

Model Ordinance Prohibiting the Sale of Tobacco and Unregulated Nicotine Delivery Products by Health Care Institutions

Sec. I. Findings and Intent

Whereas, tobacco is one of the leading causes of death and disease in the United States as well as in the City of _____;

Whereas, unregulated non-prescribed nicotine delivery products, such as electronic smoking devices, present a public health hazard and may lead minors to early initiation to, and dependence on, nicotine products, resulting in use of conventional tobacco products in the future;

Whereas, tobacco and nicotine delivery products are currently sold in many health care institutions such as pharmacies and drug stores;

Whereas, the sale of tobacco and nicotine delivery products is incompatible with the mission of health care institutions because it is detrimental to the public health and undermines efforts to educate patients on the safe and effective use of medication;

Now therefore, the _____ [City Council or other governing body], in recognition of the harmful effects of tobacco and nicotine delivery products on both adults and minors, believes that it is important that the sale of tobacco and nicotine delivery products by health care institutions be prohibited in the City of _____.

Sec. II. Definitions

- A. "Electronic smoking device" means any electronic product that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately.

- B. "Health Care Institution" means an individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the _____ [state regulatory authority] or a retail establishment that provides pharmaceutical goods and services. Health care institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, opticians, and doctors' and dentists' offices.

- C. "Nicotine Delivery Product" means any article or product that is made wholly or in part of a tobacco substitute or that contains nicotine and that is intended for or expected to be used for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine Delivery Product includes, but is not limited to, electronic smoking devices.
- D. "Tobacco product" means any product that is made from or derived from tobacco and that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means. Tobacco products include, but are not limited to, cigarettes, cigars, pipe tobacco, hookahs, chewing tobacco, snuff, snus, and electronic smoking devices.

Sec. III. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Health Care Institutions

No health care institution located in the City of _____ shall sell or cause to be sold tobacco or nicotine delivery products. No retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco or nicotine delivery products.

Sec. IV. Nonretaliation.

No person or employer shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse personnel action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this ordinance or exercises any right conferred by this ordinance.

Sec. V. Enforcement.

- A. This ordinance shall be enforced by the _____ [Department of Health or City Manager] or an authorized designee.
- B. Notice of the provisions of this ordinance shall be given to all applicants for a business license in the City of _____.
- C. Any citizen who desires to register a complaint under this ordinance may initiate enforcement with the _____ [Department of Health or City Manager].

- D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this ordinance.
- E. Notwithstanding any other provision of this ordinance, an employee or private citizen may bring legal action to enforce this ordinance.
- F. In addition to the remedies provided by the provisions of this Section, the _____ [Department of Health or City Manager] or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. VI. Violations and Penalties.

- A. A person who owns, manages, operates, or otherwise controls a health care institution and who fails to comply with the provisions of this ordinance shall be guilty of an infraction, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.
 - 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
 - 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- B. In addition to the fines established by this Section, violation of this ordinance by a person who owns, manages, operates, or otherwise controls a health care institution may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- C. Violation of this ordinance is hereby declared to be a public nuisance, which may be abated by the _____ [Department of Health or City Manager] by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.
- D. Each day on which a violation of this ordinance occurs shall be considered a separate and distinct violation.

Sec. VII. Severability.

If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Sec. VIII. Effective Date.

This ordinance shall be effective thirty (30) days from and after the date of its adoption.