



CITY OF CARSON

Legislation Text

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Report to Mayor and City Council

Tuesday, November 05, 2019

Discussion

SUBJECT:

CONSIDERATION OF A RESOLUTION NO. 19-178 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 (CITY COUNCIL)

I. SUMMARY

This item is on the agenda at the request of Councilmember Dear. Electronic cigarettes or "vapes" have recently been linked to numerous lung injuries and deaths throughout the U.S. Despite the reported injuries and deaths, the Food and Drug Administration ("FDA") has not yet analyzed the appropriateness of such products or other electronic nicotine delivery systems (hereinafter "E-Cigarettes") for public safety or approved them for commercial distribution.

Due to the risks associated with use of E-Cigarettes, the City Council may wish to consider ways in which the City can regulate E-Cigarettes to better protect the public health and safety of the City's residents, and especially its youth.

One option available to the City, as proposed by Councilmember Dear, is to prohibit the retail sale of E-Cigarettes in the City until the FDA determines that they are appropriate for the public health and approves them for distribution in interstate commerce. This option is currently being pursued by the City of Los Angeles pursuant to a motion of one of its city councilmembers, but that city has not adopted final regulations as of yet.

The proposed resolution (Exhibit 1) would direct staff to prepare regulations to prohibit the retail sale of E-Cigarettes (including vapes, vape pens, and other vaping devices), until the FDA analyzes these products/devices and approves them for commercial distribution based on a determination of their appropriateness for the public health.

Alternatively, other requirements could be considered to help make the City's E-Cigarette regulations more stringent and comprehensive.

II. RECOMMENDATION

1. Discuss and provide direction to City staff and the City Attorney's Office regarding the City's options for imposing new E-Cigarette regulations in the City; and
2. Consider adoption of 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 THE PUBLIC HEALTH AND SAFETY, THE SALE OF ELECTRONIC CIGARETTES IN THE CITY OF CARSON PENDING FDA APPROVAL

III. ALTERNATIVES

1. TAKE another action the City Council deems appropriate.

IV. BACKGROUND

Public Health Crisis

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. Between 2017 and 2018, 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. 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 2017. Frequent use of e-cigarettes among high schoolers increased from 20% in 2017 to 28% in 2018.

As of October 22, 2019, 1,604 cases of e-cigarette product 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 have been confirmed spanning 24 states, including 3 in California and one in Los Angeles County. Among 1,364 patients, 79% of the patients were under the age of 35 years old.

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.

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.

Nonetheless, virtually all e-cigarettes that are sold today have not been approved by the Food and Drug Administration ("FDA") for commercial distribution based on the required determination of appropriateness for the public health.

In 2017, the FDA issued guidance giving electronic cigarette manufacturers until August 8, 2022 to submit an application for pre-market review. The 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 pre-market review to determine whether a new tobacco product poses a risk to public health.

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. Alarming, if current trends continue, six million more youth in the United States will begin using E-Cigarettes between now and then, and years could elapse thereafter before any formal FDA approval is issued. Meanwhile, the evidence suggests that E-Cigarette use is and will continue to be a major ongoing public health crisis.

City's Authority to Regulate and Existing Municipal Regulations

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. (Cal. Const. Art. XI, §7). E-cigarettes are a proper subject of these regulations.

Currently, the City regulates the sale of tobacco and e-cigarettes by requiring retailers to maintain a valid tobacco and e-cigarette regulatory permit in addition to a City business license. (CMC §63150.5).

Proposed Resolution

The proposed resolution (Exhibit 1) would prohibit the retail sale of E-Cigarettes. The prohibition would sunset upon FDA approval of E-Cigarettes, to the extent of the FDA approval. In that sense, the regulations would be temporary, but they would not constitute an interim land use ordinance or "moratorium" pursuant to Gov't Code §65858.

The proposed resolution would further direct staff to adhere to all applicable laws, including public notice and hearing requirements, in connection with preparing such regulations and presenting them for final City Council consideration.

As a point of reference, on August 20, 2019, the City Council considered a similar item, Ordinance No. 19-1937 (Exhibit 2), at the request of Mayor Robles. The Ordinance would have enacted a permanent prohibition on the retail sale of all tobacco products and paraphernalia (including but not limited to E-Cigarettes/vapes) in the City, subject to a phase-out period applicable to the City's existing tobacco and electronic cigarette retailers permitting program. The City Council voted 4-1 to table the item indefinitely.

V. FISCAL IMPACT

None.

VI. EXHIBITS

1. Proposed Resolution No. 19-178 (pgs. 5-8)
2. Ordinance No. 19-1937 (tabled on August 20, 2019) (pgs. 9-22)

Prepared by: City Attorney's Office