

ORDINANCE NO. 502

AN ORDINANCE AMENDING CHAPTER 42 OF THE CITY OF PORT ST. JOE CODE OF ORDINANCES; PROHIBITING THE SALE OF E-CIGARETTES WITHIN THE CITY TO PERSONS UNDER EIGHTEEN YEARS OF AGE, PROHIBITING THE USE OF E-CIGARETTES WITHIN THE CITY WHERE SMOKING IS PROHIBITED, PROHIBITING SELF-SERVICE MERCHANDISING IN THE SALE OF E-CIGARETTES AND LIQUID NICOTINE WITHIN THE CITY, AND FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Port St. Joe finds that the health dangers posed by tobacco, nicotine, and other consumables which are traditionally consumed by smokers are not limited to cigarettes or other traditional forms of smoking, and

WHEREAS, new unregulated high-tech smoking devices often containing a combination of pure nicotine, or other substances which are commonly referred to as electronic cigarettes or e-cigarettes, have recently been made available to consumers, and

WHEREAS, the U.S. Food and Drug Administration and many public health advocates have publicly expressed concerns regarding the safety of e-cigarettes, warn they are often marketed in such a way as to attract young people, and may serve as a gateway to traditional cigarette use, and

WHEREAS, when consumed in public places where traditional tobacco products are currently banned under Florida law, the use of e-cigarettes may cause concern and confusion among City residents, visitors and employees alike, and

WHEREAS, protecting City of Port St. Joe residents, visitors and employees against the dangers associated with e-cigarettes constitutes sound public policy; now, therefore,

BE IT ENACTED by the people of the City of Port St. Joe, Florida:

Section 1. Code Amended. Chapter 42, Code of Ordinances of the City of Port St. Joe is amended to add Section 42-9 which reads as follows:

Section 42-9. REGULATING THE DELIVERY PRODUCTS FOR CERTAIN TOBACCO, NICOTINE OR OTHER SMOKEABLE CONSUMABLES IN RETAIL STORES FOR PROTECTION OF MINORS

(a) This article is intended to prevent the sale to, possession of, and the sale of e-cigarettes and like products to persons under the age of eighteen (18), by regulating the placement of such products. This article shall not be

interpreted or construed to prohibit the sale or delivery of tobacco products which are otherwise lawful or regulated pursuant to Chapter 569, Florida Statutes.

(b) For the purpose of this article, the following terms shall mean:

*E-cigarette* means any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provides a vapor of liquid nicotine and/or other substances mixed with propylene glycol to the user that he or she inhales in simulation of smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

*Liquid nicotine* means any liquid product composed either in whole or part of pure nicotine and propylene glycol and manufactured for use with e-cigarettes.

*Self-service merchandising* means the open display of e-cigarettes or liquid nicotine, whether packages or otherwise, to which the public has access without the intervention or assistance of the vendors, store owner, or other store employee. Self-service merchandising also includes open display units which are in a case, rack, shelf, counter, table, desk, kiosk, booth, stand, or other surface which allows direct public access to the product placed therein.

*Use of an e-cigarette* means the heating or ignition of an e-cigarette which creates a vapor of liquid nicotine and/or other substances mixed with propylene glycol to the user that he or she can inhale in simulation of smoking.

(c) It is prohibited for any business, person or tobacco retailer to sell, or offer for sale, e-cigarettes, liquid nicotine or any other substance designed for or usable in e-cigarettes within the City to a person under eighteen (18) years of age.

(d) It is prohibited for any business, person or tobacco retailer to sell, permit to be sold, offer for sale, or display for sale e-cigarettes, liquid nicotine or any other substance designed for or usable in e-cigarettes by means of self-service merchandising.

(e) It is prohibited for any business, person or tobacco retailer to place e-cigarettes, liquid nicotine or any other substance designed for or usable in e-cigarettes in an open display unit unless the same is located in an area that is inaccessible to customers.

(f) The use of an e-cigarette is prohibited at all locations within the City of Port St. Joe at which smoking is prohibited under Chapter 386, Florida Statutes, and any successor thereto.

(g) Exemptions listed under this Section shall not apply to the sale or offering for sale, of e-cigarettes or liquid nicotine to a person under the age of eighteen (18) years of age.

(h) The City of Port St. Joe may bring a civil action in any court of competent jurisdiction to enforce or administer this article including seeking a temporary or permanent injunction, or appointment of a receiver when it has reasonable cause to believe that a business, person, or tobacco retailer is operating in violation of this section. The City of Port St. Joe shall be entitled to an award of costs and reasonable attorney's fee, including appellate fees and costs, in an action successfully enforcing the terms of this section.

(i) In addition to any civil remedy available to the City of Port St. Joe under this section, a person committing an act prohibited under this section shall be guilty of the violation of any part of this section shall be a second degree misdemeanor punishable in the manner provided by general Florida law.

(j) A person committing an act prohibited under this section shall be given written notice requiring the person committing the act to appear at a hearing before the special magistrate, who shall have the authority to impose a fine of not more than \$100 for a first violation and not more than \$500 for each subsequent violation. Said hearings shall proceed according to Section ~~2-276~~ of the City Code.  
2-285

Section 2. REPEAL: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. SEVERABILITY: If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 4. EFFECTIVE DATE: This ordinance shall become effective upon adoption as provided by law.

DULY PASSED AND ADOPTED by the Board of City Commissioners of Port St. Joe, Florida this 15<sup>th</sup> day of April, 2014.

THE CITY OF PORT ST. JOE

By: Mel Magidson, Jr.  
MEL C. MAGIDSON, JR.  
MAYOR-COMMISSIONER

ATTEST:

Charlotte M. Pierce  
CHARLOTTE M. PIERCE  
CITY CLERK

The following commissioners voted yea: Magidson, Buzzett, M-Cross, Patterson, Hubbard  
The following commissioners voted nay: