

Aspen hopes to ban all flavored tobacco

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Alycin Bektesh, Special to the Aspen Daily News

March 17, 2019

The city of Aspen is drafting an ordinance that would ban all flavored tobacco sales within town limits, including menthol cigarettes and many types of chew and vaping products.

City council members expressed full support of the measure, which would not need to go to voters to be enacted, at a work session on Tuesday.

The initiative is being led by Risa Turetsky with Pitkin County Public Health and Dr. Kim Levin, medical officer for the Pitkin County Board of Health. Levin helped pass Aspen's tobacco retail licence ordinance in 2017, which restricted sales to those over 21 years old and imposed new local taxes.

Levin said flavored tobacco products are a clear manipulation to hook young customers.

"Once a child is addicted to nicotine they are a lifetime customer," she said.

The measure would be an update to Aspen's existing retail license regulations, and would affect a handful of businesses in town.

Now that the council has given the go ahead to start working on the ordinance, the city will be reaching out to the relevant vendors in town.

"We will be inviting them to be present at the council meetings where the new ordinance will be introduced, as well as for the public hearing on the topic which will come later this spring," said CJ Oliver, Aspen's environmental health and sustainability director.

Neither Aspen gas station convenience store sells any vaping products. A clerk at the Aspen Conoco station said that "wintergreen" is their most popular Skoal smokeless tobacco flavor and that they also sell a variety of flavored cigarillos. Both products would likely be banned from the shelves under the proposed ordinance.

The law would be based off one passed in San Francisco that includes all types of flavored tobacco products including cigarettes, e-cigarettes, chewing tobacco and cigars. All flavors, including menthol and spice flavors such as clove, would be banned.

The fiscal impacts are hard to calculate. While the city receives \$3.10 per pack of cigarettes sold and a 40 percent sales tax on other products, the percentage of those sales that involve flavored items are not reported, according to city finance director Pete Strecker. Presumably the loss of sales would mean a loss of sales tax, but that tax brought in \$100,000 more than was predicted in its first year.

In San Francisco, the city was sued after enacting the flavor ban, but the law was upheld. In a work session last week, City Attorney Jim True told council that the measure would be a risk for lawsuit.

"I cannot say that if you took this action you'd be free from litigation," True said.

Assistant City Attorney Andrea Bryan explained that the city is able to put restrictions on free market sales when it comes to public good, as its has done with plastic bags and a proposed ban on fur in the past.

"Local governments are afforded broad discretion in implementing reasonable regulations to protect the public health, safety, and welfare," Bryan wrote in an email.

Data from the Food and Drug Administration shows a 78 percent increase in adolescent use of e-cigarettes nationally within the last year. Colorado is number one in the country for teen use of vaping products, and the Roaring Fork Valley numbers are nearly three times higher than the national average, according to Pitkin County public health.

"When you get to a product that is actually bad for your health, it's a different kind of product," Levin said, adding that she's not sure that the flavor ban is legal, but she thinks it's the right move to take the risk. "We as adults and we as regulators and government have a responsibility to protect kids — I firmly believe in regulation in public health law."

Aspen would be the first community in the state to pass this type of restriction. Colorado Rep. Diana DeGette introduced a similar measure on the federal level this month. The SAFE Kids Act is targeted solely at e-cigarettes and would ban the manufacturing of all flavored nicotine pods.

"To me, there is no legitimate reason to sell any product with names such as cotton candy or tutti fruttii, unless you are trying to market it to children," DeGette said in a press release. "If we're going to address the root cause of this problem, we have to start by banning the sale of these enticing kid-friendly nicotine flavors."

Aspen was the first city in the state to raise the purchase age for all tobacco products from 18 to 21. Many other towns have followed suit including Basalt and Carbondale and a measure in the Colorado state house would allow counties to create tobacco retail license without losing tax dollars from the state.

The hope is that Aspen would lead the way again.

"This is a bigger conversation and the only way to make change right now is local change," Levin said. "We can do it."