ORDINANCE 17-18

TO AMEND TITLE 6 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED "HEALTH AND SANITATION" – Re: Changes to Chapter 6.12 (Smoking in Public Places and Places of Employment) that Define an "Electronic Smoking Device" [ESD] and Add the Use of an ESD to the Definition of "Smoking"

WHEREAS, pursuant to its home rule power, the City of Bloomington may promote the quality of life, health, safety, and welfare of its citizens; and

WHEREAS, Electronic Smoking Devices (ESD), such as E-Cigarettes and Vape Pens, have emerged as an alternative to smoking; and

WHEREAS, in 2013, then-CDC Director Tom Frieden, M.D., M.P.H. stated the "increased use of e-cigarettes by teens is deeply troubling. Nicotine is a highly addictive drug. Many teens who start with e-cigarettes may be condemned to struggling with a lifelong addiction to nicotine and conventional cigarettes"; and

WHEREAS, the use of ESDs is visually similar to the smoking of conventional cigarettes, and has already been observed in locations where smoking is prohibited, creating concern and confusion, and threatening to interfere with enforcement of the City's current Smoking Ordinance; and

WHEREAS, the use of ESDs in places where smoking is prohibited may increase the social acceptability and appeal of smoking, particularly for youth and young adults, potentially undermining the enormous progress that has been made over the years in discouraging smoking, and could send a message to adults and youth that these potentially harmful products are in fact safe; and

WHEREAS, in 2016, the United States Food and Drug Administration (FDA) finalized a rule that extended its regulatory authority to all tobacco products, including ESDs. As a result, ESDs may not be sold to persons under the age of 18; and

WHEREAS, while the FDA prohibits state and local regulation on some aspects of tobacco products (such as labeling and registration), state and local governments *are* permitted to enact and enforce certain laws regarding tobacco products that are in addition to or more stringent than the requirements imposed by federal law (including the usage of tobacco products—including ESDs—by individuals of any age); and

WHEREAS, across Indiana—including Indianapolis, Franklin, Greenwood, and Howard County—and the nation, local governments have included ESDs in their smoke free ordinances; and

WHEREAS, the City of Bloomington finds that prohibiting the use of ESDs in public places and places of employment will protect the health and safety of the citizens of the City of Bloomington; and

WHEREAS, the City of Bloomington finds that prohibiting the use of ESDs in public places and places of employment will better facilitate continued enforcement of the City's current Smoking Ordinance; and

WHEREAS, the City of Bloomington finds that prohibiting the use of ESDs in public places and places of employment will protect youth and young adults from observing behaviors that could encourage them to smoke;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. The definition of the word "Electronic Smoking Devices" shall be added to Section 6.12.010, entitled "Definitions", and read as follows:

> "Electronic Smoking Devices" (ESD) means a device that is capable of providing an inhalable dose of nicotine by delivering a vaporized solution. The term includes the components and cartridges. ESDs shall not include any product approved by the United States Food and Drug Administration for sale as a drug or medical device.

SECTION 2. Section 6.12.010, entitled Definitions, shall be amended by adding the following phrase to the end of the definition of the word "Smoking" after the word "form": "; the use of an ESD; or, the inhalation or exhalation of smoke from any ESD."

SECTION 3. Section 6.12.010, entitled Definitions, shall be amended by inserting the following sentence after the first sentence in the definition of "Retail tobacco store" which shall read:

> The term shall also include a retail store utilized primarily for the sale of electronic smoking devices and accessories and in which the sale of other products is merely incidental.

SECTION 4. Section 6.12.070, entitled "Posting of signs –Removing of paraphernalia," shall be amended by revising part (a) so that it reads as follows:

> (a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other area where smoking is prohibited by this chapter, by the owner, operator, manager or other person having control of such building or other area. Additionally, the signs required by this section shall contain language or symbols clearly communicating that the smoking prohibition includes electronic smoking devices. Examples of acceptable language include "No Vaping", "No Electronic Cigarettes", and "No Electronic Smoking Devices".

SECTION 5. If any section, sentence, chapter or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any other section, sentence, chapter, provision or application of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 6. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington, with approval of the Mayor, and after any required waiting and/or notice periods under Indiana law.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 19th day April, 2017.

Susan Sandberg

SUSAN SANDBERG, President
Bloomington Common Council

ATTEST:

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NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 20th day of April, 2017.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED AND APPROVED by me upon this 20th day of April, 2017.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This ordinance seeks to amend the City's current Smoking Ordinance by prohibiting the use of Electronic Smoking Devices in the same public places and places of employment where smoking is already prohibited.

Note: On April 19, 2017, the Common Council adopted two amendments: First, Am 01, which revised the definition of "Retail tobacco store" to include retail stores that are primarily utilized for the sale of electronic smoking devices and accessories; and, second, Am 01, which revised 6.12.070 to require signage clearly indicating the use of electronic smoking devices are prohibited.

Distributed to: Mayor, Clerk, Council Administrator, Legal, Controller, CFRD, Planning and Transportation, ESD