

ORDINANCE NO. 2024-44

AN ORDINANCE OF THE CITY OF ROSENBERG, TEXAS, AMENDING THE CODE OF ORDINANCES, BY ADOPTING A NEW CHAPTER 16 ARTICLE XV. – RETAIL TOBACCO STORES, SMOKE SHOPS AND TOBACCO BARS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND PROVIDING A PENALTY FOR VIOLATION OF ANY PROVISION HEREOF.

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WHEREAS, the City Council is authorized by Chapter 54 of the Texas Local Government Code to enforce rules, ordinances and police regulation of the municipality by fine or penalty; and,

WHEREAS, studies have shown that the presence of tobacco retailers close to schools is associated with tobacco use initiation and sustained tobacco use among adolescents; and,

WHEREAS, a nationally representative study of U.S. youths revealed that a high density of tobacco retailers in surrounding environments is associated with increased likelihood of tobacco use initiation; and,

WHEREAS, the City Council has found that conditions unique to Retail Tobacco Store, Smoke Shops and Tobacco Bars require additional regulations to ensure the health and safety of citizens; and,

WHEREAS, the City Council has found that these regulations and requirements are in the best interest of the public health, safety and welfare of the citizens of Rosenberg;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:

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

Section 2. The Code of Ordinances of the City of Rosenberg, Texas, is hereby amended by adopting a new Article XV of Chapter 16 thereof to provide as follows:

“ARTICLE XV. RETAIL TOBACCO STORES, SMOKE SHOPS, AND TOBACCO BARS

Sec. 16-600 - Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

E-cigarette has the meaning assigned by the Texas Health and Safety Code Section 161.081, as may be amended.

E-cigarette retailer means a person who engages in the business of selling e-cigarettes to consumers.

Retail tobacco store means any business that engages in the practice of selling cigarettes, cigars, or tobacco products. This definition does not include an establishment which derives more than fifty percent (50%) of its gross revenue from food, beverage or gasoline fuel sales.

Smoke shop includes e-cigarette retailers and retail tobacco stores and may also include businesses selling smoking paraphernalia, electronic vaping devices, vaping accessories, or other similar substances and products. This definition does not include an establishment which derives more than fifty percent (50%) of its gross revenue from food, beverage or gasoline fuel sales.

Tobacco bar means an establishment or area within an establishment that is open to the public and is designated for the smoking of tobacco products, purchased on the premises or elsewhere. This includes cigar bars and hookah bars.

Sec. 16-601. Unrestricted access by law enforcement officer.

It shall be the duty of any owner, manager, operator, employee, or other person exercising control over a retail tobacco store, smoke shop, or tobacco bar, or a portion of a retail tobacco store, smoke shop, or tobacco bar, to provide any law enforcement officer with immediate unrestricted access during business hours to all areas of the retail tobacco store, smoke shop, or tobacco bar.

Sec. 16-602. Inspection by law enforcement officer, Fire Marshal, and Building Official.

- (a) Any law enforcement officer or Fire Marshal may inspect a retail tobacco store, smoke shop, or tobacco bar located in the City to determine whether the retail tobacco store, smoke shop, or tobacco bar complies with this Article and state law.
- (b) The Building Official shall have the authority to designate a person to make periodic inspections of premises licensed under this article for the purpose of determining whether or not such premises are in compliance with the health, plumbing and sanitary and other ordinances of the City.
- (c) An owner, manager, operator, or employee of a retail tobacco store, smoke shop, or tobacco bar or other person exercising control over a retail tobacco store, smoke shop, or tobacco bar, who does not allow a law enforcement officer, Fire Marshal, or Building Official, to inspect a retail tobacco store, smoke shop, or tobacco bar commits an offense.

Sec. 16-603. License fee levied.

- (a) *Payment of fee and issuance of license.* An owner, manager, operator, or lessee of a retail tobacco store, smoke shop, or tobacco bar shall be required to secure a license by paying to the City an annual retail tobacco store, smoke shop, or tobacco bar license fee as adopted in the City's schedule of fees. Upon payment of the annual license fee and compliance with all provisions of this article, the Building Official shall issue a license.
- (b) *Expiration and renewal.* Annual retail tobacco store, smoke shop, or tobacco bar licenses issued by the City shall automatically expire on August 31 following its issuance, except as otherwise stated herein. Such license shall automatically expire if the holder thereof sells, transfers equity, or otherwise disposes of such inventory particular to the business. The City shall not refund any portion of a license after the license is issued, nor shall it prorate or reduce an amount of any fee due to the City. The license is not assignable after the license is issued.
- (c) *Late penalty.* Prior to the expiration of a license, the person shall obtain a renewal in the same manner as an original license to continue operating a retail tobacco store, smoke shop, or tobacco bar. Failure to submit a renewal application and pay the license fee prior to expiration of the current license will require such person to pay an additional late fee as adopted by the City's schedule of fees in order to obtain reinstatement of the license. Nothing herein authorizes the licensee to operate after the expiration of a license and before a renewal is effective.
- (d) The license shall be conspicuously posted inside the building.

Sec. 16-604. Appeal from refusal.

In the event the City shall refuse to grant a license to any applicant under this Article, such action shall be final, unless the applicant shall, within ten (10) calendar days after the refusal to grant such license, file a written appeal with the City Secretary addressed to the City Council, requesting a hearing upon the question as to whether or not his application shall be granted. In the event such appeal is filed, the City shall provide the City Council with a record of all proceedings theretofore had with the reference to the application, including the written application, together with the action of the City and the reasons for such action. The City Council shall, within forty-five (45) days, grant a hearing thereon to determine the correctness of the action of the City, at which hearing, the City Council may make such investigation as is may deem fit, whether all the pertinent facts appear in the application or not. Within seven (7) days after the final decision, the City Council shall cause a written deduction of its judgement thereon to be filed with the City Secretary. Any decision of the City Council thereon shall be final and may not be appealed.

Sec. 16-605. Egress doors.

- (a) It shall be the duty of any owner, manager, operator, or employee of a retail tobacco store, smoke shop, or tobacco bar, or other person exercising control over a retail tobacco store, smoke shop, or tobacco bar or a portion of a retail tobacco store, smoke shop, or tobacco bar, to provide egress doors during business hours that are readily openable from the egress side without use of a key or special knowledge or effort in conformance with the fire code and all applicable City codes.
- (b) All entrance doors must remain unlocked during the hours of operation.
- (c) All exit doors must comply with the International Fire Code, as amended.

Sec. 16-606. Transparent, uncover windows required.

- (a) Any retail tobacco store, smoke shop, or tobacco bar must have at least two (2) windows in the front of the building allowing a clear and unobstructed view of the interior of the business at all times by a person outside the building or structure standing in an area open to and accessible by a member of the public, at all times the retail tobacco store, smoke shop, or tobacco bar is in operation.
- (b) It shall be the duty of any owner, manager, operator, employee or other person exercising control over a retail tobacco store, smoke shop, or tobacco bar or a portion of a retail tobacco store, smoke shop, or tobacco bar, to provide transparent glass in each window.
- (c) It shall be unlawful for any person to cover a retail tobacco store, smoke shop, or tobacco bar window or otherwise block or obscure the view of the interior through a retail tobacco store, smoke shop, or tobacco bar window.
- (d) The required transparent walls or windows of the retail tobacco store, smoke shop, or tobacco bar shall be:
 - (1) Located on at least two (2) sides of the retail tobacco store, smoke shop, or tobacco bar;
 - (2) At the lowest point, not more than four (4) feet above the adjacent sidewalk or ground level;
 - (3) At the highest point, at least eight (8) feet higher than the adjacent sidewalk or ground level; and
 - (4) Are at least four (4) feet wide.
- (e) It shall be unlawful for any person to erect or construct on any premises or to cut the building into two (2) or more rooms by constructing partitions therein. This section shall not apply to sanitary facilities which shall be enclosed and adequately ventilated in accordance with the health, plumbing, sanitary and building ordinances of the City.

Sec. 16-607. Regulations governing licensed retail tobacco store, smoke shop, or tobacco bars.

Every business or place under this article shall at all times conform to the following regulations:

- (1) All building and fire code standards must be met. Inspection by Building Official, Fire Marshal and certificate of occupancy shall be obtained before license is issued.
- (2) In the case of a retail tobacco store, smoke shop, or tobacco bar to be operated under an assumed name, a true and correct copy of the registration of the assumed name must be provided at the time of application and made available upon request.
- (3) No activities allowed outdoors.
- (4) The premises shall be kept and maintained in a clean, healthful and sanitary condition in accordance with all applicable statutes and ordinances, and all rooms or halls connected thereto shall be well-lighted and kept open and free from blinds, screens and obstructions.
- (5) No loud, boisterous, indecent or suggestive conduct shall be allowed on the premises.
- (6) No alcoholic beverages shall be sold, consumed, or served on the premises.
- (7) No gambling of any kind shall be allowed on the premises.
- (8) No loitering shall be allowed on the premises either within or without a building.
- (9) No one under the age of twenty-one (21) shall be permitted on the premises.
- (10) It shall be the duty of any owner, manager, employee or other person exercising control over a retail tobacco store, smoke shop, or tobacco bar or a portion of a retail tobacco store, smoke shop, or tobacco bar, to clearly mark their hours of operation on every entrance.
- (11) A retail tobacco store, smoke shop, or tobacco bar may only operate between the hours of 10:00 a.m. and 10:00 p.m.
- (12) Inside lighting shall be maintained at an intensity of not less than thirty (30) foot-candle power, three (3) feet from the floor, measured at any location in any room open to the public, which shall be

operative during all hours of operation of any place of business covered under the ordinance from which this section derives.

- (13) All employees of a retail tobacco store, smoke shop, or tobacco bar operator must be at least twenty-one (21) years of age.

Sec. 16-608. Termination of license.

If a person holding a license issued under the terms of this Article violates any provision of this article, or the laws of the state, or if a retail tobacco store, smoke shop, or tobacco bar licensed under this Article is not being conducted in accordance with this article, this Code and the laws of the state, or is being conducted in violation thereof, the City may at any time give notice in writing to the owner, operator, licensee, manager, or other person in control of the operation and maintenance of such retail tobacco store, smoke shop, or tobacco bar that the license issued for the operation and maintenance of such retail tobacco store, smoke shop, or tobacco bar has been revoked, stating therein the reason or reasons for such revocation. Such notice of revocation shall become a final revocation after the expiration of ten (10) calendar days from the date of the service of the same upon the owner, operator, licensee, manager, or other person in charge of the retail tobacco store, smoke shop, or tobacco bar, unless, on or before the expiration of such ten (10) days, the licensee, owner, operator, manager or other person in charge shall file with the City Secretary a written appeal addressed to the City Council, in which it is requested that the City council grant a hearing upon the question of whether or not the license shall be revoked. Such appeal, if made and filed as prescribed herein, shall operate as a stay or postponement of the revocation, until such time as the City Council shall grant a hearing and make final adjudication upon the question of whether or not the license should be revoked. Such hearing shall be held within forty-five (45) days after the date of the filing of the appeal. Within seven (7) days after the final decision, the City Council shall cause a written judgement thereon to be filed with the City Secretary. Any decision of the City Council thereon shall be entered upon the minutes of such meeting. Any decision of the City Council thereon shall be final and may not be appealed.

Sec. 16-609. Existing retail tobacco stores, smoke shops, or tobacco bars.

- (a) Any existing business that contains and or operates a retail tobacco store, smoke shop, or tobacco bar at the time of the adoption of this Ordinance is considered a non-conforming business and must obtain a license within sixty (60) days of the enactment of this Article, and be in compliance with all the regulations and requirements of this Article.
- (b) Any existing non-conforming retail tobacco store, smoke shop, or tobacco bar shall be exempt from the distance and density requirements contained in Sec. 16-610 unless such non-conforming status is abandoned.

- (c) Failure to obtain a license within sixty (60) days and continued operations of a retail tobacco store, smoke shop, or tobacco bar will be a violation of this Article.
- (d) An existing non-conforming retail tobacco store, smoke shop, or tobacco bar shall be considered abandoned and shall not thereafter be returned to any non-conforming status when such building or structure is or hereafter becomes vacant and remains unoccupied or out of use for a continuous period of six (6) months or the special equipment, furnishings or inventory peculiar to the business have been removed from the premises and have not been replaced within such six (6) month period. If a non-conforming business is abandoned, any future use of the premises shall be in conformity with the provisions of this Code, as amended, and with any other applicable City Codes or ordinances that are in effect at the time the use is resumed or the structure is re-occupied.

Sec. 16-610. Distance and density requirements.

- (a) No retail tobacco store, smoke shop, or tobacco bar shall be located nearer than two thousand (2,000) feet of any school, church, licensed day care center public park or recreation center. Measurements shall be made in a straight line, without regards to intervening structures or objects, from the nearest point on the property line of such school, church, licensed day care center, or residence.
- (b) No retail tobacco store, smoke shop, or tobacco bar shall be located within two thousand (2,000) feet of any other retail tobacco store, smoke shop, or tobacco bar. Measurements shall be made in a straight line, without regards to intervening structures or objects, from the nearest point on the property line of the applicant's retail tobacco store, smoke shop, or tobacco bar to the nearest point on the property line of any other retail tobacco store, smoke shop, or tobacco bar.

Sec. 16-611. Violation – Penalty.

Any person, owner, manager operator or employee of a retail tobacco store, smoke shop, or tobacco bar, or other person exercising control over a retail tobacco store, smoke shop, or tobacco bar or a portion of a retail tobacco store, smoke shop, or tobacco bar, violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and upon a conviction shall be subject to a penalty in an amount as provided in Chapter 1, Section 1-13 of this Code.”

Secs. 16-612–16-650. Reserved.”

Section 3. All ordinances or parts inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 4. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any

reason by adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Rosenberg, Texas declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

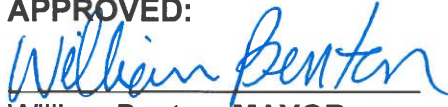
Section 5. Effective Date. This Ordinance shall take effect immediately upon its adoption as provided by law.

PASSED AND APPROVED by a vote of 5 "ayes" in favor and of 0 "noes" against on this first and final reading in full compliance with Section 3.10 of the City Charter of the City of Rosenberg, Texas, on this the 17 day of September, 2024.

ATTEST:


Danyel Swint, TRMC, **CITY SECRETARY**

APPROVED:


William Benton, **MAYOR**

APPROVED AS TO FORM:


CITY ATTORNEY
Randle Law Office, Ltd., L.L.P.

