

## ORDINANCE NO. 2013-\_\_\_\_\_

AN ORDINANCE AMENDING CHAPTERS 3.56, 3.60 AND 6.72 OF THE ALAMEDA COUNTY ORDINANCE CODE TO INCLUDE ELECTRONIC SMOKING DEVICES (ELECTRONIC CIGARETTES) IN THE TOBACCO SAMPLING, VENDING MACHINE SALES AND SMOKING PROHIBITIONS.

WHEREAS, the County of Alameda has a substantial interest in protecting the health and welfare of its residents from the health hazards associated with nicotine ingestion; and

WHEREAS, the County of Alameda has a substantial interest in protecting the public health and welfare by prohibiting smoking in public places, and in protecting the rights of non-smokers to breathe smoke-free air; and

WHEREAS, the potential health risks of the inhalation of vaporized nicotine are largely unknown; and

WHEREAS, the manufacturing of electronic smoking devices, often known as electronic-cigarettes, remains largely unregulated; and

WHEREAS, electronic smoking devices often employ the use of a nicotine cartridge, designed to deliver vaporized nicotine to the user<sup>1</sup>; and

WHEREAS, the U.S. Surgeon General has declared that nicotine is as addictive as cocaine or heroin<sup>2</sup>; and

WHEREAS, the World Medical Association has determined that electronic smoking devices are not comparable to scientifically-proven methods of smoking cessation and that neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements has been established<sup>3</sup>; and

WHEREAS, The U.S. Food and Drug Administration (FDA) conducted laboratory analysis of electronic smoking device cartridges and found the following<sup>4</sup>:

- Diethylene glycol, an ingredient used in antifreeze and toxic to humans, was found in one cartridge;
- Certain tobacco-specific nitrosamines, which are human carcinogens, were detected in half of the samples tested;

<sup>1</sup>Kuscher WG, Reddy S, Mehrota N, et al, *Electronic Cigarettes and Thirdhand Smoke: Two Emerging Health Care Challenges for the Primary Care Provider*, International Journal of General Medicine (Feb. 1, 2011), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3068875/>.

<sup>2</sup>*The Health Consequences of Smoking: Nicotine Addiction*, U.S. Surgeon General (May 1988), <http://profiles.nlm.nih.gov/ps/access/NNBBZD.pdf>.

<sup>3</sup>*Statement on Electronic Cigarettes and Other Electronic Nicotine Delivery Systems*, World Medical Association (Oct. 2012), <http://www.wma.net/en/30publications/10policies/e19/>.

<sup>4</sup>*Tobacco Fact Sheet: Electronic Cigarettes (E-Cigarettes)*, Legacy Foundation (Jun. 2013), <http://www.legacyforhealth.org/content/download/582/6926/file/LEG-FactSheet-eCigarettes-JUNE2013.pdf>.

- Tobacco-specific impurities suspected of being harmful to humans—anabasine, myosmine, and B-nicotyrine—were detected in a majority of the samples tested;
- All but one tested cartridge labeled as containing no nicotine did in fact contain low levels of nicotine;
- Three identically labeled cartridges emitted markedly different amounts of nicotine with each puff. Nicotine levels per 100 milliliter puff ranged dramatically from 26.8 to 43.2 micrograms of nicotine; and
- One high-nicotine cartridge delivered twice as much nicotine to users as was delivered by a nicotine inhalation product approved by the FDA for use as a smoking cessation aid which was used as a control;

WHEREAS, electronic smoking devices often mimic conventional tobacco products in shape, size, and color<sup>5</sup>, with the user exhaling a vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products<sup>6</sup>; and

WHEREAS, the use of electronic smoking devices in smoke free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment; and

WHEREAS, in accordance with similar health concerns, the state of California implemented Health and Safety Code section 119405, which prohibits the sale of electronic cigarettes to minors in order to protect their welfare and to reduce the chances of nicotine addiction in youth; and

WHEREAS, it is the purpose and intent of the Board of Supervisors, in enacting this Ordinance, to amend current County of Alameda tobacco product and smoking regulation ordinances to include electronic smoking devices, thus improving the health, safety, and welfare of its constituents by continuing to prevent the harmful effects of nicotine and tobacco products;

NOW THEREFORE, the Board of Supervisors of the County of Alameda ordains as follows:

## SECTION I

A. Section 3.56.020 of the Alameda County Ordinance Code is amended to read:

3.56.020 Declaration of policy.

It is declared to be in the public interest and in the interest of the residents of the unincorporated areas of Alameda County to prohibit tobacco sample and electronic smoking device promotions and giveaways.

<sup>5</sup>*Tobacco Fact Sheet: Electronic Cigarettes (E-Cigarettes)*, Legacy Foundation (Jun. 2013), <http://www.legacyforhealth.org/content/download/582/6926/file/LEG-FactSheet-eCigarettes-JUNE2013.pdf>.

<sup>6</sup>Kuscher WG, Reddy S, Mehrota N, et al, *Electronic Cigarettes and Thirdhand Smoke: Two Emerging Health Care Challenges for the Primary Care Provider*, International Journal of General Medicine (Feb. 1, 2011), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3068875/>.

B. Section 3.56.030 of the Alameda County Ordinance Code is amended to read:

3.56.030 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as hereafter set out, unless it shall be apparent from the context that they have a different meaning:

"Distribute" means to give, sell, deliver, dispense, issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue, as part of an advertising plan or program.

"Electronic Smoking Device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine. "Electronic Smoking Device" includes any such device and parts thereof, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic Smoking Device" includes nicotine cartridges used in such devices, which may be separately sold or distributed as refills. "Electronic Smoking Device" includes similar devices and cartridges that purport to contain no nicotine.

"Person," shall mean an individual, firm, partnership, joint venture, unincorporated association, corporation, estate, trust, trustee, or any other group or combination of the above acting as a unit;

"Sample" means a distribution to a member or members of the general public at no cost or at nominal cost for the purpose, in whole or in part, of promoting a tobacco product or electronic smoking device;

"Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, smoking tobacco, and smokeless tobacco.

C. Section 3.56.040 of the Alameda County Ordinance Code is amended to read:

3.56.040 Tobacco sampling prohibited.

No person shall knowingly distribute or furnish without charge, or cause to be furnished without charge to the general public, cigarettes, other tobacco products, or electronic smoking devices, or coupons for cigarettes, other tobacco products, ~~at any event open to the public, or in any public place, including but not limited to any right-of-way, mall or shopping center, park, playground, and any property owned by the city, any school district, or any park district,~~ or electronic smoking devices, within the unincorporated areas of the County of Alameda, or any property owned by the County of Alameda, except in retail tobacco stores.

## SECTION II

- A. Section 3.60.020 of the Alameda County Ordinance Code is amended to read:

3.60.020 Declaration of policy.

It is hereby declared to be in the public interest and in the interest of all the residents of Alameda County to prohibit the distribution of tobacco products and electronic smoking devices through vending machines in any place within the unincorporated areas of the county which is open to minors.

- B. Section 3.60.030 of the Alameda County Ordinance Code is amended to read:

3.60.030 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as hereafter set out, unless it shall be apparent from the context that they have a different meaning.

"Electronic Smoking Device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine. "Electronic Smoking Device" includes any such device and parts thereof, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic Smoking Device" includes nicotine cartridges used in such devices, which may be separately sold or distributed as refills. "Electronic Smoking Device" includes similar devices and cartridges that purport to contain no nicotine.

"Person" means an individual, firm, partnership, joint venture, unincorporated association, corporation, estate, trust, trustee, or any other group or combination of the above acting as a unit.

"Tobacco accessories" means cigarette papers of wrapper, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed primarily for the smoking or ingestion or chewing of tobacco products.

"Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, smoking tobacco, and smokeless tobacco.

"Tobacco vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper bill, or other thing representative of value, which dispenses or releases a tobacco product and/or tobacco accessories.

- C. Section 3.60.040 of the Alameda County Ordinance Code is amended to read:

3.60.040 Prohibition on the sale of tobacco products through vending machines in the unincorporated areas of Alameda County.

No cigarette, other tobacco product, or electronic smoking device may be sold, offered for sale, or distributed by or from a vending machine or other appliance, or any other device designed or used for vending purposes. Any ~~vending~~ such vending machine in use on the effective date of the ordinance codified in this section shall be removed within thirty (30) days after the effective date of the ordinance or any ordinance amendment codified in this section.

### SECTION III

A. Section 6.72.010 of the Alameda County Ordinance Code is amended to read:

6.72.010 Findings and declaration.

The Alameda County board of supervisors does find that:

A. Tobacco Product Findings

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand tobacco smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are children, elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

Health hazards induced by exposure to environmental tobacco smoke (ETS) include lung and other forms of cancer, respiratory infection, decreased respiratory function, including broncho-constriction and broncho-spasm, and premature death from heart disease.

In 1989, the health care costs and lost productivity resulting from smoking-related disease and death amounted to three hundred seventy million dollars (\$370,000,000.00) in Alameda County and represent a heavy and avoidable financial drain on our community.

Section 6404.5 of the California Labor Code regulates smoking in California workplaces, and requires local governments to initiate enforcement of this law.

The U.S. Surgeon General and the U.S. Department of Health and Human Services have found that a majority of those Americans who die of tobacco-caused diseases became addicted to nicotine in tobacco products as adolescents before the age of legal consent.

The U.S. Surgeon General has declared that nicotine is as addictive as cocaine or heroin; no other addictive product or drug, or cancer-causing product or drug is sold through vending machines.

The free distribution of cigarettes and other tobacco products encourages people to begin smoking and using tobacco products, and tempts those who had quit to begin smoking again. Minors currently have ready access to tobacco products as a result of noncompliance with existing laws that prohibit the furnishing of tobacco products to minors and the marketing practice of distributing free tobacco product samples and the widespread availability of tobacco vending machines.

According to recent studies, exposure to secondhand smoke is the third leading cause of preventable death in the United States, killing over fifty-three thousand (53,000) non-smokers each year, including three thousand (3,000) deaths from lung cancer.

#### B. Electronic Smoking Devices Findings

The County of Alameda has a substantial interest in protecting the health and welfare of its residents from the health hazards associated with nicotine ingestion.

The County of Alameda has a substantial interest in protecting the public health and welfare by prohibiting smoking in public places, and in protecting the rights of non-smokers to breathe smoke-free air.

The potential health risks of the inhalation of vaporized nicotine are largely unknown.

The manufacturing of electronic smoking devices, often known as electronic-cigarettes, remains largely unregulated.

Electronic smoking devices often employ the use of a nicotine cartridge, designed to deliver vaporized nicotine to the user.

The World Medical Association has determined that electronic smoking devices are not comparable to scientifically-proven methods of smoking cessation and that neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements has been established.

The U.S. Food and Drug Administration (FDA) conducted laboratory analysis of electronic smoking device cartridges and found the following:

- Diethylene glycol, an ingredient used in antifreeze and toxic to humans, was found in one cartridge;
- Certain tobacco-specific nitrosamines, which are human carcinogens, were detected in half of the samples tested;

- Tobacco-specific impurities suspected of being harmful to humans— anabasine, myosmine, and B-nicotyrine—were detected in a majority of the samples tested;
- All but one tested cartridge labeled as containing no nicotine did in fact contain low levels of nicotine;
- Three identically labeled cartridges emitted markedly different amounts of nicotine with each puff. Nicotine levels per 100 millileter puff ranged dramatically from 26.8 to 43.2 micrograms of nicotine; and
- One high-nicotine cartridge delivered twice as much nicotine to users as was delivered by a nicotine inhalation product approved by the FDA for use as a smoking cessation aid which was used as a control.

Electronic smoking devices often mimic conventional tobacco products in shape, size, and color, with the user exhaling a vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products.

The use of electronic smoking devices in smoke free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment.

In accordance with similar health concerns, the state of California implemented Health and Safety Code section 119405, which prohibits the sale of electronic cigarettes to minors in order to protect their welfare and to reduce the chances of nicotine addiction in youth.

### C. Declaration

Accordingly, the Alameda County board of supervisors finds and declares that the purposes of this chapter are: (A) to protect the public health and welfare by prohibiting smoking in public places and places of employment not under the jurisdiction of state law; (B) to enforce the state law prohibiting smoking in the workplace; (C) to guarantee the rights of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke; (D) to reduce addiction to nicotine and tobacco products by minors; and (E) to generally promote the health, safety, and welfare of all people in the county of Alameda against the health hazards and harmful effects of the use of tobacco products.

- B. Section 6.72.020 of the Alameda County Ordinance Code is amended to read:  
6.72.020 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

"Bar" means an area that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which any food served is incidental. "Bar" does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

"Business" means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

"Business vehicle" means automobile, truck or van, owned, leased or otherwise controlled by an employer, which is available, by advance request, reservation or otherwise, for the use, in the course of employment, of any employee or employees.

"Distribute" means to give, sell, deliver, dispense, issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue, as part of an advertising plan or program.

"Electronic Smoking Device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine. "Electronic Smoking Device" includes any such device and parts thereof, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic Smoking Device" includes nicotine cartridges used in such devices, which may be separately sold or distributed as refills. "Electronic Smoking Device" includes similar devices and cartridges that purport to contain no nicotine.

"Employee" means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity, and shall have the same meaning as the term "employee" as defined in Sections 3350 through 3352.94, inclusive, of the California Labor Code.

"Employer" means every person or public service corporation which has any natural person in service, and shall have the same meaning as the term "employer" in Section 3300 and Section 3301 of the California Labor Code.

"Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.

"Gaming club" means any establishment where legal gambling, as defined in Section 19802(a) of the Business and Professions Code, is conducted, or bingo facility,



as defined in Section 326.5 of the Penal Code, that restricts access to minors under eighteen (18) years of age.

"Place of employment" means any enclosed area under the control of a public or private employer in which employees normally meet or work during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care or health care facility.

"Public place" means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, laundromats, public transportation facilities, reception areas, indoor shopping malls, theaters and waiting rooms.

"Reasonable distance" means a distance of at least twenty (20) feet to insure that occupants of a building and those entering or exiting the building are not exposed to secondhand smoke created by smokers outside of the building. The determination of the health officer or appropriate designee shall be final in any disputes relating to reasonable distance beyond twenty (20) feet for smoking outside of buildings regulated by this chapter.

"Restaurant" means any indoor and outdoor coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in this section.

"Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

"Sample" means a distribution to a member or members of the general public at no cost or at nominal cost for the purpose, in whole or in part, of promoting a tobacco product or electronic smoking device.

"Seller" shall mean any natural person, company, corporation, firm, partnership, organization, or other legal entity, who sells, dispenses, distributes or issues tobacco products or electronic smoking devices for commercial purposes.

"Service area" means any area designated to be or regularly used by one or more persons to receive or wait to receive a service, to enter a public place, or to make a transaction, whether or not such service includes the exchange of money, including

but not limited to, ATMs, bank teller windows, telephones, ticket lines, bus stops, waiting rooms, restrooms, and taxi stands.

"Service line" means any line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

"Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant, or other combustible substance in any manner or in any form. "Smoking" also includes the use of an electronic smoking device. For the purposes of this Chapter the tobacco smoking restrictions in Section 6404.5 of the California Labor Code shall extend to restrictions on the use of electronic smoking devices.

"Sports arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling centers and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

"Tobacco accessories" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed primarily for the smoking or ingestion or chewing of tobacco products.

"Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, smoking tobacco, and smokeless tobacco.

"Vending machine" means any electronic or mechanical device or appliance, the operation of which depends upon insertion of money, whether in coin or in paper bill, or other thing representative of value, which dispenses or releases tobacco products, ~~and/or~~ tobacco accessories, or electronic smoking devices.

- C. Section 6.72.040 of the Alameda County Ordinance Code is amended to read:

6.72.040 Sale prohibited.

The sale of tobacco products or electronic smoking devices by any means, including vending machines, in facilities in which the county conducts its business is prohibited.

- D. Section 6.72.070 of the Alameda County Ordinance Code is amended to read:

6.72.070 Reasonable distance.

Smoking shall occur at a reasonable distance of at least twenty (20) feet outside any enclosed area where smoking is prohibited to ensure that smoke does not enter the area through entrances, windows, ventilation systems or any other means to ensure that

those indoors and those entering or leaving the building are not involuntarily exposed to secondhand tobacco smoke or electronic smoking device smoke or vapor.

SECTION IV

- A. This ordinance shall take effect and be in force ninety (90) days from and after the date of passage.
- B. Before the expiration of fifteen (15) days after its passage, it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on \_\_\_\_\_, 2013, by the following called vote:

AYES:

NOES;

EXCUSED:

\_\_\_\_\_  
 President of the Board of Supervisors  
 County of Alameda, State of California

ATTEST:  
Clerk of the Board of Supervisors

By: \_\_\_\_\_

Approved as to form:  
DONNA R. ZIEGLER, County Counsel

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_