

ORDINANCE NO. 2014-18

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GEORGETOWN, TEXAS AMENDING CHAPTER 8.32 OF THE CODE OF ORDINANCES OF THE CITY OF GEORGETOWN TO ESTABLISH REGULATIONS RELATING TO ELECTRONIC CIGARETTES AND/OR ELECTRONIC VAPING DEVICES; REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS; INCLUDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Georgetown enacted Ordinance 2006-144 on November 28, 2006 regulating smoking in public places, which was codified as Chapter 8.32 of the Code of Ordinances of the City of Georgetown; and

WHEREAS, the City Council desires to amend Chapter 8.32 to include the regulation and sale of electronic cigarettes and other vaping devices within the City; and

WHEREAS, the U.S. Food and Drug Administration ("FDA") have conducted laboratory tests that have shown that electronic cigarettes or e-cigarette vapors contain carcinogens, including nitrosamines. Further, the FDA tests showed that electronic cigarettes or e-cigarettes vapors were found to contain toxic chemicals such as, diethylene glycol, a common ingredient in antifreeze and which ingredient, in 2007, was surreptitiously substituted for glycerin by several Chinese manufacturing companies in the making of toothpaste which resulted in the deaths of hundreds of people worldwide. While some manufacturers of electronic cigarettes or e-cigarettes dispute the FDA's findings as limited in scope and sample, these manufacturers have not submitted, for independent peer review, any of their findings that purportedly support their safety and smoking cessation claims; and

WHEREAS, the City Council finds that concurrent with this lack of suitable information, manufacturers of electronic cigarettes or e-cigarettes offer their liquid nicotine cartridges in a variety of flavors, including, but not limited to, cherry, chocolate and vanilla, which flavorings the FDA and public health advocates warn are purposefully meant to appeal to and attract young people and are commonly referred to as "training wheels" for traditional cigarettes; and

WHEREAS, studies show that adolescents can become addicted to nicotine after ingesting the equivalent of twenty (20) traditional cigarettes, the amount traditionally available in a single pack, and the appeal created by the flavored electronic cigarettes, e-cigarettes and/or liquid nicotine can lead young people into a lifetime of nicotine addiction; and

WHEREAS, the City Council has determined that a ban on the sale of electronic vaping devices in the City to persons under the age of eighteen (18) and a prohibition on self-service merchandising in the retail sale of electronic vaping devices in order to minimize their physical accessibility to minors serves an important public interest in furtherance of the health, safety and general welfare of the citizens of the City; and

WHEREAS, Texas Legislature currently prohibits the possession, purchase, consumption or receipt of cigarettes or tobacco products by minors currently regulates vendor assisted sales and vending machines of cigarettes or tobacco products, including, but not limited to, prohibiting the use of the same by minors, and the City enforces such regulations; and

WHEREAS, the City Council finds that in order to promote the public health, safety and welfare of the City and its citizens, it is in the best interest of the City and its citizens to amend the Code of Ordinances as set forth below.

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

Section 1. The meeting at which this ordinance was approved was in all things conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 2. The facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim.

Section 3. Chapter 8.32 relating to Smoking is hereby amended in its entirety and shall provide as shown in Exhibit A.

Section 4. If any provision of this ordinance or application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are hereby declared to be severable.

Section 5. All ordinances that are 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.

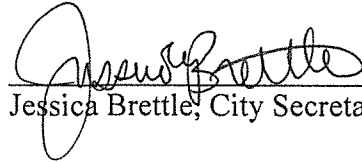
Section 6. The Mayor is hereby authorized to sign this ordinance and the City Secretary to attest. This Ordinance shall become accordance with the provisions of the Charter of the City of Georgetown.

PASSED AND APPROVED on First Reading on the 25 day of MARCH, 2014.

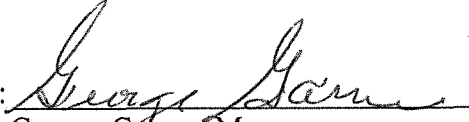
PASSED AND APPROVED on Second Reading on the 8 day of APRIL, 2014.

ATTEST:

THE CITY OF GEORGETOWN



Jessica Brettle, City Secretary

By: 

George Garver, Mayor

APPROVED AS TO FORM:



Bridget Chapman, City Attorney

CHAPTER 8.32. SMOKING

Sec. 8.32.010. Definitions.

As used in this Chapter, the following terms have the respective meanings ascribed to them:

"Bar" or "cocktail lounge" means any establishment or place of business in which more than 60 percent of the annual gross sales is derived from the sale of alcoholic beverages for on-premises consumption and where the serving of food is only incidental to the primary business of serving alcoholic beverages or limited to the provision of free snacks or appetizers, and that has its own entrance from the outside, does not share an entrance with a restaurant or other establishment, and does not have a door or access to a restaurant or other establishment.

"Bar area" means a counter or similar place within a restaurant where alcoholic beverages are served to customers.

"Bingo hall" means any premises in which an establishment or organization as its sole or predominant function offers the playing of bingo. A "non-profit private club" offering the playing of bingo as a secondary function is not a "bingo hall."

"Electronic vaping device" means any electronically powered or battery powered device that uses an atomizer or similar device allowing users to inhale nicotine vapor or any other vapor to simulate the smoking of tobacco, cigarettes, pipes, or cigars. An electronic vaping device includes personal vaporizers, electronic cigarettes (e-cigarettes), electronic pipers (e-pipes), electronic cigars (e-cigars) and any other type of electronic nicotine delivery system or any part thereof.

"Enclosed area" means any area covered by a roof and surrounded by walls, including walls with windows and openings for ingress and egress.

"Health care facility" means any office or institution providing individual care or treatment of human medical, physiological or psychological illness, other than a hospital, which definition shall include but not be limited to doctor's offices, nursing and convalescent homes and senior citizen residential facilities.

"Liquid nicotine" means any liquid product composed either in whole or in part of pure nicotine and propylene glycol and/or any other substance and manufactured for use with electronic vaping devices.

"Minor" means a person under 18 years of age.

"Non-profit private club" means any building, premises or portion thereof which is wholly owned or leased and operated by an organization meeting the requirements of Chapter 501(c) of the United States Internal Revenue Code, as amended.

"Open display unit" means, in the context of the retail sale of electronic vaping devices, any device, furniture or furnishing within or upon which electronic vaping devices are displayed to customers and includes, but is not limited to, any case, rack, shelf, counter, table, desk, kiosk, booth, stand, and vending machine.

"Person" means any individual, firm, partnership, association, corporation, company or organization of any kind.

"Private membership club" means an association of people that:

1. Grants membership to an applicant after submission of a written application to the club for determination of eligibility and/or approval;
2. Owns, leases or rents a building, or a space in a building of such extent and character as is suitable and adequate for the club's membership and their guests; and
3. Collects annual membership fees, dues, or other income from its members that defrays a substantial portion of the operating expenses of the club.

"Public conveyance" means any mass transit vehicle or school bus other than a transit system bus, or intrastate bus, as defined by Section 541.201, Transportation Code, plane, or train.

"Public meeting" means any gathering or assembly of individuals held in any room or chamber wherein public, civic or governmental business is conducted and which is open to the public either as participants or spectators.

"Public place" means any enclosed area to which the public is invited or in which the public is permitted, not including the offices or work areas not entered by the public in the normal course of business or use of the premises. A residence is not a public place.

"Restaurant" means any structure or premises where the principal activity involves the serving of prepared food on-premises or off-premises, with or without alcohol, where the sales of alcoholic beverages are 60 percent or less than the annual gross sales of the establishment. Cafeterias and lunch counters are included in this definition, while drive-in eating establishments that do not have indoor seating or dining are not.

"Retail store" means an establishment whose purpose is to offer for sale and sell to consumers, not for resale, goods, wares, merchandise and food, which items are purchased for use and/or consumption off the premises.

"Retailer" means a person or retail store who/which engages in the practice of selling electronic vaping devices to consumers and includes, but is not limited to, the owner of an open display unit.

"Self-service merchandising" means, in the context of retail sale of electronic vaping devices, the open display for direct retail customer access and handling prior to purchase, without the intervention or assistance of the retailer or the retailer's owner, employee or agent,, including, but not limited to, the use of an open display unit of electronic vaping devices, whether packaged or otherwise.

"Separate ventilation" means separation by a physical barrier of the area where smoking is allowed from the area where smoking is not allowed. The physical barrier must form an effective membrane continuous from outside wall to outside wall, from smoke barrier to 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. The ventilation system must be a HVAC system designed by a licensed professional engineer to have a negative pressure on the area designated

for smoking to prevent air from a smoking area to be drawn across or into a non-smoking area, provide a total air exchange every 15 minutes and exhaust that air to the exterior of the building. All air ventilation systems shall be tested at least once every six months and a record of such test maintained by the establishment or facility and submitted to the building official or his/her designee when requested. The system shall be operated such that smoke from the area where smoking is allowed does not enter the area where smoking is not allowed.

"Service line" means a line of persons formed for the securing of a service or product on a first-come first-served basis.

"Smoking" means lighting, burning, inhaling, exhaling, holding or carrying of a lighted tobacco product including but not limited to cigarettes, pipes, and any other lighted smoking equipment or device or the use of an electronic vaping device as such term is defined in this Chapter..

"Sports arena" means an indoor facility primarily used for sports, cultural or other similar events.

"Theater" means any indoor facility primarily used for the exhibition of any motion picture, stage drama, musical recital, musical concert, dance, lecture or other similar performance.

"Tobacco product" means the product derived from the dried leaves of any one of the various species of nicotine, including but not limited to the species nicotine tabacum, the broad-leafed native American plant, which is utilized for smoking.

Sec. 8.32.020. Smoking prohibited in certain areas.

A. Smoking is unlawful in the following areas, establishments, forms of public transportation, and public places during the hours in which they are open to the public:

1. All areas identified in Texas Penal Code Section 48.01(a), including but not limited to a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, or intrastate bus, (as defined by Section 541.201, Transportation Code), plane, or train which is a public place;
2. Art galleries, and similar cultural facilities;
3. Classrooms and lecture halls;
4. Health care facilities, except as otherwise provided in Section 8.32.030 A.3.;
5. Public conveyances;
6. Public meetings;
7. Restaurants and bar areas within restaurants, except as otherwise provided in Section 8.32.030 A.1.;
8. Retail stores;
9. Taxicabs;
10. Service lines;
11. Shopping centers and malls;

12. Sports arenas;
 13. All property owned or leased by the Georgetown Independent School District for school purposes, including but not limited to, school grounds, school buildings, and related facilities;
 14. Recreational and/or park areas where no-smoking signs are posted;
 15. Within the fenced area of the Creative Playscape;
 16. Hotels and motels, except as otherwise provided in Section 8.32.030 A.4.;
 17. Bed and breakfast establishments;
 18. Bars or cocktail lounges, except as otherwise provided in Section 8.32.030 A.2.;
 19. On the property of the Georgetown Public Library, including the cafe area and outdoor plazas;
 20. Within a building owned, leased, or operated by the City, or within 15 feet of the entrances/exits or openable windows of such buildings; and
 21. Bingo halls.
- B. The owner, operator, manager or other person having control of an area, building or place identified in Section 8.32.020 A., must conspicuously post the following signs at the following locations:
1. At the public and employee entrances to public places where smoking is prohibited in the entire public place, signs that state "NO SMOKING PERMITTED IN THIS BUILDING" or language substantially similar thereto which indicates smoking is prohibited within the public place, which signs may include, but not be limited to "No Smoking" signs of 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.
 2. At the public and employee entrances to public places in which are located designated smoking areas authorized by this article, signs that read "NO SMOKING EXCEPT IN DESIGNATED SMOKING AREAS" or substantially similar language.
 3. At entrances to designated smoking areas allowed by this Chapter, signs that state "SMOKING PERMITTED IN THIS AREA" or substantially similar language; provided that such signs may be placed only at entrances and not any other location and provided further that such signs shall not exceed one square foot in size.
- C. The owner, operator, manager or other person having control of an area, building or place identified in Section 8.32.020 A., must:
1. Remove all ash trays, and ash cans, and any other smoking related paraphernalia from any place identified in Section 8.32.020 A.;
 2. Within 90 days after the effective date of the ordinance adopting this provision, implement, make known, and maintain a written smoking policy that contains at least the following:

- (i) A provision indicating that smoking is prohibited in an area, building, or place identified in Section 8.32.020 A. (except for designated smoking areas, if applicable),
 - (ii) A provision stating that no person may provide goods or services or allow goods or services to be provided to a person who is smoking in an area, building or place identified in Section 8.32.020 A.
3. Post the policy required by Section 8.32.020 C.2. in one or more conspicuous places accessible to employees, customers, and patrons.

Sec. 8.32.030. Exemptions to smoking prohibition.

- A. The following are exemptions to Section 8.32.020 A. and are areas where smoking is not prohibited, unless the area is designated as nonsmoking by the owner, operator, manager or person in control of the establishment or facility:
- 1. Subject to the additional provisions of Section 8.32.030 B., bar areas within a restaurant in operation on the effective date of this Chapter, if within 180 days of the effective date of this Chapter the bar area has separate ventilation.
 - 2. Subject to the additional provisions of Section 8.32.030 B., bars or cocktail lounges that were in operation on the effective date of this Chapter with a permit from the Texas Alcoholic Beverage Commission to sell beer, wine, and mixed alcoholic beverages on premises by the drink without the requirement to also serve food.
 - 3. Designated areas of a health care facility, except that hallways and other public areas shall be non-smoking areas.
 - 4. Designated smoking guest rooms in a hotel or motel, provided that the hotel or motel does not designate more than 25 percent of the guest rooms for rent as smoking rooms, and provided further that hotel and motel lobbies, hallways, an other public areas shall be nonsmoking areas;
 - 5. Non-profit private clubs, except that smoking shall not be allowed at a public event or activity at which any person under the age of 18 is allowed; and
 - 6. Designated areas in private membership clubs.
- B. The right to exempt status under Section 8.32.030 A.1. and 2. shall cease and the owner of the affected establishment shall comply with the provisions of Section 8.32.020 under any of the following circumstances:
- 1. Whenever the bar area, bar or cocktail lounge is vacated, abandoned, closed for business, or ceases to meet the definition of bar area, bar or cocktail lounge, any of which continues for a period of more than 30 consecutive days, except when the premises in which the establishment operates are being repaired, remodeled or expanded, in which case the period is 180 days. The 180-day period may be further extended to the period for which a building permit for the work remains valid.
 - 2. Whenever the enclosed areas of a structure in which the bar area, bar or cocktail lounge is expanded by more than 25 percent of its original size by the owner or operator; or

3. Whenever there is a change of location of the bar area, bar or cocktail lounge.

Sec. 8.32.040. Purchase or Possession of Electronic Vaping Device and/or Liquid Nicotine by Minors Prohibited.

- A. A minor commits an offense if the minor possesses, purchases or attempts to purchase 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 the purpose of purchasing or receiving an electronic vaping device or liquid nicotine.
- C. It shall be a defense to prosecution for a violation of this section if at the time of the purchase, the minor :
 1. Was in the presence of an adult parent or legal guardian of the minor;
 2. Was in the course and scope of the minor's employment and the purchase of the electronic vaping device was a part of the duties of such employment; or
 3. Was participating in an inspection or test of compliance in conjunction with local law enforcement.

Sec 8.32.050. Sale or Distribution of Electronic Vaping Devices and/or Liquid Nicotine to Minors Prohibited.

- A. A person or retailer commits an offense if the person or retailer sells, gives or causes to be sold or given an electronic vaping device or liquid nicotine to a minor or to a person who intends to deliver it to a minor.
- B. If the offense under this section occurs in connection with a sale of an electronic vaping device or liquid nicotine at a business by an employee of the business, the employee who committed the offense is subject to prosecution.
- C. It is a defense to prosecution under subsection (B) that at the time of the sale, the minor presented the person with an apparently valid proof of identification showing the minor was at least 18 years of age.
- D. A proof of identification satisfies the requirements of subsection (C) if it contains the name of the minor, a photograph resembling the appearance of the minor and was issued by a state or federal government agency.

Sec. 8.32.060 Vendor assist sales required; self-service merchandising prohibited.

- A. A person or retailer may not:
 1. Offer electronic vaping devices or liquid nicotine for sale in a manner that permits a customer direct access to the electronic vaping devices or liquid nicotine;
 2. Offer electronic vaping devices or liquid nicotine by means of self-service merchandising; or

3. Install or maintain an open display unit containing electronic vaping devices or liquid nicotine.
- B. It is a defense to prosecution under subsection (A) if:
1. A facility or business is not open to minors at any time;
 2. A facility or business is a premises for which a person holds a package store permit issued under the Texas Alcoholic Beverage Code; or
 3. An open display unit is located in an area that is inaccessible to customers.

Sec. 8.32.070. Unlawful acts.

A person commits an offense if he:

1. Engages in smoking in an area designated as prohibited by this Chapter;
2. Fails to post any sign required by Section 8.32.020 B.;
3. Destroys or defaces a sign posted as required by this Chapter;
4. Fails to take the actions required under Sections 8.32.020 C.;
5. Fails to install or maintain separate ventilation as required by this Chapter;
6. Violates any other provision of this Chapter;
7. Fails to designate no-smoking and smoking areas as required by this Chapter.

Sec. 8.32.080. Enforcement.

- A. Violations of this chapter shall each constitute a separate offense and shall each be punishable as a Class C misdemeanor and shall each be punishable by a fine not to exceed \$500.00 for each day the violation exists. A culpable mental state is not required for a violation of this Chapter and need not be proved.
- B. The Chief of Police shall have enforcement authority for this Chapter.
- C. The Chief of Police hereby authorizes any City employee conducting an inspection under any provision of the City Code to also inspect for compliance with Section 8.32.020 of this Chapter and issue a citation for violation of Section 8.32.020 this Chapter.
- D. The Chief of Police may seek injunctive relief to enforce this Chapter.
- E. A person may report a violation of this Chapter to the City of Georgetown Police Department.
- F. This Section is cumulative of other laws providing enforcement authority.