

The City of Lee's Summit
Action Letter - Draft
Community and Economic Development Committee

Wednesday, December 11, 2019

4:00 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

1. Call to Order

The meeting of the Community and Economic Development Committee was called to order at 4:00 p.m. by Chair Forte.

2. Roll Call

Present: 4 - Chairperson Diane Forte
Vice Chair Fred DeMoro
Councilmember Beto Lopez
Planning Commissioner Donnie Funk

Absent: 1 - Councilmember Craig Faith

3. Approval of Agenda

ACTION: A motion was made by Vice Chair DeMoro, seconded by Mayor Pro Tem Lopez, to approve the agenda as published. The motion carried by a unanimous vote.

4. Public Comments

There were no public comments.

5. Business

A. [2019-3186](#) Approval of the November 13, 2019 meeting minutes.

ACTION: A motion was made by Mayor Pro Tem Lopez, seconded by Vice Chair DeMoro, to approve the November 13, 2019 Community and Economic Development Committee meeting minutes. The motion carried by a unanimous vote.

B. [BILL NO. 19-270](#) An Ordinance amending Sections 17-4, 17-303 and 17-307 of Article I. General. of Chapter 17 - Offenses of the Code of Ordinances of the City of Lee's Summit, Missouri by amending the definition of the term Vapor Product; by amending the definition of Smoking; by amending certain provisions related to who may be present in places where smoking is allowed; and, enacting a new Article XI. Vapor Products of Chapter 17 - Offenses., of the Code of Ordinances of the City of Lee's Summit, Missouri dealing generally with the regulation of the use of vapor products in certain locations. (CEDC 12/11/19)
(Note: This Bill as first read by Council on December 17, 2019. Passed by unanimous vote.)

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Brian Head, City Attorney, reviewed the proposed amendments to the Clean Air Act, specifically Sections 17-4, 17-303 and 17-307 of Article I. General. of Chapter 17 - Offenses of the Code of Ordinances of the City of Lee's Summit, Missouri. He noted the City's Health Education Advisory Board and LS Cares supports these amendments. He further stated medical marijuana is exempt from this ordinance. This ordinance addresses the subject of vaping in public places in the city and the medical dangers comprised of second hand exposure.

Mr. Head noted the red line changes proposed were mainly amending the definition of smoking, amending certain provisions related to who may be present in places where smoking is allowed and enacting a new Article XI Vapor Products of Chapter 17 - Offenses.

This ordinance slightly amends the definition of vaping in the Clean Indoor Act (Tobacco 21) to include a product that produces an aerosol or a vapor, including flavoring or any other substances that may or may not have nicotine in it.

This ordinance contains a statement that nothing in Section 17-4 shall apply to a medical marijuana facility because there is already a provision in the Missouri state constitution that prohibits the use of medical marijuana in any public place.

The ordinance redefines the term "smoking" to mean inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or other tobacco product including but not limited to any heat-not-burn (HNBO), tobacco heating products (THP) or IQOS device designed to heat certain types of heated tobacco units to produce a vapor or aerosol but without combustion, fire, ash or smoke.

While Section F designates where smoking is not regulated, there are no significant changes except that retail tobacco locations will not allow anyone under the age of 18 years old into areas where the possession of lighted smoking materials occur. The reason for this change is that an 18 year old is legally eligible to work in these types of locations.

Vice Chair DeMoro questioned the medical marijuana facilities referenced in Section 17-4.

Brian Head replied this ordinance applies to all vaping in public places, but not vaping in medical marijuana facilities. He clarified this will not affect locations already grandfathered in with the previous ordinance.

The next section adds a new article pertaining to Vapor Products mirroring the definitions in the Clean Indoor Act for consistency.

Mr. Head then reviewed Sec. 17-501 stipulating where vapor use is prohibited and includes two new categories:

1. No person shall use vapor products in an enclosed place of employment within the city. For example, City Hall, as it is a place of employment.
2. No person shall use vapor products in an enclosed public place within the city.

Sec. 17-502 states the responsibilities of proprietors, owners and managers that no person having control of a place listed in this Article shall knowingly permit, cause, suffer or allow any person to violate the provisions of this Article in that place.

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However, they have an affirmative defense if they ask a person using the vapor product to leave the establishment.

Mr. Head reviewed Section 17-503 detailing the exceptions and noted they are similar to the ones listed in the Indoor Clean Air Act, but some are slightly different. He stated this ordinance is modeled after the City of Kansas City, Missouri, Vaping Ordinance, which is one of the only separate and freestanding ordinances in the State of Missouri, pertaining to public vaping.

The Ordinance allows vaping in the following areas:

- Private residences
- Medical marijuana facility
- Hotel or motel room that has been permanently designated as a smoking room
- Any place of employment of a sole proprietor with no other employees or in a place of employment of an individual who is the sole employee where the public is not invited
- Any establishment that was in operation prior to the effective date of this article that does not sell or serve food or alcoholic beverages where more than 80% of the volume of trade is that of the blending of tobaccos, or tobaccos, pipes, vapor products, cigars or smokers' sundries and smoking-related paraphernalia. Therefore, existing vaping stores may continue to exist and continue to use vaping products in that facility.
- Any business establishment that begins operation or relocates to a new location after the effective date of this article that does not sell or serve food or alcoholic beverages where more than 80 percent of the volume of trade or business carried on is that of the blending of tobaccos, or the sale of tobaccos, pipes, vapor products, cigars or smokers' sundries and smoking-related paraphernalia provided that:

(1) The establishment is the sole occupant of a building that stands alone from other buildings; or

(2) (i) is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above; (ii) complies with all applicable fire and building code requirements; and (iii) has a separate ventilation system whereby the air from such space is immediately exhausted to an outdoor area rather than being recirculated inside, and is negatively pressurized to prevent back streaming of second-hand smoke into adjoining areas located in a freestanding structure; and,

(3) Does not allow those under the age of 18 years old into the areas where the possession of lighted smoking materials or use of vapor products occurs

The penalty for violation includes the provision of a fine up to \$500.

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Mr. Head ended his presentation stating the ordinance is liberally construed and severable so if any provision were declared unconstitutional or improper, the remainder of the ordinance would continue to stand.

Chair Forte asked about the anticipation of public response for this ordinance.

Mr. Head stated most people are already aware of no smoking in public places. Staff received one email from a current vapor storeowner asking about the grandfathered clause.

He added that if the committee recommends forwarding this ordinance to the City Council, he suggests holding a public hearing the same date as the first City Council reading. Then have the second reading a few weeks later to provide ample time for the public to review the contents and respond prior to the City Council vote.

Chair Forte agreed with the timeline stating it provides transparency.

Mr. Funk asked if the vaping industry is taxed like tobacco. Mr. Head replied he is not certain, but he doubted it.

Chair Forte stated when the Tobacco 21 Ordinance passed she believed vaping was used by individuals trying to quit smoking. However, since then the public has become aware of the medical issues related to vaping.

Dr. Ed Kraemer, co-chair of the Health Education Advisory Board (HEAB), provided his input stating the board supports this ordinance and appreciates the efforts of Mr. Head in drafting it. The HEAB began looking at this issue in 2015 and thinking about the young people in our community and how vaping in public places is not a good model for them.

Dr. Kraemer continued that each of the "Whereas" clauses in this ordinance was researched and thoughtfully considered through reliable sources and medical literature searches including statements from the Surgeon General, Public World Health Association, American College of Physicians, and American Medical Association indicating for public health reasons vaping should be publically prohibited.

Dr. Kraemer added the 2017 Jackson County Health Dept. survey indicated 77% of residents think vaping should not be allowed in public places. Another 2017 national survey found 88% of people who vape did not find it difficult to refrain from vaping in public places. Vaping industries are tied to tobacco industries and want the public to think vaping is a merely water vapor in gas form, when actually it is an aerosol that contains elements, compounds and particles that get deep into lung tissues.

Vaping lung injury and mysterious illnesses associated with e-cigarettes is taking place across the country, has hospitalized over 2,000 people, and killed 48 people in 25 states. These statistics are a stark reminder vaping is not a benign activity.

Mr. Funk asked if warning labels are placed on vaping products similar to tobacco products.

Dr. Kraemer replied vaping has not been regulated by the FDA until recently and he's not certain if warnings are placed on the labels. However, heat not burn is not a new product and is included in the ordinance because it uses a tobacco cartridge placed in a vaping mechanism. Most vaping consists of a nicotine component and

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flavoring.

Mayor Pro Temp Lopez expressed this issue is affecting students in high schools and is becoming more prevalent, causing expulsions and probations assigned. The community and the City Council need to consider that aspect as well.

Dr. Kraemer stated LS Cares is represented on the HEAB and is involved with this issue. They too, continuously work to promote healthy lifestyles and protect youths from smoking and vaping.

Committee members expressed their appreciation to staff and the Health Education Advisory Board for their work and research on this issue.

Mr. Head reminded the committee since this issue deals with liberty interests in public places, additional time should be provided for the public to become informed about the issue and the proposed changes as this topic could become controversial.

ACTION: A motion was made by Vice Chair DeMoro, seconded by Mayor Pro Tem Lopez, that this Ordinance be recommended for approval to the City Council. The motion carried by a unanimous vote.

6. Roundtable

Chair Forte stated the committee would discuss Special Events at next month's meeting. Staff presented an overview on this topic this past July and was directed to do additional research and bring the item back to this committee for discussion. She also stated it may be relevant to include the Finance and Budget Committee on these discussions to review the costs/fees associated with Special Events, including the impact on Police and Fire overtime costs.

Mark Dunning, Assistant City Manager, added staff would provide packet information to committee members in advance of the meeting to provide ample time for review. Staff's goal is to present information on the current process (costs/fees) offer their suggestions to the committee and get their input before taking it to the full Council.

Adjournment

Chair Forte adjourned the meeting at 4:52 p.m.

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