



Legislation Details (With Text)

File #: 19-804 **Version:** 1

Type: Ordinance **Status:** Agenda Ready

File created: 8/12/2019 **In control:** City Council

On agenda: 8/20/2019 **Final action:**

Title: Conduct the first reading of an ordinance amending Sections 3-3-3, 3-3-5, 3-3-14 and 3-3-15 of the Naperville Municipal Code by adding a definition of kratom, banning the retail sale of kratom, and prohibiting anyone under the age of 21 from possessing tobacco or alternative nicotine products.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Ordinance, 2. August 9, 2018 Liquor Commission Minutes, 3. June 6, 2019 Draft Liquor Commission Minutes, 4. June 7, 2018 Liquor Commission Minutes, 5. 360 Youth Services Report

| Date | Ver. | Action By | Action | Result |
|-----------|------|--------------|---------------------------|--------|
| 8/20/2019 | 1 | City Council | conduct the first reading | Pass |

CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Conduct the first reading of an ordinance amending Sections 3-3-3, 3-3-5, 3-3-14 and 3-3-15 of the Naperville Municipal Code by adding a definition of kratom, banning the retail sale of kratom, and prohibiting anyone under the age of 21 from possessing tobacco or alternative nicotine products.

DEPARTMENT: Legal Department

SUBMITTED BY: Jennifer Lutzke, Senior Assistant City Attorney

BOARD/COMMISSION REVIEW:

On June 6, 2019, the Liquor Commission unanimously recommended prohibiting anyone under the age of 21 from possessing tobacco and alternative nicotine products. On August 9, 2018, the Liquor Commission unanimously recommended banning the retail sale of kratom.

BACKGROUND:

Tobacco/Alternative Nicotine Products

On July 1, 2019, Public Act 101-002 became effective, which raised the minimum age to purchase tobacco products to 21 years. Public Act 101-002 no longer regulates the possession of tobacco by minors of any age. Prior to this change in the state law, on December 5, 2016, the Mayor and City Council approved a text amendment to the City’s Code prohibiting the sale of tobacco or alternative nicotine products to persons under the age of 21. At that time, no change was made concerning possession of tobacco products due to concerns about regulating personal decisions for legal adults and challenges of enforcement. The City’s Code currently prohibits anyone under the age of 18 from possessing tobacco or alternative nicotine products.

Kratom

Kratom comes from the leaves of a tropical evergreen plant in the coffee family that, according to the U.S. Food and Drug Administration (“FDA”), grows naturally in Thailand, Malaysia, Indonesia and Papua New Guinea. Kratom can be brewed like a tea, crushed into powder, smoked, snorted, or taken as a tablet or capsule. Kratom has been used as mood buster, energy supplement, and pain reliever. Proponents contend it assists with opioid addiction, but the FDA has warned people to avoid using kratom, saying “there’s no evidence to indicate that kratom is safe or effective for any medical use.”

Kratom has no FDA-approved uses, is listed by the U.S. Drug Enforcement Agency as a “drug of concern,” and the FDA warns consumers not to use any products labeled as containing the botanical substance kratom or its psychoactive compounds, mitragynine and 7-hydroxymitragynine. Several states, including Indiana and Wisconsin, have banned kratom. Legislation was introduced in Illinois to ban kratom, but it did not advance. Illinois currently bans the sale to or possession of kratom by minors. Two other Illinois municipalities, Alton and Jerseyville, have banned kratom. The City’s Code does not prohibit the sale of kratom, but the City, under its home rule authority, can enact such prohibition. In considering whether to ban kratom, consideration should be given to health, safety and welfare concerns.

DISCUSSION:

Tobacco/Alternative Nicotine Products

Following the change in the state law, the Liquor Commission considered whether to make all regulations regarding tobacco and alternative nicotine products apply to individuals under 21 years of age. This regulation would assist with enforcement in high schools by deterring 18-year-old students from bringing products to school to share with younger classmates; it would also provide the police department consistency concerning the regulation of tobacco products. Individuals who are caught buying or possessing tobacco will be fined \$100-200 for their first offense; \$150-250 for their second offense; \$250-350 and 10 hours of community service for their third offense; and \$350-750 and 30 hours of community service for each subsequent offense. Individuals are also required to complete a tobacco education program for each offense. In 2018, the police department issued thirty-eight citations for possession of tobacco or alternative nicotine products by minors in schools.

The Liquor Commission unanimously recommended that the City Council approve the text amendment. Draft minutes from the June 6, 2019 Liquor Commission meeting are attached.

Kratom

On June 7, 2018, the Liquor Commission reviewed a request to open a business specializing in the sale of kratom and cannabidiol. Safety concerns were raised regarding kratom and staff was directed to do additional research. At the next meeting, on August 9, 2018, a representative from the Naperville Chamber of Commerce voiced concerns about similarities between kratom and opioids. 360 Youth Services echoed similar worries about addictive effects. Following review of the information provided, the Liquor Commission unanimously recommended that staff draft an ordinance banning the retail sale of kratom for consideration by City Council. The petitioner decided not to open his business in Naperville, but other businesses have started selling kratom.

Per the Liquor Commission recommendation, staff has provided a proposed text amendment for consideration, which is appended hereto.

Liquor Commission meeting minutes from June 7, 2018 and August 9, 2018 as well as the 360 Youth Services report from June 19, 2018 are attached.

In addition to the proposed text amendments, staff recommends adopting additional minor, technical edits to code language that staff identified during their preparation of the ordinance to increase clarity and enforceability of existing regulations.

FISCAL IMPACT:

N/A