

Ordinance No. 06-103

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article X, Regulation of Smoking, at Section 10.01, Definitions, by the addition of the definitions of "Bar", "Health care facility" and "Shared HVAC system" and the amendment of the definitions of "Bingo parlor" and "Eating establishment"; by the amendment of Section 10.02, Smoking Prohibited - Public Places; by the amendment of Section 10.03, Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Adult Entertainment Establishments, Billiard Halls, Bingo Parlors and Bowling Centers; by the amendment of Section 10.04, Posting of Signs, Placing of Receptacles and Public Address System Announcement Required, at Subsection (A), relative to the posting of signs; by the deletion of Section 10.06, Structural Modifications Not Required; and by the deletion of Section 10.07, Exemptions; and providing for a fine of up to \$2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective January 1, 2007

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended at **Article X, Regulation of Smoking, Section 10.01, Definitions**, by the addition of the definitions of "Bar", "Health care facility" and "Shared HVAC system" and the amendment of the definitions of "Bingo parlor" and "Eating Establishment" so that hereafter said definitions shall be and read as follows:

"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 items 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.

"Bingo parlor" shall mean a facility regulated under V.T.C.A., Occupations Code §2001.001 et seq. - "Bingo Enabling Act".

"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.

"Health care facility" shall mean any ambulatory surgical center, rehabilitation center, or minor emergency treatment facility.

"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.

Further, Article X, **Section 10.02, Smoking Prohibited – Public Places**, is hereby amended so that said section shall be and read as follows:

**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 or health care facility;
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.

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.

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.

Further, Article X, **Section 10.03**, Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Adult Entertainment Establishments, Billiard Halls, Bingo Parlors and Bowling Centers, so that said section shall be and read as follows:

**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.
  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.**"

Further, Article X, **Section 10.04, Posting of Signs, Placing of Receptacles and Public Address System Announcement Required**, Subsection (A), is hereby amended so that said subsection shall be and read as follows:

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.**"

Further, Article X, is hereby amended by the **deletion** of **Section 10.06, Structural Modifications Not Required**, by the **deletion** of **Section 10.07, Exemptions**, and by the **renumbering** of subsequent sections.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars (\$2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

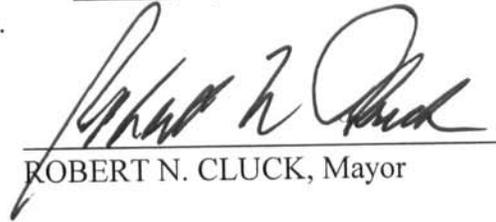
The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

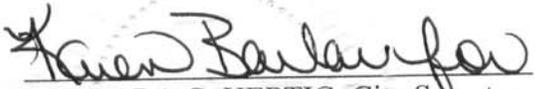
This ordinance shall become effective January 1, 2007.

PRESENTED AND GIVEN FIRST READING on the 26th day of September, 2006, at a regular meeting of the City Council of the City of Arlington, Texas; and

GIVEN SECOND READING, passed and approved on the 10th day of October, 2006, by a vote of 8 ayes and 1 nays at a regular meeting of the City Council of the City of Arlington, Texas.

  
ROBERT N. CLUCK, Mayor

ATTEST:

  
BARBARA G. HEPTIG, City Secretary

APPROVED AS TO FORM:  
JAY DOEGEY, City Attorney

BY 