

ORDINANCE NO. 2023-10706

AN ORDINANCE AMENDING CHAPTER 48 ENTITLED "SMOKING" OF THE CODE OF CIVIL AND CRIMINAL ORDINANCES OF THE CITY OF IRVING, TEXAS, AMENDING CERTAIN STANDARDS AND DEFINITIONS REGARDING SMOKING REGULATIONS; PROVIDING A PENALTY, AN EFFECTIVE DATE, AND SAVINGS AND SEVERABILITY CLAUSES.

WHEREAS, the City of Irving, as a home-rule municipality, has the full power of local self-government pursuant to Section 51.072(a) of the Texas Local Government Code, and is authorized by Section 51.001 of the Texas Local Government Code to enact ordinances for the good government, peace, or order of the city and to protect the health, safety, and welfare of its citizens; and

WHEREAS, Article III, Section 2 of the Charter of the City of Irving vests additional power in the City Council to enact and enforce all ordinances necessary to protect health, life, and property, and to prevent and summarily abate and remove all nuisances, and to preserve and enforce good government and order and security of the city and its inhabitants; and

WHEREAS, the City Council finds that it is in the public interest to improve public health by amending Chapter 48 of the Code of Civil and Criminal Ordinances to adopt a comprehensive smoke free ordinance, as supported by public health and medical experts; and

WHEREAS, the City Council finds that it is in the interest of public health to prohibit smoking in indoor public places not operated as Tobacco-related businesses as defined by this ordinance; and

WHEREAS, the City Council finds redefining smoking to include electronic vaping devices, and other inhalants to be in the interest of public health.

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

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: That Chapter 48 of The Code of Civil and Criminal Ordinances of the City of Irving, Texas, is hereby repealed in its entirety and amended to read as follows:

ARTICLE I – GENERAL SMOKING REGULATIONS

Sec. 48-1. - Purpose.

The purpose of this chapter is to:

- (1) Improve and protect the public's health by eliminating smoking in certain places, including workplaces; and
- (2) Guarantee the right of nonsmokers to breathe smoke-free air; and
- (3) Recognize that the need to breathe smoke-free air shall have priority over the choice to smoke

Sec. 48-2. - Definitions.

For the purposes of this chapter, the following terms have the respective meanings ascribed to them in this section, except in those instances where the context indicates a different meaning:

- (1) *Employee* means any person who works for hire, including an independent contractor and any person who is working as a volunteer for a nonprofit entity.
- (2) *Employer* means any person (partnership, corporation, association or other entity) employing one (1) or more employees.
- (3) *Enclosed area* means all space between a floor and a 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.
- (4) *Food products establishment* means an operation that:
  - a. Sells food and/or beverages, including alcoholic beverages.
  - b. Serves food to an ultimate consumer; or
  - c. Manufactures, processes, distributes, stores, prepares or transports food that is to be sold; and includes the facility from which the establishment operates and the person that owns, controls or manages the operation.
  - d. A restaurant is a food products establishment. A restaurant means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public-school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.
- (5) *Patio* means an unenclosed seating area outside the smoke-free entrance zone, connected with, and contiguous to a facility that is open to the public or is a workplace, and either of which is separated from the interior of the building by solid walls, or fixed glazing or self-closing doors.
- (6) *Person* means an individual, firm, partnership, association, or other legal entity.
- (7) *Private residence* means the part of a structure used as a dwelling, including, without limitation: a private home (including yards), townhouse, condominium, apartment, mobile home, or vacation home. Common areas of townhouse, condominium, or apartment communities are not considered part of the dwelling for the purposes of this chapter.
- (8) *Public place or public area* means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, bingo facilities, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms.
- (9) *Smoke-free entrance zone* means that area within twenty-five (25) feet from the primary door or entrance, of any building where smoking is prohibited or on a patio within fifteen (15) feet from any indoor entrance of any building where smoking is prohibited.
- (10) *Smoking* means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. Smoking includes the

use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

- (11) *Tobacco Product* means (1) any product containing, made of, or derived from tobacco or nicotine whether natural or synthetic that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine whether natural or synthetic.
- (12) *Tobacco-related business* means a retail store utilized primarily for the sale of tobacco products, smoking implements, or smoking accessories for on-premises consumption and in which the sale of other products is merely incidental, which shall include but not be limited to hookah lounges, cigar bars and humidors. In this definition, “primarily” means that the sale of tobacco products, smoking implements, or smoking accessories shall be at least 51% of the total sales revenues. “Tobacco-related business” expressly does not include a food products establishment or an establishment where alcohol is consumed on the premises.
- (13) *Unenclosed area* means an area in an exterior environment that is not enclosed within the conditioned interior space of a building.
- (14) *Workplace* means any enclosed area under the control of any public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways.

#### Sec. 48-3. - Smoking prohibited.

Except where specifically exempted below, smoking shall be prohibited and unlawful in all enclosed public places and workplaces, and the outdoor areas of any building or grounds owned, operated or managed by the city within the City of Irving. Smoking is permitted in:

- (1) Private residences, except when used for a lawful business purpose which requires non-residents to visit or work at the residence;
- (2) A tobacco-related business;
- (3) A patio, as defined in this article;
- (4) Outdoor areas of Golf courses.

#### Sec. 48-4. – Signage Required.

Tobacco-related businesses shall post and maintain a sign at each entrance to the facility at least eight (8) inches by ten (10) inches with letters at least two (2) inches high with one-half-inch strokes in a color contrasting with the background that states "This Is Not A Smoke Free Environment."

#### Sec. 48-5. - Duties of owner, operator or other person in control; affirmative defense for owner, operator or other person in control.

(a) An owner, operator or other person in control of buildings or areas not authorized for smoking in section 48-3 shall:

- (1) Prohibit smoking in nonsmoking areas.
- (2) Provide adequate receptacles for proper disposal of combustible material at least twenty-five (25) feet from entrances and exits.

(3) Place signs stating "NO SMOKING" at all building entrances open to the public.

- (b) It is a defense to prosecution under this section that an owner, operator, or other person in control of any of the areas in section 48-3 has made a good faith effort to prevent smoking in nonsmoking areas. A good faith effort shall include telling the smoker to move from the nonsmoking area or to stop smoking and posting a sign in a conspicuous place in each nonsmoking area that contains the words, "No Smoking City of Irving Ordinance No. \_\_\_\_\_."

Sec. 48-6. - Federal and state law.

Nothing in this article shall be construed to allow smoking in any area where it is prohibited by state or federal law at this time or by any future statutory provisions.

Secs. 48-7—48-19. - Reserved.

## ARTICLE II. - PROHIBIT SALE OF TOBACCO PRODUCTS FROM VENDING MACHINES

Sec. 48-20. - Definitions.

*Tobacco vending machine* shall mean any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products, as defined in this chapter, upon the insertion of bills, coins, trade checks, or slugs.

Sec. 48-21. - Purpose.

The purpose of this article is to protect the health, safety, and welfare of persons under the age of twenty-one (21) from the health risks caused by the use of tobacco products.

Sec. 48-22. - Tobacco vending machines prohibited and exceptions.

(a) Except as provided by subsection (b), a retailer or other person may not:

- (1) Offer cigarettes or tobacco products, as defined by this chapter, for sale in a manner that permits a customer direct access to the cigarettes or tobacco products; or
- (2) Install or maintain a vending machine containing cigarettes or tobacco products.

(b) Subsection (a) does not apply to:

- (1) Facility or business that is not open to persons younger than twenty-one (21) years of age at any time; or
- (2) That part of a facility or business that is a humidor or other enclosure designed to store cigars in a climate-controlled environment.

Secs. 48-23—48-24. - Reserved.

## ARTICLE II. – OFFENSES

Sec. 48-25. – Violations and Penalties.

- (a) It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to violate or fail to comply with any of its provisions.
- (b) It is unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.
- (c) An offense under this chapter is a strict liability offense and the culpable mental state required by the Texas Penal Code is hereby specifically negated and clearly dispensed with for the commission of an offense under this chapter.
- (d) Each day and each area in which a person violates this chapter is a separate offense.

- (e) The criminal remedies in this section are in addition to and cumulative of the remedies available to the City for enforcement of the provisions of this chapter. Nothing in this section shall limit any and all other criminal, civil or administrative remedies available to the City in seeking to enforce the provisions of this chapter, including but not limited to a petition for civil penalties and/or injunctive relief available under state law for a violation of the provisions of this chapter.

SECTION 3. 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 4. That Ordinance No. ORD-2015-9662 is repealed in its entirety. In the event of a conflict between this ordinance and all other ordinances of the City of Irving, this ordinance shall control and supersede such other ordinances and the conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION 5. Should any paragraph, sentence, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof.

SECTION 6. This ordinance shall take effect March 25, 2023 in accordance with the provisions of the Texas Local Government Code and the Irving City Charter.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS,  
on February 23, 2023.

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RICHARD H. STOPFER  
MAYOR

ATTEST:

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Shanae Jennings  
City Secretary/Chief Compliance Officer

APPROVED AS TO FORM:

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Kuruvilla Oommen  
City Attorney