



ORDINANCE NO. 3273

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING CHAPTER 46 "MISCELLANEOUS OFFENSES" OF THE CODE OF ORDINANCES OF THE CITY OF FARMERS BRANCH, TEXAS, BY ADDING ARTICLE V, "SALE AND MERCHANDISING OF ELECTRONIC CIGARETTES AND LIQUID NICOTINE TO MINORS", ADDING SECTIONS 46-70 THROUGH 46-73; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00) PER OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, new, unregulated high-tech smoking devices, commonly referred to as "electronic cigarettes" or "e-cigarettes" have recently become more available to consumers; and

WHEREAS, nicotine is a known neurotoxin that is also one of the most highly addictive substances available for public consumption; and

WHEREAS, the manufacturers and marketers of e-cigarettes purposefully and intentionally advertise their products as safe nicotine delivery devices and smoking cessation modalities; and

WHEREAS, e-cigarettes manufacturers offer their liquid nicotine cartridges in a variety of flavors, including cherry, chocolate, and vanilla, which flavorings the Food and Drug Administration ("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 nicotine content provided by e-cigarettes is unknown and unspecified and presents a significant risk of rapid addiction or overdose; and

WHEREAS, protecting the younger citizens of the City of Farmers Branch against an untested nicotine product like e-cigarettes and liquid nicotine represents sound public health and fiscal policy; and

WHEREAS, a ban on the sale of e-cigarettes and liquid nicotine and like products to persons under the age of 18, a prohibition on self-service merchandising in the retail sale of e-cigarettes, liquid nicotine, and like products in order to minimize their physical accessibility to minors, and the prohibition of the possession of such products by minors, serves an important public interest in furtherance of the health, safety, and general welfare of the citizens of the City of Farmers Branch;

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

SECTION 1. Chapter 46 “Miscellaneous Offenses” of the Code of Ordinances of the City of Farmers Branch, Texas, is amended by adding Article V “Sale and Merchandising of Electronic Cigarettes and Liquid Nicotine to Minors”, by adding Sections 46-70 through 46-73, which shall read as follows:

“CHAPTER 46 MISCELLANEOUS OFFENSES

...

ARTICLE V. - SALE AND MERCHANDISING OF ELECTRONIC CIGARETTES AND LIQUID NICOTINE TO MINORS

Sec. 46-70. Definitions.

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

Business means any sole proprietorship, joint venture, partnership, corporation, limited liability company, or other entity formed for profit making or non-profit purposes, including but not limited to all retail establishments where goods or services are sold or offered for sale.

Electronic cigarette and *e-cigarette* mean any electronic device composed of a mouthpiece, heating element, battery, and electronic circuits that provides, or is manufactured or intended to provide, a vapor of liquid nicotine and/or other substances mixed with propylene glycol and/or other substances delivered or deliverable to the user that he or she can inhale in simulation of smoking. This term shall include every version and type of such devices whether they are manufactured or marketed as e-cigarettes, e-cigars, e-pipes, or under any other product name or description.

Liquid nicotine means 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 e-cigarettes.

Open display unit, in the context of the retail sale of e-cigarettes and liquid nicotine, means any device, furniture, or furnishing within or upon which e-cigarettes or liquid nicotine are displayed to customers, and includes, but is not limited to, any case, rack, shelf, counter, table, desk, kiosk, booth, stand, and other surface.

Person means any natural person, individual, sole proprietor, partnership, cooperative association, corporation, limited liability company, personal representative, receiver, trustee, assignee, or other legal entity.

Retailer means any person or business that operates a store, stand, booth, concession, or other place at which sales of e-cigarettes and/or liquid nicotine are made to purchasers for consumption or use.

Self-service merchandising, in the context of the retail sale of e-cigarettes and liquid nicotine, means the open display of e-cigarettes and liquid nicotine, whether packaged or otherwise, for direct retail customer access and handling prior to purchase without the intervention of assistance of the retailer or the retailer's owner, employee, or agent. Such open display includes the use of an open display unit.

Sec. 46-71. Sale of e-cigarettes to minors prohibited.

No person, business, retailer, or other establishment shall sell, permit to be sold, or offer for sale within the city to any person under eighteen (18) years of age any e-cigarette or liquid nicotine. A violator of this section includes the person who sells, permits to be sold, or offers for sale within the city any such product to a person under eighteen (18) years of age as well as his or her employer and any person who controls the person who sells, permits to be sold, or offers for sale within the city any such product to a person under eighteen (18) years of age.

Sec. 46-72. Self-service merchandising prohibited.

(1) No person, business, retailer, or other establishment engaged in the retail sale of e-cigarettes or liquid nicotine shall sell, permit to be sold, offer for sale, or display for sale e-cigarettes or liquid nicotine within the city by means of self-service merchandising which allows a purchase of e-cigarettes or liquid nicotine without verification of the age of the purchaser.

(2) No person, business, retailer, or other establishment engaged in the retail sale of e-cigarettes or liquid nicotine shall place e-cigarettes or liquid nicotine in an open display unit within the city unless the same is located in an area that is inaccessible to a person under eighteen (18) years of age.

Sec. 46-73. Possession prohibited.

A minor commits an offense if the minor possesses an electronic cigarette provided, however, it is not a violation of this section for a minor to possess a tobacco product if such possession would be a violation of V.T.C.A., Penal Code section 48.01.

SECTION 2. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 3. Any person violating any provision of this ordinance shall be deemed guilty of a misdemeanor and upon conviction shall be fined a sum not to exceed Five Hundred Dollars (\$500.00) for each offense.

SECTION 4. If any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be judged to be invalid or unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole or any portion thereof other than the portion so decided to be invalid or unconstitutional.

SECTION 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such case provide.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THE 18th DAY OF MARCH, 2014.

ATTEST:

APPROVED:

Angela Kelly, City Secretary

William P. Glancy, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(PGS:1-4-14:TM 64624)