

ORDINANCE NO. 14-20

AN ORDINANCE OF THE CITY OF HARLINGEN, TEXAS, AMENDING CHAPTER 92: HEALTH REGULATIONS AND HOSPITALS, OF THE HARLINGEN CITY CODE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING.

WHEREAS, the City Of Harlingen is a home rule municipality established by its Charter and the laws of Texas; and,

WHEREAS, it is the intent of the City to protect the health, safety, welfare, and wellbeing of its citizens; and,

WHEREAS, the 2006 U.S. Surgeon General's Report, The Health Consequences of Involuntary Exposure to Tobacco Smoke, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry; and,

WHEREAS, according to the 2010 U.S. Surgeon General's Report, How Tobacco Smoke Causes Disease, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke; and,

WHEREAS, a 2007 World Health Organization report, "Protection from exposure to secondhand smoke: policy recommendations," has determined that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke; and,

WHEREAS, the City Of Harlingen has reviewed the findings of numerous other studies summarized by Americans for Nonsmokers' Rights, each detailing the dangers posed by second-hand and third-hand smoke to employees in the workplace and the public in general, including increased risk of heart disease, respiratory disease, and cancer, the dangers of smoking in general as a potential cause of fires and economic damage to businesses, as well as the reduction in such risks by the implementation of smoke-free laws; and,

WHEREAS, the City of Harlingen finds that smoking tobacco is a form of air pollution, a positive danger to health, and a material public nuisance; and,

WHEREAS, the City of Harlingen finds that amendments to Chapter 92: Health Regulations and Hospitals, are necessary to protect the public health and welfare by prohibiting smoking in public places and places of employment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF HARLINGEN:

SECTION 1. That Chapter 92: Health Regulations and Hospitals of the Harlingen City Code as amended, is hereby amended to read as follows:

§92.10. PURPOSE

The purpose of this chapter is to improve and protect the public's health by eliminating smoking in public places and places of employment, guarantee the right of nonsmokers to breathe smoke-free air, and recognize that the need to breathe smoke-free air shall have priority over the choice to smoke.

§92.11. DEFINITIONS

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

BAR. 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 represents less than 50% of total receipts, including but not limited to, taverns, nightclubs, cocktail lounges and cabarets. A *BAR* includes those facilities located within a hotel, motel, or other similar transient occupancy establishment.

BUSINESS. Any sole proprietorship, partnership, joint venture, corporation or other business entity formed either for-profit or not-for-profit, 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; and private clubs.

E-CIGARETTE. 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 e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.

EMPLOYEE. Any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

EMPLOYER. Any person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity, which employs the services of one or more individual persons.

ENCLOSED AREA. All space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

HEALTH CARE FACILITY. An office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

PLACE OF EMPLOYMENT. 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, private offices, 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.

PLAYGROUND. Any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City of Harlingen grounds.

PRIVATE CLUB. An organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes, 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.

PUBLIC PLACE. Any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health facilities, hotels and motels, laundromats, public transportation vehicles and facilities, reception area, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters and waiting rooms. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.

PRIVATE RESIDENCE. The primary residence for an individual, family, or household, whether permanent or semi-permanent. A house, apartment, mobile home, duplex, four-plex, or other similar type of dwelling unit.

RESTAURANT. An eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar area within the restaurant.

RETAIL TOBACCO STORE AND E CIGARETTE STORE. A retail store utilized primarily for the sale of tobacco products/e-cigarettes and accessories and in which the sale of other products is merely incidental.

SERVICE LINE. Any 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, including, but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

SHOPPING MALL. An enclosed public walkway or hall area that serves to connect retail or professional establishments.

SMOKING. Inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. “Smoking” also includes the use of an e-cigarette 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 Article.

SPORTS ARENA. An enclosed or outdoor sports pavilion, 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.

§92.12 PROHIBITION OF SMOKING IN PUBLIC PLACES:

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:

(A) 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;

(B) Bingo facilities.

(C) Elevators;

(D) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multi-unit residential facilities;

(E) Polling places;

(F) 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;

(G) Restrooms, lobbies, reception areas, hallways and any other common-use areas;

(H) Retail stores;

(I) Rooms, 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.

(J) Service lines;

(K) All City owned facilities;

(L) Restaurants, Bars;

(M) Galleries, libraries, museums and zoo facilities and grounds;

(N) Any facility which is primarily used for exhibiting any motion picture, stage drama, lecture, musical recital, or other similar performance;

(O) Child care and adult day care facilities, Health care facilities;

(P) Convention facilities; Educational facilities, both public and private;

(Q) Hotels and motels;

(R) Shopping malls, indoor flea markets;

(S) Enclosed and outdoor sports arenas and convention halls including bowling facilities;

(T) Valley Race Park.

(U) Private Clubs.

§92.13 PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT:

(A) It shall be the responsibility of employers to provide a smoke-free workplace for all employees.

(B) Smoking shall be prohibited in all enclosed areas 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.

(C) This prohibition on smoking shall be communicated to all existing employees by the effective date of this Chapter and to all prospective employees upon their application for employment.

92.14 PROHIBITION OF SMOKING IN OUTDOOR AREAS

Smoking shall be prohibited in the following outdoor places:

(A) Within a distance of 10 feet from outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to ensure that tobacco smoke does not enter those areas.

(B) In all outdoor sports arenas, playgrounds, parks, zoos, stadiums, and amphitheaters, bleachers and grandstands for use by spectators at sporting and other public events.

(C) In all public transportation stations, platforms, bus shelters, and outdoor public transit waiting areas.

(D) In all outdoor service lines.

(E) In outdoor common areas of nursing homes, except in designated smoking areas, which must be located at least 10 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

(F) Outdoor flea Markets.

§92.15 ADDITIONAL DECLARATION OF NONSMOKING ESTABLISHMENT:

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

§ 92.16 EXEMPTIONS.

Notwithstanding any other provision of this Chapter to the contrary, the following areas shall be EXEMPT from the provisions of this Chapter:

- (A) Private residences, except when used as a child care, adult day care or health facility;
- (B) Not more than twenty five (25%) of hotel and motel rooms rented to guests and designated as smoking rooms. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Chapter.
- (C) Retail tobacco stores and/or retail e-cigarette stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Chapter.
- (D) Golf Courses between the tee of the first hole and the green of the final hole.
- (E) Outdoor seating at restaurants, bars, private clubs and Valley Race Park, provided that smoking will not be permitted within 10 feet of entrances, operable windows or ventilation systems of the enclosed areas.

§92.17 PROHIBITION RELATED TO MINORS

- (A) Except as otherwise provided by state or federal law, the sale of e-cigarettes to any person under the age of 18 is prohibited in the City of Harlingen.
- (B) Except as otherwise provided by state or federal law, possession of an e-cigarette by any person under the age of 18 is prohibited in the City of Harlingen.

§92.18 POSTING OF SIGNS

- (A) The owner, manager or other person having control of such building or other area where smoking is prohibited by this Chapter 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.
- (B) 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).
- (C) 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.
- (D) The owner, manager or other person having control of every vehicle that constitutes a place of employment under this Chapter shall clearly and conspicuously post at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.

§92.19 ENFORCEMENT

1. Enforcement of this Chapter 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 Chapter 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 Chapter shall be responsible for informing persons violating this Chapter of the provisions through appropriate signage.
4. Notwithstanding any other provision of this Chapter, a private citizen may bring legal action to enforce this Chapter.

§92.20 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 Chapter.

§92.21 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 Chapter 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 Chapter.
3. Any person who violates any provision of this Chapter shall be guilty of a Class "C" misdemeanor punishable by:
 - a. A fine not exceeding one hundred dollars for the first violation;
 - b. A fine not exceeding two hundred dollars for a second violation within a one year period of the first violation;
 - c. A fine not exceeding five hundred dollars for an additional violation within a one year period of the first violation.

§92.22 OTHER APPLICABLE LAWS

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

SECTION 2. 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.

SECTION 3. 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.

SECTION 4. Effective date

That except as provided herein, this Ordinance shall take effect on July 1, 2014 and it is accordingly so ordained.

FINALLY ENACTED THIS 27th day of May, 2014, at a special 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

BY: 
Chris Boswell, Mayor

ATTEST:


Amanda C. Elizondo, City Secretary