

City of Houston, Texas, Ordinance No. 2022-233

AN ORDINANCE AMENDING SECTION 21-236 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO THE USE OF ELECTRONIC SMOKING DEVICES (E-CIGARETTES); CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, the City Council is concerned about the risks posed by the use of electronic smoking devices, commonly referred to as electronic cigarettes (“e-cigarettes”), in places wherever smoking is banned under Chapter 21, Article IX (Smoking) of the Code of Ordinances (the “Code”); and

WHEREAS, e-cigarettes have gained popularity among smokers seeking to reduce or eliminate their consumption of combustible cigarettes, in part because e-cigarettes are promoted as safer products when compared to combustible cigarettes; and

WHEREAS, according to the U.S. Centers for Disease Control (CDC), most e-cigarettes contain nicotine, a known neurotoxin considered one of the most highly addictive substances available for public consumption, which can harm the developing adolescent brain (which keeps developing until about the age of 25), including long-lasting changes in brain regions involved in addiction, attention, learning, and memory; and

WHEREAS, laboratory studies reviewed by the U.S. Food and Drug Administration (FDA) have shown that acetaldehyde, acrolein, and formaldehyde, the principal toxic aldehydes present in cigarette smoke that contribute to the risk of cardiovascular disease and noncancerous pulmonary disease, have been found in e-cigarette aerosols; and

WHEREAS, public health authorities, including the Surgeon General of the United States and the CDC, have expressed concerns about the dangers of exposure to e-cigarette aerosol; and

WHEREAS, while users inhale e-cigarette aerosol into their lungs, bystanders can also breathe in this aerosol when the user exhales it into the air; and

WHEREAS, 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 created 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

WHEREAS, as of February 18, 2020, a total of 2,807 hospitalized e-cigarette, or vaping, product use-associated lung injury (EVALI) cases or deaths have been reported

to the CDC from 50 states, the District of Columbia, and two U.S. territories (Puerto Rico and U.S. Virgin Islands); and

WHEREAS, every year, smoking-related illness in the United States costs more than \$300 billion, including nearly \$170 billion for direct medical care for adults and more than \$156 billion in lost productivity, including \$5.6 billion in lost productivity due to secondhand smoke exposure; and

WHEREAS, the FDA has also raised concerns about the epidemic levels of youth use of e-cigarettes, which may lead to the use of conventional tobacco products like combustible cigarettes, and has issued a policy prioritizing enforcement against certain unauthorized flavored e-cigarette products that appeal to kids; and

WHEREAS, the Texas Legislature has prohibited the possession, purchase, consumption or receipt of e-cigarettes or tobacco products by anyone under 21 years of age (unless at least 18 and has U.S. or state military ID card). Further, state law 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 anyone under 21 years of age; and

WHEREAS, to protect the public health and welfare of the City and its citizens, it is in the best interest of the City to update Chapter 21, Article IX (Smoking) of the Code by prohibiting e-cigarettes in places where smoking is currently prohibited, **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That Section 21-236 of the Code of Ordinances, Houston, Texas, is hereby amended by adding, in appropriate alphabetical order position, a new definition that reads as follows:

"Electronic smoking device means any device with a heating element, battery, or electronic circuit that delivers nicotine or any other substance intended for human consumption by inhalation. The term includes every variation and type of such device whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vaping device, or any other product name or descriptor, and any aerosol, liquid, or vapor used in such a device."

Section 3. That the definition of the term *retail tobacco store* in Section 21-236 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"*Retail tobacco store* means any retail establishment utilized primarily for the sale of tobacco products, electronic smoking devices, and related accessories in which the sale of other products, including food and beverages, does not exceed 40 percent of gross revenues."

Section 4. That the definition of the term *smoking* in Section 21-236 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"*Smoking* means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, hookah, electronic smoking device, or any other lighted tobacco product, plant material, or other combustible substance."

Section 5. That the City Attorney is hereby authorized to direct the publisher of the Code of Ordinances, Houston, Texas, (the "Code") to make such nonsubstantive changes to the Code as are necessary to conform to the provisions adopted in this Ordinance and also to make such changes to the provisions adopted in this Ordinance to conform them to the provisions and conventions of the published Code.

Section 6. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 7. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor.

PASSED AND APPROVED this 30th day of March, 2022.

David P. Martin
Mayor Pro Tem of the City of Houston

Prepared by Legal Dept. _____
AS/asw 03/10/2022 Assistant City Attorney
Requested by Stephen L. Williams, Director, Houston Health Department
L.D. File No. 0392000054001