

ORDINANCE NO. 20140807-109

AN ORDINANCE ADDING CHAPTER 10-11 TO THE CITY CODE TO PROHIBIT THE SALE AND DELIVERY OF ELECTRONIC SMOKING DEVICES TO MINORS.

PART 1. FINDINGS

- A. New, unregulated high-tech smoking devices, commonly referred to as electronic cigarettes or e-cigarettes, have recently become more available to consumers; and
- B. Nicotine is a known neurotoxin that is also one of the most highly addictive substances available for public consumption; and
- C. The manufacturers and marketers of electronic cigarettes or e-cigarettes advertise their products as safe nicotine delivery devices and smoking cessation modalities; and
- D. Laboratory tests conducted by the U.S. Food and Drug Administration (“FDA”) have shown that electronic cigarettes or e-cigarette vapors contain carcinogens, including nitrosamines. Further, the FDA tests showed that electronic cigarettes or e-cigarettes vapors were found to contain toxic chemicals such as, diethylene glycol, a common ingredient in antifreeze. While some manufacturers of electronic cigarettes or e-cigarettes dispute the FDA’s findings as limited in scope and sample, manufacturers have not submitted, for independent peer review, any findings that support their safety and smoking cessation claims; and
- E. Concurrent with this lack of suitable information, manufacturers of electronic cigarettes or e-cigarettes offer their liquid nicotine cartridges in a variety of flavors, including, but not limited to, cherry, chocolate and vanilla, which flavorings the FDA and public health advocates warn are purposefully meant to appeal to and attract young people; and
- F. Studies show that adolescents can become addicted to nicotine after ingesting the equivalent of 20 traditional cigarettes, the amount traditionally available in a single pack, and the appeal created by the flavored electronic cigarettes, e-cigarettes and/or liquid nicotine may lead young people into a lifetime of nicotine addiction; and
- G. The nicotine content provided by electronic cigarettes or e-cigarettes is unknown and unspecified and presents a significant risk of rapid addiction or overdose; and
- H. Other governments and public health organizations, including the World Health Organization and the Canadian government’s FDA equivalent, the

Heath Products and Food Branch Inspectorate, have joined the FDA in speaking out about the potential dangers posed by electronic cigarettes or e-cigarettes and are also calling on manufacturers of electronic cigarettes or e-cigarettes to discontinue their safety claims until these products have been independently tested; and

- I. Every year tobacco products siphon off more than \$268 billion in directly related healthcare and lost worker productivity costs and lead to the deaths of almost half a million Americans, and the City Council is supportive of tobacco cessation programs and modalities that have proven efficacy and utilize safe FDA-approved products; and
- J. Protecting the citizens of the City against an untested nicotine product like electronic cigarettes, e-cigarettes and liquid nicotine represents sound public health and fiscal policy; and
- K. A ban on the sale of electronic cigarettes, e-cigarettes, liquid nicotine and like products in the City to persons under the age of eighteen (18) and a prohibition on self-service merchandising in the retail sale of electronic cigarettes, e-cigarettes, liquid nicotine and like products in order to minimize their physical accessibility to minors serves an important public interest in furtherance of the health, safety and general welfare of the citizens of the City; and
- L. The Texas Legislature currently prohibits the possession, purchase, consumption or receipt of cigarettes or tobacco products by minors, and the City enforces such regulations; and
- M. The Texas Legislature currently regulates vendor assisted sales and vending machines of cigarettes or tobacco products, including, but not limited to, prohibiting the use of the same by minors; and
- N. To promote the public health, safety and welfare of the City and its citizens, it is in the best interest of the City and its citizens to amend the Code of Ordinances as set forth below. Now therefore,

BE IT ORDAINED BY THE CITY COUNCIL:

PART 2. The findings of the preceding Part 1 are incorporated into the body of this Ordinance as if fully set forth herein.

PART 3. City Code Title 10, *Public Health and Sanitation Services*, is amended to add a new Chapter 10-11, *Electronic Smoking Devices*, to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§ 10-11-1 DEFINITIONS.

In this chapter:

- (1) **MINOR** means a person under 18 years of age.

(2) **ELECTRONIC SMOKING DEVICE** means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to inhale vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor, and any aerosol, liquid, or vapor used in such a device.

§ 10-11-2 **ENFORCEMENT POLICY.**

(A) The director of Health and Human Services Department and the police chief shall enforce this chapter.

(B) The director and the police chief shall seek voluntary compliance with this chapter before taking action to enforce the chapter.

(C) A member of the public may file a complaint in a form acceptable to the prosecuting attorney to enforce this chapter.

§ 10-11-3 **RELATIONSHIP TO OTHER LAW.**

This chapter is cumulative of other law relating to minors' access to Electronic Smoking Devices.

ARTICLE 2. OFFENSES.

§ 10-11-4 **SALE OR DELIVERY TO MINOR PROHIBITED.**

(A) A person may not sell or deliver an Electronic Smoking Device to an individual who would appear to a reasonable person to be a minor unless:

- (1) the person knows that the individual is not a minor; or
- (2) the person examines the individual's proof of identification to determine that the individual is not a minor.

(B) To comply with this section, proof of identification must:

- (1) be issued by the department of public safety or another governmental agency;
- (2) contain a photograph or physical description consistent with the appearance of the individual presenting the proof ; and
- (3) establish that the individual is 18 years of age or older.

§ 10-11-5 **SELF-SERVICE MERCHANDISING PROHIBITED.**

(A) A person may not display, sell, or offer Electronic Smoking Devices for sale in a manner that permits the public direct access to the Electronic Smoking Devices.

(B) This section does not apply to a business that does not permit minors on the premises.

§ 10-11-6 ELECTRONIC SMOKING DEVICE VENDING MACHINES PROHIBITED.

(A) Except as provided in Subsection (B), a person may not install or maintain on the person's premises, or permit another person to install or maintain, a vending machine containing Electronic Smoking Devices for public sale or delivery.

(B) A person who does not allow minors on the premises of a business may install a vending machine for Electronic Smoking Devices. The person may not install or maintain the vending machine within 25 feet of an entrance to the business.

§ 10-11-6 FREE ELECTRONIC SMOKING DEVICES PROHIBITED.

A person may not deliver free Electronic Smoking Devices or coupons redeemable for Electronic Smoking Devices to a minor.

§ 10-11-7 RETALIATION PROHIBITED.

An employer may not discharge, refuse to hire, or retaliate against an employee or prospective employee because the person complies with or expresses an intention to comply with this chapter.

§ 10-11-8 PENALTIES.

A person who violates this chapter commits a misdemeanor and shall be assessed a fine as follows:

- (1) not less than \$100 for a first conviction;
- (2) not less than \$200 for a second conviction within a 12-month period following the first conviction; and
- (3) not less than \$500 for a third or subsequent conviction.

PART 4. This ordinance takes effect on August 18, 2014.

PASSED AND APPROVED

August 7, 2014

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§ _____
Lee Leffingwell
Mayor

APPROVED: _____
Karen M. Kennard
City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk