



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.

"Bar" shall mean any establishment licensed by the State for the sale of alcoholic beverages that derives more than 75% of the establishment's gross revenue from the on-premise sale of alcoholic beverages for on-premise consumption. For purposes of this Ordinance, any establishment which sells or serves alcoholic beverages in quantities which exceed 75% of the estimated daily gross sales is defined as a bar. For purposes of this definition, "daily gross sales" shall be calculated using the normal selling price of all items of food and alcoholic beverages served in the establishment and shall reflect the price normally charged for such items in the particular establishment for which the daily gross sales figure is calculated, whether such item is actually sold at normal selling price, below normal entrance fee or other consideration paid. Reduced prices charged during promotions, happy hours, and other occasions when drinks are sold at reduced prices or served at no charge, shall not be considered "normal selling price" for calculation of daily gross sales. (Amend Ord 06-103, 10/10/06)

"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.T.C.A., Occupations Code §2001.001 et seq. - "Bingo Enabling Act". (Amend Ord 06-103, 10/10/06)

"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.

"Condominium" shall mean a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions. Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners. (Amend Ord 05-092, 10/11/05)

"Eating establishment" shall mean any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually served or available to be served to patrons at all times such establishment is open to the public, and where food sales constitute not less than 25% of the daily gross sales of said establishment; and for purposes of this Ordinance, any establishment which sells or serves alcoholic beverages in quantities which exceed 75% of the daily gross sales of said establishment is excluded from the category of establishments defined as restaurants and shall be included in the category of establishments defined as bars. For purposes of this definition, "daily gross sales" shall be calculated using the normal selling price of all items of food and alcoholic beverages served in the establishment and shall reflect the price normally charged for such items in the particular establishment for which the daily gross sales figure is calculated whether such item is actually sold at normal selling price, below normal entrance fee or other consideration paid. Reduced prices charged during promotions, happy hours, and other occasions when drinks are sold at reduced prices or served at no charge, shall not be considered "normal selling price" for calculation of daily gross sales. (Amend Ord 06-103, 10/10/06)

"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.

"Fraternal Organization" shall mean a facility or area for a special purpose organization or for the sharing of sports, arts, literature, politics or other similar interests, but not primarily for profit or to render a service that is customarily carried on as a business, excluding churches, synagogues, or other houses of worship. (Amend Ord 07-022, 4/10/07)

"Health care facility" shall mean any ambulatory surgical center, rehabilitation center, or minor emergency treatment facility. (Amend Ord 06-103, 10/10/06)

"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.

"Nursing Home" shall mean a facility or area furnishing food and shelter in single or multiple facilities to five or more persons who are not related by blood, marriage, or adoption to the owner or proprietor of the establishment. In addition, the facility provides minor treatment under the direction and supervision of a physician, or provides a service which meets some need beyond the basic provision of food, shelter and laundry. (Amend Ord 07-022, 4/10/07)

"Park" shall mean any land selected, obtained, or acquired by the City for use as a public park, or recreation or playground area, and any building or facility thereon, owned and maintained by the City as a public park, or recreation or playground area, whether or not such areas have been formally dedicated to such purpose. (Amend Ord 07-022, 4/10/07)

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

"Private Club" shall mean the private quarters for a private organization, a principal purpose of which is the preparation and service of food and/or drink for members and their guests only. (Amend Ord 07-022, 4/10/07)

"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 10.03 of this article.

"Shared HVAC system" shall mean a heating/ventilation/air conditioning system that circulates air through more than one retail or service establishment in which public or private business is conducted. (Amend Ord 06-103, 10/10/06)

"Smoker's lounge" shall mean any facility that is attached to a retail tobacco shop for the purpose of enjoyment of tobacco products purchased from the attached tobacco shop. (Amend Ord 08-020, 3/18/08)

"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.

"Stand Alone Tobacco Shop" shall mean a tobacco shop that is housed in a facility that shares no common mechanical equipment systems or physical properties such as walls, ceilings, or hallways with any other establishment, occupancy or use. (Amend Ord 08-020, 3/18/08)

"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 - Public Places

- A. Prohibited Places. A person commits an offense if he possesses a burning tobacco product or smokes a tobacco product within:
1. A public primary or secondary school;
 2. An elevator in buildings generally used by and open to the public, including elevators in office buildings, hotels and multi-family dwellings;
 3. A library;
 4. A museum;
 5. The buildings or grounds of a hospital, health care facility or nursing home;
 6. A transit system bus;
 7. 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;
 8. Indoor or outdoor service lines in which more than one (1) person is giving or receiving goods or services of any kind;
 9. Retail or service establishments;
 10. Public rest rooms;
 11. 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;
 12. 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;
 13. 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;

14. 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;
15. 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;
16. Any common area of a multi-family development; or
17. Fifty feet of outside entrances, operable windows, or ventilation systems of enclosed areas where smoking is prohibited by this Article, so as to ensure that tobacco smoke does not enter those areas.
18. the following areas of a park:
 - a. while seated in or within fifty (50) feet of a dugout or bleacher provided for spectators at outdoor athletic events;
 - b. a park playground or within fifty (50) feet of a park playground;
 - c. in plaza areas at athletic complexes or within fifty (50) feet of such area;
 - d. in a park restroom or within fifty (50) feet of such restroom; or
 - e. within the fenced areas at a swimming pool or within fifty (50) feet of such area.

B. Exceptions.

1. 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.
2. It is an exception to Subsection (A)(16) that the smoking or possession occurred in an unenclosed common area which has been designated by the owner, manager, or operator or other person having control of such areas, as a smoking area.
3. It is an exception to Subsection (A)(16) if the multi-unit development is owner occupied condominiums.
4. It is an exception to Subsection (A)(5) that the smoking or possession occurred on the grounds of a nursing home in an outdoor area, that may be enclosed by fixed walls, which has been designated by the owner, manager, or operator or other person having control of such area, as a smoking area.

Said designated smoking area must be at least fifty feet from outside entrances, operable windows, or ventilation systems of enclosed areas where smoking is prohibited by this Article.

5. It is an exception to Subsection (A) that the smoking or possession occurred in a fraternal organization or private club unless the smoking occurred in an area that has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area.
6. It is an exception to Subsection (A) that the smoking or possession was by a person in a smoker's lounge attached to a tobacco shop that meets the following requirements:

- a. The smoker's lounge shall not allow or employ persons under the age of eighteen (18). Signs shall be conspicuously posted at all entrances of the smoker's lounge which state: **"No One Under Age 18 Allowed."**
- b. Smoking is prohibited within the tobacco shop. Signs shall be conspicuously posted at all entrances to the tobacco shop in accordance with Section 10.04(A)(1) of this ordinance.
- c. The smoker's lounge shall have separate entrances, exits and restroom facilities from the attached tobacco shop.
- d. The smoker's lounge shall be enclosed from floor to roof by solid walls and shall have no voids or penetrations allowing air from the smoker's lounge to migrate into the tobacco shop or any other establishment, occupancy or use where smoking is prohibited.
- e. The smoker's lounge must have a separate heating and cooling system from the tobacco shop and any other establishment, occupancy or use where smoking is prohibited.
- f. The smoker's lounge shall have a ventilation system which provides a complete air change every fifteen (15) minutes and shall exhaust the air to the exterior of the building and shall not allow air from the smoker's lounge to migrate into the tobacco shop or any other establishment, occupancy or use where smoking is prohibited.
- g. The ventilation system may 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 the smoker's lounge is not allowed or drawn into the tobacco shop or any other establishment where smoking is prohibited.
- h. The owner shall be required to pass additional tests in the future, as determined by the Administrator, if the adequacy of the system appears to fail to meet the objectives of the ordinance.
- i. The Administrator may deny the opportunity to operate a smoker's lounge upon a finding that:
 - (1) Smoke is migrating from the smoker's lounge into the tobacco shop or any other establishment, occupancy or use where smoking is prohibited; or
 - (2) The smoker's lounge has failed to meet any of the standards set forth in this section or tests prescribed by the Administrator.

Upon such a finding, the smoker's lounge shall be deemed to be nonsmoking until successfully tested.

- j. The owner, manager or operator of a tobacco shop commits an offense if he or she allows smoking of a tobacco product in an area deemed to be nonsmoking by the Administrator.
- k. The owner, manager or operator of a tobacco shop commits an offense if he or she designates or maintains a smoking area in violation of this section.

7. Exception for Tobacco Shops meeting the requirements set forth below:

a. Stand Alone Tobacco Shop. It is an exception to Subsection (A) that the smoking or possession was by a person in a Stand Alone Tobacco Shop that meets the following requirements:

(1) The stand alone tobacco shop shall not allow or employ persons under the age of eighteen (18).

(2) Signs shall be conspicuously posted at all entrances of the stand alone tobacco shop which state: **“No One Under Age 18 Allowed.”**

b. Tobacco Shop. It is an exception to Subsection (A) that the smoking or possession was by a person in a tobacco shop that meets the following requirements:

1) The tobacco shop shall not allow or employ persons under the age of eighteen (18).

2) Signs shall be conspicuously posted at all entrances of the tobacco shop which state: **“No One Under Age 18 Allowed.”**

3) The tobacco shop shall be enclosed from floor to roof by solid walls and shall have no voids or penetrations allowing air from the tobacco shop to migrate into the any other establishment, occupancy or use where smoking is prohibited.

4) The tobacco shop must have a separate heating and cooling system from any other establishment, occupancy or use where smoking is prohibited.

5) The tobacco shop shall have a ventilation system which provides a complete air change every fifteen (15) minutes and shall exhaust the air to the exterior of the building and shall not allow air from the tobacco shop to migrate into any other establishment, occupancy or use where smoking is prohibited.

6) The ventilation system may 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 the tobacco shop is not allowed or drawn into any other establishment where smoking is prohibited.

7) The owner shall be required to pass additional tests in the future, as determined by the Administrator, if the adequacy of the system appears to fail to meet the objectives of the ordinance.

8) The Administrator may deem the tobacco shop nonsmoking upon a finding that:

(a) Smoke is migrating from the tobacco shop into any other establishment, occupancy or use where smoking is prohibited; or

(b) The tobacco shop has failed to meet any of the standards set forth in this section or tests prescribed by the Administrator.

Upon such a finding, the tobacco shop shall be deemed to be nonsmoking until successfully tested.

(c) The owner, manager or operator of a tobacco shop or stand alone tobacco shop commits an offense if he or she allows smoking of a tobacco product in an area deemed to be nonsmoking by the Administrator.

(d) The owner, manager or operator of a tobacco shop or stand alone tobacco shop commits an offense if he or she designates or maintains a smoking area in violation of this section. (Amend Ord 08-020, 3/18/08)

C. Defenses.

1. 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.
2. 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 fifty feet (50') of the public entrances to the place or establishment.
3. 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.

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

E. Shared HVAC System. Notwithstanding other provisions to the contrary, smoking shall be prohibited in all facilities that have shared HVAC systems, unless smoking is otherwise permitted in all the establishments using a shared HVAC system.

F. Rangers Ballpark in Arlington. Smoking at the Rangers Ballpark in Arlington is allowed only at designated areas near the outer perimeter of the first level and upper concourse. When food kiosks are located in the smoking areas, smoking is prohibited in the kiosk line and within fifty (50) feet of the food kiosk. Signage must indicate that smoking is not permitted in a kiosk line or within fifty (50) feet of the food kiosk. Smoking is not restricted in private club areas of the Rangers Ballpark in Arlington. (Amend Ord 07-022, 4/10/07)

Section 10.03 Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Sexually Oriented Businesses, 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, sexually oriented business, billiard hall, bingo parlor or bowling center.
- B. An owner, manager or operator of an eating establishment, bar, nightclub, sexually oriented business, 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) and (B) that the smoking or possession occurred in a bar, nightclub, sexually oriented business, billiard hall, bingo parlor or bowling center that:
 - a. does not allow or employ persons under the age of eighteen (18) years; and
 - b. does not open into an eating establishment, hotel, motel or any other establishment in which smoking is prohibited under this Article.
2. Notwithstanding Subsection (1), smoking shall be prohibited in all facilities that have shared HVAC systems, unless all the establishments using a shared HVAC system meet the requirements for exception as outlined in subsection (1) above.

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 fifty feet (50') and outside of the public entrances of the establishment.*

E. The owner, manager or operator of an eating establishment, bar, nightclub, sexually oriented business, 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.

F. 1. An establishment which does not meet the exception requirements of Subsection (C) 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. There shall be no requirement of a culpable mental state for this offense. (Amend Ord 06-110, 11/28/06)

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.**" (Amend Ord 06-103, 10/10/06)

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

A. Signs.

1. A place or conveyance regulated by Sections 10.02 or 10.03; that is required 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) shall have signs conspicuously posted at all entrances which state: **"We Do Not Have A Nonsmoking Area."** (Amend Ord 06-103, 10/10/06)

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 fifty feet (50') of all entrances and within all designated smoking areas. (Amend Ord 06-110, 11/28/06)

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.

D. Offenses.

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. There shall be no requirement of a culpable mental state for this offense.
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). There shall be no requirement of a culpable mental state for this offense.
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 06-110, 11/28/06)

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 non-smoking 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 non-smokers.
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 Penalty For Violation

A. 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 Two Thousand and No/100 Dollars (\$2,000.00) for a third conviction hereunder and for each conviction thereafter. Each day that a violation is permitted to exist shall constitute a separate offense.

B. Notwithstanding Subsection (A) above, the fine for violations of Subsections 10.03(F)(2), 10.04(D)(1) and 10.04(D)(2) or any other offense within this Article where the culpable mental state is specifically dispensed, shall be an amount not less than One Hundred and No/100 Dollars (\$100.00) nor more than Five Hundred and No/100 Dollars (\$500.00) for a third conviction hereunder and for each conviction thereafter. (Amend Ord 06-110, 11/28/06)

Article X – 17
(Amend Ord 06-110, 11/28/06)

Please contact Health Services for more information:

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