

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David A. Bobardt, Community Development Director 

DATE: February 10, 2014 (CC Meeting of 2/19/2014)

SUBJECT: Consider Resolution Concurring with the Community Development Director's Determination under Section 17.20.030 of the Zoning Ordinance that Establishments that Primarily Sell Electronic Cigarettes and Supplies for Use both On-Site and Off-Site Shall Have the Same Review Requirements as Tobacco Stores and Making a Determination of Exemption from CEQA in Connection Therewith

BACKGROUND

The Community Development Department has in the past year received several inquiries from prospective businesses wishing to establish stores that primarily sell electronic cigarettes and supplies for both on-site and off-site use. This use is not listed in the use matrices (Sections 17.20.050 and 17.20.060) of the Zoning Ordinance. Section 17.20.030 allows for the Community Development Director to review a proposed use and determine the review requirements, based on the use being similar in nature, character, and intensity to one or more of the permitted uses.

At the present time, one prospective electronic cigarette retailer/vapor bar has notified staff of the desire to open such a business in the Moorpark Plaza shopping center and is seeking a permit from the City. Although Section 17.20.030 of the Zoning Ordinance can be initiated formally by a private entity paying a fee and submitting an application, staff believes that a determination on this use should be made in advance of any application and fee, based on the number of inquiries that are being received. A resolution has been prepared for Council consideration to concur with the Community Development Director's determination below on the review requirements for this use.

DISCUSSION

Electronic cigarettes, electronic vaping devices, and personal vaporizers, are all relatively recent inventions that utilize battery-powered heating elements that vaporize

liquid solutions such as propylene glycol, glycerin, or polyethylene glycol 400 mixed with flavorings and most often nicotine in variable concentrations. The devices are often made to look like cigarettes, cigars, or pipes. Electronic cigarette vapor bars typically combine retail sales of electronic cigarettes and supplies with a place where customers can use the electronic cigarette products. Drinks and snacks may be sold to accompany the electronic cigarette use.

Electronic cigarettes are not a recognized medical device to quit smoking. The World Medical Association has determined that electronic cigarettes, “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 replacement is established.

(World Medical Association. Statement on Electronic Cigarettes and Other Electronic Nicotine Delivery Systems. October 2012. www.wma.net/en/30publications/10policies/e19/index.html)

In addition, the U.S. Food and Drug Administration has raised concerns that electronic cigarettes, which are often marketed in appealing flavors, can increase nicotine addiction among young people and may lead youth to try conventional tobacco products.

(USFDA – E-Cigarette: Questions and Answers. 2010. www.fda.gov/forconsumers/consumerupdates/ucm225210.htm)

Federal law does not regulate the sale of electronic cigarettes. Under California Health and Safety Code Section 119405, the sale of electronic cigarettes to minors is prohibited. Although the smoking of tobacco in public places is regulated by State law under the Labor Code, Government Code, and Health and Safety Code, as well as locally by the Moorpark Municipal Code, neither State law nor the Moorpark Municipal Code currently regulates the use of electronic cigarettes in public places. A number of cities have adopted or are considering local regulations on the use of electronic cigarettes in public places.

Because 1) electronic cigarettes are primarily used as a method of delivering nicotine, a substance found in tobacco products, 2) electronic cigarettes are not a recognized medical device for the cessation of smoking and may increase nicotine addiction, and 3) State law prohibits the sale of electronic cigarettes to minors, the Community Development Director has determined that establishments that primarily sell electronic cigarettes and supplies for on-site or off-site use are most like “Tobacco stores, including but not limited to cigarette, cigar, and smoking paraphernalia shops,” as listed in Section 17.20.060(A)(26) of the Zoning Ordinance and would be subject to the same review requirements. Tobacco stores are currently allowed in the Commercial Planned Development (CPD) Zone after obtaining a Conditional Use Permit (CUP), which requires a noticed public hearing before the Planning Commission.

It should be noted that the CUP requirement for tobacco stores does not apply to stores that sell tobacco products where the sale of tobacco products is not a primary use (e.g. grocery stores, convenience stores, etc.) The same principle would apply to stores that

sell electronic cigarettes and supplies where their sale is not a primary use. Any change in Federal, State, or City regulations related to electronic cigarette sales or use could affect this determination.

ENVIRONMENTAL DETERMINATION

The Community Development Director has determined that the determination of review requirements under Section 17.20.030 is exempt from the California Environmental Quality Act of 1970 as amended, ("CEQA") on the grounds that the imposition of review requirements is not a project pursuant to State CEQA Guidelines Section 15061 (b)(3) because it can be seen with certainty that there is no possibility that the imposition of review requirements, as distinguished from the future approval of particular uses, may have a significant effect on the environment. This is because this determination is only imposing new review requirements on potential E-Cigarette establishments and uses and is not approving those establishments or uses.

FISCAL IMPACT

None.

STAFF RECOMMENDATION

Adopt Resolution No. 2014-_____.

Attachment:

Resolution No. 2014-_____

RESOLUTION NO. 2014-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, CONCURRING WITH THE COMMUNITY DEVELOPMENT DIRECTOR'S DETERMINATION UNDER SECTION 17.20.030 OF THE ZONING ORDINANCE THAT ESTABLISHMENTS THAT PRIMARILY SELL ELECTRONIC CIGARETTES AND SUPPLIES FOR USE BOTH ON-SITE AND OFF-SITE SHALL HAVE THE SAME REVIEW REQUIREMENTS AS TOBACCO STORES AND MAKING A DETERMINATION OF EXEMPTION FROM CEQA IN CONNECTION THEREWITH

WHEREAS, Section 17.20.030 of the Zoning Ordinance allows for the Community Development Director to review a proposed use that is not listed in the use matrices in Sections 17.20.050 and 17.20.060 of the Zoning Ordinance and determine the review requirements, based on the use being similar in nature, character, and intensity to one or more of the listed uses; and

WHEREAS, information from the World Medical Association and U.S. Food and Drug Administration has demonstrated that electronic cigarettes are primarily used as a method of delivering nicotine, a substance found in tobacco products, and electronic cigarettes are not a recognized medical device for the cessation of smoking and may increase nicotine addiction; and

WHEREAS, The California Health and Safety Code Section 119405 prohibits the sale of electronic cigarettes to minors; and

WHEREAS, based on the reasons above, the Community Development Director has determined that establishments that primarily sell electronic cigarettes and supplies for on-site or off-site use are most like "Tobacco stores, including but not limited to cigarette, cigar, and smoking paraphernalia shops," as listed in Section 17.20.060(A)(26) of the Zoning Ordinance and would be subject to the same zoning limitations and review requirements; and

WHEREAS, the Community Development Director has determined that the determination of review requirements under Section 17.20.030 is exempt from the California Environmental Quality Act of 1970, as amended, ("CEQA") on the grounds that the imposition of review requirements is not a project pursuant to State CEQA Guidelines Section 15061 (b)(3) because it can be seen with certainty that there is no possibility that the imposition of review requirements, as distinguished from the future approval of particular uses, may have a significant effect on the environment. This is because this determination is only imposing new review requirements on potential E-Cigarette establishments and uses and is not approving those establishments or uses.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. ENVIRONMENTAL DETERMINATION: The City Council concurs with the determination of the Community Development Director that the determination of

review requirements under Section 17.20.030 is exempt from the California Environmental Quality Act of 1970, as amended, ("CEQA") on the grounds that the imposition of review requirements is not a project pursuant to State CEQA Guidelines Section 15061 (b)(3) because it can be seen with certainty that there is no possibility that the imposition of review requirements, as distinguished from the future approval of particular uses, may have a significant effect on the environment. This is because this determination is only imposing new review requirements on potential E-Cigarette establishments and uses and is not approving those establishments or uses.

SECTION 2. DETERMINATION OF REVIEW REQUIREMENTS: The City Council concurs with the determination of the Community Development Director that establishments that primarily sell electronic cigarettes and supplies for on-site or off-site use are most like "Tobacco stores, including but not limited to cigarette, cigar, and smoking paraphernalia shops," as listed in Section 17.20.060(A)(26) of the Zoning Ordinance and would be subject to the same review requirements.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 19th day of February, 2014.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk