


# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: July 27, 2015

TO: Honorable Members of the Rules, Elections, Intergovernmental Relations, and  
Neighborhoods Committee

FROM: Sharon M. Tso   
Chief Legislative Analyst

Council File No.: 15-0002-S9  
Assignment No.: 15-02-0083

SUBJECT: Resolution to support SB 140 (Leno) relative to electronic cigarettes.

CLA RECOMMENDATION: That the City Council adopt the attached revised Resolution to include in its 2015-16 State Legislative Program SUPPORT for SB 140 (Leno) relative to electronic cigarettes IF AMENDED to recast and broaden the definition of "tobacco product" in State law to include electronic cigarettes.

## SUMMARY

Resolution (Koretz – O’Farrell – Parks), introduced January 30, 2015, states that recent studies indicate that electronic cigarettes present a greater concern to public health than originally thought. The Resolution further states that on December 4, 2013, the City Council adopted an Ordinance to require retailers to obtain a Tobacco Retailer Permit for e-cigarettes and on March 4, 2014, the City Council adopted an Ordinance to revise the definition of smoking to include electronic smoking devices and to prohibit the use of e-cigarettes in locations such as restaurants, outdoor dining areas, daycare centers, and beaches (C.F. 13-1204; C.F. 13-1204-S1). The Resolution notes that the California Department of Public Health reported that e-cigarettes are a growing threat to public health. The Resolution indicates that the State Legislature is considering SB 140 (Leno) which would change STAKE Act definition of tobacco products to include electronic devices and would restrict the use of electronic cigarettes in some locations where the use of traditional tobacco products are prohibited.

The Resolution requests that the City support SB 140.

## BACKGROUND

Electronic cigarettes, also known as e-cigarettes, are battery-powered devices that provide doses of nicotine and other additives (such as flavorings) which are heated, vaporized, and inhaled by the user. In contrast to traditional cigarettes, electronic cigarettes only emit substances when activated by pressing a button or through suction.

Several recent scientific studies have reported on the use, prevalence, and health effects of electronic cigarettes, as follows:

- On April 16, 2015, the University of California, San Diego School of Medicine released a study which stated that smokers who used electronic cigarettes were 49 percent less likely to decrease cigarette use and 59 percent less likely to quit smoking as compared to smokers who never used electronic cigarettes.
- On April 3, 2015, the United States Centers for Disease Control and Prevention (CDC) released a study which stated that the number of middle and high school students using electronic cigarettes tripled from 2013 to 2014.

- On February 4, 2015, the Bloomberg School of Public Health at Johns Hopkins University released a study which concluded that electronic cigarettes contain less nicotine than traditional cigarettes, but actual nicotine intake by electronic cigarette users can approximate that of cigarette smokers.
- On January 28, 2015, the California Department of Public Health (Public Health) released the *State Health Officer's Report on E-Cigarettes: A Community Health Threat* which addressed the health effects from the use, sale, and marketing of electronic cigarettes. According to Public Health, electronic cigarettes are not as harmful as conventional cigarettes but are addictive and release cancer-causing chemicals. In addition, Public Health stated that there is no scientific evidence that e-cigarettes help smokers successfully quit traditional cigarettes.

#### Existing Law

Under existing State law, the Cigarette and Tobacco Products Licensing Act requires the California Board of Equalization to license manufacturers and retailers of cigarette and tobacco products. Existing State law also prohibits the smoking of cigarettes and other tobacco products in a variety of specified areas such as outdoor dining areas and indoor work spaces. The Stop Tobacco Access to Kids Enforcement Act (STAKE Act) prohibits an individual from selling or providing traditional tobacco cigarettes and electronic cigarettes to a person who is under eighteen years of age.

On December 4, 2013 the City Council approved an Ordinance which requires retailers to obtain a Tobacco Retailer Permit and prohibits the self-service display of electronic cigarettes (C.F. 13-1204). On March 4, 2014, the City Council adopted an Ordinance which prohibits the use of electronic cigarettes where smoking is prohibited by law such as outdoor dining areas; City-permitted farmer's markets; City parks and beaches; indoor workplaces; twenty feet from the entryway of a government building; and, vehicles when a minor is present (C.F. 13-1204-S1).

The federal Food and Drug Administration (FDA) has proposed rules that would extend the FDA's existing authority to regulate tobacco products to electronic cigarettes. It is our understanding that the FDA will release draft rules regarding the regulation of electronic cigarettes in the near future. The FDA has also conducted a series of public workshops in June 2015 to review scientific evidence regarding the public health effects of electronic cigarettes.

#### SB 140

SB 140, introduced on January 26, 2015, would extend the requirements of the STAKE Act from tobacco cigarettes to the sale of electronic cigarettes; prohibit the use of electronic cigarettes in specific places such as schools, places of employment, public buildings, apartments, and other places; and require electronic cigarette wholesalers to obtain a license from the State Board of Equalization. SB 140, as introduced, would expand the definition "tobacco product" in certain sections of current law to include electronic cigarettes and would specify that "tobacco cessation products" licensed by the Food and Drug Administration are not considered tobacco products. In addition, under SB 140, implementation of the licensing requirement for electronic cigarette retailers would become effective on October 1, 2016. Furthermore, the State Board of Equalization would be authorized to impose an additional one-time fee on electronic cigarette retailers to cover costs associated with licensing.

On July 8, 2015, the Associated Press reported that SB 140 was amended in the Assembly Committee on Governmental Organization to delete the provision that defines electronic cigarettes as tobacco products. The Associated Press further reported that the author of the bill

will not take part in the advancement of the modified bill. The American Cancer Society Cancer Action Network states that the current definition of electronic cigarettes only includes products that can provide an inhalable dose of nicotine and excludes products that contain other harmful substances. The City Attorney has advised that defining electronic cigarettes as tobacco products in State law will eliminate the possibility of loopholes and ensure that electronic cigarettes are subject to the same smoke-free laws as traditional tobacco cigarettes.

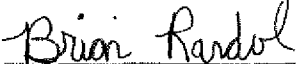
We have prepared a revised Resolution to support SB 140 if the bill is amended to define electronic cigarettes as tobacco products.

Department Notified

City Attorney

Bill Status

March 16	March 25 set for first hearing cancelled at the request of author.
March 18	Set for hearing April 8.
April 9	From Committee on Health: Do pass as amended and re-refer to Committee on Appropriations (Ayes 6, Noes 1).
April 13	Read second time and amended. Re-referred to Committee on Appropriations.
April 27	April 27 hearing: Placed on Committee on Appropriations suspense file.
May 28	From Committee on Appropriations: Do pass as amended (Ayes 5, Noes 2.)
June 1	Read second time and amended. Ordered to third reading.
June 2	Read third time. Passed. (Ayes 25, Noes 12.) Ordered to the Assembly.
June 18	Referred to Assembly Committee on Governmental Organization.
July 8	Held in committee without recommendation.



Brian Randol

Analyst

Attachment: Revised Resolution to support SB 140

# RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, electronic cigarettes, also known as e-cigarettes, are battery-powered devices that provide doses of nicotine and other additives (such as flavorings) which are heated, vaporized, and inhaled by the user; and

WHEREAS, recent studies indicate that electronic cigarettes present a greater threat to public health than previously thought; and

WHEREAS, the City has taken various steps to address health concerns related to the growing proliferation of these devices among young people, including revising the definition of smoking to include electronic smoking devices and prohibiting the use of electronic cigarettes in locations such as restaurants, outdoor dining areas, daycare centers, and beaches (C.F. 13-1204-S1); and

WHEREAS, additional changes in State law are needed to ensure that the public health is safeguarded against the growing use of these devices; and

WHEREAS, SB 140 (Leno), introduced on January 26, 2015, would extend the requirements of the STAKE Act from tobacco cigarettes to the sale of electronic cigarettes, prohibit the use of electronic cigarettes in specific places such as schools, places of employment, public buildings, apartments, and other places; and

WHEREAS, as introduced, SB 140 would also expand the definition "tobacco product" in certain sections of current law to include electronic cigarettes; and

WHEREAS, On July 8, 2015, the Associated Press reported that SB 140 was amended in the Assembly Committee on Government Organization to declare that electronic cigarettes are not tobacco products; and

WHEREAS, it is imperative that the provision to define electronic cigarettes as tobacco products is included in SB 140 to ensure that SB 140 contains sufficient safeguards to protect our youth from the dangers of electronic cigarette use; and

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that upon adoption of this Resolution, the City of Los Angeles hereby includes in its 2015-16 State Legislative Program SUPPORT for SB 140 (Leno) relative to electronic cigarettes IF AMENDED to recast and broaden the definition of "tobacco product" in State law to include electronic cigarettes.