

ORDINANCE NO.: 2016-09
OF THE COMMON COUNCIL OF THE CITY OF FRANKLIN, INDIANA

ORDINANCE AMENDING ORDINANCES 09-04 AND 06-12
REGULATING SMOKING

WHEREAS, Ind. Code § 7.1-5-12-13 provides that a City may adopt an Ordinance more restrictive than state law;

WHEREAS, due to public health risks, including but not limited to concerns from second hand smoke and vapors, which constitute a form of air pollution, the Common Council of the City of Franklin, Indiana determines that the smoking of tobacco, and the use of electronic smoking devices should be banned in certain public places;

WHEREAS, specific findings are contained in the attached Exhibit "A";

WHEREAS, the Common Council finds that Ordinances No. 06-12 and 09-04 should be amended to reflect the Council's findings.

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF FRANKLIN, INDIANA, ORDAINS AND ENACTS THE FOLLOWING:

SECTION (1) AMENDMENTS: "Section 1) Definitions:" of Ordinance 06-12 and "Section 7) Definitions:" of Ordinance 09-04 shall be amended to provide that the term "smoking" or "to smoke" means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, e-cigarette, electronic smoking device or any other lighted or heated tobacco or plant product intended for inhalation. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device.

SECTION (2) AMENDMENTS ADDING DEFINITIONS: "Section 1) Definitions:" of Ordinance 06-12 and "Section 7) Definitions:" of Ordinance 09-04 shall be amended to add the following definitions:

a. "Electronic Smoking Device" means any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed or sold as an "e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.

SECTION (3) PRIOR ORDINANCE: All other provisions of Ordinance 06-12 and Ordinance 09-04 not specifically amended herein shall remain in full force and effect as previously adopted.

SECTION (4) SEVERABILITY: The sections, paragraphs, sentences, clauses, phrases and words of this Ordinance are separable, and if any word, phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a Court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs and sections of this Ordinance.


SECTION (5) DURATION AND EFFECTIVE DATE: The provisions set forth in this Ordinance become and will remain in full force and effect upon the passage and adoption of this Ordinance by signature of the executive in the manner prescribed by Indiana Code §36-4-6-15, 16.

Introduced and Filed on the 18th day of July, 2016. A motion to consider same on the First Reading or day of introduction was not offered.

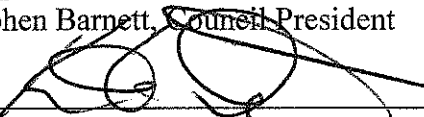
DULY PASSED on this 18th day of August, 2016 by the Common Council of the City of Franklin, Johnson County, Indiana, having been passed by a vote 5 in Favor and 2 Opposed.

CITY OF FRANKLIN, INDIANA, BY ITS COMMON COUNCIL

Voting Affirmative:



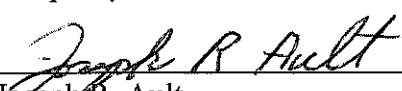
Stephen Barnett, Council President



Kenneth W. Austin, Vice President



Joseph P. Abban



Joseph R. Ault

Andrew Eggers

Keith Fox



Richard L. Wertz

Voting Opposed:

Stephen Barnett, Council President

Kenneth W. Austin, Vice President

Joseph P. Abban

Joseph R. Ault



Andrew Eggers



Keith Fox

Richard L. Wertz

Attest:

Jayne Rhodes
Jayne Rhoades
City Clerk Treasurer

Presented by me to the Mayor of the City of Franklin for his approval or veto pursuant to Indiana § 36-4-6-15, 16 this 1st day of August, 2016 at 6:15 o'clock P.M.

Jayne Rhodes
Jayne Rhoades
City Clerk Treasurer

This Ordinance having been passed by the legislative body and presented to me was approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16a)(2) this 1st day of August, 2016 at 6:15 o'clock P.M.

Joseph E. McGuinness
Joseph E. McGuinness, Mayor

Attest:

Jayne Rhodes
Jayne Rhoades
City Clerk Treasurer

Prepared by:

Lynnette Gray
Lynnette Gray, City Attorney

Exhibit "A"

- A. Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of electronic cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent." ("Summary of results: laboratory analysis of electronic cigarettes conducted by FDA," Food and Drug Administration (FDA), July 22, 2009; <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm> Accessed on: October 22, 2009.)
- B. According to a more recent study, electronic cigarette emissions are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke. Electronic cigarettes produce an aerosol or vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions. (Fuoco, F.C.; Buonanno, G.; Stabile, L.; Vigo, P., "Influential parameters on particle concentration and size distribution in the mainstream of e-cigarettes," *Environmental Pollution* 184: 523-529, January 2014.)