



EASTERN SIERRA COUNCIL OF GOVERNMENTS (ESCOG)

REGULAR MEETING AGENDA

Friday, April 12, 2019

8:30 a.m.

Bishop City Council Chambers

301 West Line Street

Bishop, California

Board Members

Mono County Supervisor
Stacy Corless – Vice Chair

Inyo County Supervisor
Jeff Griffiths –Chair

Mono County Supervisor
Bob Gardner

Inyo County Supervisor
Dan Totheroh

Town of Mammoth Lakes Councilmember
Lynda Salcido

City of Bishop Councilmember
Jim Ellis

Town of Mammoth Lakes Councilmember
John Wentworth

City of Bishop Councilmember
Karen Schwartz

NOTICE TO THE PUBLIC

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting please contact the Clerk of the Board at 760-965-3603. Notification 48 hours prior to the meeting will enable the City of Bishop or Town of Mammoth Lakes to make reasonable arrangements to ensure accessibility to this meeting. (See 42 USCS 12132, 28CFR 35.130)

NOTE: Comments for all agenda items are limited to a speaking time of three minutes.

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Roll Call**
- 4. Public Comment** – Notice to the Public: This time is set aside to receive public comment on matters not calendared on the agenda. When recognized by the Chair, please state your name and address for the record and please limit your comments to

three minutes. Under California law the Eastern Sierra Council of Governments Board is prohibited from generally discussing or taking action on items not included in the agenda; however, the Eastern Sierra Council of Governments Board may briefly respond to comments or questions from members of the public. Therefore, the Eastern Sierra Council of Governments Board will listen to all public comment but will not generally discuss the matter or take action on it.

- 5. Update regarding ESCOG Staff Support, Town of Mammoth Lakes Assistant Clerk Angela DeLisle**
- 6. Approval of Minutes**
 - a. February 8, 2018**
 - b. December 8, 2017**
 - c. October 20, 2017**
 - d. August 11, 2017**
- 7. Update regarding Inyo Mono Broadband Consortium (IMBC) Advisory Council**
- 8. Discuss the potential ban of flavored tobacco**
- 9. Discuss Eastern Sierra Sustainable Recreation Partnership**
- 10. Update regarding Mammoth Yosemite Airport and Bishop Airport**
- 11. Update regarding next steps in considering formation of a Joint Powers Authority for the ESCOG**
- 12. Board and Council Reports**
- 13. Call for Agenda Items for Next Meeting**
- 14. Adjournment**



EASTERN SIERRA COUNCIL OF GOVERNMENTS (ESCOG)

REGULAR MEETING MINUTES

**Friday, February 8, 2019
8:30 a.m.
Mammoth Lakes Council Chamber
437 Old Mammoth Road, Suite Z
Mammoth Lakes, CA**

Board Members

| | |
|---|---|
| Mono County Supervisor Stacy Corless | Inyo County Supervisor Jeff Griffiths – Vice Chair |
| Mono County Supervisor Bob Gardner | Inyo County Supervisor Dan Totheroh |
| Town of Mammoth Lakes Councilmember Lynda Salcido | City of Bishop Councilmember Jim Ellis |
| Town of Mammoth Lakes Councilmember John Wentworth – Chair | City of Bishop Councilmember Karen Schwartz |

NOTICE TO THE PUBLIC

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NOTE: Comments for all agenda items are limited to a speaking time of three minutes.

1. Call to Order

The meeting started at 8:35 a.m.

2. Pledge of Allegiance

Chair Wentworth asked Matthew Paruolo to lead the pledge from the audience.

3. Roll Call

Board members Corless, Gardner, Salcido, Wentworth, Griffiths, Tothoroh, and Schwartz were present. Board member Ellis was absent.

4. **Public Comment** – Notice to the Public: This time is set aside to receive public comment on matters not calendared on the agenda. When recognized by the Chair, please state your name and address for the record and please limit your comments to three minutes. Under California law the Eastern Sierra Council of Governments Board is prohibited from generally discussing or taking action on items not included in the agenda; however, the Eastern Sierra Council of Governments Board may briefly respond to comments or questions from members of the public. Therefore, the Eastern Sierra Council of Governments Board will listen to all public comment but will not generally discuss the matter or take action on it.

SPEAKING FROM THE FLOOR

Matthew Paruolo, Eastern Sierra Sustainable Recreation Partnership (ESSRP) Coordinator, introduced himself and spoke about the Eastern Sierra Sustainable Recreation Partnership.

5. Election of Officers

ACTION: It was moved by Board member Corless, seconded by Board member Schwartz, and carried by a 7-0 vote to nominate and appoint Vice Chair Griffiths to the Chair position.

ACTION: It was moved by Board member Schwartz, seconded by Board member Corless, and carried by a 7-0 vote to nominate and appoint Board member Gardner to the Vice Chair position.

6. Committee Appointments

There was a discussion about the role of the Mammoth Inyo Airport Working Group. There was a discussion among the Board about which members wanted to serve on the committees.

ACTION: It was moved by Board member Gardner, seconded by Board member Schwartz, and carried by a 7-0 vote to nominate and appoint Board members Gardner, Salcido, Griffiths and Ellis to the Mammoth Inyo Airport Working Group and to appoint Board members Gardner, Wentworth, Griffiths and Schwartz to the ESCOG Joint Powers Authority (JPA) Ad Hoc Committee.

7. Approve the minutes of December 14, 2018

ACTION: It was moved by Board member Corless, seconded by Board member Schwartz, and carried by a 6-0 vote, with Board member Wentworth abstaining, to approve the minutes of December 14, 2018.

8. **Update regarding the Eastern Sierra Sustainable Recreation Partnership (ESSRP)**
a. Introduce ESSRP Coordinator Matthew Paruolo

- b. "Recreation Counties Attracting New Residents and Higher Incomes" (ATTACHMENT)
- c. Grant application to the Sierra Nevada Conservancy (ATTACHMENT)

Board member Wentworth spoke about a report by Headwaters Economics. There was a discussion among the Board about connections between forest management, recreation, and economic development.

Board member Wentworth spoke about the budget deliverables in the grant application. There was a discussion among the Board about the status and how the grant would be implemented.

13. Update regarding next steps in considering formation of a Joint Powers Authority for the ESCOG

This item was taken out of order.

Dan Holler, Town of Mammoth Lakes Town Manager, gave a report. He said that a JPA would be a standalone public agency and would have all of the responsibilities thereof. He spoke about costs to operate a new entity. He asked the Board to consider startup costs, PERS contract, HR costs/needs, etc.

Clint Quilter, Inyo County Administrator, said there will be administrative activities in the JPA that grants won't cover. He reminded the group that there is no funding for a grant application that is not successful. He warned about legal costs compounding when multiple agencies are asking their legal counsels for opinions. He advising having a formal arrangement for legal services.

Leslie Chapman, Mono County Administrator, spoke about reimbursement grants. She said that agencies might need to front \$100,000s prior to being reimbursed by a grant.

David Kelly, City of Bishop City Administrator, stated that the ability to get things done is going to be difficult without having a staff person dedicated to this JPA due to limited staffing availability from the four agencies.

Stacey Simon, Mono County Counsel, said she would update the draft JPA document to include the suggestions from the administrators. She said that Inyo County has a contract to provide legal services for ESTA, and she is not sure what the current cost is.

There was a discussion among the Board about cost and realistic expectations.

CONSENSUS: continue to move forward to make changes to the draft agreement.

9. Introducing the “Mountain Ventures Summit”

Board member Wentworth said this event is coming to Mammoth Lakes in March. He provided details of the event.

10. Update regarding Inyo Mono Broadband Consortium (IMBC) Advisory Council

This item was not discussed.

11. Update regarding Town of Mammoth Lakes Assistant Clerk position

Jamie Gray, Town of Mammoth Lakes Town Clerk, spoke about the recruitment process and provided an update on filling this position.

12. Update regarding Mammoth Yosemite Airport and Bishop Airport

Dan Holler spoke about operations at the Mammoth Yosemite Airport.

Clint Quilter spoke about the environmental review process for the Bishop Airport.

Board member Wentworth spoke about the impact of snow to the Mammoth Yosemite Airport.

14. Civility – discussion and introduction

Board member Gardner spoke about an item that the Mono County Board of Supervisors approved regarding the need for more civility at the federal government level.

15. Board and Council Reports

Board member Gardner said that Mono County just completed a mid-year review and State of the County and set strategic priorities for the rest of the year. He spoke about visiting the new cannabis retail business in June Lake. He said Mono County approved a marijuana cultivation business in Walker/Coleville.

Board member Schwartz reported on the celebration of life for Jim Tatum. She said that Bishop entered into a purchase agreement with LADWP to transfer land to IMACA for affordable housing.

Board member Griffiths reported that Inyo County has gone through a review process for two marijuana dispensaries in the North Bishop area. He reported that the County has received a lot of cultivation permits for locations in the southern county as well as for two dispensaries. He spoke about hemp cultivation. He said that Inyo County has been giving conditional use permits

for Airbnb uses. He repowered that Adventure Trails requested that the State extend its pilot program for five more years.

Board member Wentworth spoke about the “IKON effect.” He said people are comparing Mammoth Mountain/the Eastern Sierra to other locations that also have IKON passes.

Board member Corless provided an update on the Mono County Civic Center project in Mammoth Lakes. She said she has been participating in the State’s Forest Management Taskforce Sierra Eastside Prioritization Group. She spoke about challenges with dealing with forest management at the local level.

There was a discussion among the Board about Firesafe Councils.

Board member Salcido spoke about the tax appeals that are coming in for Ormat and MMSA.

16. Call for Agenda Items for Next Meeting

No specific items were identified.

17. Adjournment

The meeting ended at 10:50 a.m.



EASTERN SIERRA COUNCIL OF GOVERNMENTS

MINUTES

Friday – December 8, 2017
Bishop City Council Chambers – 8:30 a.m.
301 West Line Street
Bishop, California

Eastern Sierra Council of Governments (ESCOG) Board Members

City of Bishop Councilmember Joe Pecsí

City of Bishop Councilmember Karen Schwartz – Chair

Inyo County Supervisor Jeff Griffiths

Inyo County Supervisor Mark Tillemans

Mono County Supervisor Stacy Corless

Mono County Supervisor Larry Johnston

Mono County Supervisor Bob Gardner – Alternate Board Member

Town of Mammoth Lakes Councilmember Shields Richardson

Town of Mammoth Lakes Councilmember John Wentworth – Vice Chair

1. CALL TO ORDER

Chair Schwartz called the meeting of the Eastern Sierra Council of Governments to order at 8:34 a.m. in the Bishop City Council Chambers.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Chair Schwartz.

3. ROLL CALL

Present: Board Members Pecsí, Griffiths, Tillemans, Corless, Alternate Board Member Gardner, Board Member Richardson, Vice Chair Wentworth, and Chair Schwartz

Alternate Mono County Board Member Bob Gardner was present in Board Member Johnston's absence.

Absent: Board Member Johnston

December 8, 2017

4. PUBLIC COMMENT - NOTICE TO THE PUBLIC: This time is set aside to receive public comment on matters not calendared on the agenda. When recognized by the Chair, please state your name and address for the record and please limit your comments to three minutes. Under California law the Eastern Sierra Council of Governments Board is prohibited from generally discussing or taking action on items not included in the agenda; however, the Eastern Sierra Council of Governments Board may briefly respond to comments or questions from members of the public. Therefore, the Eastern Sierra Council of Governments Board will listen to all public comment but will not generally discuss the matter or take action on it.

Public comments were made by:

Mammoth Lakes Tourism Executive Director John Urdi thanked everyone who participated in the air service planning meeting held on December 7, 2017 which is the beginning of several meetings to address the level of consistency and reliability at both Mammoth Yosemite Airport and Bishop Airport.

No further public comments were made.

5. APPROVE ESCOG BOARD MEETING MINUTES FOR JUNE 16, 2017 – Board consideration to approve the ESCOG Board Meeting Minutes for June 16, 2017.

No public comments were made.

Vice Chair Wentworth made a motion to approve the June 16, 2017 minutes as presented. Board Member Corless seconded the motion. Motion passed 7-0, with 1 abstention.

Ayes: Board Members Pecsí, Griffiths, Tillemans, Corless, Richardson, Vice Chair Wentworth, Chair Schwartz

Noes: None

Abstain: Alternate Board Member Gardner

Absent: Board Member Johnston

6. ESCOG Joint Powers Authority (JPA) Ad Hoc Committee – Representatives from each jurisdiction – Alternate Board Member Gardner, Board Members Griffiths, Pecsí, and Vice Chair Wentworth.

The Board discussed reviewing the initial intent of the original ESCOG Joint Powers Agreement with staff prior to moving forward with the approval of the proposed ESCOG Joint Powers Authority agreement and taking any further actions at this time. After further discussion, the Board came to a consensus and agreed that the ESCOG JPA Ad Hoc Committee will arrange for a consultant to facilitate a planning session with staff to re-address the intent of the original ESCOG Joint Powers Agreement to better understand why we should look at drawing up a new ESCOG Joint Powers Authority agreement.

Public comments were made by:

Steven Kalish, a resident of Swall Meadows, asked for clarification as to whether the ESCOG JPA Ad Hoc Committee meetings as well as the Airport Ad Hoc

Committee meetings will be noticed publicly and minutes taken like other Brown Act meetings. The ESCOG Board responded that if it is a standing committee meeting, with or without a quorum of a governing board, it is subject to the Brown Act. However, if it is an ad hoc committee set aside for one purpose that is temporary in nature, it is not subject to the Brown Act. Mr. Kalish acknowledged the Board's response stating that he was not challenging the Board, but wanted clarification. However, he stated that he would encourage the Board to make these meetings public.

No further public comments were made.

A motion was made by Board Member Tillemans to approve the ESCOG Joint Powers Authority (JPA) Ad Hoc Committee representatives from each jurisdiction: Alternate Board Member Gardner, Board Member Griffiths, Vice Chair Wentworth and Chair Schwartz. Alternate Board Member Gardner seconded the motion. Motion passed 8-0.

Ayes: Board Members Pecs, Griffiths, Tillemans, Corless, Alternate Board Member Gardner, Board Member Richardson, Vice Chair Wentworth, Chair Schwartz

Noes: None

Abstain: None

Absent: Board Member Johnston

Mayor Schwartz reported that it is expected that the ESCOG JPA Ad Hoc Committee will report back to the Board at their next meeting with their proposed mission(s).

7. ESCOG MONO-INYO AIRPORT WORKING GROUP AD HOC COMMITTEE – Representatives from each jurisdiction – Alternate Board Member Gardner, Board Member Griffiths, Vice Chair Wentworth, and Chair Schwartz.

Mayor Schwartz reviewed this item with the Board and explained that this item was placed on the ESCOG Board agenda since the motion taken at their October 20, 2017 meeting approved the Mammoth/Inyo Air Working Group Sub-Committee representatives, not for the Mono-Inyo Airport Working Group Ad Hoc Committee representatives. Therefore, the approval of the Mono-Inyo Airport Working Group Ad Hoc Committee representatives is under consideration.

No public comments were made.

A motion was made by Board Member Griffiths to approve the ESCOG Mono-Inyo Airport Working Group Ad Hoc Committee with representatives from each jurisdiction: Alternate Board Member Gardner, Board Members Griffiths, Pesci, and Vice Chair Wentworth. Alternate Board Member Gardner seconded the motion. Motion passed 8-0.

Ayes: Board Members Pecs, Griffiths, Tillemans, Corless, Alternate Board Member Gardner, Board Member Richardson, Vice Chair Wentworth, Chair Schwartz

Noes: None

Abstain: None

Absent: Board Member Johnston

Mayor Schwartz reported that it is expected that the ESCOG Mono-Inyo Airport Working Group Ad Hoc Committee will report back to the Board at their next meeting with their proposed mission(s).

It was also announced and discussed that due to the high interest level on this topic, the ESCOG Mono-Inyo Airport Working Group Ad Hoc Committee meetings will be publicly noticed.

8. CANNABIS REGULATIONS (Discussion) – Continue discussions on regional cannabis regulations – All Jurisdictions.

Board Member Tillemans recused himself from discussion on this item because of a potential conflict of interest as advised by legal counsel. Board Member Tillemans left the room at 9:05 a.m.

The Board continued discussions on regional cannabis regulations and continued discussions on creating a matrix to track each jurisdictions progress on this and other issues. No action was taken. No public comments were made.

Board Member Tillemans returned to the room at 9:07 a.m.

9. ECONOMIC DEVELOPMENT (Discussion) – Reports from each jurisdiction after meeting with administrators – All Jurisdictions.

Alternate Board Member Gardner reviewed this item with the Board and to follow up on the analysis he shared with the Board at their October 20, 2017 meeting. Discussion ensued on looking at the economic development demand for this region.

Public comments were made by:

Mammoth Lakes Tourism Executive Director John Urdi spoke to their relationships in working closely with not only Mono County but also in the past five years with Bishop Area Chamber of Commerce and Visitors Bureau Executive Director Tawni Thomson and Inyo County to promote this region. He expressed that they have all worked very closely together to build their current alliance with the National Park Service and to market this entire region as a whole, from fishing, to driving up highway 395, to going to the national parks.

No further public comments were made.

In conclusion, the Board asked that this topic be brought back to their next meeting and asked that City of Bishop Associate Planner Elaine Kabala be present to share the her report on the economic development discussions they had with Berkley Economic Development Office representative Liz Redmond-Cleveland back in July 2017.

10. HOUSING (Discussion) – Continue discussions on the progress of housing across the region – All Jurisdictions.

The Board continued discussions on the progress of housing across the region. Vice Chair Wentworth reported that the Town of Mammoth Lakes accepted the Mammoth Lakes Housing Action Plan and described their next steps; the Board asked to place the discussion on the Sierra Business Council Sierra Camp on their next meeting agenda; and Board Member Corless announced that Mono County Board of Supervisors accepted the Mono County Housing Needs Assessment in November 2017 identifying 120-180 housing units needed in the next ten years in Mono County. Board Member Corless said she would be happy to forward the Mono County Housing Needs Assessment to staff for ESCOG Board Members to view, and that she already forwarded a link to the Mammoth Lakes Housing Action Plan to staff so that it can be forwarded to the ESCOG Board to view as well. No action was taken. No public comments were made.

11. RECREATION – All Jurisdictions.

Vice Chair Wentworth reported on U.S. Forest Service activities, increased recreation focus updates, and the new County of Mono / Town of Mammoth Lakes joint position coming up for approval by the Mono County Board of Supervisors and the Town of Mammoth Lakes Town Council. The Board asked that this item be brought back for further discussion at their next meeting and to further discuss Senate Bill 5 for trail maintenance and other opportunities in our region.

12. REVIEW ESCOG PRIORITIES FOR 2018 – All Jurisdictions.

The Board asked that the following items be brought back to the next ESCOG meeting as priorities for 2018: Air Service, Recreation, Technology, Housing, Solid Waste, and Cannabis. The Board also mentioned that they should continue to discuss all items that they have listed thus far in their past agendas to be brought back to their future meetings as requested.

Board Member Corless announced that she would have to leave shortly. Chair Schwartz asked to address Item 14 on the agenda next in order to have Board Member Corless participate in the appointment of ESCOG officers for 2018. The Board quickly came to a consensus to do so.

The Board addressed Item 14 below and back to Item 13 thereafter.

13. REVIEW AND APPROVE ESCOG MEETING SCHEDULE FOR 2018 – All Jurisdictions.

A. Proposed ESCOG Meeting Schedule for 2018:

- Friday, February 16 in Mammoth Lakes
- Friday, April 20 in Bishop
- Friday, June 15 in Mammoth Lakes
- Friday, August 17 in Bishop
- Friday, October 19 in Mammoth Lakes
- Friday, December 14 in Bishop

The Board reviewed the proposed dates listed above. After a brief discussion, it was agreed to keep the ESCOG meetings on a Friday beginning at 8:30 a.m.

The only changes to the list above is to schedule the meeting in April to Thursday, April 19, 2018 at 8:30 am in Bishop, and the meeting in August to Thursday, August 16, 2018 at 8:30 a.m. in Bishop.

Board Member Corless left the meeting at 10:27 a.m.

A motion was made by Vice Chair Griffiths to approve the following ESCOG Meeting schedule for 2018 as follows:

Friday, February 16 in Mammoth Lakes
Thursday, April 19 in Bishop
Friday, June 15 in Mammoth Lakes
Thursday, August 16 in Bishop
Friday, October 19 in Mammoth Lakes
Friday, December 14 in Bishop

Board Member Pecsí seconded the motion. No public comments were made. Motion passed 7-0.

Ayes: Board Members Pecsí, Schwartz, Tillemans, Richardson, Alternate Board Member Gardner, Vice Chair Griffiths, and Chair Wentworth

Noes: None

Abstain: None

Absent: Board Member Johnston, Corless

14. CALL FOR AGENDA ITEMS FOR NEXT MEETING

The Board agreed to continue with their standing agenda items for 2018 as discussed. A discussion ensued on whether or not the ESCOG Board would be interested in including Alpine County in future ESCOG discussions. The Board came to a consensus to discuss this further at their next meeting.

15. BOARD AND COMMITTEE REPORTS

Board Members reported on Council/Board meetings, other agency meetings, and shared upcoming City/County projects.

16. ADJOURNMENT – TENTATIVE: Friday, February 16, 2018 at 8:30 a.m. Regular Meeting in the Mammoth Lakes Town Council Chambers located at 437 Old Mammoth Road, Suite Z, Mammoth Lakes, California.

Chair Wentworth adjourned the meeting at 10:51 a.m. to the ESCOG meeting scheduled for Friday, February 16, 2018 at 8:30 a.m. in the Mammoth Lakes Town Council Chambers.

John Wentworth, Chair

Approved on: _____

December 8, 2017



EASTERN SIERRA COUNCIL OF GOVERNMENTS

MINUTES

Friday – October 20, 2017
Mammoth Lakes Town Council Chambers – 8:30 a.m.
437 Old Mammoth Road, Suite Z
Mammoth Lakes, California

Eastern Sierra Council of Governments (ESCOG) Board Members

City of Bishop Councilmember Joe Pecsí
City of Bishop Councilmember Karen Schwartz – Chair
Inyo County Supervisor Jeff Griffiths
Inyo County Supervisor Mark Tillemans
Mono County Supervisor Stacy Corless
Mono County Supervisor Larry Johnston
Mono-County Supervisor Bob Gardner – Alternate Board Member
Town of Mammoth Lakes Councilmember Shields Richardson
Town of Mammoth Lakes Councilmember John Wentworth – Vice Chair

1. CALL TO ORDER

Chair Schwartz called the meeting of the Eastern Sierra Council of Governments to order at 8:45 a.m. in the Mammoth Lakes Town Council Chambers.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Board Member Griffiths.

3. ROLL CALL

Present: Board Members Pecsí, Griffiths, Tillemans, Corless, Alternate Board Member Gardner, Vice Chair Wentworth, and Chair Schwartz

Alternate Mono County Board Member Bob Gardner was present in Board Member Johnston's absence.

Absent: Board Members Johnston, Richardson

4. PUBLIC COMMENT - NOTICE TO THE PUBLIC: This time is set aside to receive public comment on matters not calendared on the agenda. When recognized by the Chair, please state your name and address for the record and please limit your comments to three minutes. Under California law the Eastern Sierra Council of Governments Board is prohibited from generally discussing or taking action on items not included in the agenda; however, the Eastern Sierra Council of Governments Board may briefly respond to comments or questions from members of the public. Therefore, the Eastern Sierra Council of Governments Board will listen to all public comment but will not generally discuss the matter or take action on it.

No public comments were made.

5. INYO-MONO BROADBAND CONSORTIUM (IMBC) ADVISORY COUNCIL UPDATES – IMBC Advisory Council Chair Ron Day and IMBC Advisory Council Member Christie Osborne.

IMBC Advisory Council Chair Ron Day and IMBC Advisory Council Member Christie Osborne made presentations updating the Board on IMBC Website Development and Regional Branding Program. No public comments were made.

6. ESCOG Joint Powers Authority – All Jurisdictions.

Vice Chair Wentworth and Alternate Board Member Gardner reviewed this item with the Board. After a discussion of ESCOG's authority and identification of future needs, the Board came to a consensus to appoint Chair Schwartz, Vice Chair Wentworth, Alternate Board Member Gardner and Board Member Griffiths to further research the formation of an Eastern Sierra Council of Governments Joint Powers Authority. Vice-Chair Wentworth agreed to take the lead of this sub-committee.

Public comments were made by:

County of Mono County Administrative Officer Leslie Chapman spoke to her concerns on 1. Lack of resources that the County of Mono has available to assist the ESCOG currently and if it becomes a Joint Powers Authority; 2. Taking action from two Mono County Board of Supervisors without approval from the entire Mono County Board of Supervisors; and 3. Administration of ESCOG Joint Powers Authority. Town of Mammoth Lakes Town Manager expressed similar concerns. No further public comments were made.

7. RELIABLE REGIONAL AIR SERVICE – Town of Mammoth Lakes and County of Inyo.

Vice Chair Wentworth and Board Member Tillemans reviewed this item with the Board. No public comments were made.

After a discussion on the Mammoth/Inyo Air Working Group (MIAWG) Sub-Committee and the need for a revision of the Air Service Sub-Committee membership, Alternate Board Member Gardner made a motion to appoint Vice Chair Wentworth and Board Members Pecs, Griffiths, and Alternate Board Member

Gardner to the Mammoth/Inyo Air Working Group Sub-Committee. Vice Chair Wentworth seconded the motion. Motion passed 7-0.

Ayes: Board Members Pecs, Griffiths, Tillemans, Corless, Alternate Board Member Gardner, Vice Chair Wentworth, Chair Schwartz

Noes: None

Abstain: None

Absent: Board Members Johnston, Richardson

8. CANNABIS REGULATIONS (Discussion) – Continue discussions on regional cannabis regulations – All Jurisdictions.

Board Member Tillemans recused himself from discussion on this item due to a potential conflict of interest and left the room at 10:24 a.m.

The Board continued discussions on regional cannabis regulations. No action was taken. No public comments were made.

At the conclusion of this topic's discussions, Board Member Tillemans returned to the room at approximately 10:35 a.m.

9. ECONOMIC DEVELOPMENT (Discussion) – Review of Economic Development spending across the region – County of Mono.

The Board continued discussions on regional economic development. Alternate Board Member Gardner handed out a document he created called, "Analysis of Eastern Sierra Economic Development Related Spending" which is based on the available data found on-line in each of their respective agency's (Bishop, Mammoth Lakes Tourism, Mono County, and Inyo County) budgets and financial statements. After further discussion, it was suggested that this preliminary data be shared with each agency's administrator for further input and to bring this item back to their next scheduled meeting for further discussion and evaluation. No action was taken. No public comments were made.

10. HOUSING (Discussion) – Continue discussions on the progress of housing across the region – All Jurisdictions.

The Board continued discussions on the progress of housing across the region to accommodate all levels of income and needs. No action was taken. No public comments were made.

11. RECREATION – All Jurisdictions.

Vice Chair Wentworth reported to the Board on his recent meetings with the U.S. Forest Service, increased focus on recreation, and an update on positions to be shared and benefited by both the County of Mono and the Town of Mammoth Lakes. No action was taken. No public comments were made.

12. CALL FOR AGENDA ITEMS FOR NEXT MEETING

The Board asked that the following items be brought to their next meeting.

- Review of priorities for 2018
- Appoint Chair and Vice Chair for 2018
- Continue economic development discussion after meeting with agency administrators
- Continue discussions on housing and to review the Town of Mammoth Lakes Housing Action Plan, to hear from the Sierra Business Council on their “Sierra Camp,” review Mono County’s Housing Needs Assessment, and to create a housing summary report for all jurisdictions.
- Continue discussions on recreation

13. ADJOURNMENT – Friday, December 8, 2017 at 8:30 a.m. Regular Meeting in the Bishop City Council Chambers located at 301 West Line Street, Bishop, California.

Chair Schwartz adjourned the meeting at 11:11 a.m. to the ESCOG meeting scheduled for Friday, December 8, 2017 at 8:30 a.m. in the Bishop City Council Chambers.

Karen Schwartz, Chair

Approved on: _____



EASTERN SIERRA COUNCIL OF GOVERNMENTS

MINUTES

Friday – August 11, 2017

Bishop City Council Chambers – 8:30 a.m.

301 West Line Street

Bishop, California

Eastern Sierra Council of Governments (ESCOG) Board Members

City of Bishop Councilmember Joe Pecsí

City of Bishop Councilmember Karen Schwartz – Chair

Inyo County Supervisor Jeff Griffiths

Inyo County Supervisor Mark Tillemans

Mono County Supervisor Stacy Corless

Mono County Supervisor Larry Johnston

Mono-County Supervisor Bob Gardner – Alternate Board Member

Town of Mammoth Lakes Councilmember Shields Richardson

Town of Mammoth Lakes Councilmember John Wentworth – Vice Chair

1. CALL TO ORDER

Chair Schwartz called the meeting of the Eastern Sierra Council of Governments to order at 8:34 a.m. in the Bishop City Council Chambers.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Chair Schwartz.

3. ROLL CALL

Present: Board Member Pecsí, Alternate Board Member Gardner, Board Member Richardson, and Chair Schwartz

Alternate Mono County Board Member Bob Gardner was present in Board Member Johnston's absence.

Board Member Corless joined the meeting at 8:37 a.m.

Absent: Board Members Griffiths, Tillemans, Johnston, and Vice Chair Wentworth

4. PUBLIC COMMENT - NOTICE TO THE PUBLIC: This time is set aside to receive public comment on matters not calendared on the agenda. When recognized by the Chair, please state your name and address for the record and please limit your comments to three minutes. Under California law the Eastern Sierra Council of Governments Board is prohibited from generally discussing or taking action on items not included in the agenda; however, the Eastern Sierra Council of Governments Board may briefly respond to comments or questions from members of the public. Therefore, the Eastern Sierra Council of Governments Board will listen to all public comment but will not generally discuss the matter or take action on it.

No public comments were made.

5. PRESENTATION - AFFORDABLE HOUSING IN BISHOP – Presented by City of Bishop City Administrator Jim Tatum.

City of Bishop City Administrator Jim Tatum reviewed this item with the ESCOG Board. After Mr. Tatum answered all of the Board member's questions, the Board briefly discussed the current work being done to address affordable housing in Mammoth Lakes. The Town of Mammoth Lakes is working on a housing plan which the Board would like to see added to a future meeting agenda for discussion. Board Member Richardson also mentioned that Cerro Coso College and Mammoth Hospital are also working on a housing development in Mammoth.

No public comments were made.

6. APPROVE ESCOG MINUTES FOR JUNE 16, 2017 (Action) - Board consideration to approve the ESCOG June 16, 2017 Minutes.

Chair Schwartz asked that this item be pulled at this time and be brought to the next scheduled meeting in order to have a quorum of Board Members that were present at that meeting to approve the June 16, 2017 minutes.

7. INYO-MONO BROADBAND CONSORTIUM ADVISORY COUNCIL UPDATE (Discussion) – Presented by Mono County & Town of Mammoth Lakes Information Technology Director/GIS Coordinator Nate Greenberg and Inyo-Mono Broadband Consortium Advisory Council Chair Ron Day.

Inyo-Mono Broadband Consortium (IMBC) Advisory Council Chair Ron Day and Information Technology Director/GIS Coordinator Nate Greenberg presented the Board with an update on the work progress being made by the IMBC Advisory Council. Mr. Day and Mr. Greenberg spoke to the development of IMBC Advisory Council's by-laws, as well as the IMBC's website, interactive service level map, and regional brand. Mr. Greenberg also brought up the fact that since IMBC Advisory Council is in its infancy, and are making decisions on how to proceed with the items they have been tasked to do, it is appropriate to ask the ESCOG Board as to how they would like for the Advisory Council to proceed on moving forward with items that are under their current scope of work. After a brief discussion, the Board came to a consensus that the Advisory Council should give an update to the ESCOG Board at their regularly scheduled

meetings in order to address any concerns the ESCOG Board may have on the direction that the Advisory Council is taking action on to complete their scope of work that the ESCOG Board has charged them with. After answering all of the Board's questions, the Board thanked Mr. Day, Mr. Greenberg, and the other volunteer Advisory Council Members for attending.

No public comments were made.

8. REVIEW OF REGIONAL MARIJUANA POLICIES (Discussion) – Continue discussions from each member agency on status and planning for regulation of marijuana cultivation and sales.

Town of Mammoth Lakes Assistant Planner Nolan Bobroff presented the Board with a review of the Town of Mammoth Lakes workshop on proposed cannabis regulations held on August 9, 2017. The workshop allowed their Planning Commission and the public to provide early input on the proposed Town of Mammoth Lakes cannabis regulations. The proposed regulations included: 1. Limits on the number of cannabis retailers, cultivators, and manufacturers; 2. Limitations on the zones that cannabis commercial uses are permitted; 3. Buffers from schools, day care centers, and youth centers; 4. Implementation of related taxes and an annual cannabis permit renewal fee; 5. Prohibition of outdoor cannabis grows; 6. Regulations pertaining to personal cannabis use; and 7. Application and operational standards. Further discussions will be held at the Town of Mammoth Lakes Planning Commission meeting in September.

County of Mono Assistant County Administrative Officer Tony Dublino spoke to cannabis regulations in Mono County. Mono County Planning Commission will be discussing this topic at their next meeting scheduled for August 17, 2017 and a workshop is scheduled with the Mono County Board of Supervisors on September 19, 2017. It is understood that the County does not have the opportunity to impose a tax until November 2018. However, they would like to have their ordinance addressing cannabis regulation in place by November 2017 in order to have it effective by January 1, 2018. If Mono County fails to have an ordinance in place, they will continue with the moratorium that is in place currently.

Chair Schwartz announced that the City of Bishop just adopted their ordinance (on July 24, 2017) entitled, "Medical Marijuana Dispensaries" and adding Title 17, Chapter 79 entitled, "Marijuana Cultivation and Marijuana-Related Businesses" which banned marijuana cultivation and businesses. The City does allow deliveries within the city limits with a license to do so and a limit on the number of medical marijuana plants allowed to be grown for personal use with restrictions.

County of Inyo County Administrative Officer Kevin Carunchio provided the Board with a written statement on the status of Inyo County's marijuana policies. The written communication stated that, "Based on input garnered during 13 community outreach meetings earlier this year, discussion at Board of Supervisor meetings, and guidance from the County's consultant, HdL, the working group (comprised of the Planning Director, Inyo-Mono Ag Commissioner, Public Works Director, County Counsel, Assistant County Counsel, and the County Administrative Officer) is nearing completion of a draft land use ordinance. The

working group is scheduled to meet the week of August 28, 2017 to finalize its internal working draft.” In summary, once the resulting comments have been considered and incorporated, the draft ordinance(s) will be presented to the Board of Supervisors for further discussion and input, along with a schedule for additional community presentations and stakeholder engagement, before initiating the codification process later this fall.

After further discussion, the Board came to a consensus to create a shared matrix that outlines cannabis regulations set by each ESCOG member agency. The Board agreed that this would be a great tool for each member agency to view and help monitor and evaluate cannabis regulations in their region.

No public comments were made.

9. SHORT-TERM RENTAL ROBOTS (Discussion) – All Jurisdictions.

The Board discussed short-term rentals and Transient Occupancy Tax (TOT) in their region. The City of Bishop shared their proposed ordinance addressing short-term rental of residential property that will be under consideration to adopt at their August 14, 2017 City Council meeting. After sharing what each member agency is experiencing in each of their short-term rental markets, the Board came to a consensus to create another shared matrix that outlines short-term rental regulations and TOT rates set by each ESCOG member agency. The Board agreed that this tool would be very useful for each member agency to continue to develop and evaluate short-term rental regulations and TOT rates in their region.

The Board also discussed the use of “robots” (software) to address the regulation of short-term rentals that are operating illegally and if use of such software would be useful or not in each of their respective agencies.

No public comments were made.

10. UNMANNED AIRCRAFT (OR AERIAL) VEHICLE (UAV)/DRONE POLICIES IN REGION (Discussion) - Inyo County.

Chair Schwartz asked that this item be pulled at this time and be brought to the next scheduled meeting since there was no Inyo County representative present to lead this discussion.

11. REGIONAL ECONOMIC DEVELOPMENT AUTHORITY CONVERSATIONS UPDATE (Discussion) – Town of Mammoth Lakes.

Board Member Corless reported that an initial meeting facilitated by City of Berkeley Economic Development Office representative Liz Redmond-Cleveland to discuss regional economic development was held in early July 2017. This meeting included a representative from each member agency’s Board/Council and staff members. The meeting resulted in a matrix outlining several economic development topics. After further discussion, the Board came to a consensus to continue these meetings on an ad-hoc basis with the same participants in order to develop a list of regional economic development priorities and to carefully

appoint staff resources to address these priorities in an efficient, non-redundant, manner going forward. No public comments were made.

12. CALL FOR AGENDA ITEMS FOR NEXT MEETING

City of Bishop Interim City Clerk Robin Picken reviewed the list of upcoming agenda items for the Board's review:

- A presentation on affordable housing from the Town of Mammoth Lakes
- Approve the ESCOG Board Minutes from June 16, 2017
- Inyo-Mono Broadband Consortium Advisory Council Update
- Unmanned aircraft (or aerial) vehicle (UAV)/drone policies in region
- Regional economic development with matrix
- Board Member Reports
- Economic development priority list
- Airport update
- Regional marijuana/cannabis policies with matrix (and invite local tribe members to join future meetings on this topic)
- Short-term rental regulations with matrix
- Policy on attendance at future meetings
- Place approved matrices on the ESCOG website
- Discuss smoke from local fires in the Area and its effects to the region

It was agreed that Chair Schwartz and Board Member Corless will attend future IMBC Advisory Council meetings. Staff will notify Inyo County representatives that one of them is also invited to attend future IMBC Advisory Council meetings.

13. ADJOURNMENT – Friday, October 20, 2017 at 8:30 a.m. Regular Meeting in the Mammoth Lakes Town Council Chambers located at 437 Old Mammoth Road, Suite Z, Mammoth Lakes, California.

Chair Schwartz adjourned the meeting at 10:39 a.m. to the ESCOG meeting scheduled for Friday, October 20, 2017 at 8:30 a.m. in the Mammoth Lakes Town Council Chambers.

Karen Schwartz, Chair

Approved on: _____



THE FLAVOR TRAP

How Tobacco Companies Are
Luring Kids with Candy-Flavored
E-Cigarettes and Cigars

American Academy
of Pediatrics



DEDICATED TO THE HEALTH OF ALL CHILDREN™



March 15, 2017

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Executive Summary

A 2009 federal law, the Family Smoking Prevention and Tobacco Control Act, prohibited the sale of cigarettes with characterizing flavors other than menthol or tobacco, including candy and fruit flavors. However, this prohibition did not apply to other tobacco products. In recent years, tobacco companies have significantly stepped up the introduction and marketing of flavored non-cigarette tobacco products, especially electronic cigarettes (e-cigarettes) and cigars.

This report documents the widespread availability of these flavored other tobacco products and the scientific evidence demonstrating that flavors play a critical role in the popularity of these products among youth. These flavored products are undermining the nation's overall efforts to reduce youth tobacco use and putting a new generation of kids at risk of nicotine addiction and the serious health harms that result from tobacco use. This report's key findings include:

- **In recent years, there has been an explosion of sweet-flavored tobacco products, especially e-cigarettes and cigars.** These products are available in a wide assortment of flavors that seem like they belong in a candy store or ice cream parlor – like gummy bear, cotton candy, peanut butter cup, cookies 'n cream and pop rocks for e-cigarettes and chocolate, wild berry, watermelon, lemonade and cherry dynamite for cigars. A 2014 study identified more than 7,700 unique e-cigarette flavors, with an average of more than 240 new flavors being added per month. Sales of flavored cigars have increased by nearly 50 percent since 2008, and flavored cigars made up more than half (52.1 percent) of the U.S. cigar market in 2015, according to Nielsen convenience store market scanner data. Further, the number of unique cigar flavor names more than doubled from 2008 to 2015, from 108 to 250.
- **These sweet products have fueled the popularity of e-cigarettes and cigars among youth.** While there has been a steep drop in youth use of traditional cigarettes, overall youth use of any tobacco product has remained steady in recent years due to the popularity of tobacco products like cigars and e-cigarettes – products that are predominantly flavored. From 2011 to 2015, current use of e-cigarettes among high school students increased more than ten-fold – from 1.5 percent to 16 percent – according to the National Youth Tobacco Survey (while the 2016 Monitoring the Future survey shows the first evidence of a decline in youth use of e-cigarettes, it also shows that e-cigarettes continue to be the most popular tobacco products among kids). In addition, more high school boys now smoke cigars than cigarettes – 14 percent vs. 11.8 percent.
- **Studies show that flavors play a major role in youth use of tobacco products such as e-cigarettes and cigars.** A government study found that 81 percent of kids who have ever used tobacco products started with a flavored product, including 81 percent who have ever tried e-cigarettes and 65 percent who have ever tried cigars. Youth also cite flavors as a major reason for their current use of non-cigarette tobacco products, with 81.5 percent of youth e-cigarette users and 73.8 percent of youth cigar users saying they used the product “because they come in flavors I like.”

- **Tobacco companies have a long history of developing and marketing flavored tobacco products as “starter” products that attract kids.** Flavors improve the taste and reduce the harshness of tobacco products, making them more appealing and easier for beginners – often kids – to try the product and ultimately become addicted. Since most tobacco users start before age 18, flavored tobacco products play a critical role in the industry’s marketing playbook. Flavors can also create the impression that a product is less harmful than it really is.
- **Strong FDA regulation is needed to protect kids from flavored tobacco products.** After years of delay, the U.S. Food and Drug Administration (FDA) in 2016 issued new rules for previously unregulated tobacco products, including e-cigarettes and cigars. Despite the strong evidence that flavored tobacco products are attracting and addicting a new generation of kids, legislation has been introduced in Congress that would greatly weaken FDA oversight of e-cigarettes and cigars, including the many candy-flavored products on the market. Congress should reject these proposals. In fact, the FDA should strengthen its rules by prohibiting all flavored tobacco products.



Introduction

Cigarettes with characterizing flavors other than menthol and tobacco were prohibited in the United States on September 22, 2009, as part of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), which gave the FDA authority over tobacco products.¹ Prior to 2009, tobacco companies marketed cigarettes with candy and fruit flavors, images and names that appealed to a young audience.

However, the prohibition on characterizing flavors did not apply to other tobacco products. In recent years, tobacco companies have significantly stepped up the introduction and marketing of flavored non-cigarette tobacco products, especially e-cigarettes and cigars (i.e., large cigars, small cigars and cigarillos). These products are widely available through convenience stores, other retail outlets and online retailers.

As this report documents, these flavored tobacco products are popular with kids, and the scientific evidence demonstrates that flavors play a major role in youth initiation and continued use of these products. The recent proliferation of flavored tobacco products also continues tobacco companies' long history of developing and marketing flavored products as "starter" products that attract kids.



These flavored products are undermining the nation's overall efforts to reduce youth tobacco use and putting a new generation of kids at risk of nicotine addiction and the serious health harms that result from tobacco use.

Flavored tobacco products contain nicotine, the highly addictive chemical that makes it so easy to get hooked on tobacco products and so hard to quit. The 2016 U.S. Surgeon General's Report, *E-Cigarette Use Among Youth and Young Adults*, warned that youth use of products containing nicotine in any form is unsafe, can cause addiction and can harm the developing adolescent brain, disrupting attention and learning. The U.S. Surgeon General's Report also concluded, "E-cigarette use is strongly associated with the use of other tobacco products among youth and young adults, including combustible tobacco products." The report further found that e-cigarette aerosol is not harmless and can contain harmful and potentially harmful constituents, including nicotine.²

Cigar smoking also poses serious health risks. According to the National Cancer Institute, cigar smoking causes cancer of the oral cavity, larynx, esophagus and lung, and cigar smokers are also at increased risk for aortic aneurysms. Daily cigar smokers, particularly those who inhale, have an increased risk of heart disease and chronic obstructive pulmonary disease (COPD).³

Given the health risks of these products and the role of flavors in promoting their use among youth, addressing the impact of flavored tobacco products must be a public health priority.



Trends in Youth Tobacco Use

Since 1997, current (past-month) cigarette use among high school students has declined by 70 percent, from 36.4 percent to a record-low 10.8 percent in 2015, according to the Youth Risk Behavior Survey (YRBS) conducted by the Centers for Disease Control and Prevention (CDC).⁴ However, the popularity of other tobacco products threatens to undermine progress in reducing overall youth tobacco use. The 2015 YRBS found that 31.4 percent of high school students reported using some form of tobacco in the past month, including cigarettes, smokeless tobacco, cigars or e-cigarettes. Another government survey, the National Youth Tobacco Survey (NYTS), found there was no significant decline in overall tobacco use from 2011-2015, with an estimated 4.7 million middle and high school students who were current tobacco users in 2015.⁵

E-cigarettes, first introduced to the U.S. marketplace in 2006-2007, have skyrocketed in popularity among kids, contributing to this stall in reducing overall tobacco use. From 2011-2015, past-month e-cigarette use increased more than ten-fold among high school students, from 1.5 percent to 16 percent, according to the NYTS, which has tracked youth e-cigarette use the longest of any survey.⁶ Recent data from another national survey, the 2016 Monitoring the Future survey, show the first evidence of a decline in youth use of e-cigarettes, but prevalence of e-cigarette use continues to exceed that of all other tobacco products.⁷ In at least 43 states, e-cigarette use among high school students exceeds cigarette smoking.⁸ Data from the 2015 NYT show that 13.1 percent of high school students who have never used another tobacco product have tried e-cigarettes.⁹ Earlier data from the NYTS show that the number of youth who had used e-cigarettes, but had never smoked a regular cigarette, increased from 79,000 in 2011 to more than 263,000 in 2013.¹⁰

MORE HIGH SCHOOL BOYS SMOKE CIGARS THAN CIGARETTES (2015)

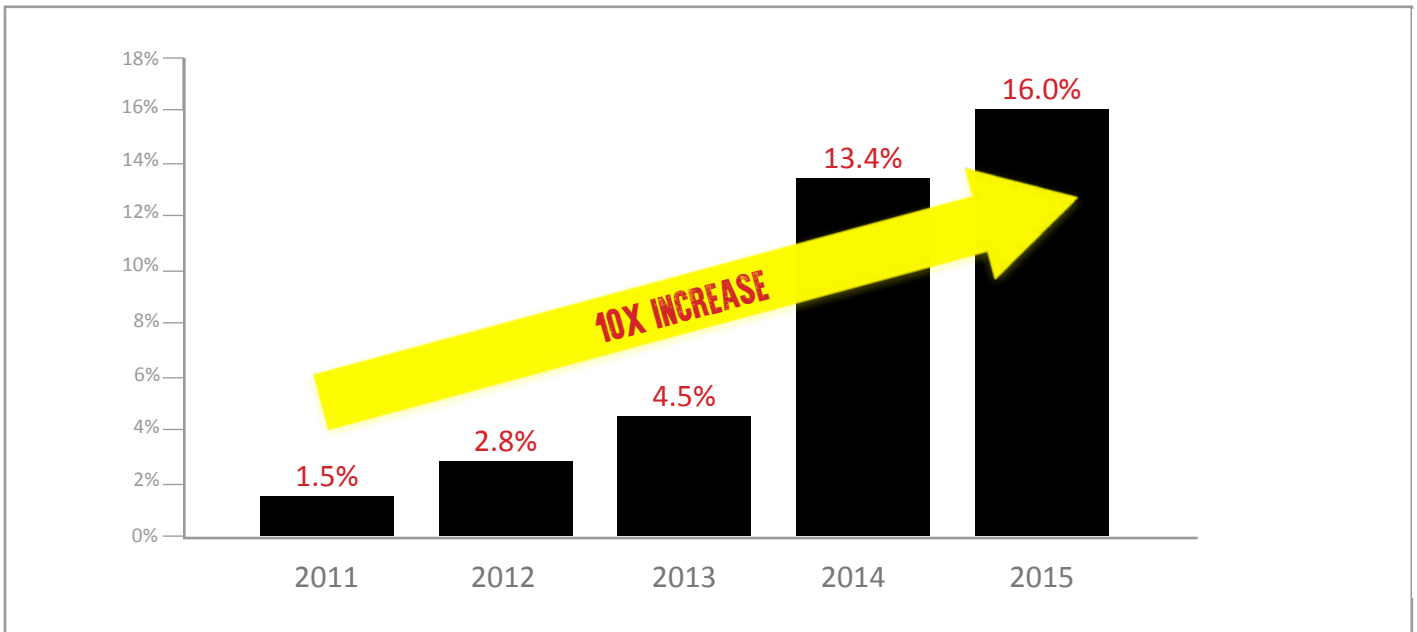


Source: CDC 2015 Youth Risk Behavior Survey

While overall cigar use has been declining in recent years, cigars remain popular among youth, particularly high school boys. While 11.8 percent of high school boys smoke cigarettes, 14 percent are current cigar smokers.¹¹ In at least 33 states, prevalence of cigar use equals or surpasses use of cigarettes among high school boys.¹²

The scientific evidence indicates these trends are linked to the growing market of flavored tobacco products.

HIGH SCHOOL E-CIGARETTE USE 2011-2015



Source: CDC National Youth Tobacco Survey



Flavored Tobacco Products Are on the Rise

Despite the FDA's ban on flavored cigarettes, the overall market for flavored tobacco products is growing. Continuing a long tradition of designing products that appeal explicitly to new users, tobacco companies in recent years have significantly stepped up the introduction and marketing of flavored other tobacco products (OTPs), particularly e-cigarettes and cigars, as well as smokeless tobacco and hookah (water pipes). Although tobacco companies claim to be responding to adult tobacco users' demand for variety, flavored tobacco products play a key role in enticing new users, particularly kids, to a lifetime of addiction. This growing market for flavored tobacco products is undermining the nation's overall progress in reducing youth tobacco use.

Tobacco companies market products in many kid-friendly flavors such as gummy bear, berry blend, chocolate, peach, cotton candy, strawberry and grape. A 2013 survey of internet tobacco retailers found that more than 40 percent of cigarette-sized cigars, machine-made cigars, moist snuff smokeless tobacco and dry snuff smokeless tobacco were flavored, including fruit, sweet and mint/menthol.¹³ An article in *Convenience Store News* stated that "flavored tobacco is offering a bright spot in the category," referring to the increased tobacco sales – and number of consumers – in stores that sell such products.¹⁴

Here's a look at the growing marketplace of flavored tobacco products:



CIGARS

Historically, cigar manufacturers designed flavored cigars to serve as “starter” smokes for youth and young adults because the flavorings helped mask the harshness, making the products easier to smoke.¹⁵ Recently, there has been an explosion of cheap, flavored cigars. Despite a 10 percent decline between 2014 and 2015, sales of all cigars (i.e., large cigars, cigarillos and small cigars) doubled between 2000 and 2015, from 6.1 billion cigars to 12.3 billion cigars, and sales have been generally increasing at a time when cigarette sales have been slowly declining.¹⁶

Much of the growth in cigar sales can be attributed to smaller types of cigars, many of them flavored. An industry publication stated, “While different cigars target a variety of markets, all flavored tobacco products tend to appeal primarily to younger consumers.”¹⁷ These products are often colorfully packaged and much cheaper than cigarettes; for instance, cigarillos can be priced as low as 3 or 4 for 99 cents, making them even more appealing to price-sensitive youth.

- There has been explosive growth in flavor options for cigars, such as candy, fruit, chocolate and various other kid-attracting tastes. The vice president of one distributor commented, “For a while it felt as if we were operating a Baskin-Robbins ice cream store” in reference to the huge variety of cigar flavors available – and, no doubt, an allusion to flavors that appeal to kids.¹⁸
- Flavored cigars have made a substantial contribution to the overall growth of the cigar market. 2015 Nielsen convenience store market scanner data show that sales of flavored cigars increased by nearly 50 percent since 2008. As a proportion of all cigar sales, the share of flavored cigars rose from 43.6 percent to 52.1 percent in 2015. Among flavored cigars sold in 2015, the most popular flavors were fruit (38.8 percent), sweet or candy (21.2 percent), and wine (17.0 percent). Further, the number of unique cigar flavor names more than doubled from 2008 to 2015, from 108 to 250.¹⁹

- The top five most popular cigar brands among 12- to 17-year olds who have used cigars – Black & Mild, Swisher Sweets, Al Capone, White Owl and Dutch Masters – all come in flavor varieties.²⁰ For example, Black & Mild cigars come in flavors such as apple, cherry vanilla and cherry; Swisher Sweets comes in a huge variety of flavors such as grape, chocolate, strawberry, peach and “sticky sweets”; and White Owl has flavors such as mango, peach and “very berry.” Altria, the nation’s largest tobacco manufacturer and parent company of Philip Morris USA, expanded its business to the cigar category in 2007 by acquiring John Middleton, Inc., which sells Black & Mild.
- The cigar industry acknowledges that flavors attract new users. The vice president of marketing for the international division of Swedish Match, which sells White Owl cigars and Game cigars in the U.S., stated, “It is mainly new recruits to cigar smoking who take to the new flavors, while long-time consumers still prefer the more traditional cigars.”²¹ Industry insiders also recognize the use of flavors for the uninitiated. The luxury lifestyle magazine, *Cigar Aficionado*, stated in an article, “More likely, flavored cigars serve as a bridge to premium cigars for the uninitiated, something to be smoked as an entryway into the world of cigar smoking. For the novice, a simple, sweet and easily identifiable flavor (honey or cherry, for example) is an easier step than moving into a box marked Cuban-seed Corojo.”²²
- Nielsen convenience store market scanner data also show an increasing number of “other” options have emerged in the past few years, using names that do not explicitly identify a flavor, such as Swisher’s “Wild Rush” and Altria’s “Jazz,” even though they are flavored. This could be an attempt by cigar manufacturers to circumvent local sales restrictions on characterizing flavors, which rely on definitions that describe flavors.²³



Since the Tobacco Control Act prohibited flavored cigarettes in 2009, cigarette makers have manipulated their products to qualify as “little” or “filtered” cigars.²⁴ For instance, the 2012 Surgeon General’s report, *Preventing Tobacco Use Among Youth and Young Adults*, noted that flavored cigarettes such as Sweet Dreams re-emerged as Sweet Dreams flavored cigars after the federal restriction on flavored cigarettes went into effect.²⁵ In October 2009, U.S. Representatives Henry Waxman and Bart Stupak sent letters to two flavored cigarette companies, Cheyenne International and Kretek International, that began making little cigars shortly after the federal flavored cigarette ban went into effect.²⁶ Rep. Waxman discovered that Kretek International intentionally changed its cigarettes to cigars to exploit a loophole in the Tobacco Control Act.²⁷ In December 2016, the FDA issued warning letters to four tobacco manufacturers – Swisher International, Inc., Cheyenne International LLC, Prime Time International Co. and Southern Cross Tobacco Company Inc. – for marketing and selling fruit-flavored cigarettes labeled as cigars, in violation of the Tobacco Control Act.²⁸



ELECTRONIC CIGARETTES

Although these products are relatively new to the market, the variety of flavors available for use in e-cigarettes has grown exponentially. E-cigarette marketing employs many of the same strategies used for years by cigarette manufacturers that proved so effective in reaching kids, such as celebrity endorsements, slick TV and magazine advertisements, and sports and music sponsorships. Another strategy has been the widespread marketing of e-cigarettes and nicotine “e-juice” with a wild assortment of candy, fruit and other flavors.

- As of January 2014, researchers had identified more than 7,700 unique e-cigarette flavors available online, with an average of more than 240 new flavors being added per month.²⁹ Among more than 400 available brands, 84 percent offered fruit flavors and 80 percent offered candy and dessert flavors.³⁰
- In addition to the more traditional candy and fruit flavors like cherry and chocolate, the liquid nicotine solutions are also being sold in such kid-friendly options as cotton candy, gummy bear, root beer float and banana split. One study even uncovered over twenty different types of unicorn-flavored e-liquid, often paired with cartoon imagery, undoubtedly appealing to kids.³¹

- The top three cigarette manufacturers now sell e-cigarettes in a variety of flavors other than tobacco. Altria’s MarkTen brand e-cigarettes come in Fusion, Menthol and Winter Mint varieties.³² Reynolds American’s Vuse product comes in flavors such as Melon, Nectar, Berry, Mint and Chai, while ITG Brand’s blu e-cigarette features such flavors as Berry Cobbler, Blueberry, Cherry Crush, Strawberry Mint, Vivid Vanilla and Pina Colada.³³
- “Vape shops,” which are specialty e-cigarette retail stores, offer an even wider assortment of flavors. In addition to the pre-made options, these stores allow patrons to mix their own preferred flavor combinations.³⁴

The use of flavors in e-cigarette products is of even greater concern because e-cigarettes are the subject of extensive advertising campaigns, and there is evidence that young people are exposed to significant amounts of e-cigarette advertising. In 2012, e-cigarette companies began airing media campaigns on television. One study found that exposure of youth aged 12-17 to television e-cigarette advertising increased 256 percent from 2011 to 2013 and that e-cigarette companies advertise their products to a broad audience that includes 24 million youth.³⁵ Ads for the blu brand (then owned by Lorillard) accounted for 81 percent of the youth exposure.³⁶ The 2014 Youth Tobacco Survey found that nearly seven in ten middle and high school students were exposed to e-cigarette advertising in 2014.³⁷



SMOKELESS TOBACCO

The variety of flavored smokeless tobacco products has grown over time and continues to grow.

- U.S. Smokeless Tobacco Company (UST, owned by Altria) increased the number of its sub-brands – including flavored products – by 140 percent from 2000 to 2006 in order to “cast a wide net” and appeal to as many potential users as possible.³⁸ In 2011, more than 80 percent of Skoal smokeless tobacco sold in convenience stores was flavored and more than one out of five (21.1 percent) were fruit-flavored, including vanilla, apple and berry blend.³⁹ Skoal is the third most popular brand among smokeless tobacco users ages 12-17.⁴⁰
- Between 2005 and 2011, sales of moist snuff increased by more than two-thirds; increases in the sale of *flavored* moist snuff accounted for about 60 percent of this growth.⁴¹ In 2012, flavored products made up more than half (58 percent) of all smokeless tobacco sales. Menthol and mint flavors are most popular, followed by fruit flavors.⁴²



- A trade publication for convenience stores quoted one retailer stating, “In the case of smokeless tobacco, you get a new flavor once every quarter.”⁴³

HOOKAH

Hookahs originate from Middle Eastern countries, but their use has rapidly increased in the U.S. The tobacco used in hookah often has flavorings or sweeteners added to enhance the taste and aroma. In the U.S., even more kid-friendly flavors are available, such as watermelon, tropical fruit, orange cream, caramel, chocolate, tutti frutti, vanilla and strawberry.⁴⁴



CIGARETTES

Menthol cigarettes, the only remaining flavored cigarette, maintain a significant market share. While overall cigarette sales have been declining, the proportion of smokers using menthol cigarettes has been increasing.⁴⁵

- Data from the Federal Trade Commission show that in 2014 (the most recent year for which data are available), menthol cigarettes comprised 30 percent of the market.⁴⁶
- Before cigarettes with specific characterizing flavors were prohibited by the Tobacco Control Act, R.J. Reynolds’ “Camel Exotic Blends” came in flavors such as Twista Lime, Kauai Kolada, Warm Winter Toffee and Winter Mocha Mint, among others. Bright, colorful and alluring ads for these cigarettes appeared in magazines popular with kids, including *Rolling Stone*, *Cosmopolitan* and *Sports Illustrated*.
- Using data from the 1999-2013 Youth Tobacco Surveys, a 2017 study analyzed the impact of the 2009 ban on characterizing flavors in cigarettes on youth tobacco use. The researchers found that cigarette use declined significantly after the ban, whereas cigar and pipe tobacco use significantly increased. Further, use of menthol cigarettes, the only remaining flavored cigarettes, increased significantly after the ban.⁴⁷





Source: Journal of the American Medical Association (2015)

Flavored Products Are Popular Among Kids and Young Adults

Research shows that no matter what the tobacco product, flavors appeal to youth and young adults. Data from the government’s 2013-2014 Population Assessment of Tobacco and Health (PATH) study found that 80.8 percent of 12-17 year olds who had ever used a tobacco product initiated tobacco use with a flavored product and 79.8 percent of current tobacco users had used a flavored tobacco product in the past month.⁴⁸ Moreover, for each tobacco product, at least two-thirds of youth report using these products “because they come in flavors I like.”⁴⁹

Additional national data from the 2014 NYTS found that 70 percent of current middle and high school tobacco users – a total of over 3.2 million youth (12 percent of all youth) – had used a flavored tobacco product in the past month.⁵⁰ Another national study found that 18.5 percent of young adult tobacco users (18-34 years old) currently use a flavored tobacco product, with younger age being a predictor of flavored tobacco product use. In fact, the study found that those aged 18-24 years old had an 89 percent increased chance of using a flavored tobacco product compared to those aged 25-34 years old.⁵¹

According to the 2012 Surgeon General Report, “Much of the growing popularity of small cigars and smokeless tobacco is among younger adult consumers (aged <30 years) and appears to be linked to the marketing of flavored tobacco products that, like cigarettes, might be expected to be attractive to youth.”⁵² The 2016 Surgeon General Report on e-cigarettes concluded that flavors are among the most commonly cited reasons for using e-cigarettes among youth and young adults.⁵³

CIGARS

More than 2,100 children under age 18 try cigar smoking for the first time every day.⁵⁴ Teens and young adults are much more likely than adults 25 years and older to report smoking cigars.⁵⁵ Research demonstrates that flavored cigars are driving much of this usage and not surprisingly, flavored cigars are the most popular among youth. Cheap, sweet cigars can serve as an entry product for kids to a lifetime of smoking.

- The 2013-2014 PATH study found that 65.4 percent of 12-17 year olds who had ever smoked cigars smoked a flavored cigar the first time they tried the product, and 71.7 percent of current cigar smokers had used a flavored product in the last month.⁵⁶ Additionally, 73.8 percent of current youth cigar smokers said they smoked cigars “because they come in flavors I like.”⁵⁷
- The 2014 NYTS found that 63.5 percent of middle and high school cigar smokers – a total of 910,000 youth – had smoked a flavored cigar in the past month.⁵⁸
- Data from the 2013-2014 National Adult Tobacco Survey indicate that use of flavored cigars decreases with age. Flavored cigar use among cigar smokers was 48.3 percent among 18-24 year olds, 41.0 percent among 25-29 year olds, 37.1 percent among 30-44 year olds, 28.8 percent among 45-64 year olds and 17.8 percent among those ages 65 and older.⁵⁹
- Youth and young adults prefer brands that come in a variety of flavors, and that preference declines significantly with age. In one national study, 95 percent of 12-17-year-old cigar smokers reported a usual brand that makes flavored cigars compared with 63 percent of cigar smokers aged 35 and older.⁶⁰

ELECTRONIC CIGARETTES

Given the dramatic growth in the availability and marketing of flavored e-cigarettes, it’s no surprise that e-cigarette use among high school students increased more than ten-fold from 2011 to 2015.⁶¹ E-cigarettes are now the most commonly used tobacco products among youth, surpassing conventional cigarettes; more than 3 million middle and high school students were current e-cigarette users in 2015.⁶²

One tobacco company has acknowledged that youth are attracted to sweet-flavored e-cigarettes. Lorillard Inc.’s Youth Smoking Prevention Program posted a page on e-cigarettes on its “Real Parents Real Questions” website that stated: “Kids may be particularly vulnerable to trying e-cigarettes due to an abundance of fun flavors such as cherry, vanilla, piña-colada and berry.”⁶³



- The 2013-2014 PATH study found that 81 percent of 12-17 year olds who had ever smoked an e-cigarette used a flavored e-cigarette the first time they tried the product, and 85.3 percent of current users used a flavored product in the last month. Additionally, 81.5 percent of current youth e-cigarette users said they used e-cigarettes “because they come in flavors I like.”⁶⁴
- The 2015 NYTS found that 44.6 percent of middle and high school e-cigarette users – totaling 1.26 million youth – had used a flavored e-cigarette in the past month.⁶⁵
- The 2013-2014 National Adult Tobacco Survey found that use of flavored e-cigarettes was highest among young adults (ages 18-24), compared to those over age 25, and that flavored e-cigarettes were most popular among adults who were never cigarette smokers.⁶⁶
- A national phone survey found that youth (ages 13-17) were more likely to report interest in trying an e-cigarette offered by a friend if it were flavored like fruit, candy or menthol, compared to tobacco. This study also found that youth believed that fruit-flavored e-cigarettes were less harmful than tobacco-flavored e-cigarettes.⁶⁷
- Another study found that compared to college students, high school students were more likely to report experimenting with e-cigarettes because of appealing flavors (47 percent vs. 33 percent).⁶⁸



“Kids may be particularly vulnerable to trying e-cigarettes due to an abundance of fun flavors such as cherry, vanilla, piña-colada and berry.”
 – Lorillard Inc.’s Youth Smoking Prevention Program, 2014

SMOKELESS TOBACCO

As with cigarettes, characterizing flavors in other tobacco products (OTPs) mask the tobacco flavor and can make the products appealing to youth. Smokeless (or spit) tobacco companies, particularly UST, have a long history of creating new products that appeal to kids and marketing them aggressively to children to “graduate” them to more potent smokeless tobacco varieties.⁶⁹

- The 2013-2014 PATH study found that 68.9 percent of 12-17 year olds who had ever used smokeless tobacco used flavored smokeless tobacco the first time they tried the product, and 81 percent of current smokeless tobacco users had used a flavored product in the last month.⁷⁰
- The 2014 NYTS found that 58.8 percent of middle and high school smokeless tobacco users – a total of nearly 700,000 youth – had used flavored smokeless tobacco in the past month.⁷¹

HOOKAH

Research shows that many youth and young adults perceive hookah to be safer than other combustible tobacco products.⁷² However, according to the CDC, using a hookah to smoke tobacco poses serious health risks to smokers and others exposed to the smoke from the hookah.⁷³ Because the flavors and the smoking technique create a more soothing (“smooth”) experience, hookah smokers can inhale more deeply and spend more time in a “hookah session,” which typically lasts for 40 to 45 minutes (three to four times longer than it typically takes to smoke a cigarette). While a typical cigarette requires about 20 puffs,⁷⁴ an hour-long hookah session may involve 100 to 200 puffs, potentially exposing the user to more smoke over a greater period of time than what occurs when smoking a regular cigarette.⁷⁵ The appeal of flavored hookah undoubtedly contributes to its popularity among youth and young adults.

- The 2013-2014 PATH study found that 88.7 percent of 12-17 year olds who had ever smoked hookah used flavored hookah the first time they tried the product, and 89 percent of current hookah users had used a flavored product in the last month.⁷⁶
- According to the PATH study, use of flavored tobacco is highest for users of hookah than for any other tobacco product, and more than three-quarters (78.9 percent) of youth hookah users reported that they use hookah “because they come in flavors I like.”⁷⁷
- The 2014 NYTS found that 60.6 percent of middle and high school hookah users – a total of over 1 million youth – had used flavored hookah in the past month.⁷⁸

CIGARETTES

As the only flavored cigarette left on the market, it is no surprise that menthol cigarettes are popular among youth. Menthol cools and numbs the throat, reducing the harshness of cigarette smoke, thereby making menthol cigarettes more appealing to youth who are initiating tobacco use.⁷⁹

- Over half (54 percent) of youth smokers ages 12-17 use menthol cigarettes compared to nearly one-third (32 percent) of older adult smokers.⁸⁰ Prevalence of menthol use is even higher among African Americans: 85 percent of all African-American smokers smoke menthol cigarettes and seven out of ten African-American youth smokers smoke menthol cigarettes.⁸¹
- The popularity of menthol flavored cigarettes is also evidenced by brand preference among youth. According to data from the 2014 National Survey on Drug Use and Health, one in five smokers ages 12-17 prefers Newport cigarettes, a heavily marketed menthol cigarette brand. Preference for Newport is even higher among



African-American youth smokers (64.3 percent) because of targeted marketing by the tobacco industry.

- Daily menthol cigarette smokers have higher odds of also using flavored little cigars/cigarillos compared to occasional non-menthol smokers.⁸³

According to FDA’s Tobacco Products Scientific Advisory Committee:⁸⁴

- Menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking.
- Young people who initiate using menthol cigarettes are more likely to become addicted and become long-term daily smokers.
- The availability of menthol cigarettes reduces smoking cessation, especially among African Americans, and increases the overall prevalence of smoking among African Americans.

FDA’s own scientific analysis concluded that menthol cigarettes lead to increased smoking initiation among youth and young adults, greater addiction and decreased success in quitting smoking.⁸⁵

Although they are no longer on the market, older studies on flavored cigarettes other than menthol are still relevant to reinforce the general appeal of flavors to youth and young adults. When they were available, flavored cigarettes were being tried and used primarily by the young.⁸⁶ Candy-flavored cigarettes clearly had their greatest appeal to new smokers, 90 percent of whom were teens or younger. Research indicated that youth and young adults were more likely to notice flavored tobacco products and their ads, and this awareness translated into higher use rates among young smokers.

- Older adolescents and young adults aged 17 to 19 were more than twice as likely to report using flavored cigarettes (specifically Camel Exotic blends, Kool Smooth Fusion or Salem Silver Label brands) in the past 30 days compared to those 22 years or older.⁸⁷
- A significant gradient in flavored cigarette use was seen across age, with the highest rates of use among 17-year-old smokers (22.8 percent) and 18-19-year-old smokers (21.7 percent). Just nine percent of 24-26 year olds reported flavored cigarette use.⁸⁸



Flavored Products Have Long Been Used to Attract Kids

The tobacco companies know that almost all new tobacco users begin their addiction as kids, but they also know that to novice smokers, tobacco can be harsh and unappealing. Internal tobacco industry documents show that tobacco companies have a long history of using flavors to reduce the harshness of their products to make them more appealing to new users, almost all of whom are under age 18.⁸⁹ By masking the harshness and soothing the irritation caused by tobacco smoke, flavors make it easier for beginners – primarily kids – to try the product and ultimately become addicted. As early as the 1970s, the tobacco companies were discussing the “benefits” of sweet flavors. Their internal documents and public statements show that the tobacco industry’s use of sweet flavors goes beyond just encouraging current smokers to switch brands, but rather to attract new users, mostly kids.

- As early as 1972, advisors to Brown & Williamson reviewed new concepts for a “youth cigarette,” including cola and apple flavors, and a “sweet flavor cigarette,” stating, “It’s a well-known fact that teenagers like sweet products. Honey might be considered.”⁹⁰
- A 1974 summary of an RJR meeting discussed cigarettes designed for beginning smokers, noting that such a cigarette should be “low in irritation and possibly contain added flavors to make it easier for those who never smoked before to acquire the taste of it more quickly.”⁹¹

- An RJR interoffice memo revealed ideas for new products: *“Make a cigarette which is obviously youth oriented. This could involve cigarette name, blend, flavor and marketing technique ... for example, a flavor which would be candy-like but give the satisfaction of a cigarette.”*⁹²
- A Lorillard report summarizing the test results from new cigarette flavors included smokers’ description of “Tutti Frutti” flavored cigarettes as *“for younger people, beginner cigarette smokers, teenagers... when you feel like a light smoke, want to be reminded of bubblegum.”*⁹³
- U.S. Tobacco, noticing declines in smokeless tobacco use in the 1980s, instituted a “graduation strategy,” developing mint- and cherry-flavored smokeless products with lower nicotine content as a way to attract new users.⁹⁴
- A former UST sales representative revealed that *“Cherry Skoal is for somebody who likes the taste of candy, if you know what I’m saying.”*⁹⁵



“Cherry Skoal is for somebody who likes the taste of candy, if you know what I’m saying.”

– Former UST sales representative, 1994

With their colorful packaging and sweet flavors, today’s flavored tobacco products are often hard to distinguish from the candy displays near which they are frequently placed in retail outlets. In fact, the same flavor chemicals used in sweet-flavored cigars and smokeless tobacco products are also used in popular candy and drink products such as LifeSavers, Jolly Ranchers and Kool-Aid.⁹⁶ Flavors are not just a critical part of the product design, but are a key marketing ploy for the industry. The 2016 Surgeon General Report on e-cigarettes concluded, **“E-cigarettes are marketed by promoting flavors and using a wide variety of media channels and approaches that have been used in the past for marketing conventional tobacco products to youth and young adults.”**⁹⁷



Flavored Tobacco Products Pose Serious Health Risks, Including Addiction, and Flavors May Pose Unique Risks

Flavored tobacco products contain nicotine, the highly addictive chemical that makes it so easy to get hooked on tobacco products and so hard to quit. The 2016 Surgeon General’s report on e-cigarettes warned that youth use of products containing nicotine in any form is unsafe, can cause addiction and can harm the developing adolescent brain, disrupting attention and learning.⁹⁸ Here is a summary of other health risks posed by cigars and e-cigarettes, including the flavored versions of these products.

HEALTH HARMS FROM CIGAR SMOKE

Cigar smoke is composed of the same toxic and carcinogenic constituents found in cigarette smoke.⁹⁹ According to the National Cancer Institute, smoking cigars causes serious health consequences, including cancer of the oral cavity, larynx, esophagus and lung, and cigar smokers are also at increased risk for aortic aneurysms.¹⁰⁰ Daily cigar smokers, particularly those who inhale, have an increased risk of heart disease and chronic obstructive pulmonary disease (COPD). Each year, about 9,000 Americans die prematurely from regular cigar use.¹⁰¹

HEALTH HARMS FROM NICOTINE AND OTHER E-CIGARETTE CONSTITUENTS

E-cigarettes and refill liquids contain widely varying levels of nicotine. Nicotine is a highly addictive drug that can have lasting damaging effects on adolescent brain development and has been linked to a variety of adverse health outcomes for the developing fetus.¹⁰² The 2016 Surgeon General’s report also concluded, “E-cigarette use is strongly associated with the use of other tobacco products among youth and young adults, including combustible tobacco products.”¹⁰³

Exposure to liquid nicotine also carries a poisoning risk. Delivered in high doses, nicotine can be lethal. The Surgeon General found, “Ingestion of e-cigarette liquids containing nicotine can cause acute toxicity and possibly death if the contents of refill cartridges or bottles containing nicotine are consumed.”¹⁰⁴ Exposure to liquid nicotine found in e-cigarettes has resulted in thousands of calls to poison control centers in recent years, peaking in 2014, according to the American Association of Poison Control Centers.¹⁰⁵ In 2014, more than half of these calls to poison hotlines were to report exposures among children under the age of six.¹⁰⁶ To address this poisoning risk, Congress in 2016 enacted the Child Nicotine Poisoning Prevention Act, which gave the Consumer Product Safety Commission authority to enforce child resistant packaging standards for e-cigarette products.

There is currently insufficient research on the long-term effects of using e-cigarettes, which involves regular inhalation of nicotine, glycerin or some other solvent, and other additives.¹⁰⁷ According to the Surgeon General, “E-cigarette aerosol is not harmless. It can contain harmful and potentially harmful constituents, including nicotine.”¹⁰⁸ Studies have found other chemicals and toxins present in some e-cigarettes, including formaldehyde, acrolein, volatile organic compounds like toluene, tobacco-specific nitrosamines, and metals like nickel and lead.¹⁰⁹ These compounds are generally present at levels much lower than in cigarette smoke, although the compounds themselves are found on the FDA’s list of harmful or potentially harmful substances.¹¹⁰ Because the FDA has just begun to regulate e-cigarettes, which are available in hundreds of different brands,¹¹¹ consumers cannot know for sure yet what is in the products or the aerosol.¹¹²



HEALTH HARMS FROM FLAVORINGS IN TOBACCO PRODUCTS

In addition to playing a detrimental role in addicting youth and other users, some flavored tobacco products pose their own unique health risks. The 2016 Surgeon General’s report stated that “while some of the flavorings used in e-cigarettes are generally recognized as safe for ingestion as food, the health effects of their inhalation are generally unknown” and noted that some of the flavorings found in e-cigarettes have been shown to cause serious lung disease when inhaled.¹¹³ An article in the *Journal of the American Medical Association* raised concerns that the chemical flavorings found in some e-cigarettes and e-liquids could cause respiratory damage when the e-cigarette aerosol is inhaled deeply into the lungs.¹¹⁴



FDA and Congress Must Protect Kids from Flavored Tobacco Products

The 2009 Tobacco Control Act gave the FDA immediate regulatory authority over cigarettes, cigarette tobacco, smokeless tobacco and roll-your-own tobacco, and it authorized the FDA to extend its jurisdiction to all other tobacco products. Among other things, the law prohibited the sale of cigarettes with characterizing flavors other than menthol or tobacco, including candy and fruit flavors.

More than five years after first stating its intention to do so, the FDA in May 2016 issued a final rule (called the deeming rule) extending its jurisdiction to all previously unregulated tobacco products, including e-cigarettes, cigars and hookahs. The rule extended key provisions of the 2009 law to these products, including provisions that prohibit sales to children under age 18 nationwide; prohibit free samples; restrict vending machine sales to adult-only facilities; require addiction and health warnings; require disclosure of ingredients; prohibit the introduction of new products without prior FDA review and scientific evidence demonstrating a benefit to public

health; set standards manufacturers must meet before they are allowed to make health-related claims; and authorize the FDA to regulate the content of tobacco products.¹¹⁵

However, the deeming rule did not extend the prohibition on characterizing flavors to these newly regulated products despite the substantial evidence that flavors play a critical role in youth use of these products. The FDA itself proposed removing these flavored products from the marketplace in the version of the rule that it sent to the White House Office of Management and Budget (OMB) for review, but OMB deleted this provision from the final rule. This key change was revealed in a [“redline” version of the rule](#) published on May 27, 2016, which showed changes made by OMB.

The deleted provision would have removed flavored e-cigarettes, cigars, hookah and other newly regulated products from the market by November 2016 and required those products to receive pre-market authorization from the FDA before re-entering the marketplace. This provision would also have affected menthol-flavored products. The deleted portion of the rule provided 17 pages of scientific evidence to support removing flavored products from the market, concluding that these products should be removed “given the attractiveness of flavors, especially to youth and young adults, and the impact flavored tobacco products may have on youth initiation.”¹¹⁵

Despite this change in the final rule, the FDA retains another pathway for reviewing and removing flavored tobacco products from the market. The rule requires all new tobacco products introduced after February 15, 2007, to undergo FDA scientific review to determine their impact on public health, including their appeal to kids (products can remain on the market for up to three years from the rule’s effective date – until August 2019 – while undergoing this review). The FDA has the authority to remove from the market products that it determines are harmful to public health, including the many sweet-flavored e-cigarettes and cigars that have been introduced during this time period.



However, two bills introduced in Congress would significantly weaken the FDA's authority over these newly regulated products and make it much more difficult, if not impossible, for the FDA to remove sweet-flavored products from the market. One bill (H.R.1136) would "grandfather" e-cigarettes, cigars and other newly deemed tobacco products already on the market (those introduced between February 15, 2007, and August 8, 2016, when the FDA's rule took effect) and exempt these products from the critical FDA review needed to determine their impact on public health. Tobacco companies would also be able to introduce similarly flavored products in the future. In short, this bill would allow existing flavored tobacco products to stay on the market and make it easier for tobacco companies to introduce new ones.

In September 2016, The New York Times reported that Altria drafted the legislation to change the "grandfather" date for e-cigarettes, cigars and other newly-regulated products and that it was endorsed by R.J. Reynolds. The Times reported that the legislation as introduced "pulled verbatim from the industry's draft."¹¹⁷ Reynolds and Altria make two of the best-selling e-cigarette brands in the U.S. (Vuse and MarkTen).

A second bill (S.294/H.R.564) would exempt what the tobacco industry calls "traditional large and premium cigars," but defines such cigars so broadly that it could also exempt some cheap, machine-made, flavored cigars that are widely used by kids. This legislation invites manufacturers to manipulate their products to qualify for the exemption and continue targeting kids, as they have done before.

In addition to being introduced as stand-alone legislation, such measures have also been added in recent years to the U.S. House appropriations bill that funds the FDA. They could be considered again this year as Congress finalizes appropriations for the rest of Fiscal Year 2017 and considers appropriations bills for Fiscal Year 2018. A large coalition of public health and medical groups has repeatedly urged Congress to reject these measures.

Given the strong evidence summarized in this report that flavored tobacco products such as e-cigarettes and cigars are attracting and addicting a new generation of kids, Congress must reject any proposals to weaken FDA oversight of these products. In fact, the FDA should strengthen its new rule by prohibiting all flavored tobacco products, including menthol products. As the FDA itself has demonstrated and as this report documents, there is more than sufficient scientific evidence to support such a prohibition. Eliminating all flavored tobacco products is a critical step in preventing tobacco companies from addicting another generation of kids and reversing our nation's progress in the fight against tobacco.

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Public Health
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January 30, 2019

Youth Epidemic Warrants Banning the Sale of Flavored Tobacco Products

Adolescent and child use of addictive flavored tobacco products has reached epidemic levels in our communities and across the United States. Use of e-cigarettes (vaping) by high school students nearly doubled over the past year to over one in five kids, with about one in ten middle school students also reporting current use of flavored tobacco products. Most of these kids are using flavored e-cigarettes, inhaling chemical aerosols created by heating solutions containing nicotine and flavoring agents seemingly developed for young people. With flavors such as Gummy Bear, Cotton Candy, Berry Cobbler, Cherry Crush, Vivid Vanilla and host of others, e-cigarette liquids are enticing to many youths.

Tobacco use is the leading cause of preventable disease, disability and death in the United States, and the rapid rise in use by young people, driven by use of flavored products, threatens to reverse recent progress in reducing tobacco use. Among minors, e-cigarettes are the most commonly used tobacco product today although child use of flavored cigars and smokeless tobacco (flavored snuff) is unfortunately growing also.

Flavors are an essential part of the problem: Tobacco companies have long used flavored products to entice new users because flavors improve taste and reduce harshness. Congress banned flavored cigarettes (except menthol) in 2009 because the risks to minors was clear, but the Tobacco Control Act did not address flavored cigars or e-cigarettes, which were little-known at that time. Since then the tobacco industry has effectively exploited the shortcomings of this federal law by developing countless flavored e-cigarette liquids, cigars and smokeless (spit) tobacco, all of which are more popular among children and young adults than they are with older tobacco users.

Over 80% of youth e-cigarette users say they use them “because they come in flavors I like.” A government study found that 81% of 12-17 year old kids who had used tobacco started with a flavored tobacco product (PATH, 2013-14)

Vaping is probably less harmful than smoking although e-cigarettes have not been around long enough to understand long-term health risks. One risk is crystal clear: e-cigarettes contain nicotine, which is highly addictive, and nicotine addiction too often leads to smoking.

- Eighty percent of young smokers started vaping nicotine before they smoked.
- A 2016 study found that e-cigarette users are 6 times more likely to smoke cigarettes compared to people who had never vaped nicotine. (*Pediatrics, Barrington-Trimis, et al., 2016*)*.
- Almost all adult smokers began smoking when they were kids and close to 90% started before they were 18 years old (*CDC.gov*).

JUUL's sleek e-cigarette devices currently dominate the market. One JUUL "pod" of flavored liquid nicotine contains about the amount of nicotine in one to two packs of cigarettes (<https://www.aafp.org/patient-care/public-health/tobacco-nicotine/e-cigs.html>)

- JUUL's phenomenal recent growth mirrors the alarming rise in child and adolescent use
- Kids 15-17 years old are SIXTEEN TIMES more likely to be current JUUL users than young adults 25-34 years (*truthinitiative.org*)
- Although JUUL liquid has a nicotine concentration about twice as high as most other e-cigarettes a study found that 63% of young JUUL users did not know that JUUL always contains nicotine (*truthinitiative.org*)
- Products like JUUL, with higher nicotine levels, appear to pose greater risk: studies show that young people vaping high nicotine products are more likely to start smoking (*Leventhal, et al, JAMA Pediatrics, 2018*)

Nicotine is considered bad for young, developing brains. A 2016 report by the U.S. Surgeon General noted that nicotine use in adolescence harms the parts of the brain involved in attention, learning, mood and impulse control ([E-cigarette Use Among Youth and Young Adults: A Report of the Surgeon General](#) [PDF – 8.47MB]. Atlanta, GA: US Department of Health and Human Services, CDC; 2016). Such neurobehavioral effects may be lasting.

We do not know enough about other possible health effects of vaporized tobacco products and flavorings. E-cigarette aerosols have been found to contain at least ten chemicals that are on California's Proposition 65 list of chemicals known to cause cancer, birth defects or other reproductive harm.

Little is known about the possible effects of inhaling aerosolized flavoring chemicals. Most of these flavors are generally considered safe when ingested in food but we simply do not know whether there are risks when such aldehydes and ketones are heated and inhaled. Some of these chemicals cause harm to the lungs of animals, and it seems reckless to permit human consumption of such unstudied products ("*Toxicological Concerns from Inhaled Food Flavorings Found in Electronic (E-) Cigarette Aerosols: A Report from the Environmental Health Investigations Branch*", CDPH, January 2017)

To combat rising child use of tobacco, in 2016 California raised the age for purchasing tobacco products to 21 years (we are currently one of 6 states requiring purchasers to be 21; in other states the age is 18). But clearly the current approach is not working: three-quarters of teenage JUUL users in a recent national survey reported that they had purchased JUUL products at retail stores, over half had gotten it from friends or family, and 6% had purchased JUUL over the internet.

Prompt actions at multiple levels are needed to reverse this addiction trend. U.S Surgeon General Dr. Jerome Adams last month issued a warning about e-cigarettes, with messages to parents, schools, healthcare providers and communities (<https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>).

The Surgeon General urges parents, teachers and healthcare providers to learn more about flavored electronic nicotine delivery devices and the potential risks, to talk to kids about the dangers and take other appropriate steps to discourage use, including instituting school policies that more effectively deter all forms of tobacco use. Communities are advised to take steps to limit the access of minors to these products.

I endorse the Surgeon General's advice but believe that even stronger action is needed: **We should ban the sale of flavored tobacco products completely**, closing the giant loopholes in the 2009 federal law. In 2018 Mono County

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became one of at least a dozen California communities to prohibit the sale of flavored tobacco products in unincorporated parts of the county. But the benefits of such bans are diminished by the continued availability of these products in neighboring jurisdictions. I hope that the Town of Mammoth Lakes and neighboring counties recognize that the exploding public health threat of flavored tobacco products justifies making sales illegal, regardless of age.

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[en Español \(http://esp.fda.gov/TobaccoProducts/default.htm\)](http://esp.fda.gov/TobaccoProducts/default.htm)

Some E-cigarette Users Are Having Seizures, Most Reports Involving Youth and Young Adults



The FDA has become aware that some people who use [e-cigarettes](#) ([/TobaccoProducts/Labeling/ProductsIngredientsComponents/ucm456610.htm](#)) have experienced seizures, with most reports involving youth or young adult users. Seizures or convulsions are known potential side effects of nicotine toxicity and have been reported in the scientific literature in relation to intentional or accidental swallowing of e-liquid. However, a recent uptick in voluntary reports of adverse experiences with tobacco products that mentioned seizures occurring with e-cigarette use (e.g., vaping) signal a potential emerging safety issue. The FDA continues to monitor all adverse experiences reported to the agency about the use of e-cigarettes and encourages the public to report cases of individuals who use e-cigarettes and have had a seizure via the online [Safety Reporting Portal](#) ([/TobaccoProducts/PublicHealthScienceResearch/ucm377563.htm](#)), as further described below.

Seizures result from sudden, abnormal electrical activity in the brain. Though often associated with convulsions in which a person's entire body shakes uncontrollably, not all seizures show full-body shaking. Other possible signs of seizures include a lapse in awareness or consciousness, which may look like a person is staring blankly into space for a few seconds or suddenly stops moving. The person may or may not fall down. Most seizures end in a few seconds or minutes, and the person may seem fine, sleepy, confused or have a headache afterwards. They may not remember what they were doing or what happened right before the seizure. While seizures generally do not cause lasting harm, they indicate the need for prompt medical attention to look for a cause and to prevent future seizures, if possible. **If you think a person is having a seizure, call 911 and seek immediate medical help. For exposures with less serious visible effects or if you have questions, call poison control at 800-222-1222.**

The FDA has been receiving [voluntary adverse experience reports](#) ([/TobaccoProducts/PublicHealthScienceResearch/ucm581911.htm](#)) about tobacco products since 1988, including accepting online reports since 2014 via the Safety Reporting Portal (SRP). Consumers have also reported adverse experience information directly to poison control centers. Since June 2018, the FDA observed a slight but noticeable increase in reports of seizures. After examining poison control centers' reports between 2010 and early

2019, the FDA determined that, between the poison control centers and the FDA, there were a total of 35 reported cases of seizures mentioning use of e-cigarettes within that timeframe. Due to the voluntary nature of these case reports, there may be more instances of seizure in e-cigarette users than have been reported.

Seizures have been reported among first-time e-cigarette users and experienced users. In a few situations, e-cigarette users reported a prior history of seizure diagnosis. A few reported cases indicated seizures in association with use of other substances such as marijuana or amphetamines. Seizures have been reported as occurring after a few puffs or up to one day after use. Most of the self-reported data that the FDA has received does not contain any specific brand or sub-brand information about the e-cigarette.

While detailed information is currently limited, the FDA is alerting the public to this important and potentially serious health issue.

- Healthcare providers should be aware that seizures may be associated with e-cigarette use—[redacted reports of past incidents \(/downloads/TobaccoProducts/NewsEvents/UCM635154.pdf\)](#) are available on the FDA website and may assist medical evaluations of seizures.
- Consumers should recognize the wide range of symptoms that may be associated with e-cigarette use and the importance of reporting new or unexpected seizures to their doctor or clinic.
- Parents, teachers, and other concerned adults should be aware that many youth are using e-cigarettes that closely resemble a USB flash drive, have high levels of nicotine and emissions that are hard to see.
- Youth and young adult users should also be aware that some e-cigarettes (also called vapes) can contain high levels of nicotine, even as much nicotine as a pack of regular cigarettes. Teens who vape may end up addicted to nicotine faster than teens who smoke. Vapes may be used more frequently because they are easier to hide and may expose users to more nicotine. There are no safe tobacco products.

The FDA is seeking more information about seizures following e-cigarette use to identify common risk factors and understand if any e-cigarette product attributes such as nicotine content or formulation may contribute to seizures. If you or someone you know experiences any unexpected health or safety issues with any tobacco product, please report it through the Safety Reporting Portal (SRP). SRP users may upload relevant medical records in support of or instead of a full SRP report.

When reporting an adverse experience, please be sure to include:

- The name of the manufacturer
- The brand name, model, and serial number of the device or e-liquid, if applicable
- Where the device or e-liquid was purchased
- Whether the device or e-liquid was modified in any way or whether there was a device malfunction
- Whether other tobacco products, medications, supplements or other substances were used
- Whether there were any other symptoms (i.e., nausea, vomiting) or warning right before the adverse experience, such as change in the user's behavior, alertness, vision or hearing
- Details about product use preceding the event (duration, amount and intensity of e-cigarette use)
- Details about health effects, including specific areas of the body affected, how symptoms progressed, how long they lasted, the course of the recovery, and the medical testing or care and decisions rendered

Additional Resources

- **[CDC – Seizure First Aid \(https://www.cdc.gov/epilepsy/about/first-aid.htm?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fepilepsy%2Fbasics%2Ffirst-aid.htm\)](https://www.cdc.gov/epilepsy/about/first-aid.htm?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fepilepsy%2Fbasics%2Ffirst-aid.htm)**
- **[Medline Plus - Seizures \(https://medlineplus.gov/seizures.html\)](https://medlineplus.gov/seizures.html)**
- **[Safety Reporting Portal for Tobacco Products \(/TobaccoProducts/PublicHealthScienceResearch/ucm377563.htm\)](/TobaccoProducts/PublicHealthScienceResearch/ucm377563.htm)**
- **[Tobacco Product Problem Reports \(/TobaccoProducts/PublicHealthScienceResearch/ucm581911.htm\)](/TobaccoProducts/PublicHealthScienceResearch/ucm581911.htm)**
- **[Think E-Cigs Can't Harm Teen's Health? \(/TobaccoProducts/NewsEvents/ucm633034.htm\)](/TobaccoProducts/NewsEvents/ucm633034.htm)**
- **[American Association of Poison Control Centers: Tobacco & Liquid Nicotine Recommendations \(https://www.aapcc.org/prevention/tobacco-liquid-nicotine\)](https://www.aapcc.org/prevention/tobacco-liquid-nicotine)**
[\(/http://www.fda.gov/AboutFDA/AboutThisWebsite/WebsitePolicies/Disclaimers/default.htm\)](http://www.fda.gov/AboutFDA/AboutThisWebsite/WebsitePolicies/Disclaimers/default.htm)

More in Newsroom**[\(/TobaccoProducts/NewsEvents/default.htm\)](/TobaccoProducts/NewsEvents/default.htm)**

Surgeon General's Advisory on E-cigarette Use Among Youth

*I, Surgeon General of the United States Public Health Service, VADM Jerome Adams, am emphasizing the importance of protecting our children from a lifetime of nicotine addiction and associated health risks by immediately addressing the epidemic of youth e-cigarette use. The recent surge in e-cigarette use among youth, which has been fueled by new types of e-cigarettes that have recently entered the market, is a cause for great concern. **We must take action now to protect the health of our nation's young people.***

KNOW THE RISKS. TAKE ACTION. PROTECT OUR KIDS.

The E-cigarette Epidemic Among Youth

Considerable progress has been made in reducing cigarette smoking among our nation's youth.¹ However, the tobacco product landscape continues to evolve to include a variety of tobacco products, including smoked, smokeless, and electronic products, such as e-cigarettes.² E-cigarettes are designed to deliver nicotine, flavorings, and other additives to the user via an inhaled aerosol.²

E-cigarettes entered the U.S. marketplace around 2007, and since 2014, they have been the most commonly used tobacco product among U.S. youth.² E-cigarette use among U.S. middle and high school students increased 900% during 2011-2015, before declining for the first time during 2015-2017.³ However, current e-cigarette use increased 78% among high school students during the past year, from 11.7% in 2017 to 20.8% in 2018.⁴ In 2018, more than 3.6 million U.S. youth, including 1 in 5 high school students and 1 in 20 middle school students, currently use e-cigarettes.⁴

E-cigarette aerosol is not harmless.² Most e-cigarettes contain nicotine – the addictive drug in regular cigarettes, cigars, and other tobacco products.² Nicotine exposure during adolescence can harm the developing brain – which continues to develop until about age 25.² Nicotine exposure during adolescence can impact learning, memory, and attention.^{1,2} Using nicotine in adolescence can also increase risk for future addiction to other drugs.^{1,2} 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.²

Many e-cigarettes also come in kid-friendly flavors. In addition to making e-cigarettes more appealing to young people,⁵ some of the chemicals used to make certain flavors may also have health risks.² E-cigarettes can also be used to deliver other drugs, including marijuana.² In 2016, one-third of U.S. middle and high school students who ever used e-cigarettes had used marijuana in e-cigarettes.⁶

For adults, e-cigarettes may have the potential to reduce risk for current smokers if they completely transition from cigarettes to e-cigarettes; however, a majority of adults who use e-cigarettes also smoke cigarettes.⁷ For youth, the use of multiple tobacco products puts youth at even greater risk for addiction and tobacco-related harms.^{1,2} Moreover, a 2018 National Academy of Sciences, Engineering, and Medicine report concluded that there was moderate evidence that e-cigarette use increases the frequency and intensity of cigarette smoking in the future.⁷ But any e-cigarette use among young people is unsafe, even if they do not progress to future cigarette smoking.²

E-cigarettes Come in Many Shapes and Sizes

E-cigarettes are a rapidly changing product class, and are known by many different names, including “e-cigs,” “e-hookahs,” “mods,” and “vape pens.”² Recently, a new type of e-cigarette has become increasingly popular among our nation's youth due to its minimal exhaled aerosol, reduced odor, and small size, making it easy to conceal.⁸ Many of these new e-cigarettes look like a USB flash drive, among other shapes. One of the most commonly sold

USB flash drive shaped e-cigarettes is JUUL, which experienced a 600% surge in sales during 2016-2017, giving it the greatest market share of any e-cigarette in the U.S. by the end of 2017.⁹ Other companies are now also starting to sell e-cigarettes that look like USB flash drives.

All JUUL e-cigarettes have a high level of nicotine. A typical JUUL cartridge, or “pod,” contains about as much nicotine as a pack of 20 regular cigarettes.¹⁰ These products also use nicotine salts, which allow particularly high levels of nicotine to be inhaled more easily and with less irritation than the free-base nicotine that has traditionally been used in tobacco products, including e-cigarettes. This is of particular concern for young people, because it could make it easier for them to initiate the use of nicotine through these products and also could make it easier to progress to regular e-cigarette use and nicotine dependence. However, despite these risks, approximately two-thirds of JUUL users aged 15-24 do not know that JUUL always contains nicotine.¹¹

You Can Take Action

We must take aggressive steps to protect our children from these highly potent products that risk exposing a new generation of young people to nicotine.^{2,7} The bad news is that e-cigarette use has become an epidemic among our nation’s young people. However, the good news is that we know what works to effectively protect our kids from all forms of tobacco product use, including e-cigarettes.^{1,2,12} We must now apply these strategies to e-cigarettes, including USB flash drive shaped products such as JUUL. To achieve success, we must work together, aligning and coordinating efforts across both old and new partners at the national, state, and local levels. Everyone can play an important role in protecting our nation’s young people from the risks of e-cigarettes.

Information for Parents

- **You have an important role to play in addressing this public health epidemic.**
- Learn about the different shapes and types of e-cigarettes and the risks of all forms of e-cigarette use for young people at <https://e-cigarettes.surgeongeneral.gov/>.
- Set a good example by being tobacco-free. If you use tobacco products, it’s never too late to quit. Talk to a healthcare professional about quitting all forms of tobacco product use. For free help, visit smokefree.gov or call 1-800-QUIT-NOW.
- Adopt tobacco-free rules, including e-cigarettes, in your home and vehicle.
- Talk to your child or teen about why e-cigarettes are harmful for them. It’s never too late.
- Get the Surgeon General’s tip sheet for parents, [Talk With Your Teen About E-cigarettes](https://e-cigarettes.surgeongeneral.gov/), at <https://e-cigarettes.surgeongeneral.gov/>. Start the conversation early with children about why e-cigarettes, including JUUL, are harmful for them.
- Let your child know that you want them to stay away from all tobacco products, including e-cigarettes, because they are not safe for them. Seek help and get involved.
 - Set up an appointment with your child’s health care provider so that they can hear from a medical professional about the health risks of tobacco products, including e-cigarettes.
 - Speak with your child’s teacher and school administrator about enforcement of tobacco-free school policies and tobacco prevention curriculum.
 - Encourage your child to learn the facts and get tips for quitting tobacco products at Teen.smokefree.gov.

Information for Teachers

- **You have an important role to play in addressing this public health epidemic.**
- Learn about the different shapes and types of e-cigarettes and the risks of all forms of e-cigarette use, including JUUL, for young people at <https://e-cigarettes.surgeongeneral.gov/>.
- Develop, implement, and enforce tobacco-free school policies and prevention programs that are free from tobacco industry influence, and that address all types of tobacco products, including e-cigarettes.

- Engage your students in discussions about the dangers of e-cigarette use. To help you, the Food and Drug Administration (FDA), and Scholastic, developed free resources for teachers. These materials can be found at www.scholastic.com/youthvapingrisks.

Information for Health Professionals

- **You have an important role to play in addressing this public health epidemic.**
- Learn about the different shapes and types of e-cigarettes and the risks of all forms of e-cigarette use, including JUUL, for young people at <https://e-cigarettes.surgeongeneral.gov/>.
- Ask about e-cigarettes, including small, discreet devices such as JUUL, when screening patients for the use of any tobacco products.
- Educate patients about the risks of all forms of tobacco product use, including e-cigarettes, for young people.
- Encourage patients to quit. For free help, patients can visit smokefree.gov or call [1-800-QUIT-NOW](tel:1-800-QUIT-NOW).

Information for States, Communities, Tribes, and Territories

- **You have an important role to play in addressing this public health epidemic.**
- Implement evidence-based population-level strategies to reduce e-cigarette use among young people, such as including e-cigarettes in smoke-free indoor air policies, restricting young peoples' access to e-cigarettes in retail settings, licensing retailers, implementing price policies, and developing educational initiatives targeting young people.
- Implement strategies to curb e-cigarette advertising and marketing that are appealing to young people.
- Implement strategies to reduce access to flavored tobacco products by young people.

KNOW THE RISKS. TAKE ACTION. PROTECT OUR KIDS.

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ESCOG STAFF REPORT

Subject: Consider formation of an Eastern Sierra Council of Governments Joint Powers Authority

Meeting Date: April 12, 2019

BACKGROUND:

The Eastern Sierra Council of Governments (ESCOG) currently exists as a body that shares ideas and discussions between elected officials representing the Town of Mammoth Lakes, City of Bishop, and Inyo and Mono Counties. As an information sharing body, the ESCOG currently operates under a joint powers agreement. The ESCOG has expressed an interest in creating a Joint Powers Authority (JPA) that would allow the Board to take action on various items affecting the region.

Creation of a JPA would create a new governmental body in the Eastern Sierra. As a separate body, the ESCOG may be delegated certain authority and funding from the member agencies. It may act independently from the members or in concert with member agencies.

The ESCOG historically has not had any staff assigned to work on its behalf. Clerking duties have rotated between the four agencies, although a recent change will assign those duties to a new Town of Mammoth Lakes position that will be funded in part by each of the four ESCOG agencies. The new position will be responsible for coordinating and clerking meetings and maintaining the ESCOG website. A JPA would likely require more permanent staff assistance, which could be provided through formal agreements with member agencies or direct hire or contract employee(s).

The following discussion is in response to the presentation provided by member agency Chief Administrators at the last ESCOG meeting.

ANALYSIS:

Mono County Counsel has taken the lead on working to draft a JPA agreement. If the agreement is approved by the ESCOG, a number of additional tasks would need to take place prior to any JPA becoming effective. The first step is for each member agency's governing body to approve the JPA. To facilitate this process, the following is proposed:

1. ESCOG finalizes the JPA agreement to its satisfaction.
2. A detailed scope of work will be prepared to support the intent of the JPA.
3. The formation steps and cost estimates will need to be completed with enough detail for the member agencies to consider the near-term requirements to form the JPA.

4. The scope of work and JPA agreement will need to be presented to each of the four member agencies. This presentation should be made by ESCOG Board Members. Each of the four agencies would need to approve the JPA document in order to participate.

If the JPA is approved by each of the four agencies, a number of items will need to occur in order to finalize the adoption of the JPA. Most likely, the Board would need to hire a staff person to oversee these tasks (or contract with member agencies). The cost for this work would likely need to be allocated by the member agencies. The following initial steps have been identified by staff and legal counsel as requirements for the formation of a JPA:

1. Finalize the JPA document, with any amendments from member agencies
2. File the document with the Secretary of State
3. Adopt a Conflict of Interest Code
4. File new (or amended) Form 700s
5. Secure insurance for the JPA
6. Acquire legal counsel/representation
7. Draft and adopt a budget and detail member agency financial requirements
8. Set regular meeting schedule (adopt by resolution)
9. Adopt Bylaws for the new JPA

STAFFING CONSIDERATIONS:

It is likely that the ESCOG will need to hire staff in order to conduct work on its behalf. There are several possible options for how this could occur:

1. Contract with a member agency: Assuming there is staff capacity, a member agency could volunteer to work on behalf of the ESCOG to complete the necessary tasks. In this case, the staff person would bill for all time allocated to the work and would be reimbursed by the JPA.
2. The JPA could directly hire an employee. Human Resources capability as well as benefits administration would be needed to conduct the hiring process and to support the employee once on board.
3. The JPA could hire a contract employee. The contract would outline the scope of work and terms of employment.
4. The JPA could hire an employee through a temp agency. The temp agency would be responsible for all employee support. However, this would require a specific knowledge of the tasks that need to be completed as someone from the JPA would need to provide technical assistance to such an employee.

FINANCIAL CONSIDERATIONS:

At this point in time, it has not been determined what the financial impact to the four agencies would be if the JPA were to be adopted. An estimate ranging from \$20,000 to \$35,000 is likely needed to complete the above tasks in setting up the new JPA. Ultimately the financial impact would depend upon the activity of the ESCOG as well as the type of staffing solution that the JPA chooses to employ.

LEGAL CONSIDERATIONS:

Adoption of the JPA would create a new governmental entity in the Eastern Sierra. The JPA structure is provided under State law and is a legal process used by multiple agencies across the state to provide regional services. The Eastern Sierra Transit Authority (ESTA) is a local example. This body would have the authority to take action on certain items, which could override the authority and autonomy of the individual agencies in some cases.

Attachments

- Draft JPA
- Draft Bylaws
- Current ESCOG Agreement

**JOINT POWERS AGREEMENT ESTABLISHING THE EASTERN SIERRA COUNCIL OF GOVERNMENTS
AS A SEPARATE LEGAL ENTITY FROM ITS MEMBER AGENCIES**

This agreement, made and entered into this _____ day of _____, by and among the County of Mono, a political subdivision of the State of California (“Mono”), the County of Inyo, a political subdivision of the State of California (“Inyo”), the Town of Mammoth Lakes, a municipal corporation (“Town”) and the City of Bishop, a municipal corporation (“City”) (collectively “Member Agencies” or “Members”), shall supersede and replace, in its entirety, that Amended Joint Powers Agreement Eastern Sierra Council of Government Entities (COG) entered into by and among the Parties on or about February 26, 1999.

I. Recitals

- 1.01 In 1995, the Counties of Inyo and Mono and the Town of Mammoth Lakes executed a joint powers agreement (JPA) establishing the Eastern Sierra Council of Governments (ESCOG). The 1995 JPA was amended in 1999 to add the City of Bishop as a party.
- 1.02 Since its establishment, the ESCOG has functioned as a forum for communication among Member Agencies regarding issues of regional concern and, more recently, for the planning and implementation of regional communications and broadband solutions through the establishment of the Inyo-Mono Broadband Consortium. The ESCOG has not historically operated as a joint powers authority independent from its Members, nor taken the necessary steps to become such an independent legal entity.
- 1.03 The Member Agencies acknowledge and agree that there are circumstances where it is necessary or desirable for the Member Agencies to function collectively on a regional basis, such as where regionalization enhances funding opportunities, provides resources and capabilities that would not otherwise be available, or improves the delivery of services to benefit the interests of the Members’ constituents.
- 1.04 The Member Agencies further agree that the creation of a regional joint powers authority that is a separate legal entity from the Members would position the ESCOG to maximize and take advantage of these opportunities.
- 1.05 Article 1 of Chapter 5 of Division 7 of Title 1, commencing with section 6500, of the California Government Code authorizes two or more public agencies, by joint powers agreement approved by their governing bodies, to jointly exercise any powers common to them and/or to create a separate legal entity for the purpose of exercising such powers.
- 1.06 It is the intent of the Parties to enter into a joint powers agreement pursuant to the provisions of sections 6500 et seq. to establish a joint powers authority, the Eastern Sierra Council of Governments, which would supersede and replace the historic ESCOG established in 1995 (and modified in 1999), for the purposes of enhancing funding and resource opportunities and providing such programs, services or functions that the Member Agencies, by approval of their governing bodies, deem necessary or desirable.

II. Purposes

- 2.01 The ESCOG shall continue to be organized to: (1) provide a forum for discussion and study of regional issues of interest to the Member Agencies; (2) identify and plan for the solution of selected regional issues requiring multi-governmental cooperation; (3) facilitate actions and agreements among the Member Agencies for specific project development; (4) conduct other region wide functions as the Members deem appropriate.
- 2.02 In addition to the above, the ESCOG shall be organized to identify funding sources and to apply for and receive funding for the planning and implementation of programs of regional impact or significance, and to implement such programs, upon approval of the governing bodies of each Member Agency.

III. Powers

- 3.01 To contract or otherwise participate in, and to accept grants, funds or services from the State or Federal government, their agencies or instrumentalities or from any civic organization or private person (including but not limited to corporations) in connection with any program judged by the ESCOG Board to be relevant to its purposes, and upon approval of the governing bodies of the Member Agencies.
- 3.02 To accept gifts, bequests or donations in support of current programs of the ESCOG or to support ongoing operating expenses.
- 3.03 To contract for any services judged by the ESCOG to be necessary or convenient for carrying out its purposes and to pay the costs of such services in accordance with section 5.02. Such contracts may be with an ESCOG Member, upon agreement by that Member and the ESCOG, or with an outside agency or firm and may include contracts for:
 - a. General legal services.
 - b. Litigation or specialized legal services.
 - c. Liability Insurance and, where applicable, workers' compensation insurance.
 - d. Human Resources services.
 - e. Other governmental services required to operate the ESCOG may be provided by a Member, JPA staff or an independent contractor.
- 3.04 To incur debts, liabilities or obligations that are not the debts, liabilities or obligations of the Member Agencies, except as required by Government Code sections 6508.1, 6508.2, 20574.1 and 20575, enacted by AB 1912 in 2018, which require that the members of a dissolving joint powers agency apportion any PERS liability among themselves and allows CalPERS to make the apportionment if the members cannot agree.
- 3.05 To employ personnel including an Executive Director and/or such other staff as the Members deem appropriate and to establish the powers and duties of such personnel

- 3.06 To invest, in accordance with Government Code section 6509.5, monies in the treasury of the ESCOG that is not immediately required for necessities of the ESCOG.
- 3.07 With the approval of the governing bodies of each of the Member Agencies, to raise revenues through the imposition of fees, assessments, taxes or the issuance of bonds, in accordance with applicable laws.
- 3.08 To incur long or short-term indebtedness.
- 3.09 To own, lease or license real or personal property and/or equipment which is necessary or proper to carry out the purposes of the ESCOG.
- 3.10 All other powers that are necessary or proper to carry out the purposes of the ESCOG.

Each of the above powers may be exercised by the ESCOG in the same manner, and subject to the same restrictions, as such powers are exercised by the Town of Mammoth Lakes.

IV. Organization - The internal organization of the ESCOG shall be as follows:

- 4.01 Membership. Members shall consist of the County of Inyo, the County of Mono, the Town of Mammoth Lakes and the City of Bishop, upon approval of this agreement by the governing body of each, and the execution of this agreement by an authorized representative of each Member. Each Member shall be entitled to be represented by two representatives, each of whom shall be a member of the legislative body of such Member.
- 4.02 Board of Directors, Officers and Meetings.
 - a. The ESCOG shall have a Board of Directors comprised of two representatives, and up to two alternates, appointed by each of the governing bodies of its Members. The term of office of each director shall not exceed his or her term of office on the legislative body he or she represents.
 - b. Upon execution of this agreement by all four Member Agencies, the ESCOG representatives having previously been appointed by the governing bodies of the Member Agencies shall continue to serve as directors of the ESCOG for the terms for which they were previously appointed. The term of office of each subsequently-appointed representative shall be four (4) years. If a vacancy occurs on the board, it shall be filled by appointment of the governing body of the affected Member and such appointed representative shall serve for the remainder of the term.
 - c. The board of directors shall elect from among its members a Chair, Vice-chair and Secretary for a term of one (1) year. The members currently serving in those offices shall continue to serve for the remainder of their appointed terms, except that the member, if any, previously appointed to serve as Secretary shall instead serve as Secretary. Notwithstanding the

above, the office of Secretary may be an administrative staff person of the ESCOG or of a Member Agency designated by the board of directors.

- d. The ESCOG shall establish regular meetings of the board of directors which shall be not less than one (1) such meeting each calendar quarter.
- e. All meetings of the ESCOG shall be noticed and carried out in accordance with the provisions of the Ralph M. Brown Act.
- f. A majority of the board of directors shall constitute a quorum for the transaction of business. No resolution or motion shall be passed or become effective without affirmative vote of at least a majority of the membership of the board and, for those actions requiring approval by the governing bodies of the Member Agencies, by each and every Member Agency, unless otherwise indicated.

V. Financial Provisions

- 5.01 Each Member shall contribute to the administrative support of the ESCOG. Administrative support is understood as those costs, expenditures and obligations which maintain one (1) 0.5 FTE agency administrative staff person on a daily operating basis. Each Member's contributions to administrative time and support shall be accounted for. It is intended that each Member will provide twenty-five percent (25%) of the 0.5 FTE administrative staff person, unless otherwise agreed by the board of directors, and shall agree in advance regarding any additional administrative support.
- 5.02 Members may make financial contributions to the ESCOG in any manner authorized by Government Code section 6504. All contract costs incurred pursuant to section 3.03 of this JPA shall be divided equally among the Members. Any financial contributions other than for costs under section 3.04 shall be provided on an individual project basis and approved by the governing body of the Member Agency providing such support. Any advances of public funds to the ESCOG shall be repaid in the manner provided in the document authorizing the advance
- 5.03 The ESCOG's fiscal year shall commence on July 1 of each year and terminate on June 30 of the following year.
- 5.04 The Finance Director of the County of Mono shall serve as the Fiscal Agent, Treasurer and Auditor (hereinafter "Treasurer") for the ESCOG, unless otherwise directed by a majority of the board. The Treasurer shall be responsible for all money of the ESCOG from whatever source, shall be the depository and have custody of the money of the ESCOG, and shall perform all duties and functions of the Treasurer as set forth in Government Code sections 6505, 6505.5, or any other applicable state, federal or local law or regulation. All funds of the ESCOG shall be strictly and separately accounted for and regular reports shall be rendered of all receipts and disbursements during the fiscal year. Members shall share the costs of this service equally.

- 5.05 Nothing contained in this agreement shall bind any Member to a financial commitment on behalf of the ESCOG, except as specifically provided.

VI. Property and Records

- 6.01 Upon any dissolution of the ESCOG, any surplus money or property shall be disposed of by division among the Members in the same proportion as such Members contributed to the ESCOG.
- 6.02 The Town of Mammoth Lakes shall serve as the repository of all records of the ESCOG. Record retention shall conform to the requirements of law. Any record destruction shall first be approved by the board of directors. The board of directors may provide for record retention beyond the requirements of law.

VII. General Provisions

- 7.01 Amendments. This agreement may be amended at any time by all of the Member Agencies acting through a majority vote of their governing bodies. In the event the ESCOG should determine that an amendment to this agreement would be in the best interests of the ESCOG and its Member Agencies, it may propose such amendment for ratification by the governing bodies of each Member Agency. This agreement shall be deemed and be so amended upon the date the last governing body approves such amendment.
- 7.02 Voluntary Association. It is understood and agreed that membership and participation in the ESCOG as described in this agreement is voluntary. Any Member may withdraw by giving written notice to the governing bodies of the other Member Agencies in the manner provided in this agreement for the communication of notices.
- 7.03 Withdrawal. A Member may withdraw from the ESCOG by providing written notice to the remaining Members at least ninety (90) days prior to the end of the fiscal year, and shall remain liable for its share of financial support and/or contribution to the ESCOG through the end of that fiscal year. Except for payments required by AB 1912 (2018) and described in section 3.04, a withdrawing Member shall not be liable to the ESCOG or any of the other Members for payment of contributions or financial support to the ESCOG not previously committed by that Member.
- 7.04 Dissolution and Termination. The ESCOG may be dissolved and this agreement terminated at any time in the same manner as provided for amendment in section 7.01. The ESCOG shall automatically be dissolved upon withdrawal of 2 of its Members.
- 7.05 Effective Date and Term of Agreement. This agreement shall be and become effective for all purposes when approved by the governing bodies of each of the Member Agencies and shall remain in full force and effect unless and until dissolved or terminated in the manner provided in this agreement.

7.06 Notices. In the event it is or becomes necessary for a party to this agreement to serve or give notice to any other party, such notice shall be deemed validly served and given if deposited in a United States Post Office with postage thereof fully prepaid, sent registered or certified mail and, if to Inyo County, addressed to the County Administrator, Administrative Center, County of Inyo, PO. Box N, Independence, California 93526; if to Mono County, addressed to the County Administrative Officer at P.O. Box 696, Bridgeport, California 93517; if to the Town of Mammoth Lakes, addressed to the Town Manager at P.O. Box 1609, Mammoth Lakes, California 93546; and, if intended for the City of Bishop, addressed to the City Manager at 337 West Line Street, Bishop, California 93514.

7.07 Inurement. This agreement shall inure to the benefit of and be binding upon the parties hereto and their successors.

VIII. Execution

IN WITNESS WHEREOF, the Member Agencies have executed this agreement as of the date last written below.

COUNTY OF INYO

DATED: _____

BY: _____
Chair, Board of Supervisors

ATTEST: _____
Clerk to the Board

APPROVED AS TO FORM:

Inyo County Counsel

COUNTY OF MONO

DATED: _____

BY: _____
Chair, Board of Supervisors

ATTEST: _____
Clerk to the Board

APPROVED AS TO FORM:

Mono County Counsel

TOWN OF MAMMOTH LAKES

DATED: _____

BY: _____

ATTEST: _____
Town Clerk

Town Mayor

APPROVED AS TO FORM:

Town Attorney

CITY OF BISHOP

DATED: _____

BY: _____
City Mayor

ATTEST: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

Bylaws
Of
The Eastern Sierra Council of Government Agencies (ESCOG)

ARTICLE I
MEETINGS

Section 1: Regular Meetings.

The Eastern Sierra Council of Governments (ESCOG) shall hold regular quarterly meetings. The time and place of such meetings shall be set by the ESCOG in accordance with the requirements of the Ralph M. Brown Act (Government Code §§ 54950 et seq.) (the "Brown Act").

Section 2: Special Meetings.

Special meetings may be called by the Chair at his or her discretion, or by the Chair upon request by a Director, in accordance with the requirements of the Brown Act.

Section 3: Cancellation of Meetings.

The Chair may cancel any regular or special meeting, unless there is an objection by a Director. The Chair, or any Director, may cancel a meeting for lack of a quorum.

Section 4: Committee Meetings.

Standing or ad hoc committee meetings may be called by the committee chair.

Section 5: Notice and Conduct of Meetings.

All meetings shall be noticed and conducted in accordance with the requirements of the Brown Act.

ARTICLE III
OFFICERS

Section 1. Chair

The Directors shall elect from among them a Chair. The Chair shall be elected annually at the first regular meeting of each fiscal year.

Section 2: Vice-Chair

The Directors shall elect from among them a Vice-Chair. The Vice-Chair shall be elected annually at the first regular meeting of each fiscal year. The Vice-Chair shall act in the place of and have all of the powers and duties of the Chair in the Chair's absence.

Section 3: Secretary

The Secretary shall prepare an agenda and take minutes of all meetings of the ESCOG, maintain a public record of the ESCOG's meetings, transactions and business. The Secretary may be a regular paid employee of a Member Agency or an outside individual or firm as determined by the ESCOG.

Section 4: Executive Director

The ESCOG may employ an Executive Director to serve at the pleasure of the ESCOG. Such Executive Director may be a regular paid employee of any Member Agency or an outside individual or firm as determined by the ESCOG.

ARTICLE V
COMMITTEES

Section 1: Committees

The Directors may establish such technical and/or advisory committees as determined to be necessary or desirable to serve the needs and accomplish the purposes of the ESCOG.

ARTICLE VI
AMENDMENTS

These Bylaws may be amended by a majority vote of the Directors at any regular meeting provided that notice of the proposed amendment has been submitted in writing by the Secretary to the Directors at least fifteen (15) calendar days prior to the meeting at which the amendment is proposed to be considered.

ADOPTED this _____ day of _____, 2019.

Jeff Griffiths, Chair
Eastern Sierra Council of Governments

ATTEST:

Secretary

A-333(A)
600-20

**AMENDED JOINT POWERS AGREEMENT
EASTERN SIERRA COUNCIL OF GOVERNMENT ENTITIES (COG)**

This amended Agreement, made and entered into this 26th day of February, 1999 by, between and among the COUNTY OF INYO, a political subdivision of the State of California (INYO), the COUNTY OF MONO, a political subdivision of the State of California (MONO), the TOWN OF MAMMOTH LAKES, a municipal corporation (TOWN), and the CITY OF BISHOP, a municipal corporation (CITY).

**WITNESSETH:
RECITALS**

1.01. The parties hereto, the COUNTY OF INYO, the COUNTY OF MONO, the TOWN OF MAMMOTH LAKES, and the CITY OF BISHOP, recognize that each are experiencing continued expansion and growth within their areas of political and/or corporate organization. Governmental problems affecting the unincorporated counties and incorporated cities are expected to increase in the future. By reason of the geography of the area encompassed by the parties and the historical ties existing among them, such problems are often of a common origin and suggest regional solutions.

1.02. The parties hereto acknowledge that there exists certain planning issues which deserve areawide consideration, and which make it necessary and desirable that a joint powers agency be created and maintained.

1.03. The existence of such a Joint Powers Agency is necessary to qualify the parties thereto and special public agencies and districts for certain State and Federal funding assistance.

1.04. Article 1 of Chapter 5 of Division 7 of Title 1, commencing with Section 6500 of the California Government Code authorizes two or more public agencies, by joint powers agreement entered into by them and authorized by their respective legislative or governing bodies, to exercise jointly any power or powers common to the contracting parties. It is the intent and purpose of the parties hereto to enter into a JOINT POWERS AGREEMENT, pursuant to the provisions of Sections 6500, et seq. of the California Government Code, to create and establish a single agency as hereinbefore recited to be known as the Eastern Sierra Council of Governmental Entities.

AGREEMENT

2.01. The COUNTY OF INYO, the COUNTY OF MONO, and the TOWN OF MAMMOTH LAKES created and established the Eastern Sierra Council of Governmental Entities, hereinafter referred

to as the Eastern Sierra COG/by Joint Powers Agreement dated May 2, 1995. By this Amended Joint Powers Agreement, the CITY OF BISHOP becomes a party to that Joint Powers Agreement and a regular member of the Eastern Sierra Council of Governmental Entities.

2.02. PURPOSES. The Eastern Sierra COG is organized to: (1) provide a forum for discussion and study of regional problems of mutual interest to the member governmental entities; (2) identify, inventory and comprehensively plan for the solution of selected regional problems requiring multi-governmental cooperation; (3) facilitate actions and agreements among the governmental units for specific project development; and (4) conduct other region wide functions as the membership deems appropriate, including review and approval of local planning documents when state law requires regional approval or when the local creating agency requests regional review and comment.

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2.03. POWERS.

1. The Eastern Sierra COG may make, publish, or assist in making or publishing studies or investigations of the resources of the region and of existing or emerging problems of any nature related to the physical growth and development, living conditions, beauty, or prosperity of the region, or any part thereof (85065.1 G.C.).
2. The COG may offer its services to assist in the solution of problems related to physical development involving two or more governing bodies, planning commissions, agencies, organizations or instrumentalities, public or private, and may otherwise participate in any program or activity intended to seek or find common ground or cooperative solutions to problems related to physical and/or economic development and conservation within the region or any part thereof.
3. The COG shall have power to contract or otherwise participate in, and to accept grants, funds or services from the Federal Government, its agencies or instrumentalities in connection with any Federal program judged by the Board to be relevant to its purposes; and the COG shall similarly have the power to contract or otherwise participate in, and accept grants, funds or services from the State, or any agency or instrumentality thereof, of any city, county, civic organization or private person in connection with any program judged by the COG to be relevant to its authorized purposes.
4. The COG shall have the power to contract with any person, firm, association, or corporation or to contract for any other types of services judged by the COG to be necessary or convenient for carrying out the purposes of the COG.

2.04. ORGANIZATION. The internal organization of the COG shall be as follows:

1. **Membership.** Membership in the COG shall consist of two (2) categories:
 - (a) **Regular Members.** Regular members shall consist only of the County of Inyo, the County of Mono, the Town of Mammoth Lakes, and the City of Bishop. The regular members shall be entitled to be represented by two representatives, each of whom shall be an elected member of the legislative body of such regular member.
 - (b) **Associate Members.** Any governmental entity which exercises any sphere of governmental authority, control, influence, power, or own property within the exterior boundaries of Inyo County, and/or Mono County, and/or the City of Bishop and/or the Town of Mammoth Lakes shall be eligible for associate membership. Each

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such associate member may be represented by not more than one (1) representative.

(c) Incidents of Membership. Only representatives of regular members shall be eligible for the Board of Directors of the COG, and eligible to hold office on said Board of Directors; entitled to vote, one (1) vote to each such representative; and attend closed sessions of the Board of Directors.

(d) Duties of Membership. To enable the COG to develop enlightened approaches to the problems for which organized, it shall be the duty of each member of the COG to completely disclose to the Board of Directors the member's planning, plans, proposals and concepts for use concerning its activities or spheres of governmental concern relative to any specific subject matter request from the COG.

(e) Miscellaneous. In the event any area represented by a regular member subsequently hereto becomes politically subdivided, as a consequence of which an additional entity is created which exercises the powers of either a county or city, such entity shall be entitled to regular member status.

2. Board of Directors. The COG shall have a Board of Directors which shall be made up and composed only of regular members. The term of office of each director shall not exceed his term of office on the legislative body he represents. The directors first selected upon the formation of the COG shall be selected by each regular member in the following manner: One (1) representative from each regular member agency shall serve for a term of two (2) years from the date of formation of the COG, and the remaining representatives shall each serve for a term of four (4) years. The directors are selected by an agency which joins the COG as a regular member after the COG's formation, shall be selected in the following manner: One (1) representative from such agency shall serve for a term of two (2) years from the date that the agency joins the COG, and the other agency representative shall serve for a term of four (4) years. The term of office for each director other than directors first selected shall be four (4) years. If a vacancy occurs on the Board, it shall be filled by an appointment to be made by the legislative body of the affected regular member.

At its first meeting, the Board of Directors shall elect from its regular members a Chairman, Vice-chairman and Secretary/Treasurer. Such officers shall serve for one (1) year terms, or until their successors are elected. The Secretary/Treasurer may, however, be such Executive Director to the COG as it selects.

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(3) **Meetings.** The COG shall, by properly adopted By-laws, prescribe regular meetings of the Board of Directors of the COG, which shall be not less than one (1) such meeting each calendar quarter. All meetings of the COG shall comply with the requirements of the California Government Code. A majority of the Board of Directors shall constitute a quorum for the transaction of business. No resolution or motion shall be passed or become effective without the affirmative votes of at least a majority of the members of the Board of Directors.

2.05. FINANCIAL PROVISIONS. Each regular member shall contribute to the administrative support of the COG. Administrative support is understood as those costs, expenditures and obligations which maintain one (1) agency on a daily operating basis. Administrative support shall be provided on an in-kind basis and each agency's contributions to in-kind administrative time and support shall be accounted for. It is intended that each regular member agency will provide 33% 25% of the administrative support of the COG. All financial provisions other than administrative shall be on an individual project basis. The COG shall adopt a fiscal year to commence on July 1 of each year and terminate on June 30 of the following year. The Treasurer of the Town of Mammoth Lakes is designated depository of this Agency (G.C. 8505.5). Nothing contained in this Joint Powers Agreement shall bind any member to a financial commitment on behalf of the COG.

2.06. SURPLUS PROPERTY. The surplus money or property of the COG shall be disposed of by dividing it among the regular members of the COG in the same proportion as such regular members contributed to the most recent fiscal budget of the COG.

2.07. RECORDS REPOSITORY. The Town of Mammoth Lakes shall serve as repository of JPA records. Record retention shall conform to the requirements of law. Any record destruction shall first be specifically approved by the Board of Directors. Said Board of Directors may provide for record retention beyond the requirements of law.

GENERAL PROVISIONS

3.01. AMENDMENTS TO AGREEMENT. This Agreement may be amended at any time by a majority vote of the legislative bodies of each of the regular members. In the event the COG should determine that an amendment to this Agreement would be in the best interests of the COG and each of the regular members thereof, it may propose such amendment for ratification by the legislative bodies of each of the regular members, and upon being approved by majority vote of each of the regular members' legislative bodies, this Agreement shall be deemed and be so amended upon the date the last legislative body votes therefor.

3.02. VOLUNTARY ASSOCIATION. It is understood and agreed that the COG of the parties hereto is voluntary. Any regular member may withdraw by giving written notice thereof to the legislative bodies of the other regular members in the manner hereinafter provided for the communication of notices. A regular member which withdraws shall not be liable to the COG or any of its members for payment of further contributions or financial support to the COG, or the success or failure thereof.

3.03. DISSOLUTION AND TERMINATION. The COG may be dissolved, and this Agreement terminated, at any time in the same manner as hereinabove provided for the amendment of this Agreement.

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3.04. EFFECTIVE DATE AND TERM OF AGREEMENT. This Agreement shall be and become effective for all purposes when resolutions of the legislative bodies of each of the parties hereto authorizing such agreement and execution thereof have been passed, approved and adopted. This Agreement shall continue in full force and effect unless and until dissolved or terminated in the manner hereinbefore provided.

3.05. NOTICES. In the event it is or becomes necessary for either party hereto to serve or give notice to any other party hereto, such notice shall be deemed validly served and given if deposited in a United States Post Office with postage thereon fully prepaid, sent registered or certified mail, and if intended for INYO, addressed to the at County Administrator, the Administrative Center, County of Inyo, P.O. Box N, Independence, California 93526, and if intended for MONO, addressed to it at the Court House, Bridgeport, California 93517, and if intended for TOWN, addressed to it at P.O. Box 1809, Mammoth Lakes, California 93546, and if intended for CITY, addressed to it at 337 West Line, Bishop, CA 93514.

3.06. INUREMENT. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

COUNTY OF INYO

BY: Linda Ocularius
Chairperson, Board of Supervisors

DATED: December 15, 1998

ATTEST: Patricia Marshall
Clerk to the Board

COUNTY OF MONO

BY: [Signature]
Chairperson, Board of Supervisors

DATE: Jan 12, 1999

ATTEST: Nancy [Signature]
Clerk to the Board

TOWN OF MAMMOTH LAKES

BY: Kirk A. Stapp
Mayor, Kirk A. Stapp

DATE: 2-26-99

ATTEST: Quirk Halls
Clerk to the Town of Mammoth Lakes

CITY OF BISHOP

BY: Bob Kimball
Mayor, City of Bishop BOB KIMBALL

DATE: November 24, 1998

ATTEST: [Signature]
Clerk to the City of Bishop

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EASTERN SIERRA COUNCIL OF GOVERNMENTS

COG
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Executive Summary: The Eastern Sierra Council of Governments (ESCOG) is recognized by the California Governor's Office of Planning and Research (OPR) as an association of city and county governments created to address regional issues, but not as a formal Regional Planning District. Such recognition is required for ESCOG to fully exercise its powers under the Amended Joint Powers Agreement (JPA).

Background:

State law provides that two or more public agencies may jointly exercise any power common to the contracting parties if authorized by their legislative bodies. Councils of governments (COGs) differ from other joint power agreement agencies in that they are primarily policymaking and not service delivery organizations. COGs lack general governmental authority in that they are not directly elected, do not have taxation powers, and do not have police powers or regulatory authority.

COGs are provided as specific powers as regional planning districts formed pursuant the Regional Planning Law (Government Code §65060 *et seq.*) The Joint Powers of Exercise Act (Government Code §5600 *et seq.*) provides additional specified powers to specific COGs. Eight California counties (Del Norte, Lassen, Madera, Mariposa, Modoc, Plumas, Shasta, and Trinity) are not members of a COG.

The California Association of Councils of Governments (CALCOG) represents 30 California regional planning agencies. The National Association of Regional Councils (NARC) serves the interests of regional councils nationwide.

Status of ESCOG:

The current amended joint powers agreement forming ESCOG was ratified on February 26, 1999, and specifies the purposes (Section 2.01) and powers (section 2.03) of the Council (see Attachment A). The Governor's Office of Planning and Research (OPR) does recognize ESCOG as an association of city and county governments created to address regional issues and has included it on its roster of Councils of Governments in the current *Planner's Book of Lists*.

However, ESCOG is not currently formally recognized as a Regional Planning District as defined in the Regional Planning Law. Regional Planning Law recognized the Governor's Council on Intergovernmental Relations as the organization to acknowledge ESCOG as the JPA for regional planning activities in the region. Unfortunately, such a Council no longer exists. Government Code § 65040.4 (b) provides "The regional planning districts established by the Council on Intergovernmental Relations pursuant to former Section 34216 shall remain in effect as the regional planning districts of the office until changed by the office."

Until recognized, ESCOG is unable to perform the powers of a Regional Planning District as provided by Government Code §65065.1 - 65065.3 (see Attachment B). ESCOG is also precluded from other regional planning tasks performed by many COGs including:

- Serving as the Regional Transportation Planning Agency for development of Regional Transportation Plans and Regional Transportation Improvement programs;

- Serving as a regional census data affiliate to the Bureau of the Census and Department of Finance Demographic Research Center;
- Officially reviewing Environmental Impact Reports for projects having regional significance for consistency with regional plans;
- Preparing regional housing needs allocations under State Housing Element Law (Government Code §65580 *et seq.*); and
- If the region were to reach 50,000 in population, serving as a Metropolitan Planning Organization (MPO) and perform intergovernmental review of programs proposed for federal financial assistance and direct development activities.

A separate, but related, matter is the consideration amendment of the powers granted ESCOG by the 1999 amended JPA. The current JPA is not consistent with the language of Government Code 65065.1 in that there is no authorization for preparation of a Regional Plan. Such a plan is defined by Government Code § 65060.7 as:

"A comprehensive, long-term general plan for the physical development of the region, and any land outside its boundaries which in the board's judgment bears relation to its planning. The regional plan shall consist of a text and a map or maps, and such recommendations of the regional planning board concerning current or future problems as may in its opinion affect the region as a whole and are proper for inclusion in the regional plan."

Recommendation:

If it chooses, ESCOG should request formal recognition from Mr. Tal Finney, Acting Director of OPR pursuant to Government Code § 65040.4 (b). If ESCOG chooses to become involved in regional housing or transportation issues, it should also notify Ms. Maria Contreras-Sweet, Secretary of the Business Transportation & Housing Agency, which oversees both the Department of Housing and Community Development and Department of Transportation.

CST

attachments

**Powers of a Regional Planning District
(Government Code §65065.1-65065.3)**

65065.1. The district may perform the following four major functions:

(a) The district may prepare, maintain, and regularly review and revise, a regional plan as defined in Section 65060.7, and may, after at least two public hearings in different parts of the region and such other public meetings as may appear to it advisable, adopt such plan as the regional plan for the region. In preparing, adopting, maintaining, reviewing and revising the regional plan, the board shall take account of and seek to harmonize, within the framework of the needs of the regional community as a whole, the master or general plans of cities and counties within the region, and the plans and planning activities of state, federal and other public and private agencies, organizations and instrumentalities within the region and adjacent to it.

(b) The district, acting in its own judgment, may make, publish, or assist in making or publishing, studies or investigations of the resources of the region and of existing or emerging problems of any nature related to the physical growth and development, living conditions, beauty, or prosperity of the region, or any part thereof.

(c) The district may, acting in its own judgment, offer its facilities and services to assist in the solution of problems related to physical development involving two or more governing bodies, planning commissions, agencies, organizations or instrumentalities, public or private; and may otherwise participate in any program or activity intended to seek or find common or co-operative solutions to problems related to physical development or the integration of policies related to physical development and conservation within the region, or in any part thereof.

65065.2. The district shall have power to contract or otherwise participate in, and to accept grants, funds, or services from the federal government, its agencies or instrumentalities in connection with any federal program judged by the board to be relevant to its functions; and the board shall similarly have the power to contract or otherwise participate in, and to accept grants, funds, or services from the State, or any agency or instrumentality thereof, or any city, county, civic organization or private person in connection with any program judged by the board to be relevant to its function.

65065.3. The district shall have power to contract with any person, firm, association, or corporation, or to contract for any other types of services judged by the board to be necessary or convenient for carrying out the purposes of the district.