



## Legislation Text

---

**File #:** O-2021-41, **Version:** 1

---

CONSIDERATION OF ORDINANCE O-2021-41 UPON SECOND AND FINAL READING: AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN AMENDING SECTION 10-502 OF ARTICLE V, CHAPTER 10 OF THE CODE OF CITY OF NORMAN DELETING, AMENDING, AND ADDING DEFINITIONS; AMENDING SECTION 10-503 TO PROHIBIT SMOKING OF MARIJUANA AND MARIJUANA VAPING IN CERTAIN PUBLIC PLACES; DELETING SECTIONS 10-504 THROUGH 10-512 CONCERNING PREVENTION OF YOUTH ACCESS TO TOBACCO FOR PURPOSES OF INTERNAL CODE CONSISTENCY; AMENDING AND RENUMBERING SECTION 10-513, DELETING REFERENCES TO SECTIONS 10-504 THROUGH 10-512; AND PROVIDING FOR THE SEVERABILITY THEREOF.

**BACKGROUND:** City Code provisions in Chapter 10 relating to smoking in public places are no longer consistent with current State law. The corresponding State law has received considerable attention, having been amended eight times since the City's last change to its public smoking provisions. The changes outlined below would make the City's Code provisions consistent with State law and eliminate inconsistencies that currently exist with other City Code provisions.

### **DISCUSSION:**

#### *State Law and Preemption*

Oklahoma's Statutes contain two provisions regulating smoking in public places. Both 21 O.S. § 1247 and 63 O.S. 1-1523 prohibit the smoking of tobacco in a public place. However, based on an Oklahoma Attorney General advisory opinion, the preemptive, controlling provisions of State law for municipalities are those found in Title 63. *Question Submitted by: The Honorable Al McAffrey, State Senator, District 46* 2013 OK AG 2, ¶ 20. In Title 63, the State has expressly adopted its intent to preempt any municipality or political subdivision from adopting any regulation promulgated to control smoking in public places, unless such regulations are "the same as provided in this act." 63 O.S. § 1-1527. Thus, a municipality may not adopt legislation which is more stringent than or that is inconsistent with the provisions found in Title 63.

#### *Ordinance Revision*

Many of the proposed changes to the City's Code are not substantive changes and are intended to increase readability, improve internal organizational structure, and delete duplicative provisions found elsewhere in the Code. Substantive or major changes are outlined and described below:

**Definitions:** Changes to State law in 2015 broadened the definition of what constitutes a "Public Place." Prior to the 2015 changes, only certain, named categories of facilities were deemed "public places" (e.g., health facilities, arenas, eating establishments, concert halls, etc.). In effect, the definition of "public places" served to limit the scope of the statute's prohibition on smoking in public since the statute only covered certain establishments and facilities.

In 2015, the definition of “public places” changed to include “any enclosed area where individuals other than employees are invited or permitted.” This language is much broader, expanding the scope of statute’s prohibition on smoking in public. The proposed changes adopt this language, replacing the obsolete, narrow definition of “public places”.

Prohibiting Language: Section 10-503(1) currently contains the following language:

The possession of lighted tobacco in any form is a public nuisance and dangerous to public health and is hereby prohibited when such possession is in any public place, public transportation, or any indoor workplace, except where specifically allowed by law.

The above language is more similar to the wording of the statutory prohibition found in Title 22. The proposed amendments to our Code change the language in 10-503(1) to reflect the language found in Title 63, the appropriate State statutory provision:

Except where specifically allowed by law, no person shall smoke tobacco or marijuana or vape marijuana in a public place, in an indoor workplace, in any vehicle providing public transportation, or at a meeting of a public body.

Under the new language taken from Title 63 the smoking or vaping of marijuana in public spaces is now also prohibited. This amendment reflects the addition of a prohibition on marijuana smoking and marijuana vaping added to the State statute in 2019. Where appropriate, the proposed changes to the City’s Code include additional amendments throughout 10-503 to reflect the addition of the prohibition on marijuana smoking and vaping.

Deletion of 10-504-10-512: The proposed changes include deletion of Sections 10-504-10-512, which pertain to the possession and sale of tobacco to minors. These sections are outdated and obsolete as Chapter 15 already contains current and updated prohibitions on youth access to tobacco and vapor products. Deletion of these sections would maintain internal consistency between Chapters of the City’s Code and remove unnecessary, duplicative provisions. These changes are not substantive and would not impact the City’s ability to enforce prohibitions preventing youth access to tobacco.

**RECOMMENDATION:** Amending Chapter 10, Article V, of the City’s Code will reflect recent changes in controlling State law and provide increased consistency with other Code provisions. Staff recommends adoption of Ordinance O-2021-41.