



CITY OF SARATOGA
Memorandum

To: Mayor Miller & Members of the Saratoga City Council

From: Debbie Bretschneider, City Clerk

Date: September 2, 2020

Subject: Agenda Item: 2.1. Ordinance Banning the Sale of Electronic Smoking Products
(Written Communications)

After publication of the agenda packet for the September 2, 2020 City Council Meeting, these written communications were received for Agenda Item: 2.1. Ordinance Banning the Sale of Electronic Smoking Products.

From: [REDACTED]
Subject: Submitting Public Testimony Letter - Agenda Item #2.1
Date: Wednesday, September 2, 2020 12:42:28 PM
Attachments: [FDA compliance Saratoga CA accessed 090120.csv](#)
[NATO Comments on Saratoga CA \(September 2 2020\).pdf](#)

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Good Afternoon City Clerk,

Please find attached a letter for public comment for tonight's city council meeting regarding agenda item #2.1. Should you have any questions, please feel free to contact me.

Thank you for your consideration.

Jaime Rojas

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National Association of Tobacco Outlets
Legislative Consultant





September 2, 2020

Mayor Howard Miller
Vice Mayor Mary-Lynne Bernald
Council Member Rishi Kumar
Council Member Yan Zhao
Saratoga City Council Members
City of Saratoga
13777 Fruitvale Ave
Saratoga, CA 95070

RE: Proposed Electronic Cigarette Products Ban

Dear Mayor Slayter and Councilmembers:

As the Executive Director of the National Association of Tobacco Outlets (NATO), a national retail trade association representing more than 60,000 retail stores nationally including several in Saratoga, I am writing to submit our comments and concerns regarding item 2.1 on your September 2, 2020 agenda that would prohibit the sale of all electronic smoking devices.

Federal and State Actions on Vapor Products Make Proposed Ordinance Unnecessary

The federal and state governments have been responding to the increase in use of electronic cigarette products by underage individuals. These actions are broad in scope and should be allowed to work to reduce tobacco usage before an outright local ban on electronic cigarette products is considered. These actions include:

- The FDA published an Enforcement Policy Guidance in February 2020 banning the sale of most flavored electronic cigarettes that have a removable cartridge or pod.
- In 2016, California became the second state to raise the legal age to purchase tobacco products, including electronic cigarettes to 21. This law addressed the access to and use of tobacco products by 18-, 19- and 20-year-olds.
- Just last week, the Legislature passed, and the Governor signed, SB 793, banning the sale of virtually all flavored tobacco products, including all flavored electronic cigarette products, effective January 1, 2021. This would mean only unflavored or tobacco flavored electronic cigarettes would be available in the state, items which no one contends are attractive to young people.

- The Vapor PACT is a bill moving through Congress, and already passed by the U.S. Senate, to restrict the on-line sale of electronic cigarettes to prevent underage individuals from obtaining these products over the Internet.
- Manufacturers must file Pre-Market Tobacco Applications with the FDA by September 9, 2020 for any new tobacco product that came on the market after February 15, 2007, effectively including all electronic cigarettes. If a manufacturer does not file an application with the FDA, their product must be removed from the market immediately. This federal deadline could result in many electronic cigarettes being removed from the marketplace next week.

Pandemic Impact and Economic Crisis Will Be Magnified by a Flavored Tobacco Product Ban:

During the current emergency caused by the Coronavirus is not the time for the City to consider prohibiting the sale of legal unflavored and tobacco flavored electronic cigarettes. Our convenience store members have experienced losses of 45% in gasoline sales and 20% or more in grocery, snack, beverage, and tobacco product sales, significant numbers because convenience stores usually rely on tobacco product sales, including electronic cigarette sales, for approximately 36% of in-store sales.

If even unflavored and tobacco flavored electronic cigarettes are removed from store shelves, legal-age customers will drive to an adjacent city to buy not only these products, but gasoline, grocery items and beverages. The result would be further losses on top of the combined 65% declines in gasoline and other product sales. These retailers have done everything possible to survive the pandemic, but may not survive an across-the-board ban on legal electronic cigarettes that results in even higher aggregate sales declines. Moreover, the closure of these stores will leave a deep void in the public's need for retailers that sell gas, food, and beverages.

Saratoga retailers have a perfect compliance check passing rate in retail tobacco compliance checks according to the Food and Drug Administration (see accompanying FDA retail compliance check report). Removing these electronic cigarettes from Saratoga retailers will incentivize adult consumers, many of whom have used electronic cigarettes to reduce or eliminate reliance on traditional cigarettes, to seek out these products over the Internet or from illicit sellers who do not care whether their customers are of legal age.

We urge the Saratoga City Council not to move forward with any attempt to impose a ban on all electronic cigarette products.

Sincerely,

Thomas A. Briant

NATO Executive Director

Compliance Check Inspections of Tobacco Product Retailers Through 7/24/20 - Search Results

You searched for:

City contains: Saratoga

State is CA

Retailer Name	Street Address	City	State	Zip	Minor Involved	Sale to Minor	Product Ty Brand	Flavor	Inspection	Decision Date	Inspection Link	Charges
SARATOGA B.P.	14395 BIG BASIN WAY	SARATOGA	CA	95070	No	No	N/A	N/A	Not availab	12/14/2015	No Violations Observed	N/A
THE BANK	14421 BIG BASIN WAY	SARATOGA	CA	95070	No	No	N/A	N/A	Not availab	12/3/2015	No Violations Observed	N/A
SARATOGA GAS CO/ VALERO	12600 SARATOGA AVE	SARATOGA	CA	95070	No	No	N/A	N/A	Not availab	12/3/2015	No Violations Observed	N/A
STOP N SAVE #124	12304 SARATOGA SUNNYVALE RD	SARATOGA	CA	95070	No	No	N/A	N/A	Not availab	12/1/2015	No Violations Observed	N/A
SAFEWAY STORE 919	12876 SARATOGA SUNNYVALE RD	SARATOGA	CA	95070	No	No	N/A	N/A	Not availab	12/1/2015	No Violations Observed	N/A
SARATOGA BOTTLE SHOP	1877 QUITO RD	SARATOGA	CA	95070	No	No	N/A	N/A	Not availab	12/1/2015	No Violations Observed	N/A
CVS/PHARMACY #09834	12940 SARATOGA SUNNYVALE RD	SARATOGA	CA	95070	Yes	No	N/A	N/A	Not availab	8/21/2013	No Violations Observed	N/A
STOP N SAVE #124	12304 SARATOGA SUNNYVALE RD	SARATOGA	CA	95070	Yes	No	N/A	N/A	Not availab	8/21/2013	No Violations Observed	N/A
SAFEWAY STORE 919	12876 SARATOGA SUNNYVALE RD	SARATOGA	CA	95070	Yes	No	N/A	N/A	Not availab	8/21/2013	No Violations Observed	N/A
SARATOGA B.P.	14395 BIG BASIN WAY	SARATOGA	CA	95070	Yes	No	N/A	N/A	Not availab	8/21/2013	No Violations Observed	N/A
SARATOGA BOTTLE SHOP	1877 QUITO RD	SARATOGA	CA	95070	Yes	No	N/A	N/A	Not availab	8/21/2013	No Violations Observed	N/A
SARATOGA GAS CO	12600 SARATOGA AVE	SARATOGA	CA	95070	Yes	No	N/A	N/A	Not availab	8/21/2013	No Violations Observed	N/A
HO GAS STATION	12015 SARATOGA SUNNYVALE RD	SARATOGA	CA	95070	Yes	No	N/A	N/A	Not availab	8/21/2013	No Violations Observed	N/A