

## RESOLUTION NO. 19-178

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, PROVIDING DIRECTION TO CITY STAFF AND THE CITY ATTORNEY'S OFFICE TO PREPARE NEW REGULATIONS PROHIBITING, FOR THE PROTECTION OF PUBLIC HEALTH AND SAFETY, THE SALE OF ELECTRONIC CIGARETTES IN THE CITY OF CARSON PENDING FDA APPROVAL**

**WHEREAS**, pursuant to Article XI, Section 7 of the California Constitution, the City has the police power to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

**WHEREAS**, according to the Centers for Disease Control and Prevention ("CDC"), tobacco use causes more than 7 million deaths per year worldwide. Cigarette smoking is responsible for more than 480,000 deaths per year in the United States; and

**WHEREAS**, electronic cigarettes, also known as e-cigarettes, vapes, vape pens, or vaping devices, or other electronic nicotine delivery systems (collectively "E-Cigarettes"), have become the most commonly used tobacco product among adolescents in the United States since they entered the marketplace in or around 2007; and

**WHEREAS**, according to the 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 between 2017 and 2018. The increase is largely attributable to a nationwide surge in E-Cigarette use by adolescents. There were 1.5 million more youth E-Cigarette users in 2018 than in 2017. Frequent use of E-Cigarettes among current high school E-Cigarette users increased from 20% in 2017 to 28% in 2018; and

**WHEREAS**, as of October 22, 2019, 1,604 cases of E-Cigarette use-associated lung injuries had been reported to the CDC from across 49 states (all states excluding Alaska), the District of Columbia, and 1 U.S. territory. A total of 34 deaths had been confirmed spanning 24 states, including three in California (one of which was in Los Angeles County). Among 1,364 patients, 79% were under the age of 35 years old; and

**WHEREAS**, the U.S. Surgeon General, the American Lung Association, and the National Academies of Science, Engineering and Medicine have issued warnings about the risks associated with the use of E-Cigarettes; and

**WHEREAS**, the Food and Drug Administration ("FDA") has not formally reviewed the effects of E-Cigarettes or their appropriateness for the public health, nor has the FDA approved any e-cigarette product for commercial distribution or otherwise; and

**WHEREAS**, in an attempt to address the health risks associated with tobacco products, the federal government in 2009 enacted the Family Smoking Prevention and

Tobacco Control Act ("FSPTCA"), which, among other things, made E-Cigarettes subject to the FDA's regulatory authority, similar to cigarettes.

**WHEREAS**, despite the adoption of the FSPTCA, virtually all E-Cigarettes currently sold have not been approved by the FDA. In 2017, the FDA issued guidance that gives E-Cigarette manufacturers until August 8, 2022, to submit an application for pre-market review. The guidance further purported to allow unapproved E-Cigarette products to stay on the market indefinitely, until such time as the FDA complies with its statutory duty to conduct a pre-market review to determine whether a new tobacco product poses a risk to public health (a time which is currently unknown); and

**WHEREAS**, by the time E-Cigarette manufacturers are required to submit their pre-market review applications, E-Cigarettes will have been on the market for fifteen years without any FDA analysis or approval, and it years could elapse thereafter before the FDA completes such analysis or approves any E-Cigarettes for commercial distribution; and

**WHEREAS**, if current trends continue, six million more youth in the United States will begin using E-Cigarettes just between now and 2022. The City Council is not content to wait any longer before addressing, for the protection of its residents, this major public health crisis that is currently ongoing.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON DOES HEREBY FIND, DETERMINE, AND RESOLVE AS FOLLOWS:**

**SECTION 1.** The foregoing recitals are true and correct, and are incorporated herein by reference as though set forth in full as findings of fact.

**SECTION 2.** Based on the foregoing findings, and to protect the public health and safety of the City's residents, the City Council hereby directs City Staff and the City Attorney's Office to prepare new regulations to (without limitation, and subject to compliance with applicable law):

- Prohibit the retail sale of E-Cigarettes in the City of Carson, until such time as the FDA reviews and approves E-Cigarettes for commercial sale or distribution based on an analysis of their appropriateness for the public health/safety, at which point the City regulations shall sunset, to the extent of the FDA approval.

City staff is hereby further directed to adhere to all notice and public hearing requirements and other procedural requirements in connection with developing and presenting the regulations for final City Council consideration.

**SECTION 3.** This resolution shall be effective immediately upon its adoption.

**SECTION 4.** The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

**PASSED, APPROVED and ADOPTED** by the City Council of the City of Carson, California, at a regular meeting held on the 5th day of November, 2019.

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MAYOR ALBERT ROBLES

ATTEST:

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CITY CLERK DONESIA GAUSE-ALDANA

APPROVED AS TO FORM:

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SUNNY K. SOLTANI, CITY ATTORNEY

