

1 **WHEREAS**, the National Association of Attorneys General issued a letter to the
2 Commissioner of the United States Food & Drug Administration (FDA) urging the FDA
3 to immediately regulate the sale and advertising of electronic cigarettes; and

4 **WHEREAS**, the letter was signed by 42 attorneys general, including Florida Attorney
5 General Pam Bondi; and

6 **WHEREAS**, in 2002, Florida voters approved an amendment to the Florida
7 Constitution that:

8 1. Prohibited smoking of lighted tobacco products in enclosed workplaces with
9 certain exceptions; and

10 2. Authorized the Legislature to enact implementing legislation, Article X, Section
11 20 of the Florida Constitution; and

12 **WHEREAS**, to implement the constitutional amendment, during Special Session A in
13 2003, the Florida Legislature enacted House Bill 63A (Chapter 2003-398, Laws of Florida),
14 which substantially amended the Florida Clean Indoor Air Act to prohibit a person from smoking
15 lighted tobacco products in an enclosed indoor workplace, while drastically reducing exceptions
16 contained in the prior version; and

17 **WHEREAS**, the exceptions where smoking lighted tobacco products is still permitted
18 include, among others, the following:

19 1. Custom smoking rooms in airport in-transit lounges meeting certain criteria;

20 2. Private residences not being used commercially to provide child care, adult care or
21 health care;

22 3. Designated smoking guest rooms at public lodging establishments; and

23 4. Stand-alone bars devoted predominantly or totally to serving alcohol, and in which

1 the serving of food, if any, is merely incidental to the consumption of alcoholic
2 beverages; and

3 **WHEREAS**, the term "smoking" was defined in both the constitutional amendment and
4 Chapter 2003-398 to mean inhaling, exhaling, burning, carrying, or possessing any "lighted
5 tobacco product," including cigarettes, cigars, pipe tobacco, and any other lighted tobacco
6 product; and

7 **WHEREAS**, Chapter 2003-398 expressly preempted regulation of smoking lighted
8 tobacco products to the state and superseded any municipal or county ordinance on the
9 subject; and

10 **WHEREAS**, electronic cigarettes are not "lighted" the way a cigarette is ignited with a
11 match; and

12 **WHEREAS**, instead, electronic cigarettes function by heating into a vapor a liquid
13 consisting of tobacco, nicotine, flavored water or other chemicals; and

14 **WHEREAS**, while electronic cigarettes typically (though not always) contain nicotine,
15 electronic cigarettes usually do not contain tobacco; and

16 **WHEREAS**, for these reasons, electronic cigarettes do not fall within the state law
17 prohibition on a person smoking a "lighted tobacco product" in an enclosed indoor workplace;
18 and

19 **WHEREAS**, in addition, electronic cigarettes do not fall within the state preemption of
20 local regulation of smoking a "lighted tobacco product" in an enclosed indoor workplace; and

21 **WHEREAS**, the City has received multiple complaints regarding the use of electronic
22 cigarettes within enclosed indoor workplaces within the City; and

1 **WHEREAS**, concerns have been raised as to the safety, health and environmental
2 effects of the vapor emitted from electronic cigarettes, both to the persons using electronic
3 cigarettes and to people in the surrounding area who may have to breathe the vapor emitted from
4 electronic cigarettes secondhand; and

5 **WHEREAS**, it is difficult to determine which electronic cigarettes are emitting
6 nicotine and carcinogens and which are simply emitting a flavored vapor, but in either case,
7 the contents of the vapors are unknown and unregulated, thereby causing concern by
8 those in close proximity to the person using the electronic cigarette as to the health
9 risks; and

10 **WHEREAS**, the Florida Legislature enacted Senate Bill 224 (Chapter 2014-65, Laws of
11 Florida) prohibiting the delivery and/or possession of nicotine dispensing devices and nicotine
12 products by minors, without preempting additional regulations by municipalities; and

13 **WHEREAS**, for the reasons set forth above, the City Commission desires to prohibit
14 the use of electronic cigarettes and other nicotine dispensing devices in enclosed indoor
15 workplaces to the same extent that the smoking of lighted tobacco products is prohibited by the
16 Florida Clean Indoor Air Act and the City Commission desires to repeal the provisions of the
17 City code that are now preempted to the state.

18 **WHEREAS**, it is the intent of the Commission to prohibit the use of electronic
19 cigarettes and other nicotine dispensing devices in any enclosed indoor work place in
20 a manner consistent with the state law prohibition on the use of lighted tobacco
21 products under the Florida Clean Indoor Air Act, and

1 **WHEREAS**, the City desires to prohibit the use of nicotine dispensing devices
2 at a city facility and Regional Transit System bus stops and bus shelters to the same
3 extent that smoking is prohibited.

4 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF**
5 **THE CITY OF GAINESVILLE, FLORIDA:**

6 **Section 1.** Article II. Clean Indoor Air of Chapter 11.5 of the City Code is
7 repealed in its entirety as follows:

8 ~~Sec. 11.5-16. Title.~~

9 ~~This article regulating smoking in government buildings and in certain private~~
10 ~~establishments where the public is invited, shall be known as the Clean Indoor Air~~
11 ~~Ordinance of 1984.~~

12 ~~Sec. 11.5-17. Purpose and intent.~~

13 ~~(a) The smoking of tobacco, or any other weed or plant, is a positive danger to health~~
14 ~~and is a material annoyance, inconvenience, discomfort, and health hazard to those who~~
15 ~~are present in confined spaces, and in order to serve the public health, safety and welfare,~~
16 ~~the declared purpose and intent of this article is to prohibit smoking in public areas~~
17 ~~where the public is invited to frequent and confined nonpublic work spaces of~~
18 ~~government buildings and in public areas and in confined nonpublic work spaces of~~
19 ~~privately owned buildings.~~

20 ~~(b) Even though a "no smoking" sign is not posted in areas and spaces regulated by~~
21 ~~this article, it is expressly implied and the public shall take notice that no smoking is~~
22 ~~permitted in such regulated areas and spaces. Smoking in indoor public spaces or~~

1 facilities as well as confined nonpublic work spaces is therefore allowed only if a sign is
2 posted indicating that smoking is permitted in a specified area or areas.

3 (c) In view of the foregoing implied notice, a person who endeavors to enforce the
4 provisions of this article shall first advise a person believed to be in violation hereof of
5 the prohibitions of this article and to thereafter request that person to extinguish the
6 smoking materials being used by that person.

7 ~~Sec. 11.5-18. Definitions~~

8 The following words, terms and phrases, when used in this article, shall have the
9 meanings ascribed to them in this section, except where the context clearly indicates a
10 different meaning:

11 ~~*Confined nonpublic work space* shall mean any nonpublic indoor work area which~~
12 ~~physically shares the same uninterrupted ceiling space and ventilation.~~

13 ~~*Confined space* shall mean any indoor area which physically shares the same~~
14 ~~uninterrupted ceiling space and ventilation.~~

15 ~~*Employee* shall mean any person who employed by any employer in consideration for~~
16 ~~direct or indirect monetary wages or profits.~~

17 ~~*Employer* shall mean any person who employs the services of an individual person.~~

18 ~~*Government-owned and/or operated building* shall mean any and all buildings~~
19 ~~intended for human occupancy owned, rented or operated by any federal, state or local~~
20 ~~government entity.~~

21 ~~*Place of employment* shall mean any enclosed indoor area under the control of a~~
22 ~~public or private employer which employees normally frequent during the course of~~

1 employment including, but not limited to, work areas, employee lounges, conference
2 rooms and employee cafeterias. A building or portion thereof used as a private residence
3 is not considered a "place of employment" for the purposes of this article.

4 *Privately owned and/or operated building* shall mean any and all buildings intended
5 for human occupancy which are not government buildings as defined in this section.

6 *Public area* shall mean any enclosed indoor area to which the general public may
7 enter without expressed invitation or permission even though entrance may require the
8 purchase of a ticket for admission but shall not include a private dwelling. This definition
9 applies, but is not limited to, retail stores, retail service establishments, retail food
10 production and marketing establishments, restaurants, theaters, waiting rooms, reception
11 areas, educational facilities, health facilities, public transportation facilities, and all
12 government and private buildings.

13 *Separate* as used in section 11.5-20(a) shall mean not a part of the nonsmoking area
14 and distinct from that area.

15 *Smoke or smoking* shall mean the intake and exhalation by a person of smoke from
16 tobacco, a tobacco substitute or other weed or plant, and also possessing, carrying,
17 holding or otherwise having control of a lighted pipe, cigar, cigarette or other lighted
18 smoking equipment.

19 *Work station* shall mean that desk, table or other piece of furniture or piece of
20 machinery or other device at which an employee performs work for which he/she
21 receives direct or indirect monetary wages or profits from his/her employer.

22 Sec. 11.5-19. Smoking—Prohibited in specified areas.

1 It shall be unlawful for any person to smoke in any area where smoking is prohibited.

2 ~~Sec. 11.5-20. Same~~ In government-owned and/or operated buildings.

3 In government-owned and/or operated buildings, smoking shall be prohibited as
4 follows:

5 (1) ~~Public areas.~~ Except as provided in this article, smoking is prohibited in public
6 areas of government-owned and/or operated buildings. At the discretion of the
7 governmental agency responsible for each government building, separate smoking
8 areas of not more than 33 percent of public floor area may be designated. These
9 areas must be plainly identified through the posting of appropriate signs.

10 (2) ~~Confined nonpublic work spaces.~~ Except as hereinafter provided, smoking is
11 prohibited in nonpublic work spaces of government-owned and/or operated
12 buildings. Each governmental agency responsible for government-owned and/or
13 operated buildings shall adopt, implement and maintain a written smoking policy
14 which shall contain at a minimum the following provisions and requirements:

15 a. ~~Smoking is prohibited in confined nonpublic work spaces of government-~~
16 ~~owned and/or operated buildings except as follows:~~

17 1. ~~An employee may request a "smoking permitted" area around his/her~~
18 ~~confined nonpublic work space. Using already available means of~~
19 ~~ventilation or separation or partition of office space, the employer shall~~
20 ~~attempt to reach reasonable accommodations, insofar as possible, to~~
21 ~~provide a "smoking permitted" area that is not objectionable to any other~~
22 ~~employees with work stations in the same combined nonpublic work~~
23 ~~space. The employer shall attempt to reach reasonable accommodations,~~

1 insofar as possible, between the preference of those objecting to the
2 "smoking permitted" designated area and those not objecting. However,
3 the employer is not required by this article to make any expenditures or
4 structural changes to accommodate the respective preferences in
5 attempting to provide a "smoking permitted" designated area.

6 2. ~~If an accommodation which is satisfactory to all employees objecting to~~
7 ~~the "smoking permitted" designated area cannot be reached in any~~
8 ~~confined nonpublic work space, the preferences of those objecting to~~
9 ~~smoking shall prevail, and the employer shall not allow a "smoking~~
10 ~~permitted" area at all in that confined nonpublic work space. Where the~~
11 ~~employer permits smoking in a confined work space, the area in which~~
12 ~~smoking is permitted shall be clearly demarcated and posted with signs~~
13 ~~indicating the area in which smoking is permitted.~~

14 b. ~~The governmental agency responsible for each publicly owned and/or~~
15 ~~operated building shall announce the smoking policy in each such building to~~
16 ~~all employees working in the confined nonpublic work spaces in the city and~~
17 ~~notice of the smoking policy shall be posted conspicuously in all confined~~
18 ~~nonpublic work spaces under each employer's jurisdiction. Where a smoking~~
19 ~~policy has not been timely adopted and conspicuously posted, it shall be~~
20 ~~presumed for the purposes of this article that smoking is prohibited~~
21 ~~everywhere in the affected building.~~

22 Sec. 11.5-21. Same ~~In privately owned and/or operated buildings.~~

23 ~~In privately owned and/or operated buildings, smoking shall be prohibited as follows:~~

1 (1) ~~Public areas.~~ Except as provided in this article, smoking is prohibited in public
2 areas of privately owned and/or operated buildings. At the discretion of the
3 private agency, responsible for operating the facility, public smoking areas not to
4 exceed sixty-seven (67) percent of the total public area may be designated and
5 plainly identified with signs in public areas of privately owned and/or operated
6 buildings.

7 (2) ~~Confined nonpublic work spaces.~~ Except as provided in this article, smoking is
8 prohibited in confined nonpublic work spaces of privately owned and/or operated
9 buildings. Each private agency responsible for privately owned and/or operated
10 buildings shall adopt, implement and maintain a written smoking policy which
11 shall contain at a minimum the following provisions and requirements:

12 a. ~~Smoking is prohibited in confined nonpublic work spaces of privately owned~~
13 ~~and/or operated buildings except as follows:~~

14 1. ~~Any employee may request a "smoking permitted" area around his/her~~
15 ~~confined nonpublic workspace. Using already available means of~~
16 ~~ventilation or separation or partition of office space, the employer shall~~
17 ~~attempt to reach reasonable accommodations, insofar as possible, to~~
18 ~~provide a "smoking permitted" area that is not objectionable to any other~~
19 ~~employees with work stations in the same confined nonpublic work space.~~
20 ~~The employer shall attempt to reach reasonable accommodations, insofar~~
21 ~~as possible, between the preferences of those objecting to the "smoking~~
22 ~~permitted" designated area and those not objecting. However, the~~
23 ~~employer is not required by this article to make any expenditures or~~

1 structural changes to accommodate the respective preferences in
2 attempting to provide a "smoking permitted" designated area.

3 ~~2. If an accommodation which is satisfactory to all employees objecting to~~
4 ~~the "smoking permitted" designated area cannot be reached in any~~
5 ~~confined nonpublic work space, the preferences of those objecting to~~
6 ~~smoking shall prevail, and the employer shall not allow a "smoking~~
7 ~~permitted" area at all in that confined nonpublic work space. Where the~~
8 ~~employer permits smoking in a confined nonpublic work space, the area in~~
9 ~~which smoking is permitted shall be clearly demarcated and posted with~~
10 ~~signs indicating the area in which smoking is permitted.~~

11 ~~b. The private agency responsible for each privately owned and/or operated~~
12 ~~building shall announce the smoking policy in each such building to all~~
13 ~~employees working in the confined nonpublic work spaces in the city, and~~
14 ~~notice of the smoking policy shall be posted conspicuously in all confined~~
15 ~~nonpublic work spaces under each employer's jurisdiction. Where a smoking~~
16 ~~policy has not been timely adopted and conspicuously posted, it shall be~~
17 ~~presumed for the purposes of this article that smoking is prohibited~~
18 ~~everywhere in the affected building.~~

19 ~~Sec. 11.5-22. Where smoking not regulated.~~

20 ~~This article is not intended to regulate smoking in the following places and under the~~
21 ~~following conditions within the city:~~

1 ~~(1) A private residence even though a portion or all of the residence may serve as a~~
2 ~~workplace;~~

3 ~~(2) Areas which are specifically and properly designated as smoking areas in~~
4 ~~accordance with this article;~~

5 ~~(3) Unless otherwise prohibited, an entire room or hall during the time it is used for a~~
6 ~~private social function, providing that the person in responsible charge of the~~
7 ~~room or hall designates all or part of the area for smoking during that time and~~
8 ~~posts appropriate signs indicating that smoking is permitted;~~

9 ~~(4) Performers on stage in a theatrical production, provided that the smoking is a part~~
10 ~~of that theatrical production.~~

11 ~~Sec. 11.5-23. Exemptions.~~

12 ~~The following establishments may permit smoking throughout public areas and~~
13 ~~confined nonpublic work spaces provided that they post "Smoking Permitted" signs on all~~
14 ~~entrances thereto:~~

15 ~~(1) Bars or establishments deriving greater than fifty one (51) percent of their gross~~
16 ~~income from the sale of alcoholic beverages;~~

17 ~~(2) Any restaurant with a seating capacity of fifty (50) or less patrons;~~

18 ~~(3) Retail stores with a ventilated floor space not exceeding two thousand five~~
19 ~~hundred (2,500) square feet;~~

20 ~~(4) Confined nonpublic work spaces where all persons normally occupying the area~~
21 ~~affirmatively consent to smoking by others.~~

1 ~~Sec. 11.5-24. Establishments permitting smoking in more than half of area to provide~~
2 ~~public notice.~~

3 ~~In any building to which the public is invited, if more than fifty (50) percent of the~~
4 ~~public area within the establishment is designated as a smoking area, notice to the public~~
5 ~~shall be conspicuously posted in accordance with this article at all entrances normally~~
6 ~~used by the public.~~

7 ~~Sec. 11.5-25. Posting of signs.~~

8 ~~(a) The agency in charge of any government-owned and/or operated building or any~~
9 ~~privately owned and/or operated building shall conspicuously post or cause to be~~
10 ~~posted, in any area designated as a smoking area, signs stating that smoking is~~
11 ~~permitted in such an area. Such signs shall clearly delineate the boundaries of~~
12 ~~such area.~~

13 ~~(b) Each sign posted pursuant to this section shall have letters at least four (4) inches~~
14 ~~high with the principal strokes of letters not less than one-half inch wide. The~~
15 ~~color, design and precise place of posting of such signs shall be left to the~~
16 ~~discretion of the agency in charge of the premises.~~

17 ~~(c) In order to increase public awareness, the agency in charge of the premises may,~~
18 ~~as its discretion also post "No Smoking" or "No Smoking Except in Designated~~
19 ~~Areas" signs as appropriate.~~

20 ~~Sec. 11.5-26. Violations.~~

1 Any person who violates any of the provisions of this article shall be subject to
2 punishment as provided in section 1-9 of this Code. The city manager, or his/her
3 designee, in enforcing the provisions of this article shall proceed as follows:

4 (1) In view of the implied notice provision contained in section 11.5-17, a person
5 believed to be in violation of this article shall first be advised of the prohibitions
6 hereof and thereafter be requested to cease the alleged prohibited activity. If such
7 person refuses to cease such activity, prosecutorial action shall then be initiated.

8 (2) In the case of flagrant or repeated violations of this article after notice as outlined
9 in this section, the person responsible for or allowing the violation shall be
10 prosecuted for a violation of this Code as provided in section 1-9

11 **Section 2.** A new Article II. Clean Indoor Air is adopted and made a part of Chapter 11.5
12 of the City Code as follows:

13 **Sec. 11.5-16 Purpose and intent**

14 It is the purpose and intent of this article to limit the use of nicotine dispensing devices to
15 the areas where the use of lighted tobacco products is allowed pursuant to state law.

16 Regulation of where the smoking of lighted tobacco products is allowed is preempted to
17 the State in Section 386.209, Florida Statutes, and the delivery to and possession of nicotine
18 dispensing devices by a minor is prohibited in Section 877.112, Florida Statutes. However,
19 regulation of where the use of nicotine dispensing devices by adults is allowed is not preempted
20 to the State. The city finds that it is in the best interest of the public health, safety and welfare to
21 further regulate the use of nicotine dispensing devices within the city.

22 **Sec. 11.5-17. Definitions**

1 For the purpose of this article, the following words and terms shall have the meanings
2 given herein:

3 Liquid nicotine means any liquid product composed either in whole or part of pure
4 nicotine and other substances and manufactured for use with nicotine dispensing devices.

5 Nicotine dispensing device means any nicotine dispensing device as defined in
6 Section 877.112, Florida Statutes.

7 Nicotine product means nicotine product as defined in Section 877.112, Florida
8 Statutes.

9 Smoking means smoking as defined in Section 386.203, Florida Statutes.

10 Use of a nicotine dispensing device means the activation, heating or ignition of a
11 nicotine dispensing device which creates a vapor of liquid nicotine and/or other
12 substances which the user can inhale in simulation of smoking.

13 **Sec. 11.5-18. Use of a nicotine dispensing device where smoking prohibited; penalty.**

- 14 1. The use of a nicotine dispensing device is prohibited at all locations within the
15 city at which smoking is prohibited under Chapter 386, Florida Statutes.
16 2. Any person violating any of the provisions of this article shall be subject to the
17 penalties of section 2-339.

18 **Section 3.** Section 11.5-40 within Article IV. Restriction of Outdoor Smoking at a City
19 Facility and at RTS Bus Stops and Bus Shelters is amended as follows:

20 **Sec. 11.5-40. - Definitions.**

21 Bus and vehicle shall mean a bus or motor vehicle operated by RTS for the purpose of
22 transporting passengers.

1 *Bus shelter* shall mean any designated place, characterized by a roofed or partially
2 roofed structure, where a RTS bus stops to pick up or let off passengers.

3 *Bus stop* shall mean any designated place where a RTS bus stops to pick up or let off
4 passengers. Bus stops may be designated by the placement of a sign or bench.

5 *Smoke or smoking* shall mean the intake and exhalation by a person of smoke from
6 tobacco, a tobacco substitute or other weed or plant, and also possessing, carrying,
7 holding or otherwise having control of a lighted pipe, cigar, cigarette or other lighted
8 smoking equipment. In addition, for purposes of this article, smoke or smoking shall
9 include the use of a nicotine dispensing device as defined in Section 11.5-17.
10

11 **Section 4.** Section 2-339 of the Code of Ordinances is amended to add the following
12 penalty. Except as amended herein the remainder of Section 2-339 remains in full force and
13 effect:

Section	Description	Class	Penalty
11.5-18	<u>Use of a nicotine dispensing device where smoking prohibited</u>	II	\$75.00

14
15 **Section 5.** It is the intention of the City Commission that the provisions of Sections 1, 2,
16 3 and 4 of this Ordinance shall become and be made a part of the Code of Ordinances of the City
17 of Gainesville, Florida, and that the sections and paragraphs of this Ordinance may be
18 renumbered or relettered in order to accomplish such intentions.

19 **Section 6.** If any word, phrase, clause, paragraph, section or provision of this ordinance
20 or the application hereof to any person or circumstance is held invalid or unconstitutional, such
21 finding shall not affect the other provisions or applications of the ordinance which can be given

1 effect without the invalid or unconstitutional provisions or application, and to this end the
2 provisions of this ordinance are declared severable.

3 **Section 7.** All ordinances or parts of ordinances, in conflict herewith are to the extent of
4 such conflict hereby repealed.

5 **Section 8.** This ordinance shall become effective immediately upon final adoption.


6 **PASSED AND ADOPTED** this 20th day of November, 2014.

7 
8 EDWARD B. BRADDY
9 MAYOR

10

11 ATTEST:

Approved as to form and legality

12 
13 KURT M. LANNON
14 CLERK OF THE COMMISSION


NICOLLE M. SHALLEY
CITY ATTORNEY

16

17 This ordinance passed on first reading this 6th day of November, 2014.

18 This ordinance passed on second reading this 20th day of November, 2014.