

**CITY OF FORNEY, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF FORNEY, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF FORNEY, TEXAS, AS HERETOFORE AMENDED, BY AMENDING SECTION 8.09.001, ENTITLED “DEFINITIONS,” BY PROVIDING RESTRICTIONS FOR SMOKING IN PUBLIC PLACES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING A PENALTY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Forney, Texas (“City”) is a home-rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, the City Council of the City of Forney (“City Council”) is empowered under the Texas Local Government Code to adopt ordinances and rules for the orderly and beneficial operation of City government and the welfare of the citizens of Forney; and

**WHEREAS**, the City Council has adopted Article 8.09 of the Forney Code of Ordinances, “Smoking in Public Places,” to safeguard the public health, safety and welfare of residents, occupants, and patrons of facilities and within public spaces; and

**WHEREAS**, the City Council has reviewed source materials related to the effects of smoking tobacco and related substances and has determined that such products can have an unreasonable adverse effect on the citizens of Forney; and

**WHEREAS**, in recent years electronic vaping devices have become a popular alternative to simulate the smoking of tobacco in which users inhale nicotine and other various and unknown chemicals substances; and

**WHEREAS**, the various health risks that may be associated with inhaling nicotine and/or other vapors that are emitted from electronic vapor devices has not been adequately studied, therefore there is no basis for claims that such nicotine or other substances contained in the vapor are safe; and

**WHEREAS**, the City Council desires to amend Article 8.09 to provide more specific definitions related to smoking, to better address the general health, safety and welfare of the residents of Forney.

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

**Section 1. FINDINGS INCORPORATED**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Forney, and they are hereby approved and incorporated into the body of this Ordinance as if restated herein in their entirety.

**Section 2. AN AMENDMENT TO SECTION 8.09.001 OF THE CODE OF ORDINANCES ENTITLED “DEFINITIONS”**

From and after the effective date of this Ordinance, Article 8.09 of the Code of Ordinances of the City of Forney, Texas, entitled “Smoking in Public Places” is hereby amended to read as follows:

**ARTICLE 8.09 SMOKING IN PUBLIC PLACES**

**Sec. 8.09.001 Definitions.**

Eating Establishment. Any establishment that prepares or serves food or beverages, regardless of whether the establishment provides seating or facilities for on-premises consumption. The term includes, but is not limited to, restaurants, coffee shops, cafeterias, fast-food establishment, private clubs, short-order cafes, luncheonettes, lunchrooms, soda fountains, food carts, food vending vehicles, and catering establishments.

E-cigarette or e-hookah. Any electronic oral device or nicotine delivery device, such as one composed of a heating element, battery, and/or electric circuit, which provides a vapor of nicotine or any other substance, and the use or inhalation of which simulates smoking. The term shall include any device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, hookah pen or under any other product name or description.

Electronic vaping device. Any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provides, or is manufactured or intended to provide, a vapor of liquid nicotine and/or other substances mixed with propylene glycol and/or similar 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, electronic hookahs, e-hookahs or under any other product name or design.

Public building, place or facility. Any city-owned or city-leased building, place, facility or property that is operated or controlled by the city.

Smoke, smokes, or smoking.

- (1) Carrying, possessing, or holding a lighted pipe, cigar, cigarette, weed, plant, or other combustible material or smoking equipment or device, irrespective of form or kind and/or vaping or the use of any electronic cigarette or electronic vaping device;
- (2) A lighted pipe, cigar, cigarette, weed, plant, or other combustible material or smoking equipment or device, irrespective of form or kind; or
- (3) Inhaling, emitting, or exhaling, in any form or manner, the smoke of or from a pipe, cigar, cigarette, weed, plant, or other combustible material or smoking equipment or device, irrespective of form or kind, and/or vaping or the use of any electronic vaping device, e-cigarette or e-hookah.

Tobacco Product. A cigarette, cheroot, stooge, cigar, snuff, smoking tobacco, chewing tobacco, and any article or product made of tobacco or a tobacco substitute.

Vaping. Inhaling or exhaling vapors of electronic vaping liquid from an electronic vaping device.

**Section 3. SEVERABILITY CLAUSE**

It is hereby declared to be the intention of the City Council that the words, phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any word, 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 words, phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of any such unconstitutional word, phrase, clause, sentence, paragraph or section.

**Section 4. SAVINGS CLAUSE**

All rights and remedies of the City are expressly saved as to

**Section 5. REPEALER CLAUSE**

Any provision of any prior ordinance of the City, whether codified or uncoded, 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 of the City, whether codified or uncoded, which are not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**Section 6. PENALTY CLAUSE**

Any person, firm, or corporation violating any of the provisions or terms of this Ordinance shall be guilty of a misdemeanor and upon conviction, shall be fined a sum not to exceed \$2,000.00 for each offense, and each and every violation or day such violation shall continue or exist, shall be deemed a separate offense.

**Section 7. EFFECTIVE DATE**

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.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Forney, Texas,  
on this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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**Mary Penn, Mayor**

**ATTEST:**

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**Dorothy Brooks, TRMC, CMC, City Secretary**

**APPROVED AS TO FORM AND LEGALITY:**

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**Jon Thatcher, City Attorney**