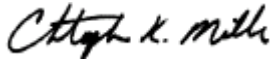



ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 02/13/12
Item No.: 9 . a

Department Approval



City Manager Approval



Item Description: Adopt an Ordinance Amending City Code Chapter 306: Cigarette and Tobacco Products

BACKGROUND

At the January 23, 2012 City Council meeting, the Council discussed whether to amend City Code Chapter 306 which regulates the sale of tobacco. The Council concluded that the Code should be amended to accommodate additional types of tobacco products and devices that have recently become available to consumers. They include (but are not limited to); tobacco-laced mints and “e-cigarettes.” E-cigarettes are typically a plastic container (that looks like a cigarette and may even have a red-lighted end) that delivers nicotine through a mist. The e-cigarettes are smokeless, but are still a nicotine-delivery device.

The Council also concluded that the Code should be amended to prohibit smoking indoors under all circumstances including tobacco shops that are partially exempt under the State’s Minnesota Clean Indoor Act of 1975 and the Freedom to Breathe Act of 2007. Under State Statute, tobacco shops are allowed to permit patrons to smoke for purposes of “sampling”. However, Municipalities have the authority to enact stricter regulations.

In making the decision to ban all indoor smoking, the Council noted that the emergence of hookah lounges or hookah bars and the activities that take place in those establishments presented a number of health concerns for patrons and employees. The Council also noted that these activities go beyond the concept of “sampling” allowed under State Statute.

During the discussion, it was mentioned that there are no known existing establishments that would be impacted by the proposed changes.

*For background purposes,
the following excerpt from the January 23, 20112 Staff Report is presented.*

Tobacco Products and Devices Definition Revision

In 2010, the State Legislature passed the Tobacco Modernization and Compliance Act. The primary feature of the Act was to expand the definition of what is regulated as tobacco in the State of Minnesota. The Act is formally defined in Minnesota Statutes, Section 279F.01, subd. 19, as:

33 *“Cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready*
34 *rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist*
35 *tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings*
36 *and sweepings of tobacco, and other kinds and forms of tobacco.”*

37
38 *The definition is now expanded to also include:*

39
40 *“Any products containing, made, or derived from tobacco that is intended for human*
41 *consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed,*
42 *or ingested by any other means, or any component, part, or accessory of a tobacco*
43 *product.”*

44
45 *This revised definition includes new products on the market, such as tobacco-laced mints*
46 *and “e-cigarettes.” The e-cigarettes are typically a plastic container (that looks like a*
47 *cigarette and may even have a red-lighted end) that delivers nicotine through a mist. The e-*
48 *cigarettes are smokeless, but are still a nicotine-delivery device.*

49
50 ***Tobacco Shop Considerations***

51 *... Currently, the City Code is largely absent when it comes to regulating “tobacco shops”,*
52 *deferring again to State Statute for guidance. State Statute 144.4167, subd 4 defines*
53 *“tobacco shops” (in a particular context) as:*

54
55 ***Subd. 4. Tobacco products shop.***

56 *Sections [144.414](#) to [144.417](#) do not prohibit the lighting of tobacco in a*
57 *tobacco products shop by a customer or potential customer for the specific purpose*
58 *of sampling tobacco products (emphasis added). For the purposes of this*
59 *subdivision, a tobacco products shop is a retail establishment with an entrance*
60 *door opening directly to the outside that derives more than 90 percent of its gross*
61 *revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes,*
62 *pipes, and other smoking devices for burning tobacco and related smoking*
63 *accessories and in which the sale of other products is merely incidental. “Tobacco*
64 *products shop” does not include a tobacco department or section of any individual*
65 *business establishment with any type of liquor, food, or restaurant license.*

66
67 *This definition stems from the Minnesota Clean Indoor Act of 1975 and the Freedom to*
68 *Breathe Act of 2007 which regulated where smoking could occur indoors. While the*
69 *definition of a tobacco shop is defined, the term “sampling” is not. This is important*
70 *distinction because a new type of tobacco establishment has been emerging in the Twin*
71 *Cities area that is significantly different than what we might think of as ‘traditional’ tobacco*
72 *shops. They are known as “hookah lounges”, “hookah bars”, or “hookah cafes”.*

73
74 *For purposes of this discussion, a ‘traditional’ tobacco shop can be categorized as a place*
75 *where people can sample tobacco products for a brief period of time before deciding*
76 *whether to make a purchase. One might suggest that the sample would be represented by a*
77 *very small portion of a cigar or pouch of pipe tobacco for example. It would therefore be*
78 *reasonable for a prospective buyer to spend a minute or two to sample the product before*
79 *making the purchase for consumption away from the premises.*

82 *In contrast, hookah lounges market themselves as a social destination or hangout. Hookah*
83 *lounges typically feature sofas, chairs, tables, and televisions. Patrons are invited to*
84 *smoke/inhale tobacco products over an extended period of time either as individuals or in a*
85 *group setting where everyone consumes the same product selection. It would not be unusual*
86 *for a patron to consume tobacco products and/or remain in a hookah lounge for an hour or*
87 *more. It could be argued that this surpasses the concept of “sampling” contemplated in the*
88 *Clean Indoor and Freedom to Breathe Acts.*

89
90 *End of Excerpt*
91

92
93 A proposed Ordinance amending Chapter 306 is included in Attachment A.
94

95 **POLICY OBJECTIVE**

96 The Council is asked to consider the attached ordinance that includes a revised definition of tobacco
97 products and to ban all indoor smoking.

98 **FINANCIAL IMPACTS**

99 Not applicable.

100 **STAFF RECOMMENDATION**

101 Not applicable.

102 **REQUESTED COUNCIL ACTION**

103 Motion to Adopt the Ordinance amending City Code Chapter 306 to expand the definition of tobacco
104 products and to ban all indoor smoking.
105

106 Prepared by: Chris Miller, Finance Director
Attachments: A: Proposed Ordinance to amend City Code Chapter 306
B: Current City Code Chapter 306
C: Description of Newer Tobacco Products
107

City of Roseville
ORDINANCE No. _____

**AN ORDINANCE AMENDING TITLE 3, SECTION 306.01; REDESIGNATING
EXISTING SECTIONS 306.05, 306.06, 306.07 AS SECTIONS 306.06, 306.07, 306.08
RESPECTIVELY; ADDING A NEW SECTION 306.05; RELATING TO TOBACCO
PRODUCTS**

THE CITY OF ROSEVILLE ORDAINS:

SECTION 1: Title 3, Section 306.01 of the Roseville City Code is amended to read as follows:

TOBACCO RELATED PRODUCT: Cigarettes, cigars, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready, rubbed and other smoking tobacco, snuff, snuff flower, Cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco prepared in such manner as to be suitable for chewing, sniffing or smoking in a pipe, rolling paper or other tobacco related devices. Also, any products containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product.

SECTION 2: Title 3, Section 306.05, 306.06, and 306.07 of the Roseville City Code are re-designated as Sections 306.06, 306.07, and 306.08 respectively.

SECTION 3: The following new Section 306.05 is added to Title 3 of the Roseville City Code:

306.05. Indoor Smoking Prohibited: It shall be unlawful for the lighting, inhaling, exhaling or combination thereof of tobacco, tobacco products, or tobacco related devices by any person in any retail establishment.

SECTION 5: Effective date. This ordinance shall take effect upon its passage and publication.

142 Passed by the City Council of the City of Roseville this 13th day of February, 2012.

143

144

145

146 (SEAL)

147

148

149

150

CITY OF ROSEVILLE

151

152

153

BY: _____

154

Daniel J. Roe, Mayor

155 ATTEST:

156

157

158

William J. Malinen, City Manager

159

CHAPTER 306 CIGARETTE AND TOBACCO PRODUCTS

163 SECTION:

- 164 306.01: Definitions
 165 306.02: License Required
 166 306.03: Application
 167 306.04: Prohibited Sales
 168 306.05: Identification
 169 306.06: Violations
 170 306.07: Appeal

171 **306.01: DEFINITIONS:**

172 As used in this Chapter, the following words and terms shall have the meanings ascribed to them in this
 173 Section:

174 **INDIVIDUALLY PACKAGED:** Any package containing only one individually wrapped item. Included
 175 are single packs of cigarettes or single cans or containers of tobacco related products. Not included are
 176 cartons containing two or more individually packaged packs of cigarettes or similar packages containing
 177 multiple cans or containers of tobacco related products.

178 **SELF SERVICE MERCHANDISING:** An open display of tobacco products which the public has access
 179 to without the intervention of an employee.

180 **TOBACCO RELATED PRODUCT:** Cigarettes, cigars, cheroots, stogies, perique, granulated, plug cut,
 181 crimp cut, ready, rubbed and other smoking tobacco, snuff, snuff flower, Cavendish, plug and twist
 182 tobacco, fine cut and other chewing tobaccos, shorts, refuse scrips, clippings, cuttings and sweepings of
 183 tobacco prepared in such manner as to be suitable for chewing, sniffing or smoking in a pipe, rolling
 184 paper or other tobacco related devices. (Ord. 1133, 1-24-94)

185 **306.02: LICENSE REQUIRED:**

186 No person shall keep for retail sale or sell at retail any tobacco product as defined in this Chapter
 187 without a license. (Ord. 1133, 1-24-94)

188 **306.03: APPLICATION:**

189 The application shall state the full name and address of the applicant, the location of the building and the
 190 part to be used by the applicant under the license, the kind of business conducted at such location and
 191 such other information as shall be required by the application form. (Ord. 1133, 1-24-94)

192 **306.04: PROHIBITED SALES:**

193 No person shall sell or give away any tobacco related product to any person under the age of 18 years,
 194 no person shall sell or dispense any tobacco product through the use of a vending machine, and it shall
 195 be unlawful for any person to offer for sale any individually packaged tobacco related product by means

196 of self-service merchandizing. All sales must be made in such a manner that requires the vendee to
197 specifically ask for the tobacco product and all other sales are unlawful. (Ord. 1133, 1-24-94)

198 **306.05: IDENTIFICATION:**

199 Any person who sells a tobacco product must require identification if such person has any reason to
200 believe that the purchaser is less than 18 years of age. (Ord. 1133, 1-24-94)

201 **306.06: VIOLATIONS:**

- 202 A. Misdemeanors: Any person who violates this Chapter shall be guilty of a misdemeanor.
- 203 B. Penalty for Noncompliance: In addition to any criminal penalties which may be imposed by a court
204 of law, the City Manager may suspend or revoke a license on a finding that the license holder or its
205 employee has failed to comply with this Chapter.
- 206 C. Minimum Penalty: In no event shall a penalty be less than:
- 207 1. For a first violation, the mandatory minimum penalty shall be the administrative penalty imposed
208 pursuant to City Code Section 102.01C.
- 209 2. For a second violation in 12 months the mandatory minimum penalty shall be suspension for two
210 days.
- 211 3. For a third violation in 12 months the mandatory minimum penalty shall be suspension for five
212 days.
- 213 D. Hearing and Notice: Revocation or suspension of a license shall be preceded by a hearing before the
214 City Manager. A hearing notice shall be given at least ten days prior to the hearing, including notice
215 of the time and place of the hearing and shall state the nature of the charges against the licensee.
216 (Ord. 1133, 1-24-94)

217 **306.07: APPEAL:**

218 The aggrieved party may appeal the decision of the City Manager within ten days of receiving notice of
219 the City's action. The filing of an appeal stays the action of the City Manager in suspending or revoking
220 a license until the City Council makes a final decision. The City Council may modify the suspension or
221 revocation. (Ord. 1133, 1-24-94)

222

New Tobacco Products

Camel Dissolvable Tobacco Products

RJ Reynolds began test-marketing dissolvable tobacco products in early 2009. These products dissolve when placed in the mouth, releasing nicotine. Users do not need to spit when using this product. Three varieties of dissolvable tobacco will eventually be available nationwide:

- Camel Orbs
 - 12 orbs per package
 - Lasts about 10 to 15 minutes; 1 milligram of nicotine each
- Camel Sticks
 - 12 sticks per package
 - Lasts about 20-30 minutes; 3.1 milligrams of nicotine each
- Camel Strips
 - 12 strips per package
 - Lasts about 2-3 minutes; 0.6 milligrams of nicotine each

The average smoker takes in 1 milligram of nicotine per cigarette. So, the sticks pack quite a dose of nicotine. Currently, these products are being test-marketed. It is unclear when these products will hit Minnesota.



Camel Dissolvable Tobacco Products

Camel Snus

Camel Snus is a smokeless, spitless tobacco product. Small pouches filled with tobacco are placed between the gum and lip where nicotine can be absorbed.

Market-testing on Snus began in select cities in April, 2006. Market-testing in Minneapolis and St. Paul began in May, 2008. Snus was released Nationwide in 2009.

Snus is currently sold in 15 pouch tins (see picture). Each pouch delivers 2.4 milligrams of nicotine. Snus is available in the following flavors: Frost, Mellow, Robust, and Winterchill, and Mint (Minnesota only).

RJ Reynolds markets Snus as "Pleasure for Whenever"—suggesting that the product can be discreetly used where other tobacco products can't.



Snus is currently available in only two flavors: Frost and Mellow. Pictured are Snus tins and the tobacco pouches found inside.

Source: http://tobaccoproducts.org/index.php/Camel_Snus#_note-0
<9/30/09>

Camel Crush

Camel Crush is a "customizable" cigarette. There is a small blue bead in the filter that a smoker can squeeze to release menthol flavoring into the cigarette. In this way, smokers can switch from a regular cigarette to a menthol cigarette with the simple squeeze of the filter.

Menthol cigarettes are most popular with youth and African Americans.

Source:

http://www.tobaccoproducts.org/index.php/Camel_Crush

<9/30/09>



Camel Crush Package

Up close view of menthol bead found in Camel Crush filters



Little Filtered Cigars

These little "cigars" are really just cheap cigarettes. They look and feel like cigarettes with one exception, they have a small amount of tobacco in the rolling paper. They are, therefore, able to be called cigars and can avoid cigarette taxes. As a result, these products are extremely cheap (\$1.59-\$2.50 per pack) compared to approximately \$6 per pack for cigarettes. These products are likely appealing to youth and low-income as these groups are price sensitive.



Remington Filter Cigars in Full Flavor



Remington ad found at a St. Paul, MN store in July, 2009. Notice the similarity to the famous Obama promotional poster.

E-Cigarettes

E-cigarettes are electronic nicotine delivery devices. These devices do not contain any tobacco. Users inhale a nicotine infused vapor. Not much is known about the health impact of these devices. A number of companies manufacture e-cigarettes.

As of 2010, Minnesota law prohibits the sale of e-cigarettes to minors.



E-cigarette user exhaling nicotine vapor.



Ramsey
Coalition

02/02/2011



Hookah:

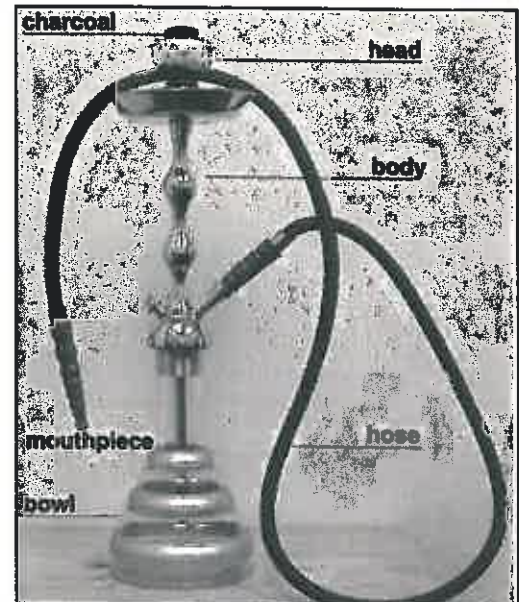
Background, History, and Health Consequences

What is hookah?

Hookah is a waterpipe that is used to smoke tobacco. A special type of tobacco is indirectly heated using coals or wood embers. Hookah is also known as shisha, sheesha, narghile, argileh, goza, and hubbly-bubbly.

What type of tobacco is used in a hookah pipe?

The tobacco used in a hookah is called shisha or maassel. Shisha is a sticky mixture of tobacco, honey or molasses, and other flavorings. Shisha is available in many flavorings such as: bubble gum, peanut butter, mango, grape, and mint.



Specially made tobacco (shisha) is placed on the head of the hookah under a sheet of tinfoil. Red hot charcoal or wood embers are then placed on top of the tinfoil. The shisha burns releasing smoke, which is cooled by the water in the bowl and then inhaled through the hose/ mouthpiece.

How long have people been smoking hookah?

Hookah smoking originated many centuries ago. The exact origins of hookah are unclear. Many believe that hookah originated in India.

Today, hookah is popular in the Middle East, Turkey, and parts of Asia and Africa.

Who uses hookah in the United States?

Hookah is growing in popularity in the United States particularly among college students. Hookah bars or lounges are popping up across the country and are seen as a place to gather with friends and socialize.

In the Twin Cities, hookah is particularly popular among East African Immigrant groups (Somali and Oromo) and the young adult/college student population.

What are the health effects of hookah use?

Hookah smoking carries the same or similar health effects as smoking cigarettes and exposure to secondhand smoke: cancer, heart disease, and respiratory disease.

The social nature of hookah also puts users at risk for other infectious diseases like tuberculosis, hepatitis, and meningitis. Hookah is often smoked in a group where many people share a common mouthpiece.



How does hookah smoking compare to cigarette smoking?

Hookah smokers inhale as much smoke from a typical hookah session as a cigarette smoker would inhale from **100-200 cigarettes**.

- Typical cigarette: 500-600 mL of inhaled smoke
- Typical hookah session: 90,000 mL of inhaled smoke

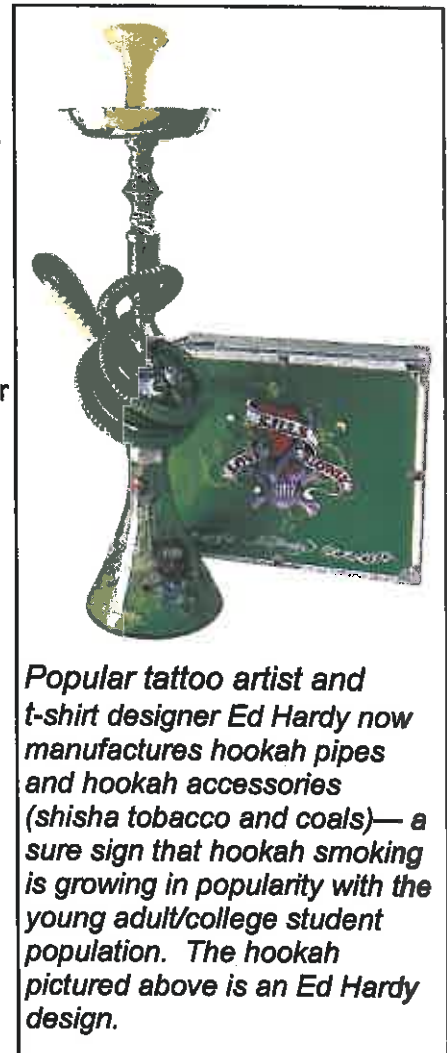
In a hookah, charcoal or wood cinders are used to burn the tobacco. This method adds health risks as burning charcoal and wood cinders release CO and heavy metals. To make matters worse, many hookah lounges in the U.S. use “quick lighting” charcoal which releases more CO than traditional charcoal.

How do hookah “lounges” work?

Hookah is usually smoked in a social setting. Hookah lounges or bars are run much like a café. Customers sit down and order a flavor of hookah tobacco from a menu. The hookah pipe is then prepared and “served” to the customers, who smoke the hookah on site. A typical hookah session lasts between 30-90 minutes.



Hookah tobacco is burned using charcoal or wood embers. This method of burning releases CO and heavy metals.



Popular tattoo artist and t-shirt designer Ed Hardy now manufactures hookah pipes and hookah accessories (shisha tobacco and coals)— a sure sign that hookah smoking is growing in popularity with the young adult/college student population. The hookah pictured above is an Ed Hardy design.

Does hookah pose a fire risk?

Hookah tobacco is heated using red hot coals or embers. These coals are often kept in an open indoor fire pit, which is a fire hazard.

Is hookah smoking prohibited indoors?

The Minnesota Clean Indoor Air Act (MCIAA) prohibits smoking in almost all indoor spaces. However, the MCIAA has an exemption for sampling of tobacco in tobacco shops. Hookah lounges are exploiting this loophole in the MCIAA by claiming the tobacco shop exemption. Local communities can choose to prohibit all sampling of tobacco. An ordinance prohibiting all sampling of tobacco would prohibit any tobacco shop or hookah lounge from allowing any smoking of tobacco on premises.

Sources:

1. American Lung Association.
2. World Health Organization.
3. Centers for Disease Control and Prevention.
4. Cobb, L, et al. *Am J Health Behavior* 2010;34(3):275-285

