



# Naperville

## CITY COUNCIL AGENDA ITEM

**SUBJECT:** E-Cigarette Regulations

**TYPE OF VOTE:** Simple Majority

**ACTION REQUESTED:**

Pass the ordinance amending Section 1 of Chapter 3, Title 3 and amending Chapter 9 of Title 4 of the Naperville Municipal Code adding regulations concerning the sale, possession and use of alternative nicotine products.

**BOARD/COMMISSION REVIEW:**

The Liquor and Tobacco Control Commission recommended adding the proposed alternative nicotine product regulations at its February 12, 2015 meeting.

**COUNCIL ACTION PREVIOUSLY TAKEN:**

Date	Item No.	Action
3/3/15	N.1.	Held first reading of the ordinance amending the Municipal Code to add regulations concerning the sale, possession and use of alternative nicotine products.

**DEPARTMENT:** Legal

**SUBMITTED BY:** Michael DiSanto, City Prosecutor

**FISCAL IMPACT:**

A nominal annual increase in licensing fees.

**BACKGROUND:** Tobacco and its use have been regulated for decades. Reports of the negative public and personal health effects of traditional forms of tobacco use have increased consumer awareness. This, in turn, has encouraged people and companies to look for alternative or potentially safer forms of adult tobacco and nicotine use. Electronic nicotine delivery systems (ENDS) - also known as vaporizers, digital, electronic or e-cigarettes - do not produce a combustible “smoke” like traditionally burned cigarettes, nor do they contain tar, a by-product of burning tobacco. Instead, they contain a small battery that converts a liquid from small

cartridges into a water-based mist, which is expelled as vapor or aerosol designed to deliver nicotine, flavor, and other chemicals to the user through inhalation. The odorless water vapor aerosol is inhaled by the user, a process called “vaping.”

These “e-cigarettes” have surged in popularity over the past two years. They come in many forms, but most often mimic the look of a tobacco cigarette as a plastic or glass cigarette or rod. The liquid cartridges or tanks may contain various amounts of tobacco-based nicotine, synthetic nicotine, or no nicotine at all, and flavorings and propellants.

## **Scientific Debate**

Research studies on the personal and public health effects of the vapor produced by these products have been inconclusive. This lack of consistent, scientific research has health groups divided. Some public health organizations believe that the products are not a safe alternative to traditional tobacco consumption and would like the Food and Drug Administration (FDA) to regulate products as new or other tobacco products. Other health professionals assert that nicotine vapor products may be a risk-reduced method of nicotine use and therefore may help reduce use of traditional forms of tobacco with more serious health risks.

In 2011, the FDA stated that it planned to regulate e-cigarettes as a tobacco product, but to date, no rules or regulations have been issued. The FDA is currently funding dozens of studies on the scientific and public health risks of e-cigarettes. As of yet, the Illinois Department of Public Health does not have a stance on e-cigarettes. Attachment 2 provides more details about the scientific debate surrounding the health effects of e-cigarettes.

## **Existing Regulations**

### FDA

The FDA 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. Under the proposed rule, makers of e-cigarettes would, among other requirements:

- Register with FDA and report product and ingredient listings
- Only market new tobacco products after FDA review
- Only make claims of reduced risk if FDA confirms that scientific evidence supports the claim and that marketing the product will benefit public health as a whole
- Not distribute free samples

In addition, under the proposed rule, the following items would also apply to newly deemed covered tobacco products:

- Minimum age and identification restrictions to prevent sales to underage youth
- Requirements to include health warnings
- Prohibition of vending machine sales, unless in a facility that never admits youth

### State of Illinois

At least 41 states, including Illinois, currently prohibit sales of e-cigarettes to minors. The following are regulations passed by the State of Illinois regulating e-cigarettes:

- Effective January 1, 2014, the State passed a law establishing a definition for “alternative nicotine products” that includes e-cigarettes and made it illegal to sell or give an e-cigarette to a person under the age of 18. Notably, the law did not explicitly prohibit minors from **possessing** an e-cigarette, but there is a bill pending (SB32) seeking to make under age possession illegal.
- Effective January 1, 2015, liquids sold and marketed for the refilling of e-cigarettes may only be sold in special packaging (childproofing).
- Effective January 1, 2015, e-cigarettes must be sold from behind the counter in an age-restricted area, or in a sealed display case.
- Effective January 1, 2016, requires a retailer of cigarettes or tobacco products to obtain a \$75 retailer license from the Department of Revenue.
- Notably, the Illinois Smoke Free Act that bans smoking inside public places does **not** apply to e-cigarettes, however there is a bill pending (HB2404) that proposed to amend the Smoke Free Illinois Act to expand the indoor smoking ban to include e-cigarettes.

### City of Naperville

Naperville’s Liquor and Tobacco Code requires a retailer to possess a local dealer’s license in order to sell any tobacco products. It defines “Tobacco Products” as “[a]ny substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.”

Accordingly, since e-cigarettes do not contain tobacco leaf, a dealer’s license is not required to sell e-cigarettes. Similarly, the local code does not prohibit local retailers from selling e-cigarettes to persons under the age of 18 nor are minors prohibited from possessing or using e-cigarettes.

### Other Municipalities

Some municipalities, such as Crystal Lake, already treat e-cigarettes like tobacco cigarettes in terms of sales and prohibit the sale of them to those younger than age 18. Crystal Lake, however, recently considered prohibiting the use of e-cigarettes indoors, but decided to wait on more conclusive medical research on the second hand effects of e-cigarettes.

Other municipalities, including Chicago, Schaumburg, Evanston, Oak Park and Wilmette, have implemented regulations that treat e-cigarettes identically to tobacco products, specifically prohibiting sales to and possession by minors and banning their use in indoor public places.

### **Liquor Commission Recommendation**

On December 4, 2014, the Liquor Commission directed staff to prepare a report on e-cigarettes for its consideration at the January Liquor Commission meeting. On January 8, 2015, staff made the report to the Liquor Commission. The Commission then directed staff to prepare an ordinance adding e-cigarette regulations for consideration at its February Liquor Commission meeting. On February 12, 2015, the Liquor Commission unanimously recommended that an ordinance adding regulations concerning the sale, possession and use of e-cigarettes be submitted to the City Council for adoption. *A copy of the Liquor Commission's February 12, 2015 meeting minutes are attached.*

### **City Council**

On March 3, 2015, City Council held the first reading of the ordinance amending the Naperville Municipal Code to add regulations concerning the sale, possession and use of alternative nicotine products. Council inquired as to the policy of the local schools concerning e-cigarettes. According to the police department's school resource officers, the local high schools treat e-cigarettes the same as tobacco cigarettes, considering the possession of e-cigarettes on campus a suspendable offense.

**DISCUSSION:** The attached ordinance expands the definition of "Tobacco Products" in the City's Tobacco Code to include any "alternative nicotine product" as defined in the State Code.

"[A]lternative nicotine product" means a product or device not consisting of or containing tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means. "Alternative nicotine product" excludes cigarettes, smokeless tobacco, or other tobacco products as these terms are defined in Section 1 of this Act and any product approved by the United States Food and Drug Administration as a non-tobacco product for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

If adopted by City Council, said ordinance will require local retailers selling e-cigarettes to possess a \$200 annual local tobacco dealer's license and prohibit sales of e-cigarettes to, and possession by, persons under the age of 18.

The proposed ordinance also adds the use of "Alternate Nicotine Products" to the City's Smoke Free Act which, if adopted by Council, will prohibit the use of e-cigarettes within public places.

**RECOMMENDATION:** Pass the ordinance amending Section of Chapter 3, Title 3 and amending Chapter 9 of Title 4 of the Naperville Municipal Code adding regulations concerning the sale, possession and use of alternative nicotine products.

### **ATTACHMENTS:**

1. Ordinance adding regulations concerning the sale, possession and use of alternative nicotine products.
2. Appendix re: Scientific Debate
3. Liquor Commission's February 12, 2015 Meeting Minutes