

ORDINANCE # 11-23

AN ORDINANCE OF THE CITY OF HAMILTON, TEXAS, APPROVING AN ORDINANCE RESTRICTING E-CIGARETTE, SMOKE, TOBACCO, OR HEAD SHOPS WITHIN THE CITY LIMITS

WHEREAS, the City of Hamilton, Texas finds it to be in the best interest for the general welfare and public safety of the citizens to restrict E-Cigarettes, Smoke, Tobacco, or Head Shops within the city limits; and

WHEREAS, pursuant to enumerated powers as set forth in the Local Government Code, and pursuant to general common law, general law cities have the authority to regulate any lawful business affecting the general public health, safety, morals, and welfare of the municipality pursuant to the general police powers of the municipality; and

WHEREAS, notice of a public hearing was properly published for the December 14, 2023 Regular Council Meeting.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HAMILTON, TEXAS

CHAPTER 16

BUSINESSES

Article I. In General

Sec. 16-2.

Definitions

Ancillary sale means where a grocery store, supermarket, convenience store or similar market uses no more than two (2) percent of its gross floor area, or two hundred (200) square feet, whichever is less, for the display, sale, distribution, delivery, offering, furnishing, or marketing of conventional cigars, cigarettes or tobacco. For any grocery store, convenience market, retail kiosk or similar use consisting of two hundred fifty (250) square feet or less, "ancillary sale" shall mean where no more than five (5) square feet are used for the display, sale, distribution, delivery, offering, and furnishing, or marketing of conventional cigars, cigarettes or tobacco.

E-cigarette means any electronically actuated device or inhaler meant to simulate cigarette smoking that uses a heating element to vaporize a liquid solution. Popularly referred to as "juice," and that causes the user to exhale any smoke, vapor, or substance other than that produced by unenhanced human exhalation. The juice used in e-cigarettes typically contains nicotine, and for this reason e-cigarettes and their juice can be classified as both tobacco

products and tobacco paraphernalia.

Smoke shop and tobacco store mean any premises dedicated to the display, sale, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, or tobacco paraphernalia; provided, however, that any grocery store, supermarket, convenience store or similar retail use that only sells conventional cigars, cigarettes or tobacco as an ancillary sale shall not be defined as a "smoke shop and tobacco store" and shall not be subject to the restrictions in this chapter.

Tobacco means any preparation of the nicotine-rich leaves of the tobacco plant, which are cured by a process of drying and fermentation for use in smoking, chewing, absorbing, dissolving, inhaling, sorting, sniffing, or ingesting by any other means into the body.

Tobacco paraphernalia means any paraphernalia, equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other controlled substances as defined in Texas Health and Safety Code. Items or devices classified as tobacco paraphernalia include, but are not limited to, the following: pipes, punctured metal bowls, bongs, water bongs, electric pipes, e-cigarettes. E-cigarette juice, buzz bombs, vaporizers, hookahs, and devices for holding burning material. Lighters and matches shall be excluded from the definition of tobacco paraphernalia.

Tobacco product means any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant, or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. For the purposes of this chapter, the term "tobacco product" excludes any product that has been specifically approved by the United States Food and Drug Administration (FDA) for sale as a tobacco/smoking cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved purpose.

Land use standards.

(a) Land use standards for smoke shops and tobacco stores shall be as follows:

- (1) Smoke shops and tobacco stores shall not be located within three hundred (300) feet, measured property line to property line, from a school (public or private), family day care home, child care facility, and youth center, community center, recreational facility, park, church or religious institution, hospital, or other similar uses where children regularly gather.
- (2) Smoke shops and tobacco stores shall not be located within one thousand (1,000) feet, measured property line to property line, from another smoke shop and tobacco store.
- (3) It is unlawful for a smoke shop and tobacco store to knowingly allow or permit a minor, not accompanied by his or her parent or legal guardian, to enter or remain within any smoke shop and tobacco store.
- (4) Smoke shops and tobacco stores shall post clear signage stating that minors may not enter the premises unless accompanied by a parent or legal guardian.

At least one (1) such sign shall be placed in a conspicuous location near each public entrance to the smoke shop and tobacco store. It shall be unlawful for a smoke shop and tobacco store to fail to display and maintain, or fail to cause to be displayed or maintained, such signage.

(b) Standard conditions of smoke shop and tobacco stores at minimum shall include the following:

- (1) No smoking shall be permitted on the premises at any time.
- (2) No sales may be solicited or conducted on the premises by minors.
- (3) No self-service tobacco, tobacco product, or tobacco paraphernalia displays shall be permitted. Each item displayed shall be deemed as a separate violation.
- (4) No distribution of free or low-cost tobacco, tobacco products or tobacco paraphernalia, as well as coupons for said items, shall be permitted.

(c) Smoke shops and tobacco stores that are legally existing on the effective date of the ordinance codified in this chapter may continue to operate as legal nonconforming uses in accordance with this chapter. However, any change or expansion of the legal nonconforming use may require compliance with this chapter.

PASSED AND APPROVED by a majority vote of the City Council for the City of Hamilton, Texas, in a meeting held on the 14th day of December, 2023.

CITY OF HAMILTON, TEXAS

Mayor, Rodney Craddick

ATTESTED:

Approved As To Form:

Brooke Tomlinson, City Secretary

City Attorney, Connie Z. White