



ARTICLE X – REGULATION OF SMOKING

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ARTICLE X REGULATION OF SMOKING

Section 10.01 Definitions

The following words and terms when used in this article shall have the meanings respectively ascribed to them in this section:

"Administrative area" shall mean that part of any place or establishment not generally accessible to the public, including but not limited to individual offices, stock rooms, meeting rooms and employee lounges.

"Billiard hall" shall mean a place of amusement whose chief purpose is providing the use of billiard/pool tables to the public for a fee.

"Bingo parlor" shall mean a facility regulated under V.C.S., Article 179d - "Bingo Enabling Act".

"Bus" shall mean every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons, and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

"Eating establishment" shall mean any place where food is served for on-premises consumption and which is accessible by the public or a substantial group of the public.

"Employee" shall mean any person who is employed by any employer for direct or indirect monetary wages or profit.

"Employer" shall mean any person who employs the services of an individual person or any person in control of the workplace.
(Amend Ord. 93-25, 3/23/93)

"Enclosed" shall mean closed in by a roof and walls with appropriate openings for ingress and egress.

"Motion picture theater" shall mean any theater engaged in the business of exhibiting motion pictures to the public.

"Net floor area" shall mean the total floor area of the interior of an eating establishment, excluding the kitchen, restrooms, storage areas and offices.

"Physically separated section" shall mean areas totally enclosed by walls and doors. (Amend Ord. 93-25, 3/23/93)

"Public business" shall mean any deliberation between a quorum of members of any board, commission, department, committee or agency within the executive or legislative department of the State of Texas, or the City Council or any Board or Commission of the City of Arlington at which any public business or public policy is discussed or considered or at which any formal action is taken.

"Retail or service establishment" shall mean any establishment which sells goods or services to the general public, except eating establishments and establishments regulated by Section 10.04 of this article.

"Smoking" shall mean the combustion of any cigar, cigarette, pipe or similar article using any form of tobacco or other combustible substance in any form.

"Tobacco product" shall mean a cigarette, cheroot, stogie, cigar, snuff, smoking tobacco, chewing tobacco and any article or product made of tobacco or a tobacco substitute.

"Tobacco shop" shall mean a retail establishment whose annual gross revenues from the sale of tobacco products and smoking accessories are at least fifty percent (50%).

"Workplace" shall mean any enclosed area of a structure, or portion thereof, intended for occupancy by employees who provide primarily clerical, professional or business services of a business entity, or which provide primarily clerical, professional or business services to other business entities or to the public at that location. (Amend Ord 91-58, 6/18/91)

Section 10.02 Smoking Prohibited In Public Places

A. Prohibited Places. A person commits an offense if he possesses a burning tobacco product or smokes a tobacco product within:

- a. A public primary or secondary school;
- b. An elevator in buildings generally used by and open to the public, including elevators in office buildings, hotels and multi-family dwellings;
- c. A library;
- d. A museum;
- e. Health care facilities and hospitals;
- f. A transit system bus;
- g. A room or enclosed place of public assembly in which public business is conducted when the public business requires or provides an opportunity for direct participation or observation by the general public;
- h. Indoor or outdoor service lines in which more than one (1) person is giving or receiving goods or services of any kind;
- i. Retail or service establishments;
- j. Public rest rooms;
- k. Every publicly or privately owned theater, auditorium or other enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event or any other performance or event;
- l. Any portion of any publicly or privately owned room, building or other enclosed place to which the public or a substantial group of the public has access, which has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area;
- m. Any portion of any publicly or privately owned unenclosed area to which the public or a substantial group of the public has access, which has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area;
- n. Any seating area of any publicly or privately owned outdoor athletic facility having an overall fixed seating capacity of at least six hundred (600) people and used for the purpose of viewing a single athletic field. For those outdoor athletic facilities exceeding a seating capacity of forty thousand (40,000) people, this subsection shall not become effective until March 1, 1994; or
- o. Any designated seating area of any publicly or privately owned outdoor theater or amphitheater having an overall fixed or temporary seating capacity of at least five thousand (5,000) people or more and used for the purpose of viewing live performances. (Amend Ord 93-07, 2/2/93)

B. Exceptions.

- a. It is an exception to Subsections (A)(1), (A)(3), (A)(4), (A)(5), (A)(9) and (A)(11) that the smoking or possession occurred in an administrative area.
- b. It is an exception to Subsections (A)(5), (A)(9) and (A)(11) that the smoking or possession occurred within an area designated by the owner, manager or operator of the place or establishment as a smoking area as provided in Subsection (D).
- c. It is an exception to Subsection (A)(5) that the smoking or possession occurred in a patient room where smoking was agreeable to all patients assigned to the room and the administrator of the facility; provided that a sign was present on each door leading into the room which stated: "SMOKING IS PERMITTED IN THIS ROOM"; or
- d. It is an exception to Subsection (A) that the smoking or possession was by a person as part of his participation in an authorized theatrical performance.

C. Defenses.

- a. It is a defense to prosecution under this section that the conveyance or public place within which the offense occurred did not have prominently displayed a reasonably sized notice that smoking was prohibited.
- b. It is a defense to prosecution under this section that facilities for the extinguishment of smoking materials were not located within the conveyance or within twenty feet (20') of the public entrances to the place or establishment.
- c. It is a defense to prosecution under Sections 10.02(A)(14) and 10.02(A)(15) that the offense occurred in an open concourse designated as a smoking area by the owner, operator or person in control of the outdoor athletic facility, theater or amphitheater. Such open areas shall not be subject to the ventilation requirements of Section 10.02(D)(4). Private areas not regulated by Sections 10.02(A)(14) and 10.02(A)(15) include but are not limited to indoor private seating areas, press boxes and similar restricted indoor areas. (Amend Ord 93-07, 2/2/93)

D. Designated Smoking Areas.

- a. The owner, manager or operator of a retail or service establishment may designate a public smoking area in such establishment, provided that the area shall be located so as to prevent the exposure to customers of the establishment to secondhand smoke.
- b. The administrator of a hospital or health care facility may designate a public smoking area within such facility, provided that the area shall be located so as to prevent the exposure to patients and the general public to secondhand smoke.
- c. The owner, manager or operator of a theater or auditorium may designate a public smoking room within such facility, provided that the room is enclosed and located so as to prevent the exposure to the general public within the facility to secondhand smoke.
- d. All designated smoking rooms and areas shall be equipped with ventilation systems in compliance with Subsections 10.03(F)(1) and (F)(2). (Amend Ord 94-26, 2/8/94)

- e. All designated smoking rooms and areas shall be subject to the approval of the Health Department.
- f. The total combined floor space of the designated smoking areas or rooms in a structure shall not exceed thirty percent (30%) of the public areas within such structure, excluding restrooms, elevators and eating establishments.
- g. A person commits an offense if he designates or maintains a smoking area or room in violation of this subsection.

E. Eating Establishments. An eating establishment within a use governed by this section shall be governed by Section 10.03.

F. Exemption. Tobacco shops are exempt from the requirements of this section. (Amend Ord 91-58, 6/18/91)

Section 10.03 Regulation of Smoking – Eating Establishments, Bars, Night Clubs, Adult Entertainment Establishments, Billiard Halls, Bingo Parlors and Bowling Centers

A. A person commits an offense if he or she smokes tobacco or possesses a burning tobacco product in an eating establishment, bar, night club, adult entertainment establishment, billiard hall, bingo parlor or bowling center.

B. An owner, manager or operator of an eating establishment, bar, nightclub, adult entertainment establishment, billiard hall, bingo parlor or bowling center commits an offense if he or she allows smoking of a tobacco product.

C. Exceptions:

- 1. It is an exception to Subsection (A) that the smoking or possession occurred in an area designated as a smoking area by the owner, manager or operator of the establishment, and such area is in conformance with this article, and such area is marked as a smoking area.
- 2. It is an exception to Subsection (A) that the smoking or possession occurred in an area regulated by and in conformance with Section 10.06 of this article.
- 3. It is an exception to Subsections (A) and (B) that the eating establishment, bar, night club, adult entertainment establishment, billiard hall or bingo parlor does not allow or employ persons under the age of eighteen (18) years.

D. Defenses.

- 1. It is a defense to a prosecution under Subsection (A) that the establishment did not have prominently displayed a reasonably sized notice that smoking was prohibited.
- 2. It is a defense to a prosecution under Subsection (A) that the facilities for the extinguishment of smoking materials were not located within twenty feet (20') and outside of the public entrances of the establishment.

E. 1. The total designated smoking area in an eating establishment, bar, night club, adult entertainment establishment, billiard hall, bingo parlor and bowling center shall not exceed thirty percent (30%) of the net floor area, provided that the provisions

of Subsections (F)(1) and (F)(2) have been met. For the purpose of bowling centers, net floor area shall mean the total floor area of the interior of a bowling center, excluding bowling lanes, kitchens, offices, restrooms and storage areas.

2. Eating establishments permitted prior to January 1, 1994, which have met the requirement of Subsections (F)(1) and (F)(2) prior to January 1, 1994, may exceed thirty percent (30%) of the net floor space; these establishments may not designate more than fifty percent (50%) of net floor space for smoking.

F. 1. A ventilation system shall provide an air change every fifteen (15) minutes and shall exhaust the air to the exterior of the building and shall not cause air from a smoking area to be drawn across the nonsmoking area.

Exception: An alternate system not complying with the exhaust requirements of this Subsection can be substituted, provided:

- a. Designated smoking areas must be substantially separated from nonsmoking areas by physical means, such as partitions and/or glazing.
- b. Designated smoking areas must be provided a separate heating and cooling system from those serving nonsmoking areas.
- c. The system shall be tested by the City to verify that the system removes visual smoke at a rate of four (4) times per hour and that air from designated smoking areas is not drawn across nonsmoking areas.
- d. Failure to meet these standards will result in the denial of the opportunity to operate a smoking area. Smoking areas failing the prescribed test shall be deemed to be nonsmoking until successfully tested.
- e. The owner shall be required to pass additional tests in the future, as determined by the Health Official, if the adequacy of the system appears to fail to meet the objectives of the ordinance.

2. Determination of the sufficiency of a ventilation system shall be made by the Building Official.

G. A designated smoking area shall be situated so as to minimize the impact of smoke upon pathways and other common areas. Such location shall be subject to the approval of the Health Department of the City of Arlington. The floor space of a bar located in an eating establishment is considered as part of the net floor area of the eating establishment for the purpose of identifying smoking areas.

H. The owner, manager or operator of an eating establishment, bar, night club, adult entertainment establishment, billiard hall, bingo parlor or bowling center commits an offense if he or she designates or maintains a smoking area in violation of this section.

I. 1. An eating establishment, bar, night club, adult entertainment establishment, billiard hall, bingo parlor or bowling center, which does not meet the requirements of Subsections (F)(1) and (F)(2), shall post a sign at all public entrances stating: "No Smoking - City Ordinance."

2. The owner or manager of an establishment governed by this subsection commits an offense if he or she fails to post and maintain the required signs.

3. All children's playgrounds associated with eating establishments shall be nonsmoking. All doors and gates leading to such play areas shall be posted: "No Smoking - City Ordinance."

4. An eating establishment which provides a smoking area must post a sign at all public entrances stating: "Smoking In Designated Areas Only." (Amend Ord. 94-109, 7/19/94)

Section 10.04 Posting of Signs, Placing of Receptacles and Public Address System Announcement Required

A. Signs.

1. A place or conveyance regulated by Section 10.02; that elects to be totally nonsmoking, shall have signs conspicuously posted at all entrances which state: "No Smoking - City Ordinance."
2. If a place or conveyance regulated by Section 10.02, has a designated smoking area, such signs may also state: "Except In Designated Areas."
3. A designated smoking area shall have signs conspicuously posted in the area which state: "Smoking In This Area Only."
4. Establishments exempt under Subsection 10.03(C)(3), which do not provide a nonsmoking area, shall have signs conspicuously posted at all entrances which state: "We Do Not Have A Nonsmoking Area."

B. Receptacles. A place, establishment or conveyance regulated by Sections 10.02 or 10.03, which is partially or totally nonsmoking, shall have facilities for the extinguishment of smoking materials located within twenty feet (20') of all entrances and within all designated smoking areas.

C. Public Address System Announcement. In those outdoor athletic facilities, theaters and amphitheatres where a public address system is used, the owner, operator or person in control of an outdoor athletic facility, theater or amphitheater shall announce prior to each game or performance the prohibition of smoking in seating areas.

1. The owner, manager or operator of a place, conveyance or establishment commits an offense if he fails to post signs and provide extinguishment facilities as required by this section.
2. The owner, manager or operator of a place, conveyance or establishment commits an offense if he places or maintains facilities for the extinguishment of smoking materials in public areas other than as provided for in Subsection (B).

3. The owner, manager or operator of an outdoor athletic facility, theater or amphitheater where a public address system is used, commits an offense if he operates such a facility without announcing or causing to be announced prior to each game or performance the prohibition of smoking in seating areas. (Amend Ord 94-26, 2/8/94)

Section 10.05 Regulation of Smoking - Workplace

- A. The purpose of this section is to assure that all employers provide working conditions for nonsmoking employees which will eliminate exposure to secondhand smoke while working or using common facilities.
- B. Employers shall:
 1. Designate all common areas of the workplace including, but not limited to, conference rooms, break areas, rest rooms, and dining areas as nonsmoking except where separate areas are provided for smokers as described in Subsections (B)(3) and (E)(2), below.
 2. Designate as nonsmoking areas of shared office space except where separate areas are provided for smokers as described in Subsection (E)(2) below.
 3. Not designate smoking common areas which are larger than comparable areas designated for nonsmokers.
 4. Prominently display signs at the place of business with the universal symbol or wording to indicate that smoking is prohibited or permitted only in designated areas.
 5. Communicate the requirements of this ordinance to all employees.
 6. Not discriminate, discharge, or in any other manner retaliate against any employee exercising a right created by this ordinance.
- C. Multiple employers sharing common ventilation/air handling systems shall be designated as nonsmoking.
- D. Building managers or owners shall prominently display signs at the place of business indicating "smoking in designated areas only" if the building is occupied by more than one employer. Buildings where all tenants have their own separate entrances to the outdoors and no common areas are shared are exempt from the requirements of this paragraph.
- E. An employer may:
 1. Designate the entire workplace as nonsmoking or have more stringent requirements than the requirements of this ordinance.
 2. Allow smoking in a physically separated section of the workplace if all employees in that area are smokers; and:
 - a. The air handling/ventilation system serving such section does not serve any other area of the workplace; or

b. No return air is permitted from such section to a common air handling/ventilation system, exhaust ventilation equal to four (4) air changes per hour is provided, and exhaust ventilation shall terminate outside the building.

F. Designated smoking areas may be provided if:

1. Tenant spaces not sharing ventilation systems with any other tenant are totally separated with walls and doors from other parts of the business; or
2. Buildings with more than one (1) employer are totally separated with walls and doors from other parts of the building and are equipped with a separate ventilation system which serves smoking areas only.

G. Employers are encouraged to promote employee participation in tobacco education and smoke cessation programs.

H. An employer commits an offense if he violates any provision of this section.

I. Customer smoking areas in establishments regulated elsewhere in this article are exempt from the provisions of this section.

(Amend Ord 94-02, 01/04/94)

Section 10.06 Structural Modifications Not Required

Except as provided in Subsections 10.02(D)(4) and 10.03, nothing in this article shall require the owner, operator, manager or other persons in control of any building, facility, room, establishment or structure to incur any expense to make structural or other physical modifications to comply with the terms and conditions of this article. The posting of signs or the equipping of any area with facilities for the extinguishment of smoking materials shall not be construed to be structural or other physical modifications. (Amend Ord 94-26, 2/8/94)

Section 10.07 Exemptions

A. Any owner or manager of a business, facility, room, structure or other establishment subject to Section 10.02, 10.04 and 10.05 may apply to the Environmental Health Official for an exemption or modification to any provision of this article due to unusual circumstances or conditions. Such exemption shall be granted only if the Environmental Health Official finds from the evidence presented by the applicant for exemption either that:

1. The applicant cannot comply with the provisions of this article for which an exemption is requested without incurring expenses for structural or other physical modifications, other than posting signs, to buildings and structures; or
2. Due to such unusual circumstances, the failure to comply with the provision for which the exemption is requested will not result in a danger to health or annoyance, inconvenience or discomfort. (Amend Ord 94-26, 2/8/94)

Section 10.08 Penalty For Violation

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined an amount not less than Twenty-five and No/100 Dollars (\$25.00) nor more than Two Hundred and No/100 Dollars (\$200.00); provided, however, in the event the actor has previously been convicted under this section, the actor shall be fined an amount not less than Fifty and No/100 Dollars (\$50.00) nor more than Five Hundred and No/100 Dollars (\$500.00) for a second conviction hereunder, and shall be fined an amount not less than One Hundred and No/100 Dollars (\$100.00) nor more than One Thousand and No/100 Dollars (\$1,000.00) for a third conviction hereunder and for each conviction thereafter. Each day that a violation is permitted to exist shall constitute a separate offense. (Amend Ord 94-02, 01/04/94)

Section 10.09 Culpability

There shall be no requirement of a culpable mental state for a violation of this article. (Amend Ord 94-02, 01/04/94)

For further information, please contact the Community Development & Planning's Health Division at 817-459-6502.