

Electronic Cigarettes: A Toolkit to Address Policy Needs of Communities and Public Health in Kansas

PURPOSE OF THE TOOLKIT

This toolkit provides communities with the elements needed to include electronic cigarettes (e-cigarettes) in smoking and/or tobacco related policies. The toolkit offers background data, legal language and answers to frequently asked questions to support informed decision-making.

Public policy, law and health researchers at the University of Kansas designed this toolkit in response to the growing number of Kansas communities asking for guidance on the issue of e-cigarettes. Please let us know if you have questions – we will be happy to assist your community efforts. For additional copies of this toolkit or assistance, contact Robin Liston-Email: rliston2@kumc.edu Telephone: 913-945-7878.

WHAT YOU SHOULD KNOW

E-cigarettes deliver nicotine and/or flavorings in an aerosol that is inhaled or “vaped.”

- Nicotine is the addictive chemical found in tobacco that makes it difficult to quit.
- The Kansas Attorney General ruled that e-cigarettes are not covered by the Kansas Indoor Clean Air Act, and therefore can be used where smoking is prohibited.

E-cigarettes are not regulated by the U.S. Food and Drug Administration.

- Researchers cannot fully study potential risks or if e-cigarettes are a helpful way for people to quit smoking.
- Consumers do not know how much nicotine or other chemicals are in these products.

Young people say that using e-cigarettes will lead them to try other tobacco products.

- It is illegal for Kansas youth to purchase or possess e-cigarettes (K.S.A. 79-3321), but it is easy to acquire them over the Internet or from friends and family.
- Students completed the National Youth Tobacco Survey (2011-2013) and of those who had tried e-cigarettes, 44% stated they intended to try tobacco cigarettes.¹
- Manufacturers state that e-cigarettes “deliver the same sensation as smoking.” Added flavorings appeal to youth, making them a potential gateway to traditional cigarettes and nicotine dependence.²

SCHOOL POLICY

The Kansas Association of School Boards (KASB) provided recommendations in June 2013 to include electronic cigarettes (e-cigarettes) in both staff and student tobacco policies. The complete policy document is available on the KASB website: <http://www.kasb.org>. Recommended policy language to use in school settings is in *bold italics*.

Staff Policy: Use of tobacco products and e-cigarettes

"The use of tobacco products in any form and/or electronic cigarettes is prohibited in any school building owned or operated by the district and in school vehicles. {Any use of tobacco products or electronic cigarettes on district property shall be only in areas designated for such purpose.}"



Student Policy: Use of tobacco and e-cigarettes



*"Smoking by students and/or the possession or use of any other tobacco product or electronic cigarette is prohibited in any district facility; in school vehicles; at school-sponsored, activities, programs, or events, and on school owned or operated property. Administrators may report students who are in violation of this policy to the appropriate law enforcement agency."*³

WORKPLACE POLICY

Workplaces should be e-cigarette free.

In the face of limited evidence and no definitive studies, employers are wrestling with whether to allow the use of electronic cigarettes (e-cigarettes) in the workplace. Some 28 states and the District of Columbia ban smoking at work, but only three—New Jersey, Utah and North Dakota—have added e-cigarettes to those bans as of March, 2015.⁴

While most workplaces are now tobacco and smoke-free, the latest challenge they face is how to handle e-cigarettes. Proponents of e-cigarettes urge companies to allow these devices because they say it will improve productivity of employees who use them instead of traditional cigarettes. The logic is that if they do not leave to take “smoke breaks” they will spend less time being unproductive. Those against such a policy say e-cigarettes’ similarity to regular smoking is a problem, that they have not been proven to be safe and that they interfere with non-smokers’ rights for a smoke- (and vapor-) free environment.



E-cigarettes are NOT covered by the Kansas Indoor Clean Act.

The Kansas Indoor Clean Air Act (K.S.A. 21-6109 - 21-6116) was passed in 2010 and banned tobacco smoking in most public places. The Kansas Attorney General has ruled that this Act does NOT apply to e-cigarettes. This means that unless specifically restricted, e-cigarettes are permitted in workplaces and other public places where smoking is not allowed.

There are a number of reasons to treat e-cigarettes like tobacco products. First, e-cigarettes can look similar to regular cigarettes, making it more difficult to monitor traditional cigarette use. Second, e-cigarettes emit an aerosol (also known as a vapor) that may be harmful to bystanders. Third, e-cigarettes are not proven tobacco cessation devices.

WORKPLACE POLICY (cont.)

Consider the following when revising your company's smoking policy:

- Whether e-cigarettes are allowed in workplaces, company vehicles or at client sites
- Whether there are separate areas for e-cigarette users and where those areas are located
- If staff can use e-cigarettes in certain social situations, (e.g., client events, office parties). (If so, policy rules should be provided in writing and employees should be made aware that failing to follow the rules may result in disciplinary action.)
- What the process is for grievances should the e-cigarette users break the rules or infringe upon other employees rights to a safe and clean work environment

Sample Workplace Policy - Recommended language in *bold italics*

Option 1 - Complete tobacco and e-cigarette free policy

"No use of any tobacco product or electronic device that delivers nicotine or other substances to the person using the product/device is permitted within the facilities or on the property of [EMPLOYER] at any time."

Option 2 - Tobacco and e-cigarette use only in designated areas

"No use of any tobacco product or electronic device that delivers nicotine or other substances to the person using the product/device, is allowed within the facilities of [EMPLOYER] at any time."

Tobacco or electronic cigarette use shall be permitted only in designated areas located at least 25 feet outside the building entrance, operable windows and ventilation systems of enclosed areas to prevent tobacco smoke or e-cigarette aerosol/vapor from entering those areas. All materials used in designated outdoor areas, including cigarette butts, matches, e-liquids, and batteries will be extinguished and/or disposed of in appropriate containers."

MUNICIPAL AND COUNTY ORDINANCES

There are three options to include e-cigarettes in your community's public health and tobacco regulation:

- Modify definitions for smoking and tobacco products that would encompass e-cigarettes
- Add the word "e-cigarette" to existing regulation of smoking and tobacco products, along with adding a broad definition for "e-cigarette"
- Introduce a new regulation specifically for e-cigarettes that is not linked to existing regulation of smoking and/or tobacco products

Attorneys reviewed current statutes for smoking, tobacco and e-cigarettes to provide guidance for each option. To choose the right option for your community, review each with your local legal counsel. Recommended legal language to use is in *bold italics*.

Option 1 - Strongest public health protection

Most ordinances define both smoking and tobacco products. "Smoking" typically relates to the method of consumption, while "tobacco products" typically relates to the type of products that are "smoked." If you choose Option 1, we provide a definition for both the smoking/method of consumption and the tobacco products/products to be consumed.

Smoking/Method of Consumption:

An all-inclusive definition of smoking could include: *"Smoking/method of consumption" means products derived from tobacco or other substances intended to be smoked, heated, absorbed, dissolved, inhaled, snorted, sniffed, or consumed by any other means.*" Be careful not to tie the definition to the simulation of smoking. "Vaping" of e-cigarettes does not require smoke, burning, lighting, or combustion. Similarly, do not tie your definition of smoking to "tobacco" or "tobacco products" unless your definitions for these terms have been updated as suggested below.

Tobacco Products/Products to be Consumed:

Defining the product to be consumed is challenging, but an all-inclusive definition could be updated to include **all three** of the following:

Part 1 - *"Any product containing, made, or derived from tobacco or containing nicotine, whether synthetically produced or derived from other sources that is intended for human consumption (not marketed for cessation)"*

Part 2 - *"Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, cigar, pipe, or hookah (and not marketed for cessation)"*

Part 3 - *"Any component, part or accessory of Part 1 or Part 2, whether or not sold separately (and not marketed for cessation)."*⁵

MUNICIPAL AND COUNTY ORDINANCES (cont.)

All three parts of defining tobacco products/products to be consumed are essential.

You may be tempted to omit one or more parts to simplify the law. Here are the risks associated with omitting any of the parts above:

- It is important to include a definition for both “smoking/method of consumption” and “tobacco products/products to be consumed”. Failure to include these definitions could result in the regulation in the method of consumption but not the regulation of the products to be consumed, or vice versa.
- Part 1 encompasses the e-liquids (containing nicotine and/or flavorings) that are commonly sold for use in e-cigarettes. If you omit all or some of Part 1, make sure you have adequately regulated nicotine derivatives.
- Part 2 – Be aware that while much of the e-liquid sold for use in e-cigarettes is a liquid derivative of nicotine, not all e-liquids contain nicotine. The “other substances” language of Part 2 is critical to the regulation of all e-cigarette use. Why does this matter? We do not want to put employers, school staff and others in the difficult, if not impossible, position of having to confiscate and test various e-liquids to determine whether or not they include nicotine.
- Part 3 – Removing Part 3 could prevent the regulation of individual e-cigarette components. For example, someone possessing e-liquid, without an e-cigarette, might avoid regulation.
- Products marketed for cessation are regulated by the U.S. Food and Drug Administration (FDA). Including this language (“not marketed for cessation”) ensures that any products that fall under this definition and may later be deemed cessation devices will automatically be exempted.

Option 2 - Moderate protection

If the definition for “tobacco products/products to be consumed” provided is too lengthy or complicated, the word “e-cigarette” can be added to an existing definition of tobacco products. If choosing this option, we recommend adding the definition of “smoking/method of consumption” provided in Option 1 and a broad definition for “e-cigarette” such as:

“Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including but not limited to any electronic cigarette, cigar, pipe, or hookah, including any component, part, or accessory of such a device, whether or not sold separately. E-cigarette shall not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.”⁵

Option 3

If your community chooses to regulate e-cigarettes independently of the regulation of smoking and/or tobacco products -for example, choosing to prohibit e-cigarette use in government/public buildings and vehicles only- it is still advisable to define smoking as suggested in Option 1 and to define e-cigarettes as suggested in Option 2.

FACT VS. HYPE ABOUT E-CIGARETTES

What are electronic cigarettes (e-cigarettes)?

E-cigarettes are battery-powered devices that deliver nicotine, flavorings (e.g., orange, mint, bubble gum, chocolate), and other chemicals in an aerosol that is inhaled. The devices come in many shapes and sizes. Some are made to resemble a regular cigarette while others look like pens, highlighters or even computer flash drives.



Using e-cigarettes is rapidly gaining popularity.

E-cigarettes were non-existent in the U.S. a decade ago but their popularity has grown dramatically in the last few years. In Kansas, 45% of current adult cigarette smokers had tried an e-cigarette in 2013. Popularity of e-cigarettes is growing among non-smokers as well; 10.5% of Kansas adults who formerly smoked and 2.2% of Kansas adults who never smoked had also tried an e-cigarette in 2013. If current trends continue, experts believe that the sale of e-cigarettes could surpass tobacco cigarettes as early as 2017.⁶

E-cigarettes are NOT covered by the Kansas Indoor Clean Air Act.

The Kansas Indoor Clean Air Act (K.S.A. 21-6109 - 21-6116) was passed in 2010 and banned tobacco smoking in most public places. The Kansas Attorney General has ruled that this Act does NOT apply to e-cigarettes. This means that, unless specifically restricted, e-cigarettes are permitted in workplaces, restaurants, bars, and other public places where smoking is not allowed.

E-cigarettes are NOT covered by most city ordinances.

In many Kansas municipalities, smoking regulations depend on specific definitions of smoking and tobacco. Neither smoking nor tobacco applies to e-cigarettes which is why they are not covered. (A person “vapes” by inhaling an aerosol (so it is not technically “smoking”) and they inhale nicotine, plus other chemicals and/or flavorings (so it is not technically “tobacco”.) As of March, 2015 a few Kansas municipalities have revised their local ordinance to prohibit e-cigarettes.

Claims about the health benefits of e-cigarettes are unsubstantiated.

E-cigarettes are marketed as healthier alternatives to conventional cigarettes and as a way for helping smokers cut back or quit smoking cigarettes. These claims are supported by anecdotal experiences, but not by the current scientific evidence. Kansas adult tobacco smokers who also use e-cigarettes reported that they are less likely to stop using traditional cigarettes compared to smokers that did not use e-cigarettes.⁶

FACT VS. HYPE ABOUT E-CIGARETTES (cont.)

E-cigarettes may be a first step to regular tobacco use among youth.

E-cigarette cartridges can be purchased in an array of nicotine and non-nicotine flavored liquids (e.g., orange, mint, bubble gum, chocolate). These are likely intentional marketing strategies aimed at attracting a new generation of nicotine-dependent users. These efforts have been successful. Nationally, more than a quarter million middle and high school students who had never smoked regular cigarettes had used e-cigarettes in 2013. In Kansas it is illegal to sell, furnish or distribute e-cigarettes to anyone under the age of 18 (K.S.A. 79-3321). However, with no federal age restriction, Kansas youth can easily obtain e-cigarettes online. Data collected from the National Youth Tobacco Survey indicated the number of never-smoking 6th-12th grade students that had tried an e-cigarette tripled between 2011 and 2013. Of the youth that used e-cigarettes, nearly 44% reported an intention to smoke tobacco cigarettes compared to 21.5% that had never used an e-cigarette.¹

Claims about the health hazards of e-cigarettes are based on what we know about the chemistry of the products.

E-cigarettes contain a wide variety of chemicals we know are harmful like aldehydes, metals and what are called volatile organic compounds (e.g., acetone and propylene glycol).

Because they are unregulated, nicotine levels in e-cigarettes vary considerably and the delivery of nicotine is not consistent between brands or even within a particular brand. This means consumers do not know what they are buying and are not guaranteed a consistent product.

E-cigarettes usually contain liquid nicotine. Contact with small amounts of nicotine, whether swallowed, inhaled or absorbed through the skin or eyes, can cause vomiting and seizures. Liquid nicotine used in e-cigarettes pose a particular risk to children who may be drawn to their bright colors and flavorings. Nationally, calls to Poison Control Centers for exposure to e-cigarettes and liquid nicotine increased 235% from 2012-2013,⁷ a time coincident with the increasing availability of e-cigarettes. In Kansas, calls to the University of Kansas Hospital Poison Control Center increased from 17 reports in 2011 to 79 reports in 2014, and the majority of these involved children less than six years of age (82% in 2011 and 62% in 2014).⁸

FREQUENTLY ASKED QUESTIONS

Are electronic cigarettes included in the state law that prohibits smoking in most public places?

The Kansas Indoor Clean Air Act was passed in 2010 and it bans tobacco smoking in most public places. The Kansas Attorney General ruled that the Kansas Indoor Clean Air Act does NOT apply to e-cigarettes. This means unless e-cigarettes are specifically banned, they are allowed to be used in workplaces, restaurants, bars, and other public places where smoking is prohibited. Most hospitals and public schools have enacted policies that prohibit the use of e-cigarettes on their campuses.

What are the ingredients in an e-cigarette?

There is no federal regulation of e-cigarettes at this time (March, 2015). Therefore, manufacturing standards are lax and the ingredients vary widely, among brands but also with a single brand. Nicotine, the main ingredient in most e-cigarettes, is both neurotoxic and cardiotoxic.⁹ Other known chemicals include aldehydes (including formaldehyde), tobacco-specific nitrosamines (cancer-causing compounds also found in tobacco smoke), metals (including lead, zinc, nickel, and chromium), tobacco alkaloids (including nicotine, anabasine, antabine, and cotinine), polycyclic aromatic hydrocarbons (including benzo(a)pyrene), volatile organic compounds (including benzene, toluene, xylene, acetone, glycerin, and propylene glycol) and flavoring agents.⁹ Candy- and fruit-flavoring make e-cigarettes particularly appealing to youth.

Are e-cigarettes harmful to the user?

Overall, there has not been sufficient research to determine the short or long-term health effects of using e-cigarettes. Not all e-cigarettes contain nicotine; however, we have scientific evidence that nicotine exposure poses serious health risks.

Is secondhand "vapor" from e-cigarettes harmful to the bystander?

Emissions of ultrafine particles of metals (including lead, zinc, nickel, and chromium) have been identified in the e-cigarette "vapor" and therefore may be harmful to bystanders as well as to the person "vaping."⁹ The short- and long-term health effects of exposure to e-cigarette vapors currently are unknown.

Can e-cigarettes help tobacco cigarette smokers quit?

Many e-cigarette companies have suggested that e-cigarettes can be used as a cessation device, but there is insufficient scientific evidence to back this up. Kansas adult tobacco smokers who also use e-cigarettes reported that they are less likely to stop using traditional cigarettes compared to smokers that did not use e-cigarettes.⁶

FREQUENTLY ASKED QUESTIONS (cont.)

What are e-liquids?

E-liquid is the nicotine containing and frequently flavored liquid that is vaporized in an e-cigarette. The e-liquids often are sold in brightly colored vials with labels depicting the flavor (e.g., cherry, banana, bubble gum), making them attractive to children. Small amounts of liquid nicotine can be toxic, whether swallowed or absorbed into the skin.

Are the e-cigarette cartridges and vials tamper-proof?

No. Any additive could be mixed into or replace the e-liquid, including hash oil, cannabinoids (from marijuana), liquid cocaine, or e-methamphetamine.

Are youth who use e-cigarettes more likely to become regular tobacco users?

Nationally, more than a quarter million middle and high school students who had never smoked tobacco cigarettes reported using e-cigarettes in 2013. Most concerning is that nearly 44% of youth who had used an e-cigarette said they intended to smoke conventional cigarettes within the year.¹

Is it legal for youth to buy e-cigarettes?

No. In Kansas and Missouri, it is illegal for anyone under 18 years of age to purchase or possess e-cigarettes.

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Should Cities Regulate the Use of Electronic Cigarettes?

In the spirit of election season, I decided to turn this month's Best Practices column into a debate. The debate topic will be whether cities should extend the state's public smoking ban to the use of electronic cigarettes (or "e-cigarettes").

Before debating the issue, here is a little background on e-cigarettes and e-cigarette regulations. E-cigarettes were first developed in China, and were introduced to the U.S. market in 2007. Typically, they are composed of a rechargeable, battery-operated heating element and a replaceable cartridge. They are smoke-free and tobacco-free, and designed to deliver nicotine or other substances to a user in the form of a vapor. The liquid used to produce that vapor is typically a combination of nicotine, flavorings, propylene glycol (a solvent), and other additives.¹

In 2011, the Kansas Attorney General's Office released an opinion stating that the state's Clean Indoor Air Act did not apply to the use of e-cigarettes in public places.² However, that Act included language expressly authorizing cities and counties to pass more stringent smoking local regulations, which could include extending the ban to e-cigarettes.³ In 2012, the Kansas Legislature joined a handful of other states to ban their sale to minors.⁴ This August, Overland Park became one of the first cities in Kansas to extend the state's public smoking ban to e-cigarettes.⁵ They were joined a few weeks later by the City of McPherson, which passed a similar ban.⁶ There are currently no federal e-cigarette regulations, but the Food and Drug Administration (FDA) has proposed rules that would establish minimum age requirements and require ingredient listings and health warnings on the products.⁷

Include E-Cigarettes in Your Community's Public Smoking Ban

One of the main roles of local government is to protect the public's health, and that should include decreasing the use of and exposure to e-cigarettes. The vapor created by these products is from liquid nicotine, which is extracted from tobacco and can be lethal. The FDA found some cartridges of liquid nicotine contained about one percent diethylene glycol (DEG), a toxic chemical ingredient also found in antifreeze.⁸ In 2013, 24 people (11 of whom were children) reported toxic exposure from e-cigarettes to poison control. Cities should do whatever they can to discourage exposure to these dangerous substances.

Proponents of e-cigarettes often claim that prohibiting their use in public does not make sense because there are no second-hand exposure concerns. However, many e-cigarette devices release metals like tin during use, as well as other materials known to be toxic or carcinogenic.⁹ These are the same types of chemicals the Kansas Legislature intended to ban from indoor areas open to the public when they enacted the Kansas Indoor Clean Air Act. Not including e-cigarettes in a community's smoking ban amounts to a loophole that individuals can use to circumvent the purpose of this Act.

Additionally, e-cigarettes may lead young people to try other tobacco products like conventional cigarettes. Allowing the widespread use of a gateway product like e-cigarettes could increase smoking, which is the leading cause of preventable disease and death in the United States.

Finally, Kansas's public smoking ban is extremely popular, and municipalities should recognize that a vast majority of their residents now expect smoke and vapor free public environments.¹⁰ As stated by Overland Park City Councilmember Terry Goodman, "Whether it's harmful or not, Overland Park residents have a right to go into a restaurant or bar and not sit next to a table full of six people puffing away on vaping devices and exhaling the vapor or smoke..."¹¹

The League of Kansas Municipalities has no position on whether cities should or should not expand their smoking bans to include use of electronic cigarettes. The intent of this article was to inform city officials about the arguments for and against expansion.

Do Not Regulate the Use of E-Cigarettes in Public

The whole conversation about regulating e-cigarettes is another example of busybody government unnecessarily intruding on the lives of its citizens. Most evidence suggests e-cigarettes are safer than smoking tobacco products, and possibly as safe as other nicotine replacement products.¹² Shouldn't Kansans have the freedom to enjoy safe products in public?

Additionally, e-cigarettes can help smokers quit using regular cigarettes. Cities are not considering outlawing the public use of the patch or nicotine gum, which arguably can also lead to nicotine addiction. It makes little sense for cities to ban another product that could decrease cigarette use, which, as my opponent mentioned, is the leading cause of preventable disease and death in the United States.

It is also important to recognize that e-cigarettes do not cause the same second-hand exposure issues created by regular cigarettes. The aerosol produced from e-cigarettes has notably fewer toxicants than cigarette smoke and likely poses less harm to others.¹³ Since Kansas's public smoking ban was passed primarily to protect non-smokers from the effects of second-hand smoke, there is no reason to expand that ban to e-cigarettes.

Finally, banning e-cigarettes in public is anti-business. Hip establishments designed for individuals to enjoy e-cigarettes (often called "vaping hangouts") are a fast-growing industry in Kansas. Passing ordinances that prevent the continued proliferation of these businesses will harm entrepreneurs and job creation in our state.

In summary, please reject the nanny-state approach of my opponent. Public regulation should be reserved for legitimate public health issues. Banning e-cigarettes in public is simply another example of government overreach.

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To view the sources for this article, see page 315.

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