

ORDINANCE NO. 4302

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 10 OF THE CODE OF THE CITY OF MESQUITE, TEXAS, AS AMENDED, BY ADDING A NEW ARTICLE XII, "E-CIGARETTE REGULATIONS" THEREBY PROHIBITING THE SALE TO MINORS OF E-CIGARETTES AND LIQUID NICOTINE, AND REGULATING THE OPEN DISPLAY AND ACCESS TO SUCH PRODUCTS WITHIN THE CITY LIMITS OF THE CITY OF MESQUITE; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED FIVE HUNDRED (\$500.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City Council of the City of Mesquite (the "City Council") has investigated and determined that electronic cigarettes ("e-cigarettes") are devices that deliver nicotine and other additives to the user in an aerosol; and

WHEREAS, the City Council has further investigated and determined that the devices have been on the American market for only seven years; and

WHEREAS, the City Council has further investigated and determined that on February 22, 2014, the New York Times reported that sales of e-cigarettes more than doubled last year from 2012; and

WHEREAS, the City Council has further investigated and determined that the number of stores that sell e-cigarettes quadrupled in the last year according to the Smoke Free Alternatives Trade Association, an e-cigarette industry trade group; and

WHEREAS, the City Council has further investigated and determined that in the Tobacco Control Act, Congress recognized that nicotine is an addictive drug; and

WHEREAS, the City Council has further investigated and determined that the U. S. Food and Drug Administration ("FDA") acknowledges that the safety and efficacy of e-cigarettes have not been fully studied; therefore, according to Public Health Law Center reports, there are no current manufacturing standards for these products, which can contain carcinogens and dangerous levels of nicotine; and

WHEREAS, the City Council has further investigated and determined that the FDA has also noted that e-cigarettes are marketed and sold to young people and are available in different flavors, such as gummy bear and cotton candy, which may appeal to young people; and

WHEREAS, the City Council has further investigated and determined that according to a September 2013 report from the Centers for Disease Control and Prevention ("CDCP Report"), e-cigarette experimentation and recent use doubled among U.S. middle and high school students during 2011-12; and

WHEREAS, the City Council has further investigated and determined that the CDCP Report stated concerns, including “the potential negative impact of nicotine on adolescent brain development, as well as the risk for addiction and initiation of the use of conventional cigarettes or other tobacco products;” and

WHEREAS, the City Council has further investigated and determined that e-cigarettes are not yet regulated by state or federal law; and

WHEREAS, the City Council has further investigated and determined that the FDA is considering appropriate regulation of e-cigarettes, but it is essential for the City of Mesquite (the “City”) to impose some type of reasonable restriction on these products until a federal regulatory system may be properly implemented; and

WHEREAS, the City Council has further investigated and determined that the regulation of e-cigarettes and liquid nicotine is in the best interests of the City and will promote the health, safety and welfare of the citizens of the City and the general public by, among other things, prohibiting sale of e-cigarettes to minors to discourage introduction of and exposure to smoking to youth, many of whom have historically had limited exposure to smoking due to the widespread adoption of smoking-free laws.

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

SECTION 1. That Chapter 10 of the Code of the City of Mesquite, Texas, as amended, is hereby amended by adding a new Article XII to read as follows, in all other respects said Code and Chapter to remain in full force and effect:

## **ARTICLE XII. E-CIGARETTE REGULATIONS**

### **Sec. 10-214. Purpose.**

The purpose of this section is to prohibit the sale to minors, of e-cigarettes and liquid nicotine, both hereinafter defined, within the city limits of the City of Mesquite.

### **Sec. 10-215. Definitions.**

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

*Electronic cigarette* or *e-cigarette* means any oral device, such as one composed of an atomizer or vaporizer, heating element, battery, electronic circuit or similar device, that allows users to inhale a vapor of liquid nicotine or other substances, and the use of which simulates smoking. The definition of e-cigarette includes any of its component parts. The term includes such devices regardless of the details of the product appearance or marketed name, included but not limited to e-cigarette, e-cigar, e-pipe, e-hookahs, vape pipes or any other product name or descriptor.

*Liquid nicotine* means any liquid product, composed either in whole or in part of nicotine, propylene glycol, lobelia, and/or any other substance, and manufactured for use with e-cigarettes.

*Minor* means any individual younger than 18 years of age.

*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 an individual, corporation, partnership, wholesaler, retailer or any licensed or unlicensed business.

*Proof of identification* means identification that 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 federal government.

*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.

**Sec. 10-216. Sale, distribution or offering for sale to minor prohibited.**

- (a) *Offense.* It shall be unlawful for any person to give, sell or offer for sale an e-cigarette, liquid nicotine or sample to a minor within the territorial limits of the City of Mesquite.
- (b) *Defenses.* It shall be a defense to the above offense if:
  - (1) The minor is in the presence of a parent, guardian, spouse or other adult to whom the minor had been committed by a court; or
  - (2) The minor presents an apparently valid proof of identification.

**Sec. 10-217. Vendor-assisted sales required; self-service merchandising prohibited.**

- (a) *Offenses.* A retailer or other person may not:
  - (1) Offer e-cigarettes or liquid nicotine for sale in a manner that permits a customer direct access to the e-cigarettes or liquid nicotine;
  - (2) Offer for sale or display for sale e-cigarettes or liquid nicotine by means of self-service merchandising; or
  - (3) Install or maintain an open display unit containing e-cigarettes or liquid nicotine.
- (b) *Defenses.* It shall be a defense to the above offense if:

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

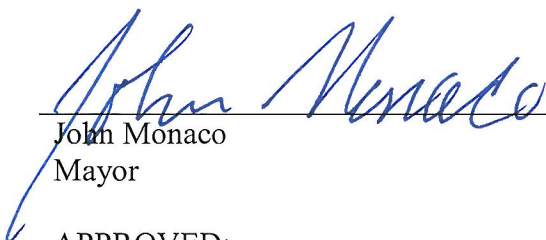
SECTION 2. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

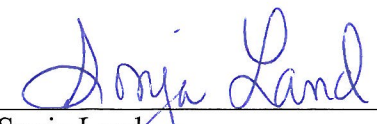
SECTION 4. That any person (as defined in Chapter 1, Section 1-2 of the Code of the City of Mesquite, Texas, as amended) violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction thereof, shall be subject to a fine not to exceed Five Hundred (\$500.00) Dollars for each offense, provided, however, if the maximum penalty provided for by this ordinance for an offense is greater than the maximum penalty provided for the same offense under the laws of the State of Texas, the maximum penalty for violation of this ordinance for such offense shall be the maximum penalty provided by the laws of the State of Texas. Each day or portion of a day any violation of this ordinance continues shall constitute a separate offense.

SECTION 5. That this ordinance shall take effect on April 15, 2014.

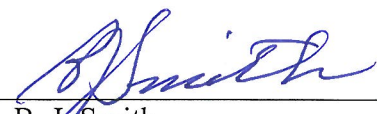
DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 17th day of March, 2014.

  
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John Monaco  
Mayor

ATTEST:

  
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Sonja Land  
City Secretary

APPROVED:

  
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B. J. Smith  
City Attorney