

Policy Brief: Prohibit smoking e-cigarettes in public places

Request: Amend the smoking prohibition ordinances to include electronic cigarettes

Request by: Councilmember Schwartz

An amendment to the city's smoking prohibition ordinances would be made to prohibit electronic cigarettes in enclosed public places.

Background information

E-cigarettes are battery-powered devices that deliver nicotine, flavorings, and other chemicals in an aerosol that is inhaled like a cigarette. They can also look like pens, highlighters, or even computer flash drives.

A tool kit funded by the Kansas Health Foundation and led by the University of Kansas Medical Center explains the Kansas Attorney General rules that e-cigarettes are not covered by the Kansas Indoor Clear Air Act, and therefore can be used where smoking is prohibited. Other main points:

- E-cigarettes are not regulated by the U.S. Food and Drug Administration.
- E-cigarettes deliver nicotine and/or flavorings in an aerosol that is inhaled or "vaped."

According to the tool kit, popularity in e-cigarettes has grown dramatically in the last few years. In Kansas, 45% of current adult cigarette smokers had tried an e-cigarette in 2013. Additionally, 10.5% of Kansas adults who formerly smoke and 2.2% of Kansas adults who never smoked had also tried an e-cigarette in 2013.

Overall, there has not been sufficient research to determine the short or long-term health effects of using e-cigarettes. Not all e-cigarettes contain nicotine; however, there is scientific evidence that nicotine exposure poses serious health risks. Many e-cigarette companies have suggested that e-cigarettes can be used as a cessation device, but there is no substantive evidence of this.

Legal considerations

Should the Council decide to prohibit electronic cigarettes in enclosed public places within the City, Legal would draft amendments to the smoking prohibition ordinances – TMC Chap. 8.20. The amendments would: (1) define 'electronic cigarette'; (2) redefine 'smoking' to include electronic cigarettes; (3) create an exemption – similar to the exemption for tobacco stores - for retail businesses that sell electronic cigarettes (e.g. 'vape' shops); and (4) require businesses to post signs that prohibit smoking, including electronic cigarettes.

Best practices

On November 18, 2014, the Olathe City Council voted 3-2 to make inclusion in its Indoor Clear Air Ordinance to add e-cigarettes to its smoking ban.

Overland Park also added e-cigarettes to its smoking ban in August of 2014. The ban also makes it illegal to sell the devices to anybody under the age of 18 and any future e-cigarette shops will have to operate out of a store front in a stand-alone building. Current shops and their locations were grandfathered.

McPherson and Kansas City, KS (on July 9th) have modified their ordinances to include e-cigarettes.

Please see the attached best practice article by the League of Kansas Municipalities that appeared in the October 2014 edition of *Kansas Government Journal*.

Operational and budgetary impact

There would be no operational or budgetary impact.