

ORDINANCE NO. 2023-059

AN ORDINANCE OF THE CITY OF WACO, TEXAS, AMENDING SECTIONS 16-120 AND 16-124 IN ARTICLE IV “SMOKING REGULATIONS” OF CHAPTER 16 “NUISANCES”, OF THE CODE OF ORDINANCES, FOR THE PURPOSE OF AMENDING THE EXCEPTION FOR CIGAR LOUNGES, HOOKAH BARS, AND HOOKAH LOUNGES TO: (1) DELETE THE REQUIREMENT THAT SAID BUSINESSES BE IN OPERATION ON JULY 21, 2015, THE DATE OF ADOPTION OF ARTICLE IV; (2) ADD A DEFINITION OF A SEPARATE AIR VENTILATION SYSTEM; AND (3) ADD A REQUIREMENT THAT SAID BUSINESSES BE LOCATED IN A STAND-ALONE BUILDING OR IN A BUILDING THAT OPERATES A SEPARATE AIR VENTILATION SYSTEM; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR PENALTIES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, a request was made to the City to allow cigar lounges, hookah bars, and hookah lounges; and

WHEREAS, it is necessary to make certain amendments to Sections 16-120 and 16-124 of Article IV “Smoking Regulations” of Chapter 16 “Nuisances” of the Code of Ordinances of the City of Waco for the purpose of amending the exception for cigar lounges, hookah bars, and hookah lounges to: (1) delete the requirement that said businesses be in operation on July 21, 2015, the date of adoption of Article IV; (2) add a definition of a separate air ventilation system; and (3) add a requirement that said businesses be located in a stand-alone building or in a building that operates a separate air ventilation system; and

WHEREAS, it is necessary to make certain amendments to Section 16-120 of Article IV “Smoking Regulations” of Chapter 16 “Nuisances” of the Code of Ordinances of the City of Waco for the purpose of amending the age of persons permitted to enter a cigar lounge and hookah lounge from 18 years of age to 21 years of age, pursuant to the Texas Legislature prohibiting the sale of tobacco products to persons younger than 21 years of age in Title 2, Subtitle H, Chapter 161, Subchapter H—Distribution of Cigarettes, E-Cigarettes, or Tobacco Products of the Texas Health and Safety Code,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WACO, TEXAS:

Section 1. That Article IV – Smoking Regulations of Chapter 16 – Nuisances of the Code of Ordinances of the City of Waco shall be amended as follows (**Additions** / ~~Deletions~~):

Chapter 16 – NUISANCES.

ARTICLE IV – SMOKING REGULATIONS.

Sec. 16-120. – Definitions.

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

Bar means an establishment which has more than 50 percent of its annual gross sales from alcoholic beverages.

Business means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making or non-profit purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

Cigar lounge means an establishment that derives more than 50 percent of its quarterly gross revenue from the sale of cigars for consumption on the premises by customers. A cigar lounge does not allow individuals under the age of ~~21~~ 18 to enter the premises, and does not have a permit or license to sell alcoholic beverages, but may serve food and nonalcoholic beverages for consumption on the premises by customers.

Director means the director of the Waco McLennan County Public Health District or the director's designated representative.

Electronic smoking device means an electronic, mechanical heating element or battery operated device that delivers nicotine or other substances for inhalation. This term shall include every variation and type of such devices whether they are 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. The term does not include a prescription medical device unrelated to the cessation of smoking.

Employee means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit.

Employer means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.

Enclosed or enclosed area means all space between a floor and ceiling, that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind. A parking garage shall be considered an enclosed area whether or not it is enclosed on at least two sides.

Food establishment means any operation engaged in the preparation of food, which gives food or offers food for sale to the public, guests or employees.

Hookah bar means an establishment with a permit or license to sell alcoholic beverages pursuant to the Texas Alcoholic Beverage Code and: (a) generates 60 percent or more of its quarterly gross revenue from the sale of alcoholic beverages for consumption on the premises by customers; (b) generates 30 percent or more of its quarterly gross revenue from the sale of shisha for consumption on the premises by customers and the sale of accessories used for smoking shisha

(not any other tobacco products); and (c) does not allow individuals under the age of 21 to enter the premises.

Hookah lounge means an establishment that derives more than 50 percent of its quarterly gross revenue from the sale of shisha for consumption on the premises by customers and the sale of accessories used for smoking shisha. A hookah lounge does not allow individuals under the age of ~~21~~ 18 to enter the premises, and does not have a permit or license to sell alcoholic beverages, but may serve food and nonalcoholic beverages for consumption on the premises by customers.

Park means the outdoor areas of land dedicated and used as parkland, or city-owned land used for a park or recreational purpose including, but not limited to, the Waco Mammoth Site, the Cameron Park Zoo, city-owned athletic fields, nature preserves, golf courses and swimming pools.

Place of employment means any area under the control of a public or private employer which employees may frequent during the course of employment, including, but not limited to, private offices, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias, hallways, enclosed portions of construction sites, temporary offices and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility.

Playground means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on city grounds.

Public means ordinary people in general; the community, open to or shared by all the people of an area.

Public event means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

Public place means any enclosed area to which the public is invited or in which the public is permitted or is a place of employment and includes but is not limited to: bars; retail stores; grocery stores; offices; professional, commercial or financial establishments; public and private institutions of education; food establishments; health care facilities; nursing and convalescent homes; residential treatment facilities; child care facilities; laundromats, buildings owned or occupied by political subdivisions; public transportation facilities and vehicles; reception areas; theaters and waiting rooms. For the purpose of this section, a "public place" does not include a private residence.

Retail electronic smoking device store means any commercial establishment that derives at least 51 percent of its annual gross receipts from the sale of electronic smoking devices and accessories.

Retail tobacco store means any commercial establishment that derives at least 51 percent of its annual gross receipts from the sale of tobacco and tobacco accessories.

Separate air ventilation system means a separate heating, ventilation, and air conditioning (HVAC) system such that air from the smoking area is exhausting directly to the outside of the building and not circulated within any occupiable space (as defined in the International Building

Code) within the same building or mixed with the general dilution ventilation for any occupiable space within the same building, and which must be designed by a licensed professional engineer to meet the requirements of this Article and the International Mechanical Code.

Shisha means flavored tobacco smoked in a hookah, usually mixed with molasses or honey and often fruit pulp or dried fruits

Smoke means the gases, particles or vapors released into the air as a result of combustion, electrical ignition or vaporization, including from an electronic smoking device, when the purpose of the combustion, electrical ignition or vaporization is human inhalation of the gases, particles or vapors. Smoke does not mean the combustion of material solely for olfactory purposes that does not contain any tobacco or nicotine.

Smoking and "smokes" means engaging in an act that generates smoke, such as possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, a lighted cigarette, or an operating electronic smoking device.

Tobacco means any tobacco, cigarette, cigar, pipe, weed, or plant, which may be utilized for smoking, chewing, inhalation or other means of ingestion or absorption.

Sec. 16-124. – Exceptions.

(a) Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from sections [16-121](#), [16-122](#) and [16-123](#) and shall constitute an affirmative defense to prosecution for violation of such sections:

(1) Private residences, except for residences used as a day care, adult day care or health care facility.

(2) Retail tobacco stores and retail electronic smoking device stores for sampling the products sold in such stores, so long as such smoking does not cause smoke or vapor to cross into areas outside of the store where smoking is not allowed.

(3) Cigar lounges, hookah bars and hookah lounges as defined herein located in a stand-alone building or that operate a separate air ventilation system that prevents the migration of smoke into any other occupiable space (as defined by the International Building Code) of the same building, but only for consumption on the premises of shisha or cigars sold by the business. ~~that were in business and operating within the city limits of the city as of the date of adoption of this article, met as of the date of adoption of this article and continuously meet the applicable definitions herein, and do not expand in size or change locations after the date of adoption of this article, but only for consumption on the premises of shisha or cigars sold by the business. Any such establishment that ceases to operate as such for longer than 30 consecutive days or ceases to meet the definition of the same type of establishment at any time after the adoption of this article shall cease to be exempt from the requirements of this article.~~

(4) Outdoor areas of places of employment except those areas described in [section 16-123](#) or that are declared nonsmoking by an authorized person under [section 16-121\(c\)](#), (d) or [section 16-124\(b\)](#) of this article.

(5) Those outdoor areas within 15 feet of a door, that is not the main public ingress/egress of an establishment, and that leads only from a designated outdoor smoking area of the

establishment to an area where smoking is prohibited. The door must remain closed except when someone is entering or exiting the area.

(6) No more than 25 percent of hotel and motel rooms in any such establishment. Rooms for smoking must be clearly designated as such.

(7) Those outdoor areas of Cameron Park, Brazos Park East, Riverbend Park, Indian Spring Park, and Martin Luther King, Jr. Park that are specified and clearly designated as approved smoking areas for a special event, in a permit for the event approved by the city's special events committee.

(8) Golf courses between the tee of the first hole and the end of the green for the final hole. Smoking is prohibited in all other areas of golf facilities, including without limitation putting greens, practice tees and the par three junior course.

(9) Those outdoor areas that are designated and clearly marked as areas where smoking is allowed in Cameron Park, Brazos Park East and the Riverbend Athletic Fields.

(b) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or business described in this section may declare a portion of, or that entire establishment as nonsmoking.

(c) Smoking that is regulated under the Texas Education Code, the Texas Health and Safety Code, the Texas Penal Code or any other state or federal law shall be governed by such other applicable law instead of this article.

Section 2. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 3. That it is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become and be a part of the Code of Ordinances of the City of Waco, Texas, and that sections of this ordinance may be renumbered or relettered to accomplish such intention.

Section 4. That a violation of this ordinance shall be a Class C misdemeanor and the penalty for violating this ordinance shall be as provided for in Sec. 1-14 of the Code of Ordinances of the City of Waco, which shall be a fine of not less than \$1.00 and no more than \$2,000.00, and each day a violation exists shall be a separate offense.

Section 5. That nothing in this ordinance shall be constructed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this ordinance.

Section 6. That the terms and provisions of this ordinance shall be deemed to be severable and that if any section, subsection, sentence, clause, or phrase of this ordinance shall be declared to be invalid or unconstitutional, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase of this ordinance and the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

Section 7. That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

PASSED AND APPROVED:

FIRST READING: this 20th day of December 2022.

SECOND READING: this 17th day of January 2023.

Dillon Meek, Mayor
City of Waco, Texas

ATTEST:

Michelle Hicks, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Jennifer Richie, City Attorney

APPROVED:

Clint Peters, Director of Planning Services