

## REGULATION OF SMOKING

### § 92.20 DEFINITIONS.

**ADMINISTRATIVE AREA.** Any enclosed indoor area, under the control of an employer, to which employees, but not the general public, except by specific invitation, have access to during the course of employment, including, but not limited to, work areas, employee lounges, employee restrooms, conference rooms, and employee cafeterias.

**ADULTS ONLY ESTABLISHMENT.** Any place of business that limits its customers to individuals 18 years of age or older and that employs no one below the age of 18. Businesses of this category may include restaurants, bars, sports bars, billiard halls, bingo parlors, retail tobacco shops or other comparable businesses.

**AIR BARRIER.** A system that creates an air curtain to prevent the drift or penetration of tobacco smoke from a smoking area to a non-smoking area not allowing drift or penetration from the ceiling down to 24 inches above the floor.

**AIR PURIFICATION SYSTEM.** An electrically powered hospital grade, hepa media filter that will clean all of the air in a designated smoking area every 15 minutes as follows: not less than 95% of three-tenths (0.3) micron particulates efficiency including dust, smoke, pollen, mold spores, bacteria, tobacco smoke, viruses, and allergens and not less than 95% removal of gases, vapors, volatile organic compounds (V.O.C.) and odors and contains an air barrier system or other barrier system if required by a licensed professional engineer, to prevent air from the smoking area from being drawn across the non-smoking area.

**BAR.** An establishment licensed by the State of Texas for the sale of alcoholic beverages that derives more than 75% of the establishment's gross revenue from the on-premise sale of alcoholic beverages for on-premise consumption. For the purposes of this definition, gross revenue shall be calculated using the total amount of gross revenue received from the sale of alcoholic beverages and from the sale of food by the establishment for the preceding 12-month period. Such establishment shall make available to the city or its agents, during reasonable hours, its books and records for inspection if required by the city.

**BILLIARD HALL.** A place of amusement whose chief purpose is providing the use of billiard/pool tables to the public.

**BINGO PARLOR.** A facility regulated under V.C.S., Article 179d - "Bingo Enabling Act."

**BUS.** Every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons, and every motor vehicle, other than a taxi cab, designed and used for the transportation of persons for compensation.

**BUSINESS.** Any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making or non-profit purposes, including but not limited to, banks, laundromats, hotels, motels, retail establishments, professional corporations, and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

**CITY.** The City of Mansfield.

**EATING ESTABLISHMENT.** Any place where food is served for on-premises consumption and which is accessible by the public or a substantial group of the public.

**ELECTRONIC VAPING DEVICE.** Any electronically or battery powered device designed to simulate the smoking of tobacco, cigarettes, pipes or cigars, that provides a vapor derived from liquid nicotine and/or other substances which is intended to be inhaled by a user thereof. The term includes such devices generally manufactured to resemble cigarettes, cigars, pipes or other smoking devices, regardless of the details of the product design, appearance or marketed name, but excludes nebulizers or medical devices designed or prescribed for medical treatment.

**EMPLOYEE.** Any person, partnership, corporation, municipal corporation, non-profit entity, or other entity who employs the services of one or more individual persons.

**EMPLOYER.** Any person who employs the services of an individual person.

**ENCLOSED AREA.** An area closed in by a roof and walls with appropriate openings for ingress and egress.

**HEALTH FACILITY.** Any institution that provides medical, surgical, and overnight facilities for patients, including but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, dentists' offices, nursing homes, adult care facilities, convalescent homes, and residential treatment centers/homes.

**LIQUID NICOTINE.** Any liquid product composed of nicotine, propylene glycol, vegetable glycerin, flavoring and/or other substances manufactured for use with an electronic vaping device.

**MAJOR RENOVATION.** Changing the amount of floor space in a building by 1/3.

**MINOR.** Any person under 18 years of age.

**NET FLOOR AREA.** The total floor area of the interior of an eating establishment, excluding the kitchen, restrooms, storage areas, and offices.

**PERSON.** Any individual, partnership, cooperative, association, corporation, or venture.

**PHYSICAL BARRIER.** A barrier that will form an effective membrane continuous from outside wall to outside wall, from a smoke barrier to a smoke barrier, from floor to floor or roof above, or a combination thereof, including continuity through all concealed spaces, such as above suspended ceilings, interstitial structural and mechanical spaces. Transfer grilles, louvers and similar openings shall not be used in these partitions. Self closing, tight fitting doors are permitted in such barriers.

**PLACE OF EMPLOYMENT.** Any enclosed area under the control of an employer including but not limited to work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias and hallways. A private residence shall not be considered a **PLACE OF EMPLOYMENT**.

**PORTABLE AIR PURIFICATION SYSTEM.** A portable electrically powered hospital grade, hepa media filter that will clean all of the air in a designated smoking area every 15 minutes as follows: not less than 95% of three tenths (0.3) micron particulates efficiency including dust, smoke, pollen, mold spores, bacteria, tobacco smoke, viruses and allergens and not less than 95% removal of gases, vapors, volatile organic compounds (V.O.C.) and odors.

**PRIVATE CLUB.** Any building, premise or portion thereof which is permitted by the state and allowed by special use permit by the city as a private club for the storing, possession, and dispensing for on-premises consumption of alcoholic beverages. However, **PRIVATE CLUB** does not include a premise operated by an organization which is not available to and not customarily used by the general public and entry and

privileges thereto are established by regulations that are created by an organization distinct from a Texas Alcohol and Beverage private club membership.

**PRIVATE FUNCTION.** The rental of a ballroom, restaurant, private club, or other facility for the sole purpose of entertaining, private parties, events, or other social functions.

**PUBLIC BUSINESS.** Any deliberation between a quorum of members of any board, commission, department, committee or agency within the executive or legislative department of the State of Texas, or the City Council or any board or commission of the City of Mansfield at which any public business or public policy is discussed or considered or at which any formal action is taken.

**PUBLIC PLACE.** Any enclosed area in which the public is invited or permitted, including, but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a **PUBLIC PLACE**, nor is a facility while it is being used for a private function, such as a reception, party, and the like. Private clubs are not considered a **PUBLIC PLACE**.

**RESTAURANT.** Any place where food is manufactured, packaged, produced, processed, transported, stored, sold, commercially prepared, vended, or otherwise handled. The term includes any such place regardless of the duration of the permit or whether there is a charge for the food. The term includes, but is not limited to, a coffee shop, cafeteria, sandwich shop, private or public school cafeteria, and any other eating establishment that gives or offers food to the public, guests, or employees, including catering facilities. The term shall not include a cocktail lounge or tavern if the cocktail lounge or tavern is a "bar" as defined in this section. The term does not include private homes where food is prepared or served for guests and individual family consumption.

**RESTRICTED SMOKING MATERIAL.** Any substance, however marketed, which can reasonably be converted for smoking purposes whether it is presented as incense, tobacco, herbs, spices or any blend thereof if it includes any of the following chemicals or a comparable chemical:

- (1) Salvia divinorum or salvinorin A; all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts;
- (2) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues;
- (3) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-211 or Dexanabinol);
- (4) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018);
- (5) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073); or
- (6) 1-pentyl-3-(4-methoxynaphthoyl)indole (also known as JWH-081).

Products containing some of the above substances are currently being marketed under the following commercial names: "K-2", "K-2 SUMMIT", "K-2 SEX", "GENIE", "DASCENTS", "ZOHAI", "SAGE", "SPICE", "KO KNOCK-OUT 2", "SPICE GOLD", "SPICE DIAMOND", "YUCATAN FIRE", "SOLAR FLARE", "PEP SPICE", "FIRE N'

ICE", AND "SALVIA DIVINORUM". It is anticipated by the Council that new products will be marketed under different names but will be subject to this definition if they contain any of the chemical components set forth above.

**RESTRICTED SMOKING MATERIAL PARAPHERNALIA.** Any paraphernalia, equipment or utensil that is used or intended to be used in ingesting or inhaling illegal smoking materials and may include:

- (1) A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
- (2) A water pipe;
- (3) A carburetion tube or device;
- (4) A smoking or carburetion mask;
- (5) A chamber pipe;
- (6) A carburetor pipe;
- (7) An electric pipe;
- (8) An air-driven pipe;
- (9) A chillum;
- (10) A bong; or
- (11) An ice pipe or chiller.

For purposes of interpretation and enforcement, the term **USED** as found in this definition shall mean **CUSTOMARILY USED**.

**RETAIL OR SERVICE ESTABLISHMENT.** Any establishment which sells goods or services to the general public.

**RETAIL TOBACCO STORE.** A retail store whose primary business is the sale of tobacco products and accessories and in which the sale of products is merely incidental.

**SELL.** To offer for sale, convey, exchange, barter, or trade.

**SERVICE LINE.** Any indoor line or area where persons wait for goods or service of any kind, regardless of whether or not an exchange of money will occur. Such service includes, but is not limited to, sales, giving of information, directions, advice, and the transfer of money or goods.

**SMOKING.** ~~Inhaling, exhaling, burning or carrying~~ The combustion of any lighted cigar, cigarette, pipe, tobacco product, weed, plant, or other combustible substance ~~whose smoke is intended to be inhaled~~ and the use of any ~~ecigarette~~ electronic vaping device as defined herein.

**SPORTS ARENA.** Sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events.

**TOBACCO PRODUCT.** Any tobacco, cigarette, cigar, pipe tobacco, smokeless tobacco, snuff, or any other form of tobacco, which may be utilized for smoking, chewing, inhalation or other manner of ingestion or absorption.

**TOBACCO SHOP.** A retail establishment whose annual gross revenues from the sale of tobacco products and smoking accessories are at least 50% of total revenue.

**TOBACCO VENDING MACHINE.** Any mechanical, electric or electronic self-serving device which, upon insertion of money, tokens, or any other form of payments, dispenses tobacco products.

**VALID IDENTIFICATION.** A valid driver's license or an identification card issued by the Department of Public Safety which contains a physical description and a photograph consistent with the person's appearance. The proof of identification may include a driver's license issued by Texas or another state, a passport, or an identification card issued by a state or the federal government.

**VENTILATION SYSTEM.** A HVAC system designed by a licensed professional engineer to meet the requirements of this subchapter and all other requirements of the city's building code. A ventilation system must provide an air change every 15 minutes; exhaust the air to the exterior of the building and the air from the smoking area cannot be drawn across the non-smoking area; and has an air barrier system, if required by a licensed professional engineer, to prevent air from the smoking area from being drawn across the non-smoking area.

**WORKPLACE.** Any enclosed area of a structure, or portion thereof, intended for occupancy by employees who provide primarily clerical, professional or business services of a business entity, or which provide primarily clerical, professional or business services to other business entities or to the public at that location.

('78 Code, § 9-81) (Ord. 741, passed 5-19-87; Am. Ord. 1309, passed 4-10-00; Am. Ord. OR-1737-09, passed 2-9-09; Am. Ord. OR-1773-10, passed 6-28-10; Meeting Minutes 6-28-10)

## **§ 92.21 SMOKING PROHIBITED IN PUBLIC PLACES.**

(A) *City-owned buildings.*

(1) All enclosed buildings owned or leased by the City of Mansfield shall be designated non- smoking with no designated smoking section, except as listed in division (A)(2) below.

(2) Jail cells located in city facilities used for the incarceration of prisoners may be designated as a smoking area at the discretion of the Director of Public Safety. All other areas shall be designated as non-smoking areas.

(B) *Places where smoking is prohibited.* A person commits an offense if he or she ~~smokes~~ is smoking or possesses a burning tobacco, weed, or other plant product in any of the following indoor or enclosed areas:

- (1) Public or private schools.
- (2) City buildings.
- (3) Public elevators and stairwells.
- (4) Buses, taxi cabs, and other means of public transportation.
- (5) All boarding and waiting areas of public transit depots.
- (6) Public restrooms, lobbies, reception areas, hallways and any other common use area.
- (7) Service lines and waiting queues, whether indoor or outdoor.
- (8) Retail or service establishments.
- (9) Businesses, including all areas available to and customarily used by the general public.
- (10) Aquariums, galleries, libraries, and museums.
- (11) Day care centers, except that day care centers that are also private homes shall be considered private residences when the children or adults receiving care have gone home.

(12) Every publicly or privately owned theater, auditorium or other enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event or any other performance or event, except when smoking is part of a stage production.

(13) Any portion of any publicly or privately owned area to which the public has access. This division (B)(13) section does not apply to private residences.

(14) Any seating area of any publicly or privately owned outdoor athletic facility.

(15) Health care facilities and hospitals.

(16) Hotels and motels, except as provided for in § 92.24(A)(2).

(17) Within 30 feet of any door, operable window/vent or other opening to an indoor enclosed area of a use listed above.

(18) Any seating area of any publicly or privately owned outdoor theater or amphitheater

(19) City parks and recreational facilities.

*(C) Exceptions.*

(1) An adults only establishment as defined in § 92.20 is exempt from the non-smoking provisions set forth above under the following circumstances:

(a) It must prohibit the entry of customers below the age of 18;

(b) It may have no employees or guests below the age of 18;

(c) It must prominently display a sign by all public entrances reflecting that this is an adults only establishment and that no one under 18 years of age is permitted within the establishment and that it permits smoking in all areas and that there are no non-smoking facilities contained within.

(2) A business establishment listed above under division (B) where smoking would otherwise be prohibited may construct a separate but contiguous facility of the same business where smoking is permitted. The facility must be separated from the non-smoking facility by a solid wall which extends from floor to ceiling, must have a separate entrance and must not share a common heating and air conditioning system which allows the passage of air from one facility to the other. It may have no employees or guests below the age of 18. The smoking portion of the business must display a sign at all public entrances reflecting that this is an adults only establishment and that no one under 18 years of age is permitted within the establishment and that smoking is permitted in all areas and that there are no non-smoking facilities contained within. A business establishment operating pursuant to this section may serve both the smoking and non-smoking dining areas from a single kitchen provided that the facility is designed and constructed in a manner that does not permit smoke from the smoking portion to pass through the kitchen to the non-smoking area. An establishment operating under this section may serve both the smoking and non-smoking areas from a single set of restrooms provided that they are located within the non-smoking portion of the establishment and the facility is designed and constructed in such a manner as to prevent smoke from the smoking area being drawn into the non-smoking area when patrons pass from one portion of the establishment to the other.

(3) It is an exception to division (B)(15) above that a hospital provide a room in which a patient may reside and smoke providing that all patients assigned to that room are agreeable and the administrator of the facility concurs with the designation. A room

placed in this status shall prominently display a sign which states: "Smoking is permitted in this room."

(D) *Defenses*. It is a defense to prosecution under this section that the conveyance or public place within which the offense occurred did not have prominently displayed a reasonably sized notice that smoking was prohibited.

('78 Code, § 9-82) (Ord. 741, passed 5-19-87; Am. Ord. 1309, passed 4-10-00; Am. Ord. OR-1737, passed 2-9-09)

## **§ 92.22 REGULATION OF SMOKING IN EATING ESTABLISHMENTS, NIGHTCLUBS, ADULT ENTERTAINMENT ESTABLISHMENTS, BILLIARD HALLS, BINGO PARLORS, AND BOWLING CENTERS.**

(A) A person commits an offense if he or she ~~smokes tobacco~~ is smoking or possesses a burning tobacco, weed or other plant product in an eating establishment, bar, night club, adult entertainment establishment, billiard hall, bingo parlor, or bowling center unless it operates in compliance with § 92.21(C).

(B) An owner, manager, or operator of an eating establishment, bar, night club, adult entertainment establishment, billiard hall, bingo parlor, or bowling center commits an offense if he or she allows smoking ~~of a tobacco product~~ in the establishment unless it operates in compliance with § 92.21(C).

(C) *Defenses*. It is a defense to a prosecution under division (A) above that the establishment did not have prominently displayed a reasonably sized notice that smoking was prohibited.

(D) *Existing businesses and facilities*. All businesses and facilities in operation on the effective date of Ordinance OR-1737-09 shall have 18 months from February 9, 2009 to be in compliance.

(E) *Owner/operator responsibility*.

(1) The owner, manager, or operator of an eating establishment, bar, night club, adult entertainment establishment, billiard hall, bingo parlor, or bowling center commits an offense if he or she designates or maintains a smoking area in violation of this subchapter.

(2) The owner or manager of an establishment governed by this subchapter commits an offense if he or she fails to post and maintain any signs required by this subchapter.

('78 Code, § 9-83) (Ord. 741, passed 5-19-87; Am. Ord. 1309, passed 4-10-00; Am. Ord. OR-1737-09, passed 2-9-09) Penalty, see § 92.99

## **§ 92.23 REGULATION OF SMOKING IN THE WORKPLACE.**

(A) An employer who owns, occupies, or controls a workplace may:

(1) Have and implement a written policy on smoking which conforms to this subchapter.

(2) Make the policy available for inspection by employees and communicate the policy to all employees at least three weeks prior to its adoption.

(3) Prominently display reasonably sized signs that smoking is prohibited.

(4) Provide facilities in sufficient numbers in such locations as to be readily accessible for the extinguishment of smoking materials.

(5) Not discharge, retaliate, or discriminate against an employee who:



(a) Files a complaint or causes a proceeding to be instituted under or related to this subchapter;

(b) Testifies or will testify in a proceeding instituted under this subchapter; or

(c) Exercises on his or her own behalf or the behalf of others any right afforded by this subchapter.

('78 Code, § 9-84) (Ord. 741, passed 5-19-87; Am. Ord. 1309, passed 4-10-00; Am. Ord. OR-1737-09, passed 2-9-09) Penalty, see § 92.99

#### **§ 92.24 WHERE SMOKING IS NOT REGULATED.**

(A) Notwithstanding any other provision of this subchapter to the contrary, the following areas shall not be subject to the smoking restrictions of this subchapter:

(1) Private residences, including porch and yard areas, except when used as a child care, adult day care or health care facility.

(2) Not more than 10% of hotel and motel rooms rented to guests shall be designated as smoking rooms. The following standards shall apply:

(a) All smoking rooms shall be on the same floor, shall be contiguous to the other smoking rooms and shall be configured and ventilated in a manner to restrict the smoke from these rooms from infiltrating into areas where smoking is prohibited under provisions of this subchapter;

(b) Separate ventilation and HVAC systems that prevent the commingling of air with other rooms, hallways and all other non-smoking areas shall be required; and

(c) The status of rooms as smoking or non-smoking may not be changed, except to add additional non-smoking rooms.

(3) Retail tobacco stores, where a retail store is utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. Separate ventilation and HVAC systems that prevent the commingling of air with other businesses, common areas, hallways and other non-smoking areas shall be required.

(4) Enclosed meeting or assembly rooms in restaurants, hotels, motels, and other public places while the entire room is being used for a private function provided it has a portable air purification system (defined in § 92.20).

(B) Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment described in this section may designate the entire establishment as a non-smoking establishment.

(Ord. 1309, passed 4-10-00; Am. Ord. OR-1737-09, passed 2-9-09)

#### **§ 92.25 POSTING OF SIGNS; PLACING RECEPTACLES.**

(A) *Signs.* All signs shall be in letters not less than one inch high with a stroke of not less than 1/8-inch on a contrasting background.

(1) A place or conveyance regulated by § 92.21 that is required to be totally non-smoking shall have signs conspicuously posted at all public entrances which state: "No Smoking - City Ordinance."

(2) If a place or conveyance regulated by § 92.21(C) permits smoking, it shall post and maintain the sign required in § 92.21(C).

(B) *Receptacles.* A place, establishment or conveyance regulated by § 92.21(B) or § 92.22 which is partially or totally non-smoking shall have facilities for the



extinguishment of smoking materials located no farther than 30 feet or closer than 15 feet of all public entrances and within all designated smoking areas. The owner, manager, or operator of a place, conveyance or establishment commits an offense if he or she fails to post signs and provide extinguishment facilities as required by this section. ('78 Code, § 9-85) (Ord. 741, passed 5-19-87; Am. Ord. 1309, passed 4-10-00; Am. Ord. OR-1737-09, passed 2-9-09)

#### **§ 92.26 EXEMPTIONS.**

Any owner or manager of a business, facility, room, structure, or other establishment existing on the effective date of Ordinance OR-1737-09 which is subject to §§ 92.21, 92.23 and 92.25 may apply for an exemption or modification to any provision of this subchapter due to unusual circumstances or conditions. Such exemption may be granted by the City Council, only if the evidence presented by the applicant for exemption demonstrates that:

(A) The applicant cannot comply with the provisions of this subchapter for which an exemption is requested without incurring expenses for structural or other physical modifications, other than posting signs, to buildings and structures; or

(B) Due to such unusual circumstances, the failure to comply with the provision for which the exemption is requested will not result in a danger to health or annoyance, inconvenience, or discomfort.

(Ord. 1309, passed 4-10-00; Am. Ord. OR-1737-09, passed 2-9-09)

#### **§ 92.27 CULPABILITY.**

There shall be no requirement of a culpable mental state for a violation of this subchapter.

(Ord. 1309, passed 4-10-00; Am. Ord. OR-1737-09, passed 2-9-09)

#### **§ 92.28 RESTRICTED SMOKING MATERIALS; PURPOSE.**

The purpose of this section is to prohibit the sale or delivery of restricted smoking materials as defined herein to any individual below 21 years of age within the city limits of the City of Mansfield and to prohibit the possession of restricted smoking materials by any individual below 21 years of age within the city limits of the City of Mansfield. Any form of delivery to include a simple gift constitutes a violation of this subchapter.

(Ord. OR-1773-10, passed 6-28-10) Penalty, see § 92.99

#### **§ 92.29 SALE, DELIVERY, OFFER, OR GIFT.**

(A) It shall be unlawful for any person to sell, offer to sell, deliver to or to give any restricted smoking material to anyone below 21 years of age.

(B) For purposes of interpretation and enforcement, the term ***SELL*** as found in this section shall include "display for sale".

(Ord. OR-1773-10, passed 6-28-10; Meeting Minutes 6-28-10) Penalty, see § 92.99

#### **§ 92.30 USE OR POSSESSION OF RESTRICTED SMOKING MATERIAL.**

It shall be unlawful for any person below 21 years of age to have in their possession or to use restricted smoking materials within the corporate limits of the City of Mansfield.

(Ord. OR-1773-10, passed 6-28-10) Penalty, see § 92.99

**§ 92.31 USE OR POSSESSION OF RESTRICTED SMOKING PARAPHERNALIA.**

It shall be unlawful for any person to have in their possession any restricted smoking paraphernalia with the intent to use it, to ingest, inhale or otherwise consume restricted smoking material if they are below 21 years of age. If an individual below 21 years of age is found in possession of this type of paraphernalia it will be a violation of this subchapter if appropriate forensic testing is done on the paraphernalia and traces of restricted smoking material are present on the device.

(Ord. OR-1773-10, passed 6-28-10) Penalty, see § 92.99

**§ 92.32 LOCATION OF SALE OF RESTRICTED SMOKING MATERIAL AND RESTRICTED SMOKING PARAPHERNALIA.**

(A) It shall be unlawful for any person to sell, offer to sell, deliver or to give any restricted smoking material or restricted smoking paraphernalia to any person within 1,000 feet of the following:

- (1) A church;
- (2) A public or private elementary or secondary school;
- (3) A licensed day care center;
- (4) A public park, recreation center or water park; and
- (5) A public library.

(B) For purposes of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used for purpose of selling or delivering the restricted smoking material or restricted smoking paraphernalia to the nearest property line of the premises of a church, public or private elementary or secondary school, licensed day care center, public library, public park, recreation center or water park.

(C) For purposes of interpretation and enforcement, the term ***SELL*** as found in this section shall include "display for sale".

(Ord. OR-1773-10, passed 6-28-10; Meeting Minutes 6-28-10) Penalty, see § 92.99

**§ 92.33 DEFENSES TO PROSECUTION.**

(A) It shall be a defense to prosecution for a violation of this section if the use of the restricted smoking material is at the direction or under a prescription issued by a licensed physician or dentist authorized to prescribe controlled substances within the State of Texas.

(B) It shall be a defense to prosecution under the terms of this section if an individual charged with a violation can provide proper and complete historic documentation that the use of such materials is a portion of a religious undertaking or activity of a religious denomination in which they have long standing historic membership supported by documentation from clergy or spiritual leader recognized by the State of Texas.

(Ord. OR-1773-10, passed 6-28-10)

**§ 92.34 SALE OR DISTRIBUTION OF ELECTRONIC VAPING DEVICE AND LIQUID NICOTINE TO MINORS PROHIBITED.**

(A) A person commits an offense if the person sells, gives, transfers or otherwise causes to be sold or given an electronic vaping device or liquid nicotine to a minor or to another person who intends to deliver it to a minor.

(B) If an offense under this section occurs in connection with a sale or delivery of an electronic vaping device or liquid nicotine at a business by an employee of the business, the employee who commits the offense shall also be subject to prosecution in addition to the business.

(C) It is a defense to prosecution under this section that at the time of the sale or delivery of an electronic vaping device or liquid nicotine, the minor presented the person with an apparently valid identification showing that the minor was at least 18 years of age.

(D) It is not a defense to prosecution under this section that the minor purchased the electronic vaping device or liquid nicotine from a vending machine or other self-service merchandising machine if the machine was located on the premises of the person.

### **§ 92.35 POSSESSION OF ELECTRONIC VAPING DEVICES AND LIQUID NICOTINE BY MINORS PROHIBITED.**

(A) A minor commits an offense if the minor purchases, accepts, possesses or attempts to purchase, accept or possess an electronic vaping device or liquid nicotine.

(B) A minor commits an offense if the minor falsely represents himself or herself to be 18 years of age or older for purpose of purchasing or receiving an electronic vaping device and or liquid nicotine.

(C) It shall be a defense to prosecution under this section if at the time of the purchase, acceptance or possession, the minor is:

(1) in the presence of an adult parent, guardian or spouse, or other adult to whom the minor has been entrusted by a court;

(2) in the course and scope of the minor's employment by a person or entity in the distribution, wholesale or retail of electronic vaping devices or liquid nicotine, and the acceptance or possession of the electronic vaping device or liquid nicotine by the minor is part of the duties of such employment.