

ORDINANCE NO. 140414

**AN ORDINANCE OF THE CITY OF MAYPEARL, TEXAS, ADOPTING REGULATIONS PROHIBITING THE POSSESSION AND PURCHASE OF ELECTONIC VAPING DEVICES BY MINORS AND THE SALE AND DISTRIBUTION OF ELECTRONIC VAPING DEVICES TO MINORS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM AND IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Maypearl, Texas (hereinafter referred to as the "City") is a Type A general law municipality located in Ellis County created in accordance with the provisions of Chapter 6 of the Texas Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

**WHEREAS**, the City Council has investigated and determined that electronic vaping devices permit users of the devices to inhale vapor containing variable amounts of nicotine and other harmful toxicants; and

**WHEREAS**, the City Council has further investigated and determined that exposure to electronic vaping devices by minors is a serious health concern; and

**WHEREAS**, the City Council has further investigated and determined that the 2012 National Youth Tobacco Survey shows that the use of electronic vaping devices by U.S. high school students has doubled from the previous year to 2.8%; and

**WHEREAS**, the City Council has further investigated and determined that medical and pharmacological experts have opined that electronic vaping devices contain nicotine in a liquid form that may escape from the devices and be ingested by minors which may cause symptoms such as hyperactivity, flushing, sweating, headache, dizziness, rapid heart rate, vomiting, diarrhea, burning and irritation of the skin and, in severe cases, may result in a coma or death; and

**WHEREAS**, the City Council has further investigated and determined that studies have shown that electronic vaping devices can serve as a "gateway" to smoking traditional tobacco products which are illegal for minors to purchase or possess; and

**WHEREAS**, the City Council has further investigated and determined that electronic vaping devices are currently not regulated by the State of Texas or the federal government; and

**WHEREAS**, the City is authorized by Section 51.012 of the Texas Local Government Code to adopt ordinances, not inconsistent with state law, that are necessary for the government, interest, welfare or good order of the City; and

**WHEREAS**, the City Council has determined that it is in the best interest and welfare of the citizens of Maypearl to prohibit the possession and purchase of electronic vaping devices by minors and the sale and distribution of electronic vaping devices to minors.

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

## **SECTION 1.**

The City of Maypearl, Texas adopts the following ordinance regarding electronic vaping devices in the city:

### **ELECTRONIC VAPING DEVICES**

#### **Sec. 1. Definitions.**

- (1) *Electronic vaping device* shall mean any electronically powered or battery powered device designed to simulate the smoking of tobacco, cigarettes, pipes or cigars. An electronic vaping device includes personal vaporizers, electronic cigarettes (e-cigarettes), electronic pipes (e-pipes), electronic cigars (e-cigars) and any other type of electronic nicotine delivery system or any part thereof.
- (2) *Minor* shall mean a person younger than 18 years of age.
- (3) *Person* shall mean an individual, corporation, sole proprietorship, and any other type of business entity recognized under Texas law.

#### **Sec. 2. Sale or Distribution of Electronic Vaping Devices to Minors Prohibited.**

- (a) A person commits an offense if the person sells, gives or causes to be sold or given an electronic vaping device to a minor or to a person who intends to deliver it to a minor.
- (b) If the offense under this section occurs in connection with a sale of an electronic device at a business by an employee of the business, the employee who committed the offense is subject to prosecution.
- (c) It is a defense to prosecution under subsection (b) that at the time of the sale, the minor presented the person with an apparently valid proof of identification showing the minor was at least 18 years of age.
- (d) A proof of identification satisfies the requirements of subsection (c) if it contains the name of the minor, a photograph resembling the appearance of the minor and was issued by a state or federal government agency.

- (e) It is not a defense under this section that the minor purchased the electronic vaping device from a vending machine or other self-service merchandising mechanism if the machine or mechanism was located on the premises of the person.

### **Sec. 3. Possession of Electronic Vaping Devices by Minors Prohibited.**

- (a) A minor commits an offense if the minor possesses, purchases or attempts to purchase an electronic vaping device.
- (b) A minor commits an offense if the minor falsely represents himself or herself to be 18 years of age or older for the purpose of purchasing or receiving an electronic vaping device.
- (c) It shall be a defense to prosecution for a violation of this section if at the time of the purchase, the minor:
  - (1) was in the presence of an adult parent or legal guardian of the minor;
  - (2) was in the course of scope of the minor's employment and the purchase of the electronic vaping device was a part of the duties of such employment; or
  - (3) was participating in an inspection or test of compliance in conjunction with local law enforcement.

### **SECTION 2.**

This ordinance shall be cumulative of all provisions of ordinances of the City of Maypearl, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

### **SECTION 3.**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections 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 its ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

#### SECTION 4.

Any person, firm or corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than five hundred dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

#### SECTION 5.

All rights and remedies of the City of Maypearl are expressly saved as to any and all violations of the provisions of the Code of Ordinances of the City of Maypearl and or any other ordinances affecting garbage which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

#### SECTION 6.

The City Secretary of the City of Maypearl is hereby authorized to publish this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof.

#### SECTION 7.

The City Secretary of the City of Maypearl is hereby directed to publish in the official newspaper of the City of Maypearl the caption, penalty clause and effective date clause of this ordinance as provided by Section 52.011 of the Texas Local Government Code.

#### SECTION 8.

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED this 14<sup>th</sup> day of April, 2014.

By: Adele Mooney, Mayor  
Adele Mooney, Mayor

ATTEST:

  
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Jeannie Evans, City Secretary

Approved as to form and legality:

  
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Bryn Meredith, Attorney