

**Health Commission  
City and County of San Francisco  
Resolution No. 7-11**

**Endorsing the San Francisco Department of Public Health Proposal  
to Regulate Electronic Cigarettes**

WHEREAS the United States Food and Drug Administration (FDA) has not yet issued any regulations regarding electronic cigarettes, also called e-cigarettes, and these products are available for purchase in this city; and

WHEREAS the U.S. Court of Appeals for the D.C. Circuit recently issued a decision that e-cigarettes and other products "made or derived from tobacco" can be regulated as "tobacco products" under the Federal Food, Drug, and Cosmetic Act, but that these products cannot be regulated as drugs/devices unless they are marketed for therapeutic purposes; and

WHEREAS electronic cigarette manufacturers and retailers are making unproven health claims about their products by asserting that they are safe or safer than traditional cigarettes and that they can be used as an aid to smoking cessation; and

WHEREAS the FDA has warned the public about the potential health risks of using electronic cigarettes;<sup>1</sup> and

WHEREAS initial FDA studies found that electronic cigarettes contain known carcinogens;<sup>2</sup> and

WHEREAS the FDA issued a statement on April 25, 2011<sup>3</sup> that it intends to propose a regulation that would extend the Agency's "tobacco product" authority under the Family Smoking Prevention and Tobacco Control Act to other categories of tobacco products that meet the statutory definition of "tobacco product" under the Act; and

WHEREAS electronic cigarette packages do not supply any warnings about possible adverse effects on health comparable to FDA-approved nicotine replacement products or conventional cigarettes;<sup>4</sup> and

WHEREAS there is no scientific evidence that electronic cigarettes can help smokers to quit smoking; and

WHEREAS the World Health Association does not consider electronic cigarettes to be a legitimate therapy for smokers trying to quit tobacco;<sup>5</sup> and

WHEREAS FDA studies found that certain electronic cigarettes misrepresent nicotine content on their labels and sometimes contain far more nicotine than FDA-approved smoking cessation products;<sup>6</sup> and

WHEREAS FDA studies found that certain electronic cigarettes emitted a markedly different amount of nicotine with each puff; <sup>7</sup> and

WHEREAS the Surgeon General has found that the chemical nicotine is a powerful pharmacologic agent that acts in the brain and throughout the body and is highly addictive; <sup>8</sup> and

WHEREAS withdrawal symptoms from nicotine include cognitive and attention defects, cravings, inability to sleep, and sleep disturbance; <sup>9</sup> and

WHEREAS use of nicotine may cause or contribute to cardiovascular disease, complications of hypertension, reproductive disorders, cancer, and gastrointestinal disorders, including peptic ulcer disease and gastro esophageal reflux; <sup>10</sup> and

WHEREAS electronic cigarettes may not be legally sold to minors in California; <sup>11</sup> and

WHEREAS some electronic cigarette producers market their product to children by flavoring their products with candy, fruit, and other flavors popular with children; and

WHEREAS the FDA has raised concerns that electronic cigarettes, including but not limited to flavored electronic cigarettes, can increase nicotine addiction among young people and may lead youth to try conventional tobacco products; <sup>12</sup> and

WHEREAS according to the 2009 San Francisco Unified School District High School Youth Risk Behavior Survey, <sup>13</sup> 10.4% of San Francisco high school students reported current cigarette use; according to the 2009 California Health Interview Survey, <sup>14</sup> 11.9% of San Francisco adults were current smokers, and according to the 2008 California Adult Tobacco Survey, 17.6% of California adults 18-24 years of age were current smokers; <sup>15</sup> and

WHEREAS there is no evidence that the vapors released into the air through the use of an electronic cigarette do not present a danger to others who breathe them; and

WHEREAS electronic cigarettes' resemblance to conventional cigarettes has caused the San Francisco Airport Health and Safety Office and Department of Public Health Secondhand Smoke Prevention and Enforcement Program to observe that the use of electronic cigarettes in places where smoking is prohibited increases the likelihood that people will break the law by lighting up cigarettes because they see what appears to be someone smoking, undermining compliance with existing smoking regulations; and

WHEREAS the use of an electronic cigarette in public is virtually indistinguishable from the use of traditional tobacco products in public, prompting confusion and concern by the owners of establishments seeking to comply with the City's laws prohibiting smoking in certain locations; and

WHEREAS the Department of Transportation<sup>16</sup> has banned the use of electronic cigarettes on U.S. carrier and foreign carrier flights in scheduled intrastate, interstate, and foreign air transportation; and

WHEREAS on April 5, 2011 the San Francisco Airport Commission amended its Rules and Regulations<sup>17</sup> regarding smoking to include a ban on the use of electronic cigarettes due to the problems associated with electronic cigarette use in public outlined above; and

WHEREAS the American Cancer Society Cancer Action Network, American Heart Association, Campaign for Tobacco Free Kids, and American Lung Association support including electronic cigarettes in smoke-free laws;<sup>18</sup> and

WHEREAS electronic cigarettes have been banned in indoor public places and workplaces by King County (Seattle), Washington, New Jersey and Suffolk County, New York while electronic cigarette sales have been banned throughout Canada; now therefore be it

RESOLVED, that the Health Commission endorses the policies proposed by the San Francisco Department of Public Health to

1. Prohibit the use of electronic cigarettes (and other nicotine delivery devices not approved by the FDA as smoking cessation aids) in those areas where smoking is prohibited in the San Francisco Health Code.
2. Require a tobacco permit for the sale or furnishing of electronic cigarettes and other nicotine delivery devices not approved by the FDA as smoking cessation aids.

FURTHER RESOLVED, that the Health Commission forwards this resolution to the San Francisco Board of Supervisors.

I hereby certify that the San Francisco Health Commission at its meeting of June 21, 2011 adopted the foregoing resolution.

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Mark Morewitz  
Executive Secretary to the Health Commission

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- <sup>1</sup> FDA and Public Health Experts Warn about Electronic Cigarettes (July 22, 2009), available at [www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm).
- <sup>2</sup> Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA (July 22, 2009), available at [www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm](http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm).
- <sup>3</sup> FDA Letter to Stakeholders: Regulation of E Cigarettes and Other Tobacco Products (April 25, 2011), available at: <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm252360.htm>
- <sup>4</sup> FDA and Public Health Experts Warn About Electronic Cigarettes (July 22, 2009), available at [www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm).
- <sup>5</sup> World Health Organization, Press Release, "Marketers of electronic cigarettes should halt unproved therapy claims" (September 19, 2008), available at [www.who.int/mediacentre/news/releases/2008/pr34/en/index.html](http://www.who.int/mediacentre/news/releases/2008/pr34/en/index.html).
- <sup>6</sup> Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA (July 22, 2009), available at [www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm](http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm).
- <sup>7</sup> Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA (July 22, 2009), available at [www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm](http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm).
- <sup>8</sup> The Health Consequences of Smoking: Nicotine Addiction, a report of the Surgeon General (1988), available at [http://profiles.nlm.nih.gov/NN/B/B/Z/D/\\_/nnbbzd.pdf](http://profiles.nlm.nih.gov/NN/B/B/Z/D/_/nnbbzd.pdf).
- <sup>9</sup> The Health Consequences of Smoking: Nicotine Addiction, a report of the Surgeon General (1988), available at [http://profiles.nlm.nih.gov/NN/B/B/Z/D/\\_/nnbbzd.pdf](http://profiles.nlm.nih.gov/NN/B/B/Z/D/_/nnbbzd.pdf).
- <sup>10</sup> The Health Consequences of Smoking: Nicotine Addiction, a report of the Surgeon General (1988), available at [http://profiles.nlm.nih.gov/NN/B/B/Z/D/\\_/nnbbzd.pdf](http://profiles.nlm.nih.gov/NN/B/B/Z/D/_/nnbbzd.pdf).
- <sup>11</sup> California Health & Safety Code section 119405.
- <sup>12</sup> Consumer Update: E-Cigarettes: Questions and Answers, available at: [www.fda.gov/ForConsumers/ConsumerUpdates/ucm225210.htm](http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm225210.htm).
- <sup>13</sup> High School Youth Risk Behavior & Resiliency Results, Key Indicators from the 2009 Youth Risk Behavior & California Healthy Kids Survey, available at: <http://healthiersf.org/Resources/docs/HS%20YRBS%20Booklet%202009%20Final.pdf>
- <sup>14</sup> 2009 California Health Interview Survey Results, available at: [http://www.chis.ucla.edu/main/DQ3/output.asp?\\_rn=0.8509485](http://www.chis.ucla.edu/main/DQ3/output.asp?_rn=0.8509485)
- <sup>15</sup> Adult Smoking Prevalence, California Department of Public Health, California Tobacco Control Program, available at: [http://www.cdph.ca.gov/programs/tobacco/Documents/CTCPAdultSmoking\\_10.pdf](http://www.cdph.ca.gov/programs/tobacco/Documents/CTCPAdultSmoking_10.pdf)
- <sup>16</sup> Questions for the Record provided by Susan Kurland Assistant Secretary for Aviation and International Affairs, U.S. Department of Transportation, following a June 17, 2010 hearing before the Senate Committee on Commerce, Science and Transportation.
- <sup>17</sup> Rules and Regulations San Francisco International Airport amended April 5, 2011. Issued by: The Airport Commission, City and County of San Francisco.
- <sup>18</sup> Policy Guidance Document Regarding E-Cigarettes, American Cancer Society Cancer Action Network, American Heart Association, Campaign for Tobacco Free Kids, and American Lung Association, April 9, 2010.