. Effective Date.

This Ordinance shall take effect January 1, 2016.

Section 8. Posting.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation

ORDINANCE NO. -N.S.

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BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Legislative findings:

A. The City Council hereby finds that:

1. Children are particularly influenced by cues suggesting that smoking is acceptable;¹
2. The density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased youth smoking rates;²
3. A study of California high school students found that the prevalence of smoking was higher at schools in neighborhoods with five or more tobacco outlets than at schools in neighborhoods without tobacco outlets;³
4. A California study found that the density of tobacco retailers near schools was positively associated with the prevalence of students reporting experimental smoking;⁴
5. Electronic smoking devices and other unapproved nicotine delivery products have a high appeal to youth due to their high tech design and availability in child friendly flavors like cotton candy, bubble gum, chocolate chip cookie dough and cookies and cream milkshake;
6. A CDC study showed that in 2011 4.7% of all high school students had tried e-cigarettes and that in 2012 that percentage more than doubled to 10.0% of all high

¹ DiFranza JR, Wellman RJ, Sargent JD, et al. 2006. "Tobacco Promotion and the Initiation of Tobacco Use: Assessing the Evidence for Causality." *Pediatrics* 6: e1237-e1248.

² Henriksen L, Feighery EC, Schleicher NC, et al. 2008. "Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventive Medicine* 47: 210-214.

³ Henriksen L, Feighery EC, Schleicher NC, et al. 2008. "Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventive Medicine* 47: 210-214.

⁴ McCarthy WJ, Mistry R, Lu Y, et al. 2009. "Density of Tobacco Retailers Near Schools: Effects on Tobacco Use Among Students." *American Journal of Public Health*, 99(11): 2006-2013.

school students;⁵

7. 6.8% of all youth between 6th and 12th grade report trying electronic smoking devices, according to an MMWR report;⁶ and

8. A University of Michigan national survey of substance use by among students in 8th, 10th and 12th grade found that more teens use e-cigarettes than traditional, tobacco cigarettes or any other tobacco product—the first time a U.S. national study shows that teen use of e-cigarettes surpasses use of tobacco cigarettes. Specifically, 9 percent of 8th-graders, 16 percent of 10th graders, and 17 percent of 12th-graders reported e-cigarette use.⁷

9. Approximately 80% of licensed tobacco retailers in Berkeley operate within 1000 feet of a school. Block lengths vary, but 500 feet is approximately 1-2 blocks and 1000 feet is approximately 3-4 blocks.

10. Overall, studies suggest that youth who may have otherwise never smoked cigarettes are now getting hooked on nicotine due to e-cigarettes, and that adolescents who use e-cigarettes are more likely to progress from experimenting with cigarettes to becoming established smokers.⁸

11. According to the Surgeon General of the United States, approximately 90% of adult smokers started by age 18 and almost no one begins smoking after age 21.⁹

Section 2. That Berkeley Municipal Code Section 9.80.010 is hereby amended to read as follows:

9.80.010 Purpose.

The purposes of this chapter ~~is~~ are to reduce minors' access and exposure to tobacco products and to discourage violations of tobacco-related laws that prohibit or discourage the sale or distribution of tobacco products to minors and that prohibit the display of tobacco products within reach of the public, but not to expand or reduce the degree to

⁵ Centers for Disease Control. "E-cigarette use more than doubles among U.S. middle and high school students from 2011-2012." CDC Press Release, September 2013.

⁶ Corey, C., Johnson, S., Apelberg, B., et al. (2013). "Notes from the Field: Electronic Cigarette Use Among Middle and High School Students - United States, 2011- 2012." *Morbidity and Mortality Weekly Report (MMWR)*. 62(35):729–730.

⁷ Johnston, L. D., O'Malley, P. M., Miech, R.A., Bachman, J. G., & Schulenberg, J. E.. Monitoring the Future national results on adolescent drug use: Overview of key findings, 2014. Ann Arbor, Mich.: Institute for Social Research, the University of Michigan, scheduled for publication January 2015.

⁸ California Department of Public Health. *Electronic Cigarettes: A Summary of the Public Health Risks and Recommendations for Health Care Professionals Health Advisory*. January 28, 2015.

⁹ U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

which the acts regulated by federal or state law are criminally proscribed or to alter the penalty provided therefore.

Nothing in this chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer's license any status or right other than the right to act as a tobacco retailer at the location in the City identified on the face of the permit, subject to compliance with all other applicable laws and ordinances. Nothing in this chapter shall be construed to render inapplicable, supercede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on indoor smoking made applicable to business establishments by California Labor Code Section 6404.5.

Section 3. That Berkeley Municipal Code Section 9.80.020 is hereby amended to read as follows:

9.80.020 Definitions.

The following words and phrases, whenever used in this article, shall have the meanings defined in this section unless the context clearly requires otherwise:

A. "Electronic nicotine delivery system" means any electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances, including but not limited to electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, electronic hookahs, or any other product name or descriptor, and inclusive of any items specifically designed for the preparation, charging, or use of any such electronic and/or battery-operated device, including but not limited to e-liquid, smoke juice, cartridges, cartomizers, atomizers, and tips.

EB. "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

AC. –"Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-to-day operations of a business.

D. "Public park" means any public property within the boundaries of the City of Berkeley used as a playground, park, community garden or open space, as specified by City Council Resolution from time to time.

E. "School" means a building or group of buildings and associated grounds used for educational and/or classroom purposes operated by the Berkeley Unified School District (BUSD) and/or other public or private educational institutions offering a general course of study at primary, secondary or high school levels (grades K through 12) which is equivalent to the courses of study at such levels offered by the BUSD, as specified by City Council Resolution from time to time. Pre-school, vocational or trade programs shall be considered schools only when incidental to the primary use as a school as defined herein. Excluded from this definition are buildings operated by public or private education institutions in which the total student enrollment is less than 25 students and private residences at which students participate in home-based or independent study programs.

~~FG.~~ "Tobacco paraphernalia" means items or instruments designed for the consumption, or preparation for consumption, of any substance containing tobacco leaf or derived from tobacco, including but not limited to cigarette papers or wrappers, pipes, holders of smoking materials of all types, and cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products.

~~BG.~~ "Tobacco product" means any of the following: (1) any substance containing, made of, or derived from tobacco or nicotine leaf, including but not limited to cigarettes, cigars, cigarillos, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or shisha; (2) any electronic nicotine delivery system, or (3) any tobacco paraphernalia. or any other instrument or paraphernalia which is designed for the smoking or ingestion of tobacco or products prepared from tobacco. "Tobacco product" does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

~~DH.~~ "Tobacco retailer" means any person or business that operates a store, stand, booth concession or other place at which the sales of tobacco products are made to purchasers for personal consumption or use.

Section 4. That Berkeley Municipal Code Section 9.80.035 is hereby amended to read as follows:

9.80.035 Limits on eligibility for a tobacco retailer license.

A. No new tobacco retailer license may be issued to a pharmacy.

B. No existing tobacco retailer license may be renewed by a pharmacy.

C. No new tobacco retailer license may be issued to authorize the sale of tobacco products within one thousand (1000) feet of any school or public park as measured by a straight line from the nearest point of the property line of the parcel on which the school or public park is located to the nearest point of the property line of the parcel on which the business is located.

D. No existing tobacco retailer license may be renewed to authorize the sale of tobacco products within one thousand (1000) feet of any school or public park as measured by a straight line from the nearest point of the property line of the parcel on which the school or public park is located to the nearest point of the property line of the parcel on which the business is located.

E. A tobacco retailer lawfully operating prior to March 1, 2015 that is ineligible to apply for or renew a tobacco retailer's license due to the proximity to a school or public park as specified in subdivisions C or D may apply, no later than close of business October 30, 2015, for a one-time license or license renewal not to exceed one year in duration (through December 31, 2016), if:

(1) the tobacco retailer falls into one of the following categories of businesses as defined in Sub-Title 23F: gasoline/automobile fuel station, smoke shop, alcoholic beverage sales, food products stores, gift/novelty shop, retail products store - Stationery, Cards and Paper Goods, and retail products store – variety; or

(2) the tobacco retailer does not fall into one of the business categories in subdivision E.1 above, but can establish that the sale of tobacco products accounts for more than 25% of its calendar year 2014 gross receipts.

F. A lawfully operating tobacco retailer that received a license or license renewal under subdivision E, and makes an adequate showing as determined by the City Manager or his or her designee that a license renewal is reasonably necessary based on the criteria listed below, may apply, no later than close of business October 31, 2016, for a license renewal for an additional one-year period (not to exceed December 31, 2017), if:

(1) the business meets the definition of a smoke shop in Sub-Title 23F or was engaged primarily in the sale of electronic nicotine delivery systems prior to March 1, 2015; and

(2) the proprietor is subject to a written long-term lease entered into prior to March 1, 2015, with a term running to December 31, 2017 or beyond with no right to early termination.

G. A map identifying the areas falling within 1000 feet of schools and public parks shall be adopted by the City Council by resolution, and may be amended from time to time.

Section 5. That Berkeley Municipal Code Section 9.80.037 is hereby added to read as follows:

9.80.037 Medical cannabis dispensary.

Sale by a dispensary to its members of tobacco paraphernalia or electronic paraphernalia does not require a tobacco retailer license. "Electronic paraphernalia" for purposes of this section only means an electronic and/or battery-operated device, the use of which may resemble smoking, which does not contain tobacco or nicotine and can be used to deliver an inhaled dose of medical cannabis, including but not limited to any device manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

Section 6. That Berkeley Municipal Code Section 9.80.095 is hereby added to read as follows:

9.80.95 Public Nuisance.

A. Any tobacco retailer violating this Chapter is a public nuisance, subject to abatement under BMC Chapter 1.24 and 1.26.

B. Any tobacco retailer selling any tobacco product within 1000 feet of a school or public park is a public nuisance. Such tobacco product sales shall be terminated over a reasonable period, as set forth in Section 9.80.035, subdivisions E and F.

Section 7. Effective Date.

This Ordinance shall take effect January 1, 2016.

Section 8. Posting.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation



Jesse Arreguín
District 4

CONSENT CALENDAR
July 13, 2010

To: Honorable Mayor and Members of the City Council

From: Councilmembers Jesse Arreguín

Subject: Referral to City Manager and Community Health Commission: Tobacco Free School Zones

RECOMMENDATION:

Refer the proposed ordinance to the City Manager and Community Health Commission, to prohibit the sale of tobacco near schools and request that the Zoning Adjustments Board review the proposal and make a recommendation to the City Council within 90 days.

BACKGROUND:

Surveys continue to confirm that the closer a tobacco retailer is to a school, the more likely they are to sell to children. A 2004 study by the Tobacco Related Disease Research Program found that 33% of tobacco sales to minors take place within 1,000 feet of a school and that 90% of all smokers start smoking as teenagers. According to the California Department of Health Services, 15.4% of California high school students smoke and around 300 new youth smoke for the first time each day.

In September 2009, the Los Angeles City Attorney announced the suspension of 24 tobacco retailers' licenses due to repeated sales of tobacco to minors, with the majority of these violations taking place near schools. In July 2009, the City of New Orleans, Louisiana became the latest city in the nation to adopt an ordinance restricting tobacco sales near schools, churches, playgrounds, public libraries, and any places "offering structure, organized care for youth."

Fortunately, Berkeley does have responsible local tobacco retailers who have been recognized by City Council commendable commitment to public health and anti-youth smoking. However, the City must ensure that the potential for bad actors do not have the opportunity to provide tobacco to minors by adopting tobacco-free zones near schools.

The City may wish to also consider grandfathering-in existing tobacco retailers but look at limited hours of tobacco sales during school hours and a tougher penalty schedule, including license revocation after a third violation of selling tobacco to minors.

FINANCIAL IMPLICATIONS:
Unknown.

CONTACT PERSONS:

Jesse Arreguín, Councilmember, District 4

981-7140

Attachments:

1. Proposed Ordinance

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING THE BERKELEY ZONING ORDINANCE TO RESTRICT TOBACCO PRODUCT SALES NEAR SCHOOLS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

SECTION 1.

FINDINGS The City Council of Berkeley hereby finds and declares as follows:

WHEREAS, tobacco use causes death and disease and imposes great social and economic costs, as evidence by the following:

- More than 440,000 people die in the United States from tobacco-related disease every year, making it the nation's leading cause of preventable death; and
- The medical and economic costs the nonsmokers suffering from lung cancer or heart disease cause by secondhand smoke are nearly \$6 billion per year in the United States; and
- The total annual cost of smoking in California was estimate at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone; and

WHEREAS, in California, 13.3% of the adult population and 15.4% of high school students smoke; and

WHEREAS, local zoning controls allow local governments to regulate the operation of lawful businesses to avoid circumstances which facilitate violations of state, federal, and local laws; and

WHEREAS, although it is unlawful to sell tobacco products to minors, 8.6% of California retailers surveyed do sell to minors. In fact, despite laws in every state making it illegal to sell tobacco to minors, each year an estimate 924 million packs of cigarettes are consumed by minors 12 to 17 years of age, yielding the tobacco industry \$480 million in profits from underage smokers; and

WHEREAS, Berkeley has a substantial interest in promoting compliance with state laws prohibiting the sales of tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the California courts in such cases as *Cohen v. Board of Supervisors*, 40 Cal.3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal.App.4th 383 (1993), have affirmed the power of local governments to regulate business activity in order to discourage violations of state law; and

WHEREAS, the California Constitution, Article XI, section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, a recent study found the 33% of tobacco underage sales took place within 1000 feet of a school; and

WHEREAS, zoning regulations are necessary to control the location and operation of the sale or exchange of tobacco products from the protection of public health, safety and welfare; and

WHEREAS, the City of Berkeley intends to restrict the location of tobacco retailers in the City for the protection of public health, safety and welfare of children; and

NOW, THEREFORE, THE CITY COUNCIL OF BERKELEY DOES ORDAIN AS FOLLOWS:

SECTION 2. _____ OF THE CITY OF BERKELEY ZONING ORDINANCE IS HEREBY AMENDED TO READ AS FOLLOWS:

Section ____ Definitions

The following words and phrases, whenever used in this article, shall have the meanings defined in this section unless the context clearly requires otherwise:

Tobacco Product means any product(s) that is used to consume tobacco or any product that contains any tobacco leaf, including but not limited to: cigarettes, cigars, cigarillos, blunts, snuff, creamy snuff, dipping/chewing tobacco, flavored tobacco, tobacco water, tobacco paste, gutka, kretek, shisha, roll-your-own cigarettes, cigarette or cigar rolling papers, or pipes.

Tobacco Retailer means any person, retail establishment, or any other legal entity who knowingly sells, donates, distributes, or delivers to any person(s), for any form of consideration, tobacco products.

Section ____ Zoning Regulations

It is hereby declared that the sense and policy of this section is that no tobacco retailer shall be permitted to sell, donate, distribute, or deliver to any person(s), for and form of consideration, tobacco products within 1000 feet of any playground, church, public library, school, or any childcare facility or similar entity providing structured, organized care for youth.

Section ____ How distance measured

- (a) The 1000-foot distance provided for in section ____ shall be measured as a person walks, using the sidewalk, from the nearest point of the property line of the playground, church, public library, school, or childcare facility or similar entity providing structured, organized care for youth, to the nearest of the property line of the tobacco retailer.
- (b) If a tobacco retailer has an interruption of the continuity of business for a period in excess of six months, in order to reopen for business, the requirements set forth above must be complied with.

Section ____ Enforcement

- (a) Enforcement of this chapter shall be the responsibility of [____]. In addition, any peace officer or code enforcement official also may enforce this chapter.



CITY COUNCIL

Darryl Moore
Councilmember District 2

CONSENT CALENDAR
February 25, 2014

To: Honorable Mayor and Members of the City Council
From: Councilmember Darryl Moore, District 2
Councilmember Max Anderson, District 3
Subject: Strengthen Youth Tobacco Prevention

RECOMMENDATION

Direct the City Manager to increase the minimum distance where all flavored tobacco (including menthol) products are banned from sale within a 500 ft radius from any school and direct the City Manager to provide changes to Berkeley's current tobacco regulations that might decrease youth tobacco use and uptake, including additional regulation around flavored (including menthol) tobacco products..

BACKGROUND

Berkeley's 2013 Health Status Report gave us some good news when it comes to teenage tobacco use. Tobacco use, along with alcohol and marijuana consumption, has gone down at all grade levels between 2008 and 2012. Berkeley's tobacco use for 7th, 9th and 11th graders is significantly lower than the state average. While there seems to be much progress over the last several years in preventing teenage tobacco use, more can be done. Tobacco control regulations must be pro-active or public health gains begin to erode.

Flavored tobacco products have been designed by tobacco manufacturers to make their products less harsh, and as a result, more appealing to young smokers. As a result, in 2009 Congress passed the Family Smoking Prevention and Tobacco Control Act which banned most types of flavored tobacco products, with the exception of menthol. While this landmark law made some very important steps to discourage tobacco use among young smokers, menthol tobacco products still remain on the market and have the same function of masking the harshness of tobacco, providing a cool sensation that makes it appealing to teenage smokers. The appeal of menthol flavored tobacco products is evidenced by the fact that it holds approximately 30% of the total market share.

As part of the Family Smoking Prevention and Tobacco Control Act, it established the Tobacco Products Scientific Advisory Committee (TPSAC) which intended to advise the United States Food and Drug Administration (FDA) on smoking-related scientific issues.

The TPSAC and the FDA's own independent investigation found that that menthol cigarette use is associated with increased smoking initiation, greater addiction, greater signs of nicotine dependence, and decreased likelihood of quitting successfully.

All of these factors demonstrate that we need to regulate menthol tobacco products more closely to protect our youth from becoming addicted at a young age, which translates into a much higher likelihood of continuing tobacco use in their adult years.

One proposal that should be evaluated is to expand the minimum distance where all flavored tobacco products are banned from sale within a 500 ft radius from any school.

FISCAL IMPACTS OF RECOMMENDATION

Unknown

CONTACT PERSON

Councilmember Darryl Moore, District 2 981-7120

Attachments:

- 1) Healthy Chicago Policy Brief: MENTHOL-FLAVO RED CIGARETTES
- 2) Healthy Chicago Policy Brief: Tobacco Retail Sales Near Schools & Youth Centered Environments
- 3) Section 4-64-098 regarding flavored tobacco products and amendments to Section 4-64-180 of the Chicago Municipal Code

HEALTHY CHICAGO

TRANSFORMING THE HEALTH OF OUR CITY

CHICAGO DEPARTMENT OF PUBLIC HEALTH

POLICY BRIEF

August 2013

MENTHOL-FLAVORED CIGARETTES

Introduction

Historically, fruity and sweet flavors were added to cigarettes by tobacco manufacturers in an effort to mask the harsh taste of tobacco. These flavors make tobacco products more appealing, especially to kids. In 2009, Congress passed the Family Smoking Prevention and Tobacco Control Act (Act). While this landmark law banned other flavors in tobacco products, menthol remains on the market while the FDA deliberates regulatory action.

With 30% of the market share,¹ menthol is the most commonly used flavored tobacco product in the United States. In addition to masking the flavor of tobacco, menthol also provides a cooling sensation that is appealing to new, young smokers, according to the U.S. Surgeon General.² Though the Act did not ban menthol flavored cigarettes, it gave the U.S. Food and Drug Administration the power to ban menthol if “appropriate for the public health.”³

To ensure the FDA was advised about menthol and other smoking-related scientific issues, the Tobacco Products Scientific Advisory Committee (TPSAC) was established. On July 21, 2011, TPSAC released “Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations.” This Review outlined TPSAC’s findings on menthol cigarettes, concluding that it is “biologically plausible” that menthol makes cigarette smoking more addictive, and “removal of menthol cigarettes from the marketplace would benefit public health in the United States.”⁴

Although TPSAC found convincing evidence of the dangers of menthol cigarettes, they did not provide any specific suggestions for follow-up to the FDA. Citing a lack of FDA action, on April 12, 2013, twenty national public health organizations filed a Citizen Petition “urging the FDA to exercise its regulatory power” and protect Americans’ health by banning menthol.⁵

Soon after, on July 23, 2013, the FDA released their own report titled “Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Non-menthol Cigarettes.” The FDA’s own report concluded that menthol cigarette use is associated with increased smoking initiation, greater addiction, greater signs of nicotine dependence, and decreased likelihood of quitting successfully, thus validating TPSAC’s findings from two years earlier. In addition, significant racial, gender and socioeconomic disparities were found in

Less than 48 hours after the FDA’s report was released ... Mayor Rahm Emanuel took swift action, directing the Chicago Board of Health to seek local policy options for curbing the use of menthol-flavored cigarettes among youth.



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the use of menthol cigarettes.⁶ Recognizing significant public health issues associated with mentholated cigarettes, on July 25, 2013 — less than 48 hours after the FDA’s report was released — Mayor Rahm Emanuel took swift action, directing the Chicago Board of Health to seek local policy options for curbing the use of menthol cigarettes among youth.⁷

How does menthol flavoring increase the harm of smoking a cigarette?

The general population believes that menthol cigarettes are healthier than other types of cigarettes, thus reducing cessation efforts.⁸ Menthol may also inhibit the metabolism of nicotine, resulting in higher rates of addiction.⁹ Through suppression of respiratory irritation, menthol may facilitate smoke inhalation and promote nicotine addiction and smoking-related morbidities.¹⁰

Does the tobacco industry specifically target mentholated products to youth and racial/ethnic communities?

Data suggests that companies that sell menthol cigarettes target minorities and kids with their advertising.^{11, 12, 13} The most popular tobacco product among youth is the menthol crush.¹⁴

Are youth and minority populations more likely to use menthol cigarettes?

Menthol contributes to the appeal and addiction potential of smoking in youth.¹⁵ Derived from the peppermint plant, menthol provides a minty flavor and cooling sensation in cigarettes, covering up the tobacco taste and reducing the throat irritation associated with smoking, particularly among first-time users. The anesthetic cooling effect of menthol facilitates initiation and early persistence of smoking by youth.¹⁶ The National Survey on Drug Use and Health found that 47.7% of all adolescent smokers smoke menthol.¹⁷ The prevalence use of menthol-flavored cigarettes among kids (ages 12-17) is staggering, with disproportionate rates being evident across the community: 72% of African Americans, 51% of Asians, 47% of Hispanics and 41% of Whites; as well as 71% among young LGBT smokers.¹⁸ The trend continues into young adulthood, with 85% of African American smokers, 38.2% of Hispanics, and 35.8% of Asians using a mentholated brand compared to 28.8% of Whites.¹⁹ At the Federal level, a menthol ban could prevent up to 600,000 smoking-related deaths by 2050, a third of these from the African American community.²⁰

Are menthol cigarettes more addictive and difficult to quit?

Among adult menthol users, menthol cigarette use (vs. non-menthol) is associated with a lower likelihood of making a quit attempt and higher rates of relapse.²¹ In addition, menthol smokers have higher physical nicotine dependence and smoking urge, despite smoking the same number of cigarettes as non-menthol users.²² The FDA’s most recent report reaffirmed these findings. Specifically, the FDA’s 2013 report found that menthol in cigarettes is likely associated with increased smoking initiation and greater addiction and that “menthol smokers show greater signs of nicotine dependence and are less likely to successfully quit smoking.”²³

Would restrictions on menthol-flavored cigarettes cause a backlash from any minority groups?

Because the FDA is considering a ban on menthol cigarettes, many researchers have been studying how different groups would respond to such a proposal. For example, when researchers asked current smokers how they might respond to a Federal ban on menthol cigarettes, 35% said they would stop smoking.²⁴ Another opinion poll found



that 28.2% of adults opposed, 20.0% supported, and 51.9% lacked a strong opinion about a Federal menthol ban. It also found that support restricting menthol was highest among Hispanics (36.4%), African Americans (29.0%), non-smokers (26.8%), and participants with less than a high school education (28.8%).²⁵ Because support for a menthol ban is strongest among populations with the highest prevalence of menthol cigarette use, a ban could motivate many menthol smokers to quit and reduce tobacco-related disease and death. In fact, researchers estimate, one-third of lives that would be saved by restricting the sale of menthol cigarettes would be African Americans.²⁰

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HEALTHY CHICAGO

TRANSFORMING THE HEALTH OF OUR CITY

CHICAGO DEPARTMENT OF PUBLIC HEALTH

POLICY BRIEF

November 2013

Tobacco Retail Sales Near Schools & Youth Centered Environments

A wide variety of factors influence youth smoking – including low socioeconomic status; use and approval by peers, siblings, and parents; lack of parental involvement; accessibility, availability, and price of tobacco products; and tobacco advertising.¹

Tobacco retail density around schools has been shown to have a significant impact on the prevalence of youth experimental tobacco use.^{2, 3} For example, youth smoking prevalence increases by as much as 3.2% in neighborhoods with five or more tobacco retail outlets within walking distance (1/2 mile) of a high school than those with no tobacco retailers nearby.^{4, 5, 6} These effects are seen primarily in urban areas, especially among high school students.⁷

Some of the evidence base that is used nationally to push for stronger restriction on tobacco licensing near schools was developed right here in Chicago. After controlling for census tract–derived school neighborhood characteristics, Novak and associates found the density of tobacco retailers in the Chicago area was associated with students' reported tobacco use.⁸

Nearly all adult smokers started as adolescents.⁹ Because the risk of moving from experimental smoking to habitual smoking is greatest for adolescents, new policies are needed to reduce both the availability of cigarettes and the visibility of cigarette ads in adolescents' environments.

Adolescents frequently visit tobacco outlets near schools.^{10, 11} Adolescents are routinely exposed to the widespread advertising for cigarettes located in these stores.^{12, 13} Moreover, tobacco retail outlets near schools have been found to contain more cigarette advertising than outlets farther from schools.^{14, 15}

Health experts recommend that local governments use zoning and licensing laws to limit tobacco retail density, including limiting the proximity of tobacco outlets near schools,^{16, 17} and requiring tobacco outlets to be located away from places frequented by children, such schools and playgrounds.^{18, 19}

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City of Chicago



O2013-9185

Office of the City Clerk

Document Tracking Sheet

Meeting Date: 11/26/2013

Sponsor(s): Emanuel (Mayor)
Thompson (16)
Mitts (37)

Type: Ordinance

Title: Amendment of Chapter 4-64 of Municipal Code by adding new Section 4-64-098 regarding flavored tobacco products and amending Section 4-64-180 (a) No person shall sell tobacco products or accessories within 100 feet of any building, school or child care facility; (b) No person shall sell tobacco products at any location within 500 feet of public, private or parochial elementary school or secondary school

Committee(s) Assignment: Joint Committee: Finance; Health and Environmental Protection



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

November 26, 2013

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Public Health and the Commissioner of Business Affairs and Consumer Protection, I transmit herewith, together with Alderman Thompson and Alderman Mitts, an ordinance amending various provisions of the Municipal Code regarding flavored tobacco products.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

ORDINANCE

WHEREAS, The City of Chicago is a home rule unit of government under Article VII, Section 6 (a) of the Illinois Constitution; and

WHEREAS, Pursuant to its home rule authority, the City may exercise any power and perform any function pertaining to its government and affairs, including promoting the public health; and

WHEREAS, To this end, the City's "Healthy Chicago" agenda seeks to reduce smoking among adults and youth; and

WHEREAS, Tobacco use is the single most preventable cause of disease and death in Chicago and the United States; and

WHEREAS, Tobacco use kills more people than murders, suicide, illegal drugs, alcohol, AIDS, and car crashes combined; and

WHEREAS, A disproportionate number of these deaths occur in minority communities; and

WHEREAS, For each tobacco-related death, another 20 people struggle with one or more serious tobacco-related illnesses, including lung, oral, and pharyngeal cancer, heart disease, and lung diseases such as emphysema and bronchitis; and

WHEREAS, Lifetime smoking and other tobacco use almost always begins before children graduate from high school; and

WHEREAS, According to the Surgeon General of the United States, approximately 90% of adult smokers started by age 18 and almost no one begins smoking after age 21; and

WHEREAS, The connection between children and tobacco is so strong that the United States Food and Drug Administration (FDA) has declared that smoking is "fundamentally a pediatric disease," and

WHEREAS, In 2009, after the FDA removed candy-flavored cigarettes from the market, the tobacco industry immediately created candy-and fruit-flavored cigarillos and cigars; and

WHEREAS, White Owl blunts and cigarillos come in a variety of flavors including grape, strawberry, wild apple, pineapple, peach, and watermelon; and

WHEREAS, Phillies Sugarillo Cigarillos are advertised with the tagline "When sweet isn't enough;" and

WHEREAS, Swisher Sweets come in kid-friendly flavors like peach, strawberry, tropical fusion, chocolate, grape, and blueberry; and

WHEREAS, With colorful packaging and sweet flavors, these products are often hard to distinguish from the candy displays that they are frequently placed near the cash register in retail outlets; and

WHEREAS, Flavored tobacco products are often sold individually or in two-packs, increasing their affordability and appeal to children; and

WHEREAS, These dangerous and addictive products often cost less than a candy bar or an ice cream cone – at less than \$1.00 each, some flavored cigars are affordable to even the youngest customers and are an impulse purchase for many consumers; and

WHEREAS, Like traditional tobacco products, electronic smoking devices, such as e-cigarettes, come in numerous flavors, such as gummy bear, cotton candy, bubble gum, Atomic Fireball, cherry cola, cherry limeade, caramel candy, and orange cream soda; and

WHEREAS, Progress in reducing use of tobacco products among youth is beginning to plateau; and

WHEREAS, Research shows menthol-flavored cigarettes in particular have slowed efforts to reduce youth smoking; and

WHEREAS, There is evidence of the continued advertisement of menthol-flavored products to youth, especially in minority communities; and

WHEREAS, Children aged 12-17 smoke menthol-flavored products more than any other age group; and

WHEREAS, Use of menthol-flavored cigarettes is prevalent among child smokers in the Black (72%), Asian (51%), Hispanic (47%), and white (41%) communities; as well as among young lesbian/gay/bisexual/transgender (LGBT) smokers (71%); and

WHEREAS, The FDA has confirmed that menthol cigarettes are more addictive and harder to quit than unflavored cigarettes; and

WHEREAS, The anesthetic cooling effect of menthol facilitates initiation and early persistence of smoking by youth; and

WHEREAS, Through suppression of respiratory irritation, menthol may facilitate smoke inhalation and promote nicotine addiction and smoking-related morbidities; and

WHEREAS, Researchers at the Harvard School of Public Health have found that the tobacco industry employs “a deliberate strategy to recruit and addict young smokers by adjusting menthol to create a milder experience for the first-time smoker;” and

WHEREAS, Menthol may also inhibit the metabolism of nicotine, resulting in higher rates of addiction; and

WHEREAS, Tobacco retail density around schools has been shown to have a significant impact on the prevalence of youth experimental tobacco use; and

WHEREAS, After controlling for census tract-derived school neighborhood characteristics, Novak & Associates found the density of tobacco retailers in the Chicago area correlated with students’ reported tobacco use; and

WHEREAS, A recent study reveals that the tobacco industry engages in predatory targeting of African American youth by increasing promotions for Newport cigarettes by as much as 42% in areas surrounding high schools with predominantly African American students; and

WHEREAS, This research also reveals that the industry lowers their prices for menthol-flavored cigarettes near schools where African American students attend; and

WHEREAS, Because the risk of moving from experimental smoking to habitual smoking is greatest for adolescents, new policies are needed to reduce both the availability of cigarettes and the visibility of cigarette ads in adolescents' environments; and

WHEREAS, Health experts recommend that local governments use zoning and licensing laws to limit tobacco retail density, including limiting the proximity of tobacco outlets near schools; and

WHEREAS, After thoroughly researching the issue, the City of Chicago has concluded that prohibiting the sale of flavored tobacco products within 500 feet of schools is the least-burdensome effective tactic to combat the serious problem of youth tobacco use; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Chapter 4-64 of the Municipal Code of Chicago is hereby amended by inserting a new section 4-64-098, as follows:

4-64-098 Flavored tobacco product defined.

As used in this chapter:

"Flavored tobacco product" means any tobacco product that contains a constituent that imparts a characterizing flavor. As used in this definition, the term "characterizing flavor" means a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product, including, but not limited to, tastes or aromas of menthol, mint, wintergreen, chocolate, vanilla, honey, cocoa, any candy, any dessert, any alcoholic beverage, any fruit, any herb, and any spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate such statements, that a tobacco product has or produces a characterizing flavor shall establish that the tobacco product is a flavored tobacco product.

SECTION 2. Section 4-64-180 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, as follows:

4-64-180 Prohibited locations.

(a) No person shall sell, give away, barter, exchange, or otherwise deal in tobacco products, tobacco product samples, or tobacco accessories at any place located within 100 feet of any building or other location used primarily as a school, child care facility, or for the education or recreation of children under 18 years of age.

(b) No person shall sell, give away, barter, exchange, or otherwise deal in flavored tobacco products, samples of such products, or accessories for such products at any location that has a property line within 500 feet of the property line of any public, private, or parochial elementary, middle, or secondary school located in the City of Chicago. This subsection does not apply to retail tobacco

stores. For purposes of this subsection, "retail tobacco store" has the meaning ascribed to the term in Section 7-32-010.

(c) The commissioner of business affairs and consumer protection and the commissioner of health are each authorized to promulgate any rules necessary to enforce this section.

SECTION 3. This ordinance shall take effect six months after passage and approval.



Berkeley City Council

ACTION CALENDAR

September 9, 2014

To: Honorable Mayor and Members of the City Council

From: Councilmembers Jesse Arreguín and Darryl Moore

Subject: Referral to Planning Commission: Tobacco Free School Zones

RECOMMENDATION:

1. Refer either proposed zoning ordinance (A) or (B) to the Planning Commission to create Tobacco Free School Zones, conforming two previous referrals prohibiting the sale of tobacco products near schools; and
2. Refer to the City Manager to coincide with any Tobacco Free School Zones ordinance the issue a tougher penalty schedule, including license revocation after a third violation of selling tobacco to minors and/or third violation of the ordinance

BACKGROUND:

On July 13, 2010, Council unanimously referred the issue of Tobacco Free School Zones (see attached), which would have prohibited the sale of any tobacco related products, including flavored tobacco and tobacco-based electronic cigarettes, "within 1000 feet of any playground, church, public library, school, or any childcare facility or similar entity providing structured, organized care for youth." As referred, the ordinance would have applied to existing as well as prospective retailers; however, given that the proposal would have effectively banned all tobacco sales within the City of Berkeley, the background also encouraged the consideration of grandfathering-in existing tobacco retailers, but accompanied by a tougher penalty schedule, including license revocation after a third violation of selling tobacco to minors, and limited hours of tobacco sales near schools around school hours.

On February 25, 2014, Council also unanimously referred a similar proposal that would have prohibited flavored tobacco products within 500 feet from any school. As referred, the proposal would have explicitly applied to existing as well as prospective retailers.

Given that both overlapping proposals will be before the Planning Commission, it is important to provide clarification of Council's interest.

The proposals can be combined in two manners:

- Apply the more expansive definition of tobacco products of the 1000 feet ban to the limited 500 feet ban to allow NO tobacco sales near schools, while the 1000 feet ban within a more expansive universe of facilities would be only prospective, effectively disallowing most new tobacco retail in the City of Berkeley (Ordinance A); or
- Simply ban any existing or prospective retail of ANY tobacco product within 1000 feet of the specified facilities (Ordinance B).

The latter is a more worthwhile endeavor and the preference of this office, but Council must make clear that its intent is to take the necessary steps to curtail all tobacco sales as a matter of public health policy.

FINANCIAL IMPLICATIONS:

Unknown.

CONTACT PERSONS:

Jesse Arreguín, Councilmember, District 4

981-7140

Attachments:

1. Proposed Ordinance A
2. Proposed Ordinance B
3. July 13, 2010 Item, "Referral to City Manager and Community Health Commission: Tobacco Free School Zones"
4. February 25, 2014 Item, "Strengthen Youth Tobacco Prevention"

ORDINANCE A

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING THE BERKELEY ZONING ORDINANCE TO RESTRICT TOBACCO PRODUCT SALES NEAR SCHOOLS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

SECTION 1.

FINDINGS The City Council of Berkeley hereby finds and declares as follows:

WHEREAS, tobacco use causes death and disease and imposes great social and economic costs, as evidence by the following:

- More than 440,000 people die in the United States from tobacco-related disease every year, making it the nation's leading cause of preventable death; and
- The medical and economic costs the nonsmokers suffering from lung cancer or heart disease cause by secondhand smoke are nearly \$6 billion per year in the United States; and
- The total annual cost of smoking in California was estimate at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone; and

WHEREAS, in California, 13.3% of the adult population and 15.4% of high school students smoke; and

WHEREAS, local zoning controls allow local governments to regulate the operation of lawful businesses to avoid circumstances which facilitate violations of state, federal, and local laws; and

WHEREAS, although it is unlawful to sell tobacco products to minors, 8.6% of California retailers surveyed do sell to minors. In fact, despite laws in every state making it illegal to sell tobacco to minors, each year an estimate 924 million packs of cigarettes are consumed by minors 12 to 17 years of age, yielding the tobacco industry \$480 million in profits from underage smokers; and

WHEREAS, Berkeley has a substantial interest in promoting compliance with state laws prohibiting the sales of tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the California courts in such cases as *Cohen v. Board of Supervisors*, 40 Cal.3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal.App.4th 383 (1993), have affirmed the power of local governments to regulate business activity in order to discourage violations of state law; and

WHEREAS, the California Constitution, Article XI, section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, a recent study found the 33% of tobacco underage sales took place within 1000 feet of a school; and

WHEREAS, zoning regulations are necessary to control the location and operation of the sale or exchange of tobacco products from the protection of public health, safety and welfare; and

WHEREAS, the City of Berkeley intends to restrict the location of tobacco retailers in the City for the protection of public health, safety and welfare of children; and

NOW, THEREFORE, THE CITY COUNCIL OF BERKELEY DOES ORDAIN AS FOLLOWS:

SECTION 2. _____ OF THE CITY OF BERKELEY ZONING ORDINANCE IS HEREBY AMENDED TO READ AS FOLLOWS:

Section ____ Definitions

The following words and phrases, whenever used in this article, shall have the meanings defined in this section unless the context clearly requires otherwise:

“Tobacco product” means any product containing, made or derived from tobacco or contains nicotine from any source that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. “Tobacco product” includes, but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, creamy snuff, dipping/chewing tobacco, flavored tobacco, tobacco water, tobacco paste, gutka, kretek, shisha, roll-your-own cigarettes, cigarette or cigar rolling papers, pipes, or electronic smoking devices. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.

“Electronic Smoking Device” means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances.

“Electronic Smoking Device” includes any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. “Electronic smoking device” includes any component, part, or paraphernalia of such a product, including but not limited to cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, ESD batteries, and ESD chargers, whether or not it is sold separately.

Tobacco Retailer means any person, retail establishment, or any other legal entity who knowingly sells, donates, distributes, or delivers to any person(s), for any form of consideration, tobacco products.

Section ____ Zoning Regulations

It is hereby declared that the sense and policy of this section is that no tobacco retailer shall be permitted to sell, donate, distribute, or deliver to any person(s), for and form of consideration, tobacco products within 500 feet of any primary and secondary school, and that no new tobacco retail shall be permitted within 1000 feet of any playground, church, public library, school, or any childcare facility or similar entity providing structured, organized care for youth

Section ____ How distance measured

- (a) The distance provided for in section ____ shall be measured as a person walks, using the sidewalk, from the nearest point of the property line of specified facilities to the nearest of the property line of the tobacco retailer.
- (b) If a tobacco retailer has an interruption of the continuity of business for a period in excess of six months, in order to reopen for business, the requirements set forth above must be complied with.

Section ____ Enforcement

- (a) Enforcement of this chapter shall be the responsibility of [____]. In addition, any peace officer or code enforcement official also may enforce this chapter.

ORDINANCE B

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING THE BERKELEY ZONING ORDINANCE TO RESTRICT TOBACCO PRODUCT SALES NEAR SCHOOLS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

SECTION 1.

FINDINGS The City Council of Berkeley hereby finds and declares as follows:

WHEREAS, tobacco use causes death and disease and imposes great social and economic costs, as evidence by the following:

- More than 440,000 people die in the United States from tobacco-related disease every year, making it the nation's leading cause of preventable death; and
- The medical and economic costs the nonsmokers suffering from lung cancer or heart disease cause by secondhand smoke are nearly \$6 billion per year in the United States; and
- The total annual cost of smoking in California was estimate at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone; and

WHEREAS, in California, 13.3% of the adult population and 15.4% of high school students smoke; and

WHEREAS, local zoning controls allow local governments to regulate the operation of lawful businesses to avoid circumstances which facilitate violations of state, federal, and local laws; and

WHEREAS, although it is unlawful to sell tobacco products to minors, 8.6% of California retailers surveyed do sell to minors. In fact, despite laws in every state making it illegal to sell tobacco to minors, each year an estimate 924 million packs of cigarettes are consumed by minors 12 to 17 years of age, yielding the tobacco industry \$480 million in profits from underage smokers; and

WHEREAS, Berkeley has a substantial interest in promoting compliance with state laws prohibiting the sales of tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the California courts in such cases as *Cohen v. Board of Supervisors*, 40 Cal.3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal.App.4th 383 (1993), have affirmed the power of local governments to regulate business activity in order to discourage violations of state law; and

WHEREAS, the California Constitution, Article XI, section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, a recent study found the 33% of tobacco underage sales took place within 1000 feet of a school; and

WHEREAS, zoning regulations are necessary to control the location and operation of the sale or exchange of tobacco products from the protection of public health, safety and welfare; and

WHEREAS, the City of Berkeley intends to restrict the location of tobacco retailers in the City for the protection of public health, safety and welfare of children; and

NOW, THEREFORE, THE CITY COUNCIL OF BERKELEY DOES ORDAIN AS FOLLOWS:

SECTION 2. _____ OF THE CITY OF BERKELEY ZONING ORDINANCE IS HEREBY AMENDED TO READ AS FOLLOWS:

Section ____ Definitions

The following words and phrases, whenever used in this article, shall have the meanings defined in this section unless the context clearly requires otherwise:

“Tobacco product” means any product containing, made or derived from tobacco or contains nicotine from any source that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. “Tobacco product” includes, but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, creamy snuff, dipping/chewing tobacco, flavored tobacco, tobacco water, tobacco paste, gutka, kretek, shisha, roll-your-own cigarettes, cigarette or cigar rolling papers, pipes, or electronic smoking devices. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.

“Electronic Smoking Device” means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances.

“Electronic Smoking Device” includes any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. “Electronic smoking device” includes any component, part, or paraphernalia of such a product, including but not limited to cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, ESD batteries, and ESD chargers, whether or not it is sold separately.

Tobacco Retailer means any person, retail establishment, or any other legal entity who knowingly sells, donates, distributes, or delivers to any person(s), for any form of consideration, tobacco products.

Section ____ Zoning Regulations

It is hereby declared that the sense and policy of this section is that no tobacco retailer shall be permitted to sell, donate, distribute, or deliver to any person(s), for and form of consideration, tobacco products within 1000 feet of any playground, church, public library, school, or any childcare facility or similar entity providing structured, organized care for youth

Section ____ How distance measured

- (a) The distance provided for in section ____ shall be measured as a person walks, using the sidewalk, from the nearest point of the property line of specified facilities to the nearest of the property line of the tobacco retailer.
- (b) If a tobacco retailer has an interruption of the continuity of business for a period in excess of six months, in order to reopen for business, the requirements set forth above must be complied with.

Section ____ Enforcement

- (a) Enforcement of this chapter shall be the responsibility of [____]. In addition, any peace officer or code enforcement official also may enforce this chapter.



Jesse Arreguín
District 4

CONSENT CALENDAR
July 13, 2010

To: Honorable Mayor and Members of the City Council

From: Councilmembers Jesse Arreguín

Subject: Referral to City Manager and Community Health Commission: Tobacco Free School Zones

RECOMMENDATION:

Refer the proposed ordinance to the City Manager and Community Health Commission, to prohibit the sale of tobacco near schools and request that the Zoning Adjustments Board review the proposal and make a recommendation to the City Council within 90 days.

BACKGROUND:

Surveys continue to confirm that the closer a tobacco retailer is to a school, the more likely they are to sell to children. A 2004 study by the Tobacco Related Disease Research Program found that 33% of tobacco sales to minors take place within 1,000 feet of a school and that 90% of all smokers start smoking as teenagers. According to the California Department of Health Services, 15.4% of California high school students smoke and around 300 new youth smoke for the first time each day.

In September 2009, the Los Angeles City Attorney announced the suspension of 24 tobacco retailers' licenses due to repeated sales of tobacco to minors, with the majority of these violations taking place near schools. In July 2009, the City of New Orleans, Louisiana became the latest city in the nation to adopt an ordinance restricting tobacco sales near schools, churches, playgrounds, public libraries, and any places "offering structure, organized care for youth."

Fortunately, Berkeley does have responsible local tobacco retailers who have been recognized by City Council commendable commitment to public health and anti-youth smoking. However, the City must ensure that the potential for bad actors do not have the opportunity to provide tobacco to minors by adopting tobacco-free zones near schools.

The City may wish to also consider grandfathering-in existing tobacco retailers but look at limited hours of tobacco sales during school hours and a tougher penalty schedule, including license revocation after a third violation of selling tobacco to minors.

FINANCIAL IMPLICATIONS:
Unknown.

CONTACT PERSONS:

Jesse Arreguín, Councilmember, District 4 981-7140

Attachments:

1. Proposed Ordinance

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING THE BERKELEY ZONING ORDINANCE TO RESTRICT TOBACCO PRODUCT SALES NEAR SCHOOLS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

SECTION 1.

FINDINGS The City Council of Berkeley hereby finds and declares as follows:

WHEREAS, tobacco use causes death and disease and imposes great social and economic costs, as evidence by the following:

- More than 440,000 people die in the United States from tobacco-related disease every year, making it the nation's leading cause of preventable death; and
- The medical and economic costs the nonsmokers suffering from lung cancer or heart disease cause by secondhand smoke are nearly \$6 billion per year in the United States; and
- The total annual cost of smoking in California was estimate at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone; and

WHEREAS, in California, 13.3% of the adult population and 15.4% of high school students smoke; and

WHEREAS, local zoning controls allow local governments to regulate the operation of lawful businesses to avoid circumstances which facilitate violations of state, federal, and local laws; and

WHEREAS, although it is unlawful to sell tobacco products to minors, 8.6% of California retailers surveyed do sell to minors. In fact, despite laws in every state making it illegal to sell tobacco to minors, each year an estimate 924 million packs of cigarettes are consumed by minors 12 to 17 years of age, yielding the tobacco industry \$480 million in profits from underage smokers; and

WHEREAS, Berkeley has a substantial interest in promoting compliance with state laws prohibiting the sales of tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the California courts in such cases as *Cohen v. Board of Supervisors*, 40 Cal.3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal.App.4th 383 (1993), have affirmed the power of local governments to regulate business activity in order to discourage violations of state law; and

WHEREAS, the California Constitution, Article XI, section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, a recent study found the 33% of tobacco underage sales took place within 1000 feet of a school; and

WHEREAS, zoning regulations are necessary to control the location and operation of the sale or exchange of tobacco products from the protection of public health, safety and welfare; and

WHEREAS, the City of Berkeley intends to restrict the location of tobacco retailers in the City for the protection of public health, safety and welfare of children; and

NOW, THEREFORE, THE CITY COUNCIL OF BERKELEY DOES ORDAIN AS FOLLOWS:

SECTION 2. _____ OF THE CITY OF BERKELEY ZONING ORDINANCE IS HEREBY AMENDED TO READ AS FOLLOWS:

Section ____ Definitions

The following words and phrases, whenever used in this article, shall have the meanings defined in this section unless the context clearly requires otherwise:

Tobacco Product means any product(s) that is used to consume tobacco or any product that contains any tobacco leaf, including but not limited to: cigarettes, cigars, cigarillos, blunts, snuff, creamy snuff, dipping/chewing tobacco, flavored tobacco, tobacco water, tobacco paste, gutka, kretek, shisha, roll-your-own cigarettes, cigarette or cigar rolling papers, or pipes.

Tobacco Retailer means any person, retail establishment, or any other legal entity who knowingly sells, donates, distributes, or delivers to any person(s), for any form of consideration, tobacco products.

Section ____ Zoning Regulations

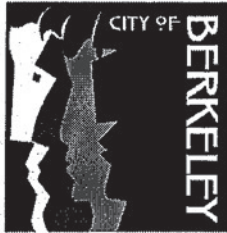
It is hereby declared that the sense and policy of this section is that no tobacco retailer shall be permitted to sell, donate, distribute, or deliver to any person(s), for and form of consideration, tobacco products within 1000 feet of any playground, church, public library, school, or any childcare facility or similar entity providing structured, organized care for youth.

Section ____ How distance measured

- (a) The 1000-foot distance provided for in section ____ shall be measured as a person walks, using the sidewalk, from the nearest point of the property line of the playground, church, public library, school, or childcare facility or similar entity providing structured, organized care for youth, to the nearest of the property line of the tobacco retailer.
- (b) If a tobacco retailer has an interruption of the continuity of business for a period in excess of six months, in order to reopen for business, the requirements set forth above must be complied with.

Section ____ Enforcement

- (a) Enforcement of this chapter shall be the responsibility of [____]. In addition, any peace officer or code enforcement official also may enforce this chapter.



CITY COUNCIL

Darryl Moore
Councilmember District 2

RECEIVED AT
COUNCIL MEETING OF:

FEB 25 2014

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

REVISED
CONSENT CALENDAR
February 25, 2014

To: Honorable Mayor and Members of the City Council
From: Councilmember Darryl Moore, District 2
Councilmember Max Anderson, District 3
Subject: Strengthen Youth Tobacco Prevention

RECOMMENDATION

That the City Council increase the minimum distance where all flavored tobacco products (including menthol cigarettes, flavored little cigars and flavored cigar wraps) are banned from sale within a 500 ft radius from any school and direct the City Manager to provide changes to Berkeley's current tobacco regulations that might decrease youth tobacco use and uptake, including additional regulation around flavored (including menthol) tobacco products.

BACKGROUND

Berkeley's 2013 Health Status Report gave us some good news when it comes to teenage tobacco use. Tobacco use, along with alcohol and marijuana consumption, has gone down at all grade levels between 2008 and 2012. Berkeley's tobacco use for 7th, 9th and 11th graders is significantly lower than the state average. While there seems to be much progress over the last several years in preventing teenage tobacco use, more can be done. Tobacco control regulations must be pro-active or public health gains begin to erode.

Flavored tobacco products have been designed by tobacco manufacturers to make their products less harsh, and as a result, more appealing to young smokers. As a result, in 2009 Congress passed the Family Smoking Prevention and Tobacco Control Act which banned most types of flavored tobacco products, with the exception of menthol. While this landmark law made some very important steps to discourage tobacco use among young smokers, menthol tobacco products still remain on the market and have the same function of masking the harshness of tobacco, providing a cool sensation that makes it appealing to teenage smokers. The appeal of menthol flavored tobacco products is evidenced by the fact that it holds approximately 30% of the total market share.

As part of the Family Smoking Prevention and Tobacco Control Act, it established the Tobacco Products Scientific Advisory Committee (TPSAC) which intended to advise the United States Food and Drug Administration (FDA) on smoking-related scientific issues.

The TPSAC and the FDA's own independent investigation found that that menthol cigarette use is associated with increased smoking initiation, greater addiction, greater signs of nicotine dependence, and decreased likelihood of quitting successfully.

All of these factors demonstrate that we need to regulate menthol tobacco products more closely to protect our youth from becoming addicted at a young age, which translates into a much higher likelihood of continuing tobacco use in their adult years.

One proposal that should be evaluated is to expand the minimum distance where all flavored tobacco products are banned from sale within a 500 ft radius from any school.

FISCAL IMPACTS OF RECOMMENDATION

Unknown

CONTACT PERSON

Councilmember Darryl Moore, District 2 981-7120

Attachments:

- 1) Healthy Chicago Policy Brief: MENTHOL-FLAVO RED CIGARETTES
- 2) Healthy Chicago Policy Brief: Tobacco Retail Sales Near Schools & Youth Centered Environments
- 3) Section 4-64-098 regarding flavored tobacco products and amendments to Section 4-64-180 of the Chicago Municipal Code

State Health Officer's Report on E-Cigarettes

*A Community
Health Threat*



State Health Officer's Report on E-Cigarettes

A Community Health Threat

Ron Chapman, MD, MPH
CDPH Director and State Health Officer
California Department of Public Health

January 2015

Edmund G. Brown Jr., Governor
State of California

Diana S. Dooley, Secretary
California Health and Human Services Agency



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Introduction from the State Health Officer

As the California Department of Public Health (CDPH) Director and State Health Officer, I am pleased to present CDPH's second issue of the State Health Officer's Report which focuses on electronic cigarettes (e-cigarettes). While there is still much to be learned about the individual and public health impact of e-cigarette use, this report provides factual information about e-cigarettes, the marketing of these products, and the public health concerns related to their use. It outlines a number of steps to protect children from nicotine poisoning, adolescents from nicotine addiction, and non-users from exposure to the toxic aerosol emitted from e-cigarettes.



Ron Chapman, MD, MPH
CDPH Director and State Health Officer

As the State Health Officer, of particular concern to me is the impact of e-cigarettes on the health and safety of children, teens, and young adults. The availability of e-cigarettes in a variety of candy and fruit flavors such as cotton candy, gummy bear, chocolate mint, and grape makes these products highly appealing to young children and teens. The use of marketing terms such as “e-juice” may further mislead consumers into believing that these products are harmless and safe for consumption.

Among children ages 0 to 5 years old, e-cigarette poisonings increased sharply from 7 in 2012 to 154 in 2014. By the end of 2014, e-cigarette poisonings to young children tripled in one year, making up more than 60 percent of all e-cigarette poisoning calls.

E-cigarette use is rapidly rising among teens and young adults. Nationally, the use of e-cigarettes by high school students tripled in just two years and e-cigarette use by teens now surpasses the use of traditional cigarettes. With this age group the long-term impact that nicotine has on adolescent brain development is of particular concern. In California, use among young adults ages 18 to 29 tripled in one year. While the long term health impact resulting from use of this product by this population is presently unknown – it is known that e-cigarettes emit at least 10 chemicals that are found on California's Proposition 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm. Comprehensive steps taken now can prevent a new generation of young people from becoming addicted to nicotine, avoid future health disparities and avert an unraveling of California's approximately \$2 billion, 25-year investment in public health efforts to prevent and reduce tobacco use in California.

This report highlights several steps to address the health and safety issues related to e-cigarette use. First and foremost, education is needed to counter the marketing of e-cigarettes which is often misleading and highly appealing to teens. Second, there is a need to treat e-cigarettes in a comprehensive manner

that is consistent with how we approach traditional cigarettes. Existing laws that currently protect minors and the general public from traditional tobacco products should be extended to cover e-cigarettes. Third, immediate action is needed to protect children and workers from the toxicity associated with unintentional exposure and handling of e-liquid and the toxic aerosol emitted from e-cigarettes.

I trust that this report provides you with new information and that you will join me in this effort to protect our communities.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ron Chapman', with a stylized, cursive script.

Ron Chapman, MD, MPH

CDPH Director and State Health Officer

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Executive Summary

While there is still much to be learned about the ingredients and the long-term health impacts of e-cigarettes, this report provides Californians with information on e-cigarette use, public health concerns related to e-cigarettes, and steps that can be taken to address the growing use of these products. The following are key highlights from the report:

E-Cigarette Use

- In 2014, teen use of e-cigarettes surpassed the use of traditional cigarettes for the first time, with more than twice as many 8th and 10th graders reporting using e-cigarettes than traditional cigarettes. Among 12th graders, 17 percent reported currently using e-cigarettes vs. 14 percent using traditional cigarettes.
- In California, adults using e-cigarettes in the past 30 days doubled from 1.8 percent in 2012 to 3.5 percent in 2013. For younger adults (18 to 29 years old), e-cigarette use tripled in only one year from 2.3 percent to 7.6 percent.
- Young adults are three times more likely to use e-cigarettes than those 30 and older.
- Nearly 20 percent of young adult e-cigarette users in California have never smoked traditional cigarettes.

Health Effects of E-Cigarettes

- E-cigarettes contain nicotine, a highly addictive neurotoxin.
- Exposure to nicotine during adolescence can harm brain development and predispose youth to future tobacco use.
- E-cigarettes do not emit water vapor, but a concoction of chemicals toxic to human cells in the form of an aerosol. The chemicals in the aerosol travel through the circulatory system to the brain and all organs.
- Mainstream and secondhand e-cigarette aerosol has been found to contain at least ten chemicals that are on California's Proposition 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm.

Heightened Concern for Youth

- The variety of fruit and candy flavored e-cigarettes entice small children who may accidentally ingest them. Even a fraction of e-liquid may be lethal to a small child.
- E-cigarette cartridges often leak and are not equipped with child-resistant caps, creating a potential source of poisoning through ingestion and skin or eye contact.
- Calls to poison control centers in California and the rest of the U.S. have risen significantly for both adults and children accidentally exposed to e-liquids.
- In California, the number of calls to the poison control center involving e-cigarette exposures in children five and under tripled in one year.



Harm Reduction Claims and Myths

- There is no scientific evidence that e-cigarettes help smokers successfully quit traditional cigarettes.
- E-cigarette users are no more likely to quit than regular smokers, with one study finding 89 percent of e-cigarette users still using them one year later. Another study found that e-cigarette users are a third less likely to quit cigarettes.

Unrestricted Marketing

- In three years, the amount of money spent on advertising e-cigarettes increased more than 1,200 percent.
- E-cigarette advertisements (ads) are on television (TV) and radio where tobacco ads were banned more than 40 years ago. Most of the methods being used today by e-cigarette companies were used long ago by tobacco companies to market traditional cigarettes to kids.
- Many ads state that e-cigarettes are a way to get around smoking bans, which undermines smoke free social norms. Various tactics and claims are also used to imply that these products are safe.
- The fact that e-cigarettes contain nicotine, which is highly addictive, is not typically included in e-cigarette advertising.

In Conclusion

California has been a leader in tobacco use prevention and cessation for over 25 years, with one of the lowest youth smoking rates in the nation. The promotion and increasing use of e-cigarettes threaten California's progress. These data suggest that a new generation of young people will become addicted to nicotine, accidental poisonings of children will continue, and involuntary exposure to secondhand aerosol emissions will impact the public's health if e-cigarette marketing, sales and use continue without restriction. Additionally, without action, it is likely that California's more than two decades of progress to prevent and reduce traditional tobacco use will erode as e-cigarettes re-normalize smoking behavior.

The Problem: E-cigarettes

E-cigarettes are battery-operated devices, often designed to resemble cigarettes, which deliver a nicotine containing aerosol, not just water vapor. E-cigarettes have many names, especially among youth and young adults, such as e-cigs, e-hookahs, hookah pens, vapes, vape pens, vape pipes, or mods.

E-cigarettes were first introduced in the U.S. in 2007 and have skyrocketed in popularity, availability, and variety. From disposable and rechargeable e-cigarettes to “tank systems” that can hold a large volume of a liquid solution (e-liquid), customers can modify e-cigarettes in many ways.¹

A Significant Public Health Concern

Unlike traditional cigarettes where the tobacco leaf is burned and the resulting smoke inhaled, e-cigarettes heat e-liquid that generally contains nicotine, flavorings, additives, and propylene glycol. The heated e-liquid forms an aerosol, not just water vapor, that is inhaled by the user. The aerosol has been found to contain toxic chemicals like formaldehyde, lead, nickel, and acetaldehyde all of which are found on California’s Proposition 65 list of chemicals known to cause cancer, birth defects, and other reproductive harm.²⁻⁴ These chemicals travel through the circulatory system to the brain and all organs. The aerosol also contains high concentrations of ultrafine particles that are inhaled and become trapped in the lungs.⁵

E-liquids are available in thousands of candy and fruit flavors, including bubble gum, cherry and chocolate, which are especially appealing to youth and small children who may accidentally ingest them. Even a small amount of e-liquid may be lethal to a small child.⁶ In addition, e-cigarette cartridges often leak and are not equipped with child-resistant caps, creating a potential source of poisoning through ingestion and skin or eye contact.

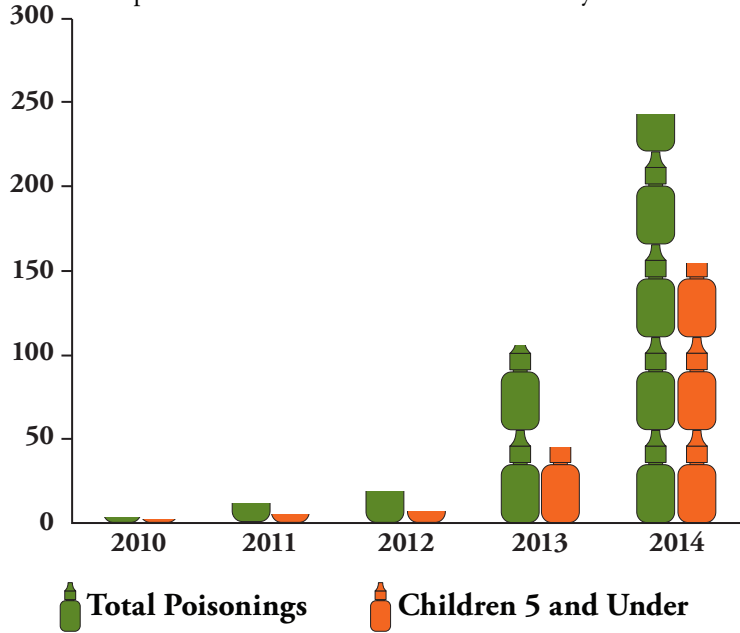
There has been a significant rise in the number of calls to poison control centers in California and nationally for both adults and children who were accidentally exposed to e-liquids, many of whom are children aged five and under.⁷ Nationally, the number of calls rose from one per month in September 2010 to 215 per month in February 2014.⁸ In California, from 2012 to 2013, the number of calls to the poison control center involving e-cigarette exposures in children ages five and under increased sharply from 7 to 154. By the end of 2014, e-cigarette poisonings to young children tripled in one year, making up more than 60% of all e-cigarette poisoning calls (see Figure 1). Adults have also mistakenly used e-liquid in harmful ways, such as eye drops, and have been harmed by exploding cartridges and burning batteries.

School and law enforcement officials have reported that e-cigarette devices are also used to inhale illegal substances, such as marijuana and hash oil.⁶ Because many of these devices are similar in appearance to a ball point pen, school and law enforcement personnel are not aware that inappropriate use of nicotine and illegal substances is occurring.



Figure 1**E-Cigarette Poisonings, 2010-2014**

Reported to the California Poison Control System



California Poison Control System, San Diego, CA, Jan. 2015

Despite the lack of manufacturing standards, quality control, and external oversight by a federal regulatory agency of e-cigarettes, they are heavily marketed, widely available, and a significant public health concern.

E-Cigarette Use by Youth

Aggressive marketing has led to an increase in e-cigarette use and experimentation by youth. Many are concerned that e-cigarettes are a gateway to using traditional cigarettes.⁹ Research suggests that kids who may have otherwise never smoked cigarettes are now becoming addicted to nicotine through the use of e-cigarettes and other e-products.⁹ An analysis of the 2011-2012 National Youth

Tobacco Survey (NYTS) found that adolescents who used e-cigarettes were more likely to progress from experimenting with traditional cigarettes to becoming established smokers and were less likely to quit.⁹

In 2014, for the first time ever, teen use of e-cigarettes surpassed the use of traditional cigarettes. The Monitoring the Future study, which tracks substance abuse trends among 40,000 youth nationally, found that among 8th and 10th graders, current e-cigarette use was double that of traditional cigarettes (8.7 percent vs. 4 percent for 8th graders and 16.2 percent vs. 7.2 percent for 10th graders). Among 12th graders, 17.1 percent reported current e-cigarette use vs. 13.6 percent traditional cigarette use.¹⁰ This 2014 finding that e-cigarette use exceeds traditional cigarette use among teens comes on the heels of the 2013 NYTS which found that e-cigarette use tripled among high school students, increasing from 1.5 percent in 2011 to 4.5 percent in 2013.¹¹ An analysis of the 2011- 2013 NYTS also reported that more than a quarter million youth who had never smoked a traditional cigarette used e-cigarettes in 2013, a three-fold increase since 2011, and that youth who had used e-cigarettes were nearly twice as likely to try traditional cigarettes as those who never used e-cigarettes.¹²

In California, preliminary data of more than 430,000 middle and high school students from the California Healthy Kids Survey found that in 2013, 6.3 percent of 7th graders, 12.4 percent of 9th graders, and 14.3 percent of



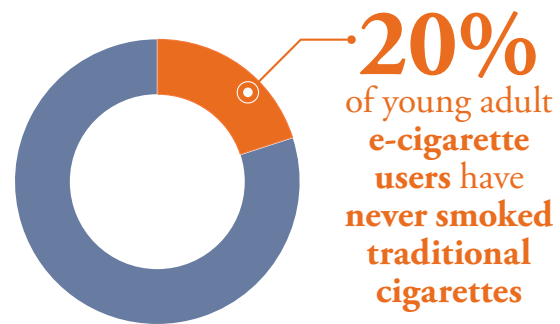


11th graders had used e-cigarettes in the past 30 days. In all instances, California teens were found to use e-cigarettes at much higher rates than traditional cigarettes. The survey data also show that 11.4 percent of 7th graders, 23.6 percent of 9th graders, and 29.3 percent of 11th graders have ever tried e-cigarettes.¹³ While the California Healthy Kids Survey is not representative of all California youth, the large sample size and consistency with the recent national data and data from other U.S. states, specifically Minnesota and Hawaii, suggest that California youth are experimenting with e-cigarettes at a rapidly increasing rate.^{14, 15}

E-Cigarette Use by Adults

Nationally, 8.1 percent of adults have tried e-cigarettes

while 1.4 percent were current users in 2012.¹⁶ New California data shows that adults using e-cigarettes in the past 30 days also doubled from 1.8 percent in 2012 to 3.5 percent in 2013. For young adults (18 to 29 year old), e-cigarette use tripled in only one year from 2.3 percent to 7.6 percent. Young adults are three times more likely to use e-cigarettes than those 30 and older. Nearly 20 percent of young adult e-cigarette users have never smoked traditional cigarettes.¹⁷



Health Effects of Nicotine

In 1990, the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency added nicotine to the Proposition 65 list of chemicals known to cause cancer, birth defects, or reproductive harm.⁴

Nicotine is a highly addictive neurotoxin, proven as addictive as heroin and cocaine.¹⁸ Nicotine affects the cardiovascular and central nervous systems, causing blood vessels to constrict, raising the pulse and blood pressure.¹⁹ Nicotine adversely affects maternal and fetal health during pregnancy, contributing to low birth weight, preterm delivery, and stillbirth.²⁰ Nicotine is also known to cross the placenta and

is detectable in the breast milk of smoking mothers as well as mothers exposed to secondhand smoke.^{21, 22}



Preliminary studies have shown that using a nicotine-containing e-cigarette for just five minutes causes similar lung irritation, inflammation, and effect on blood vessels as smoking a traditional cigarette, which may increase the risk of a heart attack.^{1, 23}

Adolescents are especially sensitive to the effects of nicotine and are likely to underestimate its addictiveness. Research shows that adolescent smokers report some symptoms of dependence even at low levels of cigarette consumption.²⁵

Adolescents are still going through critical periods of brain growth and development and are especially vulnerable to the toxic effects of nicotine. Exposure to nicotine during adolescence can harm brain development and affect future tobacco use and smoking-related harms.^{20, 24, 25} Even a brief period of continuous or intermittent nicotine exposure in adolescence elicits lasting neurobehavioral damage.²⁶

Exposure to Secondhand Aerosol

While e-cigarettes pollute the air less than traditional cigarettes, contrary to popular belief, e-cigarettes do not emit a harmless water vapor, but a concoction of chemicals toxic to human cells in the form of an aerosol. Vapors are purely gases, whereas aerosols also contain particulate matter.⁵



Although several studies have found lower levels of carcinogens in e-cigarette aerosol compared to smoke emitted by traditional cigarettes, the mainstream and secondhand e-cigarette aerosol has been found to contain at least ten chemicals that are on California's list of chemicals known to cause cancer, birth defects, or other reproductive harm, including acetaldehyde, benzene, cadmium, formaldehyde, isoprene, lead, nickel, nicotine, N nitrosonornicotine, and toluene.^{1-3, 27} There is also evidence that e-cigarette aerosol

contains propylene glycol and higher levels of other toxicants including heavy metals (tin, nickel) and silicate nanoparticles than are present in traditional cigarettes.³

Overall, research confirms that e-cigarettes are not emission-free and their pollutants could be of health concern for both users and those exposed to the secondhand aerosol. Although it may not be as dangerous as secondhand smoke from cigarettes, people passively exposed to e-cigarette aerosol absorb nicotine at levels comparable to passive smokers.²⁸ They are also exposed to volatile organic compounds (VOCs) and fine/ultrafine particles.²⁷ These ultrafine particles can travel deep into the lungs and lead to tissue inflammation.²³

Harm Reduction Claims and Myths about Cessation

Despite numerous claims, the effectiveness of e-cigarettes as cessation aids has not been proven. Unlike the U.S. Food and Drug Administration (FDA)-approved nicotine replacement therapies, e-cigarettes are not FDA-approved cessation aids. There is no scientific evidence that e-cigarettes help smokers successfully quit traditional cigarettes or that they reduce their consumption.^{9, 29}

A number of recent studies have shown that e-cigarette users are no more likely to quit than regular smokers, with one study finding that 89 percent of e-cigarette users are still using them one year later.³⁰ Another study found that e-cigarette users are a third less likely to quit cigarettes, suggesting that e-cigarettes inhibit people from successfully kicking their nicotine addiction.^{31, 32}



89%
of e-cigarette
users are still
using them
one year later

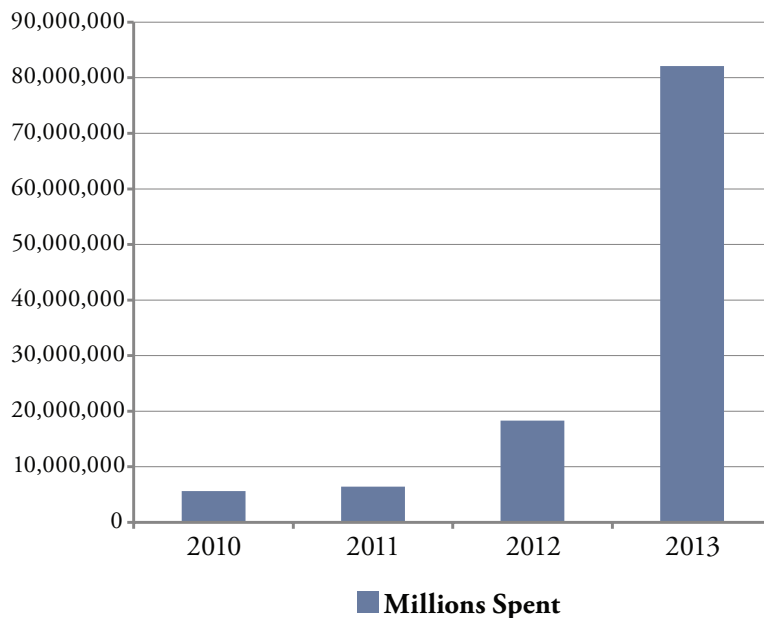
In addition, dual use of cigarettes and e-cigarettes is continuing to rise, which may diminish any potential benefits of cutting back on traditional cigarettes.³³ Continuing to smoke traditional cigarettes, while also using e-cigarettes, does not reduce cardiovascular health risks.^{1, 34, 35}

Unrestricted Marketing

In just three years, the amount of money spent on advertising e-cigarettes increased more than 1,200 percent or 12-fold (Figure 2).^{36, 37} E-cigarette ads are found in all forms of media, including TV and radio where cigarette ads were banned more than 40 years ago.

Figure 2

Estimated E-Cigarette Advertising, U.S.



Sources:

2010 and 2013 estimates from: Kantar Media Intelligence e-cigarette competitive spend data as reported in Legacy, 'Vaporized: E-Cigarettes, Advertising, and Youth', (2014).

2011 and 2012 estimates from: A. E. Kim, K. Y. Arnold, and O. Makarenko, 'E-Cigarette Advertising Expenditures in the U.S., 2011-2012', *Am J Prev Med*, 46 (2014), 409-12.

Many TV networks with a substantial proportion of youth viewers, are airing e-cigarette TV advertising. E-cigarette ads have appeared on highly viewed broadcasts, including the 2013 and 2014 Super Bowls, which had more than 110 million viewers.^{38, 37}

In addition to TV, e-cigarette ads are on the radio, magazines, newspapers, online, and in retail stores. In Style, Us Weekly, Star, Entertainment Weekly and Rolling Stone are some of the tabloids and magazines with e-cigarette ads reaching millions of youth and young adults.^{38, 39} Manufacturers are also promoting their products on social media sites

(Facebook, Instagram, YouTube and Twitter), which are heavily used by youth and young adults, and sponsoring sports, music, and cultural events in California where free samples may also be provided.³⁷

Most of the e-cigarette marketing tactics were previously used by tobacco companies to market traditional cigarettes to kids, such as featuring celebrities.³⁹ Advertising appeals include rebelliousness, sexual appeal, glamour, trendy and fun—all of which strongly resonate with youth who have a desire to be cool and fit in. Cartoon characters, which are also prohibited in traditional cigarette advertising for their youth appeal, are used by some brands and there are numerous youth oriented designs for e-cigarette products, including "Hello Kitty."



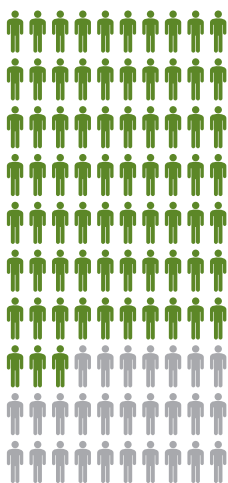
Many ads state that e-cigarettes are a way to get around smoking bans, which undermines social norms and entices young people to disregard laws established for traditional cigarettes.

Another tactic used to imply the safety of these products is that the e-liquid containing nicotine is typically labeled as “e-juice” and promoted in candy and fruit flavors, such as cotton candy, gummy bear, chocolate mint, watermelon, and grape. The fact that e-cigarettes contain nicotine is downplayed in e-cigarette advertising. Younger adults and youth who are experimenting with these products may not realize that e-juice contains the highly addictive chemical nicotine, and that the products are classified as a tobacco product.



e-liquid

The leading e-cigarette brands have taken the position that their products should not be sold or marketed to youth, but advertising industry data revealed that 73 percent of 12-17 year olds were exposed to e-cigarette advertising from Blu, the most heavily advertised e-cigarette brand.³⁸



73%
of 12-17 year
olds were
exposed to
e-cigarette
advertising

All of the major tobacco companies now own e-cigarette brands and the amount of e-cigarette advertising is expected to skyrocket. The two biggest tobacco companies, R.J. Reynolds (Camel brand) and Altria (Marlboro brand), launched their own e-cigarette brands nationally in late June and early July 2014. They join Lorillard, the third biggest tobacco company, already in the market with Blu e-cigarettes for the last few years. Other types of e-cigarette-like products can also be expected from the major tobacco companies, such as the recent news by Philip Morris International to test and launch an e-cigarette device that heats tobacco leaf instead of a liquid.⁴⁰

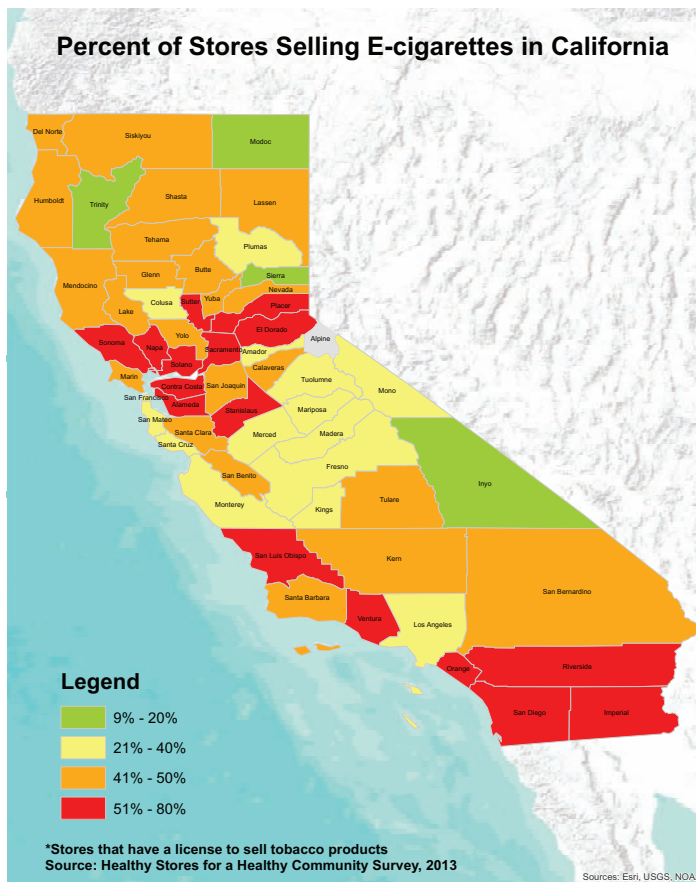
Where E-Cigarettes are Sold in California

E-cigarettes are readily available throughout California, and the number of stores selling e-cigarettes quadrupled in a two-year period, from 2011 to 2013. A survey of over 7,000 retail stores conducted in 2013 showed that 46 percent of retail stores that sold tobacco also sold e-cigarettes in California.⁴¹ In 2011, only 12 percent of stores sold e-cigarettes.⁴²

The map of where e-cigarettes are sold in California shows that counties around the Bay Area, Sacramento and San Diego have a higher percentage of stores selling e-cigarettes than the statewide average of 46 percent and many are equal to the state average (Figure 3).

Tobacco companies have historically enlisted convenience stores, the type of store most frequented by youth, as their most important partners in marketing tobacco products and opposing policies that reduce tobacco use.⁴³ More than 60 percent of convenience stores sold e-cigarettes in 2013, with almost one third selling e-cigarettes near candy, ice cream, or slushie/soda machines. Drug stores and pharmacies (other than CVS Pharmacy which will no longer sell tobacco as of October 2014), which people visit to improve their health, are also selling e-cigarettes at a rate higher than the state average (56 percent vs. 44 percent), with 88 percent of those stores placing e-cigarettes visibly in the main check-out area.⁴¹

Figure 3



Local Efforts

While the FDA has proposed a rule that would provide limited regulation of e-cigarettes, the FDA does not have the authority to regulate “where” e-cigarettes may be used. Thus, the responsibility lies with states and local governments to implement restrictions that protect youth, workers, and the public from exposure to e-cigarette aerosol emissions.

Given that much of e-cigarette marketing focuses on the users’ ability to circumvent smoke-free laws and “smoke anywhere,” local communities play a critical role in protecting nonsmokers and youth from the secondhand exposure to the e-cigarette aerosol.



Many California cities and counties are taking steps to treat e-cigarettes the same as cigarettes and other tobacco products. To date, more than one hundred cities and counties in California have passed policies regulating the use of e-cigarettes in their jurisdictions, some requiring retailers to obtain a license to sell e-cigarettes, while others prohibit the use of e-cigarettes in indoor and/or outdoor areas, including in multi-unit housing complexes.⁴⁴



Summary of FDA Proposed Regulation

In 2011 the U.S. Court of Appeals determined that e-cigarettes may not be regulated by the FDA as a drug or medical device, but may be regulated as a tobacco product under the Family Smoking Prevention and Tobacco Control Act of 2009.⁴⁵ As described below, on April 24, 2014, the FDA released its proposed deeming rule to regulate the sale and distribution of e-cigarettes.⁴⁶ The proposed rule is limited in scope and may take several years to be finalized and even longer to be implemented. As written now, the proposed rule would:

- Prohibit the sales of e-cigarettes to anyone under the age of 18 nationally
- Restrict vending machines to adult-only facilities
- Prohibit free samples
- Require a nicotine health warning statement on packaging and in advertisements
- Require all manufacturers to register their e-cigarette product with the FDA
- Require ingredients to be disclosed
- Allow the FDA to review any new or changed products before being sold
- Require manufacturers to show scientific evidence to support a claim that an e-cigarette product is less harmful and demonstrate the overall public health benefit



E-cigarette samples provided at an event.



E-cigarette sponsorship of events and samples.

Public Education Campaign on E-Cigarettes

As the State of California Health Officer, and in the face of public health and safety concerns, aggressive e-cigarette marketing, and increasing number of e-cigarette users, I am announcing the intentions of CDPH to launch an educational campaign to inform the public about the dangers of e-cigarettes. The campaign will include:

- **Partnering with the public health, medical, and child care communities:** CDPH will disseminate information to the public health, medical, and child care communities to increase awareness about the known toxicity of e-cigarettes and the high risk of poisonings, especially to children. We will continue to promote and support the use of proven effective cessation therapies.
- **The launch of a media and public education campaign:** California was the first state in the nation to comprehensively address smoking in 1990, including a bold public education campaign. We must do the same today to address the proliferation of e-cigarette marketing and products.
- **Joining with the California Department of Education (CDE) and school officials:** The Department will work with CDE and school officials to assist in providing accurate information to parents, school administrators, and students on the dangers of e-cigarettes.

**IT'S NOT JUST
"HARMLESS WATER VAPOR"**

**E-cigarette aerosol contains
at least 10 chemicals on
California's Prop 65 list of
chemicals known to cause
cancer, birth defects or other
reproductive harm.**

TOLUENE
ACETALDEHYDE
BENZENENE
CADMIUM
FORMALDEHYDE
ISOPRENE
NICKEL
LEAD
NICOTINE
N-NITROSONORNICOTINE

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Conclusion

The facts outlined in this report indicate a high need to educate the public regarding safety concerns associated with e-cigarettes. These devices pose a poisoning hazard, particularly for children, but also for adults who may confuse e-liquid bottles with other products. The nicotine in e-cigarettes has lasting health implications to the brain development of teens and young adults, and there are indications that chemicals in e-liquids may pose a respiratory hazard to users and to those exposed to the aerosol emitted from these devices. Furthermore, there are worker safety and biohazard concerns regarding the conditions under which e-liquids are mixed and how materials are disposed. Increasingly, there are reports from schools and law enforcement agencies about the use of these e-cigarettes for other illicit substances.

The adverse health effects of e-cigarettes and their by-products make it clear that these products should be strictly regulated. Restrictions on marketing to youth and access by youth, protections to prevent poisonings—particularly among children—and education of the public on the dangers of e-cigarettes are important measures to take to address this growing public health threat.

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HEALTH ADVISORY – January 28, 2015

Electronic Cigarettes: A Summary of the Public Health Risks and Recommendations for Health Care Professionals

This health advisory seeks to inform health care professionals of the public health risks posed by the marketing, sale and use of electronic cigarettes (e-cigarettes) especially to children and young people. Electronic cigarettes (e-cigarettes) are battery-operated devices, often designed to resemble a cigarette, that deliver and emit a nicotine-containing aerosol. E-cigarettes are considered electronic nicotine delivery devices (ENDS) and have many names. They are frequently referred to as e-cigs, e-hookahs, hookah pens, vapes, vape pens, vape pipes, or mods. There are disposable and rechargeable e-cigarettes as well as refillable “tank systems” that hold a larger volume of the e-cigarette liquid (e-liquid) and that heat the e-liquid to higher temperatures.¹

Toxicity of E-cigarettes and Exposure to Emissions

The heated e-liquid forms an aerosol that contains high concentrations of ultrafine particles that are inhaled and become trapped in the lungs.² Chemicals in the aerosol are absorbed through the blood stream and delivered directly to the brain and all body organs. Analyses of e-liquids by the Food and Drug Administration (FDA) and other laboratories found variability in the content of e-liquids and inaccurate product labeling related to nicotine content and chemicals.³

Typically, e-liquids contain nicotine, flavoring agents, propylene glycol and toxic chemicals known to cause cancer, birth defects and other reproductive harm.^{1, 4-7} While several studies found lower levels of carcinogens in the e-cigarette aerosol compared to smoke emitted by traditional cigarettes, both the mainstream and secondhand e-cigarette aerosol have been found to contain at least ten chemicals that are on California’s Proposition 65 list of chemicals known to cause cancer, birth defects or other reproductive harm, including acetaldehyde, benzene, cadmium, formaldehyde, isoprene, lead, nickel, nicotine, n-nitrosornicotine, and toluene.^{1, 5-7}

E-cigarette emissions are also a health concern for those exposed to the secondhand aerosol. Although not as dangerous as secondhand smoke from combustible tobacco products, people exposed to e-cigarette aerosol absorb nicotine at levels comparable to people exposed to secondhand smoke.⁸ E-cigarette emissions also contain volatile organic compounds (VOCs) and fine/ultrafine particles.⁶ These ultrafine particles can travel deep into the lungs where they get trapped and may lead to tissue inflammation.⁹

Health Effects of Nicotine

Nicotine, the primary psychoactive ingredient in e-liquid, stimulates pleasure/reward pathways in the brain. It is a highly addictive neurotoxin that is as addictive as heroin and cocaine.^{10, 11} It affects the cardiovascular and central nervous systems, causing blood vessels to constrict, raising the pulse and blood pressure.¹² Nicotine adversely affects maternal and fetal health during pregnancy, contributing to low birth weight, preterm delivery and stillbirth.¹³ Nicotine is also known to cross the placenta and is detectable in the breast milk of smoking mothers as well as mothers exposed to secondhand smoke.^{14, 15} Preliminary studies show that using a nicotine-containing e-cigarette for just five minutes causes similar lung irritation, inflammation and effect on blood vessels as smoking a traditional cigarette, which may increase the risk of a heart attack.^{1, 9}

Exposure to and use of nicotine products by adolescents is of particular concern because adolescence is a critical period for brain growth and development. As a consequence, adolescents are especially vulnerable to the toxic effects of nicotine. Exposure to nicotine during adolescence may harm brain development and predispose future tobacco use.^{13, 16, 17} Even a brief period of continuous or intermittent nicotine exposure in adolescence elicits lasting neurobehavioral damage.¹⁸

Nicotine Poisonings

E-liquids are available in flavors such as bubble gum, cherry and chocolate, which makes them appealing to children and youth. E-cigarette cartridges and e-liquid bottles are not equipped with child resistant caps and often leak, creating a potential source of poisoning through ingestion and skin or eye contact. Even a small amount of e-liquid ingested by a small child can be lethal.¹⁹

There has been a significant rise in the number of calls to poison control centers for both adults and children who were accidentally exposed to e-liquids.²⁰ Nationally, the number of calls rose from one per month in September 2010 to 215 per month in February 2014.²¹ Figure 1 depicts e-cigarette-related calls to the California Poison Control Center over a five year period. In California, from 2012 to 2014, the number of calls to the poison control center

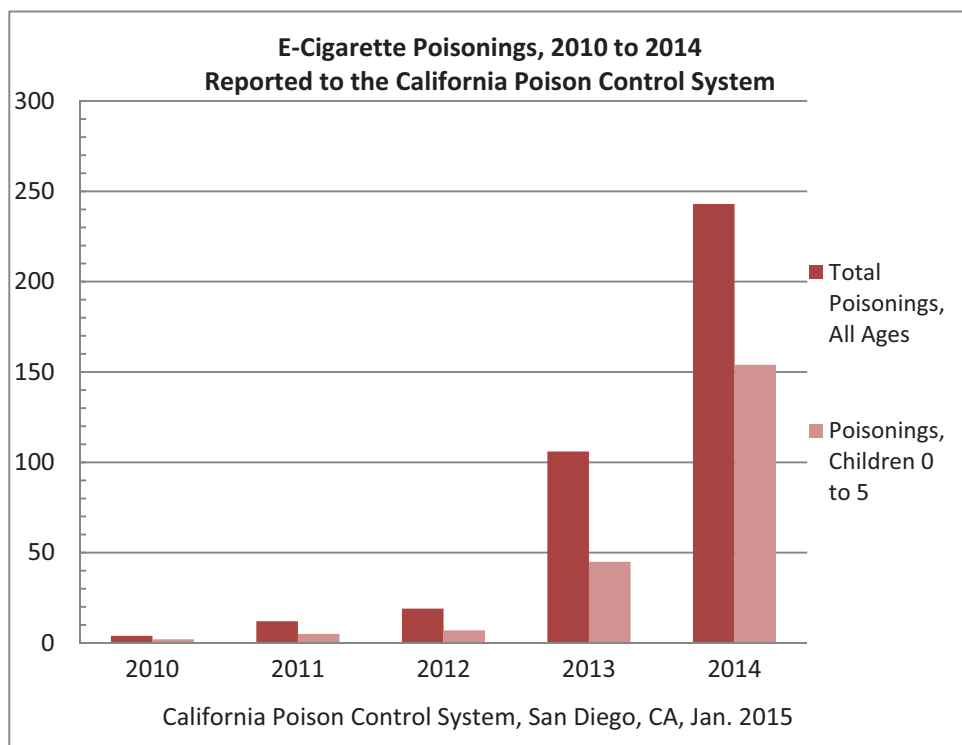


Figure 1: E-cigarette-related calls to the California Poison Control System.

involving e-cigarette exposures in children five and under increased sharply from 7 to 154. By the end of 2014, e-cigarette poisonings to young children tripled in one year, making up more than 60% of all e-cigarette poisoning calls. Adults have also mistakenly used e-liquid in harmful ways, such as eye drops, and have been harmed by exploding cartridges.

E-cigarette Use and Youth

Recent national and preliminary California data show that youth are experimenting with e-cigarettes at an alarming rate. In 2014, the Monitoring the Future survey, which tracks substance abuse trends among over 40,000 youth nationally, found that the use of e-cigarettes among teens surpassed the use of traditional cigarettes. More than twice as many 8th and 10th graders reported using e-cigarettes than traditional cigarettes in the survey, and among 12th graders, 17 percent reported currently using e-cigarettes vs. 14 percent using traditional cigarettes.²² Another survey, the National Youth Tobacco Survey, found that in 2013, that e-cigarette use among high school students tripled between 2011 and 2013, increasing from 1.5 percent to 4.5 percent.²³ Over a quarter million students who reported using e-cigarettes had never used traditional cigarettes.²⁴ Overall, studies suggest that youth who may have otherwise never smoked cigarettes are now getting hooked on nicotine due to e-cigarettes, and that adolescents who use e-cigarettes are more likely to progress from experimenting with cigarettes to becoming established smokers.^{25, 26}

E-cigarette devices may also be used to inhale illegal substances, such as marijuana and hash oil.¹⁹ Because many of these devices are similar in appearance to a ball point pen, school and law enforcement personnel are unaware that inappropriate use of nicotine and illegal substances is occurring.

E-cigarette Use and Adults

Among California adults, use of e-cigarettes in the past 30 days doubled from 1.8 percent in 2012 to 3.5 percent in 2013. For younger adults (18 to 29 year old), e-cigarette use tripled in one year from 2.3 percent to 7.6 percent. Young adults are three times more likely to use e-cigarettes than those 30 and older. Nearly 20 percent of young adult e-cigarettes users have never smoked traditional cigarettes.²⁷

E-cigarette Availability

E-cigarettes are readily accessible throughout California, and the number of stores selling e-cigarettes quadrupled between 2011 and 2013, increasing from 12 percent to 46 percent.^{28, 29} Figure 2 depicts the percent of tobacco stores selling e-cigarettes in California counties.



Over the past 40 years, great strides have been made to protect youth from tobacco marketing. Numerous state and federal laws and litigation regulate the sale, marketing and distribution of traditional tobacco products and tobacco-related paraphernalia. These restrictions include: prohibiting tobacco advertising on television, radio and billboards; prohibiting youth-oriented tobacco products marketing, including a ban on the sale of flavored cigarettes and the use of cartoon characters; prohibiting free sampling of cigarettes and restrictions on sampling of other tobacco products; restrictions on brand name sponsorship of sporting, music, and cultural events; restrictions on giving away branded promotional items such as t-shirts.³⁰ Presently in California, these restrictions are not interpreted to apply to e-cigarettes. As a result, the e-cigarette industry is legally allowed to use marketing strategies and tactics that are no longer permissible for traditional tobacco products.

4



The use of cartoon characters in advertising and promoting of e-cigarettes as fashion accessories are other ways these products appeal to youth with the implication that these products are harmless (see Figure 3). E-cigarette manufacturers report sponsoring concerts, sporting events, and parties that include the distribution of free samples; many of these events occurred in California.³² Another tactic to create a perception that e-cigarettes are family friendly is through the association of these products with family oriented attractions.



Figure 3: E-cigarette products and accessories.

Cessation Claims

There is no scientific evidence that e-cigarettes help smokers to successfully quit traditional cigarettes or that they reduce consumption of traditional cigarettes.^{25, 33} A number of recent studies show that e-cigarette users are no more likely to quit than regular smokers. One study found that 89 percent of e-cigarette users are still using them one year later and another study found that e-cigarette users are a third less likely to quit cigarettes.^{34, 35} These studies suggest that e-cigarettes are effectively inhibiting people from successfully kicking their nicotine addiction. In addition, dual use of cigarettes and e-cigarettes is continuing to rise, which may diminish any potential benefits of cutting back on traditional cigarettes.³⁶ Continuing to smoke traditional cigarettes, while also using e-cigarettes, does not reduce the cardiovascular health risks.^{1, 37, 38}

California health care providers are recommended to:

Educate, Advise and Protect Unborn Children, Young Children and Adolescents.

- Educate parents, adolescents, and the public, as well as health care personnel, school personnel, child care providers, and community leaders, about these products:
 - Nicotine is contained and is highly addictive and toxic
 - Increases in e-cigarette related poisonings, especially to children.
- Advise that these products are especially harmful to adolescents and pregnant women.
- Advise and warn e-cigarette users about toxicity of these products to themselves and those subjected to secondhand emissions.

Educate About Clean Indoor Air.

- Educate parents and the public to take steps to protect children and themselves from exposure to e-cigarette emissions.

Encourage Cessation.

- Current smokers and e-cigarette users should be advised to quit and offered support.
- Refer users to cessation resources offered by their health insurance plan including access to FDA approved cessation medications.
- The California Smokers' Helpline at 1-800-NO BUTTS is another cessation resource.

Protect Children from Nicotine Poisoning.

- Inform parents and e-cigarette users that e-cigarette cartridges and e-liquid bottles are a potential source of poisoning through ingestion, skin or eye contact. Store these materials out of the reach of children, away from medications, and call the California Poison Control Center at 1-800-222-1221 for expert help in case of accidental exposure.

Promote Health Literacy: Educate about Misleading Marketing.

- Educate parents and e-cigarette users about misleading advertising and labeling.
- Educate adolescents, parents and others about unknown ingredients and rights as consumers to have ingredient disclosure readily accessible.

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The Situation

Stores in our communities play a critical role in our health.

They not only impact the economic well-being of neighborhoods, but also the physical health of the people who visit them. The types of products available, many of which contribute to chronic health issues, and how they're promoted influence us all, but especially our kids.

In 2011, the tobacco industry spent \$605 million¹ advertising and promoting tobacco products in California and our kids are paying the price. Exposure to tobacco marketing in stores increases tobacco experimentation and use by youth² and is more powerful than peer pressure.³

Marketing of unhealthy foods also has a great impact, particularly on kids. They consume more of it, more often because it's promoted heavily to them – \$1 million an hour is spent by

companies selling soda, candy, chips and other unhealthy foods.⁴ Low-income communities also have less access to fresh, affordable and nutritious food furthering the problem.⁵ Underage drinking also increases when youth are exposed to alcohol ads.⁶ In fact, 1 in 5 California high school students drink 5 or more alcoholic drinks in a row per month.⁷



The Campaign

The **Healthy Stores for a Healthy Community** campaign is a statewide collaboration between tobacco use prevention, nutrition and alcohol prevention partners. The goal is to improve the health of Californians through changes in community stores and to educate people how in-store product marketing influences consumption of unhealthy products. Working together, we can make our community a healthier place and maintain a vibrant business community.

The Survey

Scientific surveys were recently conducted throughout California to assess product marketing and the availability of healthy and unhealthy options offered in stores that sell tobacco – **the first time** in California that tobacco, alcohol and food were analyzed together in stores. This is valuable information to help make the places we shop healthier.

More than 7,000 stores were surveyed in all 58 counties, which included convenience, supermarket, liquor, tobacco, small market, discount, drug and big-box stores. Approximately 700 individuals participated in gathering information statewide, including representatives from public health, community volunteers and youth.

WHAT WE KNOW...

	ALAMEDA COUNTY	CA
% of adults who smoke (2011-12)	11.9%	13.8%
% of youth who smoke (2012, grades 9-12)	8.8%	10.5%
Cost of smoking (2012)	\$19,899,394	\$6.5B
% of adults who are overweight or obese (2011-12)	54.6%	59.8%
% of adults who ate 3+ fruits and vegetables yesterday (2011-12)	24.8%	27.2%
% of youth who used alcohol in the past 30 days (2011-12, 11th grade)	45%	35%
% of youth who binge drink (2011-12, 11th grade)	31%	22%

For sources, please see website

FACT: CHRONIC DISEASES

Obesity, diabetes, heart disease, cancer and tobacco-related diseases account for more than **80% of all deaths** in California. These deaths could be prevented by eliminating tobacco use, limiting alcohol intake, eating healthy and being physically active.

WHAT WE KNOW ABOUT STORES THAT SELL TOBACCO (2012)

	CITY OF BERKELEY	CA
Stores that sell tobacco products	116	36,777
% of stores near schools**	61.2%	27.4%
% of stores in low income areas (185% of federal poverty level)	37%	46.5%
Number of youth for every 1 store	122	251
Number of adult smokers for every 1 store	*	101

SURVEY RESULTS OF STORES THAT SELL TOBACCO (2013)

SURVEY RESULTS OF STORES THAT SELL TOBACCO (2013)		CITY OF BERKELEY	CA	
GENERAL	Number of stores surveyed	83	7,393	
	% of stores that have <u>unhealthy</u> exterior advertising	53%	71%	
	% of stores that have <u>healthy</u> exterior advertising	16.9%	12.2%	
TOBACCO	% OF STORES THAT SELL...	Lowest price of cigarettes	\$4.33	\$4.30
		e-cigarettes	57.8%	45.7%
		candy, mint and liquor flavored non-cigarette tobacco products	83.1%	79.4%
		candy, mint and liquor flavored non-cigarette tobacco products and <u>are near schools</u> **	86.8%	75.3%
		candy, mint and liquor flavored non-cigarette tobacco products vs. alcopops	83.1%/83.7%	79.4%/82.4%
		candy, mint and liquor flavored non-cigarette tobacco products vs. milk	83.1%/41%	79.4%/37.2%
		chewing tobacco	51.8%	56.1%
		little cigars and cigarillos	84.3%	83.7%
		the most popular brand of cigarillos for under \$1	90.2%	78.1%
		tobacco products near candy at the check-out	26.5%	39.1%
		tobacco products near candy at the check-out <u>and are near schools</u> **	22.6%	40.5%
FOOD	% OF STORES THAT SELL...	low- or non-fat milk	41%	37.2%
		sugary drinks at the check-out	60.2%	56.9%
		sugary drinks at the check-out <u>and are near schools</u> **	56%	55.6%
		<u>any</u> fresh fruit or vegetable	43.4%	42.4%
		a good selection of <u>good quality</u> fresh fruits and vegetables	36.1%	33.2%
		a good selection of <u>good quality</u> fresh fruits and vegetables in low income vs. <u>not</u> low income areas	30.8%/39.1%	30.3%/36%
	% OF STORES...	that accept CalFresh that sell a good selection of <u>good quality</u> fresh fruits and vegetables	38.5%	41%
	that accept CalFresh or WIC	49.4%	53.7%	
ALCOHOL	% OF STORES THAT SELL ALCOHOL, %...	overall % of stores that sell alcohol	51.8%	71.3%
		that sell alcopops	83.7%	82.4%
		with alcohol ads near candy/toys or below 3 feet	69.8%	36.7%
		that sell malt liquor in low income vs. <u>not</u> low income areas	91.7%/80.6%	81.6%/71.4%
		with alcohol exterior advertising	16.9%	54.3%

* = no information available ** = within 1,000 feet Reference the technical report for confidence intervals

