

ORDINANCE NO. 2014-\_\_

AN ORDINANCE AMENDING CITY OF BURNET CODE OF ORDINANCES, CHAPTER 70—OFFENSES AND MISCELLANEOUS PROVISIONS, ARTICLE III—SMOKING, BY REPEALLING SEC. 70-64, PENALTIES; ESTABLISHING A DEFINITION SECTION; ESTABLISHING A NEW SMOKING PROHIBITED SECTION; ESTABLISHING A NEW EXEMPTIONS SECTION; ESTABLISHING A NEW NO SMOKING SIGNAGE SECTION; ESTABLISHING A NEW POSSESSION BY AND SALE TO MINORS SECTION; ESTABLISHING A NEW SECTION PENALTIES SECTION; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FINDING COMPLIANCE WITH THE OPEN MEETING ACT, CH 551, LOCAL GOVERNMENT CODE.

**WHEREAS**, the City Council of the City of Burnet has determined that exposure to second-hand smoke generated by the smoking, or burning of tobacco, or other combustible plants or plant derived products including but not limited to cigarettes, cigars, and pipes has a deleterious effect on the health, safety and welfare of the general public; and

**WHEREAS**, reasonable and prudent regulation of smoking or burning of said products in public places will serve to protect the health, safety and welfare of the general public; and

**WHEREAS**, the vapor generated by use of e-cigarettes contains unknown quantities of nicotine and other unidentified particles: and

**WHEREAS**, medical agencies including, the World Health Organization, based on concerns regarding the hazards that e-cigarette vapors pose to children and non-smoking adults, have called for regulation of the use and sale of e-cigarettes: and

**WHEREAS**, the City Council, while convened in open meeting in compliance with the Open Meeting provisions of Chapter 551 of the Texas Local Government Code has determined that prohibiting smoking and vaping in public places and within fifteen (15) feet of any entrance or operable window of a public space or enclosed area in which smoking is prohibited provides a reasonable and prudent method of promoting said health, safety and welfare of the general public;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT:**

**Section 1. Findings.** The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

**Section 2. Sec. 70-64. Penalties Repealed.** Sec. 70-64. "Penalties," is hereby repealed in its entirety.

**Section 3. Definitions.**

- (a) E-CIGARETTE means any device which simulates tobacco smoking by producing a vapor that resembles smoke.
- (b) ENCLOSED AREA means a space that is enclosed on all sides by solid walls that extend from the floor to the ceiling, exclusive of windows and doors.
- (c) OPERATOR means the owner or person in charge of a public place or workplace, including an employer.
- (d) PUBLIC PLACE means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, waiting rooms, and offices unless exempted as provided for herein. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
- (e) RETAIL TOBACCO STORE means a retail store used primarily for the sale of tobacco products and accessories and in which the sale of other non-tobacco products is incidental.
- (f) SMOKING/SMOKES means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible plant or plant derived substance. For the purpose of this ordinance, the term smoking/smokes shall include vaping.
- (g) VAPING mean the act of inhaling water vapor through an e-cigarette.

**Section 4. Smoking Prohibited.**

- (a) A person commits an offense if the person Smokes:
  - (1) In a Public Place.
  - (2) Within fifteen (15) feet from an entrance or operable window of an enclosed area in which Smoking is prohibited.
- (b) The owner, or Operator, of a Public Place commits an offense if the person fails to take necessary steps to prevent or stop another person from smoking in an Enclosed Area in a Public Place.

## **Section 5. Exemptions.**

Public Places and Enclosed Areas listed below are exempt from the provisions of this chapter.

- (a) A dwelling unit used exclusively for residential use;
- (b) A facility operated by a fraternal organization for a charitable, benevolent, or educational function if the premises is controlled by the organization; and if
  - (1) Areas in which Smoking is permitted are clearly signed as smoking areas
  - (2) An enclosed non-smoking area is provided and identified by no smoking signage complying with the terms of this chapter;
  - (3) The smoking area is mechanically ventilated to prevent smoke and vapors from entering a non-smoking area; and
  - (4) No one under the age of 18 is admitted to the smoking area;
- (c) A hotel or motel room designated and signed as a smoking room by the Operator.
- (d) An office or other enclosed workspace that is not readily accessible by the general public provided the Operator has designated and signed said office or workspace as an area in which Smoking is permitted, and Smoking is not otherwise prohibited by the adopted fire code of the City;
- (e) A private or semi-private room in a nursing home or long-term care facility that the Operator has designated and signed as a smoking room and is occupied by individuals who Smoke and have requested in writing to be placed in a room where Smoking is permitted;
- (f) A Retail Tobacco store;
- (g) A fenced, or otherwise contained patio or outdoor area that is adjunct to and restricted to use by patrons of a restaurant, café, or bar if said patio or outdoor area satisfies the requirements of this chapter, or if:
  - (1) The Operator has designated and signed said patio or outdoor area as an area in which Smoking is permitted; and
  - (2) Said patio or outdoor area is not located on a public sidewalk, alley, or right-of-way; and

- (3) Said patio or outdoor area is located at least fifteen (15) feet from any operable window and any doorway used as a building entrance by the general public.

#### **Section 6. No Smoking Signage.**

- (a) The Operator of a Public Place shall conspicuously post a "No Smoking" sign displaying the international "No Smoking" symbol (depiction of a burning cigarette enclosed in a red circle with a red bar across it). No Smoking signs shall also contain words prohibiting the use of E-cigarettes.
- (1) In each Public Place where Smoking is prohibited by this chapter; and
- (2) At each entrance to a Public Place.
- (b) The Operator of a Public Place shall conspicuously post signs in areas where smoking is permitted.
- (c) The Operator of a Public Place shall remove any ashtray or other smoking accessory from a place where smoking is prohibited.
- (d) It is not a defense to prosecution under this chapter that an Operator failed to post a sign required under this section.

#### **Section 7. E-cigarettes, possession by and sale to minors.**

- (a) Possession of an E-cigarette by a minor shall be a violation of this ordinance.
- (b) Sale of an E-cigarette to a minor shall be a violation of this ordinance.

#### **Section 8. Penalties.**

Any person convicted of violating any provision of this article shall be guilty of a Class "C" misdemeanor and shall be subject to a fine in an amount not to exceed \$100.00 for a first offense, \$250 for a second offense, and \$500.00 for any subsequent offense. Each day of such violation shall be a separate violation.

**Section 9. Repealer.** That if other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent that they are in conflict.

**Section 10. Severability.** That if any provisions of this ordinance shall be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.

**Section 11. Open Meetings.** That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act, Ch. 551, Loc. Gov't. Code.

**PASSED AND APPROVED** on First Reading this \_\_\_\_ day of \_\_\_\_, 2014.

**FINALLY PASSED AND APPROVED** on this \_\_\_\_ day of \_\_\_\_, 2014.

**CITY OF BURNET, TEXAS**

\_\_\_\_\_  
Gary Wideman, Mayor

**ATTEST:**

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Kelly Dix, City Secretary