



# STAFF REPORT

AGENDA NO: 10a

MEETING DATE: September 16, 2019

**To: Honorable Mayor and City Council**

**Date: September 16, 2019**

**From: Kathleen Kane, City Attorney – (650) 558-7204**

**Subject: Direction Regarding Whether to Introduce an Ordinance Banning the Sale of Flavored Tobacco Products, Including Vaping Liquids**

---

## **RECOMMENDATION**

Staff recommends that the City Council consider whether to direct staff to bring back an ordinance banning the sale of flavored tobacco products, including vaping liquids.

## **BACKGROUND and DISCUSSION**

Flavored tobacco products have been identified as a significant threat to public health. In particular, the prevalence of vaping has radically increased among teenagers in recent years, with over 37 per cent of twelfth graders stating they had used e-cigarettes in the prior twelve months, up ten per cent over the prior year. See, e.g., National Institutes of Health, “*Teens Using Vaping Devices in Record Numbers*”, Dec. 17, 2018, reporting on the Monitoring the Future survey conducted in 2018 (although daily use is relatively low). This trend is potentially dangerous because the adolescent brain appears to be uniquely sensitive to nicotine, which may have both acute and long-term effects on the neurobiology of users, including modifying the dopamine system in a way that increases the risk of future addictive tendencies. See *Nicotine and the Adolescent Brain*, Yuan, M, Cross, S., et al., *Journal of Physiology*, 2015 Aug 15; 593 (Pt. 16): 3397-3412.

E-cigarettes are not well-regulated, and meaningful studies are difficult to conduct given the wide range of ingredients and concentrations of nicotine that they contain. Numerous sources indicate that e-cigarettes may be less harmful overall than traditional cigarettes. See, e.g., *Key issues surrounding the health impacts of electronic nicotine delivery systems (ENDS) and other sources of nicotine*, Drope, J., Cahn, Z., et. al, *CA: A Cancer Journal for Clinicians*, Vol. 67, issue 6, (2017) 449-471. As a potential method for harm-reduction for those already addicted to cigarettes, they may be an important tool. See, e.g., *Electronic Cigarettes and Vaping: A New Challenge in Clinical Medicine and Public Health*, Palazzolo, D., *Frontiers in Public Health*, 2013; 1: 56 (meta-analysis noting the harm-reduction potential of vaping but questioning whether the net effect might be an overall increase in nicotine addiction). The statistics are not conclusive as to whether the use of e-cigarettes and other more traditional forms of flavored tobacco lead to increased incidence of smoking regular cigarettes among teenagers. Compare American Cancer Society, Position Statement on Electronic Cigarettes (taking the position that they do act as a gateway to traditional cigarettes) to Drope, et al., (“the increase in [e-cigarette] experimentation

[among teenagers] has not yet coincided with an uptick in cigarette use in the same population”). However, the increase in the use of e-cigarettes themselves is well-documented.

Several jurisdictions, including San Mateo County, have moved to ban the sale of flavored tobacco products in an effort to stem the tide of new, particularly teenage, users. The County's ordinance is attached for your reference. So far, it is unclear whether these types of measures have been successful in reducing the number of e-cigarette users or the rate of increase in use. An effort at the state level to restrict sale of flavored tobacco products stalled when hostile amendments caused the bill's author to withdraw it. With the spate of recent hospitalizations linked to vaping in the news, the federal government announced that it plans to restrict the sale of e-cigarettes, though the actual dimensions of such a move remain unclear at this time. If a federal rule were to go into effect, it could preempt state and local regulation of the products. Preemption is not a given, however, but instead depends on how the eventual rule is drafted.

Staff seeks direction from Council as to whether to introduce an ordinance banning the sale of flavored tobacco products, including vaping liquids, within the City of Burlingame. Age restrictions for the sale of nicotine-containing products already exist, and we do not currently have any evidence that brick-and-mortar retailers in Burlingame have been selling such products to minors. However, the Council could determine that, given the exigency of the apparent crisis among teen users, any effort to make access to such products harder is worthwhile. If Council directs that an ordinance be brought back for introduction, staff suggests that it be based on the one adopted by the County in order to ensure consistency among neighboring jurisdictions. Because our respective codes are structured differently, it is likely that a draft ordinance for the City will not be identical, but it could share key substantive provisions with the County's model.

### **FISCAL IMPACT**

There is no impact on the City General Fund.

Exhibit:

- County Ordinance