

CITY OF ITALY, TEXAS

ORDINANCE NO. 2014-0714-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ITALY, TEXAS, REPEALING ARTICLE 6.03 OF THE ITALY CODE OF ORDINANCES, ENTITLED "TOBACCO PRODUCTS"; ADDING NEW ARTICLE 6.03 OF THE ITALY CODE OF ORDINANCES, ENTITLED "TOBACCO AND RELATED NICOTINE PRODUCTS" THAT ADOPTS REGULATIONS CONCERNING THE SALE, USE, AND POSSESSION OF ELECTRONIC CIGARETTES, LIQUID NICOTINE AND ASSOCIATED PARAPHERNALIA; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Italy, Texas ("City"), is a Texas general law city possessing the power of local self-government pursuant to Texas law; and

WHEREAS, the City Council of the City of Italy, Texas ("City Council") has determined that the dangers posed by tobacco are not limited to cigarettes, pipes or other traditional forms of smoking; and

WHEREAS, the City Council has observed that new, unregulated high-tech smoking devices, commonly referred to as "electronic cigarettes" or "e-cigarettes," have recently become more available to consumers; and

WHEREAS, nicotine is a known neurotoxin that is also one of the most highly addictive substances available for public consumption; and

WHEREAS, the City Council has observed that the manufacturers and marketers of e-cigarettes purposefully and intentionally advertise their products as safe nicotine delivery devices and smoking cessation modalities; and

WHEREAS, e-cigarettes are entirely unregulated, there being no regulation by the federal government and no Texas statutes or regulations that in any way limit the production, distribution, or use of e-cigarettes; and

WHEREAS, the City Council believes that protecting the younger citizens of the City against an untested nicotine product like e-cigarettes and liquid nicotine represents sound public health and fiscal policy; and

WHEREAS, the City Council has determined that a ban on the sale of electronic cigarettes, liquid nicotine and associated paraphernalia in the City to persons under the age of eighteen (18), a prohibition on self-serve merchandising in order to minimize their physical accessibility to minors, and the prohibition of the use and possession of such products by minors, serves an important public interest in furtherance of the health, safety, and general welfare of the citizens of the City.

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

Section 1. All of the above premises are hereby found to be true and correct legislative determinations and are hereby incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. Repeal of Article 6.03, entitled "Tobacco Products."

From and after the effective date of this Ordinance, Article 6.03 of the Italy Code of Ordinances, entitled "Tobacco Products," is hereby repealed in its entirety.

Section 3. Adoption of Article 6.03, entitled "Tobacco and Related Nicotine Products."

From and after the effective date of this Ordinance, there is hereby adopted new Article 6.03 of the Italy Code of Ordinances, entitled "Tobacco and Related Nicotine Products," as follows:

"ARTICLE 6.03 TOBACCO AND RELATED NICOTINE PRODUCTS

Sec. 6.03.001 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:

Business means any sole proprietorship, joint venture, partnership, corporation, limited liability company, or other entity formed for profit making or non-profit purposes, including but not limited to retail establishments where goods or services are sold or offered for sale.

City property means any property which is owned by the city, and includes, but is not limited to, city community buildings and concession stands, city office and administration buildings, city vehicles, and city utility buildings.

Electronic cigarette or e-cigarette means any electronic or mechanical device that uses a heating element designed or intended to vaporize, or is capable of vaporizing, a liquid solution containing nicotine. The term includes electronic devices that employ an atomizer or heating element and battery as well as mechanical vaporizers, and is inclusive of any version or type of such devices whether manufactured or marketed as e-cigarettes, e-cigars, e-pipes, electronic vaping device, mechanical PV's, electronic nicotine delivery system, or other device under any other product name or description.

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

Minor shall mean a person younger than eighteen (18) years of age.

Open display unit, in the context of the retail sale of electronic cigarettes and liquid nicotine, means any device, furniture, or furnishing within or upon which electronic cigarettes, liquid nicotine, or paraphernalia associated with electronic cigarettes are displayed to customers, and includes, but not limited to, any case, rack, shelf, counter, table, desk, kiosk, booth, stand, or other surface.

Paraphernalia associated with electronic cigarettes means any device, equipment, article or other thing designed, intended or used for the storage, consumption, inhalation or ingestion of liquid nicotine using an electronic cigarette.

Person means any natural person, individual, sole proprietor, partnership, cooperative association, corporation, limited liability company, personal representative, receiver, trustee, assignee, or other legal entity. The term includes employees, agents and representatives of businesses and retailers.

Retailer means any person or business that operates a store, stand, booth, concession, or other place at which sales of electronic cigarettes, liquid nicotine, or paraphernalia associated with electronic cigarettes are made to purchasers for consumption or use.

Self-service merchandising, in the context of the retail sale of electronic cigarettes, liquid nicotine, or paraphernalia associated with electronic cigarettes, means the open display of electronic cigarettes, liquid nicotine, and paraphernalia associated with electronic cigarettes, whether packaged or otherwise, for direct retail customer access and handling without the intervention or assistance of the retailer or the retailer's owner, employee, or agent.

Tobacco product means (1) a cigar; (2) smoking tobacco, including granulated, plug cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette; (3) chewing tobacco, including Cavendish, twist, plug, scrap, and any kind of tobacco suitable for chewing; (4) snuff or other preparations of pulverized tobacco; or (5) an article or product that is made of tobacco or a tobacco substitute not otherwise defined in this article and that is not a cigarette.

Section 6.03.002 Use of tobacco products on city property.

- **Designated areas.** The city administrator shall designate areas in the exterior areas of the city's office, administration and utility buildings to reasonably accommodate the interests of tobacco product users.
- **Offenses.** A person commits an offense if the person uses a tobacco product on city property unless such use is in a designated area as specified in subsection (a) of this section.

Sec. 6.03.003 Use and possession of e-cigarettes by minors prohibited.

- (a) A minor commits an offense if the minor uses, possesses, purchases or attempts to purchase an electronic cigarette, liquid nicotine, or paraphernalia associated with electronic cigarettes.
- (b) A minor commits an offense if the minor falsely represents himself or herself to be eighteen (18) years of age or older for the purpose of purchasing or receiving an electronic cigarette, liquid nicotine, or paraphernalia associated with electronic cigarettes.

Sec. 6.03.004 Sale of e-cigarettes to minors prohibited.

No person, business, retailer, or other establishment shall sell or convey, offer for sale, or cause or allow to be sold or conveyed to a minor, an electronic cigarette, liquid nicotine, or paraphernalia associated with electronic cigarettes.

Sec. 6.03.005 Self-service merchandising prohibited.

- (a) No person, business, retailer, or other establishment engaged in the sale or distribution of electronic cigarettes, liquid nicotine or paraphernalia associated with electronic cigarettes shall display, sell or convey, offer for sale, or cause or allow to be sold or conveyed electronic cigarettes, liquid nicotine, or paraphernalia associated with electronic cigarettes within the city by means of self-servicing merchandising which allows a purchase of electronic cigarettes, liquid nicotine, or paraphernalia associated with electronic cigarettes without verification of the age of the purchaser.
- (b) No person, business, retailer, or other establishment engaged in the retail sale of electronic cigarettes, liquid nicotine or paraphernalia associated with electronic cigarettes shall place electronic cigarettes, liquid nicotine, or paraphernalia associated with electronic cigarettes in an open display unit unless the unit is located in an area that is inaccessible to minors.

Sec. 6.03.006 Penalties.

Any person, firm or corporation violating any of the provisions or terms of this article shall, upon conviction, be guilty of a misdemeanor punishable by a fine not to exceed the sum of Five Hundred and No/100 Dollars (\$500.00) for each offense. Every act in violation of this article shall constitute a separate offense. Unless otherwise specifically set forth in this article, the allegation and evidence of a culpable mental state are not required for the proof of an offense of this article.”

Section 4. Repeal.

Any provision of any prior ordinance, resolution or authorization of the City of Italy, Texas, which is in conflict with any provision of this Ordinance is hereby repealed to the extent of the conflict, but all other provisions of the ordinances, resolutions or authorizations of the City

of Italy, Texas, which are not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section 5. Severability.

It is hereby declared to be the intention of the City Council that the parts, sections, subsections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and should any part, section, subsection, paragraph, sentence, clause or phrase contained in this Ordinance be held to be unconstitutional or of no force and effect by the valid judgment or decree of any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, but in all respects said remaining portions shall be and remain in full force and effect since the same would have been enacted by the City Council without the incorporation into this Ordinance of any such unconstitutional or invalid part, section, subsection, paragraph, sentence, clause or phrase.

Section 6. Effective Date.

This Ordinance shall become effective immediately upon its adoption and publication in accordance with Texas law.

PASSED, APPROVED AND ADOPTED this the ____ day of _____, 2014.

CITY OF ITALY, TEXAS

James Hobbs, Mayor

ATTEST:

Teri D. Murdock, TRMC
City Secretary/Administrator