

ORDINANCE NO. 1392-08-2016

**AN ORDINANCE OF THE CITY OF GAINESVILLE, TEXAS
AMENDING CHAPTER 8 – HEALTH, ARTICLE IV -
SMOKING REGULATIONS; AMENDING SECTION 8-300
DEFINITIONS; AMENDING SECTION 8-301
NONSMOKING AREAS IN PUBLIC PLACES; AMENDING
SECTION 8-302 REASONABLE DISTANCE; AMENDING
SECTION 8-304 POSTING OF SIGNS; PROVIDING
SEVERABILITY; PROVIDING FOR REPEAL OF
CONFLICTING ORDINANCES; PROVIDING AN
EFFECTIVE DATE; AND MAKING AN OPEN MEETINGS
FINDING**

WHEREAS, the City of Gainesville currently prohibits smoking of cigarettes and other tobacco products in City parks, arenas, sports facilities and other owned City-owned facilities; and

WHEREAS, in 2009, the U.S. Food and Drug Administration (FDA) conducted a limited laboratory analysis of 18 electronic cigarettes, which resulted in the following findings:

- (1) Diethylene glycol, an ingredient used in antifreeze that is toxic to humans, was detected in one sample;
- (2) Tobacco-specific nitrosamines, which are human carcinogens, were found in half of the samples;
- (3) Tobacco-specific impurities suspected of being harmful to humans – anabasine, myosmine, and β -nicotyrine – were detected in a majority of the samples.

WHEREAS, the health risks associated with the use of electronic cigarettes and inhalation of second-hand vapor are unknown as they have not been fully studied; and

WHEREAS, Boy’s Baseball of Cooke County has requested that vaping be banned from parks; and

WHEREAS, the Parks and Recreation Advisory Board met in accordance with the Texas Open Meetings Act on July 28, 2016; and

WHEREAS, the Parks and Recreation Advisory Board members recommended the banning of e-cigarettes and vaping in Leonard Park and Edison Park locations with baseball fields year round;

WHEREAS, the City of Gainesville deems it in the best interest of the citizens of the City of Gainesville to ban vaping in all City of Gainesville parks and facilities.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE, MEETING IN REGULAR SESSION, THAT:

SECTION 1. AMEND CHAPTER 8 – HEALTH, ARTICLE IV – SMOKING REGULAITONS, SECTION 8-300 DEFINITIONS TO READ AS FOLLOWS:

Section 8-300. – 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:

Bar means an establishment which has more than seventy (70) percent of its annual gross sales in alcoholic beverages and which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages and where minors are not allowed admittance unless accompanied by a parent or legal guardian. Food establishments that contain a bar are not considered a "bar."

Business means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making or nonprofit purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

Designated smoking area means a designated area, which shall be a physically enclosed area and "separate ventilation" system as "enclosed" and "separate ventilation" are defined under section 8-300.

Electronic cigarette means an electronic device that delivers vapor for inhalation, including hookah pens, vape pipes, and electronic hookahs. Electronic cigarette does not include any product approved by the United States Food and Drug Administration for sale as a drug or medical device.

Employee means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

Employer means any person, partnership, corporation, including a municipal corporation, or nonprofit entity, which employs the services of one (1) or more individual persons.

Enclosed means all space between a floor and ceiling, which is closed on all sides by solid walls or windows with appropriate openings for ingress or egress.

Food establishment means any operation engaged in the preparation of food, which gives food or offers food for sale to the public, guests or employees. A "food establishment" for purposes of this definition does not include a "bar" as defined under section 8-300.

Place of employment means any area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias, hallways and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility.

Public place means any enclosed area to which the public is invited or in which the public is permitted or is a place of employment and includes, but is not limited to: retail stores; grocery

stores; offices; professional, commercial or financial establishments; public and private institutions of education; food establishments; health care facilities; nursing and convalescent homes; residential treatment facilities; child care facilities; laundromats, buildings owned or occupied by political subdivisions; public transportation facilities and vehicles; reception areas; theaters and waiting rooms. For the purpose of this section, a "public place" does not include a private residence.

Retail tobacco store means any commercial establishment that derives at least fifty-one (51) percent of its annual gross receipts from the sale of tobacco and tobacco accessories.

Separate ventilation means a separate heating, ventilation, and air conditioning (HVAC) system such that air from the smoking area is exhausting directly to the outside and not circulated within the building or mixed with the general dilution ventilation for the building and that creates a negative pressure away from the door into the room sufficient to prevent any flow of smoke from the smoking area to the nonsmoking area. Such system shall supply a minimum of thirty cubic feet (30 CFM) per minute outdoor air exchange per person and be under negative pressure. An HVAC system must be designed by a licensed professional engineer to meet the requirements of the city mechanical code.

Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed or plant.

Tobacco bar means a bar in which the on-site sales or rentals of tobacco products and smoking accessories for consumption or use on the premises exceeds twenty (20) percent of gross revenues and into which entry is restricted to individuals eighteen (18) years of age and above.

Vape or vaping means the use of electronic cigarette in any of the following ways: (1) through inhalation or exhalation of vapor from an electronic cigarette; or, (2) by holding or otherwise activating an electronic cigarette such that any vapor is being emitted from it.

SECTION 2. AMEND CHAPTER 8 – HEALTH, ARTICLE IV – SMOKING REGULATIONS, SECTION 8-301 – NONSMOKING AREAS IN PUBLIC PLACES TO READ AS FOLLOWS:

Section 8-301. - Nonsmoking and non-vaping areas in public places.

- (a) Smoking is hereby prohibited in all enclosed public places within the city limits of the City of Gainesville, Texas.
- (b) Smoking and vaping in all enclosed facilities including buildings and vehicles owned or occupied by the City of Gainesville, Texas will be subject to the provisions of this article.
- (c) Smoking and vaping in all city parks and recreational areas including, but not limited to Leonard Park, Edison Park, BP Douglas Park, Georgia Davis Bass Park, Heritage Park North, Heritage Park South, Jaycee Park, Keneteso Park, Moffett Park, Pecan Creek Park, Booker T. Washington Park, Forsythe Skate Park, Youth Center Football Field, and Home Grown Hero Walking Trail. Smoking and vaping is permitted in the parking lot of the Civic Center but not within twenty (20) feet of any entrance or exit of the building.
- (d) Smoking and vaping in all outdoor sporting arenas, stadiums and amphitheaters, as well as in bleachers and grandstands for use by spectators at sporting and other public events.

- (e) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment, facility or business may declare that entire establishment, facility or business as nonsmoking and/or non-vaping.

SECTION 3. AMEND CHAPTER 8 – HEALTH, ARTICLE IV – SMOKING REGULATIONS, SECTION 8-302 REASONABLE DISTANCE TO READ AS FOLLOWS:
Section 8-302. –Reasonable distance.

Smoking and/or vaping shall occur at a reasonable distance of twenty (20) feet or more outside any entrances, operable windows, ventilation systems or any other openings of an enclosed area where smoking and/or vaping is prohibited to insure that tobacco smoke and/or vapor does not enter the area.

SECTION 4. AMEND CHAPTER 8 – HEALTH, ARTICLE IV – SMOKING REGULATIONS, SECTION 8-304 POSTING OF SIGNS TO READ AS FOLLOWS:
Section 8-304. - Posting of signs.

- (a) "No Smoking" signs in English and Spanish or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted at every entrance to every building or other area where smoking is prohibited by this article, by the owner, operator, manager or other person who has control of such building or other area.
- (b) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager or other person who has control of such area. Private offices and display cases or shelves are exempt from this subsection 8-304(b).
- (c) City shall install at least one (1) no smoking sign as described in section 8-305 in each park in which smoking is prohibited in order to meet the requirement of this section. The sign can include wording and/or a symbol (consisting of a pictorial representation of an electric cigarette enclosed in a red circle with a red bar across it) that prohibits vaping or a second sign can be used to notify people that vaping is not allowed.

SECTION 5. SEVERABILITY

If any provision, section, subsection, sentence, clause, or phrase of this article, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this article or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the city council in adopting the ordinance from which this article derives that no portion hereof or provisions or regulation contained therein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this article to be severable for that purpose.

SECTION 6. REPEAL OF CONFLICTING ORDINANCES

All ordinances or parts of ordinances in conflict with the provisions of this article are hereby repealed.

SECTION 7. EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the *Texas Government Code and City Charter*.

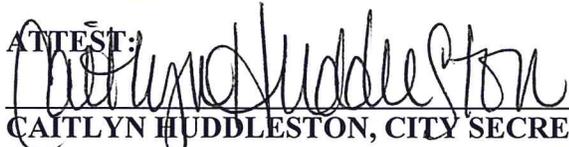
SECTION 8. OPEN MEETING FINDING

It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapter 551 of the Texas Government Code*.

INTRODUCTION AND FIRST READING

INTRODUCED AND READ FOR THE FIRST TIME BEFORE THE CITY COUNCIL OF THE CITY OF GAINESVILLE ON THE 17TH DAY OF MAY 2016, AT WHICH TIME THE CHARTER REQUIREMENT OF THREE READINGS WAS SUSPENDED BY THE FOLLOWING VOTE.

 7 AYES, 0 NAYS, 0 ABSENT, 0 ABSTENTIONS

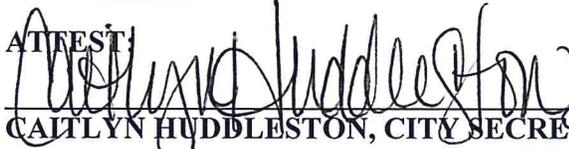
ATTEST:

CAITLYN HUDDLESTON, CITY SECRETARY


JIM GOLDSWORTHY, MAYOR

SECOND READING

READ FOR THE SECOND TIME AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE ON THE 7TH DAY OF JUNE 2016.

 6 AYES, 0 NAYS, 1 ABSENT, 0 ABSTENTIONS

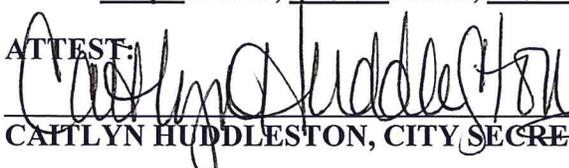
ATTEST:

CAITLYN HUDDLESTON, CITY SECRETARY


JIM GOLDSWORTHY, MAYOR

THIRD READING AND ADOPTION

READ FOR THE SECOND TIME AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE ON THE 16TH DAY OF AUGUST 2016.

 7 AYES, 0 NAYS, 0 ABSENT, 0 ABSTENTIONS

ATTEST:

CAITLYN HUDDLESTON, CITY SECRETARY


JIM GOLDSWORTHY, MAYOR

