

AN ORDINANCE AMENDING ARTICLE I OF CHAPTER 48 ENTITLED "SMOKING" OF THE CODE OF CIVIL AND CRIMINAL ORDINANCES OF THE CITY OF IRVING, TEXAS, PROVIDING A PURPOSE; PROVIDING DEFINITIONS; PROHIBITING SMOKING IN CERTAIN AREAS; PROVIDING THE DUTIES OF THE OWNER, OPERATOR OR OTHER PERSON IN CONTROL AND AN AFFIRMATIVE DEFENSE FOR THE OWNER, OPERATOR OR OTHER PERSON IN CONTROL; PROVIDING EXCEPTIONS TO SMOKING PROHIBITED IN CERTAIN AREAS; ALLOWING MORE STRINGENT REQUIREMENTS; PROVIDING FOR NONRETALIATION; PROVIDING FOR CONSISTENCY WITH STATE AND FEDERAL LAW; PROVIDING VIOLATIONS AND PENALTIES; PROVIDING A SEVERABILITY CLAUSE AND PRESERVING PENDING ACTIONS UNDER THE EXISTING ORDINANCE.

WHEREAS, the City of Irving's Board of Health ("Health Board") has recommended that the City Council of the City of Irving amend the City's current smoking ordinance to further restrict smoking in public places to combat the negative effects associated with smoking and tobacco use; and

WHEREAS, after notice and public hearing, and upon consideration of the recommendation of the Health Board and of all testimony and information submitted during the public hearing, the City Council has determined that it is in the best interest of the public and in support of the health, safety, morals, and general welfare of the citizens of Irving that the City's current smoking ordinance be amended;

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

SECTION 1. That Article I of Chapter 48 entitled "Smoking" of The Code of Civil and Criminal Ordinances of the City of Irving, Texas, is repealed in its entirety and amended to read as follows:

## **ARTICLE I. IN GENERAL**

### **Sec. 48-1. Purpose.**

The purpose of this chapter is to (1) improve and protect the public's health by eliminating smoking in certain places, including workplaces; (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.

### **Sec. 48-2. Definitions.**

For the purposes of this chapter, the following terms have the respective meanings ascribed to them in this section, except in those instances where the context indicates a different meaning:

- (1) *Air curtain or airstream* means a directionally-controlled airstream, moving across the entire height and width of an opening, which reduces the infiltration or transfer of air from one side of the opening to the other and/or inhibits insects, dust or debris from passing through the opening.

- (2) *Bar area* means that area of a restaurant that is set apart from the main dining area and has as its primary function the service of alcoholic beverages.
- (3) *Bingo parlor* means any premises or bingo occasion regulated under the "Bingo Enabling Act," Chapter 2001 of the Occupations Code, V.T.C.A.
- (4) *Child care facility* means a place other than the child's or children's own home or house in which care, supervision and guidance of a child or children unaccompanied by parents or custodian is provided on a regular basis, as further defined in Chapter 13 of The Code of Civil and Criminal Ordinances of the City of Irving, Texas.
- (5) *Day care center* is a commercial establishment which may be a day nursery school, kindergarten, child play school, child development center, early childhood center or registered family home.
- (6) *Employee* means any person who works for hire, including an independent contractor and any person who is working as a volunteer for a nonprofit entity.
- (7) *Employer* means any person (partnership, corporation, association or other entity) employing 1 or more employees.
- (8) *Enclosed area* means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) that 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.
- (9) *Environmental tobacco smoke* means ambient smoke resulting from the act of smoking, including exhaled mainstream smoke and side-stream smoke.
- (10) *Food products establishment* means an operation that:
  - a. Sells food and/or beverages, including alcoholic beverages;
  - b. Serves food to an ultimate consumer; or
  - c. Manufactures, processes, distributes, stores, prepares or transports food that is to be sold;and includes the facility from which the establishment operates and the person that owns, controls or manages the operation.
  - d. A restaurant is a food products establishment.
- (11) *Health care facility* means any facility that provides health care, medical, surgical, psychological, psychiatric, or personal care services, including, but not limited to, adult day-care facilities, assisted living facilities, community mental health centers, crisis stabilization unit, end stage renal disease facility, hospitals, nursing homes, psychiatric hospitals, special care facilities or special hospitals.
- (12) *Movie house* means any facility engaged in the business of exhibiting motion pictures to the public.

- (13) *Patio* means an unenclosed seating area connected with and contiguous to a facility that is open to the public or is a workplace, and either of which is separated from the interior of the building by solid walls, fixed glazing or self-closing doors.
- (14) *Person* means an individual, firm, partnership, association, or other legal entity.
- (15) *Private club* means any establishment, building or facility to which the general public is not invited or in which the public is not permitted, including, but not limited to, private fraternal, social, recreational, political or religious clubs or organizations by membership or invitation only. A privately-owned business, open to the public, is not a "private club."
- (16) *Public facility* means any building, structure or appurtenant areas of a public place. This includes office buildings, hotels, other commercial buildings, and retail facilities.
- (17) *Public place or public area* means any area, facility or building to which the general public routinely has access, whether publicly or privately owned, which is open to or accessible by individuals in the course of business, recreation, employment, the purchase of goods or services, health care, child care or any other activity. A public place does not include a private club as defined above.
- (18) *Retail and service establishment* means any establishment that sells goods or services to the general public.
- (19) *Service line* means any line at which 1 or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- (20) *Smoke-free entrance zone* means that area within 25 feet from the main entrance door of any building where smoking is prohibited.
- (21) *Smoking* means the combustion of any cigar, cigarette, pipe or similar article, using any form of tobacco or other combustible substance in any form. This includes the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or device, and the lighting or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.
- (22) *Theater* means a building in which live performances are presented to an audience.
- (23) *Tobacco-related business* means a retail or service establishment whose primary business involves the sale of tobacco, tobacco products or tobacco smoking implements.
- (24) *Unenclosed area* means an area in an exterior environment that is not enclosed within the conditioned interior space of a building.

- (25) *Workplace* means any enclosed area under the control of any public or private employer that 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 or other permitted business use.

**Sec.48-3. Smoking prohibited in certain areas.**

Except where specifically excepted, smoking is prohibited and shall be unlawful in the following places and areas within the City of Irving:

- (1) An elevator used by the public in buildings generally used by and open to the public, including elevators in office buildings, hotels and multi-family dwellings;
- (2) A health care facility as defined in Section 48-2(11) of this article;
- (3) Any public area of any facility or building of a public or private primary or secondary school; or any seating area of an athletic facility (including an indoor or outdoor athletic facility) of a public or private primary or secondary school;
- (4) Any area of any building or grounds owned, operated or managed by the city, including, but not limited to, the Civic Center Complex, parks (excluding golf courses), municipal swimming pools, recreation centers, Senior Center, Criminal Justice Center, fire stations, police and fire training centers, Irving Community Television Network Building, Irving Convention and Visitors Bureau, Irving Arts Center, Municipal Service Center, municipal warehouses, any seating area of an athletic facility (including an indoor or outdoor athletic facility), Irving Convention Center, and Irving Entertainment Center;
- (5) Any public area of any retail or service establishment serving the general public, including, but not limited to, any department store, grocery store, drug store, or hotel or motel, or shopping mall;
- (6) Food products establishment;
- (7) Workplace of a public or nonpublic facility;
- (8) Standing in a service line or a queue in a public area, regardless of whether the line is indoors or outdoors;
- (9) Restrooms in public facilities;
- (10) Any public area of any facility or building of a public or private institution of higher education or any seating area of an athletic facility (including an indoor or outdoor athletic facility) of an institution of higher education;
- (11) Any area temporarily designated as nonsmoking by order of the fire chief or building official or their designees; when a potentially hazardous or unsafe situation exists;

- (12) Any other area with markings or signs that give reasonable notice that the area is a no smoking area, regardless of whether the means of designating said area comply with this chapter or state law;
- (13) Bingo parlors, billiard halls or pool halls;
- (14) Any facilities or means of public transportation, including, but not limited to, taxicabs, bus terminals or buses, train stations or city-owned, operated or contracted transportation systems;
- (15) Common indoor areas of all multifamily, town home or condominium projects;
- (16) Within the smoke-free entrance or exit zones of all buildings where smoking is prohibited by this article;
- (17) An enclosed theater, movie house, library or museum;
- (18) Daycare centers and child care facilities;
- (19) Any other areas available to and customarily used by the general public, including public places, public facilities and public areas as defined herein.

**Sec. 48-4. Duties of owner, operator or other person in control; affirmative defense for owner, operator or other person in control.**

(a) An owner, operator or other person in control of any of the areas in section 48-3 shall prohibit smoking in nonsmoking areas.

(b) An owner, operator or other person in control of any of the areas in section 48-3 shall provide adequate receptacles for proper disposal of combustible material at least 25 feet from entrances and exits.

(c) An owner, operator or other person in control of any of the areas in section 48-3 shall place signs stating "NO SMOKING" at all building entrances open to the public.

(d) It is a defense to prosecution under this section that an owner, operator or other person in control of any of the areas in section 48-3 has made a good faith effort to prevent smoking in nonsmoking areas. A good faith effort shall include telling the smoker to move from the nonsmoking area or to stop smoking, and posting a sign in a conspicuous place in each nonsmoking area that contains the words, "No Smoking City of Irving Ordinance No. \_\_\_\_."

**Sec. 48-5. Smoking not prohibited in certain areas.**

(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 a child care, adult day care, or health care facility or other permitted business use; health care facilities that also serve as residences may designate smoking areas, which shall be deemed "private residences" for purposes of this article;

- (2) A tobacco-related business;
- (3) Private clubs, as defined in this article;
- (4) A bingo parlor in which smoking was permitted under the provisions of Ordinance No. 8740, adopted December 14, 2006 [section 48-5(8)], may continue as an exception to this article in the building in which it is operating on the date of adoption of this article under the terms of the prior section 48-5(8), in such building;
- (5) A food products establishment, including a restaurant, in which smoking was permitted under the provisions of Ordinance No. 8740, adopted December 14, 2006 [section 48-4(a)-(c)], may continue as an exception to this article in the building in which it is operating on the date of adoption of this article and may continue to operate under the terms of prior Ordinance No. 8740, adopted December 14, 2006 [section 48-4(a)-(c)], in such building so long as it complies with the requirements contained in section 48-11 of this article;
- (6) A hotel in which smoking was permitted under the provisions of Ordinance No. 8740, adopted December 14, 2006, may continue as an exception to the this article in the building in which it is operating on the date of adoptions of this article under the terms of the prior section 48-4(a)-(c), in such building so long as it complies with the requirements contained in section 48-11 of this article;
- (7) A patio, as defined in this article; or
- (8) Golf courses.

(b) All public places which are excepted from the requirements of this article shall post and maintain a sign at each entrance to the facility at least 8 inches by 10 inches with letters at least 2 inches high with half-inch strokes in a color contrasting with the background that states "This Is Not A Smoke Free Environment."

#### **Sec.48-6. More stringent requirements allowed.**

Nothing in this article shall prohibit an owner, operator or person in control of an area designated in section 48-3 from designating an entire facility as nonsmoking or having more stringent requirements than the requirements of this article.

#### **Sec.48-7. Nonretaliation.**

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee, applicant or other person because such employee, applicant or other person exercises any rights afforded by this article.

#### **Sec.48-8. Federal and state law.**

Nothing in this article shall be construed to allow smoking in any area where it is prohibited by state or federal law at this time or by any future statutory provisions.

**Sec.48-9. Violations and penalties.**

(a) It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions.

(b) It is unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.

(c) Any person who violates any provision of this article shall be guilty of a misdemeanor, punishable by a fine of not more than \$2,000.00.

(d) Each day and each area in which a person violates this article is a separate offense.

**Sec.48-10. Time for compliance.**

All places, areas or buildings subject to the terms of this article shall become in compliance prior to the expiration of 6 months from the date of adoption of this article.

**Sec. 48-11. Smoke containment treatment and removal requirement.**

A food products establishment or hotel in which smoking is permitted under section 48-5(a)(5-6) of this article must comply with the following smoke containment treatment and removal requirements:

- (1) Air, gas, and smoke from the designated smoking area shall be prevented from migrating into non-designated areas by a combination of floor to ceiling walls, partitions, glazing, doors or air curtain systems and the maintenance of an air pressure in the designated area sufficiently less than that in the nondesignated area to assure that air flows only from the nondesignated area to the designated area, and not otherwise.
- (2) Ventilation of the air, gas, and smoke from the designated smoking area shall provide an air change every 15 minutes and shall exhaust the air to the exterior of the building or said air, gas, and smoke shall be treated as set forth in subsection (3) below, nor shall said ventilation system cause air from a smoking area to be drawn across the nonsmoking area.
- (3) If air, gas, and smoke from a designated smoking area is treated and returned to that area, treatment shall be at least equal to that provided by an electrically powered media filter that will clean all of the air, gas, and smoke in the designated smoking area every 15 minutes with not less than 95 percent removal of 0.3 micron particulates efficiency including tobacco smoke. In no event will air drawn from designated smoking areas be returned to nonsmoking areas.
- (4) The system shall be tested by an agency approved by the building official or his designee to verify that the system will provide an air change at a rate of 4 times per hour and that air from designated smoking areas is not drawn across nonsmoking areas.

- (5) Failure to meet these standards will result in the denial of the opportunity to operate a smoking area. Smoking areas failing the prescribed test shall be deemed to be nonsmoking until successfully tested. Should there be a mechanical breakdown, malfunction, or other problem rendering the air, gas, and smoking treatment system inoperable for any reason, smoking is prohibited in the facility until repair of the system has been completed and is in operation.
- (6) Facilities with designated smoking areas demonstrating compliance with the provisions herein shall be required to present evidence of testing and certification a minimum of every 2 years. Approved testing and certification shall be performed by:
  - a. A Texas registered professional engineer;
  - b. A certified industrial hygienist; or
  - c. An indoor air quality professional approved by the building official or his designee.
- (7) If the building official or his designee receives a complaint regarding the effectiveness of a system or observes evidence of the failure of a system to comply with subsections (1), (2), or (3) above, the facility shall perform approved testing and certification.
- (8) Facilities which are shown to be in compliance with this section through testing approved by the building official or his designee shall be exempt from the requirements of subsection (6) above for a period of 2 years.
- (9) Smoke removal or containment may be performed by any other method which meets the intent of this chapter and is approved by the building official.

**Sec. 48-12. Cessation of non-conforming rights to allow smoking.**

The right of a food products establishment or hotel to permit smoking under section 48-5(a)(5-6) of this article shall cease at such time as either the certificate of occupancy or use of the establishment changes, fifty-one (51) percent or more of the taxable value of the building is destroyed by fire or natural disaster, or the establishment voluntarily prohibits smoking.

**Secs. 48-13—48-17. Reserved.**

SECTION 2. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in the ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph, or section. Further, it is the intent of the Irving City Council that pending prosecutions, brought under the previous code which this ordinance replaces, should continue under the terms and penalties of said code and be saved from dismissal as if said prior ordinances had not been repealed.



PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS,  
on February 19, 2015.

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BETH VAN DUYNE  
MAYOR

ATTEST:

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Shanae Jennings  
City Secretary

APPROVED AS TO FORM:

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Charles R. Anderson  
City Attorney