

ORDINANCE NO. 2020-02

AN ORDINANCE AMENDING CHAPTER 4, “OFFENSES AGAINST THE HEALTH, WELFARE AND MORALS,” OF THE CODE OF ORDINANCES OF THE TOWN OF LUTHER, OKLAHOMA, AND SPECIFICALLY ADDING SECTION 10-423, “DEFINITIONS,” TO PROVIDE DEFINITIONS APPLICABLE TO SMOKING IN PUBLIC PLACES AND INDOOR WORKPLACES; ADDING SECTION 10-424, “PROHIBITION AGAINST SMOKING,” TO SET FORTH PROHIBITIONS IN ACCORDANCE WITH STATE LAW ON THE POSSESSION OF LIGHTED TOBACCO AND OTHER TOBACCO PRODUCTS; ADDING SECTION 10-425, “EXEMPTIONS,” WHICH SETS FORTH EXEMPTIONS; ADDING SECTION 10-426, “DESIGNATED SMOKING ROOMS AND AREAS,” WHICH PROVIDES FOR SMOKING ROOMS AND AREAS; ADDING SECTION 10-427, “POSTING,” WHICH SETS FORTH THE REQUIREMENT OF POSTING SIGNS PROHIBITING SMOKING; ADDING SECTION 10-428, “VIOLATION AND PENALTY,” WHICH PROVIDES THAT VIOLATION OF THIS ARTICLE IS A MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN \$10.00 AND NOT MORE THAN \$100.00; ADDING SECTION 10-429, “ENFORCEMENT,” REQUIRING THE POSTING OF SIGNS AND ASKING SMOKERS TO REFRAIN FROM SMOKING; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; AND DECLARING AN EMERGENCY

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LUTHER, OKLAHOMA THAT:

SECTION I: Section 10-423 of the Code of Ordinances of the Town of Luther, Oklahoma, is hereby added to read as follows:

SECTION 10-423 DEFINITIONS

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Educational facility means any property, building, permanent structure, facility auditorium, stadium, arena or recreational facility owned, leased or under the control of a public school district or private school, college or university, provided, however, that a public school district shall not include a technology center school district.

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.

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.

Public place means any enclosed indoor area where individuals other than employees are invited or permitted. This term is synonymous with the phrase any indoor place used by or open to the public.

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 no person under 21 years of age is admitted, except for members of a musical band employed or hired as provided in Paragraph 2 of Subsection B of Section 537 of Title 37 of the Oklahoma Statutes 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.

SECTION II: Section 10-424 of the Code of Ordinances of the Town of Luther, Oklahoma, is hereby added to read as follows:

SECTION 10-424 PROHIBITION AGAINST SMOKING

A. Except as specifically provided herein or the Smoking in Public Places and Indoor Workplaces Act, no person shall smoke tobacco or marijuana or vape marijuana 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, 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. Commercial airport operators may prohibit the use of lighted tobacco in any area that is open to or used by the public whether located indoors or outdoors, provided that the outdoor area is within 175 feet from an entrance.

B. Except as specifically provided herein or the Smoking in Public Places and Indoor Workplaces Act, no person shall smoke tobacco or marijuana or vape marijuana in an Educational Facility as defined herein. Provided that, a technology center school district may designate tobacco smoking areas outside of buildings, away from general traffic areas and completely out of sight of children under eighteen (18) years of age, for use by adults attending training courses, sessions, meetings or seminars, and a technology center school district, college or university may designate

tobacco smoking areas outside the educational facility buildings for the use of adults during certain activities or functions, including, but not limited to, athletic contests.

C. Technology center school districts that offer an early childhood education program or in which children in grades kindergarten through 12 are educated shall prohibit tobacco or marijuana smoking or marijuana vaping, the use of marijuana products, snuff, chewing tobacco or any other form of tobacco product in the educational facility 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.

D. Except as otherwise provided herein, smoking tobacco or marijuana or vaping is prohibited in all buildings owned or operated by The Town of Luther. Except as otherwise provided herein, no smoking of tobacco or marijuana or vaping shall be allowed within 25 feet of the entrance or exit of any building owned by the Town of Luther. Except as otherwise provided herein, smoking tobacco or marijuana or vaping is also banned outdoors within the boundaries of all property owned or operated by the Town of Luther, except for streets, alleys, sidewalks adjacent to a street and any other similar public ways used solely for the purpose of public travel.

SECTION III: Section 10-425 of the Code of Ordinances of the Town of Luther, Oklahoma, is hereby added to read as follows:

SECTION 10-425 EXEMPTIONS

The restrictions provided in Section 10-424 shall not apply to the following:

- a. stand-alone bars, stand-alone taverns and cigar bars;
- b. the room or rooms where licensed charitable bingo games are being operated, but only during the hours of operation of such games;
- c. up to 25 percent of the guest rooms at a hotel or other lodging establishment;
- d. 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;
- e. 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;
- f. workplaces occupied exclusively by one or more smokers, if the workplace has only incidental public access;
- g. private offices occupied exclusively by one or more smokers;

- h. private residences and workplaces within private residences, except that smoking shall not be allowed inside any private residence that is used as a licensed childcare facility during hours of operation;
- i. medical research or treatment centers, if smoking is integral to the research or treatment;
- j. 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., Sections 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; and
- k. 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.

SECTION IV: Section 10-426 of the Code of Ordinances of the Town of Luther, Oklahoma, is hereby added to read as follows:

SECTION 10-426 DESIGNATED SMOKING ROOMS AND AREAS

- A. An employer not otherwise restricted from doing so pursuant to this Article or the Smoking in Public Places and Indoor Workplaces Act 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 a 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.
- B. If smoking is to be permitted in any space exempted in Section 10-425 or in a smoking room pursuant to Subsection A 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. Any employer may choose a more restrictive smoking policy, including being totally smoke free.
- C. 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.
- D. Restaurants shall be totally nonsmoking or may provide nonsmoking areas and designated smoking rooms. Food and beverages 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.

SECTION V: Section 10-427 of the Code of Ordinances of the Town of Luther, Oklahoma, is hereby added to read as follows:

SECTION 10-427 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, shall be responsible;
2. in corporately owned facilities, the manager and/or supervisor of the facility involved shall be responsible; and
3. in publicly owned facilities, the manager and/or supervisor of the facility shall be responsible.

SECTION VI: Section 10-428 of the Code of Ordinances of the Town of Luther, Oklahoma, is hereby added to read as follows:

SECTION 10-428 VIOLATION AND PENALTY

Any person who knowingly violates Sections 10-424, 10-426 or 10-427 is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$10.00 nor more than one hundred dollars (\$100.00).

SECTION VII: Section 10-429 of the Code of Ordinances of the Town of Luther, Oklahoma, is hereby added to read as follows:

SECTION 10-429 ENFORCEMENT

The State or local governmental agency or the person who owns or operates a public place shall, at a minimum, do the following in order to prevent tobacco or marijuana smoking or marijuana vaping in public places:

- a. post signs at entrances to places where tobacco or marijuana smoking or marijuana vaping is prohibited which state that tobacco or marijuana smoking or marijuana vaping

is prohibited or that the indoor environment is free of tobacco or marijuana smoke or marijuana vapor; and

- b. ask tobacco or marijuana smokers or marijuana vapers to refrain from smoking upon observation of anyone violating the provisions of this Article.

SECTION VIII. If any section, sentence, clause or phrase of this ordinance or any part thereof is for any reason found to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance or any part thereof.

SECTION IX. All ordinances in conflict herewith are hereby repealed.

SECTION X. It being immediately necessary for the preservation of the public peace, health, safety, and welfare of the Town of Luther and the inhabitants thereof that this ordinance be put into full force and effect, an emergency is hereby declared to exist by reason whereof this ordinance shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED and the Emergency Clause ruled upon separately this 14th day of January, 2020.


MAYOR JENNI WHITE

ATTEST:


TOWN CLERK



Approved as to form and legality:


Town Attorney