BACKGROUND:
At the December 9, 2019 Council Committee meeting, staff presented information on the location of electronic cigarette (vape) establishments. Concern had been raised by council members about the proliferation and concentration of these establishments within the City. The City is currently under a moratorium for new vape establishments that is set to expire on June 30, 2020. At the conclusion of the presentation, the Council Committee voted 7-0 directing staff to present an ordinance to the full Governing Body that regulates the location of electronic cigarette establishments. Adoption of the ordinance will repeal the current electronic cigarette moratorium. A copy of the proposed ordinance is attached.

DISCUSSION:
The proposed ordinance will limit Vape shops in a similar manner to the City’s current separation requirements that apply to Cash Advance businesses. This would involve implementing restrictions that would require separation between Vape shops of at least one mile. Vape shops would also have to provide buffer distances of 200 feet from adjacent schools/colleges, churches, and commercial daycare centers. Property zoned or used for residential purposes would also require a 200 foot buffer distance. Vape shops would only be permitted to be located in the CN (Commercial Neighborhood), CH (Commercial Highway), and TSQ (Townsquare) zoning districts. These are the same zoning areas where tobacco products are currently allowed to be sold.

The proposed ordinance provides that stores which sell electronic cigarette products but maintain sales of less than 65 percent of such defined products (such as grocery stores, convenience stores, etc.) would not be subject to the separation or buffer distances mandated by the ordinance. However, stores that hold themselves out as vape establishments are covered by the ordinance, even if sales are less than 65 percent.

The proposed ordinance also provides that any cessation or abandonment of use by an existing vape store immediately causes loss of any grandfather allowance from the newly adopted electronic cigarette regulations. The proposed ordinance also allows the City the ability to review sales and purchase records of the store to verify percentage of sales.

RESULTS:
The City has established key Results or goals to achieve on behalf of its citizens. This item contributes to the Result of Good Governance.

**RECOMMENDATION:**
The Council Committee recommended 7-0 that the proposed electronic cigarette ordinance be approved.

**ATTACHMENTS:**
[Vape Shop Ordinance No. 3312](#)
AN ORDINANCE PROVIDING FOR A NEW CHAPTER 5.51 TO THE SHAWNEE MUNICIPAL CODE TO REQUIRE FUTURE ELECTRONIC CIGARETTE RETAIL ESTABLISHMENTS COMPLY WITH A DISTANCE REQUIREMENT.

WHEREAS, much of the electronic cigarette marketing today uses bright colors, candy- and fruit-flavored liquids, cartoons and characters, and mirrors the marketing used by tobacco companies which was determined to target youth and is now prohibited; and

WHEREAS, a 2016 Surgeon General's report on electronic cigarette use among youth and young adults concluded that electronic cigarettes are unsafe for children and adolescents; and

WHEREAS, a 2017 study published in the Journal of the American Medical Association Pediatrics found an association between initial electronic cigarette use and subsequent tobacco cigarette smoking initiation and determined that state and local agencies needed to engage in regulatory actions to discourage youths' use of electronic cigarettes; and

WHEREAS, both the U.S. Food and Drug Administration (FDA) and the U.S. Centers for Disease Control and Prevention (CDC) are investigating the cause of the severe respiratory illness and lung injuries associated with the use of vaping products, including e-cigarettes. The FDA and CDC have indicated they will take appropriate actions as the facts emerge but the cause has not yet been identified; and

WHEREAS, the Governing Body of the City of Shawnee deems it to be in the best interests of the health, safety and welfare of its youth to limit the access and exposure of under-age children to electronic cigarette items and marketing by imposing a distance restriction for such retail stores.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SHAWNEE, KANSAS:

PARAGRAPH 1. Title 5, of the Shawnee Municipal Code is hereby amended to add a new Chapter 5.51, Electronic Cigarette Retail Establishment, to read as follows:

5.51.010 Definitions.

A. "Electronic Cigarette" means a battery-powered device, whether or not such device is shaped like a cigarette, which can provide inhaled doses of nicotine by delivering a vaporized solution by means of cartridges or other chemical delivery systems.

B. "Electronic Cigarette Retail Establishment" means a retail establishment that derives at least 65% of such establishment's revenue from Electronic
Cigarettes and Electronic Cigarette products or a retail establishment that holds itself out or advertises itself primarily as an electronic cigarette retail establishment.

5.51.020 License - Term - Fee
A. It shall be unlawful for any person or entity to operate an Electronic Cigarette Retail Establishment within the corporate limits of the City without having first procured a license therefor from the City.
   1. All applications and fees for new or change of ownership licenses must be submitted to the City Clerk at least thirty (30) days in advance of the date sought for such issuance.
   2. All applications and fees for renewal of licenses shall be submitted to the City Clerk at least thirty (30) days prior to the last scheduled meeting of the Governing Body for that Calendar Year.
B. Such license shall be valid from January 1 to December 31 of each calendar year and must be renewed annually.
C. There is levied an annual license fee, in an amount recommended by the City Clerk or his or her designee and approved by the Governing Body and listed in the latest City of Shawnee Policy Statement Code.

5.51.030 Distance Requirement.
A. No license shall be issued for any Electronic Cigarette Retail Establishment that is located within 5,280 feet of any other Electronic Cigarette Retail Establishment within Shawnee City Limits or outside City Limits, or within two hundred (200) feet of any property used or zoned for school, college, church, commercial daycare use, or any property used or zoned for residential use. The separation distances shall be measured from or to the outer wall of the Electronic Cigarette Retail Establishment to the property line of the property containing the school, college church, or commercial daycare use.
   1. Exception: If such school, college, church, or commercial daycare is established within two hundred (200) feet of any Electronic Cigarette Retail Establishment after the premises has been licensed, the premises shall remain an eligible location for said licensing as long as the premises remains in compliance with subsection B below.
B. In the event any Electronic Cigarette Retail Establishment abandons or discontinues an Electronic Cigarette Retail Establishment in operation prior to the effective date of this Ordinance, any future Electronic Cigarette Retail Establishment operated at the same location shall be required to comply with the distance requirements set forth in this Section. This provision shall not apply to a change in ownership which may occur by operation of law, including a court order, divorce, death, mortgage foreclosure, bankruptcy or transfer by contract, provided there is a continuous occupancy or operation of the Electronic Cigarette Retail Establishment at the licensed location.
C. Each Electronic Cigarette Retail Establishment shall retain the records of purchases and sales for a period of one year. These records are
subject to inspection by the City and shall be provided within a reasonable time upon request. The records may be in electronic or paper format. If electronic, the records must be available to print upon request by the City.

PARAGRAPH 2. Severability. If any one or more sections, subsections or other part of this Ordinance shall be declared invalid by a court of competent jurisdiction, it is the intent of the City that the remaining portions of the Ordinance shall remain effective. The City states that it would have enacted such remaining portions irrespective of the fact that one or more sections, subsections, or other part of the Ordinance have been held invalid.

PARAGRAPH 3. This Ordinance shall be in full force and effect from and after its passage and publication as provided by law and Resolution 1880 is repealed upon the effective date.

PASSED by the Governing Body this [<Date>] day of [<Month>], [<Year>].

APPROVED AND SIGNED by the Mayor this [<Date>] day of [<Month>], [<Year>].

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