

Legislation Text

File #: Ordinance 84-2015, **Version:** 6

Agenda Date: 11/03/2015

Subject:

An ordinance amending chapter 10 of title 6 of the city code pertaining to electronic smoking devices and smoking prohibitions in the downtown area.

Presented By: Mike Braaten, Deputy City Manager

POLICY QUESTION:

Does city council support establishing a smoking ban within a defined downtown area, excluding private parking lots, public alleys, back patios or rooftop patios?

BACKGROUND:

*******SEE STAFF ANALYSIS BELOW FOR NEW INFORMATION FOR NOV. 3rd PUBLIC HEARING*******

It is a long-recognized fact that smoking and exposure to smoke causes cancer and other health issues. The US Surgeon General states there is no safe level of exposure to secondhand smoke and that even brief exposure can be harmful to health¹. Americans for Nonsmokers' Rights notes that, "secondhand aerosol from electronic smoking devices contains nicotine, ultrafine particles and low levels of toxins that are known to cause cancer." Additionally, they state that the, "ultrafine particles may exacerbate respiratory ailments like asthma and constrict arteries which could contribute to a heart attack."²

¹http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/

²<http://no-smoke.org/getthefacts.php?id=824>

In 2013, state law regulating smoking was amended to address the passage of the retail marijuana initiative. The state statute regulating public smoking includes a legislative declaration to, "preserve and improve the health, comfort, and environment of the people of this state by limiting exposure to tobacco and marijuana smoke." The law allows for local authorities (towns, cities and counties) to adopt laws more stringent than the state. Numerous cities throughout the state have adopted smoke-free zones, have prohibited smoking in certain public places in their communities and/or expanded their regulations to include electronic smoking devices; examples of cities include, but are not limited to Fort Collins, Golden, Edgewater, Arvada, Lakewood, Boulder, and Greeley.

In response to complaints and concerns expressed to the city council, staff researched and prepared an ordinance to ban smoking within the downtown.

The smoking ban excludes public alleys and private parking lots and is bound by Rio Grande/Bega Street on the east, South Santa Fe Drive on the west, Alamo Avenue on the south and West Powers Avenue on the north

(as if it carried through to Santa Fe). The ban includes to the center-line of the street. For instance - the property on the south side of Powers is included in the ban, but not the property on the north side of Powers; the property on the north side of Alamo is included, but not the property on the south side of Alamo.

STAFF ANALYSIS:

UPDATE SINCE LAST CONSIDERED BY CITY COUNCIL:

Council requested that staff conduct additional outreach to merchants and the community regarding 1) the proposed downtown smoking restrictions and 2) the treatment of electronic smoking devices the same as tobacco or marijuana and their prohibition from use in public places.

Staff from the economic development and the city manager's office conducted face-to-face outreach to over 70 businesses in the downtown over the course of four days at the end of September. Staff provided merchants a fact sheet on the issues and alerted them that council has both issues under consideration at their November 3, 2015 council meeting. Everyone was also provided information on accessing OpenLittleton.org and providing their opinions on the issues on that website.

In addition to face-to-face outreach, staff published an article in October/November issue of the *Littleton Report*. The *Littleton Report* goes to every mailbox in the City of Littleton. That article was similar to the fact sheet provided to the downtown merchants and encouraged people to provide their opinions on the matter on OpenLittleton.org.

The proposed ordinance was also discussed at the October 7, 2015 Historic Downtown Littleton Merchant's meeting by members of city council.

As noted above, two questions were posted on OpenLittleton.org for public input. The first question was, **"Should the City of Littleton implement smoking restrictions in a defined area in downtown?"** the question included an explanation of the proposed ordinance, why the city was seeking additional information, a map of the area under consideration, and a note that final action will occur at the city council meeting on November 3, 2015. The questions closed for public input on October 20 to allow staff to develop this report.

Verified Littleton residents responded as follows:

	District 1	District 2	District 3	District 4	Totals
Yes	10	7	6	14	37 (54%)
No	14	5	7	6	32 (46%)
Totals	24	12	13	20	69

Of the total 129 responses to the question (both verified residents and people outside of the city), 70 people support additional downtown smoking regulations, while 59 are against the proposed regulation.

Total Responses on Downtown Smoking Regulations:



The second question posted on OpenLittletonl.org was, **“Should the City of Littleton regulate electronic smoking devices by prohibiting them from the same places as cigarettes and cigars?”** The question included pro/con information on the subject, the public meeting hearing date of November 3, 2015 and other related information.

Verified Littleton residents responded as follows:

District 1					
District 2					
District 3					
District 4					
Totals					
Yes	6	7	6	12	31 (77.5%)
No	3	2	2	2	9 (22.5%)
Totals	9	9	8	14	40

Of the total 80 responses to the question (both verified residents and people outside of the city), 52 people support the proposed electronic smoking device regulations, while 28 are against the proposed regulation.

Total responses on proposed electronic smoking device regulations:



A report, including all of the comments, from OpenLittleton.org is attached to this memo.

New input on the regulation of electronic cigarettes:

Staff has received additional input from School Resources Officers and LPS principals. Included in the packet is a letter from Goddard Middle School Principal, Bryan Breuer, who cites concerns with the inconsistencies of current law not addressing electronic cigarettes/vape pens in the same manner as other tobacco products. The only time a student could be cited for use of a vape pen in his middle school was when it was found to have THC (Marijuana/Hash) Oil in it.

Similarly, a recent study by Yale shows teens are increasingly using e-cigarettes as a means of consuming marijuana. An article on the Yale University study is attached.

Both the Library and Museum Boards unanimously supported banning the use of electronic cigarettes in those two city facilities citing concern for other patrons - especially children, and concern for the collections at each

facility. The Boards took formal action at their October meetings.

Also - as was noted at the first public hearing on the issue - Public Health England has proclaimed electronic cigarettes 95% less harmful than smoking cigarettes. An article on the issue is attached.

End of new information

The problem being addressed by this ordinance is that pedestrians and front-patios users are exposed to second hand smoke when using the sidewalks downtown. This proposed ordinance recognizes the need to protect the health of Littleton residents and visitors by limiting secondhand smoke exposure and the harmful chemicals created by smoking and the use of electronic smoking devices. The purpose of the ordinance is to remove smoking from the front of the buildings in downtown to eliminate exposure to pedestrians and front-patio users, while still providing places to smoke through exclusions to the ban. Those proposed exclusions are parking lots, alleys, or back and roof-top patios.

Outreach to the downtown businesses included an in-person survey of store owners and/or managers. Among respondents, this survey yielded exactly a 50 percent split among those in favor and those opposed to an outright smoking ban in the downtown. Additionally, staff requested input through OpenLittleton.org and promoted the question through the city's social media outlets. The wording of the question was, "Would you support a smoking ban, including electronic smoking, in the outdoor public spaces in the downtown area?". The question closed at 1p.m. on August 4; 350 people viewed the question, 285 responded (the most ever for an OpenLittleton.org question), which is the equivalent of 14.3 hours of public testimony at 3 minutes per response. The following is a summary of responses on OpenLittleton.org.

Respondents verified and living in Littleton:

Council District	Support	Oppose	Total	Percent Support/Oppose
1	15	15	30	50/50
2	17	9	26	65/34
3	14	4	18	78/22
4	15	6	21	71/29
Total	61	34	95	64/36

Results from all respondents (in/out of Littleton, verified and not):

Support	Oppose	Total	Percent Support/Oppose
164	121	285	58/42

A common suggestion from both surveys was to provide an area for smokers somewhere in the downtown so as not to drive smokers into nearby residential areas, potentially creating additional problems.

Staff incorporated public opinion and suggestions into the council directive and now proposes permitting

smoking and the use of electronic smoking devices in public alleys and private parking lots rather than a total ban. Public alley ways were included for the patrons of those businesses who may not have anywhere to direct an individual to a location to legally smoke. For those businesses with a parking lot that choose to allow smoking in their parking lot, this gives those businesses an option to still cater to smokers, if desired. Back and roof-top patios were excluded to address concerns raised by some property/business owners. Even with these exceptions, the goal of eliminating second-hand smoke from the street fronts and front patios is accomplished.

It is also important to understand that the definition of “entryway” in our city code preserves a non-smoking 15-foot radius from the front primary entrance. The definition of entryway in code: “the outside of the front or main doorway leading into a building or facility that is not exempted from this chapter under section [6-10-3](http://www.sterlingcodifiers.com/codebook/getBookData.php?ft=3&find=6-10-3) [<http://www.sterlingcodifiers.com/codebook/getBookData.php?ft=3&find=6-10-3>](http://www.sterlingcodifiers.com/codebook/getBookData.php?ft=3&find=6-10-3) of this chapter. "Entryway" also includes the area of public or private property within a radius of fifteen feet (15') outside of the doorway.”

Should this ordinance be adopted, city staff will develop a public information campaign, modeled after other cities with similar laws, prior to its implementation to ensure business owners and the public are aware of the change in law.

FISCAL IMPACTS:

In discussion with police, enforcement will remain on a complaint basis, so this change in law is doubtful to drive additional enforcement costs.

STAFF RECOMMENDATION:

Staff recommends adoption of the ordinance as proposed.

PROPOSED MOTION:

I move to approve the ordinance amending chapter 10 of title 6 of the city code pertaining to electronic smoking devices and smoking prohibitions in the downtown area.