

ORDINANCE NO. 22-_____

AN ORDINANCE PERTAINING TO NUISANCES AND HEALTH, AMENDING SECTIONS 15-4-401, 15-4-402, 15-4-403 AND 15-4-404, CHAPTER 15, LAWTON CITY CODE, 2015, BY ADDING DEFINITIONS, DESIGNATING CERTAIN PROPERTY AS SMOKE-FREE, CLARIFYING LANGUAGE RELATED TO SMOKING IN CERTAIN PUBLIC AREAS, ADDING LANGUAGE CONCERNING DISCRIMINATION AGAINST LICENSED MEDICAL MARIJUANA PATIENTS, USE PROHIBITED IN MUNICIPAL VEHICLES, PENALTIES FOR MUNICIPAL EMPLOYEES, AND PROVIDING FOR SEVERABILITY.

BE IT ORDAINED by the Council of the City of Lawton, Oklahoma, that:

SECTION 1. Section 15-4-401 is hereby amended to read as follows:

15-4-401 Definitions.

A. As used in this article, the following terms shall have the meanings respectively ascribed to them herein, except where the context clearly indicates a different meaning:

* * *

"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 workplace at any given time, whether or not work is being performed.

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"Smoking" means the carrying or use ~~by a person~~ of a lighted ~~cigar, cigarette, pipe, tobacco,~~ nicotine, marijuana or other lawful products, or ~~other~~ lighted smoking device.

* * *

"Smoke-free location" means a location where the use of tobacco, nicotine, marijuana, or other lawful products consumed in a smoking or vaporized manner are prohibited.

* * *

"Designated smoking room" is a location that 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.

* * *

"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.

* * *

"Stand-alone bar" or "stand-alone tavern" ~~and "cigar bar"~~ mean an properly licensed business 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.

* * *

"Medical Marijuana use" means the use of marijuana in any form, including but not limited to chewing or smoking, as recommended by a doctor in the treatment of a medical condition.

* * *

"Licensed Medical Marijuana Patient" means a person that has been properly issued a medical marijuana license pursuant to Oklahoma law.

* * *

"Consumption Lounge" means a properly licensed business establishment where the inhalation, exhalation, and consumption of tobacco, nicotine, marijuana, or other lawful products used in a smoke or vaporized manner is allowed, such as a cigar bar, hookah lounge, smoking salon, and other similar establishments, that may engage in the sale of tobacco products, and the sale or rental of accessories for consumption.

* * *

"Cigar Bar" means an establishment designated for smoking cigars or use of other tobacco products or accessories purchased on the premises or elsewhere.

* * *

"Hookah Lounge" means an establishment where patrons may share shisha (flavored tobacco) from a communal hookah.

* * *

"Vapor product" means noncombustible products, that may or may not contain nicotine, or medical marijuana extracts, that employ a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution or other form. ~~"Vapor Products"~~ This shall include any vapor cartridge or other container with or without nicotine, marijuana extracts, or other form that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of a solution, that may or may not contain nicotine, or marijuana extracts, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo or electronic device.

* * *

SECTION 2. Section 15-4-402 is hereby amended to read as follows:

15-4-402 Use of tobacco, nicotine, marijuana and vapor products in certain places prohibited.

- A. The possession of lighted tobacco, nicotine, or marijuana ~~in any form~~ consumed in a smoke or vaporized manner is a public nuisance ~~and dangerous to public health, as well as an unhealthy example for children.~~ As such, the possession of lighted tobacco in any form and is prohibited ~~when such possession~~ is in any indoor place used by or open to the public, any city-owned parks or playgrounds, public transportation, or any workplace, except where specifically authorized by city code. Lawton-Ft. Sill Regional Airport operators may prohibit the use of tobacco, nicotine, or marijuana consumed in a smoke or vaporized manner, in any area that is open to or used by the public whether located indoors or outdoors, provided that the outdoor area is within one hundred seventy-five (175) feet from an entrance.
- B. In addition to the prohibitions set forth in subsection A of this section, all buildings and other properties, or portions thereof, and real property owned or operated by the City of Lawton shall be designated as a smoke-free location, ~~as both tobacco-free, and vapor-free.~~ The use of tobacco in any form in said buildings or on such real property is prohibited. ~~Furthermore, the use of vapor products in said buildings or on such real property is also prohibited.~~ Additionally, any building(s) of any trust or authority in which the City of Lawton is the beneficiary, may be designated as a smoke-free location at the discretion of the City Council.

The tobacco smoking provisions of this subsection shall not apply to the Lawton-Fort Sill Veteran's Center operated by the state of Oklahoma pursuant to state law. The Center may establish outdoor designated smoking areas for resident veterans only. Smoking tobacco shall only be allowed in those designated areas.

- C. Any indoor smoking space shall be in a location that 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 State Department of Health as authorized in 21 O.S. Sec. 1247.

The restrictions provided in subsection A of this section shall not apply to the following:

1. Stand-alone bars, stand-alone taverns ~~and cigar bars~~ as defined in Section 15-4-401 of this chapter;
2. The room or rooms where licensed charitable bingo games are being operated, but only during the hours of operation of such games;

3. Up to twenty-five percent (25%) of the guest rooms at a hotel or other lodging establishment;
4. Retail tobacco stores and consumption lounges predominantly engaged in the sale of tobacco products or rental of 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;
5. 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 has only 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;~~
6. Workplaces occupied exclusively by one or more smokers, if the workplace has only incidental public access;
7. Non-residential Private offices, in a stand-alone building, occupied exclusively by one or more smokers;
8. Workplaces within private residences, except that smoking or vaping of tobacco, nicotine, or marijuana shall not be allowed inside any private residence that is used as a licensed childcare facility during hours of operation;
9. Medical research or treatment centers, if smoking is integral to the research or treatment;
10. 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. § 501(c)(8), 501(c)(10) or 501(c)(19), when such facility is utilized exclusively by its members and their families and for the conduct of post or organization nonprofit operations except during an event or activity which is open to the public; and

~~D. 11. Any outdoor seating area of a restaurant: provided~~ Smoking shall not be allowed within ~~fifteen (15) feet~~ twenty-five (25) feet of any exterior public doorway or any air intake restaurant.

- ~~E. D.~~ 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~~ twenty-five (25) feet of any entrance, exit or air intake.

- F. ~~E.~~ If smoking is to be permitted in any space exempted in subsection C of this section or in a smoking room pursuant to subsection D 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 a smoking room shall not be exhausted within ~~fifteen (15) feet~~ twenty-five (25) feet of any entrance, exit or air intake. Any employer may choose a more restrictive smoking policy, including being totally smoke free.
- G. ~~F.~~ A nursing facility licensed pursuant to the Nursing Home Care Act may designate smoking rooms for residents and their guests. Such rooms shall be fully enclosed, directly exhausted to the outside, and shall be under negative air pressure so that no smoke can escape when a door is opened, and no air is recirculated to nonsmoking areas of the building.
- H. ~~G.~~ Notwithstanding any other provision of this section, restaurants shall be totally nonsmoking or may provide nonsmoking areas and designated smoking rooms as defined in City of Lawton Municipal Code 15-4-401. Food and beverage may be served in such designated smoking rooms, ~~which shall be in a location that 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 state department of health as authorized in 21 O.S. Sec. 1247.
- I. ~~H.~~ 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 to the building indicating that the place is smoke-free or tobacco-free.
- J. ~~I.~~ Responsibility for posting signs or decals shall be as follows:
1. In privately owned facilities, the owner or lessee, if a lessee is in possession of the facilities, shall be responsible; and,
 2. In corporately owned facilities, the manager and/or supervisor of the facility involved shall be responsible; and,
 3. In publicly owned facilities, the manager and/or supervisor of the facility shall be responsible. For all public buildings owned by the City of Lawton, the City Manager

or his/her designee ~~Parks and Recreation Department Director~~ shall be responsible for posting all appropriate signs and decals.

K. ~~J.~~ Any person who knowingly violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00).

Subsection A.

1. No school or landlord may refuse to enroll or lease to and may not otherwise penalize a person solely for his or her status as a licensed medical marijuana patient, unless failing to do so would cause the school or landlord the potential to lose a monetary or licensing-related benefit under federal law or regulations.

Subsection B.

1. Unless a failure to do so would cause an employer the potential to lose a monetary or licensing-related benefit under federal law or regulations, an employer may not discriminate against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a person based upon the status of the person as a licensed medical marijuana patient.
2. Employers may take action against a licensed medical marijuana patient if the licensed medical marijuana patient uses or possesses marijuana while in his or her place of employment or during the hours of employment. Employers may not take action against the licensed medical marijuana patient solely based upon the status of an employee as a licensed medical marijuana patient or the results of a drug test showing positive for marijuana or its components.

Subsection C. For the purposes of medical care, including organ transplants, the authorized use of marijuana by a licensed medical marijuana patient shall be considered the equivalent of the use of any other medication under the direction of a physician and does not constitute the use of an illicit substance or otherwise disqualify a registered qualifying patient from medical care.

Subsection D. No licensed medical marijuana patient may be denied custody of or visitation or parenting time with a minor child, and there is no presumption of neglect or child endangerment for conduct allowed under this law, unless the behavior of the person creates an unreasonable danger to the safety of the minor child.

Subsection E. No licensed medical marijuana patient may unduly be withheld from holding a state-issued license by virtue of their being a licensed medical marijuana patient including, but not limited to, a concealed carry permit.

Subsection F.

1. The City of Lawton may not unduly change or restrict zoning laws to prevent the opening of a medical marijuana dispensary. For purposes of this subsection, an undue change or restriction of municipal zoning laws means an act which entirely prevents medical marijuana dispensaries from operating within municipal boundaries as a matter

of law. Municipalities may follow their standard planning and zoning procedures to determine if certain zones or districts would be appropriate for locating marijuana-licensed premises, medical marijuana businesses or any other premises where marijuana or its by-products are cultivated, grown, processed, stored or manufactured.

2. For purposes of this section, a medical marijuana dispensary does not include those entities licensed by the State Department of Health as marijuana-licensed premises, medical marijuana businesses or other facilities or locations where marijuana or any product containing marijuana or its by-products are cultivated, grown, processed, stored or manufactured.

Subsection G. The location of any retail marijuana establishment is specifically prohibited within one thousand (1,000) feet of any public or private school entrance.

SECTION 3. Section 15-4-403 is hereby amended to read as follows:

15-4-403 Use of tobacco and vapor products, nicotine, marijuana, or other lawful products in municipal vehicles prohibited.

* * *

~~Both tobacco use and the use of vapor products shall be prohibited~~ The use of tobacco, nicotine, marijuana, or other lawful products consumed in a smoke or vaporized manner, or any other form are prohibited in all city owned or leased vehicles.

* * *

SECTION 4. Section 15-4-404 is hereby amended to read as follows:

15-4-404 Administrative penalties for municipal employees.

* * *

A. City of Lawton employees who: (1) are observed using tobacco ~~or vapor products~~, nicotine, marijuana, or other lawful products consumed in a smoke or vaporized manner, or any other form, in a municipal building or on property owned or operated by the City of Lawton, or (2) are found to have otherwise violated Section 15-4-403 of this article, are subject to disciplinary action as provided by either city code or any applicable collective bargaining agreement.

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B. All City of Lawton supervisory personnel shall ~~ask~~ direct individuals observed using any tobacco ~~or vapor products~~, nicotine, marijuana, or other lawful products consumed in a smoke or vaporized manner, or any other form, in any municipal building or on any property owned or operated by the city, to cease or refrain from using such ~~tobacco or vapor products~~ while in said building or on said property. Any on duty employee observing another on duty employee using tobacco ~~or a vapor product~~, nicotine, marijuana, or other lawful products consumed in a smoke or vaporized manner, or any other form in a municipal building, municipal vehicle or on property owned or operated by the city shall report the violation to their supervisor. The supervisor shall then ~~ask~~ direct the employee to cease or refrain from using tobacco ~~or vapor products~~, nicotine, marijuana, or other lawful products consumed in a smoke or vaporized manner, or any other form, while on/in city property and shall report the employee committing the infraction to that employee's department director. The department director shall then conduct an investigation and,

if appropriate, discipline the employee in accordance with city code or any applicable collective bargaining agreement.

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C. In addition to the administrative penalties herein, nothing in this section shall preclude any criminal charges being brought for violations under Section 15-4-402.

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SECTION 5. Renumbering.

The provisions of Sections 15-4-402, Chapter 15, Lawton City Code, 2015, shall be renumbered consecutively to reflect the new numbering of paragraphs of said sections as amended by this ordinance as to avoid duplication or omission of numbers and/or letters in said sections.

SECTION 6. 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, said portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this ordinance.

ADOPTED and APPROVED by the Council of the City of Lawton, Oklahoma, this ____ day of _____, 2022.

STAN BOOKER, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK

APPROVED as to form and legality this ____ day of _____, 2022.

JOHN RATLIFF, CITY ATTORNEY

ORDINANCE NO. 22-____

AN ORDINANCE PERTAINING TO NUISANCES AND HEALTH, AMENDING SECTIONS 15-4-401, 15-4-402, 15-4-403 AND 15-4-404, CHAPTER 15, LAWTON CITY CODE, 2015, BY ADDING DEFINITIONS, DESIGNATING CERTAIN PROPERTY AS SMOKE-FREE, CLARIFYING LANGUAGE RELATED TO SMOKING IN CERTAIN PUBLIC AREAS, ADDING LANGUAGE CONCERNING DISCRIMINATION AGAINST LICENSED MEDICAL MARIJUANA PATIENTS, USE PROHIBITED IN MUNICIPAL VEHICLES, PENALTIES FOR MUNICIPAL EMPLOYEES, AND PROVIDING FOR SEVERABILITY.

Brief Gist

This ordinance relating to nuisances and health adding definitions, designating certain property as smoke-free, clarifying language for smoking in public places, prohibition and penalties for municipal employees, and adding anti-discrimination language against licensed medical marijuana patients.

ADOPTED and APPROVED by the Council of the City of Lawton, Oklahoma, this ____ day of _____, 2022.

STAN BOOKER, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK

(Published in *The Lawton Constitution* this ____ day of _____, 2022)