

ORDINANCE NO. 3305

AN ORDINANCE AMENDING CHAPTER 42 OF THE NORTH RICHLAND HILLS CODE OF ORDINANCES AND CREATING A NEW DIVISION 4 DEFINING ELECTRONIC CIGARETTES AND OTHER TERMS; PROHIBITING SALE OF AND POSSESSION OF E-CIGARETTES BY MINORS; PROHIBITING THE USE OF ELECTRONIC CIGARETTES ANYWHERE SMOKING OF TOBACCO IS PROHIBITED; ESTABLISHING A PENALTY; PROVIDING FOR SEVERABILITY AND PROVIDING FOR PUBLICATION.

WHEREAS, the safety and efficacy of electronic cigarettes and other vaping devices is still unknown and such devices deliver an unknown mix of potentially carcinogenic and toxic compounds, as evidenced by the following: a) nicotine content labeling is not accurate with some electronic cigarette manufacturers;¹ b) nicotine related impurities content in cartridges and refills vary by electronic cigarette manufacturer;² and c) the concentrations of some metal and silicate particles in electronic cigarette aerosol were higher than or equal to the levels contained in conventional cigarette smoke;³ and

WHEREAS, the U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found them to contain carcinogens and toxic chemicals to which users and bystanders could potentially be exposed,⁴ suggesting that the same concerns present with secondhand smoke from conventional cigarettes may exist with electronic cigarettes; and

WHEREAS, it is unlawful to sell or furnish electronic cigarettes to minors,⁵ however minors are still able to obtain access to electronic cigarette products. A national survey revealed that between 2011 and 2012, middle school students who reported ever using electronic cigarettes increased from 1.4% to 2.7% and current use of electronic cigarettes increased from

¹ Trehy ML, Ye W, et al. "Analysis of Electronic Cigarette Cartridges, Refill Solutions, and Smoke for Nicotine and Nicotine Related Impurities." Journal of Liquid Chromatography & Related Technologies, 34:1442–1458, 2011.

² Id.

³ Williams M, Villarreal A, Bozhilov K, Lin S, Talbot P (2013) Metal and Silicate Particles Including Nanoparticles Are Present in Electronic Cigarette Cartomizer Fluid and Aerosol. PLoS ONE 8(3): e57987. doi:10.1371/journal.pone.0057987

⁴ US Food and Drug Administration. News Release, FDA and Public Health Experts Warn About Electronic Cigarettes. July 22, 2009. Available at: www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm.

⁵ Cal. Health & Safety Code § 119405 (West 2013).

0.6% to 1.1%.⁶ The same survey found that high school students who reported ever using electronic cigarettes increased from 4.7% to 10.0% while current use increased from 1.5% to 2.8%; and,

WHEREAS, there is no Constitutional right to smoke;⁷ and,

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

WHEREAS, the City Council has determined that it is in the best interest and welfare of the citizens of North Richland Hills to prohibit the possession and purchase of electronic smoking devices by minors and the sale and distribution of electronic smoking devices to minors; and,

⁶ Centers for Disease Control and Prevention. Electronic Cigarette Use Among Middle and High School Students— United States, 2011-2012. Morbidity and Mortality Weekly Report. September 6, 2013 (survey results are available at http://www.cdc.gov/tobacco/data_statistics/surveys/nyts.)

⁷ Public Health Law & Policy, Technical Assistance Legal Center. There Is No Constitutional Right to Smoke. 2005. Available at www.phlpnet.org/tobacco-control/products/there-no-constitutional-right-smoke.

WHEREAS, it is the intent of the City Council, in enacting this Ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of the use of electronic cigarettes and electronic smoking devices, around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke and vapors where they live, work and play; by reducing the potential for children to wrongly associate smoking and tobacco use with a healthy lifestyle; and by affirming and promoting a healthy and nuisance-free environment in the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH RICHLAND HILLS, TEXAS:

Section 1. Chapter 42 of the North Richland Hills Code of Ordinances is hereby amended by adding a new Article V which shall read as follows:

“Article V - Electronic cigarettes.

Sec. 42-215. Definitions.

- (a) “E-cigarette” or “electronic cigarette” or “electronic smoking device” means any electronic or battery- operated device, the use of which resembles smoking, that can be used to deliver an inhalable dose of nicotine or other substances by delivering a vaporized solution. “E-Cigarette,” “electronic cigarette,” or “electronic smoking device” includes any such electronic smoking device, whether manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. “E-Cigarette,” “electronic cigarette,” or “electronic smoking device” does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.
- (b) *Minor* shall mean a person younger than 18 years of age.
- (c) *Person* shall mean an individual, corporation, sole proprietorship, and any other type of business entity recognized under Texas law.

Sec. 42-216. Sale or Distribution of Electronic Smoking Devices to Minors Prohibited.

- (a) A person commits an offense if the person sells, gives or causes to be sold or given an electronic smoking device 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 smoking device 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.
- (e) It is not a defense under this section that the minor purchased the electronic smoking device from a vending machine or other self-service merchandising mechanism if the machine or mechanism was located on the premises of the person.

Sec. 42-217. Possession of Electronic Smoking Devices by Minors Prohibited.

- (a) A minor commits an offense if the minor possesses, purchases or attempts to purchase an electronic smoking device.
- (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 smoking device.
- (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 of scope of the minor's employment and the purchase of the electronic smoking device was a part of the duties of such employment; or
- (d) was participating in an inspection or test of compliance in conjunction with local law enforcement

Section 42-218. Use of Electronic Smoking Devices Prohibited where Tobacco Smoking is Prohibited.

Use of any electronic smoking device is prohibited in all locations where tobacco smoking is prohibited by Division 2 of Article IV of this Chapter. Any person using such electronic smoking device in such a location shall be deemed in violation of this provision."

Section 2: It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section 3: Any person who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of this Ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense.

Section 4: The City Secretary of the City of North Richland Hills is hereby directed to publish the caption, penalty clause, publication clause and effective date clause of this ordinance.

Section 5: This ordinance shall be in full force and effect from and after its passage and publication as required by law,

AND IT IS SO ORDAINED.

PASSED AND APPROVED on the 14th day of July, 2014.

CITY OF NORTH RICHLAND HILLS

By: _____
Oscar Trevino, Mayor

ATTEST:

Alicia Richardson, City Secretary

APPROVED AS TO FORM AND LEGALITY:

George A. Staples, City Attorney

APPROVED AS TO CONTENT:

John Pitstick, Planning & Development Director