



City of Rowlett

Special Meeting Agenda

City Council

4000 Main Street
 Rowlett, TX 75088
 www.rowlett.com

City of Rowlett City Council meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary at 972-412-6115 or write 4000 Main Street, Rowlett, Texas, 75088, at least 48 hours in advance of the meeting.

Tuesday, April 8, 2014

6:00 P.M.

Annex Building – 4004 Main Street

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item herein.

The City of Rowlett reserves the right to reconvene, recess or realign the Regular Session or called Executive Session or order of business at any time prior to adjournment.

1. **CALL TO ORDER**

2. **EXECUTIVE SESSION (6:00 P.M.)* Times listed are approximate**
 - 2A. The City Council shall convene into Executive Session pursuant to Texas Government Code, §551.087 (Economic Development) and §551.071 (Consultation with Attorney) to receive legal advice from the City Attorney, to discuss and deliberate commercial or financial information received from business prospects and the offer of financial or other incentives to business prospects that the governmental body seeks to have locate, stay, or expand in the Downtown District, and to discuss economic development incentives and a Development Agreement with Integral Development LLC and Catalyst Urban Development LLC on City owned property located in Downtown. (120 minutes)

3. **WORK SESSION (8:00 P.M.)***
 - 3A. Discuss amending Article VI (“Smoking”) of Chapter 22 (“Environment”) of the Code of Ordinances that would include a provision that prohibits the sale, use, and possession of electronic cigarettes, liquid nicotine and associated paraphernalia to minors. (45 minutes)

TAKE ANY NECESSARY OR APPROPRIATE ACTION ON CLOSED/EXECUTIVE SESSION MATTERS

4. **ADJOURNMENT**

Stacey Chadwick

Stacey Chadwick, Deputy City Secretary

I certify that the above notice of meeting was posted on the bulletin boards located inside and outside the doors of the Municipal Center, 4000 Main Street, Rowlett, Texas, as well as on the City’s website (www.rowlett.com) on the 3rd day of April, 2014, by 5:00 p.m.



City of Rowlett

Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 04/08/14

AGENDA ITEM: 2A

TITLE

The City Council shall convene into Executive Session pursuant to Texas Government Code, §551.087 (Economic Development) and §551.071 (Consultation with Attorney) to receive legal advice from the City Attorney, to discuss and deliberate commercial or financial information received from business prospects and the offer of financial or other incentives to business prospects that the governmental body seeks to have locate, stay, or expand in the Downtown District, and to discuss economic development incentives and a Development Agreement with Integral Development LLC and Catalyst Urban Development LLC on City owned property located in Downtown. (120 minutes)



City of Rowlett

Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
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AGENDA DATE: 04/08/14

AGENDA ITEM: 3A

TITLE

Discuss amending Article VI ("Smoking") of Chapter 22 ("Environment") of the Code of Ordinances that would include a provision that prohibits the sale, use, and possession of electronic cigarettes, liquid nicotine and associated paraphernalia to minors. (45 minutes)

STAFF REPRESENTATIVE

Mike Brodnax, Chief of Police

SUMMARY

Due to an increase in the popularity of the use of electronic cigarettes, and in an effort to protect the younger citizens of the City of Rowlett, the purpose of this item is to discuss amending Article VI of Chapter 22 of the Code of Ordinances as it relates to the sale, use and possession of electronic cigarettes to children eighteen years of age or younger.

BACKGROUND INFORMATION

Electronic cigarettes have been on the market for several years and were designed to assist smokers in breaking their nicotine habit. In July 2013, the World Health Organization stated the efficacy in using electronic cigarettes to aid in smoking cessation has not been demonstrated scientifically. They recommend that "consumers should be strongly advised not to use" electronic cigarettes until a reputable national regulatory body has found them safe and effective. This has not been done as of this date. This statement began to stir additional controversy across the nation regarding the use of electronic cigarettes. Some worried that electronic cigarettes were luring children and exposing them to nicotine, an addictive substance. According to the U.S. Centers for Disease Control and Prevention, the number of high school students who have tried electronic cigarettes is growing annually. Cities locally began to pass ordinances that prohibit the use and sale of electronic cigarettes to children that are eighteen years of age or younger.

Electronic cigarettes have not been proven to be safe, although the UK National Health Service has noted that the toxic chemicals found by a preliminary analysis conducted by the US Food and Drug Administration were at levels one-thousandth that of cigarette smoke, and that while there is no certainty that these small traces are harmless, initial test results are reassuring. Nevertheless, due to the highly addictive nature of nicotine and the potential that the use of electronic cigarettes by teens may lead to addiction to cigarettes, it is in the best interest of the public that the City of Rowlett pass an ordinance that helps protect our children. Prohibiting the sale and use of electronic cigarettes to and by our children is a step in the right direction.

DISCUSSION

Electronic cigarettes are battery powered and are used in a manner similar to traditional cigarettes except that they don't involve burning tobacco. They contain a heating element that vaporizes a liquid solution, and they emit a vapor instead of smoke. The liquid solution can contain liquid nicotine, which has caused concern for area law enforcement officials. Manufacturers and marketers of electronic cigarettes advertise their products as safe nicotine delivery devices and smoking cessation modalities. Electronic cigarettes are entirely unregulated; there is no regulation by the federal government and no Texas statutes or regulations that in any way limit the production, distribution or use of electronic cigarettes to anyone. A few states have either banned the sale to minors or regard electronic cigarettes in the same manner as traditional cigarettes.

Protecting the younger citizens of the City of Rowlett against an untested nicotine product like electronic cigarettes and liquid nicotine represents sound public health and fiscal policy. A ban on the sale of electronic cigarettes, liquid nicotine and associated paraphernalia in the City of Rowlett to persons under the age of 18, a prohibition on self-service 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 of Rowlett.

The following cities have enacted ordinances prohibiting the possession and sale of electronic cigarettes to minors: Dennison, Flower Mound, Frisco, Georgetown, Lewisville, Murphy, and Rockwall.

FINANCIAL/BUDGET IMPLICATIONS

N/A

RECOMMENDED ACTION

Provide direction to staff on the proposed schedule to amend Article VI ("Smoking") of Chapter 22 ("Environment") of the Code of Ordinances that would include a provision that prohibits the sale, use, and possession of electronic cigarettes, liquid nicotine and associated paraphernalia to minors.

ATTACHMENT

Attachment 1 – Proposed Ordinance

AN ORDINANCE OF THE CITY OF ROWLETT, TEXAS, AMENDING THE CODE OF ORDINANCES, CITY OF ROWLETT, TEXAS, TO AMEND ARTICLE VI (“SMOKING”) OF CHAPTER 22 (“ENVIRONMENT”) TO DESIGNATE SECTIONS 22-241 THROUGH 22-244 AS DIVISION 1, TO BE ENTITLED, “SMOKING,” TO AMEND SECTION 22-244, AND TO ADD A NEW DIVISION 2, TO BE ENTITLED “ELECTRONIC CIGARETTES,” CONSISTING OF SECTIONS 22-245 THROUGH 22-249, PROHIBITING THE SALE, USE, AND POSSESSION OF ELECTRONIC CIGARETTES, LIQUID NICOTINE AND ASSOCIATED PARAPHERNALIA TO MINORS; PROHIBITING SELF-SERVICE MERCHANDISING; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO HUNDRED DOLLARS (\$200.00) FOR EACH OFFENSE; AND, PROVIDING AN EFFECTIVE DATE.

WHEREAS, the dangers posed by tobacco are not limited to cigarettes, pipes or other traditional forms of smoking; and

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

WHEREAS, a ban on the sale of electronic cigarettes, liquid nicotine and associated paraphernalia in the City of Rowlett to persons under the age of 18, a prohibition on self-service 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 of Rowlett.

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

SECTION 1. That the Code of Ordinances, City of Rowlett, Texas, be and is hereby amended by amending Article VI (“Smoking”) of Chapter 22 (“Environment”) to establish

sections 22-241 through 22-244 as Division 1, entitled "Smoking," and to amend Section 22-244, such that Section 22-244 shall read in its entirety as follows:

"CHAPTER 22

ENVIRONMENT

...

ARTICLE VI. SMOKING

DIVISION 1. SMOKING

...

Sec. 22-244. Offenses and penalties.

(a) A person who violates a provision of this division, or who fails to perform an act required of the person by this division, commits an offense. A person commits a separate offense each day or portion of a day during which a violation is committed, permitted, or continued.

(b) Unless specifically provided otherwise in this division, an offense under this division is punishable by a fine not to exceed \$200.00.

(c) No culpable mental state shall be required to be plead or proven to substantiate guilt in the prosecution of any case in which an offense under this division is alleged."

SECTION 2. That the Code of Ordinances, City of Rowlett, Texas, be and is hereby amended by amending Article VI ("Smoking") of Chapter 22 ("Environment") to add a new Division 2 to Article VI, entitled, "Electronic Cigarettes," consisting of sections 22-245 through 22-249, prohibiting the sale to and the use and possession of electronic cigarettes by minors, such that Division 2 of Article VI of Chapter 22 shall henceforth read in its entirety as follows:

"CHAPTER 22

ENVIRONMENT

...

ARTICLE VI. SMOKING

...

DIVISION 2. ELECTRONIC CIGARETTES

Sec. 22-245 Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings assigned in this section, except where the context clearly indicates a different meaning:

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 means a person under the age of 18 years.

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 is 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.

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.

Sec. 22-246 Use and possession 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 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. 22-247 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. 22-248 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-service 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. 22-249 Penalties.

(a) A person in violation of this division shall be punished by fine not to exceed \$200.00.

(b) The city may revoke a certificate of occupancy for a business or retailer if the business, retailer, or an employee, agent or representative thereof has been convicted of or placed on deferred disposition for two or more violations of this division within a consecutive 12-month period occurring on the premises of the business or retailer.

(c) No culpable mental state shall be required to be plead or proven to establish guilt in the prosecution of any case in which an offense under this division is alleged.

Sec. 22-250. Reserved."

SECTION 3. That all ordinances of the City of Rowlett, Texas, in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the City not in conflict with the provisions of the ordinance shall remain in full force and effect.

SECTION 4. That an offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 5. That should any section, paragraph, sentence, subdivision, clause, phrase or provision of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so decided to be unconstitutional, illegal, or invalid and shall not affect the validity of the remainder of this ordinance or any other provision of the Code of Ordinances of the City of Rowlett.

SECTION 6. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed guilty of a misdemeanor and subject to a penalty as provided for in this ordinance, and upon conviction shall be punished by fine not to exceed the sum of Two Hundred Dollars (\$200.00) for each offense.

SECTION 7. That this ordinance shall take effect immediately from and after its passage and the publication of the caption as the law and charter in such cases provide.