

*(Ordinance Summary published in The Hesston Record on August 22, 2019 and the full text of the Ordinance made available at [www.hesstonks.org](http://www.hesstonks.org) for a minimum of one (1) week from the date of publication.)*

## **ORDINANCE NO. 010-2019-215**

**AN ORDINANCE PROHIBITING THE SMOKING OF TOBACCO PRODUCTS IN DESIGNATED PUBLIC PLACES AND PLACES OF EMPLOYMENT IN THE CITY OF HESSTON, KANSAS; ESTABLISHING DUTIES AND RESPONSIBILITIES IN RELATION TO SUCH PROHIBITIONS; AND ESTABLISHING PENALTIES FOR VIOLATIONS OF SUCH PROHIBITIONS, DUTIES AND RESPONSIBILITIES.**

WHEREAS, the City of Hesston, Kansas (the “City”) acknowledges that secondhand tobacco smoke and e-cigarette vapor poses a threat to the health, safety and welfare of adults and minor children; and

WHEREAS, the City has previously adopted Ordinance No. 010-2007-172 regulating the smoking of tobacco products.

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the City of Hesston, Kansas:

SECTION 1. Ordinance No. 010-2007-172 is hereby repealed.

SECTION 2. The following is hereby adopted as Chapter VIII, Article 8 of the Code of the City of Hesston, Kansas (the “Code”):

### **ARTICLE 8. SMOKING AND TOBACCO USE**

8-801. DEFINITIONS. The following words and phrases, whenever used in this Article, are defined and shall be construed as follows:

- (a) “Electronic Nicotine Delivery Device” means any product delivering nicotine, nicotine salts, or any other substance that can be used by a person to simulate smoking through inhalation of aerosol or vapor from the product. The term includes, but is not limited to, any electronic cigarette, cigar, cigarillo, pipe, or personal vaporizer.
- (b) “Enclosed Public Places” means the portion or portions of any building, structure or other enclosure of any type to which the public is invited or permitted for the transaction of any business or the engagement in any activities, which building, structure or enclosure (or the public portion thereof) is enclosed by floor-to-ceiling walls and by roof or ceiling structures (exclusive of doors, windows and passageways), and includes the

portions thereof provided as public entrances and exits, hallways and passageways, reception areas, lobbies, waiting rooms, elevators and restrooms. Examples of Enclosed Public Places include but are not limited to: retail stores, retail service establishments (including food and/or beverage service establishments and other commercial facilities of all types; professional offices; educational, healthcare, child care and adult day care facilities; indoor recreational and sports facilities; hotels, motels and other places of public accommodation; and convention, conference and meeting facilities.

- (c) “Enclosed Places of Employment” means the portion of any building, structure or other enclosure of any type which is under the possession or control of a public or private employer, which building, structure or enclosure (or the employee- access portion thereof) is enclosed by floor-to-ceiling walls and by roof or ceiling structures (exclusive of doors, windows and passageways), in which the employer’s employees engage in employment-related and other necessary activities, including but not limited to: work areas; lounge, dining and rest areas; restrooms; meeting rooms; and hallways and other passageways.
- (d) “Hookah” means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.
- (e) “Playground” means any outdoor park or Recreational Area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public grounds of the City, and all appurtenant facilities, indoor or outdoor, located thereon.
- (f) “Public Event” means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.
- (g) “Public Place” means an area to which the public is invited or in which the public is permitted.
- (h) “Recreational Area” means any outdoor area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, arenas, stadiums, amusement parks, athletic fields, gardens, parks, skate parks, swimming pools, and trails, and all appurtenant facilities, indoor or outdoor, located thereon.
- (i) “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco

or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" 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.

8-802. PLACES WHERE SMOKING PROHIBITED; EXCLUSIONS.

- (a) Smoking shall be prohibited in all of the following places within the City:
  - (1) Enclosed Public Places.
  - (2) Any other portion of a building, structure or enclosure in which one or more Enclosed Public Places is located unless such portion is completely separated from the Enclosed Public Places by solid, structural walls which extend from floor to ceiling, and is so maintained such that, except for brief intermittent incidents, any doors or windows between such portions and any Enclosed Public Places are maintained in a closed position so as to not allow the passage of air from such portions into the Enclosed Public Places.
  - (3) Enclosed Places of Employment.
  - (4) All enclosed facilities and vehicles owned by the City.
  - (5) Areas near public entrances and exits (including park shelter houses and the golf clubhouse), defined as any indoor or outdoor area which is within a radius of twenty (20) feet of a public entrance to or public exit from any building, structure or enclosure in which one or more Enclosed Public Places is located, or which is within a radius of twenty (20) feet of a ventilation system intake thereto.
  - (6) Outdoor restaurant and bar patio areas, defined as any outdoor patio or dining area which is adjacent to a food and/or beverage service establishment and which is provided for the service and consumption of food or beverages.
  - (7) Outdoor bleacher and concession areas, park shelters, etc., defined as (i) the fixed portions of any outdoor stadium, arena, ballfield or other sporting event area which is provided for the use of spectators (such as bleachers and other seating areas), or as public entrances or exits, concession areas, or restrooms, the prohibition extending during the course of any such public event, and for one hour prior to and one hour after such event, and (ii) the portion of a public park as to which a shelter is provided for seating, picnic and other

related activities, including a 20- foot perimeter around such park shelter areas.

- (8) Outdoor property owned, leased, or operated by the City and within twenty (20) feet of the boundaries thereof.
- (9) Recreational Areas and within twenty (20) feet of the boundaries thereof.
- (10) Playgrounds and within twenty (20) feet of the boundaries thereof.
- (11) Outdoor Public Events and within twenty (20) feet of the boundaries thereof;
- (12) Outdoor vendor areas, defined as any place which is within a radius of twenty (20) feet of any outdoor vendor where food or goods are being offered for sale to the public.

(b) The following are hereby excluded from the foregoing prohibitions:

- (1) Private residences, except when in use as a licensed childcare, adult day care or health care facility.
- (2) Except within areas described in Section 8-802(a)(5), the smoking prohibitions herein shall not apply to any outdoor property owned by a private individual or private, non-governmental entity.
- (3) Except within areas described in Section 8-802(a)(5), the smoking prohibitions herein shall not apply to any outdoor areas of the Hesston Municipal Golf Course.
- (4) Private clubs and fraternal organization facilities, defined as the premises of nonprofit fraternal organizations and nonprofit veterans' organizations, as defined in K.S.A. 79-4701, and premises licensed as a class A club under the Kansas Liquor Control Act, K.S.A. 41-101, et seq.
- (5) Hotels, motels, inns, bed-and-breakfast facilities and other facilities for public overnight accommodation may designate up to twenty-five percent (25%) of their sleeping room accommodations as being smoking rooms where smoking is allowed.
- (6) The smoking prohibitions herein shall not apply to any building or facility, or to any meeting or conference room, which has been provided for the exclusive use of others engaged in a private

meeting or function, provided that no employees of the building or facility owner or operator, or of a caterer or other person or entity providing services, are present within such area while smoking is occurring.

- (7) The smoking prohibitions herein shall not apply to performers where smoking is part of a stage production.
- (c) "No Smoking" signage shall be posted at all outdoor property owned and operated by the City.

**8-803. RESPONSIBILITIES OF EMPLOYERS, PROPRIETORS, OWNERS AND MANAGERS.**

- (a) It is recommended that the owner, manager or other person having control of a building, structure or enclosure, or of any portion of a building, structure or enclosure, where smoking is prohibited under the terms of this Ordinance conspicuously post signs at each point of entrance thereto clearly stating that smoking is prohibited.
- (b) No person having control of a place, business, office or other establishment or activity subject to this Ordinance shall knowingly permit, cause, suffer or allow any person to violate the provisions of this Ordinance in that place. Such persons shall take all reasonable steps necessary to prevent or stop smoking in violation of this Ordinance by employees, patrons and visitors in the place, business, office or establishment, including, but not limited to: posting no-smoking signs; verbally asking a person who is smoking to extinguish the smoking materials; refusing service to a person who is illegally smoking; verbally asking anyone illegally smoking to leave the premises; and applying standard business procedures in the same manner for violations of house rules or other local ordinances or state laws.
- (c) No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke-free environment afforded by this Ordinance.

**8-804. VIOLATIONS AND PENALTIES.** It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Ordinance. It shall also be unlawful for any person who owns, manages, operates or otherwise controls any premises subject to regulation hereunder to fail to comply with all provisions of this Ordinance. Each day that any violation of this Ordinance occurs shall constitute a separate offense. Violation of any of the provisions of the Ordinance shall be punishable as follows:

- (a) By a fine not exceeding One Hundred Dollars (\$100.00) for the first violation, not exceeding Two Hundred Dollars (\$200.00) for a second violation occurring within one (1) year from the date of the first violation, and not exceeding Five Hundred Dollars (\$500.00) for a third or subsequent violation occurring within one (1) year from the first violation.
- (b) In addition to any applicable penalty above, a violation of this Ordinance by a person having control of an Enclosed Public Place or an Enclosed Place of Employment as defined herein may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- (c) At the judge's discretion, the judge may suspend the fine in lieu of attendance by the offender, at his or her own expense, in a smoking cessation program recommended by the local health department including the dangers of smoking, tobacco use, and secondhand smoke, OR the offender may provide five (5) hours of community service, cleaning and maintaining the public parks of the City including cigarette and tobacco product removal.

SECTION 3. SEVERABILITY. If any provision, clause, sentence or paragraph of this Ordinance, or the application thereof to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect and be in full force from and after its adoption by the governing body of the City, approval by the Mayor and either (a) publication once in the official newspaper of the City, or (b) publication of a summary of this Ordinance certified as legally accurate and sufficient by the City Attorney.


PASSED AND ADOPTED by the Governing Body of the City of Hesston, Kansas this 12th day of August, 2019.



CITY OF HESSTON, KANSAS

  
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David K. Kauffman, Mayor

ATTEST:

  
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Jason Thrasher, City Clerk