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3 **AN ORDINANCE** amending Chapter 95 in the Fort Wayne Municipal Code of Ordinances:
4 “Health, Safety and Sanitation”
5 to include additional regulations to the Regulations of Smoking
6

7 **WHEREAS**, an estimated 8.1 million people uses electronic cigarettes and similar
8 products in the United States, including 3.6 million youths in 2018; and

9 **WHEREAS**, from 2012 to 2018, vaping usage increased by 300% for Indiana youth; and

10 **WHEREAS**, in 2019 more than 5 million middle and high school students reported using
11 e-cigarettes in the last 30 days, and nearly 1 million were using them daily; and

12 **WHEREAS**, the constituents of secondhand aerosol electronic smoking devices (ESDs)
13 do not just emit a harmless water vapor, but instead emit a secondhand aerosol that contains
14 nicotine, ultrafine particles and toxins which are known to cause cancer; and

15 **WHEREAS**, ESD aerosol is made up of fine and ultrafine particles, and the
16 concentration of such particles is higher than conventional tobacco cigarette smoke, and may
17 exacerbate respiratory ailments like asthma or constrict arteries, which could trigger a heart
18 attack; and

19 **WHEREAS**, at least ten (10) chemicals identified in ESD aerosols, both mainstream and
20 secondhand, are considered to be carcinogens and reproductive toxins including Acetaldehyde,
21 Benzene, Cadmium, Formaldehyde, Isoprene, Lead, Nickel, Nicotine, N-Nitrosornicotine, and
22 Toluene; and

23 **WHEREAS**, ESDs contain and emit propylene glycol and short-term exposure can lead
24 to eye, throat, and airway irritation, while long-term exposure can lead to the development of
25 asthma in children; and

26 **WHEREAS**, ESDs contain metals including chromium, nickel, and tin nanoparticles;
27 and

28 **WHEREAS**, ESDs are not a safe alternative to tobacco smoking, there are simply different
29 dangers; and

1 **WHEREAS**, as the known first- and second-hand effects of ESDs become clearer, more
2 communities are including them any smoking prohibitions, including 990 municipalities and 20
3 states, in order to ensure that unplanned secondary effects do not impact residents.

4
5 **NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF**
6 **FORT WAYNE, INDIANA,**

7
8 **SECTION 1.** That § 95.60: “Definitions” shall be amended to add a new definition and amend
9 existing definitions.

10
11 **Electronic Smoking Device.** Any product containing or delivering nicotine or any other substance
12 intended for human consumption that can be used by a person in any manner for the purpose of
13 inhaling vapor or aerosol from the product. The term includes any such device, whether
14 manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape
15 pen, or under any other product name or descriptor.

16 **Retail Tobacco Store.** A retail store.

17 (1) Utilized primarily for the sale of tobacco and tobacco-related products, including but
18 not limited to, cigarettes, cigars, tobacco, pipes, cigarette papers, electronic smoking devices, e-
19 liquids, and lighters;

20 (2) That is not licensed for the consumptions of meals or alcoholic beverages on the
21 premises, or operated in conjunction with another business that is licensed for the on-premises
22 consumption of meals or alcoholic beverages; and

23 (3) In which the sale of tobacco and tobacco-related products account for not less than
24 60% of the store’s gross sales.

25 **Smoking.** Inhaling, exhaling, burning or carrying any lighted or heated tobacco or cannabis
26 product in any manner or in any form, including, but not limited to a cigar, cigarette, pipe, blunt,
27 hookah, that is intended for inhalation, whether natural or synthetic, in any manner or form. This
28 includes the use of an electronic smoking device which creates and aerosol or vapor in any
29 manner or form, or the use of any oral smoking device for the purpose of circumventing the
30 prohibition of smoking in this ordinance.

1 **SECTION 2.** That § 95.64: “Exceptions” shall be amended and read as follows:

2 **§ 95.64 Exceptions**

3 The following shall be exempted from this subchapter:

4 (A) Retail tobacco stores.

6 **SECTION 3.** Add Section 95.74: “Smoking Area Construction”, which shall read as follows:

7 **§95.74 Smoking Area Construction**

8 All construction associated with smoking rooms or areas must meet minimum code according to
9 state guidelines. All construction must meet current Indiana Code, including but not limited to
10 the Indiana Building Code and Indiana General Administrative Rules, which are enforced locally
11 by the Allen County Building Department. Local building permits shall be required.

13 **SECTION 4.** Update relevant Indiana Code, in which the 2021 Prohibition on smoking is now
14 codified in 7.1-5-12.

16 **§ 95.99 Penalty**

17 (A) Any person violating any provision of this chapter, for which no specific penalty is otherwise
18 provided, shall, upon conviction thereof, pay a fine of not more than \$2,500. Each day any violation shall
19 continue shall constitute a separate offense. In all cases where the same offense may be made punishable,
20 or may be created by different clauses or sections of the ordinances of the city, the City Attorney may
21 elect under which to proceed, but not more than one recovery shall be had against the same person for the
22 same offense. Notwithstanding the foregoing, the penalty provision contained therein is not intended to
23 be applicable to §§ [95.60](#) through [95.73](#).

24 (B) Any person violating any of the provisions of § [95.01](#) shall be deemed guilty of a violation, and
25 upon conviction thereof, shall be fined in an amount not exceeding \$300. Each day such violation is
26 committed or permitted to continue shall constitute a separate offense and shall be punishable as such
27 hereunder.

1 (C) Any person violating any provision of §§ [95.16](#) through [95.19](#) shall be punished by a fine of \$25
2 payable to the City Clerk. Each day such violation shall continue shall constitute a separate offense.

3 (D) Any person who violates any provision of §§ [95.31](#) through [95.33](#) shall pay a civil penalty of not
4 more than \$2,500 for each such violation.

5 (E) A business entity which allows a violation of §§ [95.61](#) through [95.71](#) or otherwise fails to comply
6 with it shall be issued a warning on a first violation and shall be subject to a civil fine of up to \$100 for a
7 second violation, up to \$500 for a third violation, and up to \$2,500 per day for subsequent violations.

8 (F) Any person, except for persons smoking in dining areas in restaurants, who violates this subchapter
9 shall be subject to a civil fine of \$25 for a first violation, \$100 for a second violation, and \$250 for each
10 additional violation. A person who violates this subchapter by smoking in dining areas, or who violates
11 the Indiana Prohibition on Smoking codified at IC 7.1-5-12, shall be subject to the fines and penalties as
12 set forth in IC 7.1-5-12-8, IC 7.1-5-12-9, and IC 7.1-5-12-10, and nothing herein shall be construed to
13 restrict local law enforcement agents from enforcing such penalties.

14
15 **SECTION 5.** That this Ordinance shall be in full force and effect after any and all necessary
16 approval by the Mayor.

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19 _____
20 Glynn Hines, Council Member

21
22 **APPROVED AS TO FORM AND LEGALITY**

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24 _____
25 Joseph G. Bonahoom, City Council Attorney