

City of Houston, Texas, Ordinance No. 2018-\_\_\_\_

**AN ORDINANCE AMENDING ARTICLE IX OF CHAPTER 21 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATED TO THE USE OF SMOKELESS TOBACCO BY COVERED PERSONS AT EVENT SITES DURING PROFESSIONAL SPORTING EVENTS; DECLARING CERTAIN CONDUCT TO BE UNLAWFUL AND PROVIDING PENALTIES THEREFORE; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

\* \* \* \* \*

**WHEREAS**, the U.S. Centers for Disease Control and Prevention (CDC), indicates that the use of smokeless tobacco among youth has not declined significantly since 1999; and

**WHEREAS**, public health authorities, including the Surgeon General of the United States, the CDC and the National Cancer Institute, have found that smokeless tobacco use is hazardous to health and can lead to nicotine addiction; and

**WHEREAS**, the National Cancer Institute states that chewing tobacco and snuff contain 28 cancer-causing agents and the U.S. National Toxicology Program has established smokeless tobacco as a "known human carcinogen"; and

**WHEREAS**, the National Cancer Institute and the International Agency for Research on Cancer report that use of smokeless tobacco causes oral, pancreatic and esophageal cancer; and

**WHEREAS**, the Federal Trade Commission reports that in 2014, these smokeless tobacco companies spent \$600.8 million to advertise and promote their products; and

**WHEREAS**, in a letter to baseball Commissioner Bud Selig following the death of Major League Baseball icon Tony Gwynn, nine leading health care organizations, including the American Medical Association and the American Dental Association, stated: "Use of smokeless tobacco endangers the health of Major League Ballplayers. It also sets a terrible example for the millions of young people who watch baseball at the ballpark or on TV and often see players and managers using tobacco;" and

**WHEREAS**, the use of smokeless tobacco has become part of the culture of baseball, not only at the professional level, but at every level throughout the sport; and

**WHEREAS**, the strong association of baseball and smokeless tobacco is reinforced by the use of smokeless tobacco by players, coaches and fans at every level of the sport, professional and amateur; and

**WHEREAS**, smoking of tobacco products is already prohibited in all event sites for professional sporting events within the City of Houston; and

**WHEREAS**, on November 30, 2016, Major League Baseball (“MLB”) and the Major League Baseball Players Association agreed to a new, 5-year collective bargaining agreement (“CBA”); and

**WHEREAS**, the new MLB CBA provides, in part:

- (1) Use of tobacco products on the field will be banned in all ballparks where it is prohibited by local law or ordinance; and
- (2) Any player who makes his Major League debut in 2017 or later will be prohibited from using smokeless tobacco on the field in every ballpark; and

**WHEREAS**, the Houston Health Department, the University of Texas MD Anderson Cancer Center, the Harris County Sports Authority, the Greater Houston Partnership, the Harris County Medical Society, the Houston Hispanic Chamber of Commerce, the American Cancer Society Cancer Action Network, and the Campaign for Tobacco Free Kids, support an ordinance prohibiting the use of smokeless tobacco at an event site during professional sporting events; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** That the findings contained in the preamble of this Ordinance are determined to be true and correct.

**Section 2.** That the title of Article IX of Chapter 21 is hereby amended to read as follows:

**“ARTICLE IX. SMOKING AND TOBACCO PRODUCTS”**

**Section 3.** That Section 21-236 of the Code of Ordinances, Houston, Texas, is hereby amended by adding, in the appropriate alphabetical order positions, the following new definitions:

*“Covered person* means any person employed by a professional baseball team or league of such teams while acting in the course and scope of their employment duties at an event site for professional sporting events.”

*“Event site* means the entire physical area of a stadium, ballpark, arena, playing area or other venue where professional sporting events occur. The event site includes all open, semi-open and enclosed spaces

and structures, such as playing fields, dugouts, bullpens, training rooms, locker rooms, team bench areas, offices, bathrooms, dining areas, vendor areas, and recreational areas.”

“*Professional sporting event* means any baseball game engaged in by professional athletes for pay or prize money for which spectators are charged money to observe.”

“*Smokeless tobacco* means any product that contains cut, ground, powdered, or leaf tobacco and is intended to be placed in the oral or nasal cavity, including but not limited to snuff, chewing tobacco, dipping tobacco, dissolvable tobacco and snus.”

**Section 4.** That Article IX, Chapter 24 of the Code of Ordinances, Houston, Texas, is hereby amended by adding, in the appropriate numerical-order position, the following new Section:

**“Sec. 21-239.1 Prohibition of the use of smokeless tobacco by team personnel at event sites for professional sporting events.**

Covered persons are prohibited from using smokeless tobacco at an event site during professional sporting events.”

**Section 5.** That Item (7) of Section 21-242 of the Code of Ordinances, Houston, Texas, is hereby deleted and the subsequent Item is hereby renumbered accordingly.

**Section 6.** That Section 21-244 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**“Sec. 21-244. Posting of signs.**

(a) The owner, operator, manager, or other person in control of a public place, public pedestrian plaza, or place of employment shall clearly and conspicuously post "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) in every place where smoking is prohibited by this article.

(b) The owner, operator, manager, or other person in control of a public place or place of employment shall conspicuously post at every entrance thereto a sign clearly stating that smoking is prohibited therein.

(c) The owner, operator, manager, or other person in control of an event site shall conspicuously post signs clearly stating that the use of smokeless tobacco by covered persons is prohibited.

(d) The owner, operator, manager, or other person in control shall remove all ashtrays from any area where smoking is prohibited by this article.”

**Section 7.** That Section 21-247 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**“Sec. 21-247. Violations and penalties.**

(a) A person commits an offense if he is smoking in an area where smoking is prohibited by the provisions of this article. A covered person commits an offense if he is using smokeless tobacco in an area where using smokeless tobacco is prohibited by the provisions of this article.

(b) It shall be the duty of every person in control of an area where smoking or using smokeless tobacco is prohibited by the provisions of this article to request any person known to be smoking or covered person using smokeless tobacco in such area to either extinguish the burning tobacco product or discontinue the use of the smokeless tobacco. Any knowing or intentional failure to maintain compliance with such duty shall constitute an offense.

(c) Whenever in this article an act is prohibited or is made or declared to be unlawful or an offense or misdemeanor, or whenever in this article the doing of any thing or act is required or the failure to do any thing or act is prohibited, the violation of the provision shall be and constitute a misdemeanor punishable, upon conviction, by a fine not to exceed \$2,000.00.”

**Section 8.** That the City Attorney is hereby authorized to direct the publisher of the Code of Ordinances, Houston, Texas, (the “Code”) to make such nonsubstantive changes to the Code as are necessary to conform to the provisions adopted in this

Ordinance, and also to make such changes to the provisions adopted in this Ordinance to conform them to the provisions and conventions of the published Code.

**Section 9.** That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 10.** That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor.

**PASSED AND APPROVED** this \_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mayor of the City of Houston

APPROVED AS TO FORM: \_\_\_\_\_  
RVG 11/27/2018 Senior Assistant City Attorney  
Requested by Stephen L. Williams, Director, Houston Health Department  
L.D. File No. 0121700001001