

ORDINANCE NO. 3993-A

AN ORDINANCE AMENDING THE CITY OF MUSKOGEE CODE OF ORDINANCES BY AMENDING CHAPTER 38, ENVIRONMENT, ARTICLE IV, SMOKING AND USE OF TOBACCO IN PUBLIC PLACES, SECTION 38-98, DEFINITIONS, ADDING DEFINITION OF VAPOR PRODUCTS; SECTION 38-99, POSSESSION OF LIGHTED TOBACCO IN CERTAIN PLACES PROHIBITED; EXCEPTIONS, DESIGNATING ALL CITY PROPERTY AS VAPOR FREE; AMENDING SECTION 38-100, TOBACCO USE DECLARED A PUBLIC NUISANCE, ADDING USE OF VAPOR PRODUCTS AS A PUBLIC NUISANCE; AMENDING SECTION 38-101, POSTING, REQUIRING POSTING INCLUDE VAPOR PRODUCTS AS PROHIBITED; AMENDING 38-103, ENFORCEMENT, TO INCLUDE VAPOR PRODUCTS; PROVIDING FOR REPEALER, SEVERABILITY, AND SETTING AN EFFECTIVE DATE.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSKOGEE, OKLAHOMA, AS FOLLOWS:

AN AMENDED ORDINANCE

Section 1. Chapter 38, Environment, Article IV, Smoking and Use of Tobacco in Public Places is hereby amended as follows:

Section 38-98, Definitions

As used in this article the following terms shall be defined as follows:

Educational facility means a building owned, leased or under the control of a public or private school system, college or university.

Health facility means an entity which provides health services, including, but not limited to, hospitals, nursing homes, long-term care facilities, kidney disease treatment centers, health maintenance organizations and ambulatory treatment centers.

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 shall 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 shall apply to such indoor workplace at any given time, whether or not work is being performed.

Meeting means a meeting as defined in the Oklahoma Open Meeting Act.

Public body means a public body as defined in the Oklahoma Open Meeting Act.

Public park means all areas of a parcel of land which is owned or leased by the City of Muskogee and used for recreational activities, including parking lots related thereto, walking and bicycle trails, golf courses, ball fields, skate parks and all other fields and facilities to which the general public have been granted the right of access.

Public place means any enclosed indoor area where individuals other than employees are invited or permitted.

Restaurant means any eating establishment regardless of seating capacity.

Smoking means the carrying by a person of a lighted cigar, cigarette, pipe or other lighted smoking device.

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 37 O.S. § 537(B)(2) 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.

Tobacco products mean any bidis, cigars, cheroots, stogies, smoking tobacco (including granulated, plug cut, crimp cut, ready rubbed, and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including cavendish, twist, plug, scrap, and any other kinds and forms of tobacco suitable for chewing), however prepared; and shall include any other articles or products made of tobacco.

Vapor products mean any non combustible shall mean noncombustible products, that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution

or other form. "Vapor products" shall include any vapor cartridge or other container with or without nicotine or other form that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Vapor products" do not include any products regulated by the United States Food, Drug and Cosmetic Act.

Sec. 38-99. Possession of lighted tobacco in certain places prohibited; exceptions.

- (a) Except as specifically provided in the Smoking in Public Places and Indoor Workplaces Act, no person shall smoke in a public place, in any part of a zoo to which the public may be admitted, whether indoors or outdoors, in an indoor workplace, on City property, whether indoors or outdoors, in any vehicle providing public transportation, at a meeting of a public body, in a nursing facility licensed pursuant to the Nursing Home Care Act, or in a child care facility licensed pursuant to the Oklahoma Child Care Facilities Licensing Act. A nursing facility licensed pursuant to the Nursing Home Care Act may designate smoking rooms for residents and their guests. Such rooms shall be fully enclosed, directly exhausted to the outside, and shall 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.
- (b)
 - (1) Except as otherwise provided in paragraph (2) of this subsection, an educational facility which offers an early childhood education program or in which children in grades kindergarten through 12 are educated shall prohibit smoking, the use of snuff, chewing tobacco or any other form of tobacco product in the buildings and on the grounds of the facility by all persons including, but not limited to, full-time, part-time, and contract employees, during the hours of 7:00 a.m. to 4:00 p.m., during the school session, or when class or any program established for students is in session.
 - (2) Career and technology centers may designate smoking areas outside of buildings, away from general traffic areas and completely out of sight of children under 18 years of age, for use by adults attending training courses, sessions, meetings or seminars.
 - (3) An educational facility may designate smoking areas outside the buildings for the use of adults during certain activities or functions, including, but not limited to, athletic contests.
 - (4) Nothing in this section shall be construed to prohibit educational facilities from having more restrictive policies regarding smoking and the use of other tobacco products in the buildings or on the grounds of the facility.
- (c) All buildings, public parks, and other properties, exclusive of public ways, or portions thereof, owned or operated by the City of Muskogee shall be designated as Tobacco and Vapor Free, prohibiting the use of tobacco and vapor products.
- (d) A private residence is not a "public place" within the meaning of this article except that areas in a private residence that are used as a licensed child care facility during hours of operation are "public places" within the meaning of the Smoking in Public Places and Indoor Workplaces Act and this article.
- (e) Smoking and the use of tobacco or vapor products is prohibited in all vehicles owned by the City of Muskogee and all of its agencies, authorities and instrumentalities.

- (f) An employer not otherwise restricted from doing so 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 manner that no smoke can drift or circulate into a nonsmoking area. No exhaust from a smoking room shall be located within 15 feet of any entrance, exit or air intake. If smoking is to be permitted in any space exempted in subsection (g) of this section or in a smoking room pursuant to subsection (h) 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 shall 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 shall not be exhausted within 15 feet of any entrance, exit or air intake.
- (g) The provisions of this article shall not prohibit smoking in:
- (1) Stand-alone bars, stand-alone taverns or cigar bars;
 - (2) The room or rooms where licensed charitable bingo games are being operated, but only during the hours of operation of such games;
 - (3) Up to 25 percent of the guest rooms at a hotel or other lodging establishment;
 - (4) 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;
 - (5) 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;
 - (6) Workplaces occupied exclusively by one or more smokers, if 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;
 - (7) Private offices occupied exclusively by one or more smokers;
 - (8) Workplaces within private residences, except that smoking shall not be allowed inside any private residence that is used as a licensed child care facility during hours of operation;
 - (9) 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., Section 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;
 - (10) Any outdoor seating area of a restaurant; provided, smoking shall not be allowed within 15 feet of any exterior public doorway or any air intake of a restaurant; and

(11) Medical research or treatment centers, if smoking is integral to the research or treatment.

- (h) Notwithstanding any other provision of this article restaurants shall be totally nonsmoking or may provide nonsmoking areas and designated smoking rooms. Food and beverage may be served in such designated smoking rooms which shall 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 shall be located within 25 feet of any entrance, exit or air intake. Such room shall be subject to verification for compliance with the provisions of this subsection by the state department of health.

Sec. 38-100 – Tobacco and vap or product use declared a public nuisance.

The use of tobacco or vapor products is dangerous to the health of both adults and children, sets an unhealthy example for the City of Muskogee's youth and children, and disturbs, injures and endangers the comfort, repose and safety of others. Thus, the use of tobacco or vapor products in any form in and on all property owned or operated by the City of Muskogee is hereby declared a public nuisance.

Sec. 38-101 – Posting

(a) The person who owns or operates a place where smoking or tobacco use is prohibited by law shall be responsible for posting a sign or decal, at least four inches by two inches in size, at each entrance to the building indicating that the place is smoke-free or tobacco-free.

(b) Responsibility for posting signs or decals shall be as follows:

- (1) In privately owned facilities, the owner or lessee, if a lessee is in possession of the facilities;
- (2) In corporately owned facilities, the manager and/or supervisor of the facility involved; and
- (3) In City of Muskogee owned or operated property, the City Manager shall ensure a sign or decal, at least four inches by two inches in size, is posted at each entrance of city owned or operated property indicating the property is Tobacco and Vapor Free.
- (4) In other publicly owned facilities, the manager and/or supervisor of the facility.

Sec. 38-102 – Penalty

Any person who knowingly violates this article is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine according to a schedule of fines, as shall be modified from time to time by the council, and made available for public viewing in the office of the clerk of court.

Sec. 38-103 – Enforcement

The City shall, at a minimum, do the following in order to prevent tobacco and vapor product use in city owned or operated places:

- a) Post signs at entrances to city owned or operated places which state that tobacco use is prohibited; and
- b) Ask tobacco users to refrain from using any form of tobacco products, including vapor products upon observation of anyone violating the provisions of this act.

Section 2. REPEALER. All other ordinances or parts of ordinances not specifically identified which are in direct conflict herewith are repealed only to the extent of the conflict.

Section 3. SEVERABILITY. Should any part section, subsection, sentence, provision, clause or phrase hereof be held invalid, void, or unconstitutional for any reason, such holding shall not render invalid, void, or unconstitutional any other section, subsection, sentence, provision, clause, or phrase of this ordinance, and the same are deemed severable for this purpose.

Section 4. EFFECTIVE DATE. This ordinance shall become effective thirty (30) days after publication.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MUSKOGEE, OKLAHOMA, THIS _____ DAY OF _____, 2016.

CITY OF MUSKOGEE

JOHN R. COBURN, MAYOR

ATTEST:

PAMELA S. BATES, CITY CLERK

Approved as to form and legality this ____ day of _____, 2016.

MATTHEW BEESE, INTERIM CITY ATTORNEY