

**ORDINANCE NO. 2617**

**AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS, AMENDING CHAPTER 7, HEALTH AND SANITATION, BY THE ADDITION OF SECTION 11: SALE OF ELECTRONIC CIGARETTES TO MINORS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE:**

**WHEREAS**, the City of Terrell (the "City") is permitted to establish ordinances to protect the health, safety and general welfare of its residents; and

**WHEREAS**, electronic cigarettes are devices that convert liquid nicotine into a gas that is inhaled by the consumer; and

**WHEREAS**, the National Institute for Occupational Safety and Health and the Center for Disease Control and Prevention have prepared emergency response information addressing the dangers associated with liquid nicotine. Nicotine affects the nervous system and heart and is addictive. Exposure to relatively small amounts of liquid nicotine can rapidly be fatal; and

**WHEREAS**, the Federal Drug Administration published an article in July 2009 warning of the dangers posed by electronic cigarettes, which include nicotine addiction and the appeal to young people due to the different flavors (such as chocolate, strawberry and mint); and

**WHEREAS**, the American Medical Association addressed the risks associated with the use of electronic cigarettes and adopted a policy recommendation that electronic cigarettes be classified as a drug delivery device, subject to the FDA's regulations and approval;

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS THAT:**

**ARTICLE I.**

That Chapter 7, Health and Sanitation, shall be amended by the addition of Section 11 as follows:

**Sec. 7-11 Sale of Electronic Cigarettes to Minors**

(a) Definitions. As used in this section:

Electronic cigarette or "E cigarette" means an electronic device usually composed of a mouthpiece, a heating element or atomizer, a battery, and electronic circuits that provide a gas derived from liquid nicotine and/or other substances which is inhaled by a user simulating smoking. The term includes such devices, regardless of the details of the product appearance or marketed name, generally manufactured to resemble cigarettes, cigars, pipes, or other smoking devices.

Liquid nicotine means any liquid product composed either in whole or in part of nicotine, propylene glycol and/or similar substances and manufactured for use with an e-cigarette to be converted into a gas for inhaling.

Minor means a person less than 18 years of age.

Person means any natural person, individual, corporation, limited liability company, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association, or other entity or business of any kind.

Photographic identification means state, district, national or other equivalent government driver's license, identification card, or military card, in all cases bearing a photograph and a date of birth or a valid passport.

(b) Sale of Electronic Cigarettes to Minors Prohibited.

(1) A person commits an offense in violation of this section if he/she gives, distributes, transfers, sells, markets, or offers electronic cigarettes, their components or samples to any minor.

(2) A person commits an offense in violation of this section if he/she sells or permits to be sold electronic cigarettes or their components through any device that mechanically dispenses such products unless the device is located fully within premises from which minors are prohibited.

(3) A minor commits an offense in violation of this section if, in an attempt to acquire an electronic cigarette, he/she states to any person engaged in the business of selling such products that such minor is not a minor, or to present to any such person a document or writing that purports to establish that such minor is not a minor.

(c) Affirmative defense.

It shall be an affirmative defense to prosecution for an offense committed under subsection (b) above if a minor purchased or possessed an electronic cigarette product in the presence of an adult parent, guardian, spouse, or other adult to whom the minor has been committed by a court.

(d) Penalty

An offense under this section is punishable by a fine not to exceed \$500.00 for each offense.

## **ARTICLE II.**

All Ordinances or parts of Ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

**ARTICLE III.**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**ARTICLE IV.**

This Ordinance will take effect immediately from and after its passage and the publication of the caption as the law in such cases provides.

PASSED AND APPROVED THIS the 18th day of November, 2014.

PASSED AND ADOPTED THIS the 2nd day of December, 2014.

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HAL RICHARDS, MAYOR

ATTEST:

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JOHN ROUNSAVALL, CITY SECRETARY

APPROVED AS TO FORM:

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MARY GAYLE RAMSEY, CITY ATTORNEY