

ORDINANCE NO. O-2014-032-03

AN ORDINANCE AMENDING ORDINANCE NO. O-2002-032-15, AS AMENDED, THE ZONING ORDINANCE OF THE CITY OF HALTOM CITY, TEXAS, BY ADOPTING REGULATIONS FOR SMOKE SHOPS AND SMOKE LOUNGES; PROVIDING A DEFINITION FOR SMOKE SHOP AND SMOKE LOUNGE; PROVIDING FOR THE CLASSIFICATION OF SMOKE SHOPS AND SMOKE LOUNGES IN CERTAIN ZONING DISTRICTS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Haltom City is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council of the City of Haltom City heretofore adopted Ordinance No. O-2002-032-15, as amended, the Zoning Ordinance of the City of Haltom City, Texas, which Ordinance regulates and restricts the location and use of buildings, structures and land for trade, industry, residence and other purposes, and provides for the establishment of zoning districts of such number, shape and area as may be best suited to carry out these regulations; and

WHEREAS, the Planning and Zoning Commission after conducting a public hearing has made its recommendation for the following amendment to the zoning ordinance; and

WHEREAS, after appropriate notice and public hearing, the Planning and Zoning Commission of the City of Haltom City, Texas has forwarded a recommendation to the City Council for amendment of the City's zoning ordinance as set forth herein; and

WHEREAS, notice has been given and public hearings held as required for amendments to the zoning ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HALTOM CITY, TEXAS:

SECTION 1.

Section 28, "Definitions" in Appendix B – Zoning of the Code of Ordinances of the City of Haltom City, Texas, as amended, is hereby amended by adding the following definitions:

Electronic vaping device. Any electronically powered or battery powered device designed to simulate the smoking of tobacco, cigarettes, pipes or cigars. An electronic vaping device includes personal vaporizers, electronic cigarettes (e-cigarettes), electronic pipes (e-pipes), electronic cigars (e-cigars) and any other type of electronic nicotine delivery system or any part thereof.

Smoke lounge. An assembly establishment that is dedicated, in whole or in part, to entertaining smokers of tobacco, electronic vaping devices or other similar substances and includes any establishment that allows either the payment of consideration by a customer to the establishment for on-site delivery of tobacco, tobacco accessories, electronic vaping devices, vapor accessories or similar substances and products to the customer; and, the onsite smoking of such. This definition shall be construed to include establishments known variously as retail tobacco stores, tobacco product shops, hookah cafes, tobacco clubs, tobacco bars, vapor shops/lounges, and similar establishments, but shall not include an establishment which derives more than 50 percent of its gross revenue from food, beverage, or gasoline fuel sales.

Smoke shop. A retail establishment that is dedicated, in whole or in part, to the smoking of tobacco, electronic vaping devices or other similar substances and includes any establishment that allows either the payment of consideration by a customer to the establishment for on-site delivery of tobacco, tobacco accessories, electronic vaping devices, vapor accessories or similar substances and products to the customer; and, the onsite smoking of such. This definition shall be construed to include establishments known variously as retail tobacco stores, tobacco product shops, vapor shops, and similar establishments, but shall not include an establishment which derives more than 50 percent of its gross revenue from food, beverage, or gasoline fuel sales.

SECTION 2.

Section 9, "Use matrix" in Appendix B – Zoning of the Code of Ordinances of the City of Haltom City, Texas, as amended, is hereby amended by adding the following to the table of uses:

KEY:

P = Permitted

C = Conditional

SE = Special Exception

D. Recreation and entertainment uses:	SF-1	SF-2	D	MF-1	MF-2	MHD	TH	O	C-1	C-2	C-3	C-4	C-5	M-1	M-2
Smoke Lounge														P*	

* Refer to Sec. 29.X for distance requirements

G. Retail and service uses:	SF-1	SF-2	D	MF-1	MF-2	MHD	TH	O	C-1	C-2	C-3	C-4	C-5	M-1	M-2
Smoke Shop													P*		P*

* Refer to Sec. 29.X for distance requirements

SECTION 3.

Section 29, "Supplementary district regulations" in Appendix B – Zoning of the Code of Ordinances of the City of Haltom City, Texas, as amended, is hereby amended by adding the following:

X. *Smoke lounges and smoke shops.*

1. A person, including an operator, commits an offense if he/she causes or permits the operation or establishment of a smoke lounge or a smoke shop in or within 1,500 feet of an existing:
 - a. Religious institution;
 - b. School;
 - c. Public park;
 - d. A residential district;
 - e. A public library;
 - f. A property line of a lot devoted to a residential use; or
 - g. Another smoke lounge or smoke shop.
2. For the purpose of subsection (1) above, measurement of the distance shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the property line of an existing religious institution, school, smoke lounge, or smoke shop, or from the boundary line of a public park, public library, or residential district, to the nearest property line of the property sought to be used as a smoke lounge or smoke shop.

3. Also for the purposes of subsection (a) above, measurement of the 1,500 foot distance shall also include religious institutions, schools, public parks, residential district, other smoke lounges, or other smoke shops, which are located in an adjacent city, township or rural land area and which are within the 1,500 foot distance of the nearest property line of the property sought to be used as a smoke lounge or smoke shop within the City of Haltom City.
4. A certified survey prepared by a licensed surveyor or licensed engineer showing distance measurements in accordance with this section shall be submitted to the Zoning Administrator as part of the application for building permit or certificate of occupancy. Any certificate of occupancy issued for a building or facility used to conduct a smoke lounge or smoke shop without submission of the required survey shall be null and void.
5. A person commits an offense if he causes or permits the establishment or operation of more than one smoke lounge or smoke shop or a combination of a smoke lounge and a smoke shop on the same property, in the same building or structure, or any portion thereof.
6. A smoke lounge or smoke shop lawfully operating on the effective date of this article that is in violation of the location requirements of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue unless terminated for any reason. A nonconforming use under this subsection shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more smoke lounges or smoke shops are within 1,500 feet of one another and otherwise in a permissible location, the smoke lounge or smoke shop which was first established and continually operating at a particular location is the conforming use and the later-established smoke lounge or smoke shop is nonconforming.
7. A smoke lounge or smoke shop lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the smoke lounge or smoke shop certificate of occupancy, of a religious institution, school, smoke lounge, smoke shop, a public park, public library, residential district, or subsequent designation of a historical/cultural district, within 1,500 feet of the smoke lounge or smoke shop. This provision applies only to the renewal of a certificate of occupancy.

SECTION 4.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Haltom City, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 5.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 6.

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2,000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 7.

All rights and remedies of the City of Haltom City are expressly saved as to any and all violations of the provision of the Zoning Ordinance of the Code of Ordinances of the City of Haltom City, Texas, as amended, or any other ordinances regulating zoning and land use that have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 8.

The City Secretary of the City of Haltom City is hereby directed to publish in the official newspaper of the City of Haltom City, the caption, penalty clause, publication clause and effective date clause of this ordinance one (1) time within ten (10) days after the first reading of this ordinance as required by Section 10-01 of the Charter of the City of Haltom City.

SECTION 9.

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED ON FIRST READING THIS 13th DAY OF OCTOBER, 2014.

PASSED AND APPROVED ON SECOND READING THIS 27th DAY OF OCTOBER, 2014.

Rhian Hutchinson
MAYOR

ATTEST:

At Lammie
CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

WkQ
CITY ATTORNEY

