

ORDINANCE NO. 2015 - 45

AN ORDINANCE RELATING TO E-CIGARETTES AND AMENDING ARTICLE VII. OFFENSES AGAINST THE PUBLIC SAFETY OF CHAPTER 24 OF THE CODE OF THE CITY OF HUTCHINSON, BY ADDING SECTIONS 24-704, 24-705, 24-706 AND 24-707.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HUTCHINSON, KANSAS:

Section 1. Article VII. Offenses Against the Public Safety of Chapter 24 of the Code of the City of Hutchinson is hereby amended to add Section 24-704 Smoking – Definitions, as follows:

Sec. 24-704 Smoking – Definitions.

The following definitions shall apply when the words and phrases defined herein are used in Hutchinson City Code Sections 24-705 through 24-707, and amendments thereto:

(a) "Access point" means the area within a ten foot radius outside of any doorway, open window or air intake leading into a building or facility that is not exempted pursuant to subsection (d) of Hutchinson City Code Section 24-705.

(b) "Bar" means any indoor area that is operated and licensed for the sale and service of alcoholic beverages, including alcoholic liquor as defined in K.S.A. 41-102, and amendments thereto, or cereal malt beverages as defined in K.S.A. 41-2701, and amendments thereto, for on-premises consumption.

(c) "Electronic cigarette" (E-Cigarette) means an electronic and/or battery operated device that may resemble a cigarette, but uses an atomizer or similar device that allows users to inhale nicotine vapor or other flavored vapor without fire, smoke or ash. An electronic cigarette includes but is not limited to an electronic smoking device, electronic vaping device, personal vaporizer, electronic pipe (e-pipe), electronic hookah, e-pen or vapor pen.

(d) "Employee" means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers their services for a nonprofit entity.

(e) "Employer" means any person, partnership, corporation, association or organization, including municipal or nonprofit entities, which employs one or more individual persons.

(f) "Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls, windows or doorways which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid or similar structures. For purposes of this section, the following shall not be considered an "enclosed area": (1) Rooms or areas, enclosed by walls, windows or doorways, having neither a ceiling nor a roof and which are completely open to the elements and weather at all times; and (2) rooms or areas, enclosed by walls, fences, windows or doorways and a roof or ceiling, having openings that are permanently open to the elements and weather and which comprise an area that is at least 30% of the total perimeter wall area of such room or area.

(g) "Food service establishment" means any place in which food is served or is prepared for sale or service on the premises. Such term shall include, but not be limited to, fixed or mobile restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich shops, soda fountains, taverns, private clubs, roadside kitchens, commissaries and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

(h) "Gaming floor" means the area of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto, where patrons engage in Class III gaming. The gaming floor shall not include any areas used for accounting, maintenance, surveillance, security, administrative offices, storage, cash or cash counting, records, food service, lodging or entertainment, except that the gaming floor may include a bar where alcoholic beverages are served so long as the bar is located entirely within the area where Class III gaming is conducted.

(i) "Medical care facility" means a physician's office, general hospital, special hospital, ambulatory surgery center or recuperation center, as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto.

(j) "Outdoor recreational facility" means a hunting, fishing, shooting or golf club, business or enterprise operated primarily for the benefit of its owners, members and their guests and not normally open to the general public.

(k) "Place of employment" means any enclosed area under the control of a public or private employer, including, but not limited to, work areas, auditoriums, elevators, private offices, employee lounges and restrooms, conference and meeting rooms, classrooms, employee cafeterias, stairwells and hallways, that is used by employees during the course of employment. For purposes of this section, a private residence shall not be considered a "place of employment" unless such residence is

used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.

(l) "Private club" means an outdoor recreational facility operated primarily for the use of its owners, members and their guests that in its ordinary course of business is not open to the general public for which use of its facilities has substantial dues or membership fee requirements for its members.

(m) "Public building" means any building owned or operated by: (1) The state, including any branch, department, agency, bureau, commission, authority or other instrumentality thereof; (2) any county, city, township, other political subdivision, including any commission, authority, agency or instrumentality thereof; or (3) any other separate corporate instrumentality or unit of the state or any municipality.

(n) "Public meeting" means any meeting open to the public pursuant to K.S.A. 75-4317 et seq., and amendments thereto, or any other law of this state.

(o) "Public place" means any enclosed areas open to the public or used by the general public including, but not limited to: Banks, bars, food service establishments, retail service establishments, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, medical care facilities, educational facilities, libraries, courtrooms, public buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities. For purposes of this section, a private residence shall not be considered a "public place" unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.

(p) "Smoke or Smoking" means any of the following: (1) the use of an electronic cigarette; (2) use of an electronic or battery-powered vaporizer that simulates tobacco smoking by producing an aerosol that resembles smoke.

(q) "Smoke shop" means any indoor area operated primarily for the retail sale of electronic cigarettes, tobacco, tobacco products or smoking devices or accessories, and which derives not less than 65% of its gross receipts from the sale of these items.

(r) "Substantial dues or membership fee requirements" means initiation costs, dues or fees proportional to the cost of membership in similarly-situated outdoor recreational facilities that are not considered nominal and implemented to otherwise avoid or evade restrictions of a ban on smoking.

Section 2. . Article VII. Offenses Against the Public Safety of Chapter 24 of the Code of the City of Hutchinson is hereby amended to add Section 24-705 Smoking – Prohibited, as follows:

Sec. 24-705 Smoking – Prohibited.

(a) It shall be unlawful, with no requirement of a culpable mental state, to smoke in an enclosed area or at a public meeting including, but not limited to:

- (1) Public places;
- (2) Taxicabs and limousines;
- (3) Restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-residential facilities;
- (4) Restrooms, lobbies and other common areas in hotels and motels and in at least 80% of the sleeping quarters within a hotel or motel that may be rented to guests;
- (5) Access points of all buildings and facilities not exempted pursuant to subsection (d); and
- (6) Any place of employment.

(b) Each employer having a place of employment that is an enclosed area shall provide a smoke-free workplace for all employees. Such employer shall also adopt and maintain a written smoking policy which shall prohibit smoking without exception in all areas of the place of employment. Such policy shall be communicated to all current employees within one week of its adoption and shall be communicated to all new employees upon hiring. Each employer shall provide a written copy of the smoking policy upon request to any current or prospective employee.

(c) Notwithstanding any other provision of this section, Section 24-706 or Section 24-707, the proprietor or other person in charge of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, or a medical care facility, may designate a portion of such adult care home, or the licensed long-term care unit of such medical care facility, as a smoking area, and smoking may be permitted within such designated smoking area.

(d) The provisions of this section shall not apply to:

- (1) The outdoor areas of any building or facility beyond the access points of such building or facility;
- (2) Private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 5-530, and amendments thereto;
- (3) A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%;

- (4) The gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto;
- (5) That portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated;
- (6) That portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;
- (7) Smoke shops;
- (8) A Class A or Class B club defined in K.S.A. 41-201, and amendments thereto, which (A) held a license pursuant to K.S.A. 41-2606 et seq., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than 90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises; and
- (9) A private club in designated areas where minors are prohibited.
- (10) Any benefit cigar dinner or other cigar dinner of a substantially similar nature that:
 - (A) is conducted specifically and exclusively for charitable purposes by a nonprofit organization which is exempt from federal income taxation pursuant to Section 501(c)(3) of the federal internal revenue code of 1986;
 - (B) is conducted no more than once per calendar year by such organization; and
 - (C) has been held during each of the previous three years prior to January 1, 2011; and
- (11) That portion of a medical or clinical research facility constituting a separately ventilated, secure smoking room dedicated and used solely and exclusively for clinical research activities conducted in accordance with regulatory authority of the United States or the State of Kansas, as determined by the director of alcoholic beverage control of the department of revenue.

Section 3. Article VII. Offenses Against the Public Safety of Chapter 24 of the Code of the City of Hutchinson is hereby amended to add Section 24-706 Smoking; Posting Premises as follows:

Sec. 24-706 Smoking; Posting Premises.

The proprietor or other person in charge of the premises of a public place, or other area where smoking is prohibited, shall post or cause to be posted in a conspicuous place signs at each entrance clearly stating that smoking, including electronic cigarettes, is prohibited.

Section 4. Article VII. Offenses Against the Public Safety of Chapter 24 of the Code of the City of Hutchinson is hereby amended to add Section 24-707 Smoking – Prohibited; Penalties, as follows:.

Sec. 24-707 Smoking – Prohibited; Penalties.

(a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to fail to comply with all or any of the provisions of Sections 24-705 through 24-707.

(b) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to allow smoking to occur where prohibited by law. Any such person shall be deemed to allow smoking to occur under this subsection if such person:

- (1) Has knowledge that smoking is occurring; and
- (2) Recklessly permits smoking under the totality of the circumstances.

(c) It shall be unlawful for any person, with no requirement of a culpable mental state, to smoke in any area where smoking is prohibited by the provisions of Section 24-705.

(d) Any person who violates any provision of Sections 24-705 through 24-707, shall be guilty of an e-cigarette or smoking infraction punishable by a fine:

- (1) Not exceeding \$100 for the first violation;
- (2) Not exceeding \$200 for a second violation within a one year period after the first violation; or
- (3) Not exceeding \$500 for a third or subsequent violation within a one year period after the first violation.

For purposes of this subsection, the number of violations within a year shall be measured by the date the e-cigarette or smoking violations occur.

(e) Each individual allowed to smoke by a person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, in violation of subsection (b) shall be considered a separate violation for purposes of determining the number of violations under subsection (d).

(f) No employer shall discharge, refuse to hire or take any other adverse action against an employee, applicant for employment or customer with the intent to retaliate against that employee, applicant or customer for reporting or attempting to prosecute a violation of any of the provisions of Sections 24-705 through 24-707.

Section 5. This ordinance shall take effect and be in force from and after its passage and publication of the summary in the official City newspaper.

PASSED BY THE GOVERNING BODY, this 3rd day of November, 2015, for the City of Hutchinson, Kansas.

Jade Piros de Carvalho, Mayor

ATTEST:

Karen Weltmer, City Clerk