

ORDINANCE NO. 2023.6.21.3

**AN ORDINANCE OF THE CITY OF FLATONIA AMENDING
CHAPTER 4 BUSINESS REGULATIONS TO INCLUDE ARTICLE
4.08 SMOKE SHOPS AND TOBACCO STORES PROVIDING FOR
LOCATION LIMITATIONS AND STANDARD CONDITIONS;
PROVIDING FOR PENALTIES; PROVIDING FOR REPEALER**

WHEREAS, the City of Flatonia has an interest and duty to protect the public health and safety of its citizens;

WHEREAS, the liquid used in e-cigarettes typically contains nicotine and is properly classified as a tobacco product;

WHEREAS, burned or vaporized nicotine products are addictive and therefore pose a special risk to minors exposed to them;

WHEREAS, burned or vaporized tobacco products, with or without nicotine, have a negative impact on public health;

WHEREAS, tobacco paraphernalia for the burning or vaporized consumption of nicotine or other legal liquid substances can also be used for the consumption of illegal liquid substances; and

WHEREAS, therefore the City Council for the City of Flatonia desires to enact reasonable and necessary regulations on the sale of burned and vaporized tobacco products and paraphernalia.

BE IT AND IT IS HEREBY ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF FLATONIA, IN THE COUNTY OF FAYETTE, THAT THE REVISED GENERAL ORDINANCES OF THE CITY OF FLATONIA ARE HEREBY AMENDED AS FOLLOWS:

SECTION 1: FINDINGS OF FACT: The foregoing recitals are incorporated into this ordinance by reference as findings of fact as if expressly set forth herein.

SECTION 2: SMOKE SHOPS AND TOBACCO STORES. Chapter 4 “Business Regulations” is hereby amended to include Article 4.08 “Smoke Shops and Tobacco Stores” as provided in the attached Exhibit A.

SECTION 3: REPEALER: In the case of any conflict between the other provisions of this ordinance and any existing ordinance of the City, the provisions of this ordinance will control.

EXHIBIT A

ARTICLE 4.08 – SMOKE SHOPS AND TOBACCO STORES

Section 4.08.01 Purpose.

The regulation of smoke shops and tobacco stores is necessary and in the interests of the public health, safety and general welfare because there is the substantial likelihood of the continued and expanded operation of smoke shops and tobacco stores in the City of Flatonia. The expansion of smoke shops and tobacco stores in the city would result in undesirable impacts to the community. Among these impacts are increased potential for tobacco sales to minors, greater opportunity for the sale of illegal drug paraphernalia that is marketed as tobacco paraphernalia, and heightened risk of negative aesthetic impacts, blight, and loss of property values of residential neighborhoods and businesses in close proximity to such uses.

Section 4.08.02 Definitions.

Ancillary sale means where a grocery store, supermarket, convenience store or similar market uses no more than two (2) percent of its gross floor area, or two hundred (200) square feet, whichever is less, for the display, sale, distribution, delivery, offering, furnishing, or marketing of conventional cigars, cigarettes or tobacco. For any grocery store, convenience market, retail kiosk or similar use consisting of two hundred fifty (250) square feet or less, "ancillary sale" shall mean where no more than five (5) square feet are used for the display, sale, distribution, delivery, offering, and furnishing, or marketing of conventional cigars, cigarettes, or tobacco.

E-cigarette means any electronically actuated device or inhaler meant to simulate cigarette smoking that uses a heating element to vaporize a liquid solution. Popularly referred to as "juice," and that causes the user to exhale any smoke, vapor, or substance other than that produced by unenhanced human exhalation. The juice used in e-cigarettes typically contains nicotine, and for this reason e-cigarettes and their juice can be classified as both tobacco products and tobacco paraphernalia.

Smoke shop and tobacco store mean any premises dedicated to the display, sale, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, or tobacco paraphernalia; provided, however, that any grocery store, supermarket, convenience store or similar retail use that sells tobacco products as an ancillary sale shall not be defined as a "smoke shop and tobacco store" and shall not be subject to the restrictions in this chapter.

Tobacco means any preparation of the nicotine-rich leaves of the tobacco plant, which are cured by a process of drying and fermentation for use in smoking, chewing, absorbing, dissolving, inhaling, sorting, sniffing, or ingesting by any other means into the body.

Tobacco paraphernalia means any paraphernalia, equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other controlled substances as defined in Texas Health and Safety Code. Items or devices classified as tobacco paraphernalia include, but are not limited to, the following: pipes, punctured metal

bowls, bongs, water bongs, electric pipes, e-cigarettes. E-cigarette juice, buzz bombs, vaporizers, hookahs, and devices for holding burning material. Lighters and matches shall be excluded from the definition of tobacco paraphernalia.

Tobacco product means any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant, or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. For the purposes of this chapter, the term "tobacco product" excludes any product that has been specifically approved by the United States Food and Drug Administration (FDA) for sale as a tobacco/smoking cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved purpose.

Section 4.08.03 Location.

(a) Location restrictions for smoke shops and tobacco stores shall be as follows:

(1) Smoke shops and tobacco stores shall not be located within three hundred (300) feet, measured property line to property line, from a school (public or private), family day care home, childcare facility, and youth center, community center, recreational facility, park, church or religious institution, hospital, or other similar uses where children regularly gather.

(2) Smoke shops and tobacco stores shall not be located within one thousand (1,000) feet, measured property line to property line, from another smoke shop and tobacco store.

(3) It is unlawful for a smoke shop and tobacco store to knowingly allow or permit a minor, not accompanied by his or her parent or legal guardian, to enter or remain within any smoke shop and tobacco store.

(4) Smoke shops and tobacco stores shall post clear signage stating that minors may not enter the premises unless accompanied by a parent or legal guardian. At least one (1) such sign shall be placed in a conspicuous location near each public entrance to the smoke shop and tobacco store. It shall be unlawful for a smoke shop and tobacco store to fail to display and maintain, or fail to cause to be displayed or maintained, such signage.

(b) For the purposes of subsection (a) of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a Smoke Shop or Tobacco Store is conducted, to the nearest property line of the relevant premises.

(c) Smoke shops and tobacco stores that are legally existing on the effective date of the ordinance codified in this chapter may continue to operate as legal nonconforming uses in accordance with this chapter. However, any change or expansion of the legal nonconforming use may require compliance with this chapter.

Section 4.08.04 Standard Conditions.

(a) Standard conditions of smoke shop and tobacco stores at minimum shall include the following:

- (1) No smoking shall be permitted on the premises at any time.
- (2) No sales may be solicited or conducted on the premises by minors.
- (3) No self-service tobacco, tobacco product, or tobacco paraphernalia displays shall be permitted. Each item displayed shall be deemed as a separate violation.
- (4) No distribution of free or low-cost tobacco, tobacco products or tobacco paraphernalia, as well as coupons for said items, shall be permitted.

Section 4.08.05 Penalty.

Any violation of this article shall be considered a class C misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). Every day that a violation exists is a separate offense.

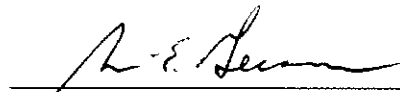
SECTION 4: SEVERABILITY: If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, that invalidity or the unenforceability will not affect any other provisions or applications of this ordinance that can be given effect without the invalid provision.

SECTION 5: EFFECTIVE DATE: This ordinance shall be effective upon signing, 2023.

SECTION 6: PROPER NOTICE & MEETING: It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

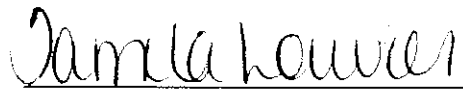
READ and APPROVED on First Reading on the 21st day of June 2023.

APPROVED:



Dennis Geesaman
Mayor

ATTEST:

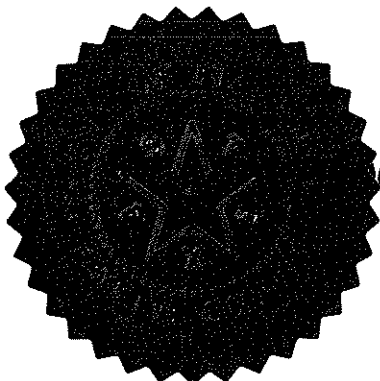


Tammy Louvier
City Secretary

Approved as to Form:

DocuSigned by:


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City Attorney



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Adopted June 21, 2023
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