

County of Santa Clara
Board of Supervisors
Supervisorial District Two
Supervisor Cindy Chavez



98591

DATE: September 24, 2019
TO: Board of Supervisors
FROM: Cindy Chavez, Supervisor
Dave Cortese, Supervisor
SUBJECT: E-cigarette Ban

RECOMMENDED ACTION

Consider recommendations relating to the vaping epidemic, especially among youth in Santa Clara County. (Chavez/Cortese)

Possible action:

- a. Approve referral to Administration and County Counsel to report to the Board on November 5, 2019 with options for consideration relating to banning the sale and distribution of e-cigarettes in unincorporated County.
- b. Approve referral to Administration to report to the Board on November 5, 2019 relating to e-cigarette use among youth under 21 years of age in Santa Clara County.
- c. Approve referral to Administration to report to the Board on November 5, 2019 with options for consideration relating to addressing the problem of e-cigarette use among youth under 21 years of age in Santa Clara County.

FISCAL IMPLICATIONS

There are no significant fiscal implications from the report-back.

REASONS FOR RECOMMENDATION

The CDC and the American Journal of Preventive Medicine state that, “E-cig usage by high school students increased 78% between 2017-2018.”⁷¹ And according to the Santa Clara County Public Health Department’s California Student Tobacco Survey, “13.9% of high school students in Santa Clara County reported currently using any tobacco product. Among high school students in Santa Clara County who had never used a tobacco product, two in five (40.1%) were susceptible to future use if offered by a best friend. Susceptibility was

even higher among those who reported having friends who used tobacco products.”ⁱⁱ Youth who use e-cigarettes are four times more likely to use combustible cigarettes.

The rising trend of e-cigarette use among young adults and minors, which is due to multiple reasons including the rise and cultural acceptance of JUUL, the increase of products and marketing tailored for young people, and the U.S. Food and Drug Administration’s (FDA) failure to review and decide to either authorize or deny the marketing of new tobacco products as is required of them by the Tobacco Control Act of 2009, has and will continue to have increasing negative health effects on young adults and minors across the county.

Currently, the county has policies in place (Ordinance No. 300.903) that aim to prevent minors from using cigarettes and e-cigarettes. Ordinance 300.903 passed by the Board on October 18, 2016, prohibits any tobacco retailer from selling their products, including e-cigarettes and related products, to anyone under 21 years old. Combustible cigarette use among young people is decliningⁱⁱⁱ and has been declining for years. Therefore, a new generation addicted to nicotine because of e-cigarettes is unthinkable. This is an issue affecting teenagers and children. The County must take further action to protect its young people.

The City and County of San Francisco banned the sale and distribution of e-cigarettes on June 25th, 2019 until said products go through a premarket review by the FDA.

This referral is asking the Administration and County Counsel to come back to the Board on November 5 with the action needed for the Board to ban the sale and distribution of e-cigarettes in the unincorporated county modelled after the San Francisco example.

By banning the sale and distribution of e-cigarettes, the county will make it harder for minors to obtain e-cigarettes. Due to the current high level of young people addicted to nicotine because of e-cigarettes in Santa Clara County, this referral additionally seeks that the Public Health Department present their report, *The California Student Tobacco Survey*, and findings on this topic and to also present to the Board recommendations for addressing this problem.

BACKGROUND

The Santa Clara County Board of Supervisors on October 18th, 2016 passed an ordinance to address teen tobacco use. The ordinance included provisions to discourage and prohibit the “sale or distribution of tobacco products to persons under 21.”^{iv} It included a flavor ban, and it defined e-cigarettes and all related products as tobacco products. The County has made great efforts to stop the sale of tobacco products to teenagers and youth.

In the past 10 years, electronic cigarettes use rose dramatically and continues to rise. The rising trend of e-cigarette use among teens and youth is particularly dramatic. According to the CDC and the American Journal of Preventive Medicine, “one in four high school students have used a tobacco product, and four out of five kids who have used tobacco started with a flavored product.”^v The Surgeon General declared e-cigarette youth use an epidemic, and in the past few months, reports of vaping-related respiratory illnesses, which now near 500 cases in nearly three dozen states and have possible links to six deaths, have increased. The

CDC is currently investigating the causes for these illnesses and deaths. The one commonality all these cases share is they are vaping-related.

Santa Clara County’s teens use e-cigarettes at an alarming rate. “A new report funded by the Santa Clara County Public Health Department finds a third of high school students have reported using an e-cigarette.”^{vi} The Tobacco survey, which was funded by the Santa Clara County Public Health Department, found that “13.2% of Santa Clara County teens reported using e-cigarettes in the past month, meaning they were counted as current users...82.3% of teens currently using tobacco reported using a flavored product: use of flavored products was widespread across all tobacco products and all demographic categories...And more than 2 in 5 teens – 45.4% -- reported purchasing their own e-cigarettes, with over a quarter of this group saying they buy them directly from a local store. Among those who purchased e-cigarettes in a local store, 62.5% purchased them at a vape shop.”^{vii} The reasons for the explosion of e-cigarette use is multifaceted, but they include marketing practices targeted at young people by e-cigarette makers most notably—JUUL. The consequences include bad and sometimes severe health problems and lifelong addictions.

The FDA is required by “the Tobacco Control Act to premarket review all new tobacco products. Specifically, every ‘new tobacco product’—defined to include any tobacco product not on the market in the United States as of February 15, 2007.”^{viii} And almost “all electronic cigarettes 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.”^{ix} In the past month, eight people in Wisconsin have been hospitalized and one person has died as a result of e-cigarette use. “The FDA issued Guidance that purports to give electronic cigarette manufacturers until August 8, 2022 to submit their application for premarket review.”^x Because the FDA has not done its job regarding e-cigarette use, San Francisco decided to act by banning the sale and distribution of e-cigarettes.

ATTACHMENTS:

- Ordinance 300.903 (101816) (PDF)
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ⁱ “Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students – U.S., 2011 – 2018” by Karen A. Cullen, PhD; Bridget K. Ambrose, PhD; Andrea S. Gentzke, PhD; Benjamin J. Apelberg, PhD; Ahmed Jamal, MBBS2; Brian A. King, PhD *CDC*; “Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014).” *Am J Prev Med.* 2017 Aug;53(2):139-151. doi: 10.1016/j.amepre.2017.01.026. Epub 2017 Mar 16.

ⁱⁱ “Key Findings: Tobacco Use Behavior...Risk Factors for Tobacco Use” By Shu-Hong Zhu, Joan Lee, Yue-Lin Zhuang, Katherine Braden, Adam Cole, and Anthony Gamst *California Student Tobacco Survey* p. 2-3

ⁱⁱⁱ “Chapter 1: Tobacco Use Behavior” by Shu-Hong Zhu, Joan Lee, Yue-Lin Zhuang, Katherine Braden, Adam Cole, and Anthony Gamst *California Student Tobacco Survey* p.7

^{iv} *Ordinance No. NS-300.903*, p.1

^v “Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students – U.S., 2011 – 2018” by Karen A. Cullen, PhD; Bridget K. Ambrose, PhD; Andrea S. Gentzke, PhD; Benjamin J. Apelberg, PhD; Ahmed Jamal, MBBS2; Brian A. King, PhD *CDC*; “Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014).” *Am J Prev Med.* 2017 Aug;53(2):139-151. doi: 10.1016/j.amepre.2017.01.026. Epub 2017 Mar 16.

^{vi} “Tobacco Use among High School Students in Santa Clara County: Findings from the 2017-18 California Student Tobacco Survey” *California Student Tobacco Survey*, by Shu-Hong Zhu, PhD, Joan Lee, BS, Yue-Lin Zhuang, PhD, Katherine Braden, MPH, Adam G. Cole, PhD, Anthony Gamst, PhD.

vii “Tobacco Use among High School Students in Santa Clara County: Findings from the 2017-18 California Student Tobacco Survey” *California Student Tobacco Survey*, by Shu-Hong Zhu, PhD, Joan Lee, BS, Yue-Lin Zhuang, PhD, Katherine Braden, MPH, Adam G. Cole, PhD, Anthony Gamst, PhD.

viii San Francisco, California, Health Code – Restricting the Sale, Manufacture, and Distribution of Tobacco Products, including Electronic Cigarettes (2019) p. 4

ix San Francisco, California, Health Code – Restricting the Sale, Manufacture, and Distribution of Tobacco Products, including Electronic Cigarettes (2019) p. 5

x San Francisco, California, Health Code – Restricting the Sale, Manufacture, and Distribution of Tobacco Products, including Electronic Cigarettes (2019) p. 5