



## Should Cities Regulate the Use of Electronic Cigarettes?

In the spirit of election season, I decided to turn this month's Best Practices column into a debate. The debate topic will be whether cities should extend the state's public smoking ban to the use of electronic cigarettes (or "e-cigarettes").

Before debating the issue, here is a little background on e-cigarettes and e-cigarette regulations. E-cigarettes were first developed in China, and were introduced to the U.S. market in 2007. Typically, they are composed of a rechargeable, battery-operated heating element and a replaceable cartridge. They are smoke-free and tobacco-free, and designed to deliver nicotine or other substances to a user in the form of a vapor. The liquid used to produce that vapor is typically a combination of nicotine, flavorings, propylene glycol (a solvent), and other additives.<sup>1</sup>

In 2011, the Kansas Attorney General's Office released an opinion stating that the state's Clean Indoor Air Act did not apply to the use of e-cigarettes in public places.<sup>2</sup> However, that Act included language expressly authorizing cities and counties to pass more stringent smoking local regulations, which could include extending the ban to e-cigarettes.<sup>3</sup> In 2012, the Kansas Legislature joined a handful of other states to ban their sale to minors.<sup>4</sup> This August, Overland Park became one of the first cities in Kansas to extend the state's public smoking ban to e-cigarettes.<sup>5</sup> They were joined a few weeks later by the City of McPherson, which passed a similar ban.<sup>6</sup> There are currently no federal e-cigarette regulations, but the Food and Drug Administration (FDA) has proposed rules that would establish minimum age requirements and require ingredient listings and health warnings on the products.<sup>7</sup>

### **Include E-Cigarettes in Your Community's Public Smoking Ban**

One of the main roles of local government is to protect the public's health, and that should include decreasing the use of and exposure to e-cigarettes. The vapor created by these products is from liquid nicotine, which is extracted from tobacco and can be lethal. The FDA found some cartridges of liquid nicotine contained about one percent diethylene glycol (DEG), a toxic chemical ingredient also found in antifreeze.<sup>8</sup> In 2013, 24 people (11 of whom were children) reported toxic exposure from e-cigarettes to poison control. Cities should do whatever they can to discourage exposure to these dangerous substances.

Proponents of e-cigarettes often claim that prohibiting their use in public does not make sense because there are no second-hand exposure concerns. However, many e-cigarette devices release metals like tin during use, as well as other materials known to be toxic or carcinogenic.<sup>9</sup> These are the same types of chemicals the Kansas Legislature intended to ban from indoor areas open to the public when they enacted the Kansas Indoor Clean Air Act. Not including e-cigarettes in a community's smoking ban amounts to a loophole that individuals can use to circumvent the purpose of this Act.

Additionally, e-cigarettes may lead young people to try other tobacco products like conventional cigarettes. Allowing the widespread use of a gateway product like e-cigarettes could increase smoking, which is the leading cause of preventable disease and death in the United States.

Finally, Kansas's public smoking ban is extremely popular, and municipalities should recognize that a vast majority of their residents now expect smoke and vapor free public environments.<sup>10</sup> As stated by Overland Park City Councilmember Terry Goodman, "Whether it's harmful or not, Overland Park residents have a right to go into a restaurant or bar and not sit next to a table full of six people puffing away on vaping devices and exhaling the vapor or smoke..."<sup>11</sup>

*The League of Kansas Municipalities has no position on whether cities should or should not expand their smoking bans to include use of electronic cigarettes. The intent of this article was to inform city officials about the arguments for and against expansion.*

### **Do Not Regulate the Use of E-Cigarettes in Public**


The whole conversation about regulating e-cigarettes is another example of busybody government unnecessarily intruding on the lives of its citizens. Most evidence suggests e-cigarettes are safer than smoking tobacco products, and possibly as safe as other nicotine replacement products.<sup>12</sup> Shouldn't Kansans have the freedom to enjoy safe products in public?

Additionally, e-cigarettes can help smokers quit using regular cigarettes. Cities are not considering outlawing the public use of the patch or nicotine gum, which arguably can also lead to nicotine addiction. It makes little sense for cities to ban another product that could decrease cigarette use, which, as my opponent mentioned, is the leading cause of preventable disease and death in the United States.

It is also important to recognize that e-cigarettes do not cause the same second-hand exposure issues created by regular cigarettes. The aerosol produced from e-cigarettes has notably fewer toxicants than cigarette smoke and likely poses less harm to others.<sup>13</sup> Since Kansas's public smoking ban was passed primarily to protect non-smokers from the effects of second-hand smoke, there is no reason to expand that ban to e-cigarettes.

Finally, banning e-cigarettes in public is anti-business. Hip establishments designed for individuals to enjoy e-cigarettes (often called "vaping hangouts") are a fast-growing industry in Kansas. Passing ordinances that prevent the continued proliferation of these businesses will harm entrepreneurs and job creation in our state.

In summary, please reject the nanny-state approach of my opponent. Public regulation should be reserved for legitimate public health issues. Banning e-cigarettes in public is simply another example of government overreach.

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#### Sources for Best Practices

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