

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 during filming 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 December 19, 2011.

PASSED AND APPROVED

_____, 2011

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Lee Leffingwell
Mayor

APPROVED: _____

Karen M. Kennard
City Attorney

ATTEST: _____

Shirley A. Gentry
City Clerk