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ORDINANCE NO.

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**AN ORDINANCE AMENDING CHAPTER 10-6 OF THE CITY CODE
RELATING TO ELECTRONIC SMOKING DEVICES AND UPDATING THE
NAME OF THE AUSTIN PUBLIC HEALTH DEPARTMENT.**

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

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PART 1. FINDINGS

(1) The City Council finds that cigarettes and secondhand smoke contain more than 7,000 chemicals, including 69 known or suspected carcinogens; and

(2) New, unregulated high-tech smoking devices, commonly referred to as electronic cigarettes (e-cigarettes), have recently become more available to consumers; and

(3) Nicotine is a known neurotoxin that is also one of the most highly addictive substances available for public consumption. The nicotine content provided by e-cigarettes is unknown and unspecified and may present a significant risk of rapid addiction or overdose; and

(4) Laboratory tests conducted by the U.S. Food and Drug Administration (FDA) have shown that e-cigarette vapors contain carcinogens, including nitrosamines and varying levels of nicotine, even in the e-cigarettes that were marketed as no-nicotine. Further, the FDA tests showed that e-cigarette vapors were found to contain toxic chemicals such as diethylene glycol, a common ingredient in antifreeze; and

(5) Manufacturers of e-cigarettes offer their liquid nicotine cartridges in a variety of flavors, including, but not limited to, cherry, chocolate, and vanilla, which the FDA and public health advocates warn are purposefully meant to appeal to and attract young people. Also, studies show that adolescents can become addicted to nicotine after ingesting the equivalent of 20 traditional cigarettes, the amount traditionally available in a single pack, and the appeal created by the flavored e-cigarettes and liquid nicotine may lead young people into a lifetime of nicotine addiction; and

(6) Other governments and public health organizations, including the World Health Organization and the Canadian government's FDA equivalent, the Health Products and Food Branch Inspectorate, have joined the FDA in speaking out about the potential dangers posed by e-cigarettes and are also calling on

manufacturers of e-cigarettes to discontinue their safety claims until these products have been independently tested; and

(7) Every year, use of tobacco products creates more than \$268 billion in directly related healthcare and lost worker productivity costs, and leads to the deaths of almost half a million Americans; and

(8) Protecting the citizens of the City against an untested nicotine product known to have nicotine, such as e-cigarettes, and liquid nicotine, represents sound public health and fiscal policy; and

(9) A ban on the sale of e-cigarettes, liquid nicotine and like products in the City to persons under the age of 18 and a prohibition on self-service merchandising in the retail sale of e-cigarettes, liquid nicotine, and like products in order to minimize their physical accessibility to minors serves an important public interest in furtherance of the health, safety, and general welfare of the citizens of the City; and

(10) The Texas Legislature currently prohibits the possession, purchase, consumption or receipt of e-cigarettes or tobacco products by minors, and the City enforces such regulations. The Texas Legislature also currently regulates vendor assisted sales and vending machines that contain e-cigarettes or tobacco products, including, but not limited to, prohibiting the use of these products by minors; and

(11) Including e-cigarettes in Chapter 10-6 (*Smoking in Public Place*) will assist the public in understanding the requirements for smoking in public places; and

(12) To promote the public health, safety, and welfare of the City and its citizens, it is in the best interest of the City and its citizens to amend the City Code.

PART 2. City Code Section 10-6-1 (*Definitions*) is amended to amend existing definitions for “Retail Tobacco Store” and “Smoking” to read:

(8) RETAIL TOBACCO STORE means a retail store used primarily for the sale of tobacco products, electronic smoking devices, and related accessories ~~[and]~~ in which the sale of other non-tobacco products is incidental, and includes vape shops or other establishments that primarily sell electronic smoking devices.

(9) SMOKING means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, any electronic smoking device as defined

71 in City Code Section 10-11-1(2) (*Definitions*), or other combustible
72 substance in any manner or in any form.

73 **PART 3.** City Code Section 10-6-10 (*Enforcement*) is amended to amend
74 Subsections (B) and (D) to read:

75 (B) A person may report a violation of this chapter to the director of the
76 Austin Public Health [~~Health and Human Services~~] Department or, if the
77 violation occurs in a park, to the director of the Parks and Recreation
78 Department.

79 (D) The director of the Austin Public Health [~~Health and Human Services~~]
80 Department or the director of the Parks and Recreation Department may
81 enforce this chapter and may seek injunctive relief.

82 **PART 4.** This ordinance takes effect on _____, 2017.

83 **PASSED AND APPROVED**

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87 _____, 2017

88 Steve Adler
89 Mayor

90 **APPROVED:** _____

91 Anne L. Morgan
92 City Attorney

ATTEST: _____

Jannette S. Goodall
City Clerk