



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: O-1920-46

File ID: O-1920-46

Type: Ordinance

Status: Non-Consent Items

Version: 1

Reference: Item 35

In Control: City Council

Department: Legal Department

Cost:

File Created: 02/28/2020

File Name: Vaping and Tobacco Ordinance Amendments

Final Action:

Title: CONSIDERATION OF ORDINANCE O-1920-46 UPON SECOND AND FINAL READING: AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING AND RENAMING SECTION 15-412 OF ARTICLE IV, CHAPTER 15, OF THE CODE OF CITY OF NORMAN TO THE PREVENTION OF YOUTH ACCESS TO TOBACCO AND VAPOR PRODUCTS; PROVIDING DEFINITIONS FOR THE PURPOSES THEREOF; PROHIBITING THE FURNISHING OF TOBACCO AND VAPOR PRODUCTS TO ANYONE UNDER THE AGE OF EIGHTEEN, PROVIDING FINES AND COSTS FOR VIOLATIONS, AND PROVIDING EXCEPTIONS IN CERTAIN CIRCUMSTANCES; PROHIBITING THE POSSESSION OF TOBACCO AND VAPOR PRODUCTS BY ANYONE UNDER THE AGE OF EIGHTEEN, PROVIDING FINES AND COSTS FOR VIOLATIONS, PROVIDING FOR DEPARTMENT OF PUBLIC SAFETY NOTIFICATION OF FAILURE TO PAY SUCH FINES; PROHIBITING DISTRIBUTION OF TOBACCO AND VAPOR PRODUCT SAMPLES; PROHIBITING THE SALE OF TOBACCO EXCEPT IN ORIGINAL PACKAGING; PROHIBITING THE DISPLAY OR SALE OF TOBACCO OR VAPOR PRODUCTS WHERE SELF-ACCESSIBLE BY ANYONE UNDER THE AGE OF EIGHTEEN; PROVIDING FOR NOTICE OF VIOLATIONS UNDER SECTION 15-412 TO THE ABLE COMMISSION; AMENDING SECTION 15-506 WHICH REFERENCED THE PREVIOUS VERSION OF SECTION 15-412; AND PROVIDING FOR THE SEVERABILITY THEREOF.

Notes: ACTION NEEDED: Motion to adopt or reject Ordinance O-1920-46 upon Second Reading section by section.

ACTION TAKEN: _____

ACTION NEEDED: Motion to adopt or reject Ordinance O-1920-46 upon Final Reading as a whole.

ACTION TAKEN: _____

Agenda Date: 03/24/2020

Agenda Number: 35

Attachments: O-1920-46 Clean, O-1920-46 Annotated

Project Manager: Jeanne Snider, Assistant City Attorney

Entered by: anthony.purinton@normanOK.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council	03/10/2020	Introduced and adopted on First Reading by title only				Pass
Action Text: That this Ordinance be Introduced and adopted on First Reading by title only. by consent roll call							

Text of Legislative File O-1920-46

Body

BACKGROUND: City Staff presented a draft ordinance on February 13, 2020, to the City Council Oversight Committee adding and amending certain section of Chapter 15 of the City Code relating to vapor and tobacco products. These changes added definitions for vapor and tobacco products and prohibited the furnishing or possession of vapor products for minors under the age of eighteen (18). The Council Oversight Committee directed Staff to bring the ordinance forward to the full Council for adoption.

DISCUSSION:

State law

In 2014, the State passed Senate Bill 1602 which amended the Prevention of Youth Access to Tobacco Act and other laws concerning juvenile offenses to include prohibitions on vapor products for anyone under the age of 18. The amendments added the definition of “vapor Products” and incorporated the term into sections of State law which had previously only prohibited the furnishing or possession of tobacco products.

63 O.S. § 1-229.11 et seq., constitutes the Prevention of Youth Access to Tobacco Act. The Act contains multiple provisions regulating the distribution, display, and packaging of tobacco and vapor products, but only certain provisions have language authorizing municipalities to enact and enforce similar ordinances. One such provision is 63 O.S. § 1-229.13, which is similar to the City’s current ordinance in that it prohibits the furnishing of tobacco products for anyone under the age of 18. However, after SB 1602, the State’s prohibition extends to “any tobacco product or vapor product.” All Sections of the Act containing municipal enforcement authorization have been adopted in the proposed amendments, which can be found below.

The State law concerning the possession of tobacco and vapor products is found elsewhere in

the State statutes. 10A O.S. § 2-8-224 makes it unlawful for any person under the age of 18 to “purchase, receive, or have in his or her possession a tobacco product, or vapor product.” Also prohibited is the unlawful use of a fraudulent proof of age to try and purchase either type of product. The statute explicitly incorporates the definition of “Vapor Product” found in the Prevention of Youth Access to Tobacco Act and authorizes municipalities to enact and enforce ordinances concerning conduct under the Section. This State law has been incorporated into the proposed amendments, as seen below.

Currently, House Bill 1432 by Rep. Ben Loring (D-Miami) amends the Prevention of Youth Access to Tobacco Act in a number of statutes by increasing the Act’s applicable age from 18 to 21. The bill recently passed the House A&B Committee by a vote of 23 to 3 and will now go to the full House.

Federal Law

Recently, there has been an uptick in federal rulemaking and legislation on tobacco and vaping products that deserves mention. In December of last year, Congress passed legislation changing the Food, Drug, and Cosmetic Act, adding a prohibition on the sale of tobacco and vaping products to anyone under the age of 21. More recently, at the beginning of this year, the FDA decided to ban flavored e-cigarettes altogether, with an exception for tank-based vaping systems. Currently, without amendments to State law, the City would not be able to implement current federal changes.

Current Ordinance

The current language of 15-412 is outdated and requires revision to better comply with the State’s laws concerning Youth Access to Tobacco. The ordinance currently reads as follows:

Sec. 15-412. - Furnishing of tobacco products to minors; possession by minors.

- a) Any person who shall furnish to any minor, by gift, sale, or otherwise, any cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product shall be guilty of an offense; provided, however, that it shall not be unlawful for an employee under eighteen (18) years of age to handle such products when required in the performance of the employee's duties.
- b) It shall be an offense for any minor to be in possession of any cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product.
- c) Any person convicted of violating any provisions in this section shall be punished by a fine of not more than one hundred dollars (\$100.00) for the first offense within a one-year period, and two hundred dollars (\$200.00) for a second or subsequent offense within a one-year period.
- d) This language is no longer reflective of State law, and should be amended to include the State’s addition of vapor products; additional regulations concerning the distribution, display, and packaging of tobacco and vapor products; and specific fines amounts for each provision.

Ordinance Revision

Attached is a draft of an ordinance amending the City's current ordinance prohibiting the sale and possession of tobacco products by anyone under the age of 18. The amendment includes several subsections, which integrates current State law into the City's municipal code. Another Section under Chapter 15 is also amended, updating language that referenced Section 15-412.

The following Sections will be amended:

Section 15-412 contains several new subsections which track State law.

- Section 15-412(a): Provides definitions pertaining to all of the subsections within 15-412.
- Section 15-412(b): Prohibits the furnishing of tobacco or vapor products to anyone under the age of 18. The subsection also contains exceptions that would apply in certain circumstances. Penalties are also provided for, including the authority for the Municipal Court to report any failure to pay fines and fees resulting from violations of the Section to the Department of Public Safety ("DPS").
- Section 15-412(c): Prohibits the purchase, possession, and receipt for anyone under the age of 18. The subsection also provides set fines for any violations of the subsection, including the authority to report a failure to pay fines to DPS.
- Section 15-412(d): Prohibits the distribution of tobacco or vapor product samples to anyone under the age of 18 and provides the fines for any violations.
- Section 15-412(e): Prohibits the sale of "cigarettes" except in original, sealed packaging and provides the fines for any violations.
- Section 15-412(f): Prohibits the display or offer of tobacco or vapor products in a way accessible to the public without assistance from a clerk or owner and also provides the fines for any violations.
- Section 15-412(g): Requires the City (in compliance with State law) to furnish any and all required information concerning convictions under this section.
- Section 15-506 references the current title of 15-412, which would need to be amended to match 15-412's new language.

This ordinance would make it a violation of the municipal code for anyone under the age of 18 to use or possess vapor products. Doing so would allow the City to prosecute any charges filled under the new section in Municipal Court and would bring the City's code closer to current State Law and other municipalities' codes.

RECOMMENDATION:

Staff recommends adoption of Ordinance O-1920-46 upon Second and Final Reading.