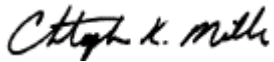


ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 10/14/13
Item No.: 14.c

Department Approval



City Manager Approval



Item Description: Consider an Ordinance Amending City Code Chapter 306: Cigarette and Tobacco Products

BACKGROUND

At the February 13, 2012 City Council meeting, the Council adopted a revised Tobacco Ordinance to address new forms of tobacco products and devices that had recently become available to consumers. One of those new tobacco products included electronic cigarettes or ‘e-cigarettes’; a smokeless device designed to deliver nicotine by inhaling a water vapor mist. This delivery process is known as ‘vaping’ as opposed to smoking.

The revised Ordinance prohibited smoking indoors under all circumstances and covers products that are derived from tobacco and are ingested by inhaling.

City Staff and the City Attorney have concluded that the current ordinance sufficiently covers e-cigarettes that feature a nicotine delivery system, because nicotine is derived from and historically linked to tobacco. However, in the past 18 months e-cigarettes have evolved further and in some cases no longer contain nicotine but rather feature other substances and flavorings. Because they lack nicotine, we have concluded that they would NOT be subject to the existing ordinance.

From a regulatory standpoint, this is problematic because a casual observer would be unable to detect which e-cigarettes contain nicotine and which do not. This is especially problematic given that some tobacco retail establishments have begun to actively market their establishment as ‘vaping lounges’ where customers can freely use their e-cigarettes.

Currently, e-cigarettes are NOT regulated under the State’s Minnesota Clean Indoor Act of 1975 or the Freedom to Breathe Act of 2007 – both of which, along with other statutory provisions, provide explicit authority for local governments to impose their own regulations on tobacco-related products. Nor are they regulated by the U.S. Food and Drug Administration like tobacco is, although the FDA itself is suggesting that it is moving in that direction.

City Staff does not have the expertise to highlight the long-term health or societal implications of e-cigarettes. While manufacturers might conclude that they are safer than regular cigarettes, others suggest that “not all of the science is in”. The question before the Council is whether the City should regulate all e-cigarettes or similar devices the same. A secondary question is whether the City Council has the authority to impose restrictions on e-cigarettes that do not feature any tobacco-related products.

34 In the event that the City Council desires to regulate all e-cigarettes and similar devices, Staff has
35 developed proposed language that would modify City Code Chapter 306. It is included in the draft
36 ordinance shown below in *Attachment A*.

37 **POLICY OBJECTIVE**

38 The Council is asked to consider the attached ordinance that includes a revised definition of tobacco
39 products to include ALL e-cigarettes and similar devices.

40 **FINANCIAL IMPACTS**

41 Not applicable.

42 **STAFF RECOMMENDATION**

43 Not applicable.

44 **REQUESTED COUNCIL ACTION**

45 Consider an ordinance amending City Code Chapter 306 to expand the definition of tobacco products to
46 include ALL e-cigarettes and similar devices.

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Prepared by: Chris Miller, Finance Director
Attachments: A: Proposed Ordinance to amend City Code Chapter 306
B: Current City Code Chapter 306

49

City of Roseville
ORDINANCE No. _____

**AN ORDINANCE AMENDING TITLE 3, SECTION 306.01; RELATING TO
TOBACCO PRODUCTS**

THE CITY OF ROSEVILLE ORDAINS:

SECTION 1: Title 3, Section 306.01 of the Roseville City Code is amended to read as follows:

TOBACCO RELATED PRODUCT: Cigarettes, cigars, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready, rubbed and other smoking tobacco, snuff, snuff flower, Cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, refuse scrips, clippings, cuttings and sweepings of tobacco prepared in such manner as to be suitable for chewing, sniffing or smoking in a pipe, rolling paper or other tobacco related devices. Also, any products containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product. And, shall include electronic cigarettes or other devices that can be used to deliver nicotine or any other substance or flavorings to the person inhaling from the device.

SECTION 2: Effective date. This ordinance shall take effect upon its passage and publication.

Passed by the City Council of the City of Roseville this 14th day of October, 2013.

(SEAL)

CITY OF ROSEVILLE

BY: _____
Daniel J. Roe, Mayor

ATTEST:

Patrick Trudgeon, Interim City Manager

CHAPTER 306 CIGARETTE AND TOBACCO PRODUCTS

SECTION:

- 306.01: Definitions
- 306.02: License Required
- 306.03: Application
- 306.04: Prohibited Sales
- 306.05: Indoor Smoking Prohibited
- 306.06: Identification
- 306.07: Violations
- 306.08: Appeal

306.01: DEFINITIONS:

As used in this Chapter, the following words and terms shall have the meanings ascribed to them in this Section:

INDIVIDUALLY PACKAGED: Any package containing only one individually wrapped item. Included are single packs of cigarettes or single cans or containers of tobacco related products. Not included are cartons containing two or more individually packaged packs of cigarettes or similar packages containing multiple cans or containers of tobacco related products.

SELF SERVICE MERCHANDISING: An open display of tobacco products which the public has access to without the intervention of an employee.

TOBACCO RELATED PRODUCT: Cigarettes, cigars, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready, rubbed and other smoking tobacco, snuff, snuff flower, Cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, refuse scrips, clippings, cuttings and sweepings of tobacco prepared in such manner as to be suitable for chewing, sniffing or smoking in a pipe, rolling paper or other tobacco related devices. Also, and products containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product. (Ord. 1424 02-13-12)

306.02: LICENSE REQUIRED:

No person shall keep for retail sale or sell at retail any tobacco product as defined in this Chapter without a license. (Ord. 1133, 1-24-94)

306.03: APPLICATION:

The application shall state the full name and address of the applicant, the location of the building and the part to be used by the applicant under the license, the kind of business conducted at such location and such other information as shall be required by the application form. (Ord. 1133, 1-

24-94)

306.04: PROHIBITED SALES:

No person shall sell or give away any tobacco related product to any person under the age of 18 years, no person shall sell or dispense any tobacco product through the use of a vending machine, and it shall be unlawful for any person to offer for sale any individually packaged tobacco related product by means of self-service merchandizing. All sales must be made in such a manner that requires the vendee to specifically ask for the tobacco product and all other sales are unlawful. (Ord. 1133, 1-24-94)

306.05: INDOOR SMOKING PROHIBITED:

It shall be unlawful to light, inhale, exhale, or any combination thereof, of tobacco, tobacco products, or tobacco related devices by any person in any retail establishment. (Ord. 1424, 02-13-12)

306.06: IDENTIFICATION:

Any person who sells a tobacco product must require identification if such person has any reason to believe that the purchaser is less than 18 years of age. (Ord. 1133, 1-24-94)

306.07: VIOLATIONS:

- A. Misdemeanors: Any person who violates this Chapter shall be guilty of a misdemeanor.
- B. Penalty for Noncompliance: In addition to any criminal penalties which may be imposed by a court of law, the City Manager may suspend or revoke a license on a finding that the license holder or its employee has failed to comply with this Chapter.
- C. Minimum Penalty: In no event shall a penalty be less than:
 - 1. For a first violation, the mandatory minimum penalty shall be the administrative penalty imposed pursuant to City Code Section 102.01C.
 - 2. For a second violation in 12 months the mandatory minimum penalty shall be suspension for two days.
 - 3. For a third violation in 12 months the mandatory minimum penalty shall be suspension for five days.
- D. Hearing and Notice: Revocation or suspension of a license shall be preceded by a hearing before the City Manager. A hearing notice shall be given at least ten days prior to the hearing, including notice of the time and place of the hearing and shall state the nature of the charges against the licensee. (Ord. 1133, 1-24-94)

306.08: APPEAL:

The aggrieved party may appeal the decision of the City Manager within ten days of receiving notice of the City's action. The filing of an appeal stays the action of the City Manager in suspending or revoking a license until the City Council makes a final decision. The City Council may modify the suspension or revocation. (Ord. 1133, 1-24-94)