

PROPOSED ORDINANCE NO. 2019-20

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PEMBROKE PINES, FLORIDA, AMENDING TITLE XV, "LAND USAGE," CHAPTER 155, "ZONING CODE," SECTION 155.146, "COMMUNITY BUSINESS (B-2) DISTRICTS," BY SPECIFICALLY AMENDING SUBSECTION 155.146(B)(12), TO PROVIDE FOR THE SALE OF ELECTRONIC NICOTINE DISPENSING DEVICES AS AN ACCESSORY USE; AMENDING SECTION 155.146, "COMMUNITY BUSINESS (B-2) DISTRICTS," BY SPECIFICALLY AMENDING SUBSECTION 155.146(C)(12) OF THE CITY OF PEMBROKE PINES CODE OF ORDINANCES TO REMOVE THE SALE OF ELECTRONIC NICOTINE DISPENSING DEVICES AND NICOTINE PRODUCTS AS A PROHIBITED USE; AMENDING TITLE XIII, "GENERAL OFFENSES," CHAPTER 134, "OFFENSES AGAINST PUBLIC PEACE AND SAFETY," BY SPECIFICALLY CREATING SECTION 134.10, "PROHIBITION OF SALE OR DISTRIBUTION OF ELECTRONIC NICOTINE DISPENSING DEVICES AND NICOTINE PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE," TO PROVIDE FOR PROHIBITION OF SALE AND DISTRIBUTION; PROVIDING FOR DEFINITIONS; AMENDING TITLE XIII, "GENERAL OFFENSES," CHAPTER 134, "OFFENSES AGAINST PUBLIC PEACE AND SAFETY," BY SPECIFICALLY AMENDING SECTION 134.04, "SMOKING IN CERTAIN PUBLIC PLACES PROHIBITED," TO PROHIBIT THE USE OF AN ELECTRONIC NICOTINE DISPENSING DEVICE OR NICOTINE PRODUCT IN CERTAIN PUBLIC PLACES; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Pembroke Pines recognizes that the use of electronic nicotine dispensing devices and nicotine products has become a national public health epidemic; and

WHEREAS, in the last year, there has been a 78% increase in the use of vaping products by high school students, and a 48% increase in the use of vaping products by middle school students; and

WHEREAS, recent federal data compiled by the National Institute on Drug

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Abuse indicates that 25% of this year's high school seniors and 20% of 10th graders reported vaping nicotine in the past month; That is more than double the use reported in 2017; and

WHEREAS, young brains are particularly susceptible to the addictive properties of nicotine, which results in approximately 3 out of 4 teen smokers utilizing nicotine into adulthood; and

WHEREAS, the Centers for Disease Control and Prevention is investigating 805 cases of vaping-related lung illnesses in 46 states and 1 U.S. territory, including at least 12 deaths, that have been linked to both nicotine and cannabis vaping products; and

WHEREAS, the Commonwealth of Massachusetts has recently declared a public health emergency with respect to the outbreak of severe lung disease related to the use of vaping products; Massachusetts has further prohibited the sale of all vaping products to consumers through January 25, 2020; and

WHEREAS, the City of Fort Lauderdale and Alachua County have adopted ordinances prohibiting the sale of tobacco products to persons under the age of 21; and

WHEREAS, raising the minimum legal sales of electronic nicotine dispensing devices and nicotine products is consistent with raising the legal drinking age to 21, which led to reduced alcohol use and dependence among youth, and contributed to the decline in drunk driving fatalities.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF PEMBROKE PINES, FLORIDA:

SECTION 1. The foregoing "**WHEREAS**" clauses are hereby ratified and confirmed as being true and correct and hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. Title XV, "Land Usage," Chapter 155, "Zoning Code," Section 155.146, "Community Business (B-2) Districts," Subsection 155.146(B)(12) of the Code of Ordinances of the City of Pembroke Pines is hereby amended as follows:

§ 155.146 COMMUNITY BUSINESS (B-2) DISTRICTS.

(B) Uses permitted. No building, structure, or part thereof, shall be erected,

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altered, or used, or land or water used, in whole or in part, for other than one or more of the following specified uses, provided, however, no more than one of the specified uses will be permitted on a single parcel of property except as permitted by subsection (H) "Out Parcels":

(12) Electronic nicotine dispensing device sales, subject to the following limitations:

(a) "Accessory use" is a use that (a) is located on the same lot and in the same building as the principal use; (b) contributes to the comfort, convenience, or necessity of the principal use; and, (c) does not exceed 40% of the gross floor area (the area within the perimeter of the inside walls of the building/bay with no deduction for corridors, stairs, closets, thickness of wall, columns or other features but excluding utility rooms).

(b) Permitted use, electronic nicotine dispensing device sales shall be accessory to a principal commercial use in the B-2 (Community Business) zoning district subject to the following conditions:

~~1. Commercially reasonable efforts will be made to rapidly identify minors (under 18 years of age) on the premises, including examining the identification of any person who a reasonably prudent person would believe is 18 years of age or younger, and cause such minors to leave the premises immediately upon identification unless accompanied by a parent or legal guardian.~~

~~2. It shall be prohibited from selling, gifting or delivering to a person under 18 years of age, or a person who appears to be under the age of 27 years without first examining identification to confirm that the recipient is at least 18 years of age, any of the following:~~

~~a. Electronic nicotine dispensing device, including electronic cigarettes (or e-cigarette), personal vaporizers (PV), electronic nicotine delivery systems (ENDS), or any similar product, or any part thereof or accessory thereto; or~~

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~~b. E-juice, e-liquid, any other product intended for use in an electronic nicotine dispensing device or any similar product.~~

3. 1. _____ No part of the premises shall be used for the possession, manufacture, display, sale or viewing of paraphernalia, as defined below, including, but not limited to (a) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls; (b) hash pipes; (c) water pipes; (d) carburetion tubes and devices; (e) smoke and carburetion masks; (f) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too thin to be held in the hand, (g) miniature cocaine spoons, and cocaine vials, (h) chamber pipes, (i) carburetor pipes, (j) electronic pipes, (k) air-driven pipes, (l) chillums, (m) bongs, (n) ice pipes or chillers, (o) blow tubes, (p) hookah pipes, (q) rolling papers, cigarette rollers or other items used to make cigarettes or cigars, (r) other objects or products used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing, marijuana, cocaine, hashish, hashish oil, or other controlled substances into the human body, or (s) other objects or products used, intended for use, or designed for use in the combustive smoking of tobacco, herbs or any other product.

PARAPHERNALIA means all equipment, products, and materials of any kind which are intended for use or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body an illegal or controlled substance or herbs.

4. 2. _____ No exterior signage specifically for electronic nicotine dispensing sales or related activities.

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- ~~5. The sale of products with names similar to, or which resemble, illegal substances, such as, by way of example, but not of limitation, "liqweed," "cocoa e-juice," and "hash oil e-juice," or similar names or descriptions is prohibited.~~
- ~~6.~~ 3. The sale of products that imply, infer or otherwise indicate that they may be used by or provide the user an experience (euphoria, etc.) similar to but not limited to marijuana, hemp, cocaine, LSD, heroin, ecstasy, or angel dust, is prohibited.
- ~~7.~~ 4. The sale of products such as vaporizer pens, acetone, vaporizers for waxy oils, alcohol vaporizers, dabs, or other delivery devices not associated with electronic nicotine dispensing devices is prohibited.

SECTION 3. That Title XV, "Land Usage," Chapter 155, "Zoning Code" Section 155.146, "Community Business (B-2) Districts," Subsection 155.146(C)(12) of the Code of Ordinances of the City of Pembroke Pines is hereby amended as follows:

§ 155.146 COMMUNITY BUSINESS (B-2) DISTRICTS.

(C) Uses Prohibited. The permissible uses enumerated in division (B) above shall not be construed to include, either as a principal or accessory use, any of the following, which are listed for emphasis:

- ~~(12) Sale of nicotine products, vaporizers, liquid nicotine and the like.~~
- ~~(a) It is unlawful for any person to sell, give or furnish nicotine products including but not limited to nicotine dispensing device or liquid nicotine to (i) a person under the age of 18; or (ii) a person who appears to be under the age of 27 years without first examining identification to confirm that the recipient is at least 18 years of age.~~
- ~~(b) The use of nicotine dispensing device is prohibited at all locations within the city at which smoking is prohibited~~

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~~under F.S. Ch. 386.~~

- ~~(c) The use of a nicotine dispensing device is prohibited in all public areas in the city, including parks and recreational areas.~~
- ~~(d) Enforcement. This section may be enforced by any city police or code enforcement officer.~~
- ~~(e) Penalties. Any person found in violation of this section shall be subject to a fine of up to \$250 per day for the first occurrence, and \$500 per day for each additional occurrence.~~

SECTION 4. That Title XIII, "General Offenses," Chapter 134, "Offenses Against Public Peace and Safety," of the Code of Ordinances of the City of Pembroke Pines is hereby amended by specifically creating Section 134.10 "Prohibition of Sale or Distribution of Electronic Nicotine Dispensing Devices and Nicotine Products to Persons Under 21 Years of Age," as follows:

§ 134.10 PROHIBITION OF SALE OR DISTRIBUTION OF ELECTRONIC NICOTINE DISPENSING DEVICES AND NICOTINE PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE

- (A) Definitions. For purposes of this section the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Electronic Nicotine Dispensing Device. Any electronic or battery-operated device which can be used to deliver an inhaled dose of nicotine or other substances and includes those composed of a mouthpiece, heating element, and battery or electronic circuits that provide a vapor of liquid nicotine and/or other substances to the user. This term shall include such devices whether they are manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, an e-cigarette, an e-cigar, an e-pipe, a vaporizer, an electronic nicotine delivery system (ENDS) or under any other product name, and whether it is utilizing liquid nicotine or any other substance at the time of use by a person.

Nicotine Product. Any product that contains nicotine, including liquid nicotine, that is intended for human consumption, whether inhaled,

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chewed, absorbed, dissolved, or ingested by any means, but does not include a: 1) tobacco product, as defined in s. 569.002, F.S.; (2) product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act; or (3) product that contains incidental nicotine.

Vape/Vaping. The act of inhaling or exhaling of vapor produced by an electronic nicotine dispensing device or possession of an electronic nicotine dispensing device while that device is actively producing vapor or aerosol from a nicotine product or any other substance. The term does not include the mere possession of an electronic nicotine dispensing device.

- (B) *Sale or distribution of electronic nicotine dispensing devices and nicotine products to persons under 21 years of age prohibited.* It is unlawful for any person to sell, gift, deliver or otherwise transfer in a retail setting any electronic nicotine dispensing device or nicotine product, as defined by this section, to any person under the age of 21 years, or to a person who appears to be under the age of 27 years without first examining identification to confirm that the recipient is at least 21 years of age.
- (1) It is unlawful for any person to sell, gift, deliver or otherwise transfer in a retail setting any product with names similar to, or which resemble illegal substances, such as, by way of example, but not limitation, "liqweed," "cocoa e-juice," and "hash oil e-juice," or similar names or descriptions to any person under 21 years of age or to a person who appears to be under the age of 27 years without first examining identification to confirm that the recipient is at least 21 years of age.
- (C) *Enforcement.* This section may be enforced by any law or code enforcement officer of the city. Any electronic nicotine dispensing device or nicotine product, as defined by this section, may be seized and held by the city as evidence to be used in any further proceeding.
- (D) *Penalties for violation.* Any person found guilty of violating this section, whether that individual is an adult or a minor, shall be subject to punishment in accordance with §130.05 or §134.99 of the City Code. Repeated violations of this section may result in additional penalties including, but not limited to, an action to revoke a business license tax receipt.

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SECTION 5. That Title XIII, "General Offenses," Chapter 134, "Offenses Against Public Peace and Safety," of the Code of Ordinances of the City of Pembroke Pines is hereby amended by specifically amending Section 134.04 "Smoking in Certain Public Places Prohibited," as follows:

§ 134.04 SMOKING IN CERTAIN PUBLIC PLACES PROHIBITED

- (A) It is hereby declared unlawful for any person to smoke, vape, carry a burning cigarette, cigar, ~~or~~ pipe or use an electronic nicotine dispensing device or nicotine product in any of the following described places:
- (1) Retail store public areas where merchandise is displayed for sale.
 - (2) Elevators in any public place.
 - (3) Public theaters and auditoriums during a performance, except where areas are designated to permit smoking.
 - (4) Buses and other public conveyances, except taxicabs and jitneys.
 - (5) All city owned parks and recreation areas.
 - (6) Any location within the city in which smoking is prohibited under Chapter 386, Florida Statutes.
- (B) Every person or his agent having control of any premises within which smoking, vaping, ~~or~~ the carrying of burning objects, or the use of an electronic nicotine dispensing device or nicotine product is prohibited by this section, shall conspicuously display the following signs in the following manner:
- (1) Retail stores. The sign shall read "SMOKING, VAPING AND THE USE OF ELECTRONIC NICOTINE DISPENSING DEVICES OR NICOTINE PRODUCTS PROHIBITED BY LAW IN THIS SECTION" and shall be displayed at each public entrance to the retail stores.
 - (2) Elevators. The sign shall read "SMOKING, VAPING AND THE USE OF ELECTRONIC NICOTINE DISPENSING DEVICES OR NICOTINE PRODUCTS IN ELEVATORS PROHIBITED BY LAW IN THIS SECTION," and shall be placed in close proximity to the entrance of the elevator and within the interior of the elevator. An

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ashtray or other device shall be located in close proximity to the elevator entrance for the disposal of prohibited item.

- (3) Public theaters and auditoriums. The sign shall read “SMOKING, VAPING AND THE USE OF ELECTRONIC NICOTINE DISPENSING DEVICES OR NICOTINE PRODUCTS PROHIBITED BY LAW IN THIS SECTION,” and shall be placed on or about each entrance to areas not designated as permitting smoking, vaping, or the use of electronic nicotine dispensing devices or nicotine products.
- (4) Public conveyances. The sign shall read “SMOKING, VAPING AND THE USE OF ELECTRONIC NICOTINE DISPENSING DEVICES OR NICOTINE PRODUCTS PROHIBITED BY LAW,” and shall be placed on or about each public entrance to the public conveyance.
- (C) It shall be unlawful for any person to remove or cause to be removed any sign required to be posted by this section.
- (D) It shall be unlawful for any person to throw or place hot or burning substances such as cigarettes, cigars, or pipes, or any other similar nicotine product in, upon, or in close proximity to any public or private premises where there is any material or substance which is combustible or liable to damage by heat, fire, or explosion.
- (E) (1) It shall be unlawful for any person to smoke cigarettes, cigars, or pipes, or use an electronic nicotine dispensing device or any nicotine product on city property as follows:
- (a) Within 25 feet of the entranceway of any municipal buildings; and/or
- (b) In bleacher areas, dugouts, in and around team seating areas, concession areas and restrooms within any park or recreational facility owned by the city. This restriction shall not apply to city-owned golf courses.
- (2) Any person issued a citation pursuant to this section shall be deemed to be charged with a civil infraction. A fine of \$25 shall be assessed for each violation of this section.

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(3) This section shall not apply to any person smoking or using an electronic nicotine dispensing device or nicotine product within a motor vehicle that is within a city park or parked in front of a city building, whether or not located in a parking lot.

(F) Any person convicted of violating this section shall be punishable as provided herein or as otherwise provided in §134.99.

SECTION 6. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 7. If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

SECTION 8. It is the intention of the Commission of the City of Pembroke Pines, Florida, that the provisions of this Ordinance shall become and be made part of the City of Pembroke Pines Code of Ordinances; and that the sections of this "Ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 9. This Ordinance shall become effective immediately upon passage.

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**PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF
PEMBROKE PINES, FLORIDA, ON THE FIRST READING, THIS ____ DAY OF
_____, 2019.**

**PASSED ADOPTED BY THE CITY COMMISSION OF THE CITY OF PEMBROKE
PINES, FLORIDA, ON THE SECOND AND FINAL READING, THIS ____ DAY OF
_____, 2019.**

CITY OF PEMBROKE PINES, FLORIDA

By: _____
MAYOR FRANK C. ORTIS

ATTEST:

_____ MARLENE GRAHAM, CITY CLERK	ORTIS	_____
	GOOD	_____
APPROVED AS TO FORM:	CASTILLO	_____
_____ OFFICE OF THE CITY ATTORNEY	SCHWARTZ	_____
	SIPLE	_____

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