

STAFF REPORT

DATE: May 27, 2014
TO: City Council
FROM: Kelly Stachowicz, Deputy City Manager
SUBJECT: Ordinance Prohibiting Use of E-Cigarettes and Hookah in Locations Where Smoking is Prohibited

Recommendation

Introduce ordinance (Attachment 1) amending various sections of Chapter 34 (Smoking Ordinance) of the Municipal Code to modify regulations related to electronic cigarettes and to modify definitions to include electronic cigarettes and hookah.

Fiscal Impact

Minimal costs associated with outreach and education, to be assumed in existing budgets.

Council Goal(s)

- Public Safety
- Community Strength and Effectiveness

Background and Analysis

On March 11, 2014, staff presented the City Council with background information on electronic cigarettes (e-cigarettes) and hookah. Upon receiving the information, the City Council directed staff to return with an ordinance that would incorporate e-cigarettes into the city's existing "no smoking" code. Attachment 1 is a draft ordinance for consideration. The draft ordinance does the following:

- provides a definition for e-cigarettes
- includes hookah in the existing definition for smoking for clarification
- prohibits the use of hookah and e-cigarettes in locations where smoking is currently prohibited
- requires employers to incorporate e-cigarettes into their existing written employee smoking policies
- limits sale of e-cigarettes to those 18 and over
- prohibits sale of e-cigarettes via vending machines
- treat the sale of e-cigarettes in a manner similar to tobacco products, limiting sales to those 18 and over, prohibiting sales in vending machines or other self-service.

The proposed ordinance does not change locations where individuals can or cannot smoke; it simply adds e-cigarettes to the definition.

Since the March 11 City Council meeting, the Food and Drug Administration has issued a proposed rule that would extend the agency's tobacco authority to cover additional products that meet the legal definition of a tobacco product, such as e-cigarettes; however, the devices still remain mostly unregulated. As was noted in March several localities and organizations have enacted ordinances to regulate e-cigarettes, treating them like conventional cigarettes are treated.

Staff has also sent a letter to Davis restaurateurs and tobacco retailers outlining the direction from the March 11 meeting and explaining that the City Council will consider an ordinance to regulate use of e-cigarettes at the May 27 meeting. Staff has not received any feedback, positive or negative, from the outreach.

Based on the interest of the City Council to regulate e-cigarettes, staff is recommending the attached ordinance.

Current Code/Law

The City of Davis has long had regulations prohibiting smoking in public places. Smoking is defined as "inhaling, exhaling, burning, or carrying any lighted cigarette, cigar, pipe, weed, plant or other combustible substance in any manner or in any form." Davis' local ordinance prohibits smoking in the following places:

- All enclosed areas available to and customarily used by the public and all areas of business establishments generally accessible to the public, including, but not limited to, the public area of retail stores, banks and other offices;
- Elevators, escalators and stairways
- Public restrooms
- Service lines
- Buses and other means of public transit directly provided by or provided under contract to the city
- All reception and waiting areas
- Galleries, libraries and museums
- Within any facility which is primarily used for, or designed for the primary purpose of exhibiting any motion picture, stage drama, lecture, musical recital or other similar performance, except when smoking is part of a stage production
- Sports arenas and convention halls
- Video arcades, bingo parlors, cardrooms, game rooms, pool halls, dancehalls, and other amusement centers
- Child day care facilities as defined in the California [Health and Safety Code](#) and private residences while used as a family day care home
- Rooms, chambers, or other enclosed areas where a meeting is being held which is or can be attended by the general public
- Retail food marketing establishments, including grocery stores and supermarkets
- Restaurants including those in private clubs
- Restaurant-bar combinations including those in private clubs
- Bars including those in private clubs
- Theater-bar combinations
- Laundromats
- Beauty shop and barbershops

- Common areas in apartment buildings, condominiums, retirement facilities, and nursing homes;
- Malls
- Polling places
- Enclosed areas which share the air space, including, but not limited to, air conditioning, heating, or other ventilation systems, entries, doorways, hallways, and stairways, with other enclosed areas in which smoking is prohibited
- Smoking shall be prohibited in the following outdoor areas, and smoking, except while passing on the way to another destination, shall be prohibited within twenty feet of or close enough to the following areas for smoke to travel into an area or building, where smoking is prohibited, whichever is greater
 - Public events including, but not limited to, sports events, entertainment, speaking performances, ceremonies, pageants and fairs
 - Seating provided by eating establishments and bars
 - Entrances and exits to enclosed public areas
 - Within the entryway of any enclosed public area
 - Stairways
 - Within courtyards and other areas where air circulation may be impeded by architectural, landscaping or other barriers
 - Areas not open to the sky
 - Any place where people are using or waiting for a service, entry, or a transaction, including, but not limited to, ATMs, bank teller windows, telephones, ticket lines, bus stops and cab stands
 - Any place where food and/or drink is offered for sale
 - Children’s play areas
 - Public gardens
 - Open windows of any enclosed public area
 - Parking garage

Electronic Cigarettes

The use of electronic smoking devices, commonly known as “e-cigarettes” or “electronic cigarettes”, is a relatively recent trend that gained significant popularity over the past five years, with a doubling of sales each year. As the popularity of the devices grows, policy makers are faced with the question of whether e-cigarettes should be considered in the same ways as traditional cigarettes when it comes to use in public places.

E-cigarettes are battery-powered devices that are designed to mimic cigarettes by vaporizing a nicotine-laced liquid that is inhaled by the user. They use rechargeable lithium batteries and have a cartridge known as a cartomizer. The cartomizer contains liquid such as propylene glycol, nicotine, and special flavoring. The e-cigarette is meant to look and feel like a traditional cigarette, right down to a small light at the tip that lights up like a burning cigarette. In addition, e-cigarettes produce a vapor from a heating element that boils the liquid, hence the term “vaping.”

Studies are not yet conclusive as to the effects of e-cigarettes. Some studies indicate the vapor may be releasing harmful substances, including nicotine, but the trend is still too new to be able

to cite longitudinal effects of direct usage and second-hand/third-hand inhalation. Electronic smoking devices have not been approved by the Food and Drug Administration, although it has been determined that it falls under their purview and they are planning to regulate them beyond those used for therapeutic purposes. It is possible that local regulations, in the future, may not be necessary, but there are no regulations to date and minimal science upon which to make health-based decisions.

Public policy is catching up the popularity of the cigarettes. Several states have passed laws to regulate/prohibit e-cigarettes in certain locations (Maryland, Oregon, etc.). Cities have banned the use of e-cigarettes in public places, including New York City, Chicago, San Francisco and Los Angeles. Other California cities have passed bans on e-cigarettes, too (Richmond, Carlsbad, Walnut Creek, etc.). San Diego is in the process of restricting usage. Common reasons cited for enacting regulations include the following:

- Concern about second-hand and third-hand health effects from the vapors
- Confusion about where smoking is allowed/prohibited, since e-cigarettes and their vapor look like traditional cigarettes
- Concern that acceptance of e-cigarettes may increase the social acceptability of smoking, particularly among minors and youth
- Concern that the vapors violate smoke-free air laws, or the intent of the laws

Hookah

In addition to the issue of e-cigarettes, the City has also received requests over the years to allow hookah lounges or hookah bars. Hookahs are water pipes that are used to smoke specially made tobacco that comes in different flavors. New forms of electronic hookah smoking, including steam stones and hookah pens, have been introduced. These products are similar to electronic cigarettes in that they are battery powered and turn a liquid containing nicotine, flavorings and other chemicals into a vapor, which is inhaled. Although hookah bars/lounges are not allowed based on the current ordinance, staff recommends hookah specifically be named in the ordinance for clarification.

Attachments

1. Proposed Ordinance

ATTACHMENT #1
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DAVIS AMENDING SECTIONS 34.01.010, 34.02.010, PORTIONS OF 34.04 AND 34.05 OF CHAPTER 34 (SMOKING ORDINANCE) OF THE MUNICIPAL CODE TO ADD AND TO MODIFY REGULATIONS RELATED TO ELECTRONIC CIGARETTES AND AMENDING SECTION 34.01.020 TO MODIFY THE DEFINITIONS OF SMOKING TO INCLUDE ELECTRONIC CIGARETTES AND HOOKAH

WHEREAS, the popularity of e-cigarettes has grown and continues to grow across the nation; and

WHEREAS, e-cigarettes are not currently regulated by the Food and Drug Administration, unless they are used for therapeutic purposes; and

WHEREAS, although e-cigarettes are too new for longitudinal studies on their health effects, current research indicates that chemicals contained in e-cigarettes may be harmful and that vaping does release contents of e-cigarettes into the air; and

WHEREAS, e-cigarettes are made to mimic conventional cigarettes, making enforcement of no-smoking rules difficult and confusing if e-cigarettes are allowed; and

WHEREAS, many cities, counties and organizations are putting into place laws or policies that treat e-cigarettes the same as conventional cigarettes when it comes to acceptable locations for usage in public and semi-public places; and

WHEREAS, Davis has had in place for over two decades strict local smoking control laws, defining where smoking conventional tobacco products is prohibited; and

WHEREAS, the Davis City Council wishes to include e-cigarettes in the smoking controls and treat them in a manner similar to conventional cigarettes; and

WHEREAS, while hookah are currently covered by Chapter 34, they are not specifically called out, causing confusion among members of the public; and

NOW THEREFORE, the City Council of the City of Davis does hereby ordain as follows:

SECTION 1. 34.01.010 of the Davis Municipal Code is hereby amended to read as follows:

The purpose of this chapter is to protect the public health and welfare by regulating smoking in public places and places of employment and to strike a reasonable balance between the desires of persons who smoke and the need of nonsmokers to breathe smoke-free air, to treat e-cigarettes in the same manner as conventional cigarettes and tobacco

products, and to recognize that, where these conflict, the need to breathe smoke-free air shall have priority.

SECTION 2. 34.01.020 of the Davis Municipal Code is hereby amended to add or amend the following definitions:

The following definition is added:

E-Cigarette means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, hookah pen or under any other product name or descriptor.

The definition is amended to read as follows:

Smoking means inhaling, exhaling, burning, or carrying any lighted cigarette, cigar, pipe, hookah, weed, plant, or other combustible substance in any manner or in any form. Smoking also includes the use of an e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device.

All other definitions in Section 34.01.020 remain unchanged.

SECTION 3. The following section is hereby added to 34.02.020 of the City of Davis Municipal Code

- (e) No later than January 1, 2015, each employer is expected to incorporate e-cigarettes into its written employee smoking policy.

SECTION 4. The following sections are hereby amended to Article 34.04 of the City of Davis Municipal Code:

34.04 SALE OF TOBACCO AND E-CIGARETTES; SALE OF TOBACCO AND E-CIGARETTES FROM VENDING MACHINES PROHIBITED

34.04.010 Purpose. The purpose of this article is to implement a strict and enforceable system to regulate the sale of cigarettes, other tobacco products and e-cigarettes.

34.04.020 Identification required. No person shall sell or permit to be sold cigarettes, other tobacco products or e-cigarettes to an individual without requesting and examining identification establishing the purchaser's age as eighteen years or greater unless the seller has some other conclusive basis for determining the buyer's age.

34.04.030 Vending machine sales prohibited. Thirty days after the effective date of the ordinance codified in this article, no cigarette, other tobacco product, or e-cigarette may be sold, offered for sale or distributed by or from a vending machine or appliance, or any other device designed or used for vending purposes.

SECTION 5. The following sections are hereby amended to Article 34.05 of the City of Davis Municipal Code:

34.05 SALE OF CIGARETTES, TOBACCO OR E-CIGARETTES; SELF-SERVICE SALES PROHIBITED

34.05.010 Self-Service Sales Prohibited.

It shall be unlawful to sell cigarettes, ~~or~~ other tobacco products or e-cigarettes by means of a self-service display rack or shelf that allows for self-service sales by any means other than vendor or employee assisted sales.

34.05.020 Vendor or employee assistance required.

All cigarettes, ~~or~~ other tobacco products or e-cigarettes shall be displayed and offered for sale exclusively by means of vendor or employee assistance, with cigarettes, ~~or~~ other tobacco products or e-cigarettes in a location which requires vendor or employee assistance to retrieve the ~~tobacco~~ product.