

**Ordinance No. 17-024**

**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; 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 ten days after first publication**

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**, so that hereafter said Article shall be and read as follows:

**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:

“Bar” shall mean any establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. A “bar” includes those facilities located within a hotel, motel or other similar transient occupancy establishment.

"Bingo parlor" shall mean a facility regulated under V.T.C.A., Occupations Code §2001.001 et seq. - "Bingo Enabling Act", as amended, that does not allow persons under the age of eighteen (18) years to enter the facility; does not employ persons under the age of eighteen (18) years; does not share a heating/ventilation/air conditioning system with another establishment in which smoking is prohibited; and does not open into any other establishment in which smoking is prohibited under this Article.

“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.

“Conveyance” shall mean public transportation facilities or a vehicle for the moving of persons from one place to another where smoking is prohibited by this Article.

“Eating establishment” shall mean any operation engaged in the preparation of food which gives food or offers food for sale to the public, guests or employees.

“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.

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

“Fraternal Organization” shall mean an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501, as amended.

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

“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.

“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

“Place of Employment” shall mean any area under the control of a public or private employer which employees may frequent during the course of employment, including, but not limited to, private offices, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias, hallways, enclosed portions of construction sites, temporary offices and vehicles. A private residence is not a “place of employment” unless it is used as a childcare, adult day care or health care facility.

“Public Place” shall mean any enclosed area to which the public or a substantial group of the public is invited or in which the public or a substantial group of the public is permitted or is a place of employment. For purposes of this section, the term “public place” includes but is not limited to: retail or service establishments; offices; professional, commercial or financial establishments; public and private institutions of education; eating establishments; hospitals; health care facilities; nursing homes; residential treatment facilities; child care facilities; bars; nightclubs; sexually oriented businesses, billiard halls, bowling centers, buildings owned or occupied by political subdivisions; public transportation facilities and vehicles; reception areas; elevators, libraries, museums, theaters and waiting rooms. For purposes of this section, a “public place” does not include a private residence or a bingo parlor as defined by this Section.

“Retail or service establishment” shall mean any establishment which sells goods or services to the general public.

“Smoke” shall mean the gases, particles or vapors released into the air as a result of combustion from any tobacco product.

“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.

“Smoking” shall mean engaging in an act that generates smoke as a result of the combustion of any tobacco product.

“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.

“Tobacco product” shall mean a cigarette, cheroot, stogie, cigar, snuff, smoking tobacco, chewing tobacco and any article or product made of tobacco or a non-electronic 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%).

## **Section 10.02 Smoking Prohibited - Public Places**

A. Smoking is prohibited in all enclosed public places.

B. Smoking is prohibited in the following non-enclosed public places:

1. Grounds of a hospital, health care facility or nursing home;
2. 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;
3. 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;
4. 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;
5. Any common area of a multi-family development;
6. Within fifteen (15) feet of the primary outside entrance of a bar, nightclub, sexually oriented business, billiard hall or bowling center;
7. Within fifty (50) feet of outside entrances, operable windows, or ventilation systems of enclosed areas not described by Subsection (B)(6) above where smoking is prohibited by this Article, so as to ensure that smoke does not enter those areas;
8. 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; and

C. Affirmative Defenses.

1. It is an affirmative defense to prosecution under Subsection (B)(1) that the smoking 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.
2. It is an affirmative defense to prosecution under Subsection (B)(4) that the smoking 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 affirmative defense to prosecution under Subsection (B)(5) if the multi-unit development is owner occupied condominiums.
4. It is an affirmative defense to prosecution under Subsection (A) that the smoking occurred in a fraternal organization 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.
5. It is an affirmative defense to prosecution under this Section that the public place within which the offense occurred did not have prominently displayed a notice that smoking was prohibited.
6. It is an affirmative defense to prosecution under Subsection (B)(6) that facilities for the extinguishment of smoking materials were not located within fifteen feet (15') of the primary entrance of an establishment described by Subsection (B)(6).
7. It is an affirmative defense to prosecution under Subsection (B)(7) 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.
8. It is an affirmative defense to prosecution under Subsections (B)(3) and (B)(4) 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.
9. It is an affirmative defense to prosecution under Subsection (A) that the smoking occurred in:

- a. a smoker's lounge attached to a tobacco shop that meets the requirements of Subsection (D)(1);
  - b. a stand alone tobacco shop that meets the requirements of Subsection (E)(1); or
  - c. a tobacco shop that meets the requirements of Subsection (E)(2)(a).
10. It is an affirmative defense to prosecution under Subsection (A) that the smoking occurred in a bingo parlor as defined by Section 10.01.

D. Smoker's Lounges Attached to Tobacco Shops.

1. Smoker's lounges attached to tobacco shops shall meet all of 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. Signs shall be conspicuously posted at all entrances to the tobacco shop noting that smoking is prohibited within the tobacco shop in accordance with Section 10.03(A).
  - 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.

2. Ventilation Systems.

- a. 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.
- b. 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.

3. Operation of Smoker's Lounges and Nonsmoking Designation.

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

4. Offenses.

- a. The owner, manager or operator of a tobacco shop commits an offense if he or she allows smoking in an area deemed to be nonsmoking by the Administrator.
- b. 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.

E. Tobacco Shops.

1. Stand Alone Tobacco Shops. Stand alone tobacco shops shall meet all of the following requirements:

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

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

2. Other Tobacco Shops.

- a. Other tobacco shops not described by Subsection (E)(1) shall meet all of 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 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.

- b. Ventilation Systems.

- (1) 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.
- (2) 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.



- c. Nonsmoking Designation.
  - (1) 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.
  - (2) Upon such a finding, the tobacco shop shall be deemed to be nonsmoking until successfully tested.

- d. Offenses.
  - (1) The owner, manager or operator of a tobacco shop or stand alone tobacco shop commits an offense if he or she allows smoking in an area deemed to be nonsmoking by the Administrator.
  - (2) 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.

F. Globe Life Park in Arlington. Smoking at the Globe Life Park 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.

**Section 10.03 Posting of Signs, Placing of Receptacles and Public Address System Announcement Required**

A. Signs. A place or conveyance regulated by Section 10.02 that is required to be totally nonsmoking, shall have signs conspicuously posted at all entrances which state: **“No Smoking - City Ordinance.”** Such “No Smoking” signs shall have bold lettering of not less than one inch in height.

B. Receptacles. A place or establishment, other than an establishment described by Subsection 10.02(B)(6), regulated by Section 10.02 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. A bar, nightclub, sexually oriented business, billiard hall or bowling center shall have facilities for the extinguishment of smoking materials located within fifteen feet (15') of all entrances. A conveyance regulated by Section 10.02 shall have facilities for the extinguishment of smoking materials within the conveyance.

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 or she 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 or she 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 or she operates such a facility without announcing or causing to be announced prior to each game or performance the prohibition of smoking in seating areas.

#### **Section 10.04 Regulation of Smoking – Place of Employment**

It shall be the responsibility of employers to provide a smoke-free workplace for all employees. Each Employer having any enclosed place of employment located within the City shall make known to employees that smoking shall be prohibited in all enclosed areas within the place of employment. This Section does not negate the affirmative defenses provided in Section 10.02.

#### **Section 10.05 Penalty For Violation**

A. Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this Article commits an offense, and upon conviction thereof, shall be fined an amount:

1. not less than Twenty-five and No/100 Dollars (\$25.00) nor more than Two Hundred and No/100 Dollars (\$200.00);
  2. not less than Fifty and No/100 Dollars (\$50.00) nor more than Five Hundred and No/100 Dollars (\$500.00) if the person has been previously convicted one time for an offense under this Article; and
  3. not less than One Hundred and No/100 Dollars (\$100.00) nor more than Two Thousand and No/100 Dollars (\$2,000.00) if the person has been previously convicted two or more times for an offense under this Article.
- B. Each day that a violation is permitted to exist shall constitute a separate offense.
- C. Culpable Mental State.
1. If the definition of an offense under this Article does not prescribe a culpable mental state, then a culpable mental state is not required.
  2. Although not required, if a culpable mental state is in fact alleged in the charge of an offense under Subsection (A)(3), such offense shall be punishable as provided by that Subsection above. If, however, a culpable mental state is not alleged in the charge of an offense under Subsection (A)(3), such offense shall be punishable by a fine in an amount not less than One Hundred and No/100 Dollars (\$100.00) nor more than Five Hundred and No/100 Dollars (\$500.00).

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 ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 11th day of April, 2017, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 9th day of May, 2017, by a vote of 7 ayes and 2 nays at a regular meeting of the City Council of the City of Arlington, Texas.



W. JEFF WILLIAMS, Mayor

ATTEST:

  
\_\_\_\_\_  
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:  
TERIS SOLIS, City Attorney

BY \_\_\_\_\_