



# STAFF REPORT

AGENDA NO: 8c

MEETING DATE: November 18, 2019

**To: Honorable Mayor and City Council**

**Date: November 18, 2019**

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

**Subject: Adoption of an Ordinance Banning the Sale of Flavored Tobacco Products, Including Vaping Liquids**

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## **RECOMMENDATION**

Staff recommends that the City Council consider adoption of an ordinance banning the sale of flavored tobacco products, including vaping liquids. In order to do so, Council should:

- A. By motion, adopt the proposed ordinance.
- B. Direct the City Clerk to publish a summary of the ordinance within 15 days of adoption.

## **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. While we lack rigorous survey data, parents and administrators at Burlingame High School and Burlingame Intermediate School have reported a significant rise in the use of vaping products by the youth they serve.

Several jurisdictions, including San Francisco and 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. 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. The FDA has never conducted “pre-market” analysis on vaping liquids and e-cigarettes. It indicated in September, however, that it would be engaging in that effort and enforcing against the marketing

of vaping devices and liquids that had not been cleared. The FDA stated at that time that it would be releasing rules and enforcement measures within a few weeks, but as of the writing of this staff report, no such action had yet taken place. The President indicated last week that the administration would be meeting with vaping industry representatives and advocates and may be scaling back on the anticipated ban.

In the absence of FDA action, the Council may consider the attached proposed ordinance as a stop gap measure to mitigate the impacts of flavored tobacco and vaping on Burlingame's youth. The ordinance bans the sale of flavored tobacco products, including flavored nicotine-containing vaping liquids, within Burlingame as well as delivery of such items to Burlingame addresses. If and when the FDA or other federal agency takes action regarding flavored tobacco/vaping products, the Council can review the attached ordinance and determine if it should be amended or rescinded. The Council introduced the attached ordinance and held a public hearing at its November 4 meeting and directed that it be brought back for introduction on tonight's agenda.

### **FISCAL IMPACT**

There is no impact on the City General Fund.

Exhibit:

- Proposed Ordinance