

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS AMENDING CHAPTER 155, ZONING, BY DELETING THE DEFINITION FOR NON-TRADITIONAL SMOKING RELATED BUSINESS IN SECTION 155.012; ADDING A NEW DEFINITION FOR TOBACCO PRODUCTS STORE IN SECTION 155.012; DELETING THE REQUIREMENT IN SECTION 155.054 (B), TABLE F, FOR A SPECIFIC USE PERMIT FOR NON-TRADITIONAL SMOKING RELATED BUSINESS IN THE C-3, I-1, AND I-2 ZONING DISTRICTS AND ADDING THE REQUIREMENT FOR A PD DISTRICT IN SAID SECTION FOR TOBACCO PRODUCTS STORE; ADDING THE SPECIAL CONDITIONS IN SECTION 155.099 FOR TOBACCO PRODUCTS STORES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the Planning and Zoning Commission and the governing body of the City of Mansfield, Texas, in compliance with the laws of the State of Texas with reference to the amendment of the Comprehensive Zoning Ordinance of the City of Mansfield, Texas (hereinafter “the Zoning Ordinance”), have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing opportunity to all property owners generally and to all interested citizens, the governing body of the City is of the opinion and finds that the Comprehensive Zoning Ordinance should be amended; and,

**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 does hereby find that the Surgeon General of the United States has declared that smoking is the largest preventable cause of premature death in the United States, and,

**WHEREAS**, the Food and Drug Administration (the “FDA”) has joined other health experts to warn consumers about potential health risks associated with electronic vaping devices; 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 and other nicotine delivery devices by minors is a serious health concern; 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 also recognizes a need to address the sale and use of electronic cigarettes, and other tobacco products near schools, places of worship, hospitals and other protected uses.

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

### **SECTION 1.**

Section 155.012 of the Mansfield Code of Ordinances, “Definitions” is hereby amended to delete the definition for “Non-Traditional Smoking Related Business”:

~~“Non-Traditional Smoking Related Business. A retail establishment or other business offering a service related to, or the selling of, renting or exhibiting of products or devices known as water pipes, hookahs, electronic cigarettes or electronic vaping devices, steam stones, hookah pens, juices or flavoring products for electronic cigarettes and vaping devices, or any comparable device or product.”~~

### **SECTION 2.**

Section 155.012 of the Mansfield Code of Ordinances, “Definitions” is hereby amended to add the following new definition for “Tobacco Products Store”:

*“Tobacco Products Store. A retail establishment that is primarily dedicated to the smoking of tobacco or other lawful substances and includes any establishment that allows either the payment of consideration by a customer to the establishment for on-site delivery of tobacco, tobacco accessories or similar lawful substances and products to the customer; and the onsite smoking of tobacco or other lawful substances. This definition shall be construed to include establishments known variously as non-traditional smoking related businesses, retail tobacco stores, tobacco products shops, head shops, hookah cafes, tobacco clubs, tobacco bars, cigar stores, and similar establishments.”*

### **SECTION 3.**

Section 155.054(B), Table F, Line 17, is hereby deleted as shown in Exhibit “A” attached hereto and 155.054 (B), Table F, Line 24 is hereby added as shown in Exhibit “A” made a part hereof for all purposes to require a PD, planned development district for a tobacco products store. All other impacted uses under 155.054(B) Table F are to be renumbered accordingly.

#### SECTION 4.

Section 155.099(B)(39) be created to provide special conditions for tobacco products stores as follows:

(39) *Tobacco products store.* Tobacco products stores shall conform to the following provisions:

(a) *Distance.* No tobacco products store shall be located within 1,000 linear feet of another tobacco products store; within 500 linear feet of the right-of-way of U.S. Highway 287, U.S. Business Highway 287, State Highway 360, Farm-to-Market Road 157, Farm-to-Market Road 1187, Farm-to-Market Road 917, Main Street, Debbie Lane, Broad Street, Country Club Drive, Heritage Parkway, Matlock Road, or Lone Star Road; within 500 linear feet of any zoning designation that allows residential uses, places of worship, hospitals, daycare centers, or public or private schools or colleges by right; or within 500 linear feet of parks and recreational facilities.

(b) *Measurement.* For purposes of this section, measurement shall be made in a straight line, without regard to intervening structures or objects:

i. From the nearest portion of the property line of the premises where the existing business is located to the nearest portion of the property line of the premises where the new business is proposed; or

ii. From the nearest portion of the right-of-way line of U.S. Highway 287, U.S. Business Highway 287, State Highway 360, Farm-to-Market Road 157, Farm-to-Market Road 1187, Farm-to-Market Road 917, Main Street, Debbie Lane, Broad Street, Country Club Drive, Heritage Parkway, Matlock Road or Lone Star Road to the property line of the premises where the new business is proposed; or

iii. From the nearest portion of any zoning designation permitting residential uses, places of worship, hospitals, daycare centers, public or private schools or colleges by right or parks and recreational facilities to the property line of the premises where the new business is proposed.

(c) *Non-conformity.* A tobacco products store that existed and was lawfully constructed, located or operating on the effective date of this Section 155.099(B)(39), and that does not conform to the zoning district or distance requirements as set forth herein shall be deemed a non-conforming use and may continue in operation subject to the provisions in Section 155.098 and as provided below:

i. If a tobacco products store ceases operations at a particular location, a new certificate of occupancy shall not be issued for a new tobacco products store at that location without first complying with all the requirements of this paragraph.

ii. The ability to continue a lawful non-conforming tobacco products store shall cease and such use shall terminate whenever either of the following occur:

a. A certificate of occupancy for a change of owner, occupant, tenant, or business is required.

b. The certificate of occupancy for the use is relinquished, canceled, or terminated in accordance with other applicable codes, ordinances, regulations, and standards of the City.

(d) Prior to the issuance of a certificate of occupancy the business owner shall register with the State of Texas and file all required information about the business with the Texas Comptroller of Public Accounts.

### **SECTION 5.**

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 6.**

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 Zoning Ordinance as a whole.

### **SECTION 7.**

Any person, firm or corporation violating any of the provisions of this ordinance or the Zoning Ordinance, as amended hereby, 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 Two Thousand Dollars (\$2,000.00) for each offense, and each and every day any such violation shall continue shall be deemed to constitute a separate offense.

### **SECTION 8.**

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

**FIRST READING APPROVED ON THE 23<sup>RD</sup> DAY OF AUGUST, 2021.**

**DULY PASSED ON THE SECOND AND FINAL READING BY THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS, THIS 13<sup>TH</sup> DAY OF SEPTEMBER, 2021.**

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**Michael Evans, Mayor**

**ATTEST:**

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**Susana Marin, City Secretary**

**APPROVED AS TO FORM AND LEGALITY:**

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**Allen Taylor, City Attorney**