

RESOLUTION NO. _____

A RESOLUTION DECLARING A ONE HUNDRED EIGHTY (180) DAY MORATORIUM ON THE ACCEPTANCE, PROCESSING OF APPLICATIONS AND THE ISSUANCE OF PERMITS FOR THE OPERATION OF NON-TRADITIONAL SMOKING RELATED BUSINESSES IN THE CORPORATE LIMITS OF THE CITY; DIRECTING CITY STAFF TO INITIATE IMMEDIATE CONSIDERATION OF APPROPRIATE REGULATIONS REGARDING NON-TRADITIONAL SMOKING RELATED BUSINESSES IN THE CITY; PROVIDING FOR A METHOD OF EXPIRATION OF THIS MORATORIUM; PROVIDING A VARIANCE PROCEDURE; AND PROVIDING THAT THIS RESOLUTION SHALL TAKE EFFECT IMMEDIATELY UPON PASSAGE.

WHEREAS, the City of Mansfield, Texas, (City) is a home-rule municipality located in Tarrant County, created in accordance with the provisions of Chapter 9 of the Local Government Code and operating pursuant to its Charter; and

WHEREAS, there is a substantial body of evidence which reveals that the smoking of tobacco is a positive danger to health and material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined spaces; and

WHEREAS, the City Council has passed an ordinance regulating the smoking of cigars, cigarettes, and other traditional methods of smoking, which currently authorizes smoking of any tobacco product, weed, plant, or other combustible substance in certain public and private locations within the City; and

WHEREAS, e-cigarettes, hookahs, water-pipes, steam stones, hookah pens, and other non-traditional smoking techniques and non-traditional smoking products have quickly developed and become popular in the City, the State of Texas and the United States; and

WHEREAS, there has not been enough time to fully assess the effects of these non-traditional smoking techniques and smoking products on the public health and safety or the welfare of the citizens or to determine whether the City's existing regulations are adequate to prevent any detrimental effects of these non-traditional smoking techniques and smoking products to the public health and safety or to the welfare of the citizens; and

WHEREAS, modern health reports and analyses show that the use of these non-traditional smoking techniques and smoking products could present a risk to the public health and safety or the welfare of the citizens; and

WHEREAS, the City Council has directed staff to investigate the potential risks of these non-traditional smoking techniques and smoking products and the information to be gained from this investigation is necessary to inform the City Council on the need to adopt regulations to mitigate these risks; and

WHEREAS, the City Council desires to maintain the status quo within the City's corporate limits until such time as the City Council has had a reasonable opportunity to review the information gained from staff's investigation and to take appropriate action as may be required to protect public health, safety and welfare; and

WHEREAS, a one hundred eighty (180) day moratorium placed on the acceptance, processing, and issuance of permits for non-traditional smoking related businesses in the City is a minimally intrusive method of maintaining the status quo until such review can be completed; and

WHEREAS, it is the intent of the City Council to maximize the safety of its citizens, while placing the least intrusive limits on development.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS, THAT:

SECTION 1.

a. Effective immediately for a period of one hundred eighty (180) days, no application for the issuance of a new permit shall be accepted, no permit shall be processed, and no permit shall be issued for the operation of a non-traditional smoking related business within the corporate limits of the City.

b. The term "permit" as used in this resolution shall mean a license, certificate, approval, registration, consent, permit or other form of authorization required by law, rule, regulation or ordinance that must be obtained by a person in order to operate or maintain a business for which the permit is sought.

c. The term "non-traditional smoking related business" as used in this resolution shall include, but is not limited to a retail establishment whose , or other business whose principal business is the offering of a service relating to, or the selling of, renting or exhibiting of products or devices known as water pipes, hookahs, electronic cigarettes, steam stones, hookah pens or any comparable device which has historically been used to allow the inhalation of nicotine.

SECTION 2.

The purpose of this moratorium is to maintain the status quo regarding development of non-traditional smoking related businesses, until such time as proper regulations have been adopted with regard to such businesses.

SECTION 3.

The City Council finds that it lacks sufficient information to determine if the application of the existing regulations is adequate to prevent any risks or detrimental effects to the public

health, safety or welfare of the residents of the City from non-traditional smoking related businesses operating in the City. By studying and adopting regulations and standards for non-traditional smoking related businesses, the City Council seeks to eliminate or minimize any potential risks to or detrimental effects on the public health, safety or welfare posed by the operation of those businesses.

SECTION 4.

The City staff is hereby directed to investigate and research the risks and detrimental effects to the public health, safety or welfare of the residents of the City from non-traditional smoking related businesses operating in the City and initiate proper procedures for the consideration of the possible adoption of regulations and standards for non-traditional smoking related businesses in the City. The recommendations shall be made as expeditiously as possible to the City Council with regard to such regulations.

SECTION 5.

This moratorium shall remain in effect until such time as the City Council has had a reasonable opportunity to consider and act upon appropriate regulations governing non-traditional smoking related businesses in the City. Upon final adoption of an ordinance adopting regulations for non-traditional smoking related businesses, or upon a determination by the City Council that such regulations are not appropriate, this moratorium shall expire. This moratorium shall automatically expire one hundred eighty (180) days from the date of adoption, unless it is specifically extended by additional City Council action for an additional time period.

SECTION 6.

Any property owner that believes that the imposition of this moratorium causes a unique and unreasonable hardship upon his or her property or business, or infringes upon any rights protected by the First Amendment to the United States Constitution, shall have the right to request a variance to the provisions of this moratorium. A property owner seeking a variance shall submit a written request to the City Council through the city secretary's office. The request must provide the following information:

- a. A description of the property to be covered by the variance.
- b. A detailed description of the proposed use of the property.
- c. An explanation as to why the application of the moratorium is unreasonable as applied to the applicant's property.
- d. A description of any hardships created by the moratorium provision.

The City Secretary's office shall place the request for a variance on the agenda of the City Council for consideration at a public meeting. The applicant shall receive written notice of the date of the proposed hearing on the variance request. The city staff shall not be required to

provide written notice of the variance request to any other individual or entity. On the date that the item is set for hearing, the City Council shall conduct a public hearing on the variance request giving any individual who desires to present information or evidence to the City Council on the appropriateness or inappropriateness of the variance the opportunity to appear before the City Council and present such information. At the conclusion of the hearing, the City Council, by majority vote, may approve a variance to the provisions of this moratorium or may deny the request for variance. The approval of a variance shall entitle the applicant to submit an application for a permit otherwise subject to this moratorium and to allow that application to be processed and a permit to be issued on that application.

SECTION 7.

This moratorium shall remain in full force and effect upon its passage and for a period not to exceed 180 days, unless terminated prior to that time by action of the City Council.

DULY RESOLVED by the City Council of the City of Mansfield, Texas on the 14th day of October, 2013.

David L. Cook, Mayor

ATTEST:

Vicki Collins, City Secretary

APPROVED AS TO FORM AND LEGALITY:

City Attorney