

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David A. Bobardt, Community Development Director 

DATE: February 10, 2014 (CC Meeting of 2/18/2015)

SUBJECT: Consider Resolution Directing the Planning Commission to Study, Hold a Public Hearing, and Provide a Recommendation to the City Council on an Amendment to Section 17.08.010 (Application of Definitions) of Chapter 17.08 (Definitions) and Section 17.20.060 (Permitted Uses in Commercial and Industrial Zones) of Chapter 17.20 (Uses by Zone) of the Zoning Ordinance Related to Electronic Cigarette Stores and Smoking or Vapor Lounges and Determination That This Action Is Not a Project Approval Subject to the California Environmental Quality Act

BACKGROUND

On February 19, 2014, the Community Development Director asked the City Council to concur with an interpretation that e-cigarette stores and vapor lounges were similar to tobacco stores, and that such uses should be restricted to the C-2 and CPD zones with a Conditional Use Permit required. One speaker at the City Council meeting was proposing a vapor lounge in Moorpark at the time and had indicated that he already signed a lease for the space and purchased the interior furnishings. The City Council directed the Community Development Director to consider a lesser permit for this use, such as an Administrative Permit, given the circumstances. On February 21, 2014, the Community Development Director issued a determination that electronic cigarette stores and vapor bars (lounges) are subject to an Administrative Permit in the C-2 and CPD zones.

Since this time, a total of two Administrative Permits have been granted for vapor lounges in Moorpark. No additional electronic cigarette stores or vapor lounges are currently proposed. Staff is now requesting City Council consideration of a resolution to initiate an amendment to the Zoning Ordinance for all new electronic cigarette stores and vapor lounges to be treated similarly to tobacco stores, restricted to the C-2 and CPD zones with a Conditional Use Permit required.

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 lounges 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 currently 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, all new 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 should 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 current 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. Should the City Council wish to amend the Zoning Ordinance to require either an Administrative Permit or Conditional Use Permit for stores that wish to sell tobacco or electronic cigarettes, but not as a primary use, such direction should be given at this time so that it could be considered as part of the Zoning Ordinance Amendment. Existing stores that currently sell tobacco or e-cigarettes as a non-primary use would be exempt from such new permit regulations, if adopted.

Draft amendments to the Zoning Ordinance are shown in Exhibit A of the attached resolution. Staff is currently reviewing other ordinances using different terms for electronic cigarettes and may amend these definitions prior to consideration by the Planning Commission.

ENVIRONMENTAL DETERMINATION

The action of the City Council at this time is not a "project approval" subject to the California Environmental Quality Act as it is only seeking the recommendation of the Planning Commission. The level of environmental review on such an ordinance will be determined prior to Planning Commission recommendation.

FISCAL IMPACT

None.

STAFF RECOMMENDATION

Adopt Resolution No. 2015-_____.

Attachment:
Resolution No. 2015-_____

RESOLUTION NO. 2015-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, DIRECTING THE PLANNING COMMISSION TO STUDY, HOLD A PUBLIC HEARING, AND PROVIDE A RECOMMENDATION TO THE CITY COUNCIL ON AN AMENDMENT TO SECTION 17.08.010 (APPLICATION OF DEFINITIONS) OF CHAPTER 17.08 (DEFINITIONS) AND SECTION 17.20.060 (PERMITTED USES IN COMMERCIAL AND INDUSTRIAL ZONES) OF CHAPTER 17.20 (USES BY ZONE) OF THE ZONING ORDINANCE RELATED TO ELECTRONIC CIGARETTE STORES AND SMOKING AND VAPOR LOUNGES AND DETERMINATION THAT THIS ACTION IS NOT A PROJECT APPROVAL SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, Section 17.44.050 of the Municipal Code provides that the City Council may initiate proceedings to consider amendments to the Zoning Ordinance by the adoption of a resolution of intent; and

WHEREAS, the City Council wishes to initiate proceedings to consider a Zoning Ordinance Amendment that would amend Section 17.08.010 (Application of Definitions) of Chapter 17.08 (Definitions) and Section 17.20.060 (Permitted Uses in Commercial and Industrial Zones) of Chapter 17.20 (Uses by Zone) of the Zoning Ordinance related to electronic cigarette stores and smoking or vapor lounges; and

WHEREAS, the Community Development Director has determined that the initiation of proceedings for a Zoning Ordinance Amendment is not a project approval subject to the California Environmental Quality Act.

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 initiation of proceedings for a Zoning Ordinance Amendment is not a project approval subject to the California Environmental Quality Act.

SECTION 2. INITIATION OF PROCEEDINGS: The City Council hereby authorizes the initiation of proceedings to consider a Zoning Ordinance Amendment that would amend Section 17.08.010 (Application of Definitions) of Chapter 17.08 (Definitions) and Section 17.20.060 (Permitted Uses in Commercial and Industrial Zones) of Chapter 17.20 (Uses by Zone) of the Zoning Ordinance Related to Electronic Cigarette Stores and Vapor Lounges as shown in Exhibit A, attached.

CC ATTACHMENT

SECTION 3. DIRECTION TO PLANNING COMMISSION: The Planning Commission is hereby directed to study, hold a public hearing, and provide a recommendation to the City Council on this matter.

SECTION 4. CITY CLERK CERTIFICATION AND FILING: 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 18th day of February, 2015.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

Exhibit A: Proposed Amendments to Zoning Ordinance

**EXHIBIT A
PROPOSED AMENDMENTS TO SECTIONS 17.08.010 AND 17.20.060
OF THE ZONING ORDINANCE**

SECTION 17.08.010 Application of definitions

The following definitions are added to this section:

“Electronic or “E” Cigarette” means an electronic or battery operated device that delivers vapors for inhalation, including every variation and type of such devices whether they are manufactured, distributed, marketed, or sold as an electronic cigarette, an “e” cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

“Electronic Cigarette Store” means a store that engages in retail trade primarily of electronic cigarettes and other vapor devices, e-juice, e-liquids or e-liquid cartridges or other vapor solutions.

“Tobacco Store” means a store that engages in retail trade primarily of tobacco products including but not limited to tobacco, cigarettes, cigars, pipe tobacco, chewing tobacco and snuff, and/or smoking paraphernalia, including but not limited to rolling paper or tubes, pipes, water pipes, hookahs, or other smoking devices.

“Smoking or Vapor Lounge” means a business established for the purpose of providing customers with a place to purchase and smoke tobacco products or purchase and use electronic cigarettes and supplies within the establishment.

SECTION 17.20.060 Permitted uses in commercial and industrial zones

Subsection A, Number 26 of Table 17.20.060 is amended as follows:

Zones	C-O	C-1	CPD C-2	C-OT	M-1	M-2	I
26. <u>Tobacco stores and electronic cigarette stores, including, but not limited to, cigarette, cigar, and smoking paraphernalia shops, and smoking or vapor lounges</u>			CUP				