

ORDINANCE NO. 4046-01-2014

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, AMENDING CHAPTER 8, MISCELLANEOUS OFFENSES, OF THE LEWISVILLE CITY CODE BY PROHIBITING THE SALE TO A MINOR OF ELECTRONIC CIGARETTES AND/OR LIQUID NICOTINE AND PROHIBITING SELF-SERVICE MERCHANDISING; PROVIDING DEFENSES; PROVIDING A REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

WHEREAS, electronic cigarettes (“e-cigarettes”) are devices that deliver, among other things, nicotine through vapor that is inhaled by the user;

WHEREAS, in the Tobacco Control Act, Congress recognized that nicotine is an addictive drug;

WHEREAS, the U.S. Food and Drug Administration (“FDA”) acknowledges that the safety and efficacy of e-cigarettes have not been fully studied; therefore, consumers have no way of knowing, among other things, whether e-cigarettes are safe for their intended use or how much nicotine or other potentially harmful chemicals are being inhaled during use;

WHEREAS, the FDA has also noted that e-cigarettes are marketed and sold to young people and are available in different flavors, such as chocolate and mint, which may appeal to young people;

WHEREAS, e-cigarettes are not yet regulated by state or federal law;

WHEREAS, the FDA is considering appropriate regulation of e-cigarettes, but it is essential for the City to impose some type of reasonable restriction on these products until a federal regulatory system may be properly implemented; and,

WHEREAS, it has been determined that the regulation of e-cigarettes and liquid nicotine is in the best interests of the City of Lewisville and will promote the health, safety and welfare of the citizens of the City of Lewisville and the general public.

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

SECTION 1. Chapter 8 of the Lewisville City Code is hereby amended by adding the following new section:

Sec. 8-5. E-Cigarette Regulations.

(a) *Purpose.* The purpose of this section is to prohibit the sale to minors, of e-cigarettes and liquid nicotine, both hereinafter defined, within the city limits of the City of Lewisville.

(b) *Definitions.* The following words and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“*Electronic Cigarette*” or “*E-Cigarette*” shall mean any device that uses an atomizer or similar device that allows users to inhale a vapor of liquid nicotine or other vapor without the use of fire, smoke, ash or carbon monoxide. The definition of e-cigarette includes any of its component parts. The term includes such devices regardless of the details of the product appearance or marketed name.

“*Liquid Nicotine*” shall mean any liquid product composed either in whole or in part of nicotine, propylene glycol and/or any other substance and manufactured for use with e-cigarettes.

“*Minor*” shall mean any individual younger than eighteen (18) years of age.

“*Person*” shall mean an individual, corporation, partnership, wholesaler, retailer or any licensed or unlicensed business.

“*Proof of Identification*” shall mean identification that contains a physical description and photograph consistent with the person’s appearance, purports to establish that the person is 18 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 federal government.

(c) *Sale, distribution, or offering for sale to minor.*

(1) *Offense.* It shall be unlawful for any person to give, sell, or offer for sale an e-cigarette, liquid nicotine or sample to a minor within the territorial limits of the City of Lewisville.

(2) *Defenses.* It shall be a defense to the above offense if:

- (i) the minor is in the presence of a parent, guardian, spouse or other adult to whom the minor had been committed by a court; or
- (ii) the minor presents an apparently valid proof of identification.

(d) *Vendor-Assisted Sales Required. Self-Service Merchandising Prohibited.*

(1) *Offense.* A retailer or other person may not:

- (i) offer e-cigarettes or liquid nicotine for sale in a manner that permits a customer direct access to the e-cigarettes or liquid nicotine;
- (ii) offer for sale or display for sale e-cigarettes or liquid nicotine by means of self-service merchandising; or
- (iii) install or maintain an open display unit containing e-cigarettes or liquid nicotine.

(2) *Defenses.* It shall be a defense to the above offense if:

- (i) the facility or business is not open to persons younger than 18 years of age at any time; or
- (ii) the open display unit is located in an area that is inaccessible to customers.

SECTION 2. REPEALER. Every ordinance or parts of ordinances found to be in conflict herewith are hereby repealed. Nothing contained herein shall be construed to conflict with state and/or federal law governing the same.

SECTION 3. SEVERABILITY. If any section, sentence, clause, or phrase of this ordinance shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this ordinance, but they shall remain in effect.

SECTION 4. PENALTY. Any person, firm or corporation who violates any provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof in the municipal court, shall be subject to a fine of not more than \$500.00 for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect and be in full force and effect from and after the date of its passage and publication as required by law.

SECTION 6. EMERGENCY. It being for the public welfare that this ordinance be passed creates an emergency and public necessity and the rule requiring this ordinance be read on three separate occasions be, and the same is hereby, waived and this ordinance shall be in full force and effect from and after its passage and approval and publication, as the law in such cases provides.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, BY A VOTE OF 5 TO 0, ON THIS THE 27th DAY OF JANUARY, 2014.

APPROVED:

Dean Ueckert, MAYOR

ATTEST:

Julie Heinze, CITY SECRETARY

APPROVED AS TO FORM:

Lizbeth Plaster, CITY ATTORNEY