

**ORDINANCE 2019-02**

**AN ORDINANCE AMENDING ORDINANCE 2018-06 REGULATING  
SMOKING IN THE CITY OF AUSTIN**

WHEREAS, the Common Council of the City of Austin desires to amend Ordinance 2018-06 which regulates smoking in the City of Austin; and

WHEREAS, the Common Council of the City of Austin desires to exempt certain places and locations from said regulation.

THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF AUSTIN that Ordinance 2018-06 is hereby amended and recodified as follows<sup>1</sup>:

**SECTION 1: DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**PERSON.** Any man, woman, or child, regardless of age.

**PLACE OF EMPLOYMENT.** Any area under the control of a public or private employer including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles.

**PUBLIC PLACE(S).** Any area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A

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<sup>1</sup> Any revised language is indicated by underlined font.

private residence is not a “public place” unless it is used as a childcare, adult day care, or health care facility.

**RETAIL TOBACCO STORE.** Means a retail store that meets the following requirements: (A) The owner or operator of the store holds a valid tobacco sales certificate issued under IC 7.1-3-18.5; (B) The store prohibits entry by an individual who is less than eighteen (18) years of age; (C) The sale of products other than tobacco products and tobacco accessories is merely incidental; (D) The sale of tobacco products accounts for at least eighty-five percent (85%) of the store’s annual gross sales; and (E) Food or beverages are not sold in a manner that requires consumption on the premises, and there is not an area set aside for customers to consume food or beverages on the premises. “Retail tobacco store” does not include a tobacco department of a larger commercial establishment such as a grocery store, convenient store, discount store or hotel.

**SMOKE or SMOKING.** Means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. “Smoking” also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

**TOBACCO.** Any of several plants belonging to the genus *Nicotiana*, of the nightshade family, especially one of those species, as *N. tabacum*, whose leaves are prepared for smoking or chewing or as snuff; the prepared leaves, as used in cigarettes, cigars, and pipes, any product or products made from such leaves; any of various similar plants of other genera.

**SECTION 2: SMOKING IN PUBLIC PLACES PROHIBITED.**

A. *Prohibition of smoking in public places.* Smoking shall be prohibited in any public place, including, but not limited to, the following areas:

1. Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, without limitation, 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.
2. All school buildings and grounds, including athletic facilities located within the Scott County School District 1, pursuant to the policy of Scott County School District 1;
3. In, and within fifteen (15) feet of, all outdoor playgrounds;
4. All other governmental buildings and grounds pursuant to policies adopted by such governmental entities;
5. Notwithstanding the foregoing prohibition, the Mayor, in his or her discretion, may provide a location for smoking outside city-owned buildings and on city-owned grounds that shall be a designated smoking area to be used only by employees of the city during a permissible work break. Such a designated location shall meet the conditions of division B below. An appropriate container shall be provided by the city at such location in order to avoid the accumulation of trash and debris and cigarette residue.

B. *Reasonable distance.* Smoking shall occur at least fifteen (15) feet outside any area where smoking is prohibited to ensure that tobacco smoke does not enter the area through

entrances, windows, ventilation systems, or any other means. It shall be a violation for smoke to be detected in any area where smoking is prohibited.

C. *Posting of signs - removing of paraphernalia.*

1. “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently, and conspicuously posted in every building or other area where smoking is prohibited by this section, by the owner, operator, manager, or other person having control of such building or other area.
2. Every public place where smoking and tobacco is prohibited by this section shall have posted at every entrance, a conspicuous sign clearly stating that smoking and tobacco is prohibited.
3. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this section, by the owner, operator, manager, or other person having control of such area.

D. Where Smoking Not Regulated. Notwithstanding any other provision of this Article to the contrary, smoking shall not be prohibited in the following locations:

1. Private residences, except when used as a licensed child care, adult day care, or health care facility;
2. Retail tobacco stores.

E. None of the areas in the preceding subsection shall be exempt from the provisions of this Section if the smoke from smoking enters any area, through entrances, windows, ventilation systems, or other means, where smoking is otherwise prohibited by this chapter.

F. Any business claiming an exemption shall provide to any enforcement agency within three (3) business days of demand, adequate written proof that it qualifies for the exemption claimed. Such written proof shall be certified under the penalties for perjury by an authorized representative of the business.

G. Any establishment exempted under this Section shall clearly and conspicuously post the following sign at every entrance: "Warning: This is a Smoking Establishment."

H. *Enforcement.*

1. This Article shall be enforced by the Scott County Health Department.
2. Any citizen who desires to register a complaint under this Article may initiate enforcement with the Scott County Health Department.
3. A city duly authorized ordinance control officer may, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
4. An owner, manager, operator, or employee of an area regulated by this Article shall direct a person who is smoking in violation of this Article to extinguish or turn off the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
5. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.

6. In addition to the remedies provided by the provisions of this Section, the city or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.


I. *Violations and penalties.*

1. It shall be unlawful for any person who owns, operates, or otherwise controls the use of any premises subject to regulation under this section to fail to comply with any of its provisions.
2. It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to regulation under this section to knowingly or willingly allow smoking to occur where prohibited by this section. It is a defense to this section, if the foregoing persons or their employees act in a reasonable and timely manner to personally inform the violator of the prohibition and request that he/she refrain from smoking.
3. It shall be unlawful for any person to smoke in an area where smoking is prohibited by the provisions of this section.
4. Any person who violates any provision of this section shall be subject to a fine of \$25 for each violation of this section.
5. In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

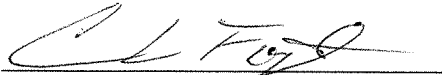
6. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the city attorney at the direction of the Mayor by restraining order, preliminary and permanent injunction, or other means provided for by law, and the city may take action to recover the costs of the nuisance abatement.
  7. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.
- J. *Public education.* The city may engage in programs to explain and clarify the purposes and requirements of this section to citizens affected by it, and to lead owners, operators, and managers in their compliance with it.
- K. *Liberal Construction.* This Article shall be liberally construed so as to further its purposes.
- L. *Severability.* If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.
- M. *Other applicable laws.* This section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable state or local laws.

PASSED AND ADOPTED by the Common Council of the City of Austin, Indiana on the 11<sup>th</sup> day of March 2019 by a vote of 5 to 0.

Common Council City of Austin, Indiana

  
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Brandon White, President

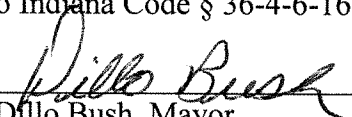
Attest:

  
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Chris Fugate, Clerk-Treasurer


Presented by me to the Mayor of the City of Austin for his approval or veto pursuant to Indiana Code § 36-4-6-15 and 16, this 11<sup>th</sup> day of March 2019 at 6:20 p.m.

  
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Chris Fugate, Clerk-Treasurer

This Ordinance having been passed by the legislative body and presented to me is approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)(1), this 11<sup>th</sup> day of March 2019 at 6:21 p.m.

  
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Dillo Bush, Mayor

Attest:

  
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Chris Fugate, Clerk-Treasurer

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