

ORDINANCE NO. 2174

AN ORDINANCE AMENDING CHAPTER 19, ENTITLED "SMOKING", OF THE HURST CODE OF ORDINANCES, AND PROHIBITING SMOKING IN CITY-OWNED PARKS AND FOOD SERVICE ESTABLISHMENTS; ESTABLISHING DISTANCE REQUIREMENTS; PROVIDING EXEMPTIONS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the smoking of tobacco, weeds, or other plant products has been demonstrated to have a detrimental effect on not only the smoker but others in close proximity to the smoker; and

WHEREAS, the City Council desires to promote the health and safety of persons within city-owned parks and food product establishments; and

WHEREAS, the City Council has determined that the amendments to the Hurst Code of Ordinances herein made are in the best interest of the health, safety, and general welfare of the citizens of the City of Hurst;

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

Section 1: THAT the Hurst Code of Ordinances Chapter 19, entitled "Smoking", be amended to read as follows:

CHAPTER 19. SMOKING

Sec. 19-1. Definitions.

For the purpose of this chapter, certain words are defined in this section. Definitions not expressly prescribed herein are to be construed in accordance with customary usage.

- (1) Administrative Area means 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) Billiard Hall means a place of amusement whose chief purpose is providing the use of billiard/pool tables to the public for a fee.
- (3) Bingo Parlor means a facility regulated under the Bingo Enabling Act, Chapter 2001, of the Occupations Code.
- (4) Director means the director of the department designated by the City Manager to enforce and administer this chapter or the director's designated representative.
- (5) Food Service Establishment means an operation that sells food for human consumption.

- (6) Health Care Facility means any institution that provides medical, surgical, and overnight facilities for patients, including but not limited to hospitals, clinics, physical therapy facilities, doctor's offices, dentist's offices, nursing homes, adult car facilities, convalescent homes, and residential treatment centers.
- (7) Public Service Area means any enclosed area to which the general public routinely has access for municipal services or which is designated a public service area in a written policy of the agency in charge of such areas.
- (8) Retail and Service Establishment means any establishment which sells goods or services to the general public.
- (9) Sports Bar means any establishment which has a bar area with seating, video equipment for sports related viewing, and gaming equipment that includes but is not limited to pool tables, dart boards, shuffle boards, electronic games, etc.
- (10) Entrance means any public entrance including, but not limited to, covered walkways or porte-cocheres.

Sec. 19-2. Smoking Prohibited in Certain Public Places

- (a) A person commits an offense if he or she smokes or possesses a burning tobacco, weed, or other plant product in the following areas:
 - (1) An elevator used by the public;
 - (2) A health care facility;
 - (3) Any retail or service establishment for serving the general public;
 - (4) An area marked with a no smoking sign in accordance with subsection (b) by the owner or person in control of a health care facility or retail or service establishment serving the general public;
 - (5) An enclosed theater movie house, library, museum, or transit system vehicle; or
 - (6) Within twenty (20) feet of all entrances into the indoor or enclosed areas covered by this Section, with the exception of retail establishments where a 50 foot distance requirement from an entrance and covered entrance is required; smoking must be in a designated area.
- (b) The owner or person in control of an establishment or area designated in subsection (a) of this section shall post a conspicuous sign visible from the main public entrance to the non-smoking area. The sign shall contain the words "No Smoking, City of Hurst Ordinance," the universal symbol for no smoking, or other language that clearly prohibits smoking.
- (c) It is a defense to prosecution under this section if the person was smoking in a location that is:
 - (1) an administrative area or office of an establishment described in Subsection (a)(3) or (a)(5) of this section;

- (2) a private or semi private room in a nursing home or long term health care facility that is occupied by persons who smoke and have requested in writing to be placed in a room where smoking is permitted;
- (3) a retail or service establishment which is primarily engaged in the sale of tobacco products or smoking implements;
- (4) a fraternal organization or private club not serving the general public ; or
- (5) a private, rented guest room in a hotel or motel that has been designated as a smoking room by the owner or operator of the hotel or motel, as long as no more than twenty percent (20%) of the rooms are designated smoking and all smoking rooms are located on the same floor.

Sec. 19-3. Smoking in City-Owned Buildings and Parks

- (a) It shall hereafter be unlawful for any person to smoke or possess a burning tobacco, weed, or other plant product in any building or park owned, operated, or managed by the City with the exception of paved parking areas only.

Sec. 19-4. Bingo Parlors, Billiard Halls, and Bowling Alleys

- (a) Notwithstanding any other provision of this chapter to the contrary, bingo parlors, billiard halls and bowling alleys, as defined in this Chapter, shall not be subject to the smoking prohibitions herein if:

- (1) a non-smoking area is provided; and
- (2) no one under eighteen (18) years of age is admitted to the smoking section.

- (b) A non-smoking area must:

- (1) be separated from smoking areas by a minimum of four (4) feet of continuous floor space;
- (2) be ventilated, where feasible, and situated so that air from the smoke area is not drawn into or across the non-smoking area;
- (3) be clearly designated by appropriate signs visible to patrons within the establishments indicating that the area is designated non-smoking; and
- (4) have ash trays or other suitable containers for extinguishing smoking materials at the perimeter of the non-smoking area.

Sec. 19-5. Food Service Establishments

- (a) It shall hereafter be unlawful for any person to smoke or possess a burning tobacco, weed, or other plant product in a food service establishment, or within twenty (20) feet of the primary entrance of a food service establishment, with the following exceptions:

- (1) the person was smoking in an outdoor dining area and/or patio, as long as the dining area and/or patio is physically separated from the indoor dining area by a closed door or partition and is more than twenty (20) feet from the primary entrance of the establishment; or
 - (2) the person was smoking after 8:30 p.m. in the designated bar area only of the food service establishment.
- (b) It is a defense to prosecution under this section that the food service establishment is:
- (1) an establishment which has indoor seating arrangement for less than eighty (80) people. Such establishments are exempt from the outdoor dining/patio distance requirements outlined in this section.
 - (2) A sports bar, as defined in the Chapter, that has a designated non-smoking area and that does not admit or employ persons under eighteen (18) years of age in the smoking section. The designated non-smoking area must meet the same requirements outlined in Section 19-4(b) above.

Sec. 19-6. Posting of Signs and Placement of Receptacles

- (a) The owner, operator, or manager of an establishment regulated by Section 19-2 or Section 19-5 shall have signs conspicuously placed at all entrances which state: “No Smoking inside – No Smoking within Twenty (20) Feet of Entrance – City Ordinance.”
- (b) The owner, operator or manager of an establishment regulated by Section 19-2 or Section 19-5 shall have receptacles for the extinguishment of smoking materials located within twenty (20) feet of all entrances.

Section 2: Penalties: 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 in a sum not to exceed two thousand dollars (\$2,000.00).

Section 3: THAT it is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court or competent jurisdiction, such unconstitutionality shall not affect the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section. Any conflict with applicable State Law shall be decided in favor of State Law and this ordinance shall be administered in accordance with State Law under those circumstances.

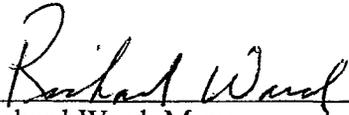
Section 4: THAT this ordinance shall become effective and shall be in full force and effect on January 1, 2012, from and after the final date of passage and adoption by the City Council of the City of Hurst, Texas.

AND SO IT IS ORDERED.

Passed on first reading on the 26th day of July, 2011 by a vote of 6 ayes and 0 nays.

Passed and approved on the 9th day of August, 2011 by a vote of 4 ayes and 0 nays.

CITY OF HURST



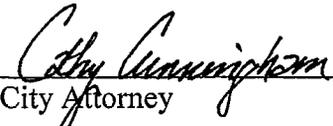
Richard Ward, Mayor

ATTEST:



City Secretary

APPROVED AS TO FORM AND LEGALITY:



City Attorney