

Electronic Cigarettes

What is the technology?

Electronic cigarettes (e-cigs) have been promoted as a safer alternative to traditional cigarettes that can wean heavy smokers off their dangerous habit. E-cigs are battery operated devices designed to look like regular tobacco cigarettes. Like their conventional counterparts, they contain nicotine. E-cigs were invented in the 1960's, but did not really take off until a decade ago. The Tobacco Vapor Electronic Cigarette Association (TVECA) now estimates that roughly four million Americans use the battery-powered cigs. An atomizer heats a liquid containing nicotine, turning it into a vapor that can be inhaled. The by-product is a vapor cloud that resembles cigarette smoke. Manufacturers claim that electronic cigarettes are a safe alternative to conventional cigarettes. Starter kits usually run between \$30 and \$100. The estimated annual cost of replacement cartridges is \$600, compared to the more than \$1,000 a year it costs to feed a pack-a-day tobacco cigarette habit, according to the TVECA.

How does the technology affect local government?

E-cigs may lead to young people wanting to try traditional cigarettes. E-cigs have a potential for being marketed to kids through their fruity flavors. In California, state law (Health and Safety Code 119405) only prohibits the sale of e-cigarettes to minors while expressly referencing that California law is subject to federal regulation of the devices.

Only e-cigarettes that are marketed for therapeutic purposes are currently regulated by the FDA Center for Drug Evaluation and Research (CDER). Currently, the FDA Center for Tobacco Products (CTP) regulates: cigarettes, cigarette tobacco, roll-your-own tobacco,

and smokeless tobacco. The FDA has issued a proposed rule that would extend the agency's tobacco authority to cover additional products that meet the legal definition of a tobacco product, such as [e-cigarettes](#).

What are local governments doing about it?

Local governments are increasingly adopting ordinances regulating e-cigarettes. Some recent examples include:

- More than 45 communities in California have included e-cigarette regulations in their smoking ordinances (i.e. vaping, like smoking, is prohibited in publicly owned parks, sidewalks, etc.).
- Almost 60 California communities include e-cigarettes in their tobacco retailer license programs (i.e. retailers must obtain a city-issued license to sell e-cigs).
- Some cities are taking no action while the long term effects of e-cigs are further studied and until federal regulations are passed on the issue.
- Other municipalities are placing a moratorium on new establishments selling e-cigs, while such studies continue.

Critics of municipalities regulating e-cigs point to the perceived lack of evidence on the long term health hazards associated with e-cig use and stress the importance that the devices may have on weaning people off of traditional cigarettes. E-cigs remain legal so long as local governments take no action while the federal government mulls over how to regulate the devices.

Adding to local concerns are reports that e-cigarettes are now being adopted by teens smoking marijuana by replacing the nicotine with marijuana oil. Using e-cigs to smoke marijuana would elevate these issues to include the criminal statutes and penalties that govern marijuana use, with attendant complications for potential regulation.

Legal Issues To Watch Out For:

- Federal rules may preempt local regulation of e-cigarettes should the FDA choose to act and to reserve the area exclusively to the federal government.
- Classifying e-cigarettes for regulation may affect the scope of what localities can exercise control over.
- Whether e-cigarettes fit within current ordinances governing smoking in public places.
- Whether steps should be taken to regulate e-cigarettes now, or whether regulation should await further studies.



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