

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CITY OF MISSION CODE OF ORDINANCES APPENDIX A – ZONING, ARTICLE XII. COMMERCIAL AND INDUSTRIAL AREA REQUIREMENTS, SECTION 1.58 GENERAL; BY ADDING SUBSECTION 4, SMOKE SHOPS AND TOBACCO STORES, BY ESTABLISHING A 1,000 FEET MINIMUM RADIUS AND DISTANCE REQUIREMENT FROM A SCHOOL, FAMILY DAY-CARE HOME, CHILD-CARE FACILITY, YOUTH CENTER, COMMUNITY CENTER, RECREATIONAL FACILITY, PARK, CHURCH OR RELIGIOUS INSTITUTIONS, HOSPITAL OR FROM OTHER SMOKE SHOPS OR TOBACCO STORES, PROVIDING REPEALER CLAUSE; PROVIDING SEVERABILITY CLAUSE; PROVIDING EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION.

WHEREAS, The City of Mission is a home-rule municipality possessing the full power of local self-governance pursuant to Article XI, Section 5 of the Texas Constitution; and

WHEREAS, Pursuant to the laws of the State of Texas, including Section 51.001 of the Texas Local Government Code, the City Council has the authority to adopt or amend an ordinance that, among other things, is for good government peace or order of Mission; and

WHEREAS, the City is authorized by the Texas Local Government Code §51.001 to adopt or amend any ordinance that is for the good government, peace, or order of the municipality or for the trade and commerce of the municipality; and

WHEREAS, Chapter 54 of the Texas Government Code authorizes the City to adopt a fine or penalty for the violation of a rule, ordinance or other police regulation; and

WHEREAS, Section 54.004 allows the City to enforce ordinances necessary to protect health, life, and property, and to preserve the good government, order, and security of the municipality and its inhabitants; and

WHEREAS, Chapter 211 of the Texas Local Government Code authorizes the City to adopt zoning regulations for the purpose of promoting health, safety, morals, or general welfare, and protecting and preserving places and areas of historical, cultural, or architectural importance and significance; and

WHEREAS, the regulation of smoke shops and tobacco stores is necessary and in the best interest of the public health, safety, and general welfare because there is a substantial likelihood of the establishment and operation of smoke shops and tobacco stores in the city; and the expansion of smoke shops and tobacco stores in the city would result in undesirable impacts to the community; and

WHEREAS, 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 such as blight and loss of property values of residential neighborhoods and businesses in close proximity to such uses; and

WHEREAS, based on a report by the Centers for Disease Control and Prevention (CDC), electronic cigarette (“e-cigarette”) use among adolescents is at epidemic levels. About 3 million U.S. high school students reported using e-cigarettes in 2018, a 78 percent increase from 2017. E-cigarette use among U.S. middle school students increased almost 50 percent, with 570,000 of those students reporting usage. Since 2014, teenagers are more likely to use e-cigarettes than to tobacco cigarettes or other tobacco products; and

WHEREAS, the CDC issued a health advisory on August 30, 2019, after finding that a multi-state outbreak of severe pulmonary disease was associated with e-cigarette use. The advisory went on to state that hundreds of e-cigarette users – many of them adolescents and young adults – have been sickened and some have died from e-cigarette usage. Further, some of these e-cigarette users are requiring a ventilator to breathe because of usage. The CDC warns that teens and young adults, and women who are pregnant, should not vape; and

WHEREAS, the CDC finds that e-cigarette advertising reaches four out of five middle and high school students (CDC, 2018); and

WHEREAS, teens who vape are more likely to start and continue cigarette smoking. It is estimated that 498,000 Texas teens under the age of 18 will die prematurely from cigarette smoking if it is not curbed. Cigarette smoking costs the State of Texas more than \$10 billion each year in health care and Medicaid dollars; and

WHEREAS, in the summer of 2018, the Federal Drug Administration (FDA) conducted its largest coordinated enforcement effort by conducting unannounced undercover inspections of stores-brick-and-mortar locations as well as online retailers that sold e-cigarettes to minors. The FDA issued more than 1,300 warning letters and civil fines to retailers. Most of the violations were for the illegal sale of five e-cigarette products: Vuse, Blu, JUUL, MarkTen XL, and Logic, which comprise more than 97 percent of the U.S. market for e-cigarettes, according to the FDA. The crackdown was prompted by clear signs that youth use of e-cigarettes has reached an epidemic proportion; and

WHEREAS, as of September 1, 2019, it is against Texas law for stores to sell or give e-cigarettes, regular cigarettes, and other tobacco products to young adults and children 20 years and younger, and for young adults and children 20 years and younger to possess or use those tobacco products; and

WHEREAS, e-cigarette retailers tend to offer for sale consumables containing Cannabidiol (CBD), tetrahydrocannabinol (THC), Delta-8 tetrahydrocannabinol (also called Delta-8 THC or Delta8), Delta-9 tetrahydrocannabinol (Delta-9 or Delta 9 THC), Delta-10 tetrahydrocannabinol (Delta-10 or Delta 10 THC), or tetrahydrocannabinol acid (THCA) products; and

WHEREAS, the regulation of e-cigarette retailers is necessary and in the interests of the public health, safety, and general welfare, because there is the substantial likelihood of the establishment and operation of such stores in the City, the expansion of which could result in undesirable impacts to the community; and

WHEREAS, among these impacts are increased potential for 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; and

WHEREAS, the Mission Police Department has enforced violations of Texas Laws pertaining to e-cigarette, vapes and other dangerous drugs; and

WHEREAS, considering the close proximity of several e-cigarette retailers near schools, with the growing number of violent robberies at vape shops and after consideration of the prevalence of e-cigarette use among adolescents from the studies and reports and the finds mentioned herein, the City proposes to establish land spacing regulations to limit the establishment of some and tobacco shops within the City in proximity to a church, hospital, daycare, or public or private primary or secondary school campus. To be specific, no new smoke shop or tobacco stores within 1,000 feet of a church, park, hospital, daycare, or public or private primary or secondary school campus; and

WHEREAS, this ordinance contains regulations consistent with good zoning and planning practices to address such negative impacts of e-cigarette retailers while providing a reasonable number of locations and zones for such shops/stores within the City

WHEREAS, The Planning and Zoning Commission has reviewed the proposed amendment and has recommended approval; and

WHEREAS, The City Council of the City of Mission finds that it is in the best interest of the citizens of Mission to amend the Code of Ordinances as set forth below;

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

SECTION 1: That the City of Mission Code of Ordinances, Appendix A – Zoning, Article XII. – Commercial and Industrial Area Requirements, Section 1.58, be hereby amended by adding Subsection 4, Smoke Shops and Tobacco Stores, the language underlined (added) to read in full as follows. *The remaining sections are to remain in force.

Section 1.58. General

4. Smoke Shops and Tobacco Stores.

a. Definitions

1. Ancillary Sale. 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 fifty (250) 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.

2. *E-cigarette.* Any electronically actuated device or inhaler meant to stimulate 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.
3. *Smoke Shop and Tobacco Store.* 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 only sells conventional cigars, cigarettes or tobacco 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.
4. *Specialty Tobacco Store.* An establishment primarily in the business of selling cigars and pipe tobacco.
5. *Tobacco Paraphernalia.* 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 the Texas Health and Safety Code. Items or devices classified as tobacco paraphernalia include but are not limited to, the following: pipes, punctured metal bowls, bong, water bong, 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.
6. *Tobacco Products.* A 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.
7. *Tobacco.* 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, snorting, sniffing, or ingesting by any other means into the body.

b. Requirements and Restrictions for Smoke Shops and Tobacco Stores

1. The following location and land use standards for smoke shops and tobacco stores shall be as follows:
 - (a) Smoke shops and tobacco stores shall not be located within one thousand (1,000) feet, measured property line to property line, from a school (public or private), family day-care home, child-care facility, youth center, community center, libraries, recreational facility, park, church or religious institution, hospital, clinic or other similar uses where children regularly gather.
 - (b) 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.
 - (c) 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.
 - (d) 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.

2. Standard conditions of smoke shops and tobacco stores at a minimum shall include the following:
 - (a) No smoking shall be permitted on the premises at any time.
 - (b) No sales may be solicited or conducted on the premises by minors.
 - (c) No self-service tobacco, tobacco product, or tobacco paraphernalia displays shall be permitted. Each item displayed shall be deemed as a separate violation.
 - (d) No distribution of free or low-cost tobacco, tobacco products or tobacco paraphernalia, as well as coupons for said items, shall be permitted.

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

- c. Penalty
Any person, firm, corporation, agent, employer or employee who intentionally, knowingly, recklessly or with criminal negligence violates any provision of this article shall, upon conviction, be fined an amount not more than \$200.00; provided, however, that in the event a defendant has previously been convicted under this article, such defendant shall be fined an amount not more than \$500.00 for a second conviction hereunder, and shall be fined an amount not more than \$2,000.00 for a third conviction hereunder and for each conviction thereafter. Each day that a violation is committed or permitted to exist shall constitute a separate offense.

SECTION 2: REPEALER: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: SEVERABILITY: If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and any remaining provision shall continue in effect notwithstanding the invalidity of such section, subsection, clause, phrase or portion.

SECTION 4. EFFECTIVE DATE: This ordinance shall take effect immediately upon its passage and publication as required by law.

PASSED, APPROVED, AND ADOPTED THIS _____ DAY OF _____, 2026, at a regular meeting of the City Council Elective Commission of the City of Mission, Texas at which a quorum was present and which was held in accordance with TEXAS GOVERNMENT CODE, CHAPTER 551.

CITY OF MISSION

Norie Gonzalez Garza, Mayor

ATTEST:

Anna Carrillo, City Secretary

APPROVED AS TO FORM:

City Attorney