To: City Council
Subject: Consideration of Ordinance 1484, an ordinance to add vaping to the definition of smoking.
Meeting: Regular Council - 11 Mar 2020
Department: City Attorney
Staff Contact: Tom Yeadon, Attorney

BACKGROUND INFORMATION:
Attached is Ordinance 1484, an ordinance to add vaping to the definition of smoking in the City Code. This would disallow vaping in a public place or in an office work place; any city owned, managed, operated and/or leased facility; or any park, plaza, playground, tennis court, community center, outdoor athletic complex, aquatic center, linear park or trail owned or controlled by the city or in city parking lots when used for community events.

Reference: Section 26-401

ATTACHMENTS:
Ordinance 1484
AN ORDINANCE TO AMEND SECTION 26-402 OF DIVISION 5 - SMOKING AND DISTRIBUTION OF TOBACCO PRODUCTS - OF ARTICLE VI - NUISANCES - OF CHAPTER 26 - OFFENSES - OF THE CODE OF THE CITY OF EAST LANSING, MICHIGAN, TO BROADEN THE DEFINITION OF SMOKE AND SMOKING TO INCLUDE THE SMOKING ELECTRONIC CIGARETTES AND VAPING.

THE CITY OF EAST LANSING ORDAINS:

Section 26-402 of Division 5 - Smoking and Distribution of Tobacco Products - of Article VI - Nuisances - of Chapter 26 - Offenses of the Code of the City of East Lansing, is hereby amended to read as follows:

Sec. 26-402. - Definitions.

The following definitions shall apply in the interpretation and enforcement of this subdivision:

*Authorized city official* means a police officer, a code compliance officer, the city manager or his or her designee, or the fire chief or his or her designee.

*Cigar* means any roll of tobacco for smoking, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated or mixed with any other ingredients, where such roll has a wrapper made chiefly of tobacco.

*Cigar bar* means an establishment or area within an establishment that is open to the public and is designated for the smoking of cigars, purchased on the premises or elsewhere.

*Cigarette* means any roll of tobacco for smoking, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated or mixed with any other ingredients, where such roll has a wrapper made chiefly of paper or other material except tobacco.

*City owned, managed, operated, and/or leased facility* includes city hall, the city jail, the 54-B District Court and any other building owned, managed, operated and/or leased by the city, and all areas within, including, but not limited to, private lounges, libraries, mail rooms, elevators, supply/equipment storage areas, inside loading dock areas, park pavilions and shelters, reception areas, restrooms, hallways, stairways, garages, and all lobbies and enclosed entrances, all areas
within 50 feet of all entrances, and any building managed and/or operated by authorities created pursuant to law, excluding, however, streets and sidewalks and open areas within city-owned parking ramps other than booths and offices within the ramp facilities.

*Employee* means any natural person who is employed by an employer in consideration for any direct or indirect monetary wages or other consideration.

*Employer* means any person who employs the services of another individual person.

*Enclosed* means closed in by a roof and four walls with appropriate openings for ingress and egress.

*Exit* means a continuous and unobstructed means of egress to a public way and shall include intervening aisles, doors, doorways, corridors, ramps, stairways, smokeproof enclosures, horizontal exits, and exit passageways.

*Health facility* means a health facility or agency licensed under article 17 of the Michigan Public Health Code, except a home for the aged, nursing home, county medical care facility, hospice, or hospital longterm care unit.

*Office work place* means any enclosed area of a structure or portion thereof intended for occupancy in a "place of employment" by two or more employees of any employer who will provide primarily clerical, professional, educational, or business services.

*Place of employment* means any enclosed area under the control of a public or private employer, including charitable, educational, or nonprofit organizations, school districts, and facilities maintained or operated by public agencies of the city or county, which employees normally frequent during the course of employment.

*Public place* means any of the following:

(a) An enclosed, indoor area owned or operated by a state or local governmental agency and used by the general public or serving as a meeting place for a public body, including an office, educational facility, home for the aged, nursing home, county medical care facility, hospice, hospital long-term care unit, auditorium, arena, meeting room, or public conveyance.

(b) An enclosed, indoor area that is not owned or operated by a state or local governmental agency, is used by the general public, and is any of the following:

1. An educational facility.
2. A home for the aged, nursing home, county medical care facility, hospice, or hospital long-term care unit.
3. An auditorium.
(4) An arena.

(5) A theater.

(6) A museum.

(7) A concert hall.

(8) Any other facility during the period of its use for a performance or exhibit of the arts.

c) Unless otherwise exempt under this code, a place of employment.

A private residence is not a "public place" except when used as a licensed child care, foster care, or health care facility.

Smoke or smoking means the lighting, inhaling, exhaling, or burning, or carrying of any lighted cigar, cigarette, tobacco, weed, plant, or other similar article or combustible substance in any form or the inhaling and exhaling of any product containing nicotine including electronic cigarettes and any other device that can be used to produce vapor for the purpose of inhaling and exhaling the vapor.

Tobacco specialty retail store means an establishment in which the primary purpose is the retail sale of tobacco products and smoking paraphernalia, and in which the sale of other products is incidental. Tobacco specialty retail store does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license.