

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 10-11 OF THE CITY CODE RELATING TO ELECTRONIC SMOKING DEVICES AND UPDATING THE NAME OF THE AUSTIN PUBLIC HEALTH DEPARTMENT IN CHAPTERS 10-4 AND 10-11.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS

(1) The City Council finds that cigarettes and secondhand smoke contain more than 7,000 chemicals, including 69 known or suspected carcinogens; and

(2) New, unregulated high-tech smoking devices, commonly referred to as electronic cigarettes or e-cigarettes (e-cigarettes), have recently become more available to consumers; and

(3) Nicotine is a known neurotoxin that is also one of the most highly addictive substances available for public consumption. The nicotine content provided by e-cigarettes is unknown and unspecified and may present a significant risk of rapid addiction or overdose; and

(4) Laboratory tests conducted by the U.S. Food and Drug Administration (FDA) have shown that e-cigarette vapors contain carcinogens, including nitrosamines and varying levels of nicotine, even in the e-cigarettes that were marketed as no-nicotine. Further, the FDA tests showed that e-cigarette vapors were found to contain toxic chemicals such as diethylene glycol, a common ingredient in antifreeze; and

(5) Manufacturers of e-cigarettes offer their liquid nicotine cartridges in a variety of flavors, including, but not limited to, cherry, chocolate, and vanilla, which the FDA and public health advocates warn are purposefully meant to appeal to and attract young people. Also, 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 e-cigarettes and liquid nicotine may lead young people into a lifetime of nicotine addiction; and

(6) Other governments and public health organizations, including the World Health Organization and the Canadian government's FDA equivalent, the Health Products and Food Branch Inspectorate, have joined the FDA in speaking out

about the potential dangers posed by e-cigarettes and are also calling on manufacturers of e-cigarettes to discontinue their safety claims until these products have been independently tested; and

(7) Every year, use of tobacco products creates more than \$268 billion in directly related healthcare and lost worker productivity costs, and leads to the deaths of almost half a million Americans; and

(8) Protecting the citizens of the City against an untested nicotine product known to have nicotine, such as e-cigarettes, and liquid nicotine, represents sound public health and fiscal policy; and

(9) A ban on the sale of e-cigarettes, liquid nicotine and like products in the City to persons under the age of 18 and a prohibition on self-service merchandising in the retail sale of 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

(10) The Texas Legislature currently prohibits the possession, purchase, consumption or receipt of e-cigarettes or tobacco products by minors, and the City enforces such regulations. The Texas Legislature also currently regulates vendor assisted sales and vending machines that contain e-cigarettes or tobacco products, including, but not limited to, prohibiting the use of these products by minors; and

(11) 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 City Code.

PART 2. City Code Section 10-11-1 (*Definitions*) is amended to amend the existing definition of “Electronic Smoking Device” to read:

- (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 or simulate smoking through the inhalation of 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.

PART 3. City Code Section 10-11-2 (*Enforcement Policy*) is amended to amend Subsection (A) to read:

(A) The director of Austin Public Health [~~Health and Human Services~~] Department and the police chief shall enforce this chapter.

PART 4. City Code Chapter 10-11 (*Electronic Smoking Devices*) is amended to repeal and replace Section 10-11-6 (*Electronic Smoking Device Vending Machines Prohibited*), Section 10-11-6 (*Free Electronic Smoking Devices Prohibited*), Section 10-11-7 (*Retaliation Prohibited*), and Section 10-11-8 (*Penalties*) to read:

Section 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.

Section 10-11-7 (*Free Electronic Smoking Devices Prohibited*) A person may not deliver free Electronic Smoking Devices or coupons redeemable for Electronic Smoking Devices to a minor.

Section 10-11-8 (*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.

Section 10-11-9 (*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 5. City Code Section 10-4-2 (*Enforcement Policy*) is amended to amend Subsection (A) to read:

(A) The director of Austin Public Health [~~Health and Human Services~~] Department and the police chief shall enforce this chapter.

PART 6. This ordinance takes effect on _____, 2017.

PASSED AND APPROVED

_____, 2017 §
 §
 § _____
 Steve Adler
 Mayor

APPROVED: _____ **ATTEST:** _____
 Anne L. Morgan Jannette S. Goodall
 City Attorney City Clerk