



A Tradition of Stewardship  
A Commitment to Service

Agenda Date: 12/15/2015  
Agenda Placement: 9F  
Set Time: 10:10 AM PUBLIC HEARING  
Estimated Report Time: 10 Minutes

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors

**FROM:** Shelli Brobst for HOWARD HIMES - Director  
Health & Human Services Administration

**REPORT BY:** Shelli Brobst, Contracts Manager - 253-4720

**SUBJECT:** Presentation on E-Cigarettes and First Reading and Intent to Adopt an Ordinance Adding Electronic Smoking Devices to Section 8.08.020 in Chapter 8.08 of the Napa County Code

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### **RECOMMENDATION**

Presentation, first reading and intent to adopt an ordinance adding Electronic Smoking Devices to Section 8.08.020 in Chapter 8.08 of the Napa County Code.

**ENVIRONMENTAL DETERMINATION:** The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

### **EXECUTIVE SUMMARY**

Chapter 8.08 of the Napa County Code, entitled "Clean Indoor Air and Health Protection," prohibits smoking in public places, regulates smoking in places of employment and defines smoking as "...inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed or plant or other combustible substance whose smoke is intended to be inhaled." Under the current definition of smoking, Napa County agencies do not have the authority to enforce smoke-free regulations as they relate to electronic cigarettes. The federal Food and Drug Administration (FDA) and the National Association of County and City Health Officials (NACCHO) advises state and local governments to broaden definitions of smoking in "smoke-free" legislation, and to continue to partner with local health departments to develop laws to dissuade the use of tobacco products, including electronic cigarettes. The purpose of this amendment is to include language in Chapter 8.08 to redefine "smoke" and "smoking" to allow for enforcement of smoking restrictions on electronic cigarette use and retail sales.

The federal Food and Drug Administration (FDA) describes electronic cigarettes as battery-operated products designed to deliver nicotine, flavor, and other chemicals. Chemicals and nicotine are vaporized and inhaled by the user. In general, electronic cigarettes or e-cigarettes are manufactured to resemble cigarettes, cigars, and smoking pipes, but have also developed to resemble pens and USB portable devices. The latter manufacturing forms are considered by the FDA and smoking cessation advocacy groups as attempts to market tobacco products

to youth. Included in today's action is a presentation by the Deputy Director/ Public Health Officer, Deputy Director/Administrator of Alcohol and Drug Programs and Paul Laskar, Chair of the Tobacco Advisory Board on e-cigarettes.

### **PROCEDURAL REQUIREMENTS**

1. Open Public Hearing.
2. Staff reports
3. Public comment
4. Close Public Hearing
5. Clerk reads the Ordinance Title
6. Motion, second, discussion and vote to waive the balance of the reading of the ordinance
7. Motion, second, discussion and vote on intention to adopt the ordinance.

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

### **BACKGROUND AND DISCUSSION**

#### Napa County and E- Cigarettes

Napa County Code includes Clean Indoor Air and Health Protection Code (Title 8, Chapter 8.08) and defines smoking as the "... inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed or plant or other combustible substance whose smoke is intended to be inhaled" (Section 8.08.20). Under the current definition of smoking, Napa County agencies do not have the authority to enforce smoke free regulations as they relate to electronic cigarettes. It is recommended to amend the current Napa County Clean Indoor Air and Health Protection Code to include language to redefine "smoke" and "smoking," which will allow for the enforcement of smoking restriction laws for e-cigarette use and retail.

#### California and Counties

Some states (Colorado, Minnesota, New Hampshire, New Jersey, and Tennessee) and local governments have been successful implementing regulations including some of the NACCHO recommendations listed above. California has prohibited the sale of e-cigarettes to minors, and has introduced a state senate bill (SB 648) to ban the use of electronic cigarettes in public areas. Forty-eight (48) cities and counties (including the cities of Richmond, Oakland, Albany, and Santa Cruz) have passed ordinances including language requiring retailers to obtain licenses to sell e-cigarettes. In addition, four bay area counties (Contra Costa, Marin, Sonoma, and Santa Clara Counties) have amended their ordinances to broadly define "smoke" and "smoking" to include e-cigarettes.

Research is being developed to indicate the potential health implications associated with e-cigarettes, and the FDA has issued its intent to propose rules to further broaden its statutory definition of "tobacco products" to provide

regulatory guidance for e-cigarettes. In the interim, the FDA and the National Association of County and City Health Officials (NACCHO) advise state and local governments to broaden definitions of smoking in “smoke-free” legislation, and to continue to partner with local health departments to develop laws to dissuade the use of tobacco products, including e-cigarettes.

**SUPPORTING DOCUMENTS**

- A . 2015 Clean Indoor Air Ordinance - Final
- B . 2015 Clean Indoor Air Ordinance - Tracked Changes
- C . Powerpoint

CEO Recommendation: Approve

Reviewed By: Leanne Link