

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS, AMENDING REGULATIONS OF SMOKING IN CHAPTER 92, HEALTH AND SANITATION OF THE CODE OF ORDINANCES OF THE CITY OF MANSFIELD, TEXAS BY ADDING DEFINITIONS FOR “ELECTRONIC VAPING DEVICE” AND “LIQUID NICOTINE;” AMENDMING THE DEFINITION OF “SMOKING” TO INCLUDE ELECTRONIC VAPING DEVICES; PROHIBITING SMOKING AT CITY PARKS AND RECREATIONAL FACILITIES; PROHIBITING THE SALE AND DISTRIBUTION OF ELECTRONIC VAPING DEVICES AND LIQUID NICOTINE TO MINORS; AND PROHIBITING THE PROCESSION OF ELECTRONIC VAPING DEVICES AND LIQUID NICOTINE BY MINORS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Mansfield, Texas 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, the City Council has investigated and determined that electronic vaping devices permit users of the devices to inhale vapor containing variable amounts of nicotine and other harmful toxicants; and

WHEREAS, the City Council has further investigated and determined that exposure to electronic vaping devices by minors is a serious health concern; and

WHEREAS, the City Council has further investigated and determined that the 2012 National Youth Tobacco Survey shows that the use of electronic vaping devices by U.S. high school students has doubled from the previous year to 2.8%; and

WHEREAS, the City Council has further investigated and determined that medical and pharmacological experts have opined that electronic vaping devices contain nicotine in a liquid form that may escape from the devices and be ingested by minors which may cause symptoms such as hyperactivity, flushing, sweating, headache, dizziness, rapid heart rate, vomiting, diarrhea, burning and irritation of the skin and, in severe cases, may result in a coma or death; and

WHEREAS, the City Council has further investigated and determined that studies have shown that electronic vaping devices can serve as a “gateway” to smoking traditional tobacco products which are illegal for minors to purchase or possess; and

WHEREAS, the City Council has further investigated and determined that electronic vaping devices are currently not regulated by the State of Texas or the federal government; and

WHEREAS, the Food and Drug Administration (FDA) has joined other health experts to warn consumers about potential health risks associated with electronic vaping devices; and

WHEREAS, the FDA found that vapor samples from electronic vaping device contained toxic chemicals such as diethylene glycol, an ingredient used in antifreeze; and

WHEREAS, electronic vaping devices, when used indoors, may involuntarily expose non-users to nicotine according to a study published by the journal Nicotine and Tobacco Research; and

WHEREAS, there is no basis for any safety claim by the makers of electronic vaping devices that they present no health risk since electronic vaping devices as a relatively new product have not been adequately tested, and people should not be subject to secondhand vapor until the makers of such devices have proven them to be safe for everyone, including children, the elderly and individuals with health conditions; and

WHEREAS, electronic vaping devices may contain fruit and candy flavors that are appealing to youth.

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

SECTION 1.

The “REGULATIONS OF SMOKING” in Chapter 92, “HEALTH AND SANITATION” of the Code of Ordinances of the City of Mansfield, Texas are hereby amended by inserting the following new definitions in Section 92.20, “DEFINITIONS”:

“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.”

“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.”

SECTION 2.

The aforementioned Section 92.20 “DEFINITIONS” in “REGULATIONS OF SMOKING” is hereby further amended by amending the definition of “SMOKING” to read as follows:

“**SMOKING.** The combustion of any cigar, cigarette, pipe, tobacco product, weed, plant, or other combustible substance and the use of any electronic vaping device as defined herein.”

SECTION 3.

Paragraph B of Section 92.21 “SMOKING PROHIBITED IN PUBLIC PLACES” is hereby amended to read as follows:

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

SECTION 4.

Paragraph B “Places where smoking is prohibited” of Section 92.21 “SMOKING PROHIBITED IN PUBLIC PLACES” is hereby further amended by inserting new subparagraphs 17 and 18 to read as shown below and by re-enumerating subsequent paragraphs:

“(17) Any seating area of any publicly or privately owned outdoor theater or amphitheater.

(18) City parks and recreational facilities.”

SECTION 5.

Paragraph C “Exceptions” of Section 92.21 “SMOKING PROHIBITED IN PUBLIC PLACES” is hereby further amended by inserting a new subparagraphs 4 and 5 to read as follows:

“(4) A person is exempt from the non-smoking provisions set forth above if the use of an electronic vaping device is at the direction or under a prescription issued by a licensed physician authorized to prescribe such devices for the treatment of medical conditions.

(5) A city park and/or public recreational facility that is operated by the governmental unit or that is leased to or operated by an outside private entity via a contract or agreement with the governmental entity may choose to designate an unenclosed area within the facility as a permitted smoking location. The area shall not be enclosed, not located within 30 feet of a playground or seating area, not located within 30 feet of a door, operable window/vent or other opening to an enclosed area and not a part of an athletic field or dugout. The operator or

manager of the facility may choose to prohibit smoking at the facility at the discretion of the operator or manager. It shall be the duty of the operator or manager to either clearly mark the designated smoking area or to provide notice that smoking will not be permitted on the entire premises.”

SECTION 6.

Paragraphs A and B of Section 92.22 “REGULATION OF SMOKING IN EATING ESTABLISHMENTS, NIGHTCLUBS, ADULT ENTERTAINMENT ESTABLISHMENTS, BILLIARD HALLS, BINGO PARLORS, AND BOWLING CENTERS” are hereby amended to read as follows:

“(A) A person commits an offense if he or she 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 in the establishment unless it operates in compliance with § 92.21(C).”

SECTION 7.

The “REGULATIONS OF SMOKING” in Chapter 92, “HEALTH AND SANITATION” of the Code of Ordinances of the City of Mansfield, Texas are hereby further amended by inserting new Sections 92.34 and 92.35 at the end thereof to read as follows:

“§ 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 DEVICE 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."

SECTION 8.

Section 92.99 "PENALTY" in Chapter 92, "HEALTH AND SANITATION" of the Code of Ordinances of the City of Mansfield, Texas is hereby amended by deleting Paragraph D and amending Paragraph B to read as follows:

"(B) Any person, firm, corporation, agent or employee thereof who violates any of the provisions of, §§ 92.20 through 92.35 shall be deemed guilty of a misdemeanor and, upon conviction in the Municipal Court of the City of Mansfield, Texas, shall be punished by a fine not to exceed the sum of Five Hundred Dollars (\$500.00) for each offense, and each and every day any such violation shall continue shall be deemed to constitute a separate offense."

SECTION 9.

That all ordinances of the City in conflict with the provisions of this ordinance be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 10.

Should any paragraph, sentence, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

SECTION 11.

This ordinance shall take effect immediately from and after its passage on third and final reading and the publication of the caption, as the law and charter in such cases provide.

First reading approved on the _____ day of _____, 2014.

Second reading approved on the _____ day of _____, 2014.

DULY PASSED on the third and final reading by the City Council of the City of Mansfield, Texas, this _____ day of _____, 2014.

David L. Cook, Mayor

ATTEST:

Vicki Collins, City Secretary

APPROVED AS TO FORM AND LEGALITY

Allen Taylor, City Attorney