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CITY OF OAKLAND

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Supplementary Documentation Pertaining to Questions regarding the Oakland Children Smoking Prevention Ordinance that arose from the May 9, 2016 Life Enrichment Committee

1. Does this ordinance provide grounds for Police to arrest an individual for smoking a flavored tobacco product?

No. This ordinance does not prohibit the smoking or “vaping” of flavored tobacco products.

This ordinance prohibits tobacco retailers from selling flavored tobacco products. Section 5.91.030.C.1 provides: “[i]t shall be a violation of this Chapter for any tobacco retailer or any of the tobacco retailer’s agents or employees to sell or offer to sale, or to possess with intent to sell or offer for sale, any flavored tobacco product.”

2. Does this ordinance prohibit the “vaping” of cannabis products?

No. This ordinance does not prohibit the consumption of cannabis in any manner, whether vaping via an electronic smoking device or otherwise. As mentioned above, this ordinance prohibits tobacco retailers from selling a “flavored tobacco product. Cannabis, whether consumed via an electronic smoking device or otherwise, does not meet the definition of a “flavored tobacco product” under the ordinance.

The ordinance defines a “flavored tobacco product” as “any tobacco product which contains an ingredient that imparts a characterizing flavor.” Section 5.91.010. “Characterizing flavor” means “a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice; provided, however, that 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.” Id.

Here, cannabis is not a flavored tobacco product because it is not a tobacco product that contains a “characterizing flavor” (i.e. the flavor imparted by a Tobacco Product or any byproduct produced by the Tobacco Product).

3. Is there evidence that an unregulated market could develop from prohibiting the retail sale of flavored tobacco products in the City of Oakland?

Due to the landmark nature of this ordinance, there is no data available on whether or not a new unregulated market will result from the passage of this legislation. Based on responses from other jurisdictions with similar legislation (New York City, NY; Chicago, IL; Providence, RI; Minneapolis and Saint Paul, MN), there is no evidence that restrictions on the sale of flavored tobacco products created unregulated markets for these products. Unregulated markets of tobacco products have occurred in areas where there were large differences in taxation rate. For example, in the Northeast U.S. where many states are located in close proximity to one another, trafficking tobacco products from low to high taxation states has occurred. This would not be applicable for the proposed ordinance.

4. Does this ordinance restrict a product that people use for smoking cessation?

Electronic smoking devices are not approved by the Federal Drug Administration (FDA) as a smoking cessation product. FDA-approved smoking cessation products are available, and this ordinance does not impact sale of those products. While there is anecdotal evidence that some people have successfully used electronic smoking devices to quit smoking cigarettes, research has found that many people who attempt to quit smoking by using electronic smoking devices end up with dual use of both traditional tobacco and electronic smoking devices.¹

This ordinance prohibits tobacco retailers from selling flavored tobacco products. It does not prohibit the sale of non-flavored electronic smoking devices, nor does it prohibit the use or possession of electronic smoking devices.

¹ Borderud, S. P., Li, Y., Burkhalter, J. E., Sheffer, C. E. and Ostroff, J. S. (2014), Electronic cigarette use among patients with cancer: Characteristics of electronic cigarette users and their smoking cessation outcomes. *Cancer*, 120: 3527–3535. doi:10.1002/cncr.28811. See Also: Center for Disease Control and Prevention, “Dual Use of Tobacco Products”. <https://www.cdc.gov/tobacco/campaign/tips/diseases/dual-tobacco-use.html>. Accessed March 2017.