



City of San Antonio

Agenda Memorandum

File Number:15-2598

Agenda Item Number: 8.

Agenda Date: 4/15/2015

In Control: Governance Committee

DEPARTMENT: Health

DEPARTMENT HEAD: Dr. Thomas L. Schlenker

COUNCIL DISTRICTS IMPACTED: City Wide

SUBJECT:

Proposed Changes to City Code Chapter 36, "Smoking"

SUMMARY:

Council Member Cris Medina submitted a Council Consideration Request (CCR) on June 26, 2014 asking City staff to review adding restrictions to the sale of e-cigarettes to anyone under the age of 18 to the City Code. The San Antonio Metropolitan Health District (Metro Health) has reviewed the CCR and recommends that the prohibition of the sale of e-cigarettes to anyone less than 18 years of age be added to the City Code. Metro Health further suggests that the City Council consider adding e-cigarettes to the prohibitions applied to traditional cigarettes in Chapter 36 of the City Code.

BACKGROUND INFORMATION:

Only e-cigarettes that are marketed for therapeutic purposes are currently regulated by the Food and Drug Administration (FDA) through the Center for Drug Evaluation and Research (CDER). Currently, the FDA regulates: cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco.

In 2010, the U.S. Court of Appeals for the D.C. Circuit issued a decision holding that e-cigarettes and other products made or derived from tobacco can be regulated as "tobacco products" under the Food, Drug, & Cosmetic (FD&C) Act and are not drugs/devices unless they are marketed for therapeutic purposes. Based on this ruling, the FDA is currently proposing to "deem" e-cigarettes as tobacco products.

ISSUE:

Metro Health supports regulation of e-cigarettes based on uncertainty and potential dangers of substances in e-cigarettes, including nicotine.

A recent study of poison centers across the United States examined all calls reporting exposure to conventional cigarettes, e-cigarettes, or nicotine liquid used in e-cigarettes. The poison centers reported 2,405 e-cigarette and 16,248 cigarette exposure calls from September 2010 to February 2014. The total number of poisoning cases is likely higher than reflected in this study, because not all exposures might have been reported to poison centers. The study concluded that just over half of calls to poison control centers due to e-cigarettes involved young children under age 5, and about 42 percent of the poison calls involved people age 20 and older. The analysis found the proportion of e-cigarette calls jumped from 0.3 percent in September 2010 to 41.7 percent in February 2014. Poisoning from conventional cigarettes is generally due to young children eating them, while poisoning related to e-cigarettes involves liquid containing nicotine used in the devices and can occur: by ingestion, inhalation, or absorption through the skin or eyes. The most common adverse health effects mentioned in e-cigarette calls were vomiting, nausea and eye irritation.

Furthermore, FDA is proposing a rule that would deem all products meeting the statutory definition of “tobacco product,” except accessories of a proposed deemed tobacco product, to be subject to FDA's tobacco product authorities under chapter IX of the FD&C Act. In addition, the Texas Legislature is currently considering several bills related to the definition, advertisement and sale of e-cigarettes and associated vapor products including a ban for minors under the age of 18.

Also, 14 states and 188 cities and counties currently regulate e-cigarettes. Currently, at least four Texas cities ban the sale of e-cigarettes to anyone less than 18 years of age (Frisco, Georgetown, Kyle and Watauga). These cities also make possession of an e-cigarette by a minor an offense. Texas does not have any state law regulation of the sale of e-cigarettes, but other states have imposed similar restrictions on the sale of e-cigarettes to minors (Maryland, New Hampshire and New York). Arizona is considering the same type of restriction.

In Texas, El Paso, Georgetown, Lufkin, San Marcos, Socorro, Watauga and Weatherford currently ban the use of e-cigarettes in municipal buildings and public places (same treatment as traditional cigarettes). Elsewhere, King County (Seattle) prohibits the sale of e-cigarettes to minors and prohibits their use in all public places. New York City, Chicago, Los Angeles and the state of New Jersey have included e-cigarettes in their respective smoking regulations in the same manner as traditional cigarettes.

ALTERNATIVES:

Updating Chapter 36, “Smoking” will allow Metro Health to add e-cigarettes to the “Smoking” ordinance. The City Council can choose to leave the Code as is and leave e-cigarettes unregulated in the community.

FISCAL IMPACT:

This item is for briefing purposes only.

RECOMMENDATION:

Staff recommends forwarding the issue of e-cigarette regulation to the Quality of Life committee for further discussion. Changes to Chapter 36, “Smoking”, will address e-cigarette regulation based on FDA actions and the uncertainty and potential dangers of substances in e-cigarettes.