

ORDINANCE 2024-10-31-0853

AMENDING CHAPTER 36 OF THE CITY CODE ENTITLED “SMOKING” TO INCORPORATE ELECTRONIC SMOKING DEVICES (ESDs), TO INCLUDE BUT NOT LIMITED TO E-CIGARETTES AND VAPES, INTO THE DEFINITION OF SMOKING AND PROHIBIT THEIR USE IN CERTAIN PUBLIC PLACES; AND PROVIDING FOR PENALTIES AND PUBLICATION.

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WHEREAS, the City of San Antonio’s Metropolitan Health District’s (Metro Health) staff reviewed the City Code, Chapter 36, titled “Smoking” and identified sections in the chapter in need of amendments to update the local ordinance to meet modern smokefree standards; and

WHEREAS, Electronic Smoking Devices (ESDs), vapes or e-cigarettes, first entered the market in 2014 and the vapor or secondhand substance that comes from ESD’s has been shown to contain harmful toxic substances; and

WHEREAS, the current San Antonio Ordinance does not prohibit e-cigarettes or vaping indoors and therefore does not protect establishment employees or patrons from exposure to the vapor, or secondhand substance that comes from e-cigarettes which contains harmful toxic substances; and

WHEREAS, the aerosol that ESD users inhale and exhale can expose both themselves and the people around them to harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs; and

WHEREAS, Metro Health staff determined that sections of the City Code needed to incorporate ESDs, also known as e-cigarettes or vapes, into the definition of smoking to align with best public health practices; and

WHEREAS, Metro Health discussed this proposed 2024 amendment of Chapter 36 of the City Code with the Restaurant Association on June 17, 2024, and the Hotel Association on June 20, 2024 and both associations were in support of the change; and

WHEREAS, the addition of ESDs into Chapter 36 of the City Code was first proposed during a briefing at a meeting of the Community Health Committee on August 22, 2024 and Council Members voiced support for this amendment; and

WHEREAS, the overarching philosophy for implementation of this ordinance is education and partnership with businesses to achieve compliance with modernization of the Smoke-Free Ordinance; and

WHEREAS, principal enforcement of the proposed modernized Smoke-Free Ordinance will continue to be conducted by Metro Health’s Environmental Health Officers with education as the primary means to address concerns; and

WHEREAS, approval of the proposed City Code amendments will bring the City Code up to meet modern smoke-free standards and public health practices; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Chapter 36 of the City Code of San Antonio, Texas entitled "Smoking" is hereby amended by adding language that is underlined (added) and deleting the language that is stricken (~~deleted~~) to the existing text as set forth in this Ordinance.

SECTION 2. Chapter 36 of the City Code of San Antonio, Texas is hereby amended as follows:

Sec. 36-1. Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

...

Electronic Smoking Device (ESD) means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, dab rig or vape pen, or under any other product name or descriptor.

...

Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, including marijuana/cannabis, in any manner or in any form. Smoking includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Chapter.

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Sec. 36-5. Distribution, display, and sale of tobacco products; and cigarette machines.

- (a) Definition. For purposes of this section only, the term "tobacco products" means any product that is made from or derived from tobacco, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe

tobacco, chewing tobacco, snuff, snus, or an electronic smoking device or liquids used in electronic smoking devices. "Tobacco product" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(b) Distribution, display, and sale of tobacco products, or smoking paraphernalia on any public right-of-way, city park or any city-owned building or facility is hereby prohibited.

~~(c) The sale of tobacco products to persons under twenty-one (21) years of age is prohibited by Chapter 161 of the Texas Health and Safety Code.~~

~~(d) Each person who sells tobacco products at retail or by vending machine shall post a sign as required by Texas Health and Safety Code Section 161.084.~~

~~(e) Sale of tobacco products to persons under twenty one (21) years of age prohibited.~~

~~(1) A person commits an offense if the person, with criminal negligence:~~

~~a. Sells, gives, or causes to be sold or given a tobacco product to someone who is younger than twenty one (21) years of age; or~~

~~b. Sells, gives, or causes to be sold or given a tobacco product to another person who intends to deliver it to someone who is younger than twenty one (21) years of age.~~

~~(2) It is a defense to prosecution under this subsection that the person to whom the tobacco product was sold or given presented to the defendant apparently valid proof of identification.~~

~~(3) A proof of identification satisfies the requirements for this subsection if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is twenty one (21) years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.~~

~~(d) Warning notice.~~

~~(1) Each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the cigarettes, e-cigarettes, or tobacco products may be purchased.~~

~~(2) The sign must include the statement:~~

~~THE SALE OR PROVISION OF E-CIGARETTES OR TOBACCO PRODUCTS TO A PERSON UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW WITHIN THE CITY OF SAN ANTONIO.~~

- ~~(3) The director shall determine the size and design of the sign.~~
- ~~(4) The department, on request, shall provide the sign without charge to any person who sells cigarettes, e-cigarettes, or tobacco products.~~
- (e) Notification of employees and agents:
 - ~~(1) Each retailer shall notify each individual employed by that retailer who is to be engaged in retail sales of cigarettes, e-cigarettes, or tobacco products that the City Code:~~
 - ~~a. Prohibits the sale or distribution of cigarettes, e-cigarettes, or tobacco products to any person who is younger than twenty-one (21) years of age; and~~
 - ~~b. Requires each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine to post a warning notice as provided by subsection (d), requires each employee to ensure that the appropriate sign is always properly displayed while that employee is exercising the employee's duties;~~
 - ~~(2) The notice required by this section must be provided within seventy-two (72) hours of the date an individual begins to engage in retail sales of e-cigarettes or tobacco products. The individual shall signify that the individual has received the notice required by this section by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law.~~
 - ~~(3) Each form signed by an individual under this section shall indicate the date of the signature and the current address and social security number of the individual. The retailer shall retain the form signed by each individual employed as a retail sales clerk until the 60th day after the date the individual has left the employer's employ.~~
 - ~~(4) A retailer required by this section to notify employees commits an offense if the retailer fails, on demand of a person authorized to enforce the City Code, to provide the forms prescribed by this section.~~
 - ~~(5) It is a defense to prosecution under subsection (f)(4) to show proof that the employee did complete, sign, and date the forms required by subsections (f)(2) and (3).~~

~~(e)(f)~~ Cigarette vending machines.

- (1) Subject to the defenses provided in subsection (2) below, it shall be unlawful for any business owner, manager and employee in control of cigarette vending machines within the city to intentionally, knowingly, recklessly, or with criminal negligence allow the display or use of any cigarette vending machine upon any property within the city.
- (2) It is a defense to prosecution under the provisions of subsection (b) that:
 - a. The cigarette vending machine is situated in a premise where entry by any person under twenty-one (21) years of age is prohibited by law; or
 - b. The cigarette vending machine is located in a workplace with the permission of the employer, provided that the employer has no persons under the age of twenty-one (21) years employed at the workplace, and further provided that the cigarette vending machine is situated at a location within the workplace to which persons other than those employed at the workplace are not permitted to have access.

~~(f)(g)~~ Penalty. A violation of any subsection of this section is hereby declared to be a misdemeanor crime, and upon conviction, shall be punishable as set out below:

- ~~(1)~~ A violation of subsections (b) or ~~(e)(f)~~ shall be punishable by a fine of not more than two thousand dollars (\$2,000.00).
- ~~(2)~~ A violation of subsections (c), (d) or (e) shall be punishable by a fine of not more than five hundred dollars (\$500.00).

...

Sec. 36-10. Posting of signs.

- (a) "No Smoking" signs ~~or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it)~~ shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this chapter, by the owner, operator, manager, or other person in control of that place. The Director shall prescribe the content of the "No Smoking" sign required to be posted under this article and have an example sign available on the department's website.
- (b) Every public place and place of employment where smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

- (c) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this chapter by the owner, operator, manager, or other person having control of the area.
- (d) Areas which are exempt from the provisions of sections 36-3 and 36-4 of this chapter shall post a standard sign at each entrance, to be designated by the city informing potential patrons that the area allows smoking, and warning patrons of the negative health effects associated with secondhand smoke, inhaling vapor and aerosol from electronic smoking devices.
- (e) The city will provide the signs required under subsection 36-10(d) to the owners or operators required to comply with subsection 36-10(d) ~~at a reasonable and appropriate cost~~.

Sec. 36-14. Additional fee for restaurants.

A reasonable fee to cover staff costs associated with consultations and inspections ~~and program expenses~~ may be charged by the city to the owner or operator of a restaurant in order to establish that outdoor seating areas of restaurants designated as smoking areas are so designated in accordance with subsections 36-3(16) and 36-10 of this chapter.

Sec. 36-15. Governmental agency cooperation.

The city manager shall annually request other governmental and educational agencies having facilities within the city to establish local operating procedures in cooperation and compliance with this chapter. This includes urging all federal, state, county and school district agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke and vapors and aerosols from electronic smoking devices.

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~~**Sec. 36-18. Effective date.**~~

~~This chapter shall become effective on August 19, 2011. Revisions made subsequent to August 19, 2011 shall become effective on October 1, 2018.~~

SECTION 3. All other provisions of Chapter 36 of the City Code of San Antonio, Texas shall remain in full force and effect unless expressly amended by this ordinance.

SECTION 4. Violations occurring after the effective date of this ordinance shall be punished as provided in the revised Chapter 36 of the City Code of San Antonio. Violations prior to the effective date shall be punished under the former applicable Sections which shall remain in effect for that purpose.

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SECTION 5. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 6. The City Clerk is directed to promptly publish public notice of this ordinance in accordance with Section 17 of the City Charter of San Antonio, Texas.

SECTION 7. The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 8. The revisions to Chapter 36 of the City Code of San Antonio, Texas shall be effective on January 1, 2025.

SECTION 9. Penalties provided for in the revised Chapter 36 of the City Code of San Antonio shall be effective five days after publication by the City Clerk.

PASSED AND APPROVED this 31st day of October, 2024

/s/Ron Nirenberg

Mayor

Attest: Debbie Racca-Sittre

City Clerk

M A Y O R

Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

Debbie Racca-Sittre, City Clerk

Andrew Segovia, City Attorney