

CITY OF LAVON, COLLIN COUNTY TEXAS

ORDINANCE NO: 2015-11-02

Tobacco Free City Facilities Ordinance

AN ORDINANCE OF THE CITY OF LAVON, COLLIN COUNTY, TEXAS: PROHIBITING USE OF ELECTRONIC CIGARETTES AND TOBACCO PRODUCTS IN CITY FACILITIES AND CITY PARKS; PROVIDING CORRESPONDING DEFINITIONS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS, AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City of Lavon, Texas possesses all of the rights, powers, and authorities possessed by a general law municipality, including the authority to protect the health and welfare of the public;

WHEREAS, pursuant to Texas Local Government Code the City Council has the general authority to adopt and publish an ordinance or police regulation that is for the good government, peace or order of the municipality and is necessary or proper for the carrying out a power granted by law to the municipality; and

WHEREAS, numerous studies have found that tobacco smoke is a carcinogen, and that breathing secondhand smoke is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the City Council finds and determines that it is the right of all citizens to choose whether to smoke actively or passively and that City facilities and City parks should therefore be a tobacco free environment; and

WHEREAS, City Council of the City of Lavon believes it is in the best interest of the citizens and visitors to the City, to regulate the use of tobacco products and e-cigarettes at City facilities and City parks within the City of Lavon.

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

SECTION 1. Enactment

1.1 The City Council of the City of Lavon finds that the above foregoing recitals are true and correct and are hereby incorporated for all purposes as official findings of the City Council of the City of Lavon.

1.2 Popular Name - This Chapter shall be commonly cited as the " Tobacco Free City Facilities Ordinance."

1.3 Scope

This Chapter applies to all City facilities and City parks that have signs posted notifying the public of the prohibition within the incorporated municipal boundaries (i.e., "city limits").

SECTION 2. Definitions

2.1 General

Words and phrases used in this Chapter shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinance shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the singular number (and vice versa); and words in the masculine gender shall include the feminine gender (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

2.2 Administrative area

The area of an establishment not generally accessible to the public, including but not limited to individual offices, stockrooms, employee lounges, or meeting rooms.

2.3 City facilities

Any City owned structure or any structure or portion of a structure that is under the control or custody of the City. City facilities include the sidewalks, disability ramps, stairs and porches adjacent to a City facility. City facilities include the parking area that is 25 feet or less from any entrance to a City facility as measured in a straight line from the entrance in any direction. City facilities do not include the public parking area that is more than 25 feet from any entrance to a City facility.

2.4 City park

Any City owned property that is generally outdoors; has been improved ; contains some form of outdoor activity or has fields designed for outdoor play; and is generally open to the public use (with or without a fee). City parks include the sidewalks, disability ramps, stairs and porches adjacent to a City park. City facilities do not include the public parking area that is provided for public use at a City park.

2.5 Cigar

Unless otherwise amended by the Tex. Tax Code, Chapter 155, a roll of fermented tobacco that is wrapped in tobacco and the main stream of smoke from which produces an alkaline reaction to litmus paper.

2.6 Cigarette

Unless otherwise amended by the Tex. Tax Code, Chapter 154, a roll for smoking: that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and that is not a cigar.

2.7 Conspicuous

Means of a size and contrast that is clearly visible and legible to the general public and unobstructed from view.

2.8 Electronic cigarette or e-cigarette

Any electronic or mechanical device usually composed of a mouthpiece, heating element or atomizer, battery, and electronic circuits that provides, or is manufactured to provide, a vapor and/or gas derived from liquid nicotine and/or other substances delivered or deliverable to the user to inhale in simulation of smoking. The term includes every version and type of such devices whether they are manufactured or marketed as electronic cigarettes, e-cigarettes, electronic cigars, e-cigars, electronic pipes, e-pipes, electronic vaping device, mechanical PV's, electronic nicotine delivery system, or other similar device under any other product name or description.

2.9 Liquid nicotine

Any liquid product composed either in whole or in part of nicotine, propylene glycol and/or any other substance and manufactured for use with electronic cigarettes or e-cigarettes.

2.10 Posted tobacco free

A sign at each public entrance to a City facility or City park that

2.10.1 has the words "This Facility is Tobacco and E- cigarette Free."

Conspicuously posted in letters of 1 inch high or greater; or

2.10.2 bears the universal symbols for

2.10.2.1 no smoking (a red circle bisected by a red diagonal line over a pictograph of a smoking cigarette); and

2.10.2.2 no tobacco products (a red circle bisected by a red diagonal line over a pictograph of a can of chewing tobacco); and

2.10.2.3 no e-cigarettes (a red circle bisected by a red diagonal line over a pictograph of a smoke emitting from vaping machine and a lightning bolt); or

2.10.2.4 a combination sign of all three of the described pictographs under a red circle bisected by a red diagonal line

2.11 Smoke(s) or smoking

Includes the carrying, possessing or holding of a pipe, cigarette, tobacco product, electronic cigarette or e-cigarette or liquid nicotine of any kind which is burning or emitting a vapor.

2.12 Tobacco product

A cigar(s); smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette; chewing tobacco, including Cavendish, Twist, plug scrap and any kind of tobacco suitable for chewing; snuff or other preparations of pulverized tobacco; an article or product that is made of tobacco or a tobacco substance and that is not a cigarette; any liquid tobacco.

SECTION 3. Offense

3.1 The City Council may, by resolution, designate any City facility or City park as tobacco and E- cigarette free and upon such designation, the Director of Public Works or his designee shall post signs giving notice that such action is prohibited in such park or park facility.

3.2 It shall be unlawful for any person to smoke E- cigarettes or use any tobacco product(s) at any facility owned or leased by the City of Lavon that has been conspicuously posted as Tobacco and E- cigarette Free.

3.3 It shall be unlawful for any person to smoke E- cigarettes or use any tobacco product(s) at any City park owned or leased by the City of Lavon that has been conspicuously posted as Tobacco and E- cigarette Free.

SECTION 4. Savings and Repealing Clause

4.1 All provisions of any ordinance in conflict with this Ordinance are hereby repealed, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinance shall remain in full force and effect.

SECTION 5. Severability

5.1 It is hereby declared by the City Council of the City of Lavon that if any of the sections, paragraphs, sentences, clauses or phrases of this ordinance shall be declared unconstitutional or otherwise illegal by the valid judgment or decree of any court of competent jurisdiction, such event shall not affect any remaining the sections, paragraphs, sentences, clauses or phrases of this ordinance.

SECTION 6. Enforcement and Penalties

6.1 Civil & Criminal Penalties

6.1.1 The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

6.2 Criminal Prosecution

6.2.1 Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

6.3 Civil Remedies

6.3.1 Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

6.3.1.1 injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and

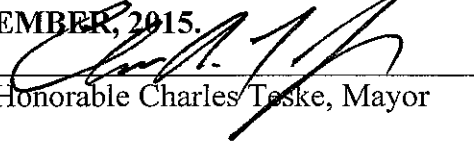
6.3.1.2 a civil penalty up to one hundred dollars (\$1000.00) a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and other available relief.

SECTION 7. Effective Date


7.1 This ordinance shall be in full force and effect January 1, 2016 and after its passage - it is so ordained.

7.2 Prior to the effective date, the City Secretary shall ensure this Ordinance's caption is published in the City of Lavon's newspaper of record and have the same published on the City's website.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LAVON, TEXAS ON THIS 3rd DAY OF NOVEMBER, 2015.


The Honorable Charles Teske, Mayor

Attest:


Susan Johnson, Acting City Secretary