

COUNCIL ACTION FORM

SUBJECT: ADOPTION OF NEW ORDINANCE PROHIBITING THE USE OF ELECTRONIC SMOKING DEVICES IN PUBLIC PLACES

BACKGROUND:

In the fall of 2014, Council requested staff assessment of enforcement and constitutional issues potentially associated with enacting a new ordinance banning the use of electronic nicotine delivery devices in public places.

Recently, there have been actions being considered at local, state, and federal levels that would regulate alternative nicotine products or vapor products. While none of the state or federal actions that are being considered would prohibit public use of these devices, there does seem to be an effort to better define the risks associated with nicotine vapors, additives, and the consequences of exposure.

At the April 14, 2015 City Council meeting, staff reported on the enforcement and potential constitutional issues related to adopting an ordinance regulating the use of e-cigarettes. The main constitutional concern in enacting local regulation prohibiting the use of these products in public places was possible preemption by State law. **However, since the recently adopted Iowa Code Chapter 453A does not address regulations related to prohibiting the use of these products in public places and The Smokefree Air Act, Chapter 142D, does not include a provision on uniform application, the City Attorney concluded that it is likely that the City is not preempted from enacting local regulation on this specific issue.**

At the May 26, 2015 City Council meeting, staff reported on the primary, secondhand, and other health risks of e-cigarettes or other alternative vaping products. Staff gave a status update at the June 19, 2015 City Council meeting reporting that the City of Iowa City had passed on first reading an ordinance restricting the use of e-cigarettes in the same places that tobacco cigarettes are restricted. Staff also reported that the University of Iowa had taken action regarding e-cigarettes.

At the June 19, 2015 City Council meeting, the City Council requested the City Attorney prepare options as to how and where the use of e-cigarettes could be regulated. The following options were explored and presented at the December 8, 2015 City Council meeting: (1) adopt an ordinance prohibiting the use of these products in the same places as are prohibited under The Smokefree Air Act; (2) adopt a policy similar to the City of Iowa City; (3) adopt an ordinance prohibiting the use of these products similar to the prohibitions proposed by Iowa State University; and (4) not prohibit the use of these products in any particular areas.

At the December 8th meeting, the Council chose to move forward with Option #1 and directed the City Attorney to draft an ordinance prohibiting the use of e-cigarettes and similar devices in the same locations as smoking is prohibited under The Smokefree Air Act. In accordance with this directive, Staff has drafted an ordinance to be included in Chapter 17, Miscellaneous Offenses, which incorporates prohibitions and definitions which mirror the State law.

The ordinance prohibits the use of these devices in: (1) public places; (2) all enclosed areas within places of employment; (3) seating areas of outdoor sports arenas; (4) outdoor seating or serving areas of restaurants; (5) public transit stations; (6) school grounds; and (7) the grounds of any public buildings owned, leased, or operated under the control of the city. The ordinance further defines “public place” by incorporating the definition from the State law and “electronic smoking device” by incorporating the definition from Iowa State University’s smoke free policy. A violation of the ordinance will be a municipal infraction punishable by a civil penalty of \$100 for a first offense and \$200 for a second or subsequent offense; or in the alternative can be charged as a simple misdemeanor. This penalty is consistent with other offenses in Chapter 17.

Also at that meeting, Council decided to refer the decision on if and how to regulate the use of devices in the city parks to the Parks and Recreation Commission.

ALTERNATIVES:

1. The City Council can adopt on first reading the new ordinance prohibiting the use of electronic nicotine devices in public places described above.
2. The City Council can direct staff to make changes to the language and return to Council with a draft ordinance.
3. The City Council can decline to adopt the proposed amendments.

MANAGER'S RECOMMENDED ACTION:

At the December 8, 2015 meeting, the City Council directed the City Attorney to draft an ordinance prohibiting the use of e-cigarettes and similar devices in the same locations as smoking is prohibited under The Smokefree Air Act. **Assuming that the City Council members are still in support of their previous directive, it is the recommendation of the City Manager that the City Council approve Alternative #1 and adopt on first reading the new ordinance prohibiting the use of electronic nicotine devices in public places described above.**

ORDINANCE NO.

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY ENACTING A NEW SECTION 17.36 THEREOF, FOR THE PURPOSE OF PROHIBITING THE USE OF ELECTRONIC SMOKING DEVICE IN PUBLIC PLACES; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ENACTED, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by enacting a new Section 17.36 as follows:

“Sec. 17.36. USE OF ELECTRONIC SMOKING DEVICE PROHIBITED IN PUBLIC PLACES

(1) The use of an electronic smoking device is prohibited and a person shall not use such device in any of the following:

- a. Public places.
- b. All enclosed areas within places of employment including but not limited to work areas, private offices, conference and meeting rooms, classrooms, auditoriums, employee lounges and cafeterias, hallways, medical facilities, restrooms, elevators, stairways and stairwells, and vehicles owned, leased or provided by the employer.

(2) In addition to the prohibitions specified in subsection 1, the use of an electronic smoking device is prohibited and a person shall not use such device in or on any of the following outdoor areas:

- a. The seating areas of outdoor sports arenas, stadiums, amphitheatres, and other entertainment venues where members of the general public assemble to witness entertainment events.
- b. Outdoor seating or serving areas of restaurants.
- c. Public transit stations, platforms, and shelters under the authority of the city.
- d. School grounds, including parking lots, athletic fields, playgrounds, tennis courts, and any other outdoor area under the control of a public or private educational facility, including inside any vehicle located on such school grounds.
- e. The grounds of any public buildings owned, leased, or operated under the control of the city.

(3) Definitions.

a. Electronic smoking device: means any product containing or delivering nicotine (e.g. Electronic Nicotine Delivery System EDNS) or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pip, e-hookah, or vape pen, or under any other product name or descriptor.

b. Public place: means an enclosed area to which the public is invited or in which the public is permitted, including common areas, and including but not limited to all of the following:

- i. Financial institutions.
- ii. Restaurants.
- iii. Bars.
- iv. Public and private educational facilities.
- v. Health care provider locations.
- vi. Hotels and motels.
- vii. Laundromats.
- viii. Public transportation facilities and conveyances under the authority of the city, including buses and taxicabs, and including the ticketing, boarding, and waiting areas of these

facilities.

- ix. Aquariums, galleries, libraries, and museums.
- x. Retail food production and marketing establishments.
- xi. Retail service establishments.
- xii. Retail stores.
- xiii. Shopping malls.
- xiv. Entertainment venues including but not limited to theaters; concert halls; auditoriums and other facilities primarily used for exhibiting motion pictures, stage performances, lectures, musical recitals, and other similar performances; bingo facilities; and indoor arenas including sports arenas.
- xv. Polling places.
- xvi. Convention facilities and meeting rooms.
- xvii. Public buildings and vehicles owned, leased, or operated by or under the control of the city
- xviii. Service lines.
- xix. Private clubs only when being used for a function to which the general public is invited.
- xx. Private residences only when used as a child care facility, a child care home, or health care provider location.
- xxi. Child care facilities and child care homes.
- xxii. Gambling structures, excursion gambling boats, and racetrack enclosures.
- xxiii. Any other place defined under “public places” in Chapter 142D of the Code of Iowa.

(4) Violation of this section shall be a municipal infraction punishable by a penalty of \$100 for a person’s first violation thereof and \$200 for each repeat violation. Alternatively, violation of this section can be charged by a peace officer of the City as a simple misdemeanor.”

Section Two. Violation of the provisions of this ordinance shall constitute a municipal infraction punishable as set out by law.

Section Three. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Four. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this _____ day of _____, _____.

Diane R. Voss, City Clerk

Ann H. Campbell, Mayor