MEMORANDUM

TO: Nolan Sunderman - City Manager
FROM: Doug Allmon - Community Development Director
DATE: November 13, 2018
SUBJECT: Consider Resolution Extending Moratorium Related to Permits for the Operation or Establishment of New Vape Shops

BACKGROUND:
At the March 26, 2018 meeting the Governing Body discussed a proposed Ordinance regulating the retail operation and conduct of vape or inhaling shops, and the regulation of the conduct or act of vaping in the City. The Governing Body considered Ordinance 3220 restricting the location of vape retail stores to limit the locations to stand alone buildings where that business was the sole tenant. Specific discussion included regulating the conduct of those persons over the age of 18 but under the age of 21. The discussion developed from the March 6, 2018 Council Committee.

The Governing Body approved a moratorium on new permits for the operation of vape or inhaling shops through the 2018 calendar year, until such time as new regulations could be considered.

The Kansas Supreme Court continues to review the authority of cities in Kansas to regulate the conduct of or use of tobacco and electronic cigarettes by persons over the age of 18 but under the age of 21. Specifically, state law (The Kansas Cigarette and Tobacco Products Act) currently permits the sale of tobacco products and electronic cigarettes to persons over the age of 18 but under the age of 21. The City of Topeka exercised its discretion to prohibit the sale of tobacco products and electronic cigarettes to persons over the age of 18 but under the age of 21.

The Kansas Supreme Court is reviewing a challenge to the City of Topeka exercise of authority to regulate the sale of tobacco products and electronic cigarettes to persons over the age of 18 but under the age of 21, (DWAGFYS Manufacturing v. City of Topeka, Kansas, Case No. 18-119269-S).

A decision from the Kansas Supreme Court would provide guidance to the Governing Body in determining the extent to which the City may regulate the retail act of vaping or distribution of electronic cigarettes.

DISCUSSION:
The proposed moratorium would extend the 2018 moratorium to July 1, 2019, to allow time for the issuance of a guiding opinion from the Kansas Supreme Court prior to the consideration of
legislation by the City to regulate conduct related to those persons over the age of 18 but under the age of 21.

RESULTS:
The City has established key Results or goals to achieve on behalf of its citizens. This item contributes to the Result(s) of Attractive, Healthy, and Well-Maintained Community; and Good Governance.

RECOMMENDATION:
The proposed Resolution would extend the current moratorium to July 1, 2019 if the Governing Body desires to extend the moratorium beyond the 2018 calendar year.

ATTACHMENTS:
Vape Resolution
CITY OF SHAWNEE

RESOLUTION NO. ___

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF SHAWNEE, KANSAS DECLARING A MORATORIUM ON THE ACT OF APPROVING PERMITS FOR THE OPERATION OR ESTABLISHMENT OF NEW VAPE SHOPS IN THE CITY OF SHAWNEE, KANSAS.

WHEREAS, the City of Shawnee is currently considering adoption of legislative measures regulating the retail operation and conduct of vape shops, and the regulation of the conduct or act of vaping in the City of Shawnee, Kansas;

WHEREAS, the authority of cities in Kansas to regulate the conduct of or use of tobacco and electronic cigarettes by persons over the age of 18 but under the age of 21 is under consideration by the Kansas Supreme Court and is pending as DWAGFYS Manufacturing, Inc., v. City of Topeka, Kansas, Case NO. 18-119269-S; and

WHEREAS, the issuance of an opinion of the Kansas Supreme Court would be a significant advisory factor to the City of Shawnee Governing Body when determining the extent to which it may or should exercise jurisdiction over the conduct of those persons over the age of 18 but under the age of 21 when it relates to the sale or act of vaping or inhaling;

WHEREAS, under its police powers to promote the health, safety and welfare of this community, the City desires to impose a reasonable moratorium to allow time for the consideration of an opinion of the Kansas Supreme Court in DWAGFYS Manufacturing, Inc., v. City of Topeka, Kansas, Case NO. 18-119269-S prior to consideration or implementation of legislative acts to regulate the conduct of persons over the age of 18 but under the age of 21 in the City of Shawnee, Kansas.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SHAWNEE, KANSAS, AS FOLLOWS:

PARAGRAPH 1. The moratorium on the act of operating or establishing a new vape shop as approved and implemented by the Governing Body on the 26th day of March, 2018 is hereby extended to July 1, 2019.

This portion is intentionally blank.
ADOPTED by the Governing Body this 13th day of November, 2018.

APPROVED AND SIGNED by the Mayor this 13th day of November, 2018.

CITY OF SHAWNEE, KANSAS

By: __________________________________________
    Michelle Distler, Mayor

{Seal}

ATTEST:

By: __________________________________________
    Stephen Powell, City Clerk

APPROVED AS TO FORM:

By: __________________________________________
    M. Ellis Rainey, II City Attorney