



## MEMORANDUM

**TO: CITY COUNCIL**

**FROM: HEATHER K. WHITHAM, CITY ATTORNEY  
BEAU D. PRYOR, POLICE CHIEF**

**SUBJECT: CONSIDERATION OF INTRODUCTION OF AN ORDINANCE PROHIBITING THE SALE AND DISTRIBUTION OF ELECTRONIC CIGARETTES AND VAPING PRODUCTS THAT REQUIRE, BUT HAVE NOT RECEIVED A FOOD AND DRUG ADMINISTRATION ORDER APPROVING THEIR MARKETING AND AN ORDINANCE PROHIBITING THE POSSESSION OF ALL TOBACCO PRODUCTS AND PARAPHERNALIA BY PERSONS UNDER TWENTY-ONE**

**DATE: NOVEMBER 12, 2019**

### **SUMMARY OF ACTION:**

Introduction of an ordinance prohibiting the sale and distribution of electronic cigarettes and vaping products and an ordinance prohibiting the possession of all tobacco products and paraphernalia by persons under twenty-one.

### **IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:**

The fiscal impacts associated with this agenda item include the cost in legal services to prepare the item and ordinances and the cost of prosecuting violators over the age of eighteen. The new ordinances would also require Police Department resources to enforce the new regulations. In addition, there would be a fiscal impact to retailers of electronic cigarettes and vaping products that do business within the City of Arroyo Grande.

### **RECOMMENDATION:**

It is recommended that the Council consider introducing an ordinance prohibiting the sale and distribution of electronic cigarettes and vaping products and an ordinance prohibiting the possession of all tobacco products and paraphernalia by persons under twenty-one.

### **BACKGROUND:**

At the October 22, 2019 City Council meeting, the Council directed staff to return with a draft ordinance prohibiting all retail sales of electronic cigarette products and paraphernalia that have not received premarket review by the Federal Drug Administration ("FDA") including online sales. The Council also directed staff to return with a draft ordinance prohibiting the possession of all tobacco products and paraphernalia by persons under twenty-one.

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Electronic cigarettes entered the marketplace around 2007, and since 2014, they have been the most commonly used tobacco product among youth in the United States. Electronic cigarettes are battery-operated devices, often designed to resemble a cigarette, that deliver and emit a nicotine-containing aerosol. Electronic cigarettes are considered electronic delivery devices and have many names. They are frequently referred to as e-cigs, hookah pens, vapes and vape pens.

According to the Centers for Disease Control and Prevention ("CDC"), the number of middle and high school students who reported being current users of tobacco products increased 36%-from 3.6 million to 4.9 million students-between 2017 and 2018. This dramatic increase, which has erased past progress in reducing youth tobacco use, is directly attributable to a nationwide surge in electronic cigarette use by adolescents. There were 1.5 million more youth electronic cigarette users in 2018 than 2017, and those who were using electronic cigarettes were using them more often. Frequent use of electronic cigarettes increased from 20 percent in 2017 to 28 percent in 2018 among current high school electronic cigarette users.

The widespread use of electronic cigarettes by youth has significant public health consequences. The Surgeon General has stated:

Most e-cigarettes contain nicotine- the addictive drug in regular cigarettes, cigars, and other tobacco products. Nicotine exposure during adolescence can harm the developing brain -which continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs.

A copy of a Surgeon General Advisory regarding electronic cigarettes is included as Attachment 1.

As of June 9, 2016, California law prohibits selling, giving, or furnishing electronic smoking devices to individuals under the age of 21, regardless of whether the electronic smoking device contains tobacco or nicotine. This prohibition does not apply to active duty military personnel who are 18 years or older, but the retailer must examine an identification card issued by the United States Armed Forces to verify the purchaser's age. Additionally, the Arroyo Grande Municipal Code ("AGMC") includes a provision prohibiting the sale of

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tobacco products (including electronic cigarettes) to persons under twenty-one (AGMC Section 8.36.020).

On August 27, 2019, the Council modified its smoking regulations to include electronic cigarettes within its definition of cigarettes. The smoking of electronic cigarettes is now prohibited wherever smoking is prohibited within the City of Arroyo Grande.

This summer, several cities in California adopted prohibitions on the sale of electronic cigarettes. The first was the City of San Francisco. In June 2019, they adopted an ordinance which prohibits:

...the sale by tobacco retail establishments of electronic cigarettes that require, but have not received, an order from the Food and Drug Administration (FDA) approving their marketing; and prohibiting the sale and distribution to any person in San Francisco of flavored tobacco products and electronic cigarettes that require, but have not received, an FDA order approving their marketing.

The San Francisco ordinance was structured so that it would not be operative until six months after its effective date. The electronic cigarette company Juul that is headquartered in San Francisco, originally backed a referendum to repeal the ordinance. The referendum, which was on the November 5, 2019 ballot, was defeated. Eighty percent (80%) of voters voted not to overturn the ordinance.

The cities of Richmond and Livermore also adopted ordinances similar to San Francisco's this summer. Livermore's has also been the subject of a referendum, which was certified in early September by their City Council and will now go to the voters.

All three ordinances are structured in a way that relates to electronic cigarettes that have not received premarket review by the FDA. Rather than an outright ban on electronic cigarettes they are a prohibition against the sale of any electronic cigarettes that haven't been reviewed by the FDA to confirm that they are appropriate for the protection of public health. Tobacco companies are required to report to the FDA for premarket review any information concerning health risks, the components, ingredients, additives, and manufacturing methods. So far, no electronic cigarettes have been put through the review process that is required by federal law. On July 11, 2019, the U.S. District Court ordered that applications for marketing orders must be filed with the FDA by May 11, 2020. Products that file applications timely may remain on the market without being subject to FDA enforcement actions for a period not to exceed one year from the date of the application while the FDA considers the application. On October 24, 2019, the

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Department of Justice filed an appeal on behalf of the FDA that asks the U.S. Court of Appeals for the Fourth Circuit to strike down the deadlines established in that case.

In June 2018, a measure was placed on the ballot in San Francisco that was a referendum of an ordinance that had been adopted by the San Francisco Board of Supervisors that banned the sale of flavored tobacco products. The voters approved that measure, upholding the ordinance by a 68% vote. A number of other cities have banned the sale of flavored tobacco. An article in the San Francisco Chronicle on November 29, 2018 noted that twenty-six California cities and counties have restrictions on the sale of flavored tobacco products.

As reflected in the referendum challenges in San Francisco, retailers who sell tobacco products often fight local bans and regulation. Such challenges are reportedly largely funded by the tobacco industry. In addition, some opponents of electronic cigarette bans assert that electronic cigarettes are a better alternative for traditional cigarette smokers who are trying to quit smoking.

**ANALYSIS OF ISSUES:**

The City has the authority to adopt and enforce ordinances and regulations not in conflict with general laws. Therefore, absent preemption by state or federal law precluding the adoption of a local regulation, the City may adopt its own regulations as well as additional requirements that supplement and do not conflict with state and federal regulations.

In 2003, California enacted the Cigarette and Tobacco Products Licensing Act to regulate the sale of tobacco and tobacco products. Similar to a business license, the Act requires every person selling cigarettes or tobacco products to the public in California to obtain a license from the California Department of Tax and Fee Administration.

In 2009, the federal government enacted the Family Smoking Prevention and Tobacco Control Act, which authorized the Food and Drug Administration to regulate the manufacture, marketing, and distribution of tobacco products. The Family Smoking Prevention and Tobacco Control Act authorizes the City to adopt local regulations prohibiting the sale, distribution, possession, exposure to, access to, and promotion of, or use of tobacco products, but does preempt the City from regulating tobacco product standards, manufacturing, and labeling. With regard to advertising, the Family Smoking Prevention and Tobacco Control Act prohibits the City from placing requirements on the content of tobacco product advertisements. Accordingly, federal law grants the U.S. Food & Drug Administration authority to regulate all tobacco products and expressly preserves the power of local governments to enact additional or “more stringent” regulations related to or prohibiting tobacco sales. Since the California legislature has not fully occupied the field of tobacco sales, California cities are free to implement any tobacco sales regulation

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or restriction provided they do not involve the collection of taxes or the penal aspects of tobacco sales to minors.

Consistent with the State Cigarette and Tobacco Products Licensing Act and the federal Smoking Prevention and Tobacco Control Act, the City licenses tobacco retailers and regulates the sale of tobacco products (reference AGMC Chapter 8.38). These regulations could be extended to include prohibitions on the sale of electronic cigarettes and paraphernalia.

It is important to keep in mind that California courts have not yet reviewed citywide bans on electronic cigarette or tobacco sales, so there is still uncertainty as to whether a court would uphold these types of bans if challenged. There have been a few legal challenges in other states to bans on electronic cigarettes or flavored vaping products on various grounds, which may not be applicable to a city in California's ability to adopt such a ban. In those instances, a few courts have issued preliminary injunctions, which prohibit the ban while the court determines the merit of the action. Accordingly, if the City chooses to enact a ban on the sale of electronic cigarettes and vaping products, there could be legal challenges, which could be underwritten by tobacco industry interests. Any such legal challenges would need to be appropriately defended, which could result in substantial litigation expenses.

The draft ordinance prohibiting the retail sale of electronic cigarettes and vaping products, is modelled in part after the San Francisco ordinance in that it prohibits the retail sale of electronic cigarettes and paraphernalia that have not received premarket review by the FDA. The definition of electronic cigarettes and vaping products includes all component, parts and accessories to an electronic cigarette, which would include flavored liquids used in electronic cigarettes. In addition, the draft ordinance contains a provision that delays its effective date for six months in order to allow retailers to adjust to the new regulation.

Lastly, when the legislature changed the legal smoking age from eighteen to twenty-one in 2016, they also repealed an existing law (Penal Code 308(b)), which made it illegal for individuals under eighteen to purchase, receive or possess tobacco products. Therefore, under State law, it is illegal to sell or give tobacco to individuals under twenty-one, but it is not illegal for individuals under twenty-one to use or possess tobacco products. This has eliminated a tool previously used by law enforcement to deter individuals under the legal age from smoking.

Following the repeal of Penal Code 308(b), we are aware of only two cities, Atascadero and Santa Clara, which have adopted their own prohibitions on possession of tobacco products by persons under the legal smoking age.

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Business and Professions Code Section 22964 expressly authorizes local jurisdictions to adopt stricter standards than those set forth in State law, providing that “[t]his division sets forth minimum state restrictions with respect to the legal age to purchase or possess tobacco products and does not preempt or otherwise prohibit the adoption of a local standard that imposes a more restrictive legal age to purchase or possess tobacco products. A local standard that imposes a more restrictive legal age to purchase or possess tobacco products shall control in the event of any inconsistency between this division and a local standard.” However, numerous public health agencies strongly discourage public agencies from adopting prohibitions on the possession of tobacco products by persons under the legal smoking age. The reasons given are that such laws divert attention from other tobacco control strategies, focus on under age users rather than the tobacco industry, that the punishment has not proven to reduce repeat violations and that punishments have been disproportionately applied to communities of color.

At the October 22, 2019 City Council meeting, the Police Chief indicated that a regulation prohibiting the possession of tobacco products by persons under the legal smoking age would be a beneficial tool for law enforcement. In addition, members of the Council articulated their belief that such a regulation would reduce the instances of youth possessing tobacco products and would be fairly administered in the City of Arroyo Grande.

Staff has prepared a draft ordinance prohibiting the purchase, receipt or possession of any tobacco product, including electronic smoking devices by persons under twenty-one.

**ALTERNATIVES:**

The following alternatives are provided for the Council’s consideration:

1. Introduce an ordinance prohibiting the sale and distribution of all electronic cigarettes and vaping products until they are approved by the FDA; and /or
2. Introduce an ordinance prohibiting the possession of all tobacco products and paraphernalia by persons under twenty-one; or
3. Provide other direction to staff.

**ADVANTAGES:**

A prohibition on the sale and distribution of electronic cigarettes and vaping products that have not received premarket review by the FDA within the City of Arroyo Grande will contribute towards a reduction in access to electronic cigarette products, which have been deemed dangerous to the public health. A prohibition on possession of tobacco products and paraphernalia by persons under twenty-one will create a deterrent to persons under twenty-one to possess such products and will provide law enforcement with another tool

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to use to prevent persons under twenty-one from possessing tobacco products and paraphernalia.

**DISADVANTAGES:**

A prohibition on the retail sale of electronic cigarettes and vaping products and a prohibition on the possession of tobacco products and paraphernalia by persons under twenty-one could expose the City to a referendum or legal challenge.

**ENVIRONMENTAL REVIEW:**

The proposed ordinance is exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in questions may have a significant effect on the environment. .

**PUBLIC NOTIFICATION AND COMMENTS:**

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

**ATTACHMENTS:**

1. Surgeon General Advisory

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE AMENDING CHAPTER 8.36 OF THE ARROYO GRANDE MUNICIPAL CODE TO PROHIBIT THE SALE AND DISTRIBUTION TO ANY PERSON IN ARROYO GRANDE ELECTRONIC CIGARETTES AND VAPING PRODUCTS THAT REQUIRE, BUT HAVE NOT RECEIVED, A FOOD AND DRUG ADMINISTRATION ORDER APPROVING THEIR MARKETING**

**WHEREAS**, based upon its concerns about use of tobacco products, the City Council of the City of Arroyo Grande has previously adopted Arroyo Grande Municipal Code Chapters 8.36 – Tobacco Products and Chapter 8.38 – Licensing of Tobacco Retailers; and

**WHEREAS**, the federal government has enacted numerous tobacco related laws that include, but are not limited to the Family Smoking Prevention and Tobacco Control Act ("Tobacco Control Act"), enacted in 2009, that prohibited candy and fruit-flavored cigarettes, largely because these flavored products are marketed to youth and young adults, and younger smokers were more likely than older smokers to have tried these products. Among other things, the Tobacco Control Act authorized the U.S. Food and Drug Administration ("FDA") to set national standards governing the manufacture of tobacco products, to limit levels of harmful components in tobacco products and to require manufacturers to disclose information and research relating to the products' health effects; and

**WHEREAS**, a central requirement of the Tobacco Control Act is premarket review of all new tobacco products. Specifically, every "New Tobacco Product" which is defined by federal law to be any tobacco product not on the market in the United States as of February 15, 2007, must be authorized by the FDA for sale in the United States before it may enter the marketplace; and

**WHEREAS**, a New Tobacco Product may not be marketed until the FDA has found that the product is: (1) appropriate for the protection of the public health upon review of a premarket tobacco application; (2) substantially equivalent to a grandfathered product; or (3) exempt from substantial equivalence requirements; and

**WHEREAS**, in determining whether the marketing of a tobacco product is appropriate for the protection of the public health, the FDA must consider the risks and benefits of the product to the population as a whole, including users and nonusers of the product, and taking into account the increased or decreased likelihood that existing users of tobacco products will stop using tobacco products and the increased or decreased likelihood that those who do not use tobacco products will start using them. Where there is a lack of showing that permitting the sale of a tobacco product would be appropriate for the protection of the public health, the Tobacco Control Act requires that the FDA deny an application for premarket review; and

**WHEREAS**, it has been reported that nearly all electronic cigarettes and vaping products that are sold today entered the market after 2007, but have not been reviewed by the FDA to determine if they are appropriate for the public health; and

**WHEREAS**, in 2017, the FDA issued guidance that purports to give electronic cigarette manufacturers until August 8, 2022 to submit their application for premarket review. That guidance further purports to allow unapproved products to stay on the market indefinitely, until such time as the FDA complies with its statutory duty to conduct a premarket review to determine whether a new tobacco product poses a risk to public health. In March 2019, the FDA issued draft guidance in which it considered moving the premarket application deadline up by one year for certain flavored electronic cigarette products. It is not known when, if ever, this narrow adjustment will become final or will take effect; and

**WHEREAS**, on July 11, 2019, the United States District Court for the District of Maryland in the case *American Academy of Pediatrics v. FDA* issued a ruling to advance the submission deadlines for premarket review of certain tobacco products, including electronic cigarettes. As a function of that ruling, the deadline for applications for FDA premarket review of electronic cigarettes would have been shortened to May 11, 2020. However, on October 24, 2019, the Justice Department appealed the Judge's decision to shorten the product approval deadline, thus creating greater uncertainty as to when such review will occur; and

**WHEREAS**, even based on the 2017 FDA guidance, by the time electronic cigarette manufacturers will be required to submit their pre-market review applications, electronic cigarettes will have been on the market for nearly fifteen years without any FDA analysis of their safety and alleged benefit. Recent reports of illness and death caused by unregulated vaping devices is a public health crisis. In response, the City and County of San Francisco, the City of Richmond and the City of Livermore have passed Ordinances that prohibit the sale of any electronic cigarette or vaping device that has not received an order from the FDA approving their marketing. The State of Massachusetts has also enacted emergency legislation to ban the sale of all vaping products for four months in response to this public health emergency; and

**WHEREAS**, the City of Arroyo Grande is also not content to wait and do nothing given the health issues associated with unregulated electronic cigarettes and vaping devices and therefore desires to adopt an ordinance that will prohibit the sale of all electronic cigarettes and vaping devices until such devices are approved by the FDA and deemed safe.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The above recitals and findings are true and correct and are incorporated herein by this reference.

**SECTION 2.** Section 8.36.050 is hereby added to Chapter 8.36 of Title 8 of the Arroyo Grande Municipal Code, to read in its entirety as follows:

**Section 8.36.050 – Sale and Distribution of Electronic Cigarettes and Vaping Products that Require, But Have Not Received, a Food and Drug Administration Order Approving Their Marketing.**

- A. Definitions: The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

"Distribute" or "distribution" means the transfer, by any person other than a common carrier, of an electronic cigarette or vaping product at any point from the place of manufacture or thereafter to the person who sells the electronic cigarette or vaping product to an individual for personal consumption, including but not limited to such transfers by licensed tobacco retailers or through online transactions.

"Electronic cigarette" and "vaping product" shall mean: 1) any product intended for human consumption by inhalation regardless of nicotine content, whether for one-time use or reusable, that relies on vaporization or aerosolization, including but not limited to electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, electronic vaping product delivery pens, hookah pens, and any other similar devices that rely on vaporization or aerosolization; and 2) any component, part, or accessory of a product or device defined in 1 above, including flavored vape juices and liquids used in such devices, even if sold separately. "Electronic cigarette" and "vaping product" does not include any product that has been approved by the federal Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

"New Tobacco Product" shall have the meaning set forth in 21 U.S.C. § 387j(a)(1), as may be amended from time to time.

"Sell," "Sale," and "to Sell" mean any transaction where, for any consideration, ownership of an electronic cigarette or vaping product is transferred from one person to another, including but not limited to any transfer of title or possession for consideration, exchange, or barter, in any manner or by any means, including but not limited to such transactions by licensed tobacco retailers or through online transactions.

In addition, "Person" and "Tobacco retailer" shall have the meanings defined in Arroyo Grande Municipal Code Section 8.38.020.

- B. Sale of electronic cigarettes and vaping products prohibited.
1. No person shall sell or distribute an electronic cigarette or vaping product in retail establishments, online, and through any other means, including all non-flavored and flavored vaping products, including mint and menthol, to a person in the City of Arroyo Grande where the electronic cigarette or vaping product is:
    - a. is a New Tobacco Product;

- b. requires premarket review under 21 U.S.C. § 387j, as may be amended from time to time; and
  - c. does not have a premarket review order under 21 U.S.C. § 387j(c)(1)(A)(i), as may be amended from time to time.
- C. Violations. Persons violating any provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one thousand (\$1,000) dollars or by imprisonment in the county jail for a period not to exceed six months or by both such fine and imprisonment. Any violations of these provisions shall constitute a separate offense for each and every day during which such violation is committed or continued. In addition to any other penalty authorized by law, violations by licensed tobacco retailers shall also be subject to suspension or revocation of their license in accordance with the provisions of AGMC Section 8.38.110.”

**SECTION 3.** This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061 (b)(3) which is the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment.

**SECTION 4.** A summary of this Ordinance shall be published in a newspaper published and circulated in the City of Arroyo Grande at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. A certified copy of the full text of the proposed Ordinance shall be posted in the office of the City Clerk. Within fifteen (15) days after adoption of the Ordinance, the summary with the names of those City Council members voting for and against the Ordinance shall be published again, and the City Clerk shall post a certified copy of the full text of such adopted Ordinance.

**SECTION 5.** This Ordinance shall take effect and be in full force and effect six months after its passage.

**SECTION 6.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

On motion by Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, and by the following roll call vote to wit:

**AYES:**  
**NOES:**  
**ABSENT:**

the foregoing Ordinance was adopted this \_\_\_\_ day of \_\_\_\_\_, 2019.

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**CARON RAY RUSSOM, MAYOR**

**ATTEST:**

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**KELLY WETMORE, CITY CLERK**

**APPROVED AS TO CONTENT:**

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**JAMES A. BERGMAN, CITY MANAGER**

**APPROVED AS TO FORM:**

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**HEATHER K. WHITHAM, CITY ATTORNEY**

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE ADDING SECTION 8.36.060 TO CHAPTER 8.36 OF TITLE 8 OF THE ARROYO GRANDE MUNICIPAL CODE RELATING TO POSSESSION OF TOBACCO PRODUCTS BY PERSONS UNDER TWENTY-ONE**

**WHEREAS**, the City Council of the City of Arroyo Grande ("City") may, by ordinance, adopt rules and regulations for the preservation of the public health, safety and welfare; and

**WHEREAS**, approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation's leading cause of preventable death; and

**WHEREAS**, the tobacco industry encourages youth and young adult tobacco initiation through predatory targeting, as evidenced by the following:

- Tobacco companies target young adults ages 18 to 24 to increase their frequency of tobacco use and encourage their transition to habitual users;
- Tobacco industry documents state that if "a man has never smoked by the age of 18, the odds are three -to -one he never will. By age 24, the odds are twenty -to -one";
- The tobacco industry spends an estimated \$ 620 million annually to market Tobacco products to California residents; and

**WHEREAS** 5.6 million of today's Americans who are younger than 18 years of age are projected to die prematurely from a smoking -related illness; and

**WHEREAS**, despite the State's efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following:

- Over 67% of current and former adult smokers in California started by the age of 18 and almost 100% started by the age of 26;
- From 2013 to 2015, approximately 15% of 9th and 11th grade students in California reported using electronic smoking devices;
- In 2017, 22.8% of high school students in California had tried cigarette smoking; and

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**WHEREAS**, the State of California, in 2016, repealed a law making possession of Tobacco products by persons under the legal smoking age illegal; and

**WHEREAS**, California Business and Professions Code Section 22964 expressly authorizes local jurisdictions to adopt stricter standards than the State with respect to the legal age to purchase or possess tobacco products; and

**WHEREAS**, the City believes that prohibiting the possession of tobacco products and electronic smoking devices by persons under the age of twenty-one will discourage such persons from using tobacco products including electronic cigarettes.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The above recitals are true and correct and are incorporated herein by this reference.

**SECTION 2.** Section 8.36.060 is hereby added to Chapter 8.36 of Title 8 of the Arroyo Grande Municipal Code, to read in its entirety as follows:

**8.36.060 – Possession of tobacco products by persons under twenty-one.**

No person under the age of twenty-one (21) shall purchase, receive, or possess any tobacco product as that term is defined in Section 8.38.020 of Chapter 8.38, which includes electronic smoking devices. Any person, upon conviction of this section, shall pay a fine of seventy-five dollars (\$75) or perform thirty (30) hours of community service work.

**SECTION 3.** A summary of this Ordinance shall be published in a newspaper published and circulated in the City of Arroyo Grande at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. A certified copy of the full text of the proposed Ordinance shall be posted in the office of the City Clerk. Within fifteen (15) days after adoption of the Ordinance, the summary with the names of those City Council members voting for and against the Ordinance shall be published again, and the City Clerk shall post a certified copy of the full text of such adopted Ordinance.

**SECTION 4.** This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage.

**SECTION 5.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

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On motion by Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, and by the following roll call vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

the foregoing Ordinance was adopted this \_\_\_\_ day of \_\_\_\_\_, 2019.

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\_\_\_\_\_  
**CAREN RAY RUSSOM, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**KELLY WETMORE, CITY CLERK**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
**JAMES A. BERGMAN, CITY MANAGER**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**CITY ATTORNEY**

# Surgeon General's Advisory on E-cigarette Use Among Youth

*I, Surgeon General of the United States Public Health Service, VADM Jerome Adams, am emphasizing the importance of protecting our children from a lifetime of nicotine addiction and associated health risks by immediately addressing the epidemic of youth e-cigarette use. The recent surge in e-cigarette use among youth, which has been fueled by new types of e-cigarettes that have recently entered the market, is a cause for great concern. **We must take action now to protect the health of our nation's young people.***

**KNOW THE RISKS. TAKE ACTION. PROTECT OUR KIDS.**

## The E-cigarette Epidemic Among Youth

Considerable progress has been made in reducing cigarette smoking among our nation's youth.<sup>1</sup> However, the tobacco product landscape continues to evolve to include a variety of tobacco products, including smoked, smokeless, and electronic products, such as e-cigarettes.<sup>2</sup> E-cigarettes are designed to deliver nicotine, flavorings, and other additives to the user via an inhaled aerosol.<sup>2</sup>

E-cigarettes entered the U.S. marketplace around 2007, and since 2014, they have been the most commonly used tobacco product among U.S. youth.<sup>2</sup> E-cigarette use among U.S. middle and high school students increased 900% during 2011-2015, before declining for the first time during 2015-2017.<sup>3</sup> However, current e-cigarette use increased 78% among high school students during the past year, from 11.7% in 2017 to 20.8% in 2018.<sup>4</sup> In 2018, more than 3.6 million U.S. youth, including 1 in 5 high school students and 1 in 20 middle school students, currently use e-cigarettes.<sup>4</sup>

E-cigarette aerosol is not harmless.<sup>2</sup> Most e-cigarettes contain nicotine – the addictive drug in regular cigarettes, cigars, and other tobacco products.<sup>2</sup> Nicotine exposure during adolescence can harm the developing brain – which continues to develop until about age 25.<sup>2</sup> Nicotine exposure during adolescence can impact learning, memory, and attention.<sup>1,2</sup> Using nicotine in adolescence can also increase risk for future addiction to other drugs.<sup>1,2</sup> In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs.<sup>2</sup>

Many e-cigarettes also come in kid-friendly flavors. In addition to making e-cigarettes more appealing to young people,<sup>5</sup> some of the chemicals used to make certain flavors may also have health risks.<sup>2</sup> E-cigarettes can also be used to deliver other drugs, including marijuana.<sup>2</sup> In 2016, one-third of U.S. middle and high school students who ever used e-cigarettes had used marijuana in e-cigarettes.<sup>6</sup>

For adults, e-cigarettes may have the potential to reduce risk for current smokers if they completely transition from cigarettes to e-cigarettes; however, a majority of adults who use e-cigarettes also smoke cigarettes.<sup>7</sup> For youth, the use of multiple tobacco products puts youth at even greater risk for addiction and tobacco-related harms.<sup>1,2</sup> Moreover, a 2018 National Academy of Sciences, Engineering, and Medicine report concluded that there was moderate evidence that e-cigarette use increases the frequency and intensity of cigarette smoking in the future.<sup>7</sup> But any e-cigarette use among young people is unsafe, even if they do not progress to future cigarette smoking.<sup>2</sup>

## E-cigarettes Come in Many Shapes and Sizes

E-cigarettes are a rapidly changing product class, and are known by many different names, including "e-cigs," "e-hookahs," "mods," and "vape pens."<sup>2</sup> Recently, a new type of e-cigarette has become increasingly popular among our nation's youth due to its minimal exhaled aerosol, reduced odor, and small size, making it easy to conceal.<sup>8</sup> Many of these new e-cigarettes look like a USB flash drive, among other shapes. One of the most commonly sold

USB flash drive shaped e-cigarettes is JUUL, which experienced a 600% surge in sales during 2016-2017, giving it the greatest market share of any e-cigarette in the U.S. by the end of 2017.<sup>9</sup> Other companies are now also starting to sell e-cigarettes that look like USB flash drives.

All JUUL e-cigarettes have a high level of nicotine. A typical JUUL cartridge, or “pod,” contains about as much nicotine as a pack of 20 regular cigarettes.<sup>10</sup> These products also use nicotine salts, which allow particularly high levels of nicotine to be inhaled more easily and with less irritation than the free-base nicotine that has traditionally been used in tobacco products, including e-cigarettes. This is of particular concern for young people, because it could make it easier for them to initiate the use of nicotine through these products and also could make it easier to progress to regular e-cigarette use and nicotine dependence. However, despite these risks, approximately two-thirds of JUUL users aged 15-24 do not know that JUUL always contains nicotine.<sup>11</sup>

## You Can Take Action

We must take aggressive steps to protect our children from these highly potent products that risk exposing a new generation of young people to nicotine.<sup>2,7</sup> The bad news is that e-cigarette use has become an epidemic among our nation’s young people. However, the good news is that we know what works to effectively protect our kids from all forms of tobacco product use, including e-cigarettes.<sup>1,2,12</sup> We must now apply these strategies to e-cigarettes, including USB flash drive shaped products such as JUUL. To achieve success, we must work together, aligning and coordinating efforts across both old and new partners at the national, state, and local levels. Everyone can play an important role in protecting our nation’s young people from the risks of e-cigarettes.

## Information for Parents

- **You have an important role to play in addressing this public health epidemic.**
- Learn about the different shapes and types of e-cigarettes and the risks of all forms of e-cigarette use for young people at <https://e-cigarettes.surgeongeneral.gov/>.
- Set a good example by being tobacco-free. If you use tobacco products, it’s never too late to quit. Talk to a healthcare professional about quitting all forms of tobacco product use. For free help, visit [smokefree.gov](http://smokefree.gov) or call [1-800-QUIT-NOW](tel:1-800-QUIT-NOW).
- Adopt tobacco-free rules, including e-cigarettes, in your home and vehicle.
- Talk to your child or teen about why e-cigarettes are harmful for them. It’s never too late.
- Get the Surgeon General’s tip sheet for parents, [Talk With Your Teen About E-cigarettes](#), at <https://e-cigarettes.surgeongeneral.gov/>. Start the conversation early with children about why e-cigarettes, including JUUL, are harmful for them.
- Let your child know that you want them to stay away from all tobacco products, including e-cigarettes, because they are not safe for them. Seek help and get involved.
  - Set up an appointment with your child’s health care provider so that they can hear from a medical professional about the health risks of tobacco products, including e-cigarettes.
  - Speak with your child’s teacher and school administrator about enforcement of tobacco-free school policies and tobacco prevention curriculum.
  - Encourage your child to learn the facts and get tips for quitting tobacco products at [Teen.smokefree.gov](http://Teen.smokefree.gov).

## Information for Teachers

- **You have an important role to play in addressing this public health epidemic.**
- Learn about the different shapes and types of e-cigarettes and the risks of all forms of e-cigarette use, including JUUL, for young people at <https://e-cigarettes.surgeongeneral.gov/>.
- Develop, implement, and enforce tobacco-free school policies and prevention programs that are free from tobacco industry influence, and that address all types of tobacco products, including e-cigarettes.

- Engage your students in discussions about the dangers of e-cigarette use. To help you, the Food and Drug Administration (FDA), and Scholastic, developed free resources for teachers. These materials can be found at [www.scholastic.com/youthvapingrisks](http://www.scholastic.com/youthvapingrisks).

## Information for Health Professionals

- **You have an important role to play in addressing this public health epidemic.**
- Learn about the different shapes and types of e-cigarettes and the risks of all forms of e-cigarette use, including JUUL, for young people at <https://e-cigarettes.surgeongeneral.gov/>.
- Ask about e-cigarettes, including small, discreet devices such as JUUL, when screening patients for the use of any tobacco products.
- Educate patients about the risks of all forms of tobacco product use, including e-cigarettes, for young people.
- Encourage patients to quit. For free help, patients can visit [smokefree.gov](http://smokefree.gov) or call [1-800-QUIT-NOW](tel:1-800-QUIT-NOW).

## Information for States, Communities, Tribes, and Territories

- **You have an important role to play in addressing this public health epidemic.**
- Implement evidence-based population-level strategies to reduce e-cigarette use among young people, such as including e-cigarettes in smoke-free indoor air policies, restricting young peoples' access to e-cigarettes in retail settings, licensing retailers, implementing price policies, and developing educational initiatives targeting young people.
- Implement strategies to curb e-cigarette advertising and marketing that are appealing to young people.
- Implement strategies to reduce access to flavored tobacco products by young people.

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