CHAPTER 93: SMOKING IN PUBLIC PLACES

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§ 93.01 SMOKING PROHIBITED IN CERTAIN PUBLIC PLACES.

(A) For the purpose of this section the following definitions shall apply unless the context clearly indicates a different meaning.

ADMINISTRATIVE AREA The area of a city owned building not generally accessible to the public, including but not limited to individual offices, stockrooms, employee lounges or meeting rooms.

PUBLIC SERVICE AREA. Any area to which the general routinely has access for municipal services or which is designated a public service area.

- (B) Where prohibited. A person commits an offense if he smokes, or possesses a burning tobacco, weed or other plant product; or if he chews a tobacco, weed or other plant product in any administrative area, conference room, meeting room or public service area of any facility owned, operated or managed by the city. This includes, but is not to be limited to the city hall, city recreation centers, library, police building, service centers and fire stations.
- (C) City facility designated smoking area. The City Manager may designate an area, including but not limited to lobbies, meeting rooms, or waiting rooms, as a smoking area. Smoking and possession of burning tobacco, weed or other plant product or chewing of same is allowed of signs are prominently displayed designating that place as a permitted smoking area.
- (D) Signs. It is a defense to prosecution under this section of the building in which the offense occurs does not have prominently displayed at its entrance a reasonably sized notice that smoking is prohibited. In the absence of a sign designating an area of any city facility as a permitted smoking area, it shall be presumed to be a no smoking area. ('65 Code, § 10-22) (Ord. 1388, passed 7-7-87) Penalty, see § 10.99

§ 93.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AIR PURIFICATION SYSTEM. An electrically powered, hospital grade, hepa media filter that will clean all of the air in the designated smoking area every 15 minutes as follows: Not less than 95% of three-tenths micron particulates efficiency including dust, smoke, pollen, mold spores, bacteria, tobacco smoke, viruses and allergens and not less than 95% percent removal of gases, vapors, volatile organic compounds (V.O.C) and odors.

- **AIR VENTILATION SYSTEM.** An HVAC system designed by a licensed professional engineer to meet the requirements of the city mechanical code.
- **BILLIARD HALL.** A place of amusement whose chief purpose is providing the use of billiard/pool tables to the public for a fee.
- **BINGO PARLOR.** A facility regulated under TEX. REV. CIV. STAT. ANN., article 179d "Bingo Enabling Act."
- **CONVEYANCE.** Any vehicle used as a means of carrying or transporting persons as passengers, to which the public or a substantial group of the public has access.
- **DAY CARE CENTER.** Any facility, which receives 13 or more children and provides for the care, supervision and guidance of the children on a regular basis, unaccompanied by a parent or guardian, for a period of less than 24 hours per day, and in a place other than the children's own home or homes.
- **DESIGNATED SMOKING AREA.** An area which shall not exceed 30% of the net floor area of a restaurant having a physical barrier between it and the nonsmoking area and having a separate air purification system or separate air ventilation system.
- **EATING ESTABLISHMENT.** Any place where food is served for on-premises consumption and which is accessible by the public or a substantial group of the public.
- **ENCLOSED.** Closing in by a roof and walls with appropriate openings for ingress and egress.
- **FOOD PRODUCTS ESTABLISHMENT.** Any restaurant, coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria or eating establishment, and any other eating establishment, organization, club, boardinghouse, or guesthouse, which gives or offers for sale food to the public or a substantial group of the public, guests, patrons or employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. Other food product establishments *include* grocery stores and food markets, not including those outdoors.
- **HEALTH OFFICIAL.** The director of the department designed by the city manager to enforce and administer this chapter or the director's designed representative.
- **NET FLOOR.** The floor area of the interior of a food products establishment normally utilized and accessible by patrons and/or the general public for dining, including bar and lounge areas, and exterior dining areas, but excluding restrooms, service lines, waiting areas, public telephone areas, and other common areas used by all patrons.
- **PHYSICAL BARRIER.** A barrier that will form an effective membrane continuous from outside wall to outside wall, from a smoke barrier to a smoke barrier, from floor to floor, or roof above, or a combination thereof, including continuity through all concealed spaces, such as above suspended ceilings, interstitial structural and mechanical spaces. Transfer grilles, louvers and similar openings shall not be used in these partitions. Self-closing, tight-fitting doors are permitted in such barriers.
- **PUBLIC AREA.** Any enclosed, indoor area that is open to or is used by the general public and includes but is not limited to: retail stores, grocery stores, offices, professional, commercial or financial establishments, restaurants, public and private institutions of education, health care facilities, nursing and convalescent homes, residential treatment facilities, and buildings owned or occupied by political subdivisions.

PUBLIC BUSINESS. Any deliberation between a quorum of members of any board, commission, department committee of agency within the executive or legislative department of the state, or the City Council or any board or commission of the city at which any public business or public policy is discussed or considered or at which any formal action is taken.

PUBLIC PLACE. Any place to which the public or a substantial group of the public has access.

SERVICE LINE OR WAITING AREA. An indoor line or area where persons await service of any kind, regardless of whether or not such service involves exchange of money. Such service shall include, but is not limited to, sales, restaurant seating, giving of information, directions or advice, and transfers of money or goods.

SMOKE OR SMOKING. The carrying or holding of a pipe, cigar or cigarette of any kind which is burning, or the igniting of a pipe, cigar of cigarette of any kind which is burning.

TOBACCO PRODUCT. A cigarette, cheroot, stogie, cigar, snuff, smoking tobacco, chewing tobacco and any article or product made of tobacco or a tobacco substitute.

TOBACCO SHOP. A retail establishment with annual gross revenues of at least 50% from the sale of tobacco products and smoking accessories.

VENDING MACHINE. Any mechanical, electric or electronic self-serving device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products. (Ord. 1988, passed 5-17-94; Am. Ord. 2394, passed 12-1-98)

§ 93.03 SMOKING PROHIBITED IN SPECIFIED PLACES.

- (A) Prohibited places. A person commits an offense if he possesses a burning tobacco product or smokes a tobacco product within;
 - 1. A public/private primary or secondary school;
 - 2. An elevator in buildings generally used by and open to the public, including elevators in office buildings, hotels and multi-family dwellings;
 - 3. A library;
 - 4. A museum:
 - 5. A health care facility or hospital;
 - 6. A public conveyance;
 - 7. A room or enclosed place of public assembly in which public business requires or provides an opportunity for direct participation or observation by the general public;
 - 8. An indoor or outdoor pedestrian service line in which more than one person is giving or receiving goods or services of any kind;
 - 9. A food products establishment, restaurant, retail food store or convenience store, except as designated in § 93.07(C);
 - 10. An eating establishment, bar, night club, adult entertainment establishment, billiard hall or bingo parlor;
 - 11. A public rest room;
 - 12. A publicly or privately owned theater, auditorium or other enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event or any other performance or event;
 - 13. A day care center in the presence of a child;
 - 14. A designated seating area of any publicly or privately owned outdoor theater, outdoor athletic facility, or amphitheater;
 - 15. A service station or gas station;

- 16. Any conference room, meeting room or assembly room of any hotel, motel or public or private convention center except when being used for an event to which the general public is excluded;
- 17. Within 20 linear feet of the outside entrance to a smoking prohibited area.

(B) Affirmative defenses.

- 1. It is an affirmative defense to a prosecution under division (A) that the establishment did not have prominently displayed a reasonable sized notice that smoking was prohibited.
- 2. It is an affirmative defense to a prosecution under division (A) that the facilities for the extinguishment of smoking materials were not located within 20 feet and outside of the public entrances of the establishment.
- (C) Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment or facility described in this section may declare that entire establishment or facility as a nonsmoking establishment. (0rd. 1988, passed 5-17-94; Am. Ord. 2394, passed 12-1-98) Penalty, see § 93.99

§ 93.04 POSTING OF SIGNS; PLACING OF RECEPTACLES AND PUBLIC ADDRESS SYSTEM ANNOUNCEMENT REQUIRED.

(A) Signs

- The owner, manager or operator of a place, establishment or conveyance regulated by § 93.03 shall have signs conspicuously placed at all entrances which state: "No Smoking Inside – No Smoking Within Twenty Feet of Entrance – City Ordinance."
- 2. The owner, manager, operator of a place or establishment using an exception under § 93.07 shall have signs conspicuously placed at all entrances which state: "No Smoking Within Twenty Feet of Entrance Smoking Area Provided Inside City Ordinance."
- (B) Receptacles. The owner, manager or operator of a place, establishment or conveyance regulated by § 93.93 shall have receptacles for the extinguishment of smoking materials located within 20 feet of all entrances.
- (C) Public address system announcement. In those outdoor athletic facilities, theaters and amphitheaters where a public address system is available, the owner, manager or operator in control of such facility shall announce prior to each game or performance the prohibition of smoking. (Ord. 1988, passed 5-17-94; Am. Ord. 2394, passed 12-1-98) Penalty, see § 93.99

§ 93.05 ADDITIONAL OFFENSES.

- (A) The owner, manager or operator of a place, establishment or conveyance regulated by § 93.03 commits an offense if he fails to post signs as required by § 93.04.
- (B) The owner, manager or operator of a place, conveyance or establishment regulated by § 93.03 commits an offense of he fails to provide extinguishment facilities as required by § 93.04.
- (C) The owner, manager or operator of an outdoor athletic facility, theater or amphitheater where a public address system is available, commits an offense if he operates such a facility without announcing or causing to be announced

- prior to each game or performance the prohibition of smoking in seating areas.
- (D) And owner, manager or operator of a food products establishment, bar, night club, adult entertainment establishment, billiard hall or bingo parlor commits in any area, except as provided in § 93.07 (C), or fails to properly maintain an air purification system or air ventilation system. (Ord. 1988, passed 5-17-94; Am. Ord. 2394, passed 12-1-98) Penalty, see § 93.99

§ 93.06 VENDING MACHINES

A person commits an offense if he sells, offers for sale, allows the sale of, allows the offer for sale or, or allows the display for sale of tobacco products by use of a vending machine. (Ord. 1988, passed 5-17-94) Penalty, see § 93.99

§ 93.07 EXCEPTIONS.

Notwithstanding any other provision of this chapter to the contrary, smoking is not prohibited in the following areas:

- (A) Retail tobacco stores that have an enclosed, separately ventilated smoking room that exhausts directly to the outside environment;
- (B) Any enclosed rooms in an establishment or facility which are being used entirely for private parties, events or other social functions;
- (C) In the designated smoking areas as herein defined of any food products, retail or service establishment serving the general public which has provided a designated smoking area equipped with a functional separate ventilation system, as herein defined:
 - (1) Such systems shall have a negative pressure on the area designated for smoking to prevent air from a smoking area to be drawn across or into the nonsmoking area.
 - (2) All air ventilation systems in the designated smoking area shall provide a total air exchange every 15 minutes and shall exhaust that air to the exterior of the building.
 - (3) A sign must be posted on the premises in a conspicuous place to advise the public that smoking is permitted in the designated smoking area.
 - (4) Designated smoking areas shall not include restrooms, service lines, waiting areas, public telephone areas, and other areas commonly used by all patrons, including access thereto. (Ord. 1988, passed 5-17-94; Am. Ord 2394, passed 12-1-98)

§ 93.08 CULPABILITY.

There shall be no requirement of a culpable mental state for a violation of this chapter. (Ord. 1988, passed 5-17-94)

§ 93.09 NO CO-MINGLING OF AIR; TESTING REQUIRMENTS.

- (A) It is the intent of this chapter to define distinct and separate areas for smoking and nonsmoking use to assure a smoke-free atmosphere in nonsmoking areas and prohibit the co-mingling of air between such areas.
- (B) All air purification systems and air ventilation systems shall be tested at installation and periodically thereafter ant the owner's or operator's expense to insure compliance with this chapter. The initial test shall be observed by the city at the time of installation. Subsequent test shall be conducted at least every six months. The health official may also require testing at any time. Notice of testing shall be given to the health official at least 24 hours in advance so the test may be observed. Records of tests must be retained on site for a minimum of five years. (Ord. 2394, passed 12-1-98)

§ 93.99 PENALTY.

Whoever violates any provision of this chapter shall be punished as provided in §10.99. (Ord. 1988, passed 5-17-94)

The City of Carrollton Smoking Ordinance (Ordinance # 2394) now has provisions for designated smoking areas in eating establishments. Those provisions are allowed only under specific guidelines as follows:

- **Application.** An application must be submitted to the Environmental Services Department prior to any work being undertaken. A floor plan showing the proposed location of the designated smoking area must be provided with the application.
- **Area Allowance.** The designated smoking area shall not exceed thirty percent (30%) of the not floor area of the restaurant. Net floor area includes the floor area of the interior of a food products establishment normally utilized and accessible by patrons and/or the general public for dining, including bar and lounge areas, and exterior dining areas, but excluding restrooms, service lines, waiting areas, public telephone areas, and other common areas used by all patrons.

- **Physical Barrier.** A barrier that will form an effective membrane continuous from outside wall to outside wall, from a smoke barrier to a smoke barrier, from floor to floor or roof above, or combination thereof, including continuity through all concealed spaces, such as above suspended ceilings, interstitial structural and mechanical spaces.
- Air Handling Requirements. The designated smoking area must be serviced by a separate ventilation system or an air purification system. The HVAC system must designed by a licensed professional engineer to meet the requirements of the city mechanical code and provide a total air exchange every fifteen (15) minutes and shall exhaust to the exterior of the building. The air purification system must be an electrically powered, hospital grade, hepa media filter that will clean all of the air in the designated smoking area every fifteen (15) minutes as follows: Not less than ninety-five percent (95%) of three-tenths (0.3) micron particulates efficiency including dust, smoke, pollen, mold spores, bacteria, tobacco smoke, viruses and allergens and not less than ninety-five (95%) removal of gases, vapors, volatile organic compounds (V.O.C.) and odors.
- **Negative Air Pressure.** Designated smoking areas equipped with a functional air purification system or functional separate ventilation system shall provide for a negative air pressure to prevent air from the smoking area to be drawn across or into the nonsmoking area.
- **Signage.** A sign must be posted on the premises in a conspicuous place to advise the public that smoking is permitted in the designated smoking area. Signs are available from Environmental Services.
- Commingling of Air Prohibited. It is the intent of this provision to define distinct and separate areas for smoking and nonsmoking use to assure a smoke-free atmosphere in the nonsmoking areas and prohibit the commingling of air between such areas.
- Monitoring and Testing Requirements. All air purification systems and air ventilation systems shall be independently tested at installation and periodically thereafter at the owner's or operator's expense to insure compliance. The initial test shall be conducted by a qualified professional and observed by the city at the time of installation. Subsequent test shall be conducted by a qualified professional at least every six (6) months. The health official may also require testing at any time. Notice of testing shall be given to the health official at least twenty-four (24) hours in advance so the test may be observed. Records of tests must be retained on site for a minimum of five years.