



TOWN OF JACKSON

AGENDA DOCUMENTATION

SUBMITTING DEPARTMENT: Administration

PRESENTER: Lea Colasuonno

MEETING DATE: July 6, 2020

SUBJECT: Flavored Vape Product Prohibition Ordinance – First Reading

STATEMENT/PURPOSE

The Town Council continued first reading of Ordinance W at the May 18, 2020 Town Council meeting in order to address concerns regarding the ban on all flavored nicotine and they did not have time to get to the ordinance at the June 1, 2020 meeting.

BACKGROUND/ALTERNATIVES

The Town Council discussed issues related to banning all flavored nicotine products versus banning only flavored vape products, as well as other issues. Jodi Radke, Director of the Rocky Mountain/Great Plains Region of the Campaign for Tobacco-Free Kids raised concern about flavor enhancers and the need to include menthol as a flavor. Her concerns have been incorporated into the revised ordinance presented for first reading. Numerous others making public comment brought up a concern about banning only flavored vape versus banning all flavored tobacco products. The revised attached ordinance bans only flavored vape products and would not include a ban on flavored chewing tobacco or flavored regular cigarettes.

State law also allows the Town of Jackson to license nicotine retailers similar to liquor licensing. Requiring a license to sell nicotine and charging a fee for that license may lead to better compliance with underage sales prohibitions for regular nicotine products. Initial research conducted by the Town Clerk with other Wyoming municipalities did not result in much information due to a lack of results. It could be that the lack of response was due to COVID-19 and minimal staffing issues. The Jackson Police Department conducted some initial research and it appears there would be 15 establishments that would be subject to a nicotine license should the Council choose to pursue licensing. Should the Council be interested, it would be appropriate to direct staff to research this possibility, determine the fiscal and staff impacts of such a licensing program, meet with affected businesses to understand concerns and then report this information back to the Council at an upcoming workshop prior to the presentation of any kind of ordinance for first reading. Please understand that with the current situation of reduced staffing and cutbacks, asking staff to conduct additional research into this issue at this time and/or adding additional enforcement requirements should be given serious consideration prior to moving forward. Impacts of research or additional enforcement requirements would have implications on the Town Attorney, the Police Department, the Town Clerk's office and the Finance staff.

The Council has many options available to them including:

1. Accept the proposed changes to Ordinance W as presented and approve it on first reading.
2. Discuss Ordinance W, make changes, and adopt it as amended on first reading.
3. Adopt the Ordinance and also direct staff to research nicotine licensing in the Town of Jackson and bring the results of that research back to Council at an upcoming workshop, understanding it may be some time before research is presented due to the current staffing levels and workload.
4. Postpone action until further discussion can occur either at a workshop or regular meeting.
5. Take no action.
6. Other.

COMPREHENSIVE PLAN ALIGNMENT

Prohibiting the sale of flavored vape products would support Principle 1.2 – Preserve and enhance water and air quality in that it may reduce the use of flavored vape products as they would not be available for sale in the Town of Jackson.

STAKEHOLDER ANALYSIS

The stakeholders involved with this type of action would include retailers that sell these products, consumers of these products, health care providers serving patients that develop health issues as a result of using these products, parents of youth that will be assured the products cannot be obtained within Town limits, educators responsible for teaching youth that have nicotine in their system as a result of using these products, public health officials invested in protecting and improving the overall health of the community, etc.

FISCAL IMPACT

The fiscal impact of banning these sales may result in a marginal decrease in sales and use taxes. Ordinance passage has fiscal impacts associated with advertising. Upon passage of an ordinance, retailers would need to be educated about the change and this would be accomplished in the most cost-effective manner possible.

STAFF IMPACT

Staff impact of preparing/amending the draft ordinance continues to be notable and involves work from Lea Colasuonno, Town Attorney; Todd Smith, Chief of Police; Michelle Weber, Support/Training Sergeant; and Roxanne Robinson, Assistant Town Manager. Passage of the ordinance on third reading will require codification, education of the public, and enforcement by the Jackson Police Department. Should the Council also direct staff to research nicotine licensing, it would have a notable impact on staff. Additional hours would be required by the Town Attorney, Asst Town Manager, Town Clerk, Chief of Police, Support Sergeant and others. It may result in a combined additional 50-60 hours of staff time.

LEGAL ISSUES

Ongoing.

ATTACHMENTS

Ordinance W redline version.

RECOMMENDATION

Staff recommends Council accept the proposed changes to Ordinance W as presented and approve it on first reading.

SUGGESTED MOTION

I move to accept the proposed changes to Ordinance W as presented and approve it on first reading.

ORDINANCE W

AN ORDINANCE ADDING CHAPTER 8.35 TO THE MUNICIPAL CODE OF THE TOWN OF JACKSON PROHIBITING THE SALE OF FLAVORED ELECTRONIC CIGARETTES OR FLAVORED VAPOR MATERIAL AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JACKSON, WYOMING, IN REGULAR SESSION DULY ASSEMBLED THAT

SECTION I.

There is hereby added Chapter 8.35 of Title 8 Sale of Flavored Electronic Cigarettes or Flavored Vapor Material Prohibited of the Municipal Code of the Town of Jackson as follows:

CHAPTER 8.35 SALE OF FLAVORED ELECTRONIC CIGARETTES OR FLAVORED VAPOR MATERIAL PROHIBITED

Sections:

8.35.010	Legislative Findings
8.35.020	Purpose
8.35.030	Definitions
8.35.040	Sale of Flavored Tobacco Products Prohibited
8.35.050	Reverse Preemption

8.35.010 Legislative Findings

WHEREAS, the Town of Jackson, Wyoming (“Town”) is a municipal corporation existing pursuant to the laws of the Wyoming Constitution, the Wyoming Statutes, and the Town Charter; and

WHEREAS, the Town has a responsibility to protect the health of its youth, citizens and guests; and

WHEREAS, the use of tobacco products by the children is a pediatric disease of considerable proportions that results in new generations of tobacco-dependent children and adults; and

WHEREAS, a consensus exists within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects; and

WHEREAS, nicotine is an addictive drug; and

WHEREAS, the Town Council finds and determines that prohibiting the sale of flavored electronic cigarettes or flavored vapor material would help address the health problems associated with such use by youth in the community, and would be in the best interest of the public health, safety, and welfare of the Town.

8.35.020 Purpose

This chapter is enacted to prohibit the sale of flavored tobacco products within the Town of Jackson.

8.35.030 Definitions

As used in this Chapter the following definitions apply:

- A. **Characterizing Flavor** means any distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or, during consumption of a tobacco product or Component Part thereof, including, but not limited to, tastes or aromas relating to any fruit, mint, menthol, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice and concepts such as spicy, arctic, ice, cool, warm, hot, mellow, fresh, and breeze or any “concept flavor” that imparts a taste or aroma that is distinguishable from tobacco flavor but may not relate to any particular known flavor; provided, however, that no tobacco product shall be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.
- B. **Distinguishable** means perceivable by the sense of smell or taste.
- C. **Electronic Cigarette** shall have the meaning set forth in Wyo. Stat. § 14-3-301, as amended.
- D. **Flavor Enhancer** means any product designed, manufactured, produced, marketed or sold to produce a Characterizing Flavor when added to any unflavored Electronic Cigarette.
- E. **Flavored Electronic Cigarette** means any Electronic Cigarette that imparts a Characterizing Flavor. A public statement or claim made or disseminated by the manufacturer of an Electronic Cigarette, or by any person authorized or permitted by the manufacturer to make or disseminate public statements

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WHEREAS, the use of tobacco products by the children is a pediatric disease of considerable proportions that results in new generations of tobacco-dependent children and adults; and

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8.35.020 Purpose

This chapter is enacted to prohibit the sale of flavored tobacco products within the Town of Jackson.

8.35.030 Definitions

As used in this Chapter the following definitions apply:

~~A. Cigarette means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by, consumers as a cigarette described in clause (1) of this definition.~~

B.A. Characterizing Flavor means any distinguishable taste or aroma, other than the taste or aroma of tobacco ~~or menthol~~, imparted either prior to or, during consumption of a tobacco product or Component Part thereof, including, but not limited to, tastes or aromas relating to any fruit, mint, menthol, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice and concepts such as spicy, arctic, ice, cool, warm, hot, mellow, fresh, and breeze or any “concept flavor” that imparts a taste or aroma that is distinguishable from tobacco flavor but may not relate to any particular known flavor; provided, however, that no tobacco product shall be determined to have a

Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.

B. *Distinguishable* means perceivable by the sense of smell or taste.

C. *Electronic Cigarette* shall have the meaning set forth in Wyo. Stat. § 14-3-301, as amended.

D. *Flavor Enhancer* means any product designed, manufactured, produced, marketed or sold to produce a Characterizing Flavor when added to any unflavored Electronic Cigarette.

E. *Flavored Electronic Cigarette* means any Electronic Cigarette that imparts a Characterizing Flavor. A public statement or claim made or disseminated by the manufacturer of an Electronic Cigarette, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such Electronic Cigarette, that such Electronic Cigarette has or produces a Characterizing Flavor and/or usage of text or images, or both, on the Electronic Cigarette labeling or packaging to explicitly or implicitly indicate that the Electronic Cigarette imparts a Characterizing Flavor, shall constitute presumptive evidence that such Electronic Cigarette is a Flavored Electronic Cigarette.

F. *Flavored Vapor Material* means any Vapor Material that imparts a Characterizing Flavor. A public statement or claim made or disseminated by the manufacturer of a Vapor Material, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such Vapor Material, that such Vapor Material has or produces a Characterizing Flavor and/or usage of text or images, or both, on the Vapor Material labeling or packaging to explicitly or implicitly indicate that the Vapor Material imparts a Characterizing Flavor, shall constitute presumptive evidence that such Vapor Material is a Flavored Vapor Material.

~~C. *Flavored Tobacco Product* means any Tobacco Product, or any Component Part thereof, that contains a Constituent that imparts a Characterizing Flavor. A public statement or claim made or disseminated by the manufacturer of a Tobacco Product or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such Tobacco Product, that such Tobacco Product has or produces a Characterizing Flavor shall constitute presumptive evidence that the Tobacco Product is a Flavored Tobacco Product.~~

~~D. *Tobacco Product* means any product containing tobacco or nicotine, be it natural, synthetic or derived from plant based inputs and regardless of the method of derivation, including but not limited to cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus, dissolvable tobacco products, and electronic cigarette; provided, however, that such term shall not include: (1) cigarettes, including those cigarettes subject to the Special Rule for Cigarettes relating to characterizing flavors of the federal Family Smoking and Tobacco Prevention Act and (2) any product that has been approved by the U.S. Food and Drug Administration pursuant to its authority over drugs.~~

G. *Manufacturer* means a person that manufactures or produces a tobacco product.

E.H. *Vapor Material* shall have the meaning set forth in Wyo. Stat. § 14-3-301, as amended.

8.35.040 Sale of Flavored Electronic Cigarettes or Flavored Vapor Material ~~Tobacco Products~~ Prohibited

It shall be unlawful for any person to sell or offer for sale or provide free manufacturer-provided samples of any Flavored Electronic Cigarettes or Flavored Vapor Material ~~Tobacco Product~~ to a person.

8.35.050 Reverse Preemption

This Chapter shall be null and void on the day that statewide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this Chapter, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the Town of Jackson.

SECTION II

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION III

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be

deemed as a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of the ordinance.

SECTION IV

This Ordinance shall become effective after its passage, approval, and publication.

PASSED 1ST READING THE _____ DAY OF _____, 2020.
PASSED 2ND READING THE _____ DAY OF _____, 2020.
PASSED AND APPROVED THE _____ DAY OF _____ 2020.

TOWN OF JACKSON

BY: _____
Pete Muldoon, Mayor

ATTEST:

BY: _____
Sandra P. Birdyshaw, Town Clerk

ATTESTATION OF TOWN CLERK

STATE OF WYOMING)
) ss.
COUNTY OF TETON)

I hereby certify that the foregoing Ordinance No. _____ was duly published in the Jackson Hole News and Guide, a newspaper of general circulation published in the Town of Jackson, Wyoming, on the _____ day of _____, 2020.
I further certify that the foregoing Ordinance was duly recorded on page ____ of Book ____ of Ordinances of the Town of Jackson, Wyoming.

Sandra P. Birdyshaw, Town Clerk

