## STAFF REPORT

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| **Agenda Item:** | 9  | **Name:** | Wendy Soo Hoo |
| **Proposed No**.: | 2015-0449 | **Date:** | March 1, 2016 |

**SUBJECT**

Proposed ordinance would add use of electronic smoking devices to activities prohibited on transit properties in King County Code 28.96.010.

**SUMMARY**

Proposed Ordinance 2015-0449 would add use of electronic smoking devices (e-cigarettes) to the list of prohibited actions that constitute a misdemeanor under the Metro Transit Code of Conduct.

The proposed ordinance would be consistent with Board of Health Rule and Regulation BOH 10-04, which prohibits the use of e-cigarettes in public places and places of employment. The Board of Health action established penalties for retailers and employers that violate the regulation, but not for individuals who use e-cigarettes in public places or places of employment.

As Proposed Ordinance 2015-0449 would make use of e-cigarettes on Transit property a misdemeanor, individuals who use e-cigarettes on buses or at Metro facilities could be subject to fines up to $1,000 and/or face imprisonment in the county jail for not more than 90 days. Note that smoking or carrying a lighted or smoldering cigarette, pipe, etc., are already prohibited under the Code of Conduct and constitute a misdemeanor.

**BACKGROUND**

According to the U.S. Centers for Disease Control (CDC), electronic cigarettes (e-cigarettes) are battery operated products designed to turn nicotine and other chemicals into a vapor, which is then inhaled. E-cigarettes may contain ingredients that are known to be toxic to humans. According to the U.S. Food and Drug Administration, e-cigarettes have not been fully studied, so the potential risks, how much nicotine or other potentially harmful chemicals are being inhaled during use or whether there are any benefits associated with using these devices.

On December 16, 2010, the Board of Health adopted Rule and Regulation BOH 10-04, which regulated electronic smoking devices, finding that the emergence of unregulated electronic smoking devices, including e-cigarettes, “presents a threat to the public health.” The regulation prohibited the use of electronic smoking devices in public places and places of employment, effectively treating the use of electronic smoking devices the same as the use of cigarettes and other lighted smoking equipment under the Washington Clean Indoor Air Act.[[1]](#footnote-1) The Board of Health action also established penalties for retailers and employers that violate the regulation.

Currently, the Metro Transit Code of Conduct (King County Code Title 28.96) and state law (Revised Code of Washington 9.91.025) prohibit smoking or carrying a lighted or smoldering cigarette, pipe, etc., and make violation of the prohibition a misdemeanor.

**ANALYSIS**

Under the Board of Health regulation BOH 10-04, smoking e-cigarettes is currently not allowed on buses or other Transit properties, as use of e-cigarettes is treated similar to use of cigarettes in places of employment. However, the Board of Health regulation can only be enforced by Public Health, and the Board of Health regulation only establishes penalties for retailers and employers who are found to violate the regulations prohibiting sales of e-cigarettes to minors or use of e-cigarettes in public places or places of employment. The Board of Health regulation does not establish penalties for individuals who use e-cigarettes in public places or places of employment.

Proposed Ordinance 2015-0449 would add use of e-cigarettes to the list of actions in the Transit Code of Conduct that constitute a misdemeanor. Misdemeanors can result in a citation and fine of up to $1,000, and/or imprisonment in the county jail for not more than 90 days. Adding the use of e-cigarettes to the list of prohibited activities in the Transit Code of Conduct would enable enforcement of the prohibition by Metro Transit personnel, including bus drivers and Transit police, and would allow for penalties to be assessed against individuals that use e-cigarettes on Transit property.

According to Metro Transit and Transit police staff, enforcement activity would start with low-level reminders by bus drivers or Transit police that use of e-cigarettes is prohibited on buses or at other Transit facilities. In cases that escalate, Transit police would write up the criminal violation (a misdemeanor), which could lead to a suspension from Transit facilities of up to 14 days, and would be submitted to the Prosecuting Attorney’s Office to determine whether to file charges. If the case proceeded to court, the court would determine whether to assess a fine and/or impose a jail sentence.

The fiscal note indicates that adoption of this ordinance is expected to have no fiscal impact. According to Transit staff, this is because few cases are anticipated to lead to fines or result in significant costs associated with enforcement by Transit personnel or police. Note that Transit staff searched the Metro Customer Service system for complaints regarding e-cigarettes, vaping, and other similar terms and few complaints were returned, as shown in Table 1.

**Table 1. Complaints on E-cigarette Use in**

**Metro Customer Service system**

|  |  |
| --- | --- |
| **Year** | **Number of Comments Returned** |
| Jan 1-Dec 31 2010 | 0 |
| Jan 1-Dec 31 2011 | 1 |
| Jan 1-Dec 31 2012 | 0 |
| Jan 1-Dec 31 2013 | 5 |
| Jan 1-Dec 31 2014 | 15 |
| Jan 1-Oct 31 2015  | 4 |
| Oct 2015-Current | 2 |

Note that a 10-day notice of public hearing is required before adoption of the proposed ordinance by full Council. The public hearing is advertised for March 14th.

**AMENDMENT**

The transmitted ordinance includes a change to a provision related to animal waste. The title and intent of the proposed legislation pertain to e-cigarettes, so the change to the animal waste provision does not comply with the single-subject rule. Staff has drafted an amendment to remove this change.

In addition, under the Council’s drafting rules, legislation that prescribes penalties must state so in the title. As transmitted, the proposed ordinance does not state this in the title, so staff has prepared a title amendment.

**ATTACHMENTS**

1. Proposed Ordinance 2015-0449
2. Amendment 1
3. Title Amendment T1
4. Transmittal Letter
5. Fiscal Note

**INVITED**

* Kevin Desmond, General Manager, Transit Division
* Major Dave Jutilla, Chief, Metro Transit Police
* Stephanie Pure, Intergovernmental Relations, Transit Division
* David Hull, Special Projects Manager, Transit Division
1. Revised Code of Washington Chapter 70.160 [↑](#footnote-ref-1)