

ORDINANCE NO. 2022-O-003

AN ORDINANCE ESTABLISHING CERTAIN LOCATION RESTRICTIONS UPON THE SALE OF ADULT-ORIENTED PRODUCTS OR SERVICES, INCLUDING CERTAIN TOBACCO PRODUCTS, ELECTRONIC SMOKING DEVICES AND RELATED ACCESSORIES, AND PROVIDING FOR FINES AND OTHER PENALTIES, AND ENFORCEMENT BY ABATEMENT AND INJUNCTIVE RELIEF

WHEREAS, since 2014, e-cigarettes have been the most commonly used tobacco product among U.S. youths; in 2020, an estimated 3.6 million (13.1%) U.S. middle and high school students reported using e-cigarettes within the past 30 days (current use); and more than 80% of current users reported flavored e-cigarette use;

WHEREAS, in 2021, 11.3% of high school students (1.72 million) and 2.8% (320,000) of middle school students reported current e-cigarette use; among current e-cigarette users, 43.6% of high school students and 17.2% of middle school students reported using e-cigarettes on ≥ 20 of the past 30 days; with daily use at 27.6% among current high school e-cigarette users and 8.3% among current middle school e-cigarette users;

WHEREAS, approximately 2.06 million youths were estimated to be current e-cigarette users in 2021, and use of any tobacco products by youths in any form, including e-cigarettes, is unsafe and highly addictive, because tobacco products and most e-cigarettes contain nicotine, and nicotine exposure during adolescence can harm the developing brain;

WHEREAS, ongoing efforts to address youth e-cigarette use, including FDA's prioritized enforcement against certain unauthorized flavored, cartridge-based e-cigarettes in 2020, are critical, especially inasmuch as the tobacco product landscape continues to evolve, sustained implementation of comprehensive tobacco control and prevention strategies at the national, state, and local levels, coupled with FDA regulation, can reduce and prevent tobacco product initiation and use among youths;

WHEREAS, the foregoing facts are well established and enumerated in numerous studies and reports, as detailed in *E-Cigarette Use Among Middle and High School Students — National Youth Tobacco Survey*, Centers for Disease Control & Prevention (CDC), United States, October 2021;

WHEREAS, the City of Blanco wishes to respond to and support all such efforts to prevent tobacco, nicotine and e-cigarette usage generally, but especially among youth;

WHEREAS, the City has determined that adopting reasonable restrictions within the City to reduce exposure and use of these products generally, and especially among youth, are reasonably related to a recognized and legitimate public health and safety purpose; and

WHEREAS, the City is mindful and has considered that any such restrictions must be carefully and narrowly drawn so as to not improperly interfere with the rights of third parties, including any such rights to free speech and association;

THEREFORE, in consideration of these premises, BE IT ORDAINED that the City Council of the City of Blanco hereby adopts the following ordinance:

- a) The sale or provision of adult-oriented business products or services in any location described herein, including but not limited to:
 - 1) a retail store used primarily and substantially for the sale of tobacco products and/or other products that contain nicotine, electronic smoking devices, and/or related accessories, in which the sale of other non-tobacco products is incidental, including vape shops or other establishments that sell electronic smoking devices; or
 - 2) a retail store that either devotes 25 percent or more of floor area or display area to, or derives 50 percent or more of gross sales receipts from, the sale or exchange of tobacco products and/or other products that contain nicotine, electronic smoking devices, and/or related accessories;

is prohibited within 750 feet of a church, school, public park, daycare center, playground, or residential district.

- b) Any retail store location described in paragraph a) above shall be located not less than one-half mile of any such other retail store location that meets the same criteria.
- c) The measurement of the distance between the location where the sale of such products or services are sold, and the church, school, public park, daycare center, playground, or residential district, or another location where such products or services are sold, shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections.
- d) Any retail stores or businesses that meet the criteria described hereinabove in paragraph a) are restricted to commercial zoned property, with special use permit (SUP), pursuant to Chapter 4 of the City's Unified Development Code (UDC). Accordingly, such restricted use shall be added to and listed in Table 4.2 of the City's UDC. Any special use permit issued pursuant to the procedures of the City's UDC shall operate as a variance described under paragraph e) of this ordinance.
- e) The City, upon recommendation of its Planning & Zoning Commission, and approval of the City Council, may grant a variance to this regulation upon a determination that enforcement in the specific instance is not in the best interest of the public, does not serve its intended purpose, is not effective or necessary, or for any other reason, all after consideration of the health, safety, and welfare of youth and the general public, and the equities of the situation, as determined in the best interest of the community.

Any variance granted under this provision of this ordinance shall be deemed a special use permit granted under Chapter 4 of the City's UDC.

- f) The foregoing provisions of this ordinance are severable. Accordingly, if for any reason one or more provisions of this ordinance is deemed or ordered invalid, null, void, or of no effect, the remaining provisions shall remain in full force and effect.
- g) Enforcement.
 - 1) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance shall constitute a violation of this ordinance.
 - 2) Any violation of this ordinance is hereby declared as a public nuisance.
 - 3) This ordinance may be enforced in accordance with Section 1.01.009 of the City's Code of Ordinances.
 - 4) In addition to other remedies provided by this ordinance, the City's Code, UDC, or by other law, any violation of this ordinance may be remedied by a civil action brought by the City, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The remedies provided herein are cumulative and in addition to any other remedies available at law or in equity.
- h) This ordinance shall be effective immediately upon the date of adoption.

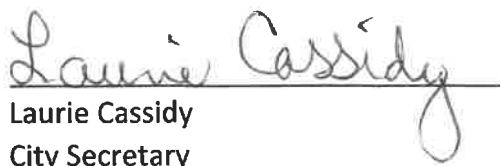
ADOPTED THE 14th DAY OF FEBRUARY 2022.

CERTIFIED BY MY HAND:



Rachel Lumpee
Mayor

ATTEST:


Laurie Cassidy
City Secretary

