

ORDINANCE NO. 16-10-13

TOBACCO-FREE AND VAPOR-FREE ORDINANCE FOR LOCAL GOVERNMENT PROPERTY

SECTION I.

It is the intent of the Board of Trustees, in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of tobacco product and vapor 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 tobacco product and vapor product use with a healthy lifestyle; and by affirming and promoting a healthy environment in the Town of Kiowa.

- A. Definitions: The following words and phrases, whenever used in this article, shall have the meanings defined in this section unless the context clearly requires otherwise:
- a. 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, and 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.
 - b. 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 Town of Kiowa including but not limited to vehicles and equipment owned by the municipality.
 - c. Outdoor Area means any area that is not an Indoor Area, and includes outdoor recreational areas.
 - d. Smoking means the carrying by a person of a lighted cigar, cigarette, pipe, or other lighted smoking device.
 - e. 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.
 - f. Vapor Product means any noncombustible product that may or may not contain nicotine that employs 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 Product shall include any vapor cartridge or other container with or without nicotine 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, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, or electronic device.
- B. Prohibited Conduct
- a. Smoking Tobacco Products is prohibited in all places in which Smoking Tobacco Products is prohibited by Oklahoma state law.
 - b. Using Tobacco Products and Vapor Products is prohibited on all Municipal Property, indoor and outdoor, including parks and recreational areas.
 - c. Nothing in this article prohibits any person or entity from prohibiting the use of Tobacco Products or Vapor Products on their property, even if the use of Tobacco Products or Vapor Products is not otherwise prohibited in that area.
 - d. No person or entity shall knowingly permit the use of Tobacco Products or Vapor Products in an area that is under the control of that person or entity and in which the use of Tobacco Products or Vapor Products is prohibited by law.
 - e. 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 Tobacco Products or Vapor Products in violation of any provision of this article.

- f. No person shall dispose of Tobacco Product or Vapor Product waste within an area in which the use of Tobacco Products or Vapor Products is prohibited.
- g. No person or entity shall intimidate, threaten, or otherwise retaliate against another person or entity that seeks to attain compliance with this article.

C. Required Signs

- a. The person or entity that has legal or de facto control of an area in which the use of Tobacco Products or Vapor 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.
- b. For restrictions on the use of Tobacco Products or Vapor 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 or tobacco use is prohibited or that a tobacco-free environment is provided. For restrictions on the use of Tobacco Products or Vapor 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 or tobacco use is prohibited or that a tobacco-free environment is provided.
- c. For purposes of this section, the Town Superintendent or his/her designee shall be responsible for the posting of signs on Municipal Property, both indoor and outdoor.
- d. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of the use of Tobacco Products or Vapor Products in violation of any other provision of this article.

D. Penalties and Enforcement


- a. Enforcement of this chapter shall be the responsibility of Town of Kiowa. In addition, any peace officer or code enforcement official may enforce this chapter.
- b. Any person who knowingly violates this article shall be punished by a citation and fine of not less than **\$98.00** fine plus cost and not more than **\$172.00** fine plus cost in accordance with article Chapter 1 Section 1-108 of the Town of Kiowa Ordinance Book.
- c. The possession of a lighted Tobacco Product in violation of this article is a nuisance.
- d. The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity.
- e. Each instance of Tobacco Product or Vapor Product use in violation of this article shall constitute a separate violation.
- f. The use of a Vapor Product in violation of this article is a nuisance.
- g. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this article regarding Tobacco Product or Vapor Product use shall also constitute a violation of this article.
- h. In addition to other remedies provided by this article or by other law, any violation of this article regarding Tobacco Product or Vapor Product use may be remedied by the Town Attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings, criminal code enforcement proceedings, and suits for injunctive relief.

SECTION II. Statutory Construction & Severability

It is the intent of the Board of Trustees of the Town of Kiowa 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.

ADOPTED this 13th day of October, 2016

ATTEST:


Town Clerk

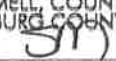

Mayor

Approved as to form and legality this 13th day of October, 2016

FILED

By:


Town Attorney

OCT 25 2016
TIME 3:44 PM
HOPE TRAMMELL, COUNTY CLERK
PITTSBURG COUNTY
BY  DEPUTY



APPENDIX A: FINDINGS

The Board of Trustees of the Town of Kiowa hereby finds and declares as follows:

WHEREAS, 21.1 percent of adults in Oklahoma smoke;¹ and
WHEREAS, tobacco use is the leading preventable cause of death, killing more than 7,500 Oklahomans every year;² and
WHEREAS, tobacco use can cause disease in nearly all organ systems, and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths;³ and
WHEREAS, studies show that separate smoking areas or rooms, air filters, and ventilation systems are insufficient to protect nonsmokers from secondhand smoke indoors;⁴ and
WHEREAS, according to the United States Surgeon General, there is no risk-free level of exposure to secondhand smoke;⁴ and
WHEREAS, nearly 50,000 nonsmokers die each year in the United States as a result of exposure to secondhand smoke;⁵ and
WHEREAS, using vapor products or smokeless tobacco products is not safe;^{6-12, 14-16} and
WHEREAS, research has found that aerosol from vapor products contains chemicals known to cause cancer, birth defects, or other reproductive harm⁶⁻¹² and vapor products may involuntarily expose children, youth, pregnant women, and other bystanders to aerosolized nicotine;^{10,12,13} and
WHEREAS, smokeless tobacco use increases people's risk of heart disease, stroke, and cancer, specifically oral, esophageal, and pancreatic cancers,¹⁴⁻¹⁶ as well as stillbirth and preterm delivery;^{17,18} and
WHEREAS, community policies that fail to prohibit the use of tobacco products normalize tobacco use and make it more likely that people will use tobacco products because they see others using tobacco;¹⁹ and Policy WHEREAS, tobacco use and exposure to secondhand smoke impose an enormous economic burden upon the government, taxpayers, business owners, and individuals through health care costs and lost productivity, as evidenced by the \$1.62 billion Oklahoma spends on smoking-related medical care and \$2.1 billion in lost productivity;² and
WHEREAS, laws restricting the use of tobacco products have demonstrated a high return on investment;²⁰ and
WHEREAS, 81.7 percent of Oklahomans agree that all workplaces in cities and towns should have smoke free policies;²¹ and
WHEREAS, Oklahoma state law prohibits smoking in most indoor workplaces; and
WHEREAS, Oklahoma state law expressly permits municipalities to impose additional regulations on smoking tobacco products on property owned or operated by local governments; and
WHEREAS, Oklahoma state law does not preempt local governments from regulating the use of smokeless tobacco products and vapor products.²²

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