

ORDINANCE NO. 3609

AN ORDINANCE OF THE CITY OF CARROLLTON, TEXAS AMENDING TITLE 9, CHAPTER 93 SMOKING IN PUBLIC PLACES, ESTABLISHING REGULATIONS PERTINENT TO USE OF ELECTRONIC SMOKING DEVICES AND AMENDING TITLE 13, CHAPTER 130, GENERAL OFFENSES BY ADDING A NEW SECTION 130.27 REGULATING SALES TO, POSSESSION OF AND USE OF ELECTRONIC SMOKING DEVICES BY MINORS AND A NEW SECTION 130.99, PENALTY AND AMENDING TITLE 1, CHAPTER 10, SECTION 10.99 BY ADDING A NEW DIVISION 10.99(A)(4); AND PROVIDING FOR REPEALING, PENALTY, SEVERABILITY, AND SAVINGS CLAUSES AND EFFECTIVE DATE ON AND AFTER ITS PUBLICATION AND ADOPTION.

WHEREAS, the City Council of the City of Carrollton, Texas ("City Council") has investigated and determined that the City of Carrollton, Texas' ("City") Code of Ordinances, as amended, ("Code of Ordinances") Title 9, Health, Safety and Property Maintenance, Chapter 93, Smoking in Public Places, should be amended as set forth herein; and

WHEREAS, the City Council has further investigated and determined that the Code of Ordinances, Chapter 130, General Offenses should be amended to add Section 130.27 Electronic Smoking Devices and Liquid Nicotine, for the purpose of establishing regulations relating to electronic smoking devices and/or e-cigarettes and liquid nicotine as set forth herein; and

WHEREAS, the City Council has further investigated and determined that it will be advantageous and beneficial to the Citizens and its inhabitants to regulate smoking in public places in the City, with certain exceptions, to reduce detrimental effects on not only the smoker, but others in close proximity to the smoker and to further the health, safety and welfare of the City and its citizens; and

WHEREAS, the City Council has further investigated and determined that the new, unregulated smoking devices, commonly referred to as electronic smoking devices or e-cigarettes, have recently become more available to consumers; and

WHEREAS, the City Council has further investigated and determined that nicotine is a known neurotoxin that is also one of the most highly addictive substances available for public consumption; and

WHEREAS, the City Council has investigated and determined that, the manufacturers and marketers of electronic smoking devices or e-cigarettes purposefully and intentionally advertise their products as safe nicotine delivery devices and smoking cessation modalities; and

WHEREAS, the City Council has further investigated and determined that laboratory tests conducted by the U.S. Food and Drug Administration ("FDA") have shown that electronic smoking devices or e-cigarette vapors contain carcinogens, including

nitrosamines and were found to contain toxic chemicals such as diethylene glycol. 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 has further investigated and determined that concurrent with this lack of suitable information, manufacturers of electronic smoking devices offer their liquid nicotine cartridges in a variety of flavors, including, but not limited to, cherry, chocolate and bubble gum, 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, the City Council has further investigated and determined that 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 further investigated and determined that the nicotine content provided by electronic cigarettes or e-cigarettes is unknown and unspecified and presents a significant risk of rapid addiction or overdose; and

WHEREAS, the City Council has further investigated and determined that other governments and public health organizations, including the World Health Organization and the Canadian government's FDA equivalent, the Health Products and Food Branch Inspectorate, have joined the FDA in speaking out about the potential dangers posed by electronic smoking devices and are also calling on manufactures of these devices to discontinue their safety claims until these products have been independently tested; and

WHEREAS, the City Council has further investigated and determined that protecting the citizens of the City against an untested nicotine product like electronic cigarettes, e-cigarettes and liquid nicotine represents sound public health and fiscal policy; and

WHEREAS, the City Council has further investigated and determined that a ban on the sale of electronic smoking devices, liquid nicotine and like products in the City to persons under the age of eighteen (18) and a prohibition on self-service merchandising in the retail sale of electronic cigarettes, e-cigarettes, liquid nicotine and like products 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, the City Council has further investigated and determined that the Texas Legislature currently prohibits the possession, purchase, consumption or receipt of cigarettes or tobacco products by minors, and the City enforces such regulations;

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

Section 1.

That Title 9, Chapter 93 of the Code of Ordinances, City of Carrollton, Texas, is hereby amended in its entirety to read as follows:

Smoking in Public Places

Sec. 93.01. - Smoking prohibited in certain public places.

(A) *Definitions.* For the purpose of this section the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Administrative area. The area of a city owned building not generally accessible to the public, including but not limited to individual offices, stockrooms, employee lounges or meeting rooms.

Public service area. Any area to which the general public routinely has access for municipal services or which is designated a public service area.

(B) *Where prohibited.* A person commits an offense if he smokes, or possesses a burning tobacco, weed or other plant product; or if he smokes or possesses an operating electronic smoking device; or if he chews a tobacco, weed or other plant product in any administrative area, conference room, meeting room or public service area of any facility owned, operated or managed by the city. This includes, but is not to be limited to the city hall, city recreation centers, library, police building, service centers and fire stations.

(C) *City facility designated smoking areas.* The City Manager may designate an area, including but not limited to lobbies, meeting rooms, or waiting rooms, as a smoking area. Smoking and possession of burning tobacco, weed or other plant product, smoking or possession of an operating electronic smoking device or chewing of a tobacco, weed or other plant product is allowed if signs are prominently displayed designating that place as a permitted smoking area.

(D) *Signs.* It is a defense to prosecution under this section if the building in which the offense occurs does not have prominently displayed at its entrance a reasonably sized notice that smoking is prohibited. In the absence of a sign designating an area of any city facility as a permitted smoking area, it shall be presumed to be a no smoking area.

Sec. 93.02. - Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Air purification system. An electrically powered, hospital grade, HEPA media filter that will clean all of the air in the designated smoking area every 15 minutes as follows: Not less than 95 percent of three-tenths micron particulates efficiency including dust, smoke, pollen, mold spores, bacteria, tobacco smoke, viruses and allergens and not less than 95 percent removal of gases, vapors, volatile organic compounds (V.O.C.) and odors.

Air ventilation system. An HVAC system designed by a licensed professional engineer to meet the requirements of the city mechanical code.

Billiard hall. A place of amusement whose chief purpose is providing the use of billiard/pool tables to the public for a fee.

Bingo parlor. A facility regulated under Tex. Rev. Civ. Stat. Ann., article 179d "Bingo Enabling Act."

Conveyance. Any vehicle used as a means of carrying or transporting persons as passengers, to which the public or a substantial group of the public has access.

Day care center. Any facility, which receives 13 or more children and provides for the care, supervision and guidance of the children on a regular basis, unaccompanied by a parent or guardian, for a period of less than 24 hours per day, and in a place other than the children's own home or homes.

Designated smoking area. An area which shall not exceed 30 percent of the net floor area of any food products, retail or service establishment serving the general public having a physical barrier between it and the nonsmoking area and having a separate air purification system or separate air ventilation system.

Eating establishment. Any place where food is served for on-premises consumption and which is accessible by the public or a substantial group of the public.

Electronic Smoking Device. An electronic or battery-operated device that delivers vapors for inhalation. This term shall include every variation and type of such devices whether they are 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.

Enclosed. Closed in by a roof and walls with appropriate openings for ingress and egress.

Food products establishment. Any restaurant, coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria or eating establishment, and any other eating establishment, organization, club, boardinghouse, or guesthouse, which gives or offers for sale food to the public or a substantial group of the public, guests, patrons or employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. Other food product establishments include grocery stores and food markets, not including those outdoors.

Health official. The Director of the department designated by the City Manager to enforce and administer this chapter or the Director's designated representative.

Liquid nicotine. 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 cigarettes or e-cigarettes.

Net floor area. The floor area either (1) of the interior of a food products establishment normally utilized and accessible by patrons and/or the general public for dining, including bar and lounge areas, and exterior dining areas, but excluding the restrooms, service lines, waiting areas, public telephone areas, and other common areas used by all patrons of a food products establishment serving the general public or (2) of the interior of a retail or service establishment normally utilized and accessible by patrons and/or the general public, but excluding the restrooms, service lines, waiting areas, public telephone areas, and other common areas used by all patrons of the retail or service establishment serving the general public.

Physical barrier. A barrier that will form an effective membrane continuous from outside wall to outside wall, from a smoke barrier to a 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.

Public area. Any enclosed, indoor area that is open to or is used by the general public and includes but is not limited to: retail stores, grocery stores, offices, professional, commercial or financial establishments, restaurants, public and private institutions of education, health care facilities, nursing and convalescent homes, residential treatment facilities, and buildings owned or occupied by political subdivisions.

Public business. Any deliberation between a quorum of members of any board, commission, department committee or agency within the Executive or Legislative Department of the State, or the City Council or any Board or Commission of the city at which any public business or public policy is discussed or considered or at which any formal action is taken.

Service or waiting area. An indoor line or area where persons await service of any kind, regardless of whether or not such service involves exchange of money. Such service shall include, but is not limited to, sales, restaurant seating, giving of information, directions or advice, and transfers of money or goods.

Smoke. The gases, particles or vapors released into the air as a result of combustion, electrical ignition or vaporization, including from an electronic smoking device, when the purpose of the combustion, electrical ignition or vaporization is human inhalation of the gases, particles or vapors.

Smoke does not mean the combustion of material solely for olfactory purposes that does not contain any tobacco or nicotine or the emissions from a product specifically approved by the United States Food and Drug Administration for use in mitigating, treating or preventing disease.

Smokes or Smoking. Engaging in an act that generates smoke, such as possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, a lighted cigarette, or an operating electronic smoking device.

Tobacco product. A cigarette, cheroot, stogie, cigar, snuff, smoking tobacco, chewing tobacco and any article or product made of tobacco or a tobacco substitute.

Tobacco shop. A retail establishment with annual gross revenues of at least 50 percent from the sale of tobacco products and smoking accessories.

Vending machine. Any mechanical, electric or electronic self-serving device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products.

Sec. 93.03. - Smoking prohibited in specified places.

(A) *Prohibited places.* A person commits an offense if he smokes or possesses a burning tobacco, weed, other plant product or if he smokes or possesses an operating electronic smoking device in any of the following indoor and/or enclosed areas:

- (1) A public/private primary or secondary school;
- (2) An elevator in buildings generally used by and open to the public, including elevators in office buildings, hotels and multi-family dwellings;

- (3) A library;
- (4) A museum;
- (5) A health care facility or hospital;
- (6) A public conveyance;
- (7) A room or enclosed place of public assembly in which public business is conducted when the public business requires or provides an opportunity for direct participation or observation by the general public;
- (8) An indoor or outdoor pedestrian service area in which more than one person is giving or receiving goods or services of any kind;
- (9) A food products establishment, restaurant, retail food store or convenience store, except as designated in section 93.03(B)(1)(d);
- (10) An eating establishment, bar, night club, adult entertainment establishment, billiard hall or bingo parlor;
- (11) A public rest room;
- (12) A publicly or privately owned theater, auditorium or other enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event or any other performance or event;
- (13) A day care center;
- (14) A designated seating area of any publicly or privately owned outdoor theater, outdoor athletic facility, or amphitheater;
- (15) A service station or gas station;
- (16) Any conference room, meeting room or assembly room of any hotel, motel or public or private convention center except when being used for an event to which the general public is excluded;
- (17) Within 20 linear feet of any outside entrance to a smoking prohibited area.

(B) Affirmative defenses.

- (1) It is an affirmative defense to a prosecution under division (A) that:
 - (a) the establishment did not have prominently displayed a reasonable sized notice that smoking was prohibited;
 - (b) smoking took place in a retail tobacco store that has an enclosed, separately ventilated smoking room that exhausts directly to the outside environment;
 - (c) smoking took place in any enclosed room in an establishment or facility which was being used entirely for private parties, events or other social functions;
 - (d) smoking took place in the designated smoking area as herein defined of any food products, retail or service establishment serving the general public which at the time of the smoking provided a designated smoking area equipped with a functional air purification system or functional separate ventilation system, as herein defined:
 - (i) Such systems shall have a negative pressure on the area designated for smoking to prevent air from a smoking area to be drawn across or into the nonsmoking area.

- (ii) All air ventilation systems in the designated smoking area shall provide a total air exchange every 15 minutes and shall exhaust that air to the exterior of the building.
 - (iii) A sign shall be posted on the premises in a conspicuous place to advise the public that smoking is permitted in the designated smoking area.
 - (iv) Designated smoking areas shall not include restrooms, service lines, waiting areas, public telephone areas, and other areas commonly used by all patrons, including access thereto. (items (b)-(d) moved from previous Sec. 93.07)
- (C) Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

Sec. 93.04. - Posting of signs; placing of receptacles required.

(A) *Signs.*

- (1) The owner, manager or operator of a place, establishment or conveyance regulated by section 93.03 shall have signs conspicuously placed at all entrances which state: "No Smoking Inside — No Smoking Within Twenty Feet of Entrance — City Ordinance."
 - (2) The owner, manager, operator of a place or establishment using an affirmative defense under section 93.03(B) shall have signs conspicuously placed at all entrances which state: "No Smoking Within Twenty Feet of Entrance — Smoking Area Provided Inside — City Ordinance."
- (B) *Receptacles.* The owner, manager or operator of a place, establishment or conveyance regulated by section 93.03 shall have receptacles for the extinguishment of smoking materials located within 20 feet of all entrances.

Sec. 93.05. - Additional offenses.

- (A) The owner, manager or operator of a place, establishment or conveyance regulated by section 93.03 commits an offense if he fails to post signs as required by section 93.04.
- (B) The owner, manager or operator of a place, conveyance or establishment regulated by section 93.03 commits an offense if he fails to provide extinguishment facilities as required by section 93.04.
- (C) An owner, manager or operator of a food products establishment, bar, night club, adult entertainment establishment, billiard hall or bingo parlor commits an offense if he allows smoking of a tobacco product in any area, except as provided in section 93.03(B)(1), or fails to properly maintain an air purification system or air ventilation system.

Sec. 93.06. - Vending machines.

A person commits an offense if he sells, offers for sale, allows the sale of, allows the offer for sale of, or allows the display for sale of tobacco products by use of a vending machine.

Sec. 93.07. - Culpability.

There shall be no requirement of a culpable mental state for a violation of this chapter.

Sec. 93.08. - No co-mingling of air; testing requirements.

(A) It is the intent of this chapter to define distinct and separate areas for smoking and nonsmoking use to assure a smoke-free atmosphere in nonsmoking areas and prohibit the co-mingling of air between such areas.

(B) All air purification systems and air ventilation systems shall be tested at installation and periodically thereafter at the owner's or operator's expense to insure compliance with this chapter. The initial test shall be observed by the city at the time of installation. Subsequent test shall be conducted at least every six months. The health official may also require testing at any time. Notice of testing shall be given to the health official at least 24 hours in advance so the test may be observed. Records of tests must be retained on site for a minimum of five years.

Secs. 93.09—93.98. - Reserved.**Sec. 93.99. - Penalty.**

Whoever violates any provision of this chapter shall be punished as provided in section 10.99.

Section 2.

That Title 13, Chapter 130 of the Code of Ordinances, City of Carrollton, Texas, is hereby amended by adding a new section, to be numbered Section 130.27, which said section reads as follows:

Sec. 130.27 Electronic Cigarettes and Minors*(A) Purpose and intent*

This Ordinance is adopted so that the City Council may promote, protect and improve the health, safety and general welfare of the citizens of the City by discouraging the unhealthy practice of using electronic smoking devices and liquid nicotine and to help prevent the addiction to nicotine, especially by minors, through regulation of the sale and merchandising of certain electronic cigarettes or e-cigarettes and liquid nicotine products, the regulation of which is not preempted to the federal or state government.

(B) Possession, purchase, consumption or receipt of electronic smoking devices and/or liquid nicotine by minors prohibited

(1) A person who is younger than 18 years of age commits an offense if the individual:

- (a) Possesses, purchases, consumes or accepts an electronic smoking device or liquid nicotine; or
- (b) Falsely represents himself or herself to be 18 years of age or older by displaying proof of age that is false, fraudulent or not actually proof of the individual's own age in order to obtain possession of, purchase or receive an electronic smoking device or liquid nicotine.

(2) It shall be a defense to prosecution for a violation of this section if the individual younger than 18 years of age possessed the electronic smoking device or liquid nicotine in the presence of:

- (a) An adult parent, a guardian or a spouse of the individual; or
- (b) An employer of the individual, if possession or receipt of the electronic smoking device or liquid nicotine is required in the performance of the employee's duties as an employee.

(3) It shall also be a defense to prosecution for a violation of this section that the individual younger than 18 years of age is participating in an inspection or test of compliance in accordance with Section 161.088, Health and Safety Code.

(C) Sale of electronic smoking device or liquid nicotine to persons younger than 18 years of age prohibited; proof of age required

(1) A person or retailer commits an offense if the person or retailer:

- (a) Sells, gives or causes to be sold or given an electronic smoking device or liquid nicotine to someone who is younger than 18 years of age; or
- (b) Sells, gives or causes to be sold or given an electronic smoking device or liquid nicotine to another person who intends to deliver it to someone who is younger than 18 years of age.

(2) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which electronic smoking devices and/or liquid nicotine is/are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

(3) It is a defense to prosecution under subsection (C)(1) that the person to whom the electronic smoking device or liquid nicotine was sold or given presented to the defendant apparently valid proof of identification.

(4) A proof of identification satisfies the requirements of subsection if it 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 the federal government.

(D) Vendor assisted sales required; self-service merchandising prohibited

(1) Except as provided by subsection (D)(2), a retailer or other person may not:

- (a) Offer electronic smoking devices or liquid nicotine for sale in a manner that permits a customer direct access to the electronic smoking devices or liquid nicotine;
- (b) Offer for sale or display for sale electronic smoking devices or liquid nicotine by means of self-service merchandising; or
- (c) Install or maintain an open display unit containing electronic smoking devices or liquid nicotine.

(2) It is a defense to prosecution under subsection (D)(1) if:

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

(E) Culpability

There shall be no requirement of a culpable mental state for a violation of this chapter.

Section 3.

That Title 13, Chapter 130 of the Code of Ordinances, City of Carrollton, Texas, is hereby amended by adding a new section, to be numbered Section 130.99, which said section reads as follows:

Sec. 130.99. - Penalty.

Whoever violates any provision of this chapter shall be punished as provided in section 10.99.

Section 4.

That Title 10, Chapter 10, Section 10.99(A) of the Code of Ordinances, City of Carrollton, Texas, is hereby amended in part by adding a new division, to be numbered division 10.99(A)(4), which said division reads as follows:

(4) Not to exceed \$250.00 for violation of the following Code chapters or sections:

(a) Section 130.27(B).

Section 5. Penalty

That any person, owner, occupant, firm or corporation violating a provision of this ordinance, upon conviction, is guilty of an offense punishable as provided in Section 10.99 of the Carrollton City Code as amended, for each act of violation and for each day or part of a day during which the violation is committed, continued or permitted.

Section 6. Severability

That if any section, sub-section, paragraph, clause, phrase, or provisions of this ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part or provisions hereof, other than the part so decided to be invalid or unconstitutional.

Section 7. Savings

That except as herein amended, the Carrollton Code of Ordinances, as amended, shall remain in full force and effect.

Section 8.

That this ordinance shall become effective after its passage and approval by the City Council and its publication.

PASSED AND APPROVED this the 15th day of April, 2014.

CITY OF CARROLLTON, TEXAS


Matthew Marchant, Mayor

ATTEST:


Ashley Mitchell, City Secretary

APPROVED AS TO FORM:


Regina Edwards,
1st Asst. City Attorney

APPROVED AS TO CONTENT:


Scott Hudson
Environmental Services Director