

**CITY COUNCIL OVERSIGHT COMMITTEE MEETING
CONFERENCE ROOM – MUNICIPAL BUILDING
201 WEST GRAY
THURSDAY, MARCH 11, 2021
4:00 P.M.**

This is a virtual meeting – Committee members - Councilmembers Hall, Holman, Petrone and Chairman Bierman are appearing via video conference. Should remaining Councilmembers Foreman, McGarry, Nash, Peacock and Mayor Clark choose to attend, they will appear via video conference as well.

<https://zoom.us/j/94067132084?pwd=TjA5VnMwaUE4dmtRT2xpMHNwK2xSUT09>

1. Discussion regarding amendments to the Smoking in Public Places Ordinances.

It is the policy of the City of Norman that no person or groups of persons shall on the grounds of race, color, religion, ancestry, national origin, age, place of birth, sex, sexual orientation, gender identity or expression, familial status, marital status, including marriage to a person of the same sex, disability, retaliation, or genetic information, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in employment activities or in all programs, services, or activities administered by the City, its recipients, sub-recipients, and contractors. In the event of any comments, complaints, modifications, accommodations, alternative formats, and auxiliary aids and services regarding accessibility or inclusion, please contact the ADA Technician at 405-366-5424, Relay Service: 711. To better serve you, five (5) business days' advance notice is preferred.



DATE: March 4, 2021
TO: City Council Oversight Committee
FROM: Anthony Purinton, Assistant City Attorney
THROUGH: Kathryn Walker, City Attorney
SUBJECT: O-2021-41 Smoking in Public Places Ordinance Amendments

BACKGROUND:

City Code provisions in Chapter 10 relating to smoking in public places are no longer consistent with current State law. The corresponding State law has received considerable attention, having been amended eight times since the City’s last change to its public smoking provisions. The changes outlined below would make the City’s Code provisions consistent with State law and eliminate inconsistencies that currently exist with other City Code provisions.

DISCUSSION:

State Law and Preemption

Oklahoma’s Statutes contain two provisions regulating smoking in public places. Both 21 O.S. § 1247 and 63 O.S. 1-1523 prohibit the smoking of tobacco in a public place. However, based on an Oklahoma Attorney General advisory opinion, the preemptive, controlling provisions of State law for municipalities are those found in Title 63. *Question Submitted by: The Honorable Al McAffrey, State Senator, District 46 2013 OK AG 2, ¶ 20.* In Title 63, the State has expressly adopted its intent to preempt any municipality or political subdivision from adopting any regulation promulgated to control smoking in public places, unless such regulations are “the same as provided in this act.” 63 O.S. § 1-1527. Thus, a municipality may not adopt legislation which is more stringent than or that is inconsistent with the provisions found in Title 63.

Ordinance Revision

Many of the proposed changes to the City’s Code are not substantive changes and are intended to increase readability, improve internal organizational structure, and delete duplicative provisions found elsewhere in the Code. Substantive or major changes are outlined and described below:

Definitions: Changes to State law in 2015 broadened the definition of what constitutes a “Public Place.” Prior to the 2015 changes, only certain, named categories of facilities were deemed “public places” (e.g., health facilities, arenas, eating establishments, concert halls, etc.). In effect, the definition of “public places” served to limit the scope of the statute’s

office memorandum

prohibition on smoking in public since the statute only covered certain establishments and facilities.

In 2015, the definition of “public places” changed to include “any enclosed area where individuals other than employees are invited or permitted.” This language is much broader, expanding the scope of statute’s prohibition on smoking in public. The proposed changes adopt this language, replacing the obsolete, narrow definition of “public places”.

Prohibiting Language: Section 10-503(1) currently contains the following language:

The possession of lighted tobacco in any form is a public nuisance and dangerous to public health and is hereby prohibited when such possession is in any public place, public transportation, or any indoor workplace, except where specifically allowed by law.

The above language is more similar to the wording of the statutory prohibition found in Title 22. The proposed amendments to our Code change the language in 10-503(1) to reflect the language found in Title 63, the appropriate State statutory provision:

Except where specifically allowed by law, no person shall smoke tobacco or marijuana or vape marijuana in a public place, in an indoor workplace, in any vehicle providing public transportation, or at a meeting of a public body.

Under the new language taken from Title 63 the smoking or vaping of marijuana in public spaces is now also prohibited. This amendment reflects the addition of a prohibition on marijuana smoking and marijuana vaping added to the State statute in 2019. Where appropriate, the proposed changes to the City’s Code include additional amendments throughout 10-503 to reflect the addition of the prohibition on marijuana smoking and vaping.

Deletion of 10-504—10-512: The proposed changes include deletion of Sections 10-504—10-512, which pertain to the possession and sale of tobacco to minors. These sections are outdated and obsolete as Chapter 15 already contains current and updated prohibitions on youth access to tobacco and vapor products. Deletion of these sections would maintain internal consistency between Chapters of the City’s Code and remove unnecessary, duplicative provisions. These changes are not substantive and would not impact the City’s ability to enforce prohibitions preventing youth access to tobacco.

RECOMMENDATION:

The City of Norman should amend Chapter 10, Article V, of the City’s Code to reflect recent changes in controlling State law and to provide increased consistency with other Code provisions. By adopting language similar to that found in Title 63, the City would expand protections against the nuisance of public smoking and update obsolete and outdated language in its Code.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING SECTION 10-502 OF ARTICLE V, CHAPTER 10 OF THE CODE OF CITY OF NORMAN DELETING, AMENDING, AND ADDING DEFINITIONS; AMENDING SECTION 10-503 TO PROHIBIT SMOKING OF MARIJUANA AND MARIJUANA VAPING IN CERTAIN PUBLIC PLACES; DELETING SECTIONS 10-504 THROUGH 10-512 CONCERNING PREVENTION OF YOUTH ACCESS TO TOBACCO FOR PURPOSES OF INTERNAL CODE CONSISTENCY; AMENDING AND RENUMBERING SECTION 10-513, DELETING REFERENCES TO SECTIONS 10-504 THROUGH 10-512; AND PROVIDING FOR THE SEVERABILITY THEREOF.

- §1. WHEREAS, in an effort to standardize laws of governmental subdivisions that control and regulate smoking in public places, the State of Oklahoma has enacted legislation to preempt regulations that differ from State law; and
- §2. WHEREAS, the City of Norman, pursuant to 63 O.S. § 1-1527, is authorized to enact laws restricting smoking on properties owned or operated by the City.
- §3. WHEREAS, the City of Norman desires to support and enforce the State of Oklahoma's regulations promulgated to control smoking in public places by adopting Ordinance O-2021-41.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA:

- § 4. THAT Section 10-502 of Chapter 10 of the Code of Ordinances of the City of Norman shall be amended to read as follows:

Sec. 10-502. - Definitions.

The following words and phrases used in this article, shall for the purposes of this article, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

~~*Eating establishment:* A place designed for the consumption of food by humans, including every coffee shop, cafeteria, short order cafe, luncheonette, sandwich shop, soda fountain and restaurant.~~

~~*Educational facility:* A building owned, leased or under the control of a public or private school system, college or university.~~

~~*Enclosed:* Closed in by a roof and walls with appropriate openings for ingress and egress and is not intended to mean areas commonly described as public lobbies.~~

Health facility: An entity which provides health services, including but not limited to hospitals, nursing homes, long-term care facilities, kidney disease treatment centers, health maintenance organizations and ambulatory treatment centers.

Indoor workplace: 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 workplaces at any given time, whether or not work is being performed.

~~*Licensed premises:* Any portion of a building, structure, room or enclosure located on real estate which is owned, leased, used, controlled or operated by a licensee authorized by the Alcoholic Beverage Laws Enforcement Commission to sell liquor for consumption on the premises.~~

~~*Meeting:* A meeting as defined in the Open Meeting Act, Section 304 of Title 25 of the Oklahoma Statutes.~~

Person: Any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed.

~~*Proof of age:* A driver's license, license for identification only, or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid.~~

~~*Public body:* A public body as defined in the Open Meeting Act, Section 304 of Title 25 of the Oklahoma Statutes.~~

Public park: All unenclosed areas of a park or playground that is owned and operated by the City of Norman to which members of the general public have been granted a right to access. "Public park" shall exclude parking lots located on the same property as a park or playground, and the Westwood Golf Course.

Public place: Any enclosed indoor area where individuals other than employees are invited or permitted.

- ~~(1) An enclosed, indoor area owned or operated by a state or local governmental agency and used by the general public or serving as a place of work for public employees or a meeting place for a public body, including an office, educational facility, health facility, auditorium, arena, meeting room or public conveyance, or~~
- ~~(2) An enclosed indoor area which is not owned or operated by a state or local governmental agency which is used by the general public and which is:~~

- (a) — ~~An educational facility;~~
- (b) — ~~A health facility;~~
- (c) — ~~An auditorium;~~
- (d) — ~~An arena;~~
- (e) — ~~A theatre;~~
- (f) — ~~A museum;~~
- (g) — ~~An eating establishment;~~
- (h) — ~~Licensed premises;~~
- (i) — ~~A concert hall;~~
- (j) — ~~Any other facility during the period of its use for a performance or exhibit of the arts.~~

Restaurant: Any eating establishment regardless of seating capacity.

Sample: ~~A tobacco product distributed to members of the public at no cost for the purpose of promoting the product.~~

Smoking: The carrying or holding of a lighted pipe, cigar, cigarette, or any other lighted smoking device.

Stand-alone bar: An establishment that derives more than sixty percent (60%) of its gross receipts, subject to verification by competent authority, from the sale of alcoholic beverages and low-point beer and no person under twenty-one (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.

Tobacco product: ~~Any product that contains tobacco and is intended for human consumption.~~

Transaction scan: ~~The process by which a seller checks, by means of a transaction scan device, the validity of a driver's license or other government issued photo identification.~~

Transaction scan device: ~~Any commercial device or combination of devices used at a point of sale or entry that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's license or other government issued photo identification.~~

§ 5. THAT Section 10-503 of Chapter 10 of the Code of Ordinances of the City of Norman shall be amended to read as follows:

Sec. 10-503. - Smoking in certain public places prohibited.

- (1) Except where specifically allowed by law, no person shall smoke tobacco or marijuana or vape marijuana in a public place, in an indoor workplace, in any vehicle providing public transportation, or at a meeting of a public body.

~~The possession of lighted tobacco in any form is a public nuisance and dangerous to public health and is hereby prohibited when such possession is in any public place, public transportation, or any indoor workplace, except where specifically allowed by law.~~

~~As used in this section, "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 workplaces at any given time, whether or not work is being performed.~~

- (2) All buildings, or portions thereof owned or operated by this municipality shall be designated as nonsmoking.
- (3) No smoking of tobacco or marijuana or vaping marijuana shall be allowed within twenty-five (25) feet of the entrance or exit of any building specified in subsection (2) of this section.
- (4) No smoking of tobacco or marijuana or vaping marijuana shall be allowed on ~~t~~The grounds of all any City-owned public parks excluding the parking lots of any public park or playground and the Westwood Golf Course.
- ~~(5) The restrictions provided in this section shall not apply to stand-alone bars, stand-alone taverns, and cigar bars as defined in 63 O.S. 2001, §1-1522.~~
- ~~(6)~~(5) The restrictions provided in this section shall not prohibit tobacco smoking in ~~apply to~~ the following:
- (a) Stand-alone bars, stand-alone taverns or cigar bars;
 - ~~(a)~~(b) The room or rooms where licensed charitable bingo games are being operated; but only during the hours of operation of such games;
 - ~~(b)~~(c) Up to twenty-five (25) percent of the guest rooms at a hotel or other lodging establishment;
 - ~~(e)~~(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;
 - ~~(d)~~(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 only has incidental public access. "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.

~~(e)~~(f) Workplaces occupied exclusively by one (1) or more smokers, if the workplace has only incidental public access;

~~(f)~~(g) Private offices occupied exclusively by one (1) or more smokers;

~~(g)~~(h) Workplaces within private residences, except that smoking shall not be allowed inside any private residence that is used as a licensed child care facility during hours of operation;

~~(h)~~(i) Medical research or treatment centers, if smoking is integral to the research or treatment. Furthermore, the restrictions on smoking or vaping of marijuana provided in this section shall not apply to medical research or treatment centers, if marijuana smoking or vaping is integral to the research or treatment;

~~(i)~~(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 Section 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(8)), 501(c)(10), or 501(c)(19), when such facility is utilized exclusively by its members and their families for the conduct of post or organization nonprofit operations, except during an event or activity which is open to the public; and

~~(j)~~(k) Any outdoor seating area of a restaurant; provided, tobacco or marijuana smoking or vaping marijuana shall not be allowed within fifteen (15) feet of any exterior public doorway or any air intake of a restaurant.

~~(7)~~(6) An employer not otherwise restricted from doing so 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 fifteen (15) feet of any entrance, exit, or air intake.

~~(8)~~(7) If smoking is to be permitted in any space exempted in subsections ~~(65)~~ or ~~(76)~~ of this section or in a smoking room pursuant to subsection (3) 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 the smoking room shall not be exhausted within fifteen (15) feet of any entrance, exit, or air intake. Any employer may choose a more restrictive smoking policy, including being totally smoke free.

~~(9)~~(8) Restaurants shall be totally nonsmoking or may provide nonsmoking areas and designated smoking rooms. Food and beverage 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 twenty-five (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 Oklahoma State Department of Health.

~~(10)~~(9) 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 (4) inches by two (2) inches in size, at each entrance of the building indicating that the place is smoke-free or tobacco-free. "Breathe Easy" decals meet this requirement.

~~(11)~~(10) Responsibility for posting signs or decals shall be as follows:

- a. In privately owned facilities, the owner or lessee, if lessee is in possession of the facilities, shall be responsible;
- b. In corporately owned facilities, the manager and/or supervisor of the facility involved shall be responsible; and
- c. In publicly owned facilities, the manager and/or supervisor shall be responsible.

~~(12)~~(11) The person who owns or operates a place where smoking or tobacco use is prohibited by law shall ask smokers to refrain from smoking upon observation of anyone violating the provisions of this act.

§ 6. THAT Section 10-504 of Chapter 10 of the Code of Ordinances of the City of Norman shall be deleted in its entirety as follows:

~~Sec. 10-504. —Furnishing or sale of tobacco products to minors.~~

~~(a) It shall be unlawful and an offense for any person to sell, give, or furnish in any manner any tobacco product to another person who is under eighteen (18) years of age or to purchase in any manner a tobacco product on behalf of any such person. It shall not be unlawful for an employee under eighteen (18) years of age to handle tobacco products when required in the performance of employee duties.~~

~~(b) Any person engaged in the sale or distribution of tobacco products shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser may be under eighteen (18) years of age.~~

~~If an individual engaged in the sale or distribution of tobacco products has demanded and was shown proof of age from a prospective purchaser or recipient who is not under eighteen (18) years of age, the failure to subsequently require proof of age shall not constitute a violation of subsection (b) of this section.~~

~~(c) If the sale of a tobacco product to a minor is made by an employee of the owner of a store at which tobacco products are sold at retail, the employee shall be guilty of the violation and shall be subject to the fine. If employees of the owner of the store at which tobacco products are sold at retail are found to be in violation of this section, the owner of the store, if the owner knew of the employee's previous violations, shall also be found to be in violation and shall be subject to an identical fine.~~

~~An owner of a store licensed to sell tobacco products shall not be deemed in violation of the provisions of subsections (a) or (b) of this section for any acts constituting a violation by an employee of the store owner, if the violation occurred prior to actual employment of the person by the store owner, or the violation occurred at a location other than the owner's store.~~

- ~~(d) *Record to be sent to the Alcoholic Beverage Laws Enforcement Commission:* Upon conviction for violating the provisions of subsections (a) or (b) of this section, a report of the conviction of the person shall be forwarded by the Municipal Court Clerk of the City of Norman to the Alcoholic Beverage Laws Enforcement (ABLE) Commission for possible administrative action.~~
- ~~(e) *Defenses:* Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to prosecution under subsections (a) or (b) of this section. A person cited for violation of this section shall be deemed to have reasonably relied upon proof of age, and such person shall not be found guilty of such violation, if such person proves that:~~
- ~~1. The individual who purchased or received the tobacco product presented a driver's license or other government issued photo identification purporting to establish that such individual was eighteen (18) years of age or older; and~~
 - ~~2. The person cited for the violation confirmed the validity of the driver's license or other government issued photo identification presented by such individual by performing a transaction scan by means of a transaction scan device.~~
 - ~~3. Provided, that this defense shall not relieve from liability any person cited for a violation of this section if such person failed to exercise reasonable diligence to determine whether the physical description and picture appearing on the driver's license or other government issued photo identification was that of the individual who presented it. The availability of the defense described in this subsection does not affect the availability of any other defense under any other provision of law.~~
- ~~(f) *Notice to be sent to the Department of Public Safety:* Upon failure of the employee to pay the fine within ninety (90) days of the day of the assessment of such fine, the Clerk of the Municipal Court shall notify the Department of Public Safety and the Department shall suspend or not issue a driver's license to the employee until proof of payment has been furnished to the Department of Public Safety. Upon failure of a store owner to pay the fine within ninety (90) days of the assessment of such fine, the Clerk of the Municipal Court shall notify the Oklahoma Tax Commission and the Oklahoma Tax Commission shall suspend the store's license to sell tobacco products until proof of payment has been furnished to the Oklahoma Tax Commission.~~
- ~~(g) For purposes of determining the liability of a person controlling franchises or business operations in multiple locations for any violation of Subsections (a) or (b) of this section, each individual franchise or business location shall be deemed a separate entity.~~

§ 7. THAT Section 10-505 of Chapter 10 of the Code of Ordinances of the City of Norman shall be deleted in its entirety as follows:

~~Sec. 10-505.—Receipt of tobacco products by minors.~~

- ~~(1) It shall be unlawful and an offense for any person who is under eighteen (18) years of age to purchase, receive, or have in their possession a tobacco product, or to present or offer to any person any purported proof of age which is false or fraudulent for the purpose of purchasing or receiving any tobacco product. It shall not be unlawful for an employee under age eighteen (18) years of age to handle tobacco products when required in the performance of the employee's duties.~~
- ~~(2) The City shall establish rules to provide for notification to a parent or guardian of any minor cited for a violation of this section.~~

§ 8. THAT Section 10-506 of Chapter 10 of the Code of Ordinances of the City of Norman shall be deleted in its entirety as follows:

~~Sec. 10-506.—Distribution of tobacco product samples.~~

- ~~(a) It shall be unlawful and an offense for any person to distribute tobacco product samples to any person under eighteen (18) years of age.~~
- ~~(b) Notwithstanding subsection (a) of this section, no person shall distribute tobacco product samples in or on any public street, sidewalk, or park that is within three hundred (300) feet of any playground, school, or other facility when the facility is being used primarily by persons under eighteen (18) years of age.~~
- ~~(c) *Notice to be sent to the Department of Public Safety:* Upon failure of an individual to pay any fine within ninety (90) days of the assessment of such fine, the Clerk of the Municipal Court shall notify the Department of Public Safety, and the Department shall suspend or not issue a driver's license to the individual until proof of payment has been furnished to the Department of Public Safety.~~

§ 9. THAT Section 10-507 of Chapter 10 of the Code of Ordinances of the City of Norman shall be deleted in its entirety as follows:

~~Sec. 10-507.—Sale of tobacco products except in original, sealed package.~~

~~It is unlawful and an offense for any person to sell cigarettes except in the original, sealed package in which they were placed by the manufacturer.~~

§ 10. THAT Section 10-508 of Chapter 10 of the Code of Ordinances of the City of Norman shall be deleted in its entirety as follows:

~~Sec. 10-508.—Signs in retail establishments required.~~

~~Every person who sells or displays tobacco products at retail shall post conspicuously and keep so posted at the place of business a sign, as specified by the Alcoholic Beverage Laws Enforcement (ABLE) Commission, stating the following: "IT'S THE LAW. WE DO NOT SELL TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF~~

~~AGE." The sign shall also provide the toll free number operated by the Alcoholic Beverage Laws Enforcement (ABLE) Commission for the purpose of reporting violations of the Prevention of Youth Access to Tobacco Act.~~

§ 11. THAT Section 10-509 of Chapter 10 of the Code of Ordinances of the City of Norman shall be deleted in its entirety as follows:

~~Sec. 10-509. Notice to retail employees.~~

~~(a) Every person engaged in the business of selling tobacco products at retail shall notify each individual employed by that person as a retail sales clerk that state law:~~

~~1. Prohibits the sale or distribution of tobacco products to any person under eighteen (18) years of age and the purchase or receipt of tobacco products by any person under eighteen (18) years of age; and~~

~~2. Requires that proof of age be demanded from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under eighteen (18) years of age.~~

~~(b) This notice shall be provided before the individual commences work as a retail sales clerk. The individual shall signify that he or she has received the notice required by this section by signing a form stating as follows:~~

~~"I understand that state law prohibits the sale or distribution of tobacco products to persons under eighteen (18) years of age and out of package sales, and requires proof of age of purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under eighteen (18) years of age. I promise, as a condition of my employment, to obey the law. I understand that violations by me may be punishable by fines, suspension, or non-issuance of my driver's license. In addition, I understand that violations by me may subject the store owner to fines or license suspension."~~

§ 12. THAT Section 10-510 of Chapter 10 of the Code of Ordinances of the City of Norman shall be deleted in its entirety as follows:

~~Sec. 10-510. Vending machine sales restricted.~~

~~(a) It shall be unlawful for any person to sell tobacco products through a vending machine unless the vending machine is located:~~

~~1. In areas of factories, businesses, offices, or other places that are not open to the public;~~
~~or~~

~~2. In places that are open to the public, but to which persons under eighteen (18) years of age are not admitted.~~

§ 13. THAT Section 10-511 of Chapter 10 of the Code of Ordinances of the City of Norman shall be deleted in its entirety as follows:

~~Sec. 10-511.— Display or sale of tobacco products.~~

~~It shall be unlawful for any person or retail store to display or offer for sale tobacco products in any manner that allows public access to the tobacco product without assistance from the person displaying the tobacco product or an employee or the owner of the store. The provisions of this subsection shall not apply to retail stores which do not admit into the store persons under eighteen (18) years of age.~~

§ 14. THAT Section 10-512 of Chapter 10 of the Code of Ordinances of the City of Norman shall be deleted in its entirety as follows:

~~Sec. 10-512.— Restrictions on manner of enforcement.~~

- ~~(a) Any conviction for a violation of sections 10-503 through 10-511 of this article and compliance checks conducted by the City pursuant to subsection (b) of this section shall be reported in writing to the Alcoholic Beverage Laws Enforcement (ABLE) Commission within thirty (30) days of the conviction or compliance check. Such reports shall be compiled in the manner prescribed by the ABLE Commission.~~
- ~~(b) Persons under eighteen (18) years of age may be enlisted by the City to assist in enforcement of sections 10-503 through 10-511 of this article; provided such persons may be used to test compliance only if written parental consent has been provided and the testing is conducted under the direct supervision of the Alcoholic Beverage Laws Enforcement (ABLE) Commission or conducted by another law enforcement agency if such agency has given written notice to the ABLE Commission in the manner prescribed by the ABLE Commission. The City may conduct, pursuant to rules of the ABLE Commission, compliance checks without prior notification to the ABLE Commission and shall be exempt from the written notice requirement of this subsection. This subsection shall not apply to the use of persons under eighteen (18) years of age to test compliance if the compliance test is being conducted by or on behalf of a retailer of cigarettes, as defined in 68 O.S. 2001, §301, at any location the retailer of cigarettes is authorized to sell cigarettes.~~

§ 15. THAT Section 10-513 of Chapter 10 of the Code of Ordinances of the City of Norman shall be amended to read as follows:

~~Sec. 10-513~~ 10-504. - Enforcement/penalties.

- ~~(1) Persons convicted of any violation of section 10-503 shall be punished by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00), excluding costs, fees, and assessments.~~
- ~~(2) Persons convicted of any violation of subsection 10-504(a), (b), or (c) shall be punished by a fine of not more than one hundred dollars (\$100.00) for the first offense; not more than two hundred dollars (\$200.00) for the second offense within a two year period following the first offense; not more than three hundred dollars (\$300.00) for a third offense within a two year period following the first offense; and not more than three~~

~~hundred dollars (\$300.00) for a fourth or subsequent offense within a two year period following the first offense.~~

- ~~(3) Any person violating the provisions of subsection 10-505(1) shall be guilty of an offense and upon conviction shall be punished by a fine of:~~
- ~~a. Not more than one hundred dollars (\$100.00), excluding costs, fees, and assessments, for a first offense.~~
 - ~~b. Not more than two hundred dollars (\$200.00), excluding costs, fees, and assessments, for a second or subsequent offense within a one year period following the first offense.~~
 - ~~c. Upon failure of the individual to pay any fine within ninety (90) days of the day of assessment of such fine, the Clerk of the Municipal Court shall notify the Department of Public Safety and the Department shall suspend or not issue a driver's license to the individual until proof of payment has been furnished to the Department of Public Safety.~~
- ~~(4) Persons convicted of any violation of subsection 10-506(a) or (b) shall be punished by a fine of not more than one hundred dollars (\$100.00) for the first offense; not more than two hundred dollars (\$200.00) for the second offense; and not more than three hundred dollars (\$300.00) for a third or subsequent offense.~~
- ~~(5) Any person violating the provisions of subsection 10-507(a) shall be guilty of an offense and upon conviction shall be punished by a fine of not more than two hundred dollars (\$200.00), excluding costs, fees and assessments, for each offense.~~
- ~~(6) Any person violating the provisions of subsection 10-508(a) shall be guilty of an offense and upon conviction shall be punished by a fine of not more than fifty dollars (\$50.00), excluding costs, fees and assessments, for each day a violation occurs. Each day a violation is continuing shall constitute a separate offense. The notice required by subsection (a) of this section shall be the only notice required to be posted or maintained in any store that sells tobacco products at retail.~~
- ~~(7) Any person violating the provisions of subsection 10-510(a) or 10-511(a) shall be guilty of an offense and upon conviction shall be punished by a fine of not more than two hundred dollars (\$200.00), excluding costs, fees and assessments, for each offense.~~

§ 16. THAT Sections 10-514—10-600 of Chapter 10 of the Code of Ordinances of the City of Norman shall be amended to read as follows:

Secs. ~~10-514-10-505~~—10-600. - Reserved.

§17. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, except that the effective date provision shall not be severable from the operative provisions of the ordinance.

ADOPTED this _____ day
of _____, 2021.

NOT ADOPTED this _____ day
of _____, 2021.

Brea Clark, Mayor

Brea Clark, Mayor

ATTEST:

Brenda Hall, City Clerk

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING SECTION 10-502 OF ARTICLE V, CHAPTER 10 OF THE CODE OF CITY OF NORMAN DELETING, AMENDING, AND ADDING DEFINITIONS; AMENDING SECTION 10-503 TO PROHIBIT SMOKING OF MARIJUANA AND MARIJUANA VAPING IN CERTAIN PUBLIC PLACES; DELETING SECTIONS 10-504 THROUGH 10-512 CONCERNING PREVENTION OF YOUTH ACCESS TO TOBACCO FOR PURPOSES OF INTERNAL CODE CONSISTENCY; AMENDING AND RENUMBERING SECTION 10-513, DELETING REFERENCES TO SECTIONS 10-504 THROUGH 10-512; AND PROVIDING FOR THE SEVERABILITY THEREOF.

- §1. WHEREAS, in an effort to standardize laws of governmental subdivisions that control and regulate smoking in public places, the State of Oklahoma has enacted legislation to preempt regulations that differ from State law; and
- §2. WHEREAS, the City of Norman, pursuant to 63 O.S. § 1-1527, is authorized to enact laws restricting smoking on properties owned or operated by the City.
- §3. WHEREAS, the City of Norman desires to support and enforce the State of Oklahoma's regulations promulgated to control smoking in public places by adopting Ordinance O-2021-41.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA:

- § 4. THAT Section 10-502 of Chapter 10 of the Code of Ordinances of the City of Norman shall be amended to read as follows:

Sec. 10-502. - Definitions.

The following words and phrases used in this article, shall for the purposes of this article, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

Health facility: An entity which provides health services, including but not limited to hospitals, nursing homes, long-term care facilities, kidney disease treatment centers, health maintenance organizations and ambulatory treatment centers.

Indoor workplace: 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 workplaces at any given time, whether or not work is being performed.

Meeting: A meeting as defined in the Open Meeting Act.

Person: Any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed.

Public body: A public body as defined in the Open Meeting Act.

Public park: All unenclosed areas of a park or playground that is owned and operated by the City of Norman to which members of the general public have been granted a right to access. "Public park" shall exclude parking lots located on the same property as a park or playground, and the Westwood Golf Course.

Public place: Any enclosed indoor area where individuals other than employees are invited or permitted.

Restaurant: Any eating establishment regardless of seating capacity.

Smoking: The carrying or holding of a lighted pipe, cigar, cigarette, or any other lighted smoking device.

Stand-alone bar: An establishment that derives more than sixty percent (60%) of its gross receipts, subject to verification by competent authority, from the sale of alcoholic beverages and low-point beer and no person under twenty-one (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.

§ 5. THAT Section 10-503 of Chapter 10 of the Code of Ordinances of the City of Norman shall be amended to read as follows:

Sec. 10-503. - Smoking in certain public places prohibited.

- (1) Except where specifically allowed by law, no person shall smoke tobacco or marijuana or vape marijuana in a public place, in an indoor workplace, in any vehicle providing public transportation, or at a meeting of a public body.
- (2) All buildings, or portions thereof owned or operated by this municipality shall be designated as nonsmoking.

- (3) No smoking of tobacco or marijuana or vaping marijuana shall be allowed within twenty-five (25) feet of the entrance or exit of any building specified in subsection (2) of this section.
- (4) No smoking of tobacco or marijuana or vaping marijuana shall be allowed on the grounds of any City-owned public parks excluding the parking lots of any public park or playground and the Westwood Golf Course.
- (5) The restrictions provided in this section shall not prohibit tobacco smoking in:
 - (a) Stand-alone bars, stand-alone taverns or 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 twenty-five (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 only has incidental public access. "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.
 - (f) Workplaces occupied exclusively by one (1) or more smokers, if the workplace has only incidental public access;
 - (g) Private offices occupied exclusively by one (1) or more smokers;
 - (h) Workplaces within private residences, except that smoking shall not be allowed inside any private residence that is used as a licensed child care facility during hours of operation;
 - (i) Medical research or treatment centers, if smoking is integral to the research or treatment. Furthermore, the restrictions on smoking or vaping of marijuana provided in this section shall not apply to medical research or treatment centers, if marijuana smoking or vaping 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 Section 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(8)), 501(c)(10), or 501(c)(19), when such facility is utilized exclusively by its members and their families 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, tobacco or marijuana smoking or vaping marijuana shall not be allowed within fifteen (15) feet of any exterior public doorway or any air intake of a restaurant.

- (6) An employer not otherwise restricted from doing so 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 fifteen (15) feet of any entrance, exit, or air intake.
- (7) If smoking is to be permitted in any space exempted in subsections (5) or (6) of this section or in a smoking room pursuant to subsection (3) 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 the smoking room shall not be exhausted within fifteen (15) feet of any entrance, exit, or air intake. Any employer may choose a more restrictive smoking policy, including being totally smoke free.
- (8) Restaurants shall be totally nonsmoking or may provide nonsmoking areas and designated smoking rooms. Food and beverage 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 twenty-five (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 Oklahoma State Department of Health.
- (9) 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 (4) inches by two (2) inches in size, at each entrance of the building indicating that the place is smoke-free or tobacco-free. "Breathe Easy" decals meet this requirement.
- (10) Responsibility for posting signs or decals shall be as follows:
 - a. In privately owned facilities, the owner or lessee, if lessee is in possession of the facilities, shall be responsible;
 - b. In corporately owned facilities, the manager and/or supervisor of the facility involved shall be responsible; and
 - c. In publicly owned facilities, the manager and/or supervisor shall be responsible.
- (11) The person who owns or operates a place where smoking or tobacco use is prohibited by law shall ask smokers to refrain from smoking upon observation of anyone violating the provisions of this act.

§ 6. THAT Section 10-504 of Chapter 10 of the Code of Ordinances of the City of Norman shall be amended to read as follows:

Sec. 10-504. - Enforcement/penalties.

Persons convicted of any violation of section 10-503 shall be punished by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00), excluding costs, fees, and assessments.

§ 7. THAT Sections 10-505—10-600 of Chapter 10 of the Code of Ordinances of the City of Norman shall be amended to read as follows:

Secs. 10-505—10-600. - Reserved.

§8. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, except that the effective date provision shall not be severable from the operative provisions of the ordinance.

ADOPTED this _____ day
of _____, 2021.

NOT ADOPTED this _____ day
of _____, 2021.

Breea Clark, Mayor

Breea Clark, Mayor

ATTEST:

Brenda Hall, City Clerk