

## ORDINANCE NO. 2644NS

AN ORDINANCE REPEALING AND AMENDING ARTICLE IV OF CHAPTER 15 OF THE SHAWNEE MUNICIPAL CODE, FINES, SMOKING IN PUBLIC PLACES AND INDOOR WORK PLACES; PROVIDING FOR DEFINITIONS; REGULATING USE OF TOBACCO; PROVIDING FOR PENALTY; PROVIDING FOR SEVERABILITY, PROVIDING FOR CODIFICATION, PROVIDING FOR REPEAL, AND DECLARING AN EMERGENCY.

**Whereas**, the Mayor and City Commissioners have previously enacted an Ordinance regulating smoking in public places and indoor work places; and

**Whereas**, the laws of the State of Oklahoma have pre-empted such ordinances insofar as they conflict with state law; and

**Whereas**, due to the changes in Oklahoma law, the Shawnee Municipal Code no longer is in compliance with those laws; and

**Whereas**, the Mayor and City Commissioners have determined that it is in the interests of the public health, safety and welfare that the City's prior ordinance be brought into compliance:

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSIONERS OF THE CITY OF SHAWNEE:

**SECTION 1:** Article IV of Chapter 15 of the Shawnee Municipal Code is hereby repealed in its entirety.

### **SECTION 2: DEFINITIONS**

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

(a) *Indoor workplace* means any indoor place of employment or employment-type service for or at the request of another individual or individuals, or any public or private entity, whether part-time or full-time and whether for compensation or not. Such services will include, without limitation, any service performed by an owner, employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant or volunteer. An indoor workplace includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees, and all space between a floor and ceiling that is predominantly or totally enclosed by walls or windows, regardless of doors, doorways, open or closed windows, stairways, or the like. The provisions of this section will apply to such indoor workplace at any given time, whether or not work is being performed.

(b) *Electronic smoking device* means an electronic and/or battery-operated device, the use of which may resemble smoking that can be used to deliver an inhaled dose of nicotine or other substances. Electronic smoking device includes any such device, whether manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor;

(c) *Outdoor area* means any covered area, partially covered area open to the sky that is on a property owned by the city.

(d) *Public place* means any enclosed indoor area where individuals other than employees are invited or permitted; the term is synonymous with the phrase any indoor place used by or open to the public;

(e) *Restaurant* means any eating establishment regardless of seating capacity;

(f) *Recreational area* means any area that is owned, controlled or used by the City of Shawnee and open to the general public for recreational purposes, regardless of any fee or age requirement. The term 'Recreational Area' includes but is not limited to parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, beaches surrounding lakes and skateboard parks.

(g) *Smoking means* the carrying by a person of a lighted cigar, cigarette, pipe or other lighted smoking device;

(h) *Stand-alone bar, stand-alone tavern, and cigar bar* mean an establishment that derives more than 60 percent of its gross receipts, subject to verification by competent authority, from the sale

of alcoholic beverages and low- point beer and no person under 21 years of age is admitted, except for members of a musical band employed or hired as provided in paragraph 2 of subsection B of Section 537 of Title 37 of the Oklahoma Statutes and that is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace, including a restaurant; and

(i) *Tobacco product* means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body. "Tobacco Product" does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

### **SECTION 3: PROHIBITION OF TOBACCO PRODUCTS AND ELECTRONIC SMOKING DEVICES IN CERTAIN PLACES PROHIBITED**

(a) The possession of lighted tobacco in any form is a public nuisance and dangerous to public health and is hereby prohibited when such possession is in any indoor place used by or open to the public, public transportation, or any indoor workplace, except where specifically allowed by law.

(b) The use of lighted tobacco products and electronic smoking devices is prohibited on, and within, all municipal property, including, but not limited to, any public place, indoor workplace, outdoor area, and recreational area; and including, but not limited to, all vehicles and equipment owned or leased by the City. This ordinance applies at all times, and to all persons on, and within, municipal property.

### **SECTION 4: EXEMPTIONS**

The restrictions provided in Section II will not apply to the following:

(a) stand-alone bars, stand-alone taverns and cigar bars;

(b) the room or rooms where licensed charitable bingo games are being operated, but only during the hours of operation of such games;

(c) up to 25 percent of the guest rooms at a hotel or other lodging establishment;

(d) retail tobacco stores predominantly engaged in the sale of tobacco products and accessories and in which the sale of other products is merely incidental and in which no food or beverage is sold or served for consumption on the premises;

(e) workplaces where only the owner or operator of the workplace, or the immediate family of the owner or operator, performs any work in the workplace, and the workplace has only incidental public access. "Incidental public access" means that a place of business has only an occasional person, who is not an employee, present at the business to transact business or make a delivery. It does not include businesses that depend on walk-in customers for any part of their business;

(f) workplaces occupied exclusively by one or more smokers, if the workplace has only incidental public access;

(g) private offices occupied exclusively by one or more smokers;

(h) private residences and workplaces within private residences, except that smoking will not be allowed inside any private residence that is used as a licensed child care facility during hours of operation;

(i) medical research or treatment centers, if smoking is integral to the research or treatment;

(j) a facility operated by a post or organization of past or present members of the Armed Forces of the United States which is exempt from taxation pursuant to Sections 501 (c)(8), 501 (c)(10) or 501 (c)(19) of the Internal Revenue Code, 26 U.S.C., Sections 501 (c)(8), 501 (c)(10) or 501 (c)(19), when such facility is utilized exclusively by its members and their families and for the conduct of post or organization nonprofit operations except during an event or activity which is open to the public; and

(k) any outdoor seating area of a restaurant; provided, smoking will not be allowed within 15 feet of any exterior public doorway or any air intake of a restaurant.

### **SECTION 5: DESIGNATED SMOKING ROOMS AND AREAS**

(a) An employer not otherwise restricted from doing so under this article may elect to provide smoking rooms where no work is performed except for cleaning and maintenance during the time the room is not in use for smoking, provided each smoking room is fully enclosed and exhausted

directly to the outside in such a manner that no smoke can drift or circulate into a nonsmoking area. No exhaust from a smoking room will be located within 15 feet of any entrance, exit or air intake.

(b) If smoking is to be permitted in any space exempted in Section III of this article or in a smoking room pursuant to Subsection (a) of this section, such smoking space must either occupy the entire enclosed indoor space or, if it shares the enclosed space with any nonsmoking areas, the smoking space will be fully enclosed, exhausted directly to the outside with no air from the smoking space circulated to any nonsmoking area, and under negative air pressure so that no smoke can drift or circulate into a nonsmoking area when a door to an adjacent nonsmoking area is opened. Air from a smoking room will not be exhausted within 15 feet of any entrance, exit or air intake. Any employer may choose a more restrictive smoking policy, including being totally smoke free.

(c) A nursing facility licensed pursuant to the Nursing Home Care Act may designate smoking rooms for residents and their guests. Such rooms will be fully enclosed, directly exhausted to the outside, and will be under negative air pressure so that no smoke can escape when a door is opened and no air is recirculated to nonsmoking areas of the building.

(d) Restaurants will be totally nonsmoking or may provide nonsmoking areas and designated smoking rooms. Food and beverage may be served in such designated smoking rooms which will be in a location which is fully enclosed, directly exhausted to the outside, under negative air pressure so smoke cannot escape when a door is opened, and no air is recirculated to nonsmoking areas of the building. No exhaust from such room will be located within 25 feet of any entrance, exit or air intake. Such room will be subject to verification for compliance with the provisions of this subsection by the State Department of Health.

## **SECTION 6: POSTING**

(a) The person or entity that has legal or de facto control of an area in which the use of Tobacco Products or Vapor Products is prohibited by this article shall post a clear, conspicuous, and unambiguous sign at each point of entry to the area, and in at least one other conspicuous point within the area.

(b) For restrictions on the use of Tobacco Products or Vapor Products in Indoor Areas, the sign or decal shall be at least 4 inches by 2 inches in size and shall clearly state that smoking or tobacco use is prohibited or that a tobacco-free environment is provided. For restrictions on the use of Tobacco Products or Vapor Products in Outdoor Areas, signs shall be weather-resistant, at least 15 inches by 15 inches in size, with lettering of at least 1 inch, and shall clearly state that smoking or tobacco use is prohibited or that a tobacco-free environment is provided.

(c) Responsibility for posting signs or decals will be as follows:

- (1) in privately owned facilities, the owner or lessee, if a lessee is in possession of the facilities, will be responsible;
- (2) in corporately owned facilities, the manager and/or supervisor of the facility involved will be responsible; and
- (3) in publicly owned facilities, the manager and/or supervisor of the facility will be responsible.

## **SECTION 7: VIOLATION AND PENALTY**

(a) Any person who knowingly violates this article is guilty of a misdemeanor, and upon conviction thereof, will be punished by a fine of not less than \$10.00 nor more than one hundred dollars (\$100.00).

(b) Enforcement of this chapter shall be the responsibility of The City of Shawnee. In addition, any peace officer or code enforcement official may enforce this chapter.

## **SECTION 8: ENFORCEMENT**

The State or local governmental agency of the person who owns or operates a public place will at minimum, do the following in order to prevent smoking in public places:

(a) Post signs at entrances to places where smoking is prohibited which state the tobacco use is prohibited or that the indoor environment is free of tobacco smoke; and

(b) ask tobacco users to refrain from using any form of tobacco products, including electronic smoking devices upon observation of anyone violating the provisions of this act.

**SECTION 9: SEVERABILITY.**

The provisions of this ordinance are severable and, if any sentence, provision, or other part of this Ordinance shall be held invalid, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this ordinance.

**SECTION 10: CODIFICATION.**

This Ordinance shall be codified in the Shawnee Municipal Code, and the codifier is authorized to set out the ordinance as appropriate.

**SECTION 11: REPEALER.**

All sections, subsection, clauses, and sentences of existing law in conflict of this ordinance are repealed.

**SECTION 12: EMERGENCY.**

It being immediately necessary for the preservation of the peace, health, safety and public good of the City of Shawnee and the inhabitants thereof that the provisions of this Ordinance be put into full force and effect, an emergency is hereby declared to exist, by reason whereof, this Ordinance shall take effect and be in full force and effect after its passage, as provided by law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
RICHARD FINLEY, MAYOR

ATTEST:

(SEAL)

\_\_\_\_\_  
LISA LASYONE, CMC, CITY CLERK

Emergency separately approved this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
RICHARD FINLEY, MAYOR

ATTEST:

(SEAL)

\_\_\_\_\_  
LISA LASYONE, CMC, CITY CLERK

Approved as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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JOSEPH VORNDRAH, CITY ATTORNEY