



City of Grand Island

Tuesday, August 27, 2019

Council Session

Item F-3

#9746 - Consideration of Amending Chapter 39 of the Grand Island City Code Relative to Vaping

Staff Contact: Councilmember Chuck Haase

Council Agenda Memo

From: Stacy R. Nonhof, Interim City Attorney

Meeting: August 27, 2019

Subject: Amending Chapter 39 of City Code to Prohibit Vaping

Presenter(s): Stacy R. Nonhof, Interim City Attorney

Background

A question by a Council member regarding the use of vaping devices in public places was asked months ago. After the question was asked, research into the uses and effects of using vaping products was done. What is being presented tonight is the result of that research and request.

Discussion

This ordinance amends Chapter 39 of City Code, the Grand Island Smoking Regulation Act. This chapter of City Code was originally modeled after the Nebraska Clean Air Act. State Statute allows municipal codes to be more restrictive than State law. The Nebraska Legislature has not banned the use of vapor products in public buildings to date. The purpose of this Ordinance is to prevent the use of electronic vaping devices in public buildings.

The most significant change to City Code is the addition of vaping and vaping device to the definitions. Vape or vaping means the inhaling and exhaling of the aerosol produced by any vaping device. Vaping device means a device that consists of a mouthpiece, battery, a cartridge for containing the e-liquid or e-juice and a heating component for the device that is powered by a battery. Vaping devices may include but not be limited to, e-cigarettes, vape pens, advanced personal vaporizers (MODS), JUUL's or any other device whether professionally made or homemade that are designed and used to inhale vapor products.

Each of the other sections of Code being amended simply add vaping as a prohibited activity along with smoking in the traditional sense.

Here are a few examples of vaping devices.

Vape Pens:



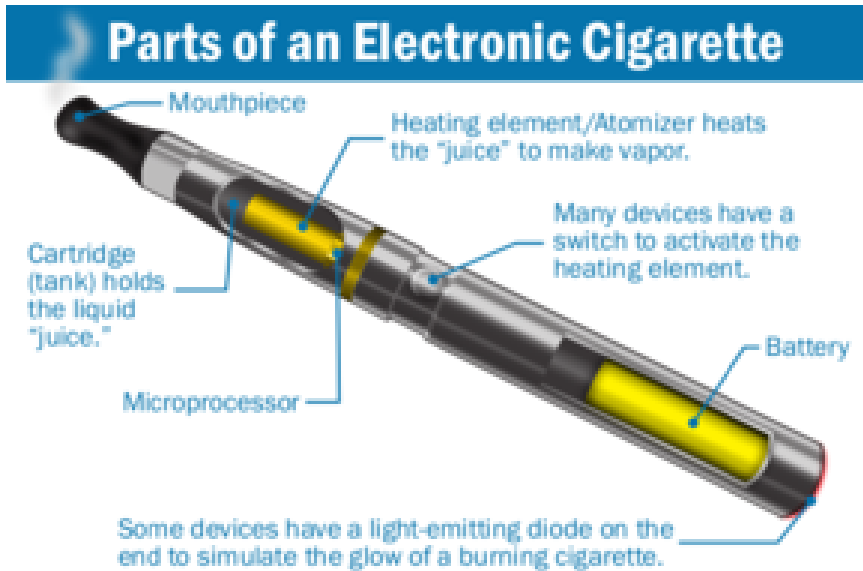
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JUUL:



E-Cigarette:



Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the Ordinance amending Chapter 39 of City Code.

Sample Motion

Move to approve the Ordinance.

ORDINANCE NO. 9746

An ordinance to amend Chapter 39 of Grand Island City Code ; to amend Section 39-2 thru Section 39-7; to clarify and/or make general corrections to various code sections, to repeal any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. Section 39-2 thru Section 39-7 of the Grand Island City Code is hereby amended to read as follows:

§39-2. Purpose

The City Council does hereby declare it to be the public policy of this City to encourage places of employment and public places to reduce the health and safety risks posed by smoking and vaping in places of employment and public places. The City Council authorizes the Health Director of the Central District Health Department and law enforcement to administer and enforce this Section within the City of Grand Island.

§39-3. Definitions; General Provisions

For the purposes of this Section, the following words and phrases shall have the meaning ascribed to them by this Section.

Employed. Employed shall mean hired, contracted, subcontracted, or otherwise engaged to furnish goods or services.

Employee. Employee shall mean a person who is employed by an employer in consideration for direct or indirect monetary wage(s), profit, or other remuneration.

Employer. Employer shall mean a person, nonprofit entity, sole proprietorship, partnership, joint venture, corporation, limited partnership, limited liability company, co-op, firm, trust, association, organization, or other business entity formed for profit-making purposes, including retail establishments, where goods or services are sold, who employs one or more employees.

Guestroom or Suite. Guestroom or suite shall mean sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if any, rented to the public for their exclusive transient occupancy including, but not limited to, guestrooms or suites in hotels, motels, inns, lodges, or other such establishments.

Health Director. Health Director shall mean the Director of the Central District Health Department or authorized representative(s).

Indoor Area. Indoor area means an area enclosed by a floor, a ceiling, and walls on all sides that are continuous and solid except for closeable entry and exit doors and windows and

Approved as to Form	☐ _____
August 23, 2019	☐ City Attorney

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in which less than twenty percent of the total wall area is permanently open to the outdoors. For walls in excess of eight feet in height, only the first eight feet shall be used in determining such percentage.

International No-Smoking Symbol. International no-smoking symbol shall mean a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.

Place of Employment. Place of employment means an indoor area under the control of a proprietor that an employee accesses as part of his or her employment without regard to whether the employee is present or work is occurring at any given time. The indoor area includes, but is not limited to, any work area, employee breakroom, restroom, conference room, meeting room, classroom, employee cafeteria, and hallway. A private residence is a place of employment when such residence is being used as a licensed child care program and one or more children who are not occupants of such residence are present.

Proprietor. Proprietor shall mean any employer, owner, operator, supervisor, manager or any other person who controls, governs, or directs the activities in a place of employment or public place.

Public Place. Public place shall mean an indoor area to which the public is invited or in which the public is permitted, whether or not the public is always invited or permitted. A private residence shall not be considered a "public place."

Smoke or Smoking. Smoke or smoking shall mean the lighting of any cigarette, cigar, or pipe; or the possession of any lighted cigarette, cigar, or pipe, regardless of its composition.

Vape(ing). Vape(ing) shall mean the inhaling and exhaling of the aerosol produced by any vaping device.

Vaping Device. Vaping device shall mean a device that consists of a mouthpiece, battery, a cartridge for containing the e-liquid or e-juice and a heating component for the device that is powered by a battery. Vaping devices may include but not be limited to, e-cigarettes, vape pens, advanced personal vaporizers (MODS), JUUL's or any other device whether professionally made or homemade that are designed and used to inhale vapor products.

§39-4. Smoking Prohibited; Exceptions

It shall be unlawful for any person to smoke or vape in a place of employment or a public place, except as designated by a proprietor pursuant to this Section.

§39-5. Proprietor to Prohibit Smoking; Exceptions

(a) It shall be unlawful for any proprietor of any place of employment or public place to allow smoking or vaping except as follows:

(1) Guestrooms or suites, provided the following requirements are met:

(i) The number of rooms or suites designated for smoking shall be no greater than 20% of the total number of guestrooms or suites.

(ii) Each guestroom or suite where smoking or vaping is allowed shall have a permanent sign posted containing the words "smoking allowed" on each entrance.

(2) As part of a study conducting research into the health effects of smoking or vaping in a scientific or analytical laboratory either governed by state or federal law or at a college or university approved by the Nebraska Coordinating Commission for Post Secondary Education. The proprietor shall post a temporary sign on all

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entrances to the laboratory indicating that smoking or vaping is being allowed for the purposes of research.

(b) Proprietors shall conspicuously post or display required signs so that the signs are readily viewable by employees and the public.

(c) This section shall not be interpreted or construed to permit smoking or vaping where it is otherwise restricted by other applicable laws.

§39-6. Enforcement

The Health Director and law enforcement agencies are hereby authorized to inspect a place of employment or public place at any reasonable time to determine compliance with this Section.

§39-7. Violations and Penalties

(a) A person who smokes or vapes in a place of employment or a public place in violation of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a minimum fine of:

- (1) One hundred dollars (\$100) and costs for the first offense;
- (2) Two hundred dollars (\$200) and costs for the second offense;
- (3) Five hundred dollars (500) and costs for the third and subsequent offenses.

(b) A proprietor of a place of employment or public place upon whom a duty is placed by the provisions of this section, who shall fail, neglect, or refuse to perform such duty, or who shall knowingly violate any of the provisions hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a minimum fine of:

- (1) One hundred dollars (\$100) and costs for the first offense;
- (2) Two hundred dollars (\$200) and costs for the second offense;
- (3) Five hundred dollars (500) and costs for the third and subsequent offenses.

(c) Each day that a violation continues to exist shall constitute a separate and distinct offense and shall be punishable as such.

(d) Every act or omission of whatever nature constituting a violation of any of the provisions of this section by an officer, manager, supervisor, agent or employee of any proprietor, if said act or omission is made with the authorization, knowledge, or approval of the proprietor, shall be deemed and held to be the act or omission of such proprietor, and said proprietor shall be punishable in the same manner as if said act or omission had been committed by such proprietor personally.

SECTION 2. Any ordinance or parts of ordinances in conflict herewith be, and hereby are, repealed.

SECTION 3. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the Grand Island Independent as provided by law.

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Enacted: August 27, 2019.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk