

ORDINANCE NO. 05-_____

AN ORDINANCE REPEALING ORDINANCE NO. 92-43 IN ITS ENTIRETY AND REPLACING IT WITH AN ORDINANCE PROHIBITING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT EXCEPT FOR BARS, NIGHTCLUBS AND DOG RACING TRACKS, REQUIRING THE POSTING OF NO SMOKING SIGNS OR SYMBOLS, PROHIBITING RETALIATION AGAINST ANY PERSON WHO EXERCISES ANY RIGHT AFFORDED BY THIS ORDINANCE, ESTABLISHING PENALTIES NOT TO EXCEED \$500.00 FOR VIOLATION OF THE PROVISIONS OF THIS ORDINANCE, PROVIDING FOR SEVERABILITY, PROVIDING FOR PUBLICATION, AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING

WHEREAS, The Elective Commission of the City of Harlingen, Texas finds it is in the interest of the public to update the City's non-smoking ordinance, now therefore,

BE IT ORDAINED BY THE CITY OF HARLINGEN:

SECTION I: That Ordinance No. 92-43 and Sections 92.10 through 92.16 of City of Harlingen Code of Ordinances are hereby repealed in their entirety and replaced by the language in Section II.

SECTION II:

Purpose:

The purpose of this ordinance is to (1) improve and protect the public's health by eliminating smoking in public places and places of employment, except bars, nightclubs and dog racing tracks; (2) guarantee the right of nonsmokers to breathe smoke-free air; and (3) recognize that the need to breathe smoke - free air shall have priority over the choice to smoke.

Definitions:

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

"Bar" means an area which 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, but does not include those facilities located within a restaurant or food service establishment.

"Business" means any sole proprietorship, partnership, joint venture, corporation or

other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

“Employee” means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

“Employer” means any person, partnership, corporation, including a municipal corporation, or nonprofit entity, which employs the services of one or more individual persons.

“Enclosed area” means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, “office landscaping” or similar structures.

“Food establishment” means food product or food service establishments.

“Place of employment” means any enclosed area under the control of public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a “place of employment” unless it is used as a child care, adult day care or health care facility.

“Private place” means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal residences, private social clubs or personal automobiles. A privately-owned business, open to the public, is not a “private place”.

“Public Place” means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, production and marketing establishments; retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a “public place.”

“Retail tobacco store” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

“Service line” means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

“Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or combustible substance in any manner or in any form.

“Sports arena” means enclosed or outdoor sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Prohibition of smoking in public places:

A. Smoking shall be prohibited in all enclosed public places within the city, except as otherwise provided in this ordinance, including, but not limited to the following places:

1. Elevators;
2. Restrooms, lobbies, reception areas, hallways and any other common-use areas;
3. Buses, bus terminals, taxicabs, train stations, airports and other facilities and means of public transit under the authority of the City, as well as ticket, boarding, and waiting areas of public transit depots;
4. Service lines;
5. Retail stores;
6. All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including but not limited to, attorneys’ offices and other offices, banks, laundromats, hotels and motels;
7. Food establishments;
8. Galleries, libraries, museums and zoo facilities and grounds;
9. Any facility which is primarily used for exhibiting any motion picture stage, drama, lecture, musical recital or other similar performance,

except that performers may smoke when the smoking is part of a stage production;

10. Enclosed and outdoor sports arenas and convention halls including bowling facilities;
11. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city;
12. Waiting rooms, hallways, wards and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;
13. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multi-unit residential facilities;
14. Polling places;
15. Bingo games.

Prohibition of smoking in places of employment:

1. It shall be the responsibility of employers to provide a smoke-free workplace for all employees, except for employees working in bars, nightclubs and dog racing tracks.
2. Each employer having any enclosed place of employment located within the city shall adopt, implement, make known and maintain a written smoking policy, which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

3. The smoking policy shall be communicated to all employees within four weeks of its adoption.
4. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

Additional declaration of nonsmoking establishment:

Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

Application to city-owned facilities:

All enclosed facilities owned by the city shall be nonsmoking at all times notwithstanding other provisions of this chapter.

Private and public places:

1. Notwithstanding any other provision of this ordinance to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:
 - i. Private residences, except when used as a child care, adult day care or health care facility;
 - ii. No more than twenty-five percent of hotel and motel rooms rented to guests;
 - iii. Retail tobacco stores in stand alone physical facilities.

Posting of signs:

1. The owner, manager or other person having control of such building or other area where smoking is prohibited by this ordinance shall have a conspicuously posted sign clearly stating that smoking is prohibited at each entrance and within the building or other areas where smoking is prohibited.
2. Such "No Smoking" signs shall have bold lettering of not less than one inch in height. The International "No Smoking" symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).
3. All ashtrays and other smoking paraphernalia shall be limited in facilities to that required for the enforcement of extinguishing of smoking materials in public places.

Enforcement:

1. Enforcement of this ordinance shall be implemented by the Harlingen Health Department, Building Inspection Department, Fire Prevention Department, Fire Department and Police Department.
2. Notice of the provisions set forth in this ordinance shall be given to all applicants for a business license in the city.
3. Any owner, manager, operator or employee of any establishment regulated by this ordinance shall be responsible for informing persons violating this ordinance of the provisions through appropriate signage.
4. Notwithstanding any other provision of this ordinance, a private citizen may bring legal action to enforce this ordinance.

Non-retaliation:

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke - free environment afforded by this ordinance.

Violations and penalties:

1. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this ordinance to fail to comply with all of its provisions.
2. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this ordinance.
3. Any person who violates any provision of this ordinance shall be guilty of a misdemeanor punishable by:
 1. A fine not exceeding one hundred dollars for the first violation;
 2. A fine not exceeding two hundred dollars for a second violation within a one year period of the first violation;
 3. A fine not exceeding five hundred dollars for an additional violation within a one year period of the first violation.

Other applicable laws:

This ordinance shall not be interpreted nor construed to permit smoking where it is otherwise restricted by other applicable laws.

Severability:

If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Publication:

That the City Secretary of the City of Harlingen, Texas is hereby authorized and directed to cause a true and correct copy of the caption of this Ordinance to published in a newspaper having general circulation in the City of Harlingen, Cameron County, Texas.

FINALLY ENACTED THIS _____ day of March, 2005 at a regular meeting of the Elective Commission of the City Harlingen, Texas at which a quorum was present and which was held in accordance with TEXAS GOVERNMENT CODE CHAPTER 551.

CITY OF HARLINGEN

Rick Rodriguez, Mayor

ATTEST:

Sylvia R. Trevino, City Secretary

