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CITY COUNCIL
City of Manila

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11TH CITY COUNCIL

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ORDINANCE NO. 8697

AN ORDINANCE REGULATING THE USE AND SALE OF VAPORIZED AND HEATED TOBACCO PRODUCTS (VHTPs) IN PUBLIC PLACES AND PUBLIC CONVEYANCES, ADVERTISEMENTS AND PROMOTIONS, AND PROVIDING PENALTIES THEREFORE

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PREAMBLE

WHEREAS, the 1987 Constitution declares it the policy of the state to protect and promote the right to health consciousness among them;

WHEREAS, a wide range of vapor and heated tobacco products (VHTPs) also known as e-cigarettes, have been introduced in the Philippines and globally. They are handled products that generate a nicotine – containing aerosol without combustion;

WHEREAS, Congress enacted Senate Bill No. 2233 with differentiated excise tax roles in recognition of the clear distinction between VHTPs – consisting of vapor products and heated tobacco products – which release an aerosol that can be inhaled without burning;

WHEREAS, last July 25, 2019, President Rodrigo Roa Duterte signed into law a bill raising the excise tax on tobacco products to support the governments universal health care program. Republic Act No. 11346 will hike tobacco excise tax rates on cigarettes and impose new taxes on heated tobacco and vapor products;

WHEREAS, an emerging body of scientific evidence shows that while not risk-free, VHTPs are far less harmful due to the lack of combustion. Public Health in England stated that carcinogenic constituents of cigarette smoke that harm health are either absent in e-cigarette vapor or if present, they are mostly at levels much below five percent (5%) of smoking doses a reduced risk potential based on the reduced level of air pollution where VHTPs are used compared to conventional cigarettes;

WHEREAS, regulating VHTPs in the exact same way as cigarettes, however, would fail to acknowledge the fundamental difference between combustible and non-combustible products and their respective risk profiles. Groups such as Public Health England and the British Lung Foundation have underscored the importance of regulating VHTPs or e-cigarette products differently from cigarettes;

WHEREAS, the proliferation of illicit or non-compliant of VHTPs is a serious problem that could deprive the government of potential revenue from excise tax collections and has the effect of flooding the market with cheaper VHTPs, thereby making them more accessible to the public, especially the youth;

WHEREAS, these non-compliant VHTPs, if not eradicated may pose a threat to the health of consumers because of their substandard quality;

WHEREAS, in order to fully protect the health and welfare of the citizens of Manila and further safeguard the interests of all stakeholders, including smokers who have the right to choose less harmful alternatives to cigarettes, there is a need to pass an ordinance regulating the use of vapor and heated tobacco products in public places and conveyances, including its advertising and promotion, in line with the latest scientific studies on this class of products: NOW, THEREFORE,

Be it ordained by the City Council of Manila, in session assembled, *THAT*:

SECTION 1. Definitions of terms. – As used in this Ordinance:

- A. Vapor and Heated Tobacco Products (VHTPs) also known as “e-cigarette” – refers to a category of products that include vapor products. Vapor products shall mean any liquid solution or gel which contains nicotine that transforms into an aerosol without combustion through the employment of a mechanical heating element, battery or circuit that can be used to heat such solution or gel, and include but is not limited to a cartridge, a tank and the device without cartridge or tank. It is commonly known as e-liquid for e-cigarette. The electronic device are used to produce an aerosol, mist or vapor that user inhale by mimicking the act of smoking. Heated tobacco products refer to tobacco products that may be consumed through heating tobacco, either electrically or through other means sufficiently to release an aerosol that can be inhaled, without burning or any combustion of the tobacco. Heated tobacco products include liquid solutions and gels that are part of the product and are heated to generate an aerosol. For purposes of this Ordinance, “VHTPs” is used interchangeably with “electronic cigarette or “e-cigarette”.
- B. Nicotine receptacle – shall refer to bottles, boxes, cartons, or containers of any kind in which a nicotine-containing solution or non-burning tobacco or product that can be used for the consumption of nicotine-containing vapors or Nicotine Mixtures or any related products is offered for sale to consumers for use with VHTP system.
- C. Advertise – refers to any visual and/or audible message disseminated to the public about a particular product that promotes and gives publicity by words, design, images or any other means through broadcast, electronic, print or whatever forms of mass media, including outdoor advertisement, such as, but not limited to, signs and billboards. For the purpose of this Ordinance, advertisements shall be understood as VHTP or e-cigarette advertisement.
- D. Advertising – refers to the business of conceptualizing, presenting, making available and communicating to the public through any form of mass media, quality or availability of consumer product, services or credit. For purposes of this Ordinance, advertising shall be understood as e-cigarette advertising. This shall specifically refer to message and images promoting VHTPs; the purchase or use of VHTPs; and VHTP or e-cigarette trademarks, brand names, design and manufacturer’s names.
- E. Celebrity – refers to any natural person who, by his accomplishments or fame, or by reason of his profession or calling, gives the public a legitimate interest in his doings, affairs and character. The term includes anyone who has arrived at a position where public attention is focused upon him as a person, such as, but not limited to, actors, athletes and other sports personalities, war heroes, famous investors and explorers among other.
- F. Distributor – refers to any person to whom VHTP product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer or common carrier of such product.
- G. Enclosed Area – refers to an area that is physically separated from adjacent areas by walls or partitions and a roof or ceiling. The walls or partitions must be continuous, interrupted only by doors and windows. The mere presence of a roof or ceiling over the structure, but without walls or partitions surrounding said structure, does not constitute an enclosed area.

- H. Mass Media – refers to any medium of communication which reaches a mass of people. For the purpose of this Ordinance, communication designed to reach persons by private, postal or regular mail, electronic mail (e-mail), and similar means shall not be considered as mass media.
- I. Minor – refers to any person below eighteen (18) years old.
- J. Non-compliant VHTPs – refers to those VHTPs being sold in the domestic market but fail to comply with national laws or regulations; these may be any of the following:
 - a. j.1) Non-tax paid VHTPs (Products with no affixed tax stamp or without fake stamp); and
 - b. j.2) VHTPs without the health warnings on its labels and packages as required under national laws and/or regulations.
- K. Perimeter – when used in this Ordinance in relation to sale of, and outdoor advertisements for, VHTPs, the term shall refer to any point in the boundaries as indicated in the Original Certificate of Title of Transfer Certificate of Title of the tract of land that is actually used or occupied by a public school, public playground owned by government or other facility frequented particularly by persons below eighteen (18) years old age who are or intended to be principal users or patrons of such facility, whether or not said tract of land is separated by adjacent tracks by a wall or fence.
- L. Point-of-sale – refers to any location at which an individual can purchased or otherwise obtain VHTPs.
- M. Premises – refers to a tract of land and the building or buildings thereon, including the open space between the buildings located on the same tract of land and within the perimeter of said tract of land.
- N. Promotion – refers to an event or activity organized by or on behalf of a VHTP or e-cigarette manufacturer, distributors or retailer with the aim of promoting a brand of e-cigarette, which event or activity would not occur but for now the support given to it by or on behalf of the VHTP manufacturer, distributor or retailer. It may also refer to the display of a VHTP or manufacturer's name, trademark, logo, and the like on non-VHTP goods.
- O. Public Conveyances – refers to the modes of transportation servicing the general population, such as but not limited to, elevators, airplanes, buses, taxicabs, ships, jeepneys, light rail transits, tricycles, e-trikes, pedicabs, and similar vehicles.
- P. Public places – refers to enclosed or confined areas of all places of worship, hospitals, or other healthcare centers, public conveyances, government offices, and educational or recreational facilities primarily intended to minors.
- Q. Vaping – refers to the act of using a VHTP where a user inhales from the device and exhales the vapor.

SEC. 2. Public Place Use. – Use of VHTPs indoor is prohibited in places of worships, hospitals, or other healthcare centers, public conveyances, and educational or recreational facilities primarily intended for minors.

SEC. 3. Designation of vaping areas. – In all enclosed places that are open to the general public, and private workplaces, and other places not covered by Section 2 of this ordinance, the owner, proprietor, operator, possessor, manager or administrator of such places shall establish vaping areas in accordance with the following standards:

3.1. Designated Vaping Areas (DVA) within the building may be in an open space or separate area with proper ventilation, but shall not be located within the same room that has been designated as a smoking area.

3.2. The owner, proprietor, operator, possessor, manager or administration shall determine the size and specifications of the vaping area and non-vaping area.

3.3 Unless the whole establishment has been designated as a vaping area, the VNA shall not be located within two (2) meters from the entrances and exits, and physically delineated from non-vaping areas.

3.4 DVAs shall have at least one (1) legible and visible sign posted, namely **“VAPING AREA”** for the information and guidance of all concerned. In addition, the sign or notice posted shall include a warning about the health effects of vaping in accordance with national laws and regulations. Lastly, DVAs should have a sign that states: **“Minors are not allowed to use VHTPs”**.

Vaping shall be allowed in outdoor areas without any need for designation as vaping area.

Notwithstanding the restrictions provided in this Section 3, temporary use of VHTPs shall be allowed within the immediate vicinity of point-of-sale establishments solely for the limited purpose of testing and demonstrating the proper use of VHTPs.

SEC. 4. VHTP/electronic cigarette ban in public conveyances: exception. – Notwithstanding the absolute ban on vaping in public conveyances mentioned in Section 2, the prohibition does not apply to inter-island vessels where vaping areas have been designated.

SEC. 5. Minimum Age Sales. – Under this Ordinance, it shall be unlawful:

- a. For any retailer to sell or distribute VHTPs to minor.
- b. To purchase VHTPs from a minor.
- c. For minors to sell VHTPs.
- d. For minors to purchase VHTPs.

SEC. 6. Sale of VHTPs within School Perimeters. – The sale or distribution of VHTPs is prohibited within one hundred (100) meters from any point of the perimeter of a school, public playground or other facility frequented particularly by minors who are intended to be the principal users of such facility.

SEC. 7. Point of Sale Display and Signage. – No point-of-Sale establishment shall display VHTPs without ensuring that the unit pockets and outside wrapping of Heated Tobacco Products, Vapor Products and other similar products are compliant with the health warnings required under national laws and regulation.

SEC. 8. Proof of Age Verification. – In case of doubt as to the age of the buyer, retailers shall verify by means of any valid form of photographic identification containing the date of birth of the bearer that the individual purchasing a VHTP is not below eighteen (18) years of age.

It shall not be a defense or distributing that he/she did not know nor had any reason to believe that the VHTP was for the consumption of the minor to whom it was sold.

SEC. 9. Advertisement Restrictions. – Printed and outdoor advertisements shall be allowed only within the premises of point-of-sale establishments regardless of whether it is visible from the outside or not. Advertisements shall likewise be allowed through direct marketing and on the internet. The following restrictions shall apply to all VHTP advertisements:

- a. Advertisements shall not be aimed at or particularly appeal to persons under eighteen (18) years of age;
- b. Advertisements shall not contain cartoon characters or subjects that depict humans or animals with comically exaggerated features or that attribute human or unnatural characteristics to animals, plants or other objects;
- c. Advertisements shall only depict persons who are or who appear to be above twenty-five (25) years of age;
- d. Advertisements shall not show, portray or depict scenes where the actual use of, act of using, or puffing of VHTPs is displayed;
- e. Advertisements should not undermine quit-smoking message and encourage non-tobacco or non- nicotine users to use the product.
- f. Advertisements shall not contain any information or element that is untrue or not scientifically substantiated, in particular with regard to product characteristics, health effects, risks or emissions;
- g. Promotional communications shall allow for adult consumers to learn about the availability of VHTPs, receive information about how to use them, try before purchasing, subject to proof of age and certification of smoker status, and receive pre-sale and after-sales support;
- h. Advertisements shall not appear on mass media television, radio, or cinema; and
- i. All allowable advertisements and promotional materials for VHTPs shall carry health warnings as required by existing laws and regulation.

SEC. 10. Punishable Acts. – The following acts are punishable under this Ordinance:

- a. Vaping in public places where vaping is expressly prohibited under Section 2 of this Ordinance;
- b. Non-compliance with Section 3 of this Ordinance when an establishment owner requires users of VHTPs to use the same designated smoking areas, unless smoking is allowed in the entire establishment;
- c. Sale of VHTP products to or by a minor;
- d. Purchase of VHTP from a minor;
- e. Minors to purchase VHTPs;
- f. Distribution of samples of VHTP to minors;

- g. Non-compliance with Section 6 of this Ordinance on selling restrictions;
- h. Non-compliance with the restrictions on VHTP promotions, advertisements, and required signages at point-of-sale establishments;
- i. Sale and distribution of non-compliant VHTP with fake tax stamp, or proof of payment of excise tax, as required by law or regulations; and
- j. Sale and distribution of non-compliant VHTPs without health warnings, as required by law or regulations.

SEC. 11. Penalties for Violation of this Ordinance –

- a. On the **FIRST OFFENSE**, a fine of not less than One Thousand Pesos (PhP. 1,000.00) but not more than One Thousand Five Hundred Pesos (PhP. 1,500.00) or one (1) day of community service shall be imposed.
- b. On the **SECOND OFFENSE**, a fine of more than Two Thousand Five Hundred Pesos (PhP. 2,500.00) but not more than Three Thousand Pesos (PhP. 3,000.00) or up to three (3) days of community service shall be imposed.
- c. On the **THIRD OFFENSE**, in addition to a fine of not less than Four Thousand Pesos (PhP. 4,000.00) but not more than Six Thousand Pesos (PhP. 6,000.00) or up to Five (5) days of community service, the business permits and license to operate of the offender may be cancelled or revoked.
- d. One (1) day community service shall equivalent to eight (8) hours.

SEC. 12. Community Service. – The apprehended violator who opts to render community service shall report to the City Health Officer and shall attend a seminar or training with topics relating to healthy living and activities such as clean up drives or other community development programs being implemented by the City Governance.

SEC. 13. Minor Offender. – A minor offender of this Ordinance shall be dealt with accordance with the provisions of the Republic Act No. 9344 or with the Juvenile Justice and Welfare Act of 2006.

SEC. 14. Confiscation. – VHTPs for sale and distribution association with any violation of the prohibited acts in SECTION 1 and 5 of this Ordinance shall, upon apprehension of the appropriate law enforcement agency, be subject to confiscation, removal, preservation and presentation as evidence before the appropriate court of competent jurisdiction.

The operatives of the Manila Police District or the Special Mayor's Reaction Team, or any of their duly authorized representatives, shall issue a corresponding confiscation receipt to the owner or retailer of items confiscated. All confiscated VHTPs shall be retained in their respective custody for evidentiary purposes. After presentation in court, the confiscated items shall be subject to disposal as directed by court order or in accordance with applicable laws, rules and regulations, whichever applicable.

SEC. 15. Enforcement on Point-of-Sale Establishments. – Within thirty (30) calendar days after the effecting of this Ordinance, the business permits and licensing office shall conduct inspections of point-of-sale establishments to determine their compliance with the provisions of this Ordinance.

Regular inspections shall thereafter be conducted at least once a month, or at such frequency that is practicable, during normal hours of operation of the point-of-sale establishments.

SEC. 16. Civilian Participation in Enforcement. – Any person may file with the Manila task force a report or complaint for any violation of this Ordinance which report or complaint for any violation of this Ordinance which report or complaint will be promptly acted upon within five (5) working days from receipt of such report or complaint.

SEC. 17. Repealing Clause. – All existing ordinances inconsistent with this Ordinance are hereby repealed or modified accordingly.

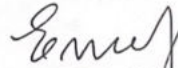
SEC. 18. Interpretation. – Any request for interpretation of the provisions of this Ordinance shall be referred to the City Legal Office. Any doubt in the interpretation of this Ordinance shall be construed in favor of the promotion of harm reduction.

SEC. 19. Separability Clause. – Should any provision of this Ordinance be subsequently declared unconstitutional or invalid, the other provisions not affected by such declaration shall remain in full force and effect.

SEC. 20. Effectivity Clause. – This Ordinance shall take effect fifteen (15) days from its Publication in at least two (2) newspapers of general or local circulation within the City of Manila, consistent with the provisions of the Local Government code.

This Ordinance was finally enacted by the City Council of Manila on November 5, 2020.

PRESIDED BY:



ERNESTO C. ISIP, JR.
President Pro-Tempore and
Acting Presiding Officer
City Council, Manila

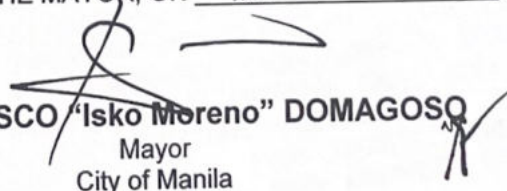
ATTESTED:



LUCH R. GEMPIS, JR.

City Government Department Head III
(Secretary to the City Council)

APPROVED BY HIS HONOR, THE MAYOR, ON NOV 23 2020.



FRANCISCO "Isko Moreno" DOMAGOSO
Mayor
City of Manila

ATTESTED:



BERNARDITO C. ANG

City Government Department Head III
(Secretary to the Mayor)

RNF: rrb/acl/jok/cpl/agv/jrp