

ORDINANCE NO. O-2016-11

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, CHAPTER 4, "OFFENSES AND MISCELLANEOUS PROVISIONS", ARTICLE II, "SMOKING PROHIBITED", DIVISION A., "SMOKING PROHIBITED", BY REMOVING UNNECESSARY WORDING, AND UPDATING AND CLARIFYING SMOKING REGULATIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of local self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to local self-government; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City of Tyler may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City, and all nuisances and causes thereof; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether expressed or implied, shall be exercised and enforced, in the manner prescribed by the Charter, or when not prescribed in the Charter, in such manner as shall be provided by ordinances or resolutions of the City Council; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under

the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by the State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, it is important to update the Smoking regulations in Chapter 4 by removing unnecessary wording, and by updating and clarifying wording;

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

PART 1: That Tyler City Code Chapter 4, "Offenses and Miscellaneous Provisions", Article II., "Smoking Prohibited", Division A., "Smoking Prohibited", is hereby amended by amending Section 4-43 to read as follows, with no other changes:

Sec. 4-43. Prohibition of Smoking in Places of Employment/Workplace

a. It shall be the responsibility of employers to provide a smoke-free place of employment for all employees.

b. Smoking shall be prohibited in all indoor and outdoor areas served by employees, in Places of Employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities. As used in this subsection, the term "served" shall not include routine maintenance or routine cleaning activities such as waste removal, sweeping, mopping, and similar activities.

c. Each employer having control of any enclosed Place of Employment/Workplace shall post a copy of Section 4-43 in the Place of Employment within thirty (30) calendar days after the effective date of this Article and in the future prior to receiving any required Certificate of Occupation from the City. (Ord. No. 0-2016-11; 2/10/16)

PART 2: That Tyler City Code Chapter 4, "Offenses and Miscellaneous Provisions", Article II., "Smoking Prohibited", Division A., "Smoking Prohibited", is hereby amended by amending Section 4-45 to read as follows:

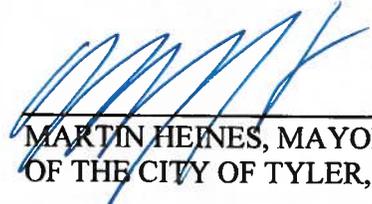
Sec. 4-45. Reasonable Distance. Prohibition of Smoking within Distance of 20 feet of Public Place or Place of Employment/Workplace.

Smoking is prohibited within a distance of twenty (20) feet or less outside entrances, operable windows, and ventilation systems of Enclosed Areas where smoking is prohibited in any Public Place or Place of Employment/Workplace. (Ord. No. 0-2016-11; 2/10/16)

PART 3: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

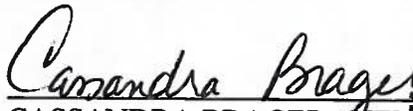
PART 4: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be February 12, 2016.

PASSED AND APPROVED this 10th day of February, A. D., 2016.



MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

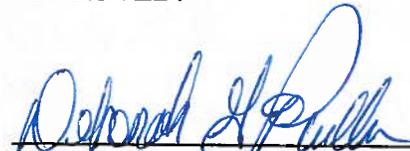
ATTEST:



CASSANDRA BRAGER, CITY CLERK



APPROVED:



DEBORAH G. PULLUM,
CITY ATTORNEY