

ORDINANCE NO. 27440

An ordinance amending CHAPTER 41, "SMOKING," of the Dallas City Code, as amended; defining terms; prohibiting smoking in all indoor and enclosed areas in the city and within 15 feet of any entrance to an indoor or enclosed area; providing certain defenses; providing signage and other requirements; providing for enforcement of smoking violations against both the person smoking and the owner, operator, or person in control of the establishment or area where smoking is prohibited; providing a penalty of \$200; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That CHAPTER 41, "SMOKING," of the Dallas City Code, as amended, is amended to read as follows:

"CHAPTER 41

SMOKING

ARTICLE I.

GENERAL PROVISIONS.

SEC. 41-1. DEFINITIONS.

In this chapter:

(1) [~~ADMINISTRATIVE AREA means the area of an establishment not generally accessible to the public or to a minor, including but not limited to individual offices, stockrooms, employee lounges, or meeting rooms.~~]

~~(2)~~ BAR means an establishment principally for the sale and consumption of alcoholic beverages on the premises that derives 75 percent or more of its gross revenue on a quarterly (three-month) basis from the sale or service of alcoholic beverages, as defined in the Texas Alcoholic Beverage Code, for on-premises consumption. If an establishment is located in a hotel or motel, the gross revenues of the particular establishment, rather than the gross revenues of the entire hotel or motel, will be used in calculating the percentage of revenues derived from the sale or service of alcoholic beverages.

~~(2)~~ ~~(3)~~ BILLIARDS means any game played on a cloth-covered table with balls and cue sticks where the balls are struck by the sticks and the balls strike against one another.

~~(3)~~ ~~(4)~~ BILLIARD HALL means an establishment that:

(A) holds a valid billiard hall license issued by the city under Chapter 9A of this code;

(B) has at least 12 billiard tables that are not coin-operated available for rent to persons desiring to play billiards on the premises; and

(C) derives 70 percent or more of its gross revenue on a quarterly (three-month) basis from the sale or service of alcoholic beverages, as defined in the Texas Alcoholic Beverage Code, for on-premises consumption and from the rental of billiard tables and billiard equipment to persons desiring to play billiards on the premises.

(4) CIGAR BAR means a bar that derives 15 percent or more of its gross revenue on a quarterly (three-month) basis from the sale or rental of tobacco, tobacco products, smoking implements, or smoking accessories for on-premises consumption.

(5) DIRECTOR means the director of the department designated by the city manager to enforce and administer this chapter, or the director's designated representative.

(6) EATING ESTABLISHMENT means any establishment that prepares or serves food or beverages, regardless of whether the establishment provides seating or facilities for on-premises consumption. The term includes, but is not limited to, restaurants, coffee shops, cafeterias, short order cafes, fast food establishments, luncheonettes, lunchrooms, soda fountains, food carts, food vending vehicles, and catering establishments.

(7) EMPLOYEE means any person who works for hire at an designated indoor or enclosed area including an independent contractor with an assigned indoor location.

(8) EMPLOYER means any person who employs one ~~five~~ or more employees.

(9) ENCLOSED means an area that:

(A) is closed in overhead by a roof or other covering of any material, whether permanent or temporary; and

(B) has 40 percent or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary.

(10) HOSPITAL means any institution that provides medical, surgical, and overnight facilities for patients.

(11) MINOR means any individual under 18 years of age.

(12) PERSON means an individual, firm, partnership, association, or other legal entity.

(13) ~~[PUBLIC SERVICE AREA means any area to which the general public routinely has access for municipal services or that is designated a public service area in a written policy prepared in compliance with this chapter.~~

(14) RETAIL OR SERVICE ESTABLISHMENT means any establishment that sells goods or services to the general public, including but not limited to any eating establishment, bar, hotel, motel, department store, grocery store, drug store, shopping mall, laundromat, bingo parlor, bowling center, billiard hall, or hair styling salon.

(14) ~~(15)~~ SECOND-HAND SMOKE means ambient smoke resulting from the act of smoking.

(15) ~~(16)~~ SMOKE OR SMOKING means inhaling, exhaling, possessing, or carrying any lighted or burning cigar or cigarette, or any pipe or other device that contains lighted or burning tobacco or tobacco products.

(16) TOBACCO SHOP means a retail or service establishment that derives 90 percent or more of its gross revenue on a quarterly (three-month) basis from the sale of tobacco, tobacco products, or smoking implements.

(17) WORKPLACE means any indoor or enclosed area where an employee works for an employer ~~[including an administrative area but excluding:~~

~~(A) a domestic residence;~~

~~(B) a factory or warehouse where smoking is regulated by another city ordinance or a state or federal law;~~

~~(C) an enclosed room with only one regular occupant; or~~

(D) — any area that is generally accessible to the public or to a minor and that is regulated under Article II of this chapter].

ARTICLE II.

SMOKING PROHIBITIONS [~~IN PUBLIC AREAS~~].

SEC. 41-2. SMOKING PROHIBITED IN CERTAIN [~~PUBLIC~~] AREAS.

(a) A person commits an offense if he smokes:

(1) in any [~~of the following~~] indoor or enclosed area in the city;

(2) within 15 feet of any entrance to an indoor or enclosed area in the city; or

(3) in any area designated as nonsmoking by the owner, operator, or person in control of the area and marked with a no smoking sign complying with Section 41-3.

(b) An owner, operator, or person in control of an indoor or enclosed area in the city commits an offense if he, either personally or through an employee or agent, permits a person to smoke in the indoor or enclosed area.

(c) For purposes of this chapter, an indoor or enclosed area includes but is not limited to the following [s]:

(1) An elevator [~~used by the public~~].

(2) A hospital or nursing home.

(3) Any facility owned, operated, or managed by the city.

(4) Any retail or service establishment.

(5) Any workplace [~~establishment or area marked with a no smoking sign complying with Subsection (b) by the owner or person in control of the establishment or area~~].

(6) Any facility of a public or private primary or secondary school or any enclosed theater, movie house, library, museum, or transit system vehicle.

~~[(b) — The owner or person in control of an establishment or area in which smoking is prohibited under Subsection (a) of this section shall post a conspicuous sign at the main entrance to the establishment or area. The sign shall contain the words "No Smoking, City of Dallas Ordinance," the universal symbol for no smoking, or other language that clearly prohibits smoking. A sign posted prior to adoption of this subsection may contain the language "No Smoking City of Dallas Ordinance No. 14682."]~~

~~(e) The owner or person in control of a bar qualifying for a defense to prosecution under Subsection (d)(3) or a billiard hall qualifying for a defense to prosecution under Subsection (d)(7) may designate smoking areas, except that the designated smoking areas may not include:~~

- ~~(1) the entire establishment;~~
- ~~(2) cashier areas; or~~
- ~~(3) restrooms.]~~

(d) It is a defense to prosecution under Subsection (a)(1), (a)(3), or (b) of this section if the person was smoking in a location that was:

(1) a private residence, except that this defense does not apply when the residence is being used as a child care facility, adult day care facility, or health care facility;

~~(2) a stage or set of a production of a television program, a theatrical presentation, or a motion picture or filming event where smoking by an actor or performer is essential to the production [an administrative area or office of an establishment described in Subsection (a)(2), (a)(4), or (a)(6) of this section if the administrative area or office is physically separated from those areas of the establishment where smoking is prohibited, except that this defense does not apply if the location was posted as a nonsmoking area under Article III of this chapter];~~

(3) a cigar bar that:

~~(A) was lawfully operating as a cigar bar on December 10, 2008 (except that this defense does not apply if the cigar bar is expanded, is relocated, or changes majority ownership after December 10, 2008);~~

~~(B) does not open into any other indoor or enclosed area [establishment] in which smoking is prohibited under this section; [except that this defense does not apply if:]~~

~~(C) [(A) any part of the bar] is not generally accessible by a minor;~~
and

~~(D) [(B)] keeps all windows and doors closed at all times except as reasonably necessary for the expeditious entering and exiting of the cigar bar [opens into a hotel or motel; or~~

~~(C) the location was posted as a nonsmoking area by the owner or person in control of the bar with a sign complying with Subsection (b)];~~

(4) a tobacco shop [~~retail or service establishment~~] that:

(A) [~~derives 90 percent or more of its gross revenue on a quarterly (three-month) basis from the sale of tobacco, tobacco products, or smoking implements; and~~

(B) does not open into any other indoor or enclosed area [~~establishment~~] in which smoking is prohibited under this section; and

(B) keeps all windows and doors closed at all times except as reasonably necessary for the expeditious entering and exiting of the tobacco shop;

(5) an unenclosed outdoor seating area associated with an indoor or enclosed area, including but not limited to a bar, hotel, motel, or [of an] eating establishment, except that this defense does not apply if:

(A) the outdoor seating area is adjacent to a playground or play area for children; or

(B) the location was posted as a nonsmoking area by the owner, operator, or person in control of the establishment or area with a sign complying with Section 41-3 [~~Subsection (b)~~]; or

(6) a private, rented guest room in a hotel or motel that has been designated as a smoking room by the owner, [~~or~~] operator, or person in control of the hotel or motel[~~;~~ or

(7) ~~a billiard hall that does not open into any other establishment in which smoking is prohibited under this section, except that this defense does not apply if:~~

(A) ~~any part of the billiard hall is generally accessible by a minor; or~~

(B) ~~the location was posted as a nonsmoking area by the owner or person in control of the billiard hall with a sign complying with Subsection (b)].~~

(e) It is a defense to prosecution under Subsection (a)(2) of this section if the person was smoking in a location that was an unenclosed outdoor seating area associated with an indoor or enclosed area, including but not limited to a bar, hotel, motel, or eating establishment, except that this defense does not apply if:

(1) the outdoor seating area is adjacent to a playground or play area for children; or

(2) the location was posted as a nonsmoking area by the owner, operator, or person in control of the establishment or area with a sign complying with Section 41-3.

SEC. 41-3. SIGNAGE AND OTHER REQUIREMENTS.

(a) The owner, operator, or person in control of an establishment or other area in which smoking is prohibited under Section 41-2(a)(1) or (a)(3) shall post a conspicuous sign at the main entrance to the establishment or area. The sign must contain the words "No Smoking, City of Dallas Ordinance," the universal symbol for no smoking, or other language that clearly prohibits smoking.

(b) The owner, operator, or person in control of an indoor or enclosed area to which the smoking prohibition of Section 41-2(a)(2) applies shall post a conspicuous sign at each entrance to the indoor or enclosed area. The sign must contain the words "No Smoking within 15 Feet of Entrance, City of Dallas Ordinance." The universal symbol for no smoking may be substituted for the words "No Smoking."

(c) The owner, operator, or person in control of an establishment or area in which smoking is prohibited under Section 41-2 shall remove all ashtrays from the establishment or area.

(d) [(e)] It is a defense to prosecution under [Subsection (b) of] this section that the establishment or area is a location for which a defense to prosecution is provided under Section 41-2(d) [of this section].

SECS. 41-4 [3] THRU 41-5. RESERVED.

ARTICLE III.**RESERVED [WORKPLACE].****[SEC. 41-6. EMPLOYER WORKPLACE REQUIREMENTS.**

An employer who owns, occupies, or controls a workplace shall:

(1) have and implement a written policy on smoking that:

(A) conforms to this chapter;

(B) reasonably accommodates the interests of both smokers and nonsmokers but minimizes the involuntary exposure of nonsmokers to second hand smoke;

(C) designates nonsmoking areas so as to use existing structural barriers and ventilation to minimize involuntary exposure of nonsmokers to second hand smoke; and

- (D) ~~establishes a procedure for addressing employee complaints;~~
- (2) ~~provide conspicuous signage indicating nonsmoking areas;~~
- (3) ~~not discharge, retaliate, or discriminate against any employee who:~~
- (A) ~~files any complaint or causes any proceeding to be instituted under or related to this chapter;~~
- (B) ~~testifies or will testify in any proceeding instituted under this chapter; or~~
- (C) ~~exercises on his own behalf or the behalf of others any right afforded by this chapter; and~~
- (4) ~~not be responsible for fines assessed against an employee for violation of Section 41-8 of this chapter.~~

SEC. 41-7. ~~WORKPLACE PROHIBITION.~~

~~Nothing in this chapter shall prohibit an entire workplace from being designated as nonsmoking.~~

SEC. 41-8. ~~SMOKING PROHIBITED.~~

~~A person commits an offense if he smokes in an area designated as nonsmoking pursuant to Section 41-6(1)(C).]~~

ARTICLE IV.

ENFORCEMENT.

SEC. 41-9. PENALTIES.

(a) A [Any] person who violates a provision of this chapter, or who fails to perform an act required of the person by this chapter, commits an offense. A person commits a separate offense each day or portion of a day during which a violation is committed, permitted, or continued [violating Section 41-2(b), 41-2(e), 41-6, or 41-11, upon conviction, is punishable by a fine of not less than \$50 or more than \$500].

(b) Unless specifically provided otherwise in this chapter, an offense under this chapter [Any person violating Section 41-2 (a) or 41-8, upon conviction,] is punishable by a fine of [not less than \$25 or more than] \$200.

(c) The culpable mental state required for the commission of an offense under this chapter is governed by Section 1-5.1 of this code.

ARTICLE V.

TOBACCO-PRODUCT VENDING MACHINES.

SEC. 41-10. DEFINITIONS.

In this article:

(1) TOBACCO-PRODUCT VENDING MACHINE means any self-service device that, upon insertion of any coin, paper currency, token, card, key, or other item, dispenses one or more tobacco products. The term does not include any machine that is in storage, in transit, or otherwise not set up for use and operation, nor does it include any machine that is situated on a train, bus, or other public conveyance.

(2) RESTAURANT BAR means any area of an eating establishment, excluding the dining area:

(A) that is primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises; and

(B) in which food service, if any, is only incidental to the consumption of alcoholic beverages.

SEC. 41-11. TOBACCO-PRODUCT VENDING MACHINES PROHIBITED; DEFENSES.

(a) A person commits an offense if he owns or allows the display or use of any tobacco-product vending machine upon any property within the city.

(b) It is a defense to prosecution under Subsection (a) that the tobacco-product vending machine was:

(1) situated in a premises where entry by a minor is prohibited by law;

(2) situated in a hotel, motel, bar, or restaurant bar;

(3) located in a workplace with the permission of the employer, provided that:

(A) the employer usually has no person under 18 years of age employed at the workplace; and

(B) the tobacco-product vending machine is situated at a location within the workplace to which no person other than an employee of the workplace is usually permitted to have access; or

(4) located in an eating establishment and equipped with a lock-out device that was installed, maintained, and operated in compliance with Section 41-12.

SEC. 41-12. LOCK-OUT DEVICES.

(a) A lock-out device on a tobacco-product vending machine located in an eating establishment must be installed, maintained, and operated in compliance with this section.

(b) A lock-out device may be electrical or mechanical and must be approved by the director.

(c) An owner, operator, employee, or other person in charge of an eating establishment who is at least 18 years of age shall:

(1) install and continuously maintain a lock-out device on a tobacco-product vending machine in good working order;

(2) require identification from any potential customer of the tobacco-product vending machine who appears to be under 18 years of age;

(3) physically observe all transactions in which the tobacco-product vending machine is used; and

(4) physically release the lock-out device before each sale from a tobacco-product vending machine.”

SECTION 2. That CHAPTER 41 of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance. Any proceeding, civil or criminal, based upon events that occurred prior to the effective date of this ordinance are saved, and the former law is continued in effect for that purpose.

SECTION 3. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

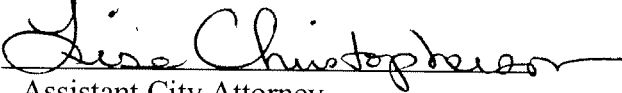
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SECTION 4. That this ordinance will take effect on April 10, 2009, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By 
Assistant City Attorney

Passed DEC 10 2008

LC/DCC/00456A