

ORDINANCE NO. 1793-03-19

ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING CHAPTER 46, "HEALTH AND SANITATION," ARTICLE III, "SMOKING POLLUTION CONTROL," SECTION 46-101, "DEFINITIONS," AND SECTION 46-106, "WHERE SMOKING NOT REGULATED;" PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEAL CLAUSE; PROVIDING A CONTINUATION CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is in the interest of City Council to protect public health, safety and welfare; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote health, safety and general welfare of citizens; and

WHEREAS, City of Nacogdoches is committed to ensuring the health of the general public and reducing potential health risks of addiction and nicotine dependency from the use of electronic smoking devices by youths and adults and dangers resulting from second hand exposure; and

WHEREAS, City of Nacogdoches has previously adopted a smoking ordinance that protects the public's health by eliminating smoking in certain Public Places and Places of Employment/Workplaces; and

WHEREAS, it is important to update the smoking regulations in Chapter 46 to prohibit use of electronic smoking devices in certain Public Places and Places of Employment/Workplaces.

NOW THEREFORE, BE IT ORDAINED BY CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS:

SECTION I

The facts and matters set forth in the preamble of this ordinance are hereby found to be true and correct.

SECTION II

Chapter 46, "Health and Sanitation," Article III, "Smoking Pollution Control," Section 46-101, "Definitions," of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended so that henceforth same shall read as follows:

Sec. 46-101. - Definitions.

The words, terms, and phrases used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Terms not defined herein shall have the meaning assigned to them in the City of Nacogdoches Building and Zoning Codes and Ordinances.

Business means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for nonprofit or 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.

Electronic Smoking Device. Any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic pipe, or electronic cigarillo, electronic hookah or under any other product name or descriptor.

Employee means any person who is employed by any employer in the 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 who 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 door or passageways) 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.

Fraternal organization means a nonprofit organization that:

- a. Is chartered by a national organization;
- b. Is tax exempt under section 501(C)(8), (10), or (19) of the Internal Revenue Code;
- c. Operates under a lodge system with a representative form of government; and is organized for the exclusive benefit of the members of the organization and their dependents.

Night club or dance hall means an establishment operated as a place of entertainment, characterized by any of the following as a principal use of the establishment:

- a. Live, recorded or televised entertainment, including, but not limited to performances by magicians, musicians or comedians;
- b. Dancing; or
- c. Any combination of a. and b.

Outdoor venue means city property where seating is provided for spectators by city or its agents.

Place of employment means any enclosed area under the control of a 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 used as a permissible home occupation is not considered a place of employment for the purposes of this article unless it is used as a child care, bed and breakfast or health care facility.

Private residence means any household unit or special unit type including but not limited to single-family detached and attached dwellings, two-family dwellings, apartments, condomenia, manufactured homes, or other residential dwelling units.

Private club where liquor by the drink is served means any establishment that serves liquor by the drink for on premise consumption. This shall include all porch, patio, and outside areas prohibiting unobstructed public access.

Public place means any enclosed area to which the public is invited or in which the public is allowed, including but not limited to banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, tattoo parlors, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place."

Restaurant means any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. This shall include all porch, patio and outside seating areas.

Retail Electronic Smoking Device store means a retail store utilized primarily for the sale of electronic smoking devices and accessories and in which the sale of other products is merely incidental.

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, or burning of any tobacco product or similar substance in any manner or any form. "Smoking" also includes the use of an electronic smoking device which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Chapter.

Sports arena means 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.

SECTION III

Chapter 46, "Health and Sanitation," Article III, "Smoking Pollution Control," Section 46-106, "Where Smoking Not Regulated," of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended so that henceforth same shall read as follows:

Sec. 46-106. - Where smoking not regulated.

- (a) Notwithstanding any other provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:
 - (1) Private residences, except when used as childcare or health care facilities;
 - (2) A facility operated by a fraternal organization for a charitable, benevolent, or educational function if the premises are controlled by the organization;
 - (3) Retail tobacco store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental;
 - (4) Retail Electronic Smoking Device store utilized primarily for the sale of electronic smoking devices and accessories and in which the sale of other products is merely incidental.
 - (5) A hotel, motel or bed and breakfast room designated as a smoking room and rented to a person, provided the hotel, motel or bed and breakfast may not designate more than 25 percent of its rooms that are rented for temporary overnight occupation by the public as a smoking rooms;
 - (6) A private or semi-private room in a nursing home or long-term care facility that is occupied by individuals who smoke and have requested in writing to be placed in a room where smoking is permitted.
- (b) Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment described in this section may declare the entire establishment as a nonsmoking establishment.

SECTION IV

If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be held to be invalid or unconstitutional, such holding shall in no way affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

SECTION V

All provisions of Chapter 46 of the Code of Ordinances not specifically herein repealed remain in full force and effect. Moreover, this ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Nacogdoches, 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.

SECTION VI

This Ordinance shall take effect immediately upon its passage.

SECTION VII

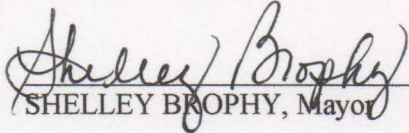
It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and public notice of time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION VIII

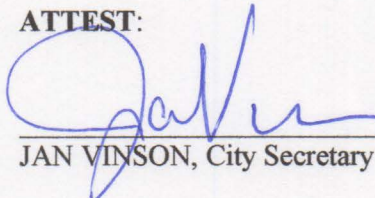
City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches.

PASSED AND APPROVED this the 5th day of March, 2019.

CITY OF NACOGDOCHES

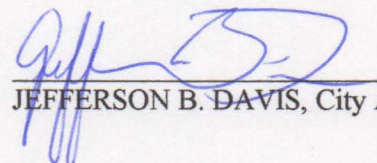
By: 
SHELLEY BROPHY, Mayor

ATTEST:


JAN VINSON, City Secretary



APPROVED AS TO FORM:


JEFFERSON B. DAVIS, City Attorney