



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE FARMERS BRANCH CODE OF ORDINANCES CHAPTER 34 "ENVIRONMENT," ARTICLE III "AIR POLLUTION," DIVISION 2 "SMOKING" AMENDING SECTION 34-142 "DEFINITIONS" ADDING DEFINITIONS FOR THE WORDS "E-CIGARETTE" AND "SMOKE OR SMOKING;" AMENDING SECTION 34-143 "PROHIBITED IN CERTAIN PUBLIC AREAS" BY PROHIBITING SMOKING IN PUBLIC PARKS AND ADDING CERTAIN DEFENSES; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00); AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Farmers Branch finds that secondhand smoke exposure causes disease and premature death in children and adults who do not smoke, and children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children;

WHEREAS, exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer;

WHEREAS, there is no risk-free level of exposure to secondhand smoke; and

WHEREAS, establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services.)

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

SECTION 1. The City of Farmers Branch Code of Ordinances is amended by amending Chapter 34 "Environment," Article III "Air Pollution Division 2, "Smoking"" as follows:

- A.** Section 34-142 "Definitions" is amended by adding definitions for the words "E-cigarette," "Smoke or Smoking" to read as follows:

E-cigarette means an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device. The

term does not include a prescription medical device unrelated to the cessation of smoking. The term includes:

- (a) a device described by this definition regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and
- (b) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

Smoke or *smoking* means inhaling, exhaling, or burning a lighted cigar, cigarette, pipe or other lighted tobacco product in any manner or form; or inhaling or exhaling from an e-cigarette.

- B.** Section 34-143 “Prohibited in Certain Public Areas” is amended in its entirety to read as follows:

Sec. 34-143. – Prohibited in certain public areas.

- (a) *Enumeration.* A person commits an offense if the person smokes or possesses a burning tobacco, weed or other plant product in any of the following areas:
 - (1) Any public conference room, public meeting room or public service area of any facility owned, operated or managed by the city;
 - (2) Any retail or service establishment serving the public including, but not limited to, any department store, grocery store or drugstore;
 - (3) An area marked with a no smoking sign in accordance with subsection (b) of this section by the owner or person in control of a retail and service establishment serving the public;
 - (4) An enclosed theater, movie house, library or museum; or
 - (5) On any property owned, leased, or otherwise operated by a governmental entity as a public park or recreational facility.
- (b) *Posting of prohibitive signs.* The owner or person in control of an establishment or area designated in subsection (a) of this section shall post a conspicuous sign at the main entrance to the establishment. The sign shall contain the words “No Smoking, City of Farmers Branch Ordinance,” the universal symbol for no smoking, or other language that clearly prohibits smoking.

(c) *Designation of smoking area; limitations.*

- (1) The owner or person in control of an establishment or area described in subsections (a)(2) or (a)(4) of this section may designate an area including, but not limited to, lobbies, meeting rooms or waiting rooms, as a smoking area; provided, however, that the designated smoking area may not include the following:
 - (i) The entire establishment;
 - (ii) Cashier areas or over-the-counter sales areas; or
 - (iii) The viewing area of any theater or movie house
- (2) The Director of Parks and Recreation or designee may designate one or more smoking areas within the City's public parks and recreational facilities by the placement of signs designating the smoking areas.

(d) *Defense to prosecution.* It is a defense to prosecution under this section if the person was smoking in a location that was:

- (1) A designated smoking area of a facility or establishment described in subsection (a)(2), (a)(4), or (a)(5) of this section which is posted as a smoking area with appropriate signs;
- (2) An administrative area or office of an establishment described in subsection (a)(2) or (a)(4) of this section;
- (3) A retail and service establishment serving the general public with less than 500 square feet of public showroom or service space or having only one employee on duty, unless posted as designated in subsection (a)(3) of this section;
- (4) A retail and service establishment which is primarily engaged in the sale of tobacco, tobacco products or smoking implements;
- (5) A retail and service establishment which is a food products establishment regulated by Section 34-145; and
- (6) In a motor vehicle parked within a parking area of a public park or recreational facility with the doors and windows of the vehicle closed so that smoke or vapor cannot emanate from the vehicle.

- (e) *Outdoor Areas of Public Parks; No Defense.* Except as provided in subsection (d) of this section, it is not a defense to a violation of subsection (a)(5) of this section that the person was on the exterior of any building when the person was smoking.

SECTION 2. All provisions of the ordinances of the City of Farmers Branch in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Farmers Branch not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. Should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 4. 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 5. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 6. This Ordinance shall take effect on July 8, 2019, after its passage and the publication of the caption, as the law and charter in such cases provide.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THIS THE 8TH DAY OF JANUARY 2019.

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Robert C. Dye, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:1/3/19:105142)