

**ORDINANCE NO. 2007-09-082**

**AN ORDINANCE OF THE CITY OF MCKINNEY, TEXAS, ADOPTING NEW SMOKING REGULATIONS TO BE DESIGNATED AS SECTIONS 20-133 THROUGH 20-137 OF ARTICLE IX, OF CHAPTER 20, OFFENSES— MISCELLANEOUS; PROVIDING A REPEALING CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on 12-17-91, the City Council of the City of McKinney passed Ordinance No. 1926, adopting regulations governing smoking; and

**WHEREAS**, the City Manager of the City of McKinney has recommended revisions to the current smoking regulations to protect the health, safety and welfare of citizens by creating a smoke free environment for the City of McKinney; and

**WHEREAS**, it is a generally accepted principle that the use of cigarettes, second-hand smoke and other tobacco products constitute a hazard to a person's health; and

**WHEREAS**, the purpose of this Ordinance is to improve and protect the public's health by eliminating smoking in public places and places of employment and;

**WHEREAS**, upon recommendations of the City Manager and upon full review and consideration of all matters attendant and related thereto, the City Council finds and determines that it is necessary to repeal portions of Ordinance No. 1926, codified in Article IX of Chapter 20 of the Code of Ordinances for the City of McKinney, Texas and replace those portions of the ordinance with this new regulation designated as Sections 20-133 through 20-137 of Article IX of Chapter 20.

**NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:**

**Section I.** Except as provided for herein and in Section VII of this Ordinance, on January 1, 2008, Ordinance No.1926, passed on 12-17-91, codified in Article IX, Chapter 20 of the Code of Ordinances, is hereby amended in part to repeal Sections 20-126 through 20-130 and Section 20-132 and adopt the provisions of Section II which shall be effective upon adoption, except for those businesses that are excepted from the January 1, 2008 effective date as outlined in Section VII, below. On September 4, 2008, those businesses that were excepted from the January 1, 2008 effective date pursuant to Section VII, Ordinance No.1926, passed on 12-17-91, codified in Article IX, Chapter 20 of the Code of Ordinances, shall be amended in part, at which time Sections 20-126 through 20-130 and Section 20-132 shall be repealed and the provisions of Section II shall be effective.

**Section II.** Sections 20-133 through 20-137 of Article IX of Chapter 20 of the Code of Ordinances of the City of McKinney, Texas, shall hereby be adopted to read as follows:

**“ARTICLE IX. SMOKING”**

**Section 20-133 Places where smoking is prohibited.**

A. Smoking shall be prohibited in most public places and enclosed places of employment within the city, including, but not limited to, the following places:

1. Within any enclosed facility within all places of employment and/or within any enclosed area available to and customarily used by the general public in all businesses, including but not limited to, retail stores, offices, banks, laundromats, warehouses, manufacturing facilities, leasing centers, food establishments and restaurants, including private club restaurants, and country clubs, except where specifically provided for in Section 20-134.A, below;
2. Hotels and motels, except as provided for in Section 20-134.A.8, below;
3. Buses, bus terminals, taxicabs, airports and other facilities and means of public transit, as well as ticket, boarding, and waiting areas of public transit depots;
4. Movie theaters, drama and recital theaters, lecture halls, galleries, libraries, museums, conference centers, meeting rooms, and outdoor amphitheaters;
5. In or within 25 feet of sports stadiums, stadium seating, ticketing, queuing, and waiting areas, concession stands, and restrooms, whether public or private;
6. In public parks, including but not limited to public recreation fields, pools, children's playground equipment, concession stands, and restrooms, except as provided for in Section 20-134.A.5, below;
7. Waiting rooms, hallways, wards, private and semiprivate rooms of physical and mental health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;
8. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
9. Elevators;
10. Restrooms, lobbies, reception areas, hallways and any other common-use areas;
11. Service lines and waiting queues, whether indoor or outdoor;
12. Polling places;
13. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city; and
14. Within 25 feet of any door, operable window/vent or other opening to an indoor enclosed area.

**Section 20-134 Places where smoking is not prohibited.**

A. Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

1. Private residences, including porch and yard areas, except when used as a child care, adult day care, health care facility, or home occupation;
2. Personal automobiles;
3. Outdoor places of employment, except where employees have to provide the public with service such as food or beverage service, within

25 feet of any door, operable window/vent or other opening to an indoor enclosed area, service lines and waiting queues, or as prohibited in Section 20-133.A, above;

4. Public sidewalks, except within 25 feet of any door, operable window/vent or other opening to an indoor enclosed area, service lines and waiting queues, or as prohibited in Section 20-133.A, above;
5. Parking lots within public parks, except within 25 feet of any door, operable window/vent or other opening to an indoor enclosed area, service lines and waiting queues, or as prohibited in Section 20-133.A, above;
6. Retail tobacco stores, where a retail store is utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. Separate ventilation and HVAC systems that prevent the commingling of air with other businesses, common areas, hallways and other non-smoking areas shall be required;
7. Enclosed areas within private clubs that are not customarily used by or accessible to the general public may be designated as a smoking room for the use of tobacco products, subject to the following definitions and requirements:
  - a. For purposes of Section 20-134, "private club" shall mean any club wherein:
    - i. the membership is not open to the general public; and
    - ii. the club's land and improvements are owned or controlled by the members, where "controlled by" shall mean through a long term lease or other managing interest in real property such as may commonly be found in private country clubs or fraternal organizations.
  - b. For purposes of Section 20-134, "private club" shall not mean a private club restaurant as defined in the Zoning Ordinance of the City of McKinney or by Texas Alcoholic Beverage Commission.
  - c. Smoking rooms shall meet all of the following physical and operational standards:
    - i. smoking rooms shall be required to post signs at the entrance to the room that state "Smoking Room, Members Only";
    - ii. smoking rooms shall be required to provide a foyer with two doors separating the smoking and non-smoking areas;
    - iii. smoking rooms shall be required to provide separate ventilation and HVAC systems that prevent the commingling of air with any other part of the private club; and
    - iv. smoking rooms shall be separate from the private country club's banquet or dining areas, bar or lounge areas, employee areas, kitchens, retail and pro shop areas, locker rooms, restrooms, other common areas, hallways, and other non-smoking areas and shall not be operated

with food or beverage service except in a self-serve manner.

8. Not more than ten percent (10%) of hotel and motel rooms rented to guests shall be designated as smoking rooms. The following standards shall apply:
  - a. All smoking rooms shall be on the same floor, shall be contiguous to the other smoking rooms and shall be configured and ventilated in a manner to restrict the smoke from these rooms from infiltrating into areas where smoking is prohibited under provisions of this article;
  - b. Separate ventilation and HVAC systems that prevent the commingling of air with other rooms, hallways and all other non-smoking areas shall be required; and
  - c. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

**Section 120-135 Posting of signs.**

A. The owner, manager or other person having control of such building or premise where smoking is prohibited by this chapter shall have a conspicuously posted sign clearly stating "no smoking" at each entrance, whether for the public, employees or deliveries, and at restroom entrances.

B. Such "No Smoking" signs shall have bold lettering of not less than one inch in height. The international "No Smoking" symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).

C. Any owner, manager, or other person having control of any establishment regulated by this chapter shall be responsible for posting appropriate signage.

**Section 120-136 Enforcement.**

A. Enforcement of this chapter shall be implemented by the City Manager or his/her designee by issuance of a citation.

B. It is the duty of the owner, manager, operator or person-in-charge of any establishment regulated by this chapter:

1. To post signs in accordance with Section 120-135 of this article;
2. To not provide ashtrays, matches, lighters or other smoking related paraphernalia in a regulated premise;
3. To advise a person who violates this article that smoking is not allowed; and
4. To request a person remove themselves from this location after that person has been advised that smoking is not allowed and that person willfully continues to smoke.

**Section 120-137 Offenses and penalties.**

A. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.

B. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with the following sections and subsections of this ordinance:

1. Section 120-136.B; and
2. Sections 120-137.A and 120-137.B.

C. Any person who violates any provision of this chapter shall be guilty of a misdemeanor infraction, punishable by a fine not to exceed five hundred dollars (\$500).

D. Every act in violation shall constitute a separate offense.

E. Unless otherwise specifically set forth herein allegation and evidence of culpable mental state are not required for the proof of an offense of this chapter."

**Section III.** Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine not to exceed five hundred dollars (\$500) for each offense. Every act in violation of this Ordinance shall constitute a separate offense.

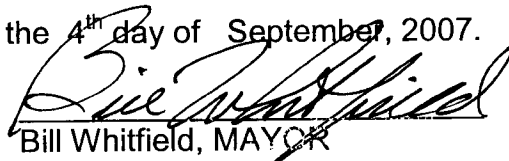
**Section IV.** The repeal of any ordinance or part of ordinances caused by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinances at the time of passage of this ordinance.

**Section V.** It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

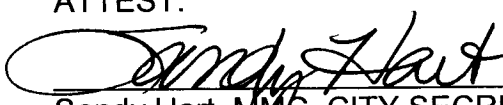
**Section VI.** All provisions of the ordinances of the City of McKinney, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the ordinances of the City of McKinney, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**Section VII.** This ordinance shall become effective on January 1, 2008; however, any existing business located on private property and holding a valid Certificate of Occupancy dated on or prior to December 31, 2007 that will be regulated under Sections 20-133.A.1 and 20-133.A.2 and/or any such business requiring physical improvements to their business in order to meet the required standards listed in Sections 20-134.A.6, 20-134.A.7, or 20-134.A.8 shall continue to be regulated pursuant to Ordinance 1926, passed on 12-17-91, until September 4, 2008. On September 4, 2008 at 12:00 a.m. the provisions of this ordinance shall become effective for these excepted businesses and this Ordinance shall apply to all locations as listed in Section 20-133, above.

**DULY PASSED AND APPROVED** this the 4<sup>th</sup> day of September, 2007.

  
Bill Whitfield, MAYOR

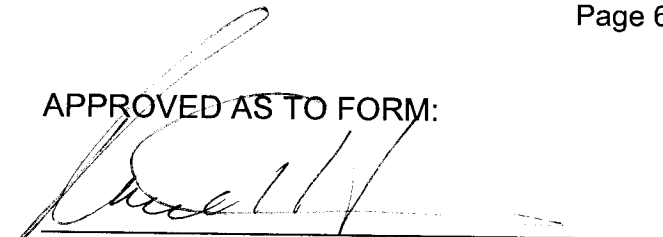
ATTEST:

  
Sandy Hart, MMC, CITY SECRETARY  
Beverly Covington, CMC, Deputy City Secretary

DATE:



APPROVED AS TO FORM:



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Mark Houser, CITY ATTORNEY