

CITY OF WILBURTON  
STATE OF OKLAHOMA

ORDINANCE NO. 16-1097

AN ORDINANCE AMENDING CHAPTER 11, HEALTH AND SAFETY, ADDING ARTICLE 6. REGULATING THE USE OF LIGHTED TOBACCO PRODUCTS TO PROVIDE FOR THE PUBLIC HEALTH, SAFETY, AND WELFARE BY DISCOURAGING THE INHERENTLY DANGEROUS BEHAVIOR OF LIGHTED TOBACCO PRODUCT USE AROUND NON-USERS, ESPECIALLY CHILDREN, BY PROTECTING THE PUBLIC FROM EXPOSURE TO SECONDHAND SMOKE WHERE PEOPLE WORK, PLAY, AND LEARN; BY REDUCING THE POTENTIAL FOR CHILDREN TO WRONGLY ASSOCIATE LIGHTED TOBACCO PRODUCTE USE WITH A HEALTHY LIFESTYLE; AND BY AFFIRMING AND PROMOTING A HEALTHY ENVIRONMENT IN THE CITY OF WILBURTON.

BE IT ORDAINED BY THE CITY COUNCIL OF WILBURTON, OKLAHOMA:

CHAPTER 11, HEALTH AND SAFETY, IS AMENDED TO READ: Article 6. REGULATING THE USE OF LIGHTED TOBACCO PRODUCTS OF THE WILBURTON CITY CODE, effective January 1, 2017.

Section 11-22. The following words and phrases, whenever used in this Article, shall have the meanings defined in this section unless the context clearly requires otherwise:

1. Indoor Area means any enclosed area used or visited by employees or the public, at all times, regardless of whether work is being performed. Indoor Area includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees, as well as 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.
2. Municipal Property means all buildings, Indoor Areas, and Outdoor Areas, including but not limited to recreational areas, and other property, or portions thereof, owned or operated by the City, including but not limited to, vehicles and equipment owned by the municipality.
3. Outdoor Area means any area that is not an Indoor Area, and includes outdoor recreational areas.
4. Smoking means the carrying by a person of a lighted cigar, cigarette, pipe, or other lighted smoking device.
5. Tobacco Product means any product that contains tobacco and is intended for human consumption. Tobacco Product does not include any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product.

Section 11-23. Prohibited Conduct

1. Smoking Tobacco Products is prohibited in all places in which Smoking Tobacco Products is prohibited by Oklahoma state law. This provision reiterates the Smoking limits in state law, which allows a local government to enforce smoking violations locally.
2. Smoking Tobacco Products is prohibited on all Municipal Property, indoor and outdoor, including parks and recreational areas. This provision prohibits the use of Smoking Tobacco Product on local government property. It applies to both indoor and outdoor areas.

3. Nothing in this Article prohibits any person or entity from prohibiting the use of lighted Tobacco Products on their property, even if the use of lighted Tobacco Products is not otherwise prohibited in that area.
4. No person or entity shall knowingly permit the use of lighted Tobacco Products in an area that is under the control of that person or entity and in which the use of lighted Tobacco Products is prohibited by law.
5. No person or entity shall permit the placement of ash receptacles, such as ash trays or ash cans, within an area under the control of that person or entity and in which Smoking is prohibited by law. However, the presence of ash receptacles shall not be a defense to a charge of the use of lighted Tobacco Products in violation of any provision of this Article.
6. No person or entity shall intimidate, threaten, or otherwise retaliate against another person or entity that seeks to attain compliance with this Article.

#### Section 11-24. Required Signs

1. The person or entity that has legal or de facto control of an area in which the use of lighted Tobacco Products is prohibited by this Article shall post a clear, conspicuous, and unambiguous sign at each point of entry to the area, and in at least one other conspicuous point within the area.
2. For restrictions on the use of lighted Tobacco Products in Indoor Areas, the sign or decal shall be at least 4 inches by 2 inches in size and shall clearly state that smoking is prohibited or that a smoke free environment is provided. For restrictions on the use of lighted Tobacco Products in Outdoor Areas, signs shall be weather-resistant, at least 15 inches by 15 inches in size, with lettering of at least 1 inch, and shall clearly state that smoking is prohibited or that a smoke free environment is provided.
3. For purposes of this section, the Mayor or his designee shall be responsible for the posting of signs on Municipal Property, both indoor and outdoor.
4. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of the use of lighted Tobacco Products in violation of any other provision of this Article.

#### Section 11-25. Penalties and Enforcement

1. The possession of a lighted Tobacco Product in violation of this Article is a nuisance.

#### Section 11-26. Statutory Construction & Severability

It is the intent of the City Council of the City of Wilburton to supplement applicable state and federal law and not to duplicate or contradict such law. The provisions of this ordinance are severable, and the invalidity of any provision of the ordinance shall not affect other provisions of the ordinance, which can be given effect without the invalid provision.

\*\*\*END\*\*\*

The undersigned hereby certifies that the foregoing Ordinance was introduced before the City Council of Wilburton, Oklahoma on the 10<sup>th</sup> day of November, 2016, and was duly adopted and approved by the Mayor and City Council, on the 10<sup>th</sup> day of November, 2016, after compliance with notice requirements of the Open Meeting Law (25 OSA, Sections 301, et. seq.).

CITY COUNCIL OF WILBURTON, OKLAHOMA

By:   
STEPHEN C. BRINLEE, Mayor

ATTEST:



*Cindee Blankenship*  
CINDEE BLANKENSHIP, City Clerk

Approved as to form and legality on *November 10, 2016*

*Wesley Brown*  
WESLEY BROWN, City Attorney