

TO: Honorable Mayor and City Council
FROM: Tonya Haas Davidson, City Attorney

Executive Summary:

Ordinance No. 1, Series of 2016, amends the Greenwood Village Municipal Code to include the use of electronic cigarettes to the Village's smoking prohibitions and to expand smoking prohibitions to public outdoor areas.

Recommendation:

It is recommended that Ordinance 01-16 be adopted on first reading and ordered published in full.

Attachments:

- A. Ordinance 01-16

DISCUSSION

Background

The use of vaping devices is growing, particularly among minors. From 2013 to 2014, use of e-cigarettes among high school students increased from 4.5% to 13%, and among middle school students from 1.1% to 3.9% - an increase from 120,000 students to 450,000 students.

Since 2014, the state of Colorado has defined "tobacco product" and "cigarette" to include any device that can be used to deliver tobacco or nicotine to the person inhaling from the device, and prohibited their sale to minors. Despite this, their popularity among minors continues to grow.

In addition to having a new and even larger generation of minors addicted to nicotine, another concern with the growing use of vaping devices is the subversion of marijuana laws. There are just as many if not more vaping devices made specifically for marijuana consumption than are made for ingesting nicotine. Since vaping devices can easily mask the odor of marijuana however, it is virtually impossible for law enforcement to know whether a person vaping in public is in fact violating the state constitution's prohibition against "open and public" consumption of marijuana.

According to American Nonsmokers' Rights Foundation, there are 438 jurisdictions across the country that now ban e-cigarettes wherever smoking is banned. Of these, 14 are communities in Colorado¹, and of those, nine² have restrictions that include both indoor and outdoor venues.

¹ Arvada, Boulder, Breckenridge, Brighton, Edgewater, Evans, Fort Collins, Frisco, Golden, Greeley, Lafayette, Lakewood, Littleton, Louisville

² Arvada, Boulder, Breckenridge, Brighton, Edgewater, Fort Collins, Golden, Littleton, Louisville

In Greenwood Village, smoking is currently prohibited in public building and public meeting places, grocery stores, restaurants and bars, common areas in public and private buildings such as restrooms, lobbies and elevators, public transportation and private transportation for hire, indoor sports arenas, bowling alleys and billiard halls, museums, libraries, schools, health care facilities and day care facilities. In addition, 75% of hotel rooms must be non-smoking, and all places of employment must be smoke free. The only places of employment where smoking can be allowed is employers with less than 3 employees and which are not open to the public.

The only outdoor areas where smoking is currently prohibited is within a 15-foot radius of the entryway of all buildings and facilities where smoking is prohibited.

Ordinance 01-16 bans the use of vaping devices in all areas where smoking is currently prohibited, and expands the prohibition of smoking in public buildings to include public parks, open space and trails, public transit waiting areas, and outdoor entertainment venues and amphitheaters. The purpose of expanding smoking prohibitions in such areas is to further protect the public from exposure to second-hand smoke and to prohibit the open and public consumption of marijuana that occurs by way of vaping devices. In addition, banning vaping where smoking is prohibited and expanding smoking restrictions will reduce the likelihood that the public will associate the use of electronic smoking devices with healthful behavior, reduce the likelihood of minors becoming addicted to nicotine, and help ensure compliance with existing smoking and marijuana restrictions.

Ordinance 01-16 does not extend the restriction of outdoor smoking to outdoor areas of restaurants, however. While the same reasons for banning smoking and vaping apply to these areas as in other outdoor venues, the Village's restaurant owners and managers have not had an opportunity to weigh in on such a measure. Currently, whether to allow smoking on patios at restaurants is left up to the individual proprietor. None have asked for smoking ban on patio areas, nor has any resident. Staff has, however, had requests for more outdoor smoking restrictions at large public venues such as Fiddler's Green amphitheater, despite smoking already being prohibited by the operators of the facility.