

5-23-17

ORDINANCE NO. 30472

An ordinance amending Chapter 12B, "Convenience Stores," of the Dallas City Code by amending Sections 12B-2, 12B-3; 12B-4, 12B-5, 12B-6; 12B-7, and 12B-20; providing new and updated definitions; authorizing enforcement of the registration requirement by the fire department and the department of code compliance; providing notice to be given via electronic mail; adding a defense to prosecution; deleting the form of business requirement on the application; deleting the provision that requires the posting of the trespass affidavit; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date. Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 12B-2, "Definitions," of Article I, "General Provisions," of Chapter 12B, "Convenience Stores," of the Dallas City Code is amended to read as follows:

**"SEC. 12B-2. DEFINITIONS.**

In this chapter:

(1) CERTIFICATE OF REGISTRATION means a certificate of registration issued by the chief under this chapter to the owner or operator of a convenience store.

(2) CHIEF means the chief of the police department of the city or the chief's authorized representative.

(3) CIGAR BAR means a bar that derives 15 percent or more of its gross revenue on a quarterly (three-month) basis from the sale or rental of tobacco, tobacco products, or smoking accessories for on-premises consumption.

(4) CONVENIENCE GOODS means basic food, household, tobacco products, paraphernalia, and pharmaceutical items.

(5[4]) CONVENIENCE STORE means any business that is primarily engaged in the retail sale of convenience goods, or both convenience goods and gasoline, and has less than 10,000 square feet of retail floor space. A convenience store [~~The term~~] does not include any business that has no retail floor space accessible to the public.

(6[5]) DROP SAFE means a cash management device in which money can be deposited without the depositor having access to the contents.

(7[6]) EMPLOYEE means any person listed on the payroll of a convenience store as an employee, whether part-time, full-time, permanent, or temporary. The term does not include a person providing only janitorial or security services to the convenience store.

(8[7]) HEIGHT MARKER means a measuring strip that may be attached on or near a door frame of a convenience store to aid in identifying the height of a person suspected of committing a crime.

(9[8]) MANAGER means the person designated in the registration application filed under this chapter as being responsible for the daily operation of a convenience store.

(10) PARAPHERNALIA means "illegal smoking paraphernalia" as that term is defined in Chapter 31 of the Dallas City Code or any other smoking paraphernalia that is commonly used, or commonly known to be used, for the inhalation of tobacco or illegal substances. For purposes of this definition, rolling papers, tobacco cigarettes, and tobacco cigars are not considered paraphernalia.

(11[9]) PERSON means any individual, corporation, organization, partnership, association, or any other legal entity.

(12[10]) REGISTERED AGENT means the person identified in the registration application filed under this chapter who is authorized to receive on behalf of the convenience store any legal process or notice required or provided for in this chapter.

(13[11]) REGISTRANT means a person issued a certificate of registration for a convenience store under this chapter and includes all owners, ~~and~~ operators, or the person in the care, custody, or control of the convenience store [~~identified in the registration application filed under this chapter~~].

(14) TOBACCO PRODUCT means a tobacco product as defined in Chapter 155 of the Texas Tax Code, as amended.

(15) TOBACCO SHOP means a retail or service establishment that derives 90 percent or more of its gross revenue on a quarterly (three-month) basis from the sale of tobacco or tobacco products."

SECTION 2. That Section 12B-3, "Authority of Chief," of Article I, "General Provisions," of Chapter 12B, "Convenience Stores," of the Dallas City Code is amended to read as follows:

**"SEC. 12B-3. AUTHORITY OF CHIEF OF POLICE, FIRE DEPARTMENT, AND DEPARTMENT OF CODE COMPLIANCE.**

(a) Except as provided in this section, t[he] chief of police shall implement and enforce this chapter and may by written order establish such rules, regulations, or procedures, not inconsistent with this chapter, as the chief determines are necessary to discharge any duty under or to effect the policy of this chapter.

(b) The chief of police, the chief of the fire department, and the director of the department of code compliance, including representatives, agents, or city employees designated by the chief of police, the chief of the fire department, and the director of the department of code compliance, shall enforce the registration requirement in Section 12B-6."

SECTION 3. That Section 12B-4, "Delivery of Notices," of Article I, "General Provisions," of Chapter 12B, "Convenience Stores," of the Dallas City Code is amended to read as follows:

**"SEC. 12B-4. DELIVERY OF NOTICES.**

Any written notice that the chief is required to give a [an applicant or] registrant under this chapter is deemed to be delivered:

(1) on the date the notice is hand delivered to the [applicant or] registrant or the [applicant or] registrant's registered agent; [or]

(2) three days after the date the notice is placed in the United States mail with proper postage and properly addressed to the [applicant or] registrant or the [applicant or] registrant's registered agent at the address provided for the [applicant or] registrant or the registered agent in the most recent registration application; or

(3) on the date the notice is sent electronically to the electronic mailing address of the registrant listed on the application."

SECTION 4. That Section 12B-5, "Violations; Penalty," of Article I, "General Provisions," of Chapter 12B, "Convenience Stores," of the Dallas City Code is amended by adding a new Subsection (e) to read as follows:

“(e) It is a defense to prosecution under this section that an establishment is operating as a cigar bar or tobacco shop as defined in this chapter.”

SECTION 5. That Subsection (b) of Section 12B-6, “Registration Required; Fees,” of Article II, “Registration of Convenience Stores,” of Chapter 12B, “Convenience Stores,” of the Dallas City Code is amended to read as follows:

“(b) It is a defense to prosecution under Subsection (a) that at the time of the alleged offense:

- (1) the convenience store had been open for business less than 45 days; [~~or~~]
- (2) the majority ownership of the convenience store had changed and the store had been open for business under the new ownership for less than 45 days; or
- (3) the establishment is operating as a cigar bar or tobacco shop as defined in this chapter.”

SECTION 6. That Subsection (a) of Section 12B-7, “Registration Application,” of Article II, “Registration of Convenience Stores,” of Chapter 12B, “Convenience Stores,” of the Dallas City Code is amended to read as follows:

“(a) To obtain a certificate of registration for a convenience store, a person must submit an application on a form provided for that purpose to the chief. The applicant must be the person who will own or operate the convenience store. The application must contain all of the following information:

- (1) The name, street address, mailing address, electronic mailing address, and telephone number of the applicant.
- (2) The name, street address, mailing address, facsimile number, and telephone number of the convenience store.
- (3) The names, street addresses, mailing addresses, electronic mailing addresses, and telephone numbers of all owners of the convenience store and any lien holders and other persons with a financial interest in the convenience store, and the nature and extent of each person’s interest in the convenience store.
- (4) The name, street address, mailing address, electronic mailing address, and telephone number of the manager of the convenience store.

(5) The name, street address, mailing address, electronic mailing address, and telephone number of a person or persons who can be contacted 24 hours a day, seven days a week, in the event of an emergency condition involving the convenience store.

(6) The name, street address, mailing address, electronic mailing address, and telephone number of the registered agent for the convenience store.

(7) A statement that the applicant understands that notices may be issued and delivered to the registrant via hand delivery, United States mail, or electronic mail in accordance with Section 12B-4. [~~The form of business of the applicant (and owner, if different from the applicant); the name, street address, mailing address, and telephone number of a high managerial agent of the business, and, if the business is a corporation or association, a copy of the documents establishing the business.~~]

(8) The total area in square feet of the convenience store.

(9) Such additional information as the applicant desires to include or that the chief deems necessary to aid in the determination of whether the requested certificate of registration should be granted.”

SECTION 7. That Article III, “Miscellaneous Requirements for Convenience Stores,” of Chapter 12B, “Convenience Stores,” of the Dallas City Code is retitled, “Safety Requirements for Convenience Stores.”

SECTION 8. That Section 12B-20, “Trespass Affidavits,” of Article III, “Safety Requirements for Convenience Stores,” of Chapter 12B, “Convenience Stores,” of the Dallas City Code is amended to read as follows:

**“SEC. 12B-20. TRESPASS AFFIDAVITS.**

[(a)] A registrant shall execute a trespass affidavit, on a form provided by the chief for that purpose, that authorizes the police department to enforce, on behalf of the registrant, all applicable trespass laws on the premises of the convenience store.

[(b)] ~~A true and correct copy of the trespass affidavit must be posted at the convenience store in a manner and location so that it is clearly visible to the public at all times.]”~~

SECTION 9. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$500.

SECTION 10. That Chapter 12B of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 11. That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.

SECTION 12. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 13. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

LARRY E. CASTO, City Attorney

By  \_\_\_\_\_  
Assistant City Attorney

Passed                     MAY 24 2017



## PROOF OF PUBLICATION – LEGAL ADVERTISING

The legal advertisement required for the noted ordinance was published in the Dallas Morning News, the official newspaper of the city, as required by law, and the Dallas City Charter, Chapter XVIII, Section 7.

DATE ADOPTED BY CITY COUNCIL MAY 24 2017

ORDINANCE NUMBER 30472

DATE PUBLISHED MAY 27 2017

ATTESTED BY: