

ORDINANCE NO. F-1888

AN ORDINANCE AMENDING CHAPTER 52 “SMOKE-FREE AIR REGULATIONS” OF THE WHEATON CITY CODE

WHEREAS, alternative nicotine products have recently been introduced into the market for commercial consumption; and

WHEREAS, alternative nicotine products are inhaled and exhaled through vaping devices; and

WHEREAS, preliminary research by persons in the medical profession indicates that the use of alternative nicotine products through vaping may pose health hazards to third persons including children; and

WHEREAS, the tobacco industry maintained for decades that there were not palpable negative health side effects from second hand smoke, which is a similar position being maintained today by the vaping industry; and

WHEREAS, the Mayor and City Council of the City of Wheaton have determined, based upon the preliminary health research, that a cautious approach to the use of alternative nicotine products in various public and private places, including those periodically occupied by children, is in furtherance of the public health safety and welfare.

NOW THEREFORE BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule authority that Chapter 52 “Smoke-Free Air Regulations” of the Wheaton City Code shall be amended as follows:

SECTION 1: That Section 52-1, “Findings”, of Chapter 52, “Smoke-Free Air Regulations,” is hereby amended by the addition of the following paragraphs:

Alternative tobacco and nicotine delivery products have recently become available to the public in the commercial market. E-cigarettes, or vapor cigarettes, are an alternative nicotine product which contains nicotine and other chemicals which are turned into a vapor or steam that is inhaled by the user and then exhaled. Although there is limited research on their health risks, the United States Food and Drug Administration notes that the solution used in e-cigarettes contains toxic chemicals found in antifreeze and several other cancer-causing chemicals, such as nitrosamines.

The concentration of these chemicals in e-cigarettes is not definitively known; the potential harmful effects and addictiveness appear to vary based upon the brand and degree of vaporization selected by the user. Research illustrates that nicotine can affect brain development in children and teens. The vapor emitted by e-cigarettes is in aerosol form that has the capacity to deeply penetrate lung cells and the cellular lining of the organs made up of these cells.

An article published in the New England Journal of Medicine reported a study performed using nuclear magnetic resonance spectroscopy which permitted researchers to look at vape aerosol after vaping. The researchers found that the pre-vaping liquid breaks down into formaldehyde and that the reaction between an electronic aerosolizer, propylene glycol, glycerol and formaldehyde creates a formaldehyde-releasing agent called formaldehyde hemiacetals, which are known as industrial biocides. Although small amounts of formaldehyde are not dangerous, higher levels are strongly associated with certain cancers, according to the international agency for research on cancer making it one of one hundred and fourteen compounds known as carcinogens. The Wheaton City Council adopts these findings in the New England Journal of Medicine as a basis to support these amendments.

SECTION 2: That Section 52-2, "Purpose," of Chapter 52, "Smoke-Free Air Regulations," is hereby repealed and rescinded in its entirety and replaced with a new Section 52-2 "Smoke-Free Air Regulations," which shall read as follows:

"Purpose": this chapter shall be cited as "The Wheaton Smoke and Vape-Free Ordinance," the purpose of which is to protect the public health, comfort, and environment by prohibiting smoking or vaping alternative nicotine products: in all enclosed public places and places of employment; within 25 feet of all public entrances to such places; in open-air public dining areas and within 25 feet of such areas; and within certain unenclosed public places in order to ensure that non-smokers and non-vapers may breathe air free from the hazardous effects of second-hand smoke and alternative nicotine products.

SECTION 3: That Section 52-3, "Definitions" of Chapter 52, "Smoke-Free Air Regulations," is hereby amended by the insertion in alphabetical order of the following definitions of:

"Alternative nicotine products" means a product or device not consisting of or containing leaf tobacco that provides for the ingestion into the body of nicotine by any means, but excluding any product approved by the United States Food and Drug Administration as a tobacco cessation product, tobacco dependency product, or for other medical purpose, and being marketed solely for that approved purpose.

“Outdoor Event” means a public or private gathering, at an Outdoor Venue, for a planned social or public purpose, by invitation or advertisement, for more than ten people at an outdoor venue.

“Outdoor Venue” means public property where an Outdoor Event occurs.

“Vape” or “Vaping” means using a vapor cigarette or alternative vapor transmission modality to vape alternative nicotine products.

“Vapor cigarettes” or alternative vapor transmission modalities are devices which contain a cartridge or open space filled with nicotine and/or other chemicals which are turned into vapor or steam that is inhaled and exhaled by the user including but not limited to e-cigarettes, e-cigs, vape, wax vape pens or other similar modalities.

SECTION 4: That Section 52-4, “Prohibition in Enclosed Places,” of Chapter 52, “Smoke-Free Air Regulations,” is hereby repealed and rescinded in its entirety and replaced with the following:

Section 52-4: **Prohibition in Enclosed Places.** (a) It shall be unlawful to smoke or vape in any enclosed area of any public place; (b) It shall be unlawful for the owner, occupant or lessee in control of a public place to permit smoking or vaping in any enclosed area in a public place.

SECTION 5: That Section 52-5(a 1-4) and (b), “Prohibition in Unenclosed Places and Outdoor Venues,” of Chapter 52, “Smoke-Free Air Regulations,” is hereby repealed and rescinded in its entirety and replaced with the following:

Section 52-5: **Prohibition in Unenclosed Places and Outdoor Venues.** (a) It shall be unlawful to smoke or vape in the following unenclosed public places: (1) all outdoor events; (2) Adams and Memorial Parks; (3) public sidewalks within twenty-five (25) feet of a public entrance; (4) public sidewalks within 25 feet of an open-air dining area; (5) or within 25 feet of an outdoor venue during an outdoor event.

SECTION 6: That Section 52-6, “Prohibition in Places of Employment,” of Chapter 52, “Smoke-Free Air Regulations,” is hereby repealed and rescinded in its entirety and replaced with the following:

Section 52-6: **Prohibition in Places of Employment.** (a) It shall be unlawful to smoke or vape in any enclosed area of any place of employment; (b) It shall be unlawful for any employer to knowingly permit smoking or vaping in any enclosed area of any place of employment.

SECTION 7: That Section 52-7, "Prohibition in Open-Air Dining Areas," of Chapter 52, "Smoke-Free Air Regulations," is hereby repealed and rescinded in its entirety and replaced with the following:

Section 52-7: **Prohibition in Open-Air Dining Areas.** (a) It shall be unlawful to smoke or vape in any open-air dining area; (b) It shall be unlawful for the owner, occupant or lessee, in control of an open-air dining area to knowingly permit smoking or vaping in the area available for open-air dining; (c) It shall be unlawful to smoke or vape within 25 feet of an open-air dining area.

SECTION 8: That Section 52-8, "Prohibition at Public Entrances," of Chapter 52, "Smoke-Free Air Regulations," is hereby repealed and rescinded in its entirety and replaced with the following:

Section 52-8: **Prohibition at Public Entrances.** (a) It shall be unlawful to smoke or vape within 25 feet of a public entrance to a public place or to a place of employment. (b) It shall be unlawful for any person or persons to gather or congregate for the purpose of smoking or vaping within 25 feet of a public entrance.

SECTION 9: That Section 52-9, "Designation of Other Non-Smoking Areas," of Chapter 52, "Smoke-Free Air Regulations," is hereby repealed and rescinded in its entirety and replaced with the following:

Section 52-9: **Designation of Other Non-Smoking Areas.** Nothing in this chapter shall be deemed to limit the owner, occupant, or lessee of a public place or place of employment to further prohibit smoking or vaping by designating outdoor areas not subject to the restriction in this chapter as a place where smoking or vaping is also prohibited, provided that the owner, occupant, or lessee shall cause signs to be posted at appropriate locations advising persons that smoking or vaping is prohibited within the designated outdoor area.

SECTION 10: That Section 52-10, "Signs," of Chapter 52, "Smoke-Free Air Regulations," is hereby repealed and rescinded in its entirety and replaced the following:

Section 52-10: **Signs.** (a) Each owner, lessor, lessee, employer, or other person in control of a public place, shall post conspicuous “no smoking or vaping” signs in the enclosed area of any public place where smoking or vaping is prohibited. Such “no smoking or vaping” signs shall have a white field with the words “no smoking or vaping” printed in red letters, four inches high with a one-half inch face, or shall bear the international “no smoking or vaping” symbols. It shall be unlawful for any person to remove, deface or obscure any sign posted pursuant to the provisions of this chapter.

(b) Each owner, lessor, lessee, management company, or other person in control of an outdoor venue shall cause signs to be posted at appropriate locations advising persons that smoking or vaping is prohibited within the outdoor venue during outdoor events.

SECTION 11: That Section 52-11, “Exemptions,” of Chapter 52, “Smoke-Free Air Regulations,” is hereby repealed and rescinded in its entirety and replaced with the following:

Section 52-11: **Exemptions.** The prohibition on smoking or vaping set forth in sections 52-4, 52-5 and 52-6 shall not apply to:

(1) A public place or place of employment of a tobacco or vapor dealer that permits customers to sample tobacco or vape products on the premises of the dealer, provided that smoke generated by smoking or vaping on the premises of the dealer does not infiltrate any other enclosed public place or place of employment. For purposes of this exemption, a dealer is a retailer whose principal business is the sale at retail of tobacco, tobacco-related products, and/or vaping products.

(2) Other than Adams and Memorial Parks, all parks and forest preserves or unenclosed public lands owned by the Wheaton Park District or the Forest Preserve District of DuPage County.

SECTION 12: That Section 52-12, “Penalties,” of Chapter 52 “Smoke-Free Air Regulations,” is hereby repealed and rescinded in its entirety and replaced with the following:

Section 52-12: **Penalties.** (a) Any person who smokes or vapes in an area where smoking or vaping is prohibited under the provisions of this chapter shall be guilty of an offense punishable by a fine of not less than \$100.00 and not more than \$250.00.

(b) Any person who owns, manages, operates or otherwise controls an enclosed public place, a place of employment, an outdoor event or an open air dining area that permits smoking or vaping in an area where smoking or vaping is prohibited under the provisions of this chapter, shall be guilty of an offense punishable by a fine of not less than (i) \$250.00 for the first violation, (ii) not less than \$500.00 for a second violation within one year after the first violation, and (iii) not less than \$2,500.00 for an offense within one year after the second violation. If offenses occur more than one year from a prior offense date, the cycle of minimum fines set forth in this subsection shall renew. Upon a third violation within a two-year period by a person/entity holding a city license/permit, the mayor, after a hearing in which the violator may contest the violation or penalty, may suspend or revoke any city license/permit for the premises in which the violation occurred.

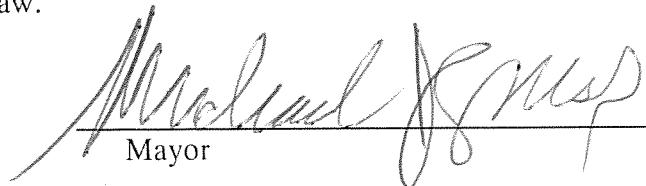
(c) Each day any violation of this chapter shall continue shall constitute a separate offense.

SECTION 13: That Section 52-13 "Effective date" is hereby repealed and rescinded and shall be removed from this ordinance by the codifier and reserved.

SECTION 14: If a court of competent jurisdiction sets aside any portion of this Ordinance as unconstitutional or unlawful, it shall not affect the validity of the remainder of the Ordinance.

SECTION 15: Any ordinance which is inconsistent with this Ordinance is repealed to the extent of such inconsistency.

SECTION 16: This Ordinance shall become effective upon passage, execution by the Mayor and publication as required by law.



Michael J. R. Mays
Mayor

ATTEST:



Alan Bruehlman
City Clerk

Roll Call Vote

Ayes:

Councilman Rutledge
Mayor Pro Tem Suess
Councilman Saline

Councilwoman Fitch
Councilman Prendiville

Nays: None
Absent: Mayor Gresk
Councilman Scalzo

Passed: October 5, 2015

Published: October 6, 2015

