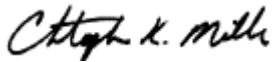


ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 10/21/13
Item No.: 9.c

Department Approval



City Manager Approval



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

BACKGROUND

At the October 14, 2013 City Council meeting, the Council held a brief discussion on whether to amend City Code Chapter 306 to incorporate evolving forms of electronic cigarettes or 'e-cigarettes'.

As noted in the previous Staff Report, the City Code was amended in February of 2012 to include e-cigarettes in the City's regulatory function. At the time, the City relied on the fact that e-cigarettes were an alternative nicotine-delivery device. The presence of nicotine made it subject to the same laws and regulations that governed regular cigarettes and other tobacco products.

However, in some cases newer e-cigarettes feature non-nicotine substances and flavorings which may not necessarily fall within the current Code definitions. This is problematic from a regulatory standpoint because a casual observer would be unable to detect which e-cigarettes contain nicotine and which do not.

At the October 14th meeting, the Council asked Staff to provide information regarding the e-cigarette regulatory efforts of other cities and to develop a proposed ordinance that would incorporate all e-cigarette types into City Code. The Council was also interested in further discussion on whether the use of e-cigarettes should be restricted in public places.

Regulatory Efforts by other Cities

A number of governmental agencies throughout the State have already weighed in on whether to regulate the sale or use of e-cigarettes. The following is a sample of those efforts.

- ❖ The City of Duluth banned their indoor use in all public places.
- ❖ The City of North Mankato banned any indoor sampling for a period of 1 year to allow for further study.
- ❖ The City of Mankato banned their indoor use (sampling) in tobacco stores, but chose to delay any action that would ban them in all public places.
- ❖ Hennepin County banned their use on all County property
- ❖ Metro Transit banned their use on all public transportation
- ❖ The cities of St. Paul, Minneapolis, Shoreview, Little Canada, and Falcon Heights are actively reviewing the issue but have not taken any formal position on regulating e-cigarettes beyond current State Law.

34 It should be noted that e-cigarettes are NOT regulated under the State’s Minnesota Clean Indoor Act of
35 1975 or the Freedom to Breathe Act of 2007 – both of which, along with other statutory provisions,
36 provide explicit authority for local governments to impose their own regulations on tobacco-related
37 products. Nor are they regulated by the U.S. Food and Drug Administration like tobacco is, although the
38 FDA itself is suggesting that it is moving in that direction.

39
40 In the event that the City Council desires to regulate all e-cigarettes and similar devices, Staff has
41 developed proposed language that would modify City Code Chapter 306. It is included in the draft
42 ordinance shown below in *Attachment A*.

43 **POLICY OBJECTIVE**

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

46 **FINANCIAL IMPACTS**

47 Not applicable.

48 **STAFF RECOMMENDATION**

49 Not applicable.

50 **REQUESTED COUNCIL ACTION**

51 Consider an ordinance amending City Code Chapter 306 to expand the definition of tobacco products to
52 include all e-cigarettes and similar devices.

53
54 Prepared by: Chris Miller, Finance Director
Attachments: A: Proposed Ordinance to amend City Code Chapter 306
B: Current City Code Chapter 306

55

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 scraps, 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. This Chapter does not apply to devices that have been approved or otherwise certified for sale by the U.S. Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

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)