

City of Palm Coast, Florida Agenda Item

Agenda Date: 02/04/2020

Department	CITY CLERK	Amount
Item Key	7688	Account
Subject	ORDINANCE 2020-XX AMENDING THE CITY OF PALM COAST CODE OF ORDINANCES ESTABLISHING A NEW SECTION BY PROVIDING FOR THE REGULATION OF VAPOR-GENERATING ELECTRONIC DEVICES AND LIQUID NICOTINE	
<u>UPDATED BACKGROUND FROM THE JANUARY 28, 2020 WORKSHOP</u>		
<p>This item was heard by the City Council at the January 28, 2020 Workshop. There were no changes suggested to this item. Staff, however, did revise to include the section number of the <i>Code of Ordinances</i> to the proposed draft, as attached.</p>		
<u>ORIGINAL BACKGROUND FROM THE JANUARY 28, 2020 WORKSHOP</u>		
<p>At the January 21, 2020 business meeting, Council Member Howell requested Council census to direct staff to bring forth an ordinance relating to vaping. Staff and the City Attorney have researched and provide the attached draft regarding regulating vapor generating electronic devices and liquid nicotine.</p>		
<p>The City of Palm Coast, Florida (the “City”) is granted the authority, under Section 2(b), Article VII, of the State Constitution, to exercise any power for municipal purposes, except where expressly prohibited by law. A primary purpose of the Code of Ordinances of the City is to protect the health, safety and welfare of the residents, citizens and visitors of the City.</p>		
<p>There are health dangers posed by tobacco and nicotine that are not limited to merely cigarettes or other traditional forms of smoking. Despite progress in reducing smoking, tobacco use is still the leading cause of preventable death in the United States.</p>		
<p>Electronic cigarettes (“e-cigarettes” or “vapor-generating electronic devices”) entered the marketplace around 2007, and since 2014, they have been the most commonly used tobacco product among middle school and high school students in the United States. Electronic cigarettes companies have effectively used marketing strategies, including celebrity endorsements, slick magazine advertisements, social media campaigns, paid influencers, and music sponsorships, to reach youth and young adults. A 2016 study found that 78.2% of middle and high school students—20.5 million youth—had been exposed to e-cigarette advertisements from at least one source, an increase from 68.9% only two years before, in 2014.</p>		
<p>According to the Centers for Disease Control and Prevention (“CDC”), the number of middle and high school students who reported being current users of tobacco products increased 36%—from 3.6 million to 4.9 million students—between 2017 and 2018. This dramatic increase, which has erased past progress in reducing youth tobacco use, is directly attributable to a nationwide surge in e-cigarette use by adolescents. There were 1.5 million more youth e-cigarette users in 2018 than 2017, and those who were using e-cigarettes were using them more often. Frequent use of e-cigarettes increased from 20 percent in 2017 to 28 percent in</p>		

2018 among current high school e-cigarette users.

The widespread use of e-cigarettes by youth has significant public health consequences. As stated by the Surgeon General, “Most e-cigarettes contain nicotine – the addictive drug in regular cigarettes, cigars, and other tobacco products. Nicotine exposure during adolescence can harm the developing brain – which continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs.”

This item is for Council consideration and requests direction be provided to staff regarding this draft Ordinance.

Recommended Action :

ADOPT ORDINANCE 2020-XX AMENDING THE CITY OF PALM COAST CODE OF ORDINANCES ESTABLISHING A NEW SECTION BY PROVIDING FOR THE REGULATION OF VAPOR-GENERATING ELECTRONIC DEVICES AND LIQUID NICOTINE

ORDINANCE 2020-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AMENDING THE CITY OF PALM COAST CODE OF ORDINANCES BY ESTABLISHING A NEW SECTION PROVIDING FOR THE REGULATION OF VAPOR-GENERATING ELECTRONIC DEVICES AND LIQUID NICOTINE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Palm Coast, Florida (the “City”) is granted the authority, under Section 2(b), Article VII, of the State Constitution, to exercise any power for municipal purposes, except where expressly prohibited by law; and

WHEREAS, a primary purpose of the Code of Ordinances of the City is to protect the health, safety and welfare of the residents, citizens and visitors of the City; and

WHEREAS, the City Council finds that the health dangers posed by tobacco and nicotine are not limited to merely cigarettes or other traditional forms of smoking; and

WHEREAS, despite progress in reducing smoking, tobacco use is still the leading cause of preventable death in the United States; and

WHEREAS, electronic cigarettes (“e-cigarettes” or “vapor-generating electronic devices”) entered the marketplace around 2007, and since 2014, they have been the most commonly used tobacco product among middle school and high school students in the United States; and

WHEREAS, electronic cigarettes companies have effectively used marketing strategies, including celebrity endorsements, slick magazine advertisements, social media campaigns, paid influencers, and music sponsorships, to reach youth and young adults. A 2016 study found that 78.2% of middle and high school students—20.5 million youth—had been exposed to e-cigarette

advertisements from at least one source, an increase from 68.9% only two years before, in 2014; and

WHEREAS, according to the Centers for Disease Control and Prevention (“CDC”), the number of middle and high school students who reported being current users of tobacco products increased 36%—from 3.6 million to 4.9 million students—between 2017 and 2018. This dramatic increase, which has erased past progress in reducing youth tobacco use, is directly attributable to a nationwide surge in e-cigarette use by adolescents. There were 1.5 million more youth e-cigarette users in 2018 than 2017, and those who were using e-cigarettes were using them more often. Frequent use of e-cigarettes increased from 20 percent in 2017 to 28 percent in 2018 among current high school e-cigarette users; and

WHEREAS, the widespread use of e-cigarettes by youth has significant public health consequences. As stated by the Surgeon General, “Most e-cigarettes contain nicotine – the addictive drug in regular cigarettes, cigars, and other tobacco products. Nicotine exposure during adolescence can harm the developing brain – which continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs;” and

WHEREAS, the City Council finds that this Ordinance is necessary to protect the health, safety, and welfare of the minor residents, citizens and visitors of Palm Coast; and

WHEREAS, words with double underlined type shall constitute additions to the original text and strike through shall constitute deletions to the original text, and asterisks (***) indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF PALM COAST, FLORIDA, AS FOLLOWS:

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS. The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

SECTION 2. Chapter 6 of the Code of Ordinances of the City of Palm Coast, Florida, is hereby created as follows:

Article I. Sale and use of vapor-generating electronic devices and liquid nicotine.

SECTION 3. Section 6-1 of the Code of Ordinances of the City of Palm Coast, Florida, is hereby created as follows:

Sec. 6-1 - Intent.

The provisions of this Article are intended to prevent the sale, purchase, use and possession of vapor-generating electronic devices and liquid nicotine by persons under the age of 21, by regulating the commercial marketing and placement of such products. It is not the intent of this Article to prohibit the sale or delivery of tobacco products which are otherwise lawful or regulated pursuant to Chapter 569, Florida Statutes, and this Article shall not be interpreted or construed to do so.

SECTION 4. Section 6-2 of the Code of Ordinances of the City of Palm Coast, Florida, is hereby created as follows:

Sec. 6-2 - Definitions.

City means the City of Palm Coast, Florida.

Liquid nicotine means any liquid product composed either in whole or part of pure nicotine and other substances and manufactured for use with vapor-generating electronic device.

Minor means a person under the age of twenty-one (21).

Open display unit, in the context of the retail sale of vapor-generating electronic devices and liquid nicotine, means any device, furniture or furnishing within or upon which vapor-generating electronic devices or liquid nicotine are displayed to customers, and includes but is not limited to any case, rack, shelf, counter, table desk, kiosk, booth, stand and other surface.

Person means any individual, employee, partnership, company, private or closely held corporation, cooperative association, personal representative, receiver, trustee, assignee, or any other business or legal entity.

Self-service merchandising, in the context of the retail sale of vapor-generating electronic devices and liquid nicotine, means the open display of vapor-generating electronic devices and liquid nicotine, whether packaged or otherwise, for direct retail customer access and handling prior to purchase without the intervention of assistance of the retailer or the retailer's owner, employee or agent. Such open display includes the use of an open display unit.

Smoking means smoking as defined in F.S. § 386.203 and any successor thereto.

Vape or vaping means to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance. The term does not include the mere possession of a vapor-generating electronic device.

Vapor means aerosolized or vaporized nicotine or other aerosolized or vaporized substance produced by a vapor-generating electronic device or exhaled by the person using such a device.

Vapor-generating electronic device means any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

Vapor-generating electronic device retailer or retail vape shop means any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental.

SECTION 5. Section 6-3 of the Code of Ordinances of the City of Palm Coast, Florida,

is hereby created as follows:

Sec. 6-3 - Sale or supply of vapor-generating electronic device or liquid nicotine to minors prohibited.

It is prohibited for any person to sell, offer for sale, or provide a vapor-generating electronic device or liquid nicotine to a person under 21 years of age within the City.

SECTION 6. Section 6-4 of the Code of Ordinances of the City of Palm Coast, Florida, is hereby created as follows:

Sec. 6#-4 – Prohibited vaping locations.

The use of a vapor-generating electronic device is prohibited at all locations within the City at which smoking is prohibited under F.S. Ch. 386.

SECTION 7. Section 6-5 of the Code of Ordinances of the City of Palm Coast, Florida, is hereby created as follows:

Sec. 6-5 – Self-service merchandising prohibited.

(a) No person engaged in the retail sale of vapor-generating electronic devices or liquid nicotine shall sell, permit to be sold, offer for sale, or display for sale vapor-generating electronic devices or liquid nicotine by means of self-service merchandising.

(b) No person engaged in the retail sale of vapor-generating electronic devices or liquid nicotine shall place vapor-generating electronic devices or liquid nicotine in an open display unit unless the same is located in an area that is inaccessible to customers.

SECTION 8. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

SECTION 9. CODIFICATION. It is the intention of the City Council of the City of Palm Coast, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Palm Coast, Florida; that the Sections

of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, “Ordinance” may be changed to “Section,” “Article,” or other appropriate word.

SECTION 10. CONFLICTS. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 11. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

Approved on first reading this 4th day of February 2020.

Adopted on the second reading after due public notice and hearing this 18th day of February 2020.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

APPROVED AS TO FORM AND LEGALITY

WILLIAM E. REISCHMANN, JR.
CITY ATTORNEY