

AGENDA ITEM #: _____

DATE: September 23, 2019

CAR #: 2019-6752



CITY COUNCIL ACTION REPORT

SUBJECT: Amendments to Chapter 11 and Article 1-8 Regarding Vaping Regulations, Restrictions and Penalties

STAFF PRESENTER(S): Roric Massey, City Attorney

OTHER PRESENTER(S): None

Summary: Consider amendments to Goodyear City Code that will provide regulations, restrictions and penalties regarding Vaping within the city of Goodyear.

Recommendation:

1. ADOPT RESOLUTION NO. 2019-1994 DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT ENTITLED “AMENDMENT TO GOODYEAR CITY CODE, CHAPTER 11 (OFFENSES), AND CHAPTER 1, ARTICLE 1-8 (PENALTY) RELATED TO VAPING REGULATIONS, RESTRICTIONS AND PENALTIES, DATED SEPTEMBER 2019.”
2. ADOPT ORDINANCE NO. 2019-1449 AMENDING CHAPTER 11 (OFFENSES) AND CHAPTER 1, ARTICLE 1-8 (PENALTY) OF THE GOODYEAR CITY CODE RELATED TO VAPING REGULATIONS, RESTRICTIONS, AND PENALTIES; AND PROVIDING FOR PENALTIES, REPEAL OF CONFLICTING ORDINANCES AND CODES, CORRECTIONS, SEVERABILITY AND DECLARING AN EMERGENCY.

Fiscal Impact: There are no costs associated related to the adoption of this code revision as no new programs are being proposed.

Background and Previous Actions

Goodyear prohibited smoking in enclosed city facilities and vehicles in 1992 pursuant to the adoption of Ordinance 92-474. In 2002, the Council sought to protect the working environment and public health of Goodyear citizens by prohibiting smoking in public places and work environments pursuant to Ordinance 02-791. In 2006 Arizona Voters approved Proposition 201, the Smoke-Free Arizona Act.

Now, in response to the epidemic of vaping use among students and the general public, the Council directed staff to prepare regulations expanding the current smoking regulations to include vaping, and to further limit smoking and vaping by:

1. Prohibiting smoking and vaping in parks and trails;

2. Prohibiting the sale of smoking and vaping materials to persons under the age of 21; and
3. Prohibiting smoking and vaping at schools and school related events.

On May 20, 2019 a report was prepared by Goodyear PD and distributed to Mayor and Council detailing the effects of vaping and what the School Resource Officers have witnessed in Goodyear schools. Council later obtained legal advice on regulating vaping at an executive session held on June 24, 2019. At that session, Council directed staff to prepare regulations expanding the current smoking regulations to include vaping and to further incorporate smoking and vaping prohibitions and penalties. At a September 19, 2019 Council work session, staff presented the proposed code amendments regarding vaping regulations, restrictions penalties.

Staff Analysis

Vaping, also known as JUULing, in schools and the general population is currently being discussed at the national, state and local levels of government. Last month, the House Oversight Subcommittee on Economic and Consumer Policy held two days of hearing investigating JUUL's role in the youth nicotine addiction epidemic, marketing to youth, misleading health claims, and new partnership with traditional tobacco companies. Last session, the Arizona legislature considered three bills, none of which passed, that proposed three different ways to regulate vaping in Arizona. A quick google search shows the media is filled with articles and stories related to the dangers of vaping. Just a few examples:

- The New York Times (The Price of Cool: A Teenager, a JUUL and Nicotine Addiction);
- USA Today (Teen vaping is on the rise. Here's what they think about e-cigarettes);
- WBUR (Vaping Could Cause Cardiovascular Harm);
- CNN (Why Vaping is so dangerous for Teens; and Vaping an epidemic in US high schools).

It is against this backdrop that Council instructed staff to research different ways to regulate vaping to protect the general public, with a special emphasis on protecting Goodyear students from the dangers of nicotine use.

One industry source describes the difference between smoking and vaping as:

DEFINITION OF SMOKE

- Smoke is the result of combustion. When combustion occurs, new chemicals form through the process of oxidation. Smoke contains thousands of new chemicals different from those initially burned.
- Fire is what creates smoke. When you smoke a cigarette, a fire must be involved to create the smoke.

DEFINITION OF VAPOR

- When a substance becomes gaseous, at a temperature that is lower than its point of combustion, it is considered vapor. The chemicals that are in vapor are the same as those found in the vaporized substance.

- Vaporizing something is what happens when you heat water on a stove. When water begins to boil, it creates vapor. While the vapor is in a different state, it still has the same chemical makeup as the liquid water.
- The biggest takeaway is the fact that vaporizing does not create any new compounds. Vapor maintains the same compounds as the substance that created it.

Some people roll various substances in paper or add them to devices and burn them, inhaling the smoke. Others heat a variety of substances and inhale the vapor created when the materials are heated. Rather than regulate the universe of substances, the proposed ordinance amendments take a conservative approach by regulating only tobacco related products, whether smoked or vaped, because tobacco related or nicotine containing products are the focus of recent warnings by the CDC, the U.S. Surgeon General, and the many media reports on smoking and vaping.

Attached to this council action report is a list of studies cited as establishing the negative impacts of using tobacco related or nicotine containing products. Below is a smattering of statements of potential harms of smoking and vaping:

1. *Quick Facts on the Risks of E-Cigarettes for kids, teens and young adults*

[Source: www.cdc.gov/tobacco]

The use of e-cigarettes is unsafe for kids, teens, and young adults because:

- a. Most e-cigarettes contain nicotine. Nicotine is highly addictive and can harm adolescent brain development, which continues into the early to mid-20s.¹
- b. E-cigarettes can contain other harmful substances besides nicotine.
- c. Young people who use e-cigarettes may be more likely to smoke cigarettes in the future.

2. *Smokeless Tobacco Health Effects* [Source: www.cdc.gov/tobacco]

Smokeless tobacco is associated with many health problems. Using smokeless tobacco:

- a. Can lead to nicotine addiction
- b. Causes cancer of the mouth, esophagus (the passage that connects the throat to the stomach), and pancreas (a gland that helps with digestion and maintaining proper blood sugar levels)
- c. Is associated with diseases of the mouth
- d. Can increase risks for early delivery and stillbirth when used during pregnancy
- e. Can cause nicotine poisoning in children
- f. May increase the risk for death from heart disease and stroke

3. *Smoking tobacco (or any plant) is a positive danger to the health and a material annoyance, inconvenience, discomfort and health hazard to those who are present in confined spaces.*

[Source: City of Tempe Ordinance, Sec. 22-40 and City of Prescott Ordinance 2018-1616]

The following statements are from: *COMPREHENSIVE SMOKEFREE [AND TOBACCO FREE] PLACES ORDINANCE* Drafted by ChangeLab Solutions, a Law & policy innovation for the common good, Updated September 2018, (Originally issued January 2013).

4. *Tobacco use causes death and disease and continues to be an urgent public health threat. The World Health Organization (WHO) estimates that tobacco kills up to half of its users, amounting to more than 7 million deaths each year worldwide, including nearly half a million people who die prematurely from smoking in the United States alone.*
5. *Electronic smoking device aerosol may be considered a health hazard, as electronic smoking device aerosol is not harmless water vapor as it contains varying concentrations of particles and chemicals with some studies finding particle sizes and nicotine concentrations similar to, or even exceeding, conventional cigarette smoke.*
6. *Secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:*
 - a. The U.S. surgeon general concluded that there is no risk-free level of exposure to secondhand smoke; and
 - b. The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) has concluded that “the only means of effectively eliminating health risk associated with indoor exposure [to secondhand smoke, cannabis smoke, and aerosol from electronic smoking devices] is to ban smoking activity.
7. *Second hand smoke concentrations in outdoor areas can reach similar levels as those found indoors.*
8. *Laws restricting the use of tobacco products have recognizable benefits to public health and medical costs.*

Attachments

1. Resolution 2019-1994 w/
Exhibit A – Code Amendments
2. Ordinance 2019-1449
3. Police Chief’s Report dated May 20, 2019
3. Strike through Copy of Code Sections
4. References Supporting Vaping Regulations