

## ORDINANCE NO.

**AN ORDINANCE AMENDING CHAPTER 10-6 OF THE CITY CODE, SMOKING IN PUBLIC PLACES, BY PROHIBITING SMOKING IN PARKS; PROVIDING CERTAIN EXEMPTIONS; AND PROVIDING A PENALTY UP TO \$2000 FOR EACH OFFENSE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

### **PART 1. FINDINGS**

- (A) The City Council finds that cigarettes and secondhand smoke contain more than 7,000 chemicals, including 69 known or suspected carcinogens, and cigarette butts take up to ten years to decompose.
- (B) Over 37,000 cigarette butts have been collected from Austin Parks and Recreation Department sites this year.
- (C) The chemicals in discarded cigarette butts pollute land, lakes, and waterways and can be ingested by children, animals, fish, and birds.
- (D) Smoke-free parks protect the health, safety and welfare of all community members.

**PART 2.** Section 10-6-1 of Chapter 10-6 of Title 10 (*Public Health Services and Sanitation*) of the City Code is amended by adding a definition for the term “Park” and renumbering accordingly:

- (6) **PARK** means the outdoor areas of land dedicated and used as parkland, or city-owned land used for a park or recreational purpose that is under the administrative control of the Parks and Recreation Department. The term includes city-owned athletic fields, as defined in Chapter 8-1, Section 8-1-1(1), nature preserves, as defined in Chapter 8-1, Section 8-1-1(11), and swimming pools.

**PART 3.** Subsection (A) of Section 10-6-2 is amended to read:

**§ 10-6-2 SMOKING PROHIBITED.**

- (A) A person commits an offense if the person smokes in a public place or in a park.

**PART 4.** Section 10-6-3 is amended to read:

**§ 10-6-3 [~~EXCEPTIONS~~] EXEMPTIONS.**

- (A) This chapter does not apply to:
- (1) a dwelling unit, as defined in Section 25-1-21(35) (*Definitions*), that is used exclusively for a residential use, as defined in Section 25-2-3 (*Residential Uses Described*);
  - (2) a hotel or motel room designated as a smoking room and rented to a person, provided that the hotel or motel complies with Section 10-6-4 (*Designation of Smoking Rooms by Hotel and Motel Restricted*);
  - (3) a retail tobacco store;
  - (4) a private or semi-private room in a nursing home or long-term care facility that is occupied by individuals who smoke and have requested in writing to be placed in a room where smoking is permitted;
  - (5) an outdoor area of a workplace that is not in the area described by Section 10-6-2(D) (*Smoking Prohibited*) provided, however, that this exemption does not apply to a park;
  - (6) a bingo facility operated under the Bingo Enabling Act, Chapter 2001 of the Occupations Code, if:
    - (a) an enclosed non-smoking area is provided;
    - (b) the smoking area is mechanically ventilated to prevent smoke from entering a non-smoking area; and
    - (c) no one under the age of 18 is admitted to the smoking area;

- (7) a facility operated by a fraternal organization for a charitable, benevolent, or educational function if the premises is controlled by the organization; ~~[and]~~
  - (8) a business premise that was issued a restricted permit by the city on or before November 2, 2004;
  - (9) those areas in parks that are specified in a permit issued by the Parks and Recreation Department authorizing smoking for filming purposes only and by actors only;
  - (10) golf courses; and
  - (11) temporary designated smoking areas in a park for special events where the Director recommends approval of, and the City Council has approved, the temporary designated smoking area.
- (B) In making the recommendation in 10-6-3(11), the Director will consider the impact on the surrounding neighborhood and other park patrons, any problem related to smoking that granting the exemption might create, a clean-up agreement made by the person requesting the exemption, and citizen input determined relevant by the Director.

**PART 5.** Section 10-6-5 is amended to read:

**§ 10-6-5 EMPLOYER RESPONSIBILITIES.**

- (A) Except as provided in Subsection (B), an employer shall provide a smoke-free workplace for employees.
- (B) If an employer requires employees to work in an area described in Subsection 10-6-3(2) through (8) (~~[Exceptions]~~ Exemptions), the employer shall make reasonable accommodations for an employee who requests assignment to a smoke-free area.
- (C) An employer shall notify each employee and applicant for employment in writing that:
  - (1) smoking in the workplace is prohibited; or
  - (2) smoking is permitted in an area in the workplace under Section 10-6-3 (~~[Exceptions]~~ Exemptions).

**PART 6.** Subsection (B) of Section 10-6-8 is amended to read:

- (B) The operator of a public place shall conspicuously post signs in areas where smoking is permitted under Section 10-6-3 (~~[Exceptions]~~ Exemptions).

**PART 7.** Section 10-6-10 is amended to read:

**§ 10-6-10 ENFORCEMENT.**

- (A) This section is cumulative of other laws providing enforcement authority.
- (B) A person may report a violation of this chapter to the director of the Health and Human Services Department or, if the violation occurs in a park, to the director of the Parks and Recreation Department.
- (C) The city manager may authorize a City employee conducting an inspection under any provision of the Code to also inspect for compliance with this chapter and issue a citation for a violation of this chapter.
- (D) The director of the Health and Human Services Department or the director of the Parks and Recreation Department may enforce this chapter and may seek injunctive relief.

**PART 8.** Subsection (A) of Section 10-6-11 is amended to read:

**§ 10-6-11 VIOLATION AND PENALTY.**

(A) A person who violates the provisions of this chapter commits a Class C misdemeanor, punishable under Section 1-1-99 (*Offenses; General Penalty*) by a fine not to exceed \$2,000. A culpable mental state is not required [~~for a violation of this chapter~~] for fines of \$500.00 or less, and need not be proved.

**PART 9.** This ordinance takes effect on \_\_\_\_\_.

**PASSED AND APPROVED**

\_\_\_\_\_, 2011

§  
§  
§

\_\_\_\_\_  
Lee Leffingwell  
Mayor

**APPROVED:** \_\_\_\_\_  
Karen M. Kennard  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Gentry  
City Clerk