

# CITY OF SOLANA BEACH

SOLANA BEACH CITY COUNCIL, SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY,  
PUBLIC FINANCING AUTHORITY, & HOUSING AUTHORITY



## AGENDA

### Joint REGULAR Meeting

Wednesday, February 26, 2020 \* 6:00 p.m.

City Hall / Council Chambers, 635 S. Highway 101, Solana Beach, California

- City Council meetings are video recorded and archived as a permanent record. The [video](#) recording captures the complete proceedings of the meeting and is available for viewing on the City's website.
- Posted Reports & Supplemental Docs contain records up to the cut off time prior to meetings for processing new submittals. Complete records containing meeting handouts, PowerPoints, etc. can be obtained through a [Records Request](#).

### PUBLIC MEETING ACCESS

The Regular Meetings of the City Council are scheduled for the 2nd and 4th Wednesdays and are broadcast live on Cox Communications-Channel 19, Spectrum(Time Warner)-Channel 24, and AT&T U-verse Channel 99. The video taping of meetings are maintained as a permanent record and contain a detailed account of the proceedings. Council meeting tapings are archived and available for viewing on the City's [Public Meetings](#) webpage.

### AGENDA MATERIALS

A full City Council agenda packet including relative supporting documentation is available at City Hall, the Solana Beach Branch [Library](#) (157 Stevens Ave.), La Colonia Community Ctr., and online [www.cityofsolanabeach.org](http://www.cityofsolanabeach.org). Agendas are posted at least 72 hours prior to regular meetings and at least 24 hours prior to special meetings. Writings and documents regarding an agenda of an open session meeting, [received](#) after the official posting, and distributed to the Council for consideration, will be made available for public viewing at the same time. In addition, items received at least 1 hour 30 minutes prior to the meeting time will be uploaded online with the courtesy agenda posting. Materials submitted for consideration should be forwarded to the [City Clerk's department](#) 858-720-2400. The designated location for viewing of hard copies is the City Clerk's office at City Hall during normal business hours.

### SPEAKERS

Please submit a speaker slip to the City Clerk prior to the meeting, or the announcement of the Section/Item, to provide public comment. Allotted times for speaking are outlined on the speaker's slip for each agenda section: Oral Communications, Consent, Public Hearings and Staff Reports.

### SPECIAL ASSISTANCE NEEDED

In compliance with the Americans with Disabilities Act of 1990, persons with a disability may request an agenda in appropriate alternative formats as required by Section 202. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to the [City Clerk's office](#) (858) 720-2400 at least 72 hours prior to the meeting.

As a courtesy to all meeting attendees, please set cellular phones and pagers to silent mode  
and engage in conversations outside the Council Chambers.

### CITY COUNCILMEMBERS

**Jewel Edson**, Mayor

**Judy Hegenauer**, Deputy Mayor

**Kristi Becker**, Councilmember

**Kelly Harless**, Councilmember

**David A. Zito**, Councilmember

Gregory Wade  
City Manager

Johanna Canlas  
City Attorney

Angela Ivey  
City Clerk

**SPEAKERS:**

Please submit your speaker slip to the City Clerk prior to the meeting or the announcement of the Item. Allotted times for speaking are outlined on the speaker's slip for Oral Communications, Consent, Public Hearings and Staff Reports.

**READING OF ORDINANCES AND RESOLUTIONS:**

Pursuant to [Solana Beach Municipal Code](#) Section 2.04.460, at the time of introduction or adoption of an ordinance or adoption of a resolution, the same shall not be read in full unless after the reading of the title, further reading is requested by a member of the Council. If any Councilmember so requests, the ordinance or resolution shall be read in full. In the absence of such a request, this section shall constitute a waiver by the council of such reading.

**CALL TO ORDER AND ROLL CALL:**

**CLOSED SESSION REPORT:**

**FLAG SALUTE:**

**APPROVAL OF AGENDA:**

**PROCLAMATIONS/CERTIFICATES:** *Ceremonial*

None at the posting of this agenda

**PRESENTATIONS:** *Ceremonial items that do not contain in-depth discussion and no action/direction.*

None at the posting of this agenda

**ORAL COMMUNICATIONS:**

This portion of the agenda provides an opportunity for members of the public to address the City Council on items relating to City business and not appearing on today's agenda by submitting a speaker slip (located on the back table) to the City Clerk. Comments relating to items on this evening's agenda are taken at the time the items are heard. Pursuant to the Brown Act, no action shall be taken by the City Council on public comment items. Council may refer items to the City Manager for placement on a future agenda. The maximum time allotted for each presentation is THREE MINUTES (SBMC 2.04.190). Please be aware of the timer light on the Council Dais.

**COUNCIL COMMUNITY ANNOUNCEMENTS / COMMENTARY:**

*An opportunity for City Council to make brief announcements or report on their activities. These items are not agendaized for official City business with no action or substantive discussion.*

**A. CONSENT CALENDAR:** (Action Items) (A.1. - A.4.)

Items listed on the Consent Calendar are to be acted in a single action of the City Council unless pulled for discussion. Any member of the public may address the City Council on an item of concern by submitting to the City Clerk a speaker slip (located on the back table) before the Consent Calendar is addressed. Those items removed from the Consent Calendar by a member of the Council will be trailed to the end of the agenda, while Consent Calendar items removed by the public will be discussed immediately after approval of the Consent Calendar.

**A.1. Register Of Demands.** (File 0300-30)

Recommendation: That the City Council

1. Ratify the list of demands for January 25, 2020 – February 7, 2020.

[Item A.1. Report \(click here\)](#)

*Posted Reports & Supplemental Docs contain records up to the cut off time, prior to the start of the meeting, for processing new submittals. The final official record containing handouts, PowerPoints, etc. can be obtained through a Records Request to the City Clerk's Office.*

**A.2. General Fund Adopted Budget for Fiscal Year 2019-2020 Changes.** (File 0330-30)

Recommendation: That the City Council

1. Receive the report listing changes made to the Fiscal Year 2019-2020 General Fund Adopted Budget.

[Item A.2. Report \(click here\)](#)

*Posted Reports & Supplemental Docs contain records up to the cut off time, prior to the start of the meeting, for processing new submittals. The final official record containing handouts, PowerPoints, etc. can be obtained through a Records Request to the City Clerk's Office.*

**A.3. Emergency Corrugated Metal Pipes (CMP) Storm Drain Repairs – Notice of Completion.** (File 0850-40)

Recommendation: That the City Council

1. Adopt **Resolution 2020-025**:
  - a. Accepting as complete the Emergency Corrugated Metal Pipe Storm Drain Repairs constructed by PAL General Engineering, Inc.
  - b. Authorizing the City Clerk to file a Notice of Completion.

[Item A.3. Report \(click here\)](#)

*Posted Reports & Supplemental Docs contain records up to the cut off time, prior to the start of the meeting, for processing new submittals. The final official record containing handouts, PowerPoints, etc. can be obtained through a Records Request to the City Clerk's Office.*

**A.4. Adjustments to the Current Fiscal Year (FY) 2019/20 Seasonal/Temporary Salary Schedule, Management Salary Schedule, and Adding a Senior Civil Engineer Position to the Classification Plan.** (File 0520-10, 0510-20)

Recommendation: That the City Council

1. Adopt **Resolution 2020-020**:
  - a. Approving Salary Adjustments to the FY 2019/20 Part-Time/Temporary/Seasonal Salary Schedule and authorizing the City Manager to make any subsequent changes to the Salary Schedule in accordance with applicable laws.
  - b. Approving and adopting the creation and addition of the Senior Civil Engineer classification and position.
  - c. Approving and adopting the pay grade change on the FY 2019/20 Management Salary Schedule.

[Item A.4. Report \(click here\)](#)

*Posted Reports & Supplemental Docs contain records up to the cut off time, prior to the start of the meeting, for processing new submittals. The final official record containing handouts, PowerPoints, etc. can be obtained through a Records Request to the City Clerk's Office.*

**NOTE: The City Council shall not begin a new agenda item after 10:30 p.m. unless approved by a unanimous vote of all members present. (SBMC 2.04.070)**

**B. PUBLIC HEARINGS:** (B.1.)

This portion of the agenda provides citizens an opportunity to express their views on a specific issue as required by law after proper noticing by submitting a speaker slip (located on the back table) to the City Clerk. After considering all of the evidence, including written materials and oral testimony, the City Council must make a decision supported by findings and the findings must be supported by substantial evidence in the record. An applicant or designee(s) for a private development/business project, for which the public hearing is being held, is allotted a total of fifteen minutes to speak, as per SBMC 2.04.210. A portion of the fifteen minutes may be saved to respond to those who speak in opposition. All other speakers have three minutes each. Please be aware of the timer light on the Council Dais.

**B.1. Public Hearing: 675 Glenmont Dr., Applicant: Roemmich-Nottingham, Case DRP19-004, V19-001** (File 0600-40)

The proposed project meets the minimum zoning requirements under the SBMC, may be found to be consistent with the General Plan and may be found, as conditioned, to meet the discretionary findings required as discussed in this report to approve a DRP and VAR. Therefore, Staff recommends that the City Council:

1. Conduct the Public Hearing: Open the Public Hearing, Report Council Disclosures, Receive Public Testimony, and Close the Public Hearing.
2. Find the project exempt from the California Environmental Quality Act pursuant to Sections 15301 15302 of the State CEQA Guidelines; and
3. If the City Council makes the requisite findings and approves the project, adopt **Resolution 2020-024** conditionally approving a DRP and VAR to reconstruct a single-story, single-family residence, construct a 211 square-foot single-story addition, and perform associated site improvements at 675 Glenmont Drive, Solana Beach.

**[Item B.1. Report \(click here\)](#)**

*Posted Reports & Supplemental Docs contain records up to the cut off time, prior to the start of the meeting, for processing new submittals. The final official record containing handouts, PowerPoints, etc. can be obtained through a Records Request to the City Clerk's Office.*

**C. STAFF REPORTS:** (C.1. – C.5.)

*Submit speaker slips to the City Clerk.*

**C.1. Fiscal Year (FY) 2019-2020 Mid-Year Budget Adjustments.** (File 0330-30)

Recommendation: That the City Council

1. Adopt **Resolution 2020-026** revising appropriations in the Fiscal Year 2019/20 Budget.

**[Item C.1. Report \(click here\)](#)**

*Posted Reports & Supplemental Docs contain records up to the cut off time, prior to the start of the meeting, for processing new submittals. The final official record containing handouts, PowerPoints, etc. can be obtained through a Records Request to the City Clerk's Office.*

**C.2. Revised Climate Adaptation Chapter Amending the 2017 Climate Action Plan and Receive the 2019 Climate Action Plan Update.** (File 0410-05)

Recommendation: That the City Council

1. Adopt **Resolution 2020-021** and receive the 2019 CAP Update report.

[Item C.2. Report \(click here\)](#)

*Posted Reports & Supplemental Docs contain records up to the cut off time, prior to the start of the meeting, for processing new submittals. The final official record containing handouts, PowerPoints, etc. can be obtained through a Records Request to the City Clerk's Office.*

**C.3. Introduce (1<sup>st</sup> Reading) Ordinance 513 to Prohibit the Sale and Distribution of Flavored Tobacco Products.** (File 0230-10)

Recommendation: That the City Council

1. Introduce **Ordinance 513** adding Chapter 6.18 to the Solana Beach Municipal Code to prohibit the sale and distribution of flavored tobacco products.

[Item C.3. Report \(click here\)](#)

*Posted Reports & Supplemental Docs contain records up to the cut off time, prior to the start of the meeting, for processing new submittals. The final official record containing handouts, PowerPoints, etc. can be obtained through a Records Request to the City Clerk's Office.*

**C.4. Cancellation Policy for the Summer Day Camp Program.** (File 0390-23)

Recommendation: That the City Council

1. Adopt **Resolution 2020-027** approving a Cancellation Policy for the Summer Day Camp Program.

[Item C.4. Report \(click here\)](#)

*Posted Reports & Supplemental Docs contain records up to the cut off time, prior to the start of the meeting, for processing new submittals. The final official record containing handouts, PowerPoints, etc. can be obtained through a Records Request to the City Clerk's Office.*

**C.5. Citizen Commission Vacancy: Public Arts Commission Appointment.** (File 0120-06)

Recommendation: That the City Council

1. Appoint one (1) member to the Public Arts Commission nominated/appointed by *Council-at-large* for a term ending January 2022.

[Item C.5. Report \(click here\)](#)

*Posted Reports & Supplemental Docs contain records up to the cut off time, prior to the start of the meeting, for processing new submittals. The final official record containing handouts, PowerPoints, etc. can be obtained through a Records Request to the City Clerk's Office.*

**WORK PLAN COMMENTS:**

*Adopted June 12, 2019*

**COMPENSATION & REIMBURSEMENT DISCLOSURE:**

GC: Article 2.3. Compensation: 53232.3. (a) Reimbursable expenses shall include, but not be limited to, meals, lodging, and travel. 53232.3 (d) Members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency "City" at the next regular meeting of the legislative body.

**COUNCIL COMMITTEE REPORTS:** [Council Committees](#)

**REGIONAL COMMITTEES: (outside agencies, appointed by this Council)**

- a. City Selection Committee (meets twice a year) Primary-Edson, Alternate-Zito
- b. County Service Area 17: Primary- Harless, Alternate-Edson
- c. Escondido Creek Watershed Authority: Becker /Staff (no alternate).
- d. League of Ca. Cities' San Diego County Executive Committee: Primary-Becker, Alternate-Harless and any subcommittees.
- e. League of Ca. Cities' Local Legislative Committee: Primary-Harless, Alternate-Becker
- f. League of Ca. Cities' Coastal Cities Issues Group (CCIG): Primary-Becker, Alternate-Harless
- g. North County Dispatch JPA: Primary-Harless, Alternate-Becker
- h. North County Transit District: Primary-Edson, Alternate-Becker
- i. Regional Solid Waste Association (RSWA): Primary-Hegenauer, Alternate-Becker
- j. SANDAG: Primary-Zito, 1<sup>st</sup> Alternate-Edson, 2<sup>nd</sup> Alternate-Becker, and any subcommittees.
- k. SANDAG Shoreline Preservation Committee: Primary-Hegenauer, Alternate-Zito
- l. San Dieguito River Valley JPA: Primary-Hegenauer, Alternate-Zito
- m. San Elijo JPA: Primary-Zito, Primary-Becker, Alternate-City Manager
- n. 22<sup>nd</sup> Agricultural District Association Community Relations Committee: Primary-Edson, Primary-Harless

**STANDING COMMITTEES: (All Primary Members) (Permanent Committees)**

- a. Business Liaison Committee – Zito, Edson.
- b. Fire Dept. Management Governance & Organizational Evaluation – Harless, Hegenauer
- c. Highway 101 / Cedros Ave. Development Committee – Edson, Becker
- d. Parks and Recreation Committee – Zito, Harless
- e. Public Arts Committee – Edson, Hegenauer
- f. School Relations Committee – Hegenauer, Harless
- g. Solana Beach-Del Mar Relations Committee – Zito, Edson

**ADJOURN:**

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***Next Regularly Scheduled Meeting is March 11, 2020***

*Always refer the City's website Event Calendar for updated schedule or contact City Hall.*

[www.cityofsolanabeach.org](http://www.cityofsolanabeach.org) 858-720-2400

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**AFFIDAVIT OF POSTING**

STATE OF CALIFORNIA }  
COUNTY OF SAN DIEGO } §  
CITY OF SOLANA BEACH }

I, Angela Ivey, City Clerk of the City of Solana Beach, do hereby certify that this Agenda for the February 26, 2020 Council Meeting was called by City Council, Successor Agency to the Redevelopment Agency, Public Financing Authority, and the Housing Authority of the City of Solana Beach, California, was provided and posted on February 19, 2020 at 6:30 p.m. on the City Bulletin Board at the entrance to the City Council Chambers. Said meeting is held at 6:00 p.m., February 26, 2020, in the Council Chambers, at City Hall, 635 S. Highway 101, Solana Beach, California.

Angela Ivey, City Clerk  
City of Solana Beach, CA

### **UPCOMING CITIZEN CITY COMMISSION AND COMMITTEE MEETINGS:**

*Regularly Scheduled, or Special Meetings that have been announced, are posted on each Citizen Commission's Agenda webpage. See the [Citizen Commission's Agenda webpages](#) or the City's Events [Calendar](#) for updates.*

- **Budget & Finance Commission**
- **Climate Action Commission**
- **Parks & Recreation Commission**
- **Public Arts Commission**
- **View Assessment Commission**





## STAFF REPORT CITY OF SOLANA BEACH

**TO:** Honorable Mayor and City Councilmembers  
**FROM:** Gregory Wade, City Manager  
**MEETING DATE:** February 26, 2020  
**ORIGINATING DEPT:** City Manager's Office/City Attorney's Office  
**SUBJECT:** **Introduce (1<sup>st</sup> Reading) Ordinance 513 – Adding Chapter 6.18 to the Solana Beach Municipal Code to Prohibit the Sale and Distribution of Flavored Tobacco Products**

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### **BACKGROUND:**

Despite progress in reducing smoking, tobacco use is still the leading cause of preventable death in the United States. Tobacco kills more than 480,000 people in this country annually. Secondhand smoke causes another 41,000 preventable deaths each year in nonsmoking persons, according to the Centers for Disease Control and Prevention ("CDC"). Smoking, and now vaping, continues to be a public health crisis.

Flavored tobacco products have become increasingly popular and are sold for cigars, cigarillos, smokeless tobacco, shisha or hookah tobacco, and liquid nicotine solutions used in electronic cigarettes (e-cigarettes) which are discussed more in depth below. Flavored tobacco products come in a variety of flavors such as chocolate, berry, cherry, apple, wintergreen and peach and are sold in colorful packaging, which can make them especially appealing to young people. In 2009, the United States Food and Drug Administration ("FDA") banned cigarettes with characterizing flavors other than menthol (e.g., cherry, chocolate). Currently, the FDA does not ban flavors from other tobacco products, although, according to the FDA, research suggests flavors may also make these products more enticing to youth and young adults. Data from FDA's Population Assessment of Tobacco and Health found that nearly 80 percent of youth ages 12-17 and nearly 75% of young adults ages 18-25 who were current tobacco users in 2014 reported that the first tobacco product they ever used was flavored.

E-cigarettes are battery-powered products, usually delivering nicotine, flavorings and other chemicals that are often used in addition to or as an alternative to tobacco cigarettes. The devices allow the user to inhale nicotine in varying doses down to a

COUNCIL ACTION:

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zero dose. The liquid can contain flavoring with the nicotine or consist of just flavoring. E-cigarettes entered the marketplace around 2007, and since 2014, they have been the most commonly used tobacco product among youth in the United States. According to the Centers for Disease Control and Prevention (“CDC”), the number of middle and high school students who reported being current users of tobacco products increased 36%—from 3.6 million to 4.9 million students—between 2017 and 2018. This dramatic increase, which has erased past progress in reducing youth tobacco use, is directly attributable to a nationwide surge in e-cigarette use by adolescents. There were 1.5 million more youth e-cigarette users in 2018 than 2019, and those who were using e-cigarettes were using more often. Frequent use of e-cigarettes increased from 20% in 2017 to 28% in 2018 among current high school e-cigarette users. The FDA has reported, according to a 2013-2014 survey, 81% of youth e-cigarette users cited the availability of appealing flavors as the primary reason for use.

The widespread use of flavored tobacco products and e-cigarettes by youth (often referred to as “vaping”) has significant public health consequences. As stated by the Surgeon General, “Most e-cigarettes contain nicotine – the addictive drug in regular cigarettes, cigars and other tobacco products. Nicotine exposure during adolescence can harm the developing brain – which continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs.”

In addition, there is a growing body of research concluding that there are significant health risks associated with e-cigarette use. For example, daily e-cigarette use is associated with increased odds of a heart attack. And the American Lung Association has warned that the inhalation of harmful chemicals through vaping may cause irreversible lung damage and lung disease. Most recently, the CDC released a health advisory on a multistate outbreak of severe pulmonary disease associated with using e-cigarette products. The CDC report 215 possible cases of severe pulmonary diseases have been reported from 25 states and additional reports of pulmonary illness are under investigation. Some of these cases of severe pulmonary diseases have resulted in death. On August 27, 2019 the California Department of Public Health issued a Health Alert for “Vaping-Associated Pulmonary Injury” stating 36 cases of vaping-associated pulmonary injury requiring hospitalization have been reported to the California Department of Public Health since June. According to the California Department of Public Health, teenagers and young adults make up about half of the e-cigarette or vaping-associated pulmonary lung injury cases hospitalized in California, and the only common linkage is e-cigarette use.

The CDC also reports that, in addition to creating an epidemic of nicotine addiction among youth, e-cigarettes have also led to an acute public health crisis called EVALI. An ingredient in illegal tetrahydrocannabinol (“THC”) e-liquids, vitamin E acetate, has

been indicated as a chemical of concern in the EVALI outbreak. According to the CDC, many of the chemicals used in nicotine e-liquids may cause lung injury, similar to vitamin E acetate. Additionally, while these chemicals are widely available because they are commonly used in food and household products, which are “Generally Recognized as Safe” by the FDA, the impact when inhaled is unknown or dangerous.

Currently, the e-cigarette device market is largely unregulated; however, on January 2, 2020, the FDA issued a policy prioritizing enforcement against certain unauthorized flavored e-cigarette products, including fruit, candy, mint and dessert flavors from small, cartridge-based e-cigarettes. But menthol and tobacco-flavored e-cigarettes will be allowed to remain on the market. The FDA flavor ban will also entirely exempt large, tank-based vaping devices. Importantly, the policy still permits all flavors to continue to be sold in devices that cannot be refilled and are designed to be disposed of after the flavored nicotine has run dry. This is causing youth users to simply switch to disposable e-cigarettes. Under the policy, companies that do not cease manufacturing, distributing, and the sale of unauthorized flavored cartridge-based e-cigarettes (other than tobacco or menthol) within 30 days risk enforcement actions by the FDA. It is not yet clear how the FDA will enforce this policy, but it is anticipated that enforcement at a local level may be requested.

The State has banned the sale of e-cigarettes to persons under the age of 21, with the exception of active duty military personnel who must be at least 18 (*see* Bus. & Prof. Code secs. 22958, 22963). California also requires electronic cigarette cartridges and solutions to be sold in child-resistant packaging. (Health & Safety Code sec. 119406(a).) Cities and counties are also attempting to regulate the use and distribution of e-cigarettes products and cities have been granted the authority for such regulations which can be more restrictive than state law. (Gov. Code sec. 7597; Bus. & Prof. Code 22962.)

As of January 2020, several cities and counties throughout the state and country have restricted the sale of flavored tobacco products. Some communities have implemented full restrictions on flavored tobacco, including menthol. Others have excluded menthol and clove flavors. Still others have restricted the sale of flavored tobacco products for retailers within a certain distance of schools or youth oriented facilities. On January 14, 2020, the County of San Diego Board of Supervisors introduced an ordinance which includes a ban on vaping products and a temporary 1-year ban on the sale and distribution of e-cigarettes.

The action before the City Council is to introduce Ordinance 513 prohibiting the sale and distribution of flavored tobacco products.

### **DISCUSSION:**

At the current time, the City of Solana Beach prohibits smoking and the use of e-cigarettes in certain locations in the City. The draft ordinance proposes to prohibit the sale and distribution of flavored tobacco products including those used with e-cigarettes

which are used much more frequently by youth. The prohibition on the sale of flavored tobacco products, including menthol cigarettes and chewing tobacco, would go into effect six months after the effective date of this ordinance.

**CEQA COMPLIANCE STATEMENT:**

The adoption of this ordinance will not have a significant adverse effect on the environment because the ordinance only prohibits the sale and distribution of flavored tobacco products. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

**FISCAL IMPACT:**

There is no direct fiscal impact as a result of this item. However, enforcement of Ordinance 513, if adopted would be the responsibility of City Staff.

**OPTIONS:**

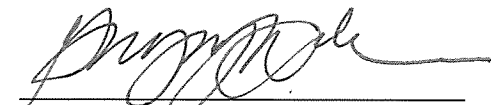
- Introduce Ordinance 513 adding Chapter 6.18 to the Solana Beach Municipal Code to Prohibit the Sale of Flavored Tobacco Products.
- Provide direction.

**DEPARTMENT RECOMMENDATION:**

Staff recommends the City Council introduce Ordinance 513 adding Chapter 6.18 to the Solana Beach Municipal Code to prohibit the sale and distribution of flavored tobacco products.

**CITY MANAGER'S RECOMMENDATION:**

Approve Department Recommendation.

  
\_\_\_\_\_  
Gregory Wade, City Manager

Attachments:

1. Ordinance 513
2. Centers for Disease Control and Prevention Health Advisory – August 30, 2019
3. California Department of Public Health Health Alert – August 27, 2019
4. Campaign for Tobacco-Free Kids – States and Localities that have Restricted the Sale of Flavored Tobacco Products

## **ORDINANCE 513**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, ADDING CHAPTER 6.18 TO THE SOLANA BEACH MUNICIPAL CODE TO PROHIBIT THE SALE AND DISTRIBUTION OF FLAVORED TOBACCO PRODUCTS**

**WHEREAS**, tobacco use remains the leading cause of preventable death in the United States, killing more than 480,000 people each year. It causes or contributes to many forms of cancer, as well as heart disease and respiratory diseases, among other health disorders. Tobacco use remains a public health crisis of the first order, in terms of the human suffering and loss of life it causes, the financial costs it imposes on society, and the burdens it places on our health care system; and

**WHEREAS**, the National Survey on Drug Use and Health in 2017 found that four-fifths of people who smoke become daily smokers before turning twenty-one. Developing adolescent brains are especially vulnerable to the effects of nicotine; and

**WHEREAS**, flavored tobacco products have also become increasingly popular and are sold for cigars, cigarillos, smokeless tobacco, shisha or hookah tobacco, and liquid nicotine solutions used in e-cigarettes. They come in a variety of flavors such as chocolate, berry, cherry, apple, wintergreen and peach and are sold in colorful packaging, which can make them especially appealing to young people; and

**WHEREAS**, e-cigarettes entered the marketplace around 2007, and since 2014, they have been the most commonly used tobacco product among youth in the United States and include flavors that are appealing to youth; and

**WHEREAS**, according to the Centers for Disease Control and Prevention (“CDC”), the number of middle and high school students who reported being current users of tobacco products increased 36%— from 3.6 million to 4.9 million students—between 2017 and 2018. This dramatic increase, which has erased past progress in reducing youth tobacco use, is directly attributable to a nationwide surge in e-cigarette use by adolescents; and

**WHEREAS**, the FDA has reported, according to a 2013-2014 survey, 81% of youth e-cigarette users cited the availability of appealing flavors as the primary reason for use; and

**WHEREAS**, the widespread use of flavored tobacco products and e-cigarettes by youth has significant public health consequences. As stated by the Surgeon General, “Most e-cigarettes contain nicotine – the addictive drug in regular cigarettes, cigars and other tobacco products. Nicotine exposure during adolescence can harm the developing brain – which continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs”; and

**WHEREAS**, there is a growing body of research concluding that there are significant health risks associated with e-cigarette use. For example, daily e-cigarette use is associated with increased odds of a heart attack. The American Lung Association has warned that the

inhalation of harmful chemicals through vaping may cause irreversible lung damage and lung disease; and

**WHEREAS**, on August 30, 2019, the CDC released a health advisory on a multistate outbreak of severe pulmonary disease associated with using e-cigarette products. The CDC report 215 possible cases of severe pulmonary diseases have been reported from 25 states and additional reports of pulmonary illness are under investigation. Some of these cases of severe pulmonary diseases have resulted in death; and

**WHEREAS**, on August 27, 2019 the California Department of Public Health issued a Health Alert for "Vaping-Associated Pulmonary Injury" stating 36 cases of vaping-associated pulmonary injury requiring hospitalization have been reported to the California Department of Public Health since June; and

**WHEREAS**, the City of Solana Beach wishes to address what appears from the evidence to be a major public health crisis and protect its youth;

**NOW, THEREFORE**, the City Council of the City of Solana Beach hereby ordains as follows:

**Section 1.** All of the above statements are true and correct and incorporated herein as findings.

**Section 2.** Chapter 6.18 is added to the Solana Beach Municipal Code to read as follows:

## **6.18 REGULATION OF THE SALE AND DISTRIBUTION OF FLAVORED TOBACCO PRODUCTS**

### **6.18.010 Purpose**

The City Council recognizes the inherent danger of tobacco products and that the use of tobacco products has devastating health and economic consequences. The City Council further recognizes that tobacco use is the leading cause of preventable illness and death in the United States, and that tobacco product use is started and established primarily during adolescence.

Allowing flavored tobacco products to be sold in the City increases access to these harmful and dangerous products. To that end, no flavored tobacco products shall be sold in the City except as specifically enumerated below.

### **6.18.020 Definitions.**

For purposes of this chapter, the following definitions shall apply:

"Characterizing flavor" means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product. Characterizing Flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a Distinguishable taste or aroma or both, as described in the first sentence of this definition, that constitutes a Characterizing Flavor.

“Distinguishable” means perceivable by either the sense of smell or taste.

“Distribute” or “Distribution” means the transfer, by any person other than a common carrier, of a Tobacco Product at any point from the place of manufacture or thereafter to the person who sells the tobacco product to an individual for personal consumption.

“Electronic Cigarette” has the meaning set forth in Section 30121 of the California Revenue and Taxation Code, as may be amended from time to time.

“Flavored Tobacco Product” means any Tobacco Product that imparts a Characterizing Flavor. A public statement or claim made or disseminated by the manufacturer of a Tobacco Product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such Tobacco Product, that such Tobacco Product has or produces a Characterizing Flavor shall constitute presumptive evidence that the Tobacco Product is a flavored Tobacco Product.

“Sell,” “Sale,” and “to Sell” mean any transaction where, for any consideration, ownership of a Tobacco Product is transferred from one person to another, including but not limited to any transfer or title or possession for consideration, exchange, or barter, in any manner or by any means.

“Tobacco Product” means any tobacco cigarette, electronic cigarette cartridge, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhaling, vaping or other manner of ingestion.

#### 6.18.030 Prohibition on Sale or Distribution of Flavored Tobacco Products

- A. It is unlawful to Sell or Distribute any Flavored Tobacco Product to a person in Solana Beach.
- B. There shall be a rebuttal presumption that a Tobacco Product, other than a cigarette, is a Flavored Tobacco Product if a manufacturer or any of the manufacturer’s agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor, including, but not limited to, text, color, and or/images on the product’s labeling or packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor.
- C. This section shall not apply to a product that has been approved by the Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes, where the product is marketed and sold solely for such an approved purpose.

#### 6.18.040 Enforcement.

- A. The city manager, or designee, is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this chapter, including, but not limited to, inspecting the premises of any business to verify compliance.
- B. Any person, business or tobacco retailer violating this chapter shall be guilty of an infraction, which shall be punishable by a fine in accordance with Chapters 1.16 or 1.18 of the Solana Beach Municipal Code, or a misdemeanor, which shall be punishable by a fine not exceeding one thousand dollars, or by imprisonment in the County Jail for a

period not exceeding six months or by both such fine and imprisonment. In addition to criminal fines, any person, business or tobacco retailer violating this chapter shall also be subject to civil penalties or administrative fines or both under Chapters 1.16 and 1.18 of the Solana Beach Municipal Code.

- C. The city attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. Administrative enforcement of this chapter shall proceed pursuant to Chapter 1.18 of the Solana Beach Municipal Code.
- E. Each violation of this chapter shall be considered a separate offense.
- F. The remedies and penalties provided in this section are cumulative and not exclusive, and nothing in this chapter shall preclude any person from pursuing any other remedies provided by law.
- G. Notwithstanding any other provision of this chapter, this chapter may be enforced through any remedy as provided for in this section upon its effective date.

#### 6.18.050 No Conflict with Federal or State Law

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.

#### 6.18.060 Severability

If any section, subsection, sentence, clause, phrase, or word of this chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this chapter. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable..

**Section 3.** The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment..

**Section 4.** Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**EFFECTIVE DATE:** This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Solana Beach shall cause



this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

**INTRODUCED AND FIRST READ** at a regular meeting of the City Council of the City of Solana Beach, California, on the 12th day of February, 2020; and

**THEREAFTER ADOPTED** at a regular meeting of the City Council of the City of Solana Beach, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES: Councilmembers –  
NOES: Councilmembers –  
ABSTAIN: Councilmembers –  
ABSENT: Councilmembers –

\_\_\_\_\_  
JEWEL EDSON, Mayor

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
JOHANNA N. CANLAS, City Attorney

\_\_\_\_\_  
ANGELA IVEY, City Clerk



SUSAN FANELLI  
Acting Director

State of California—Health and Human Services Agency  
**California Department of Public Health**



GAVIN NEWSOM  
Governor

**Health Alert**  
**Vaping-Associated Pulmonary Injury**

August 27, 2019

**Key Messages**

- Since June, 36 cases of vaping-associated pulmonary injury requiring hospitalization have been reported to the California Department of Public Health (CDPH). Most patients report vaping the cannabis compounds THC and/or CBD, and some patients also report vaping nicotine products, although the exact cause of illness is not yet known.
- Clinicians who identify cases similar to those described in this health alert are asked to report the cases to their local health department.
- Local health departments should report new cases or direct any inquiries to the CDPH Duty Officer [dutyofficer@cdph.ca.gov](mailto:dutyofficer@cdph.ca.gov) or (916) 328-3605. Please also contact the CDPH Duty Officer when any vaping devices or supplies have been collected from a patient and can be turned over to CDPH for testing.

**Current Situation**

Physicians in California and at least 23 other states have documented over 200 cases of acute pulmonary disease associated with vaping over the past three months. Most patients in California report vaping cannabis products such as THC or CBD, and some report vaping nicotine-containing liquids as well. Some patients have reported using vaping products that they purchased from unlicensed, unregulated entities.

Patients typically present to the hospital with cough, difficulty breathing, fever, and sometimes vomiting and diarrhea. In many cases, the initial diagnosis was presumed to be infectious, but no evidence of infection or other process to explain the pulmonary disease was found. All cases in California have been hospitalized, with most requiring respiratory support with supplemental oxygen, high-flow oxygen, or bi-level positive airway pressure (BiPAP). At least ten patients had respiratory failure requiring mechanical ventilation. No deaths have been reported to date in California.

Local health departments are collecting information on vaping habits and products used from patients who are suspected of having vaping-associated pulmonary injury (VAPI).

CDPH Director's Office, MS 0500 • P.O. Box 997377, Sacramento, CA 95899-7377  
(916) 558-1700 • (916) 558-1762 FAX  
Department Website ([www.cdph.ca.gov](http://www.cdph.ca.gov))



**The numbers in California as of 8/27/2019:**

Total: 36 cases (24 men, 12 women)

Ages: 14-70 (median age 27)

Total counties: 13 counties across the state

**Information for Physicians and Hospitals**

The clinical presentation of VAPI can initially mimic common pulmonary diagnoses like pneumonia, but patients typically do not respond to antibiotic therapy. High clinical suspicion is necessary to make the diagnosis of VAPI. In some cases, patients sought care at outpatient clinics in the days prior to hospital presentation and received antibiotics for presumed pneumonia or bronchitis, which did not improve their symptoms.

**Action Items for Physicians:**

- 1) Ask patients presenting with respiratory complaints in both outpatient and inpatient settings about their use of vaping or “dabbing” devices, especially patients who had an initial diagnosis of pneumonia or bronchitis that did not respond to antibiotics. For patients who do vape, ask these follow-up questions:
  - **Type of vape used**
    - Do you vape nicotine-containing substances?
    - Do you vape substances that contain cannabis or cannabinoid compounds like THC and CBD?
  - **Amount of use**
    - When was the last time you vaped?
    - How often do you vape?
    - How long have you been vaping?
  - **Source**
    - Where do you purchase your vaping supplies?
    - What brands are your vaping devices, cartridges, and oils?
- 2) Report suspected cases to the local health department within one business day.
  - An official from your local health department may interview the patient or family members.
  - The local health department will contact the hospital lab to arrange the transfer of biospecimens remaining from the patient to the public health lab. You do not have to order any specific cultures or tests on blood or urine that you would not normally request for the care of the patient.
  - The local health department may collect vape devices and cartridges from the patient or family for testing.

**Clinical Information on Vaping-Associated Pulmonary Injury**

***Clinical course***

Patients typically present for care within a few days to weeks of symptom onset. At the time of hospital presentation, patients are often hypoxic and meet systemic inflammatory response syndrome (SIRS) criteria, including high fever. In some cases, patients had progressive respiratory failure following admission, leading to intubation.

Time to recovery for hospital discharge has been from days to weeks.

### ***Symptoms***

Commonly reported symptoms include:

- Shortness of breath, cough
- Fatigue, body aches
- Fever
- Vomiting, diarrhea

### ***Laboratory findings***

- Non-specific laboratory abnormalities have been reported, including elevation in white blood cell count, transaminases, procalcitonin, and inflammatory markers.
- Negative infectious disease testing (influenza, respiratory viral panel, cultures, etc.).

### ***Imaging***

Imaging abnormalities are typically bilateral and may be described as:

- Chest x-ray: pulmonary infiltrates or opacities
- Chest CT: ground-glass opacities

### ***Diagnosis***

VAPI is a clinical diagnosis of exclusion when infectious, rheumatologic, neoplastic, cardiac, or other processes cannot explain an acute pulmonary illness in a patient known to vape cannabinoids and/or nicotine. The diagnosis is commonly suspected when the patient does not respond to antibiotic therapy, and testing does not reveal an alternative diagnosis.

Common documented hospital diagnoses for these patients have included: acute respiratory distress syndrome (ARDS), sepsis, acute hypoxic respiratory failure, pneumonitis, and pneumonia.

### ***Treatment***

Guidelines for treatment of VAPI are not yet available.

- Most patients require supplemental oxygen via nasal cannula, high-flow oxygen, bi-level positive airway pressure (BiPAP), or mechanical ventilation.
- Anecdotally, treating physicians have trialed the use of steroids with some possible benefit. Information on dosing and duration of steroids is not available.

## **Information for Local Health Departments**

### **Background**

Vaping refers to the increasingly popular practice of inhaling vapor from an e-cigarette device, which works by heating a liquid that can contain nicotine, marijuana, or other drugs. The long-term health impacts of vaping are unknown. Some individuals also use a different type of device to heat and extract cannabinoids for inhalation in a process called “dabbing.” Both vaping and dabbing have been associated with VAPI.

### **Case Definition for Vaping-Associated Pulmonary Injury (VAPI)**

A case of VAPI meets the following criteria:

- Respiratory illness requiring hospital admission;
- History of vaping or dabbing within 90 days of symptom onset;
- Pulmonary infiltrates or opacities on chest radiograph or chest CT
- Clinical presentation is not explained by infectious or other alternate etiology.

Please see the attached case definition document for California's full working case definition, including criteria for confirmed versus probable cases. A revised national case definition may be issued in the coming days, and any resulting updates to California's case definition will be distributed at that time.

### **Suspected Cases**

- Local health departments (LHDs) may use the attached "VAPI case intake form" as a guide for the data to collect from reporting clinicians in order to determine if an individual meets the case definition, and also as a template for use in reporting cases to CDPH.
- LHDs are asked to report suspected cases and direct inquiries to the CDPH Duty Officer [dutyofficer@cdph.ca.gov](mailto:dutyofficer@cdph.ca.gov) or (916) 328-3605 within one business day. After-hours reporting is not expected. Please do not send protected health information (PHI) to the Duty Officer e-mail account.
- Upon reporting a case to the CDPH Duty Officer, you will be contacted by a member of the CDPH staff, who will gather additional details from the case intake form and provide you with a link to a standardized patient interview. We ask that a member of the LHD staff complete the questionnaire with the patient or family member. If the LHD is unable to do so, CDPH staff can provide assistance.
- Please attempt to collect any vaping devices, cartridges, and liquids from affected patients and contact the CDPH Duty Officer [dutyofficer@cdph.ca.gov](mailto:dutyofficer@cdph.ca.gov) or (916) 328-3605 so that the product can be collected for testing. Keep samples sealed, stored in a secure manner, and ideally under refrigeration. Ensure samples are labeled with documentation that allows for identification of the case patient from which they were obtained and in a way consistent with the patient interview data collected on the standardized questionnaire.

This is an official  
**CDC HEALTH ADVISORY**

Distributed via the CDC Health Alert Network  
August 30, 2019, 0935 ET (9:35 AM ET)  
CDCHAN-00421

## **Severe Pulmonary Disease Associated with Using E-Cigarette Products**

### **Summary**

The Centers for Disease Control and Prevention (CDC) is providing: 1) background information on the forms of e-cigarette products, 2) information on the multistate outbreak of severe pulmonary disease associated with using e-cigarette products (devices, liquids, refill pods, and cartridges), and 3) clinical features of patients with severe pulmonary disease. This health advisory also provides recommendations for clinicians, public health officials, and the public based on currently available information.

### **General Background**

E-cigarettes typically contain nicotine, most also contain flavorings and other chemicals, and some may contain marijuana or other substances. They are known by many different names and come in many shapes, sizes and device types. Devices may be referred to as “e-cigs,” “vapes,” “e-hookahs,” “vape pens,” “mods,” tanks, or electronic nicotine delivery systems (ENDS). Some e-cigarette devices resemble other tobacco products such as cigarettes; some resemble ordinary household items such as USB flash drives, pens, and flashlights; and others have unique shapes. Use of e-cigarettes is sometimes referred to as “vaping” or “juuling.” E-cigarettes used for dabbing are sometimes called “dab” pens.

E-cigarettes can contain harmful or potentially harmful substances, including nicotine, heavy metals (e.g., lead), volatile organic compounds, and cancer-causing chemicals. Additionally, some e-cigarette products are used to deliver illicit substances; may be acquired from unknown or unauthorized (i.e., “street”) sources; and may be modified for uses that could increase their potential for harm to the user. For example, some e-cigarette pods or cartridges marketed for single use can be refilled with illicit or unknown substances. In addition, some e-cigarette products are used for “dripping” or “dabbing.” Dripping involves dropping e-cigarette liquid directly onto the hot coils of an e-cigarette which can result in high concentrations of compounds (e.g., tetrahydrocannabinol [THC] and cannabinoid compounds). Dabbing involves superheating substances such as “budder,” butane hash oil (BHO), and “710” that contain high concentrations of THC and other plant compounds (e.g., cannabidiol [CBD]).

Youth, young adults, pregnant women, as well as adults who do not currently use tobacco products should not use e-cigarettes. E-cigarettes containing nicotine have the potential to help some individual adult smokers reduce their use of and transition away from cigarettes. However, e-cigarettes are not currently approved by the Food and Drug Administration (FDA) as a quit smoking aid, and the available science is inconclusive on whether e-cigarettes are effective for quitting smoking.

### **Outbreak Background**

As of August 27, 2019, 215 possible cases have been reported from 25 states and additional reports of pulmonary illness are under investigation. One patient (in Illinois) with a history of recent e-cigarette use was hospitalized on July 29, 2019 with severe pulmonary disease and died on August 20, 2019. Although the etiology of e-cigarette-associated pulmonary disease is undetermined, epidemiologic investigations in affected states are ongoing to better characterize the exposures, demographic, clinical, and laboratory features and behaviors of patients. All patients have reported using e-cigarette products. The exact

number is currently unknown, but many patients have reported using e-cigarettes containing cannabinoid products such as THC or CBD.

Based on reports from several states, patients have experienced respiratory symptoms (cough, shortness of breath, or chest pain), and some have also experienced gastrointestinal symptoms (nausea, vomiting, or diarrhea) or non-specific constitutional symptoms (fatigue, fever, or weight loss). Symptoms typically develop over a period of days but sometimes can manifest over several weeks. Gastrointestinal symptoms sometimes preceded respiratory symptoms. Fever, tachycardia, and elevated white blood cell count have been reported in the absence of an identifiable infectious disease. Many patients have sought initial care in ambulatory settings, some with several visits, before hospital admission.

Radiologic findings have varied and are not present in all patients upon initial presentation. Bilateral pulmonary infiltrates and diffuse ground-glass opacities have been reported. Many patients required supplemental oxygen, some required assisted ventilation and oxygenation, and some were intubated. Some patients have been treated with corticosteroids with demonstrated improvement. Antimicrobial therapy alone has not consistently been associated with clinical improvement. Assessment for infectious etiologies has been completed in many patients without an identified infectious cause. Several patients from one state have been diagnosed with lipoid pneumonia based on clinical presentation and detection of lipids within bronchoalveolar lavage samples stained specifically to detect oil.

All patients have reported using e-cigarette products and the symptom onset has ranged from a few days to several weeks after e-cigarette use. Within two states, recent inhalation of cannabinoid products, THC or cannabidiol, have been reported in many of the patients. To date, no single substance or e-cigarette product has been consistently associated with illness. CDC is working closely with state health departments to facilitate collecting product specimens for testing at the U.S. FDA Forensic Chemistry Center.

### **Recommendations for Clinicians**

1. Report cases of severe pulmonary disease of unclear etiology and a history of e-cigarette product use within the past 90 days to your state or local health department. Reporting of cases may help CDC and state health departments determine the cause or causes of these pulmonary illnesses.
2. Ask all patients who report e-cigarette product use within the last 90 days about signs and symptoms of pulmonary illness.
3. If e-cigarette product use is suspected as a possible etiology of a patient's severe pulmonary disease, obtain detailed history regarding:
  - Substance(s) used: nicotine, cannabinoids (e.g., marijuana, THC, THC concentrates, CBD, CBD oil, synthetic cannabinoids [e.g., K2 or spice], hash oil, Dank vapes), flavors, or other substances
  - Substance source(s): commercially available liquids (i.e., bottles, cartridges, or pods), homemade liquids, and re-use of old cartridges or pods with homemade or commercially bought liquids
  - Device(s) used: manufacturer; brand name; product name; model; serial number of the product, device, or e-liquid; if the device can be customized by the user; and any product modifications by the user (e.g., exposure of the atomizer or heating coil)
  - Where the product(s) were purchased
  - Method of substance use: aerosolization, dabbing, or dripping
  - Other potential cases: sharing e-cigarette products (devices, liquids, refill pods, or cartridges) with others
4. Determine if any remaining product, including devices and liquids, are available for testing. Testing can be coordinated with the local or state health departments.
5. Consider all possible causes of illness in patients reporting respiratory and gastrointestinal symptoms and of e-cigarette product use. Evaluate and treat for other possible causes of illness (e.g., infectious,



- rheumatologic, neoplastic) as clinically indicated. Consider consultation with specialists (pulmonary, infectious disease, critical care, medical toxicology) as appropriate.
6. Clinical improvement of patients with severe pulmonary disease associated with e-cigarette use has been reported with the use of corticosteroids. The decision to use corticosteroids should be made on a case-by-case basis based on risks and benefits and the likelihood of other etiologies.
  7. Lipoid pneumonia associated with inhalation of lipids in aerosols generated by e-cigarettes has been reported based on the detection of lipid-laden alveolar macrophages obtained by bronchoalveolar lavage (BAL) and lipid staining (e.g., oil red O). The decision about whether to perform a BAL should be based on individual clinical circumstances.
  8. Lung biopsies have been performed on some patients. If a lung biopsy is obtained, lipid staining may be considered during pathologic examination, and is best performed on fresh tissue. Routine pathology tissue processing (including formalin-fixation and paraffin-embedding) can remove lipids. Conducting routine tissue processing and histopathologic evaluation is still important. Consider consultation with specialists in pulmonary medicine and pathology to help inform any evaluation plan.
  9. Patients who have received treatment for severe pulmonary disease related to e-cigarette product use should undergo follow-up evaluation as clinically indicated to monitor pulmonary function.

### **Recommendations for Public Health Officials**

1. State public health officials should promptly notify CDC about possible cases via [VapingAssocIllness@cdc.gov](mailto:VapingAssocIllness@cdc.gov).
2. Contact CDC at [VapingAssocIllness@cdc.gov](mailto:VapingAssocIllness@cdc.gov) for case classification criteria, reporting guidelines, case investigation forms, and questions about this outbreak.
3. Consider conducting case-finding activities that use existing data sources (e.g., local poison control center, coroner and medical examiner's office, and other applicable surveillance systems including syndromic surveillance). CDC has developed two working syndromic surveillance definitions (one version with specific symptoms and a second focused on e-cigarette product use). CDC will be programming these definitions in CDC's National Syndromic Surveillance Program's BioSense/ESSENCE platform for case-finding within the platform.
4. Consider asking the medical examiner or coroner's office and other pathologists to report possible cases, especially those without an alternative, likely diagnosis. If individuals are identified after death or at autopsy who showed signs of severe pulmonary disease as described above, medical examiners and coroners are encouraged to report the cases to their local or state health department. Thorough sampling of trachea, bronchi, and lung parenchyma with collection of fresh lung tissue for staining of lipids (e.g., oil red O) and submission of formalin-fixed, paraffin-embedded tissues for routine histopathology are recommended. For further consultation, public health officials can contact CDC's Infectious Diseases Pathology Branch at [pathology@cdc.gov](mailto:pathology@cdc.gov).
5. State health department officials seeking technical assistance with an epidemiologic investigation can contact CDC at [VapingAssocIllness@cdc.gov](mailto:VapingAssocIllness@cdc.gov). State health department officials seeking technical assistance with laboratory testing can discuss with their state health department laboratories or contact CDC at [VapingAssocIllness@cdc.gov](mailto:VapingAssocIllness@cdc.gov).

### **Recommendations for the Public**

1. While this investigation is ongoing, if you are concerned about these specific health risks, consider refraining from using e-cigarette products.
2. Regardless of the ongoing investigation, anyone who uses e-cigarette products should not buy these products off the street (e.g., e-cigarette products with THC, other cannabinoids) and should not modify e-cigarette products or add any substances to these products that are not intended by the manufacturer.
3. Regardless of the ongoing investigation, e-cigarette products should not be used by youth, young adults, pregnant women, as well as adults who do not currently use tobacco products. If you use e-cigarette products, monitor yourself for symptoms (e.g., cough, shortness of breath, chest pain) and promptly seek medical attention if you have concerns about your health. CDC and FDA will continue to advise and alert the public as more information becomes available.

4. Adult smokers who are attempting to quit should use evidence-based treatments, including counseling and FDA-approved medications. If you who need help quitting tobacco products, including e-cigarettes, contact your doctor.
5. If you are concerned about harmful effects from e-cigarette products, call your local poison control center at: 1-800-222-1222.
6. We encourage the public to submit detailed reports of any unexpected tobacco or e-cigarette-related health or product issues to the FDA via the online Safety Reporting Portal:  
<https://www.safetyreporting.hhs.gov>.

### For More Information

- For assistance with managing patients suspected of illness related to recreational, illicit, or other drugs, call your local poison control center at: 1-800-222-1222.
- Information on electronic cigarettes and similar devices: <https://www.cdc.gov/e-cigarettes>
- CDC Press Statement: <https://www.cdc.gov/media/releases/2019/s0821-cdc-fda-states-e-cigarettes.html>
- CDC Clinical Outreach and Communication Activity announcement: <https://emergency.cdc.gov/newsletters/coca/081619.htm>
- CDC's National Syndromic Surveillance Program's BioSense/ESSENCE: <https://www.cdc.gov/nssp/index.html>
- For more information, visit CDC Info: <https://www.cdc.gov/cdc-info/index.html>

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*The Centers for Disease Control and Prevention (CDC) protects people's health and safety by preventing and controlling diseases and injuries; enhances health decisions by providing credible information on critical health issues; and promotes healthy living through strong partnerships with local, national, and international organizations.*

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**Categories of Health Alert Network messages:**

<b>Health Alert</b>	Requires immediate action or attention; highest level of importance
<b>Health Advisory</b> incident or situation	May not require immediate action; provides important information for a specific
<b>Health Update</b> incident or situation	Unlikely to require immediate action; provides updated information regarding an
<b>HAN Info Service</b>	Does not require immediate action; provides general public health information

##This message was distributed to state and local health officers, state and local epidemiologists, state and local laboratory directors, public information officers, HAN coordinators, and clinician organizations##



## STATES & LOCALITIES THAT HAVE RESTRICTED THE SALE OF FLAVORED TOBACCO PRODUCTS

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Cigarettes with specific characterizing flavors, other than menthol, were prohibited in the U.S. on September 22, 2009, as part of the Family Smoking Prevention and Tobacco Control Act (TCA) that gave the U.S. Food and Drug Administration (FDA) authority over tobacco products. In addition to the federal ban on flavored cigarettes, states and localities can implement additional sales restrictions to address menthol cigarettes and flavored non-cigarette tobacco products and their appeal to youth and young adults.

In September 2019, Michigan became the first state to ban the sale of all flavored e-cigarettes as the result of an emergency order by the Governor. Another two states and over 220 localities have passed restrictions\* on the sale of flavored tobacco products, although laws differ in their application to specific products and store types (see endnotes). Prior to the enactment of the Tobacco Control Act, New Jersey had already restricted the sale of flavored cigarettes, excluding menthol and clove flavors. Maine prohibits the sale of flavored non-premium cigars.

Over 50 of these communities—those listed in **bold**—restrict the sale of menthol cigarettes, in addition to other flavored tobacco products.

### California (41)

1. **Alameda**
2. **Albany**
3. **Berkeley**<sup>1</sup>
4. **Beverly Hills**
5. Cloverdale
6. **Contra Costa County**<sup>1,3</sup>
7. **Corte Madera**
8. El Cerrito
9. Fairfax<sup>5</sup>
10. **Half Moon Bay**
11. **Hayward**<sup>1</sup>
12. **Hermosa Beach**<sup>2</sup>
13. **Lafayette**
14. **Larkspur**
15. **Livermore**
16. **Los Gatos**<sup>2</sup>
17. Manhattan Beach<sup>2</sup>
18. **Marin County**<sup>3</sup>
19. **Mono County**<sup>3</sup>
20. Novato
21. **Oakland**<sup>2</sup>
22. **Palo Alto**<sup>2</sup>
23. **Portola Valley**
24. **Richmond**
25. **Sacramento**
26. **San Anselmo**
27. **San Carlos**
28. **San Francisco**
29. San Leandro
30. **San Pablo**
31. **San Rafael**
32. **San Mateo County**<sup>3</sup>

### California (cont'd)

33. **Santa Clara County**<sup>2,3</sup>
34. **Santa Cruz**
35. **Santa Cruz County**<sup>3</sup>
36. Saratoga
37. **Sausalito**
38. Sonoma<sup>5</sup>
39. West Hollywood<sup>1</sup>
40. Windsor<sup>5</sup>
41. **Yolo County**<sup>3</sup>

### Colorado (4)

1. **Aspen**
2. Boulder<sup>6</sup>
3. **Carbondale**
4. **Glenwood Springs**

### Illinois (1)

1. **Chicago**<sup>1,2</sup>

### Massachusetts (161)

1. Adams<sup>2</sup>
2. Agawam<sup>2</sup>
3. Andover<sup>2</sup>
4. Amherst<sup>2</sup>
5. Arlington<sup>2</sup>
6. Ashburnham<sup>2</sup>
7. Ashby<sup>2</sup>
8. **Ashland**<sup>2</sup>
9. Athol<sup>2</sup>
10. Attleboro<sup>2</sup>
11. Avon<sup>2</sup>
12. Ayer<sup>2</sup>
13. **Barnstable**<sup>2</sup>

### Massachusetts (cont'd)

14. Bedford<sup>2</sup>
15. Belmont<sup>2</sup>
16. Beverly<sup>2</sup>
17. Billerica<sup>2</sup>
18. Bolton<sup>2</sup>
19. Boston<sup>2</sup>
20. Braintree<sup>2</sup>
21. Brewster<sup>2</sup>
22. Brockton<sup>2</sup>
23. **Brookline**
24. Buckland<sup>2</sup>
25. Cambridge<sup>2</sup>
26. Canton<sup>2</sup>
27. Carver<sup>2</sup>
28. Charlemont<sup>2</sup>
29. **Chatham**<sup>2</sup>
30. Chelsea<sup>2</sup>
31. Chelmsford<sup>2</sup>
32. Clinton<sup>2</sup>
33. Cohasset<sup>2</sup>
34. Concord<sup>2</sup>
35. Conway<sup>2</sup>
36. Danvers<sup>2</sup>
37. Dedham<sup>2</sup>
38. Deerfield<sup>2</sup>
39. Dracut<sup>2</sup>
40. Duxbury<sup>2</sup>
41. Easthampton<sup>2</sup>
42. E. Longmeadow<sup>2</sup>
43. Easton<sup>2</sup>
44. Edgartown<sup>2</sup>
45. Essex<sup>2</sup>
46. Everett<sup>2</sup>

**Massachusetts (cont'd)**

47. Fairhaven<sup>2</sup>
48. Fitchburg<sup>2</sup>
49. **Framingham**<sup>2</sup>
50. Franklin<sup>2</sup>
51. Gardner<sup>2</sup>
52. Gill<sup>2</sup>
53. Gloucester<sup>2</sup>
54. Grafton<sup>2</sup>
55. Granby<sup>2</sup>
56. Greenfield<sup>2</sup>
57. Groton<sup>2</sup>
58. Hadley<sup>2</sup>
59. Halifax<sup>2</sup>
60. Hamilton<sup>2</sup>
61. **Harvard**<sup>2</sup>
62. Hatfield<sup>2</sup>
63. Haverhill<sup>2</sup>
64. Holbrook<sup>2</sup>
65. Holden<sup>2</sup>
66. Holyoke<sup>2</sup>
67. Hopkinton<sup>2</sup>
68. Ipswich<sup>2</sup>
69. Lancaster<sup>2</sup>
70. Lanesboro<sup>2</sup>
71. Lawrence<sup>2</sup>
72. Leominster<sup>2</sup>
73. Lee<sup>2</sup>
74. Lenox<sup>2</sup>
75. Leverett<sup>2</sup>
76. Lowell<sup>2</sup>
77. Ludlow<sup>2</sup>
78. Lynn<sup>2</sup>
79. Lynnfield<sup>2</sup>
80. Malden<sup>2</sup>
81. Marblehead<sup>2</sup>
82. Marion<sup>2</sup>
83. Marlboro<sup>2</sup>
84. Marshfield<sup>2</sup>
85. Mashpee<sup>2</sup>
86. Maynard<sup>2</sup>
87. Medfield<sup>2</sup>
88. Medford<sup>2</sup>
89. Melrose<sup>2</sup>
90. Methuen<sup>2</sup>
91. Middleton<sup>2</sup>
92. Millis<sup>2</sup>
93. Milton<sup>2</sup>
94. Montague<sup>2</sup>

**Massachusetts (cont'd)**

95. Natick<sup>2</sup>
96. **Needham**<sup>2</sup>
97. Newburyport<sup>2</sup>
98. Newton<sup>2</sup>
99. Norfolk<sup>2</sup>
100. North Adams<sup>2</sup>
101. North Andover<sup>2</sup>
102. North Attleboro<sup>2</sup>
103. Northampton<sup>2</sup>
104. North Reading<sup>2</sup>
105. Norton<sup>2</sup>
106. Norwell<sup>2</sup>
107. **Norwood**<sup>2</sup>
108. Oak Bluffs<sup>2</sup>
109. Orange<sup>2</sup>
110. Orleans<sup>2</sup>
111. Palmer<sup>2</sup>
112. Peabody<sup>2</sup>
113. Pittsfield<sup>2</sup>
114. Provincetown<sup>2</sup>
115. Reading<sup>2</sup>
116. Rockport<sup>2</sup>
117. Royalston<sup>2</sup>
118. Salem<sup>2</sup>
119. Sandwich<sup>2</sup>
120. Saugus<sup>2</sup>
121. **Sharon**<sup>2</sup>
122. Shelburne<sup>2</sup>
123. Sherborn<sup>2</sup>
124. **Somerville**<sup>2</sup>
125. Southampton<sup>2</sup>
126. South Hadley<sup>2</sup>
127. Spencer<sup>2</sup>
128. Stockbridge<sup>2</sup>
129. Stoneham<sup>2</sup>
130. Stoughton<sup>2</sup>
131. Stow<sup>2</sup>
132. Sudbury<sup>2</sup>
133. Sunderland<sup>2</sup>
134. **Swampscott**<sup>2</sup>
135. Templeton<sup>2</sup>
136. Tewksbury<sup>2</sup>
137. Topsfield<sup>2</sup>
138. Townsend<sup>2</sup>
139. Tyngsboro<sup>2</sup>
140. Upton<sup>2</sup>
141. Uxbridge<sup>2</sup>
142. Wakefield<sup>2</sup>
143. **Walpole**<sup>2</sup>

**Massachusetts (cont'd)**

144. Wareham<sup>2</sup>
145. Watertown<sup>2</sup>
146. Webster<sup>2</sup>
147. Wellfleet<sup>2</sup>
148. West Boylston<sup>2</sup>
149. Westboro<sup>2</sup>
150. Westford<sup>2</sup>
151. Westminster<sup>2</sup>
152. Westwood<sup>2</sup>
153. Whately
154. Wilbraham<sup>2</sup>
155. Williamstown<sup>2</sup>
156. Wilmington<sup>2</sup>
157. Winchendon<sup>2</sup>
158. Winchester<sup>2</sup>
159. Winthrop<sup>2</sup>
160. Worcester<sup>2</sup>
161. Yarmouth<sup>2</sup>

**Minnesota (11)**

1. **Arden Hills**
2. **Duluth**<sup>2</sup>
3. **Falcon Heights**<sup>2</sup>
4. **Lauderdale**<sup>2</sup>
5. **Lilydale**
6. **Mendota Heights**
7. **Minneapolis**<sup>2</sup>
8. Robbinsdale<sup>2</sup>
9. St. Louis Park
10. **St. Paul**<sup>2</sup>
11. Shoreview<sup>2</sup>

**New York (2)**

1. New York City<sup>2,4</sup>
2. **Manheim**

**Rhode Island (6)**

1. Barrington<sup>2</sup>
2. Central Falls<sup>2</sup>
3. Johnston<sup>2</sup>
4. Middletown<sup>2</sup>
5. Providence<sup>2</sup>
6. Woonsocket<sup>2</sup>

MA localities courtesy of the Municipal Tobacco Control Technical Assistance Program. As of July 29, 2019 these policies cover over 67% of the state's population.

\*The above list may not be comprehensive. It includes communities that have passed restrictions, but some have future implementation dates and/or are the subject of litigation.

***Campaign for Tobacco-Free Kids, September 9, 2019 / Laura Bach***

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<sup>1</sup> Applies only to retailers within a certain distance of schools or youth oriented facilities.

<sup>2</sup> Exempts certain types of retailers, such as tobacco retailers (stores that receive a certain proportion of their revenue from tobacco), tobacco/smoking bars, e-cigarette establishments, adult-only retailers and/or liquor stores.

<sup>3</sup> Applies only to retailers in unincorporated areas of the County.

<sup>4</sup> Flavor restrictions do not apply to e-cigarettes.

<sup>5</sup> Exempts the following products: pipe tobacco; chewing tobacco and cigars sold in packages of 5 or more units; and single cigars exceeding \$5.

<sup>6</sup> Flavor restrictions only apply to e-cigarettes.