

ORDINANCE NO. 2022-08-088

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING THE CODE OF ORDINANCES, CITY OF MCKINNEY, TEXAS, BY AMENDING CHAPTER 70, "OFFENSES AND MISCELLANEOUS PROVISIONS," BY AMENDING ARTICLE VII, "SMOKING"; REPEALING CONFLICTING ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of McKinney, Texas (the "City") is a Home Rule City possessing the full power of local self-government pursuant to Article XI, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code, and its Home Rule Charter; and

WHEREAS, the City adopted the Code of Ordinances, City of McKinney, Texas ("City Code") for the protection of the public health and general welfare of the people of the City of McKinney; and

WHEREAS, the City Council has determined that certain provisions of the City Code should be modified and updated; and

WHEREAS, the City Council of the City of McKinney, Texas, deems it to be in the best interest of the citizens of the City of McKinney that the provisions of the City Code identified herein should be amended as provided hereinbelow.

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

Section 1. All of the above premises are found to be true and correct legislative determinations and are incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. From and after the effective date of this Ordinance, Chapter 70, "Offenses and Miscellaneous Provisions," is hereby amended by amending Article VII, "Smoking," by amending Section 70-182 entitled "Places Where Smoking is Not Prohibited" to hereafter read as follows:

"Sec. 70-182. -Places Where Smoking is Not Prohibited.

(a) Notwithstanding any other provision of this Division 2 to the contrary, the following areas shall not be subject to the smoking restrictions of this Division 2:

- (1) Private residences, including porch and yard areas, except when used as a childcare, adult day care, health care facility, or home occupation;
- (2) Personal automobiles;
- (3) Outdoor places of employment, except where employees have to provide the public with service such as food or beverage service, within 25 feet of any door, operable window/vent or other opening to an indoor enclosed area, service lines and waiting queues, or as prohibited in Section 70-181(a), above;
- (4) Public sidewalks, except within 25 feet of any door, operable window/vent or other opening to an indoor enclosed area, service lines and waiting queues, or as prohibited in Section 70-181(a), above;

- (5) Parking lots within public parks, except within 25 feet of any door, operable window/vent or other opening to an indoor enclosed area, service lines and waiting queues, or as prohibited in Section 70-181(a), above;
- (6) Retail tobacco stores, where a retail store is utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. Separate ventilation and HVAC systems that prevent the commingling of air with other businesses, common areas, hallways and other non-smoking areas shall be required;
- (7) Enclosed areas within restaurants, private clubs, and country clubs may be designated as a "Smoking Room" for the use of tobacco products, subject to the following definitions and requirements:
 - a. Smoking Rooms shall meet all of the following physical and operational standards:
 - i. Signs shall be posted at each entrance to the Smoking Rooms that state "Smoking Room";
 - ii. Smoking Rooms shall be required to provide a foyer with at least two (2) doors, such that there is one (1) door on each terminus of the foyer;
 - iii. Smoking Rooms shall be required to provide independent ventilation and HVAC systems that are separate from the ventilation and HVAC systems for any non-smoking areas to prevent the commingling of air from the Smoking Room with any other part of the restaurant, private club, or country club;
 - iv. Smoking Rooms shall be physically separate from the banquet or dining areas, bar or lounge areas, employee areas, kitchens, retail and pro shop areas, locker rooms, restrooms, other common areas, hallways, and all other non-smoking areas of the restaurant, private club, or country club.
- (8) Not more than ten percent of hotel and motel rooms rented to guests shall be designated as smoking rooms. The following standards shall apply:
 - a. All smoking rooms shall be on the same floor, shall be contiguous to the other smoking rooms and shall be configured and ventilated in a manner to restrict the smoke from these rooms from infiltrating into areas where smoking is prohibited under provisions of this division;
 - a. Separate ventilation and HVAC systems that prevent the commingling of air with other rooms, hallways and all other non-smoking areas shall be required; and

- c. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.”

- Section 3. All ordinances, orders or resolutions heretofore passed and adopted by the City Council of the City of McKinney, Texas, are hereby repealed to the extent that said ordinances, orders or resolutions, or parts thereof, are in conflict herewith.
- Section 4. If any section, subsection, paragraph, sentence, phrase or clause of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional for any reason whatsoever, such decision shall not affect the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, which shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and to this end, the provisions of this Ordinance are declared to be severable.
- Section 5. All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety, and welfare of the general public.
- Section 6. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney, and this Ordinance shall become effective from and after the date of its final passage and publication as provided by law.
- Section 7. This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the City of McKinney, Texas.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 16TH DAY OF AUGUST 2022.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary
JOSHUA STEVENSON
Deputy City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney