

ORDINANCE NO. 19-11-14-41

AN ORDINANCE OF THE CITY OF CORINTH, TEXAS AMENDING CHAPTER 94 “NUISANCES” OF TITLE IX, “GENERAL REGULATIONS” OF THE CODE OF ORDINANCES OF THE CITY OF CORINTH, TEXAS RELATING TO ELECTRONIC CIGARETTES AND E-CIGARETTES; PROVIDING FOR THE INCORPORATION OF PREMISES; PROVIDING AMENDMENTS TO VARIOUS SECTIONS OF CHAPTER 94, SETTING FORTH DEFINITIONS AND REGULATIONS AFFECTING POSSESSION AND USE OF E-CIGARETTES BY PERSONS UNDER THE AGE OF 21, PROHIBITING THE SALE AND DISTRIBUTION OF E-CIGARETTES TO PERSONS UNDER THE AGE OF 21; PROVIDING AS A PENALTY UPON CONVICTION A FINE IN AN AMOUNT NOT TO EXCEED \$500 FOR EACH VIOLATION OF THIS ORDINANCE; PROVIDING SEVERABILITY AND SAVINGS CLAUSES; PROVIDING A CUMULATIVE REPEALER CLAUSE; AND PROVIDING FOR PUBLICATION/EFFECTIVE DATE.

WHEREAS, Senate Bill 21, as signed by the Governor on June 2, 2019, amended certain provisions in subchapter H of Chapter 161 of the Health and Safety Code relating to the distribution of cigarettes, e-cigarettes, and tobacco products (“SB 21”); and

WHEREAS, the City Council of the City of Corinth has investigated and determined that the Chapter 94 “Nuisances“ of the Code of Ordinances should be amended to provide updated regulations as a result of SB-21 relating to cigarettes, electronic cigarettes, e-cigarettes, and similar devices, and other tobacco products; and

WHEREAS, the City Council has investigated and determined that the smoking of electronic cigarettes and e-cigarettes has been determined to have detrimental effects to the bodies of young people or minors; and

WHEREAS, the City Council has reviewed information and determined that manufacturers of some electronic cigarettes and e-cigarettes specifically target minors by portraying these products as having candy or fruit flavors and utilizing youth-focused advertising; and

WHEREAS, the U.S. Centers for Disease Control and Prevention (“CDC”) has advised that young persons should not use electronic cigarettes or e-cigarettes due to their high level of addictive nicotine, metals, and other harmful substances, and the CDC has further advised that electronic cigarettes, e-cigarettes, and similar products obtained from street sales may contain deliberately-injected hazardous adulterants such as tetrahydrocannabinol (“THC”); and

WHEREAS, the City Council has determined that a ban on the sale of cigarettes, electronic cigarettes, e-cigarettes and other tobacco products to persons under the age of 21 and a prohibition on self-servicing merchandising in the retail sale of cigarettes, electronic cigarettes, e-cigarettes, and other tobacco products in order to minimize their accessibility to persons under the age of 21 serves a vital public interest in the furtherance of the health, welfare, and safety of the citizens of the City; and

WHEREAS, the Legislature of the State of Texas has recently raised the age to 21 for persons to obtain, possess or smoke cigarettes, electronic cigarettes or e-cigarettes, and other tobacco products, and prohibited the furnishing or sale of these products to persons under the age of 21, except where SB 21 specifically identifies exception; and

WHEREAS, the City Council has further determined that in order to promote the public health, safety, and welfare of the City and its citizens, it is the best interest of the City and its citizens to amend the Code of Ordinances to regulate the sale, possession, and use of cigarettes, electronic cigarettes, e-cigarettes, and other tobacco products within the City, as set forth below;

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

SECTION 1
Incorporation of Premises

That the foregoing recitals set forth above are determined to be true and correct findings and are incorporated herein as if set forth verbatim.

SECTION 2.
Amendments

2.01. That Section 94.20 “Definitions” of Chapter 94, “Nuisances” of Title IX, “General Regulations” the Code of Ordinances of the City of Corinth, Texas, is hereby amended to amend the following definitions of “Electronic Cigarette and/or E-Cigarette,” “Minor,” “Smoke(s) or Smoking” so that such definitions shall be and read as follows and all other definitions contained within Section 94.20 shall continue in full force and effect:

§94.20 - DEFINITIONS

...

“ELECTRONIC CIGARETTE AND/OR E-CIGARETTE. Any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provides, or is manufactured or intended to provide, a vapor or aerosol of liquid nicotine and/or other substances mixed with propylene glycol and/or other substances delivered or deliverable to the user that he/she can inhale in simulation of smoking. This term shall include every version and type of such devices whether they are manufactured or marketed as electronic cigarettes, e-cigarettes, electronic cigars, e-cigars, electronic pipes, e-pipes, or under any other product name or description.”

...

“MINOR. A person under 21 years of age.”

...

“SMOKES(S) OR SMOKING. The carrying, possessing or holding of a pipe, cigarette, tobacco product, electronic cigarette or e-cigarette, or liquid nicotine of any kind which is burning or emitting a vapor or aerosol.”

2.02. That subparagraphs (A) and (E) of Section 94.21 “Smoking in Public Places Prohibited” of Chapter 94, “Nuisances” of Title IX, “General Regulations” of the Code of Ordinances of the City of Corinth, Texas, are hereby amended to be and read in their entirety as follows and all other sections and subsection of Section 94.21 not expressly amended hereby shall remain in full force and effect:

§94.21 - SMOKING IN PUBLIC PLACES PROHIBITED

“(A) A person commits an offense if the person intentionally, knowingly or recklessly smokes or possesses a burning tobacco, weed, or other plant product or e-cigarette or liquid nicotine which is emitting a vapor or aerosol in any public place where notice has been given that such conduct is prohibited pursuant to Section 94 of the Code of Ordinances or other state law.”

...

“(E) A person commits an offense if the person intentionally, knowingly or recklessly smokes or possesses a burning tobacco, or other plant product or e-cigarette or liquid nicotine which is emitting a vapor or aerosol within twenty (20) linear feet of the front or main entrance to any public place where notice has been posted that smoking is prohibited within twenty (20) feet of the entrance.”

2.03 That Section 94.24 “City-Owned Facilities; Written Policies to Establish Guidelines” of Chapter 94, “Nuisances” of Title IX, “General Regulations” of the Code of Ordinances of the City of Corinth, Texas, is repealed in its entirety and a new Section 94.24, “City Owned Facilities; Written Policies to Establish Guidelines” is hereby adopted and shall be and read in its entirety as follows:

“§94.24 - CITY-OWNED FACILITIES; WRITTEN POLICIES TO ESTABLISH GUIDELINES

(A) A person commits an offense if the person is in a city-owned building and intentionally, knowingly or recklessly:

- (1) Uses a tobacco product; or
- (2) Smokes or possesses a burning tobacco product or weed or other plant product; or

(3) Smokes or possesses an electronic cigarette or e-cigarette or liquid nicotine emitting vapors or aerosols.

(B) The City Manager or the Manager's designated representatives shall cause signs to be posted at the entrances of the city-owned buildings which shall state: "Smoking, Use of Tobacco Products and E-Cigarettes are Prohibited by Ordinance."

(C) A person commits an offense if the person is in an area of a City park that has not been designated as a smoking area by signage placed in accordance with this Section and intentionally, knowingly, or recklessly:

(1) Uses a tobacco product; or

(2) Smokes or possesses a burning tobacco product or weed or other plant product, or

(3) Smokes or possesses an electronic cigarette or e-cigarette or liquid nicotine emitting vapors or aerosols.

(D) A person commits an offense if the person intentionally, knowingly or recklessly uses a tobacco product or smokes or possesses a burning tobacco product or weed or other plant product or electronic cigarette or e-cigarette or liquid nicotine emitting vapors or aerosols within twenty linear (20) feet from any entrance to a city-owned building.

(E) A person commits an offense if the person intentionally, knowingly or recklessly smokes or possesses a burning tobacco product or electronic cigarette or e-cigarette or liquid nicotine emitting vapors or aerosols in a park other than in a designated smoking area.

(F) The City Manager or the Manager's designated representative is authorized to designate an unenclosed area within a park as a designated smoking area. The designated smoking area shall be marked by signs.

(G) The City Manager shall cause conspicuous signs to be posted at entrances to the parks from the park parking lots, and at other areas where people gather within the parks. Each sign shall contain the words "Smoking, Use of Tobacco Products and E-Cigarettes are Prohibited by Ordinance Except in Designated Areas."

2.04. That Section 94.27 "Possession, Purchase, Consumption or Receipt of Electronic Cigarettes or E-Cigarettes and/or Liquid Nicotine by Minors Prohibited" of Chapter 94, "Nuisances" of Title IX, "General Regulations" of the Code of Ordinances of the City of Corinth, Texas, is hereby repealed in its entirety and a new Section 94.27, "Possession, Purchase, Consumption or Receipt of Electronic Cigarettes or E-Cigarettes and/or Liquid Nicotine by Minors Prohibited" is hereby adopted and shall be and read in its entirety as follows:

§94.27 - POSSESSION, PURCHASE, CONSUMPTION OR RECEIPT OF ELECTRONIC CIGARETTES OR E-CIGARETTES AND/OR LIQUID NICOTINE BY MINORS PROHIBITED

(A) A person who is younger than 21 years of age commits an offense if the person intentionally, knowingly or recklessly:

(1) Possesses, purchases, consumes or accepts an electronic cigarette, e-cigarette or liquid nicotine; or

(2) Falsely represents himself or herself to be 21 years of age or older by displaying proof of age that is false, fraudulent or not actually proof of the individual's own age in order to obtain possession of, purchase or receive an electronic cigarette, e-cigarette or liquid nicotine.

(B) It shall be a defense to prosecution for a violation of subsection (A) if the person younger than 21 years of age possessed the electronic cigarette, e-cigarette or liquid nicotine in the presence of an employer of the individual, if possession or receipt of the electronic cigarette, e-cigarette or liquid nicotine is required in the performance of the employee's duties as an employee.

(C) It shall also be a defense to prosecution for a violation of subsection (A) that the individual younger than 21 years of age is participating in an inspection or test of compliance in accordance with Section 161.088, Health and Safety Code.

(D) Applicability. In accordance with the provisions of Texas Senate Bill Number 21, the prohibitions on possession, purchasing or attempting to purchase cigarettes, e-cigarettes, or tobacco products shall not apply to a person who was born on or before August 31, 2001.

2.05. That Section 94.28 “Sale of Electronic Cigarette or E-Cigarette or Liquid Nicotine to Persons Younger Than 18 Years of Age Prohibited; Proof of Age Required” of Chapter 94, “Nuisances” of Title IX, “General Regulations” of the Code of Ordinances of the City of Corinth, Texas, is hereby repealed in its entirety and a new Section 94.28 “Sale of Electronic Cigarette or E-Cigarette or Liquid Nicotine to Persons Younger Than 18 Years of Age Prohibited; Proof of Age Required” is hereby adopted and shall be and read as follows:

§94.28 - SALE OF ELECTRONIC CIGARETTE OR E-CIGARETTE OR LIQUID NICOTINE TO PERSONS YOUNGER THAN 21 YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED

(A) A person or retailer commits an offense if the person or retailer with criminal negligence:

(1) Sells, gives or causes to be sold or given an electronic cigarette or e-cigarette or liquid nicotine to someone who is younger than 18 years of age; or

(2) Sells, gives or causes to be sold or given an electronic cigarette or e-cigarette or liquid nicotine to another person who intends to deliver it to someone who is younger than 21 years of age.

(B) It shall be an exception to the application of subsection (A)(1) that the person to whom the cigarette, e-cigarette, or tobacco product was sold:

(1) Is at least 18 years of age; and

(2) presented at the time of purchase a valid military identification card of the United States military forces or the state military force.

(C) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which electronic cigarettes, e-cigarettes and/or liquid nicotine is/are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

(D) It is a defense to prosecution under subsection (A)(1) that the person to whom the electronic cigarette, e-cigarette or liquid nicotine was sold or given presented to the defendant apparently valid proof of identification showing that the person was at least 21 years of age.

(E) A proof of identification satisfies the requirements of subsection (B) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 21 years of age or older and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport or an identification card issued by a state or the federal government.

2.06. That subparagraph (B) of Section 94.29 “Vendor Assisted Sales Required; Self-Service Merchandising Prohibited” of Chapter 94, “Nuisances” of Title IX, “General Regulations” of the Code of Ordinances of the City of Corinth, Texas, is hereby repealed in its entirety and a new Section 94.29(B) is hereby adopted and shall be and read as follows and all other sections and subsection of Section 94.29 not expressly amended hereby shall remain in full force and effect:

§94.29 - VENDOR ASSISTED SALES REQUIRED; SELF-SERVICE MERCHANDISING PROHIBITED

...

(B) It is a defense to prosecution under subsection (A) if:

- (1) The facility or business is not open to persons younger than 21 years of age at any time; or
- (2) An open display unit is located in an area that is inaccessible to customers.

SECTION 8.
Severability

If any section, subsection, clause, phrase, or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unconstitutional, the remaining sections, subsections, clauses, phrases, and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 9.
Savings

That all rights and remedies of the City of Corinth are expressly saved as to any and all violations of the provisions of any Ordinances that 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 10.
Cumulative Repealer

This Ordinance shall be cumulative of all other Ordinances of the City of Corinth and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance or where expressly repealed hereby. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance.

SECTION 11.
Penalty

Any person, firm or corporation who violates any provision of this Ordinance or the Code of Ordinances, as amended hereby, shall be subject to a fine not to exceed the sum of five hundred dollars (\$500.00) for each offense, and each and every day any such offense shall continue shall be deemed to constitute a separate offense, provided, however, that in all cases involving violation of any provision of this ordinance or Code of Ordinances, as amended hereby, governing public health shall be subject to a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each

offense, and each and every day any such offense shall continue shall be deemed to constitute a separate offense.

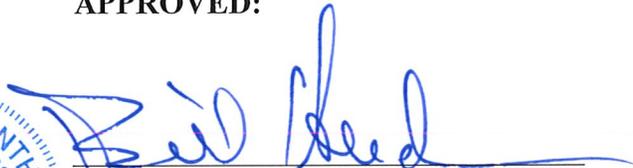
SECTION 12.
Publication/Effective Date

This Ordinance shall take effect and be in full force from and after the date of its passage and publication, as provided by state law and City Charter.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
CORINTH, TEXAS on this the 14 day of November 2019.**

APPROVED:





Bill Heidemann, Mayor
City of Corinth, Texas

ATTEST:



Kimberly Pence, City Secretary
City of Corinth, Texas

APPROVED AS TO FORM:



Patricia A. Adams, City Attorney