

ORDINANCE NO. _____

An ordinance amending Chapter 41, “Smoking,” of the Dallas City Code, by amending Sections 41-1, 41-2, and 41-3; providing a definition of electronic smoking device; revising the definition of smoking to include the use of an electronic smoking device; providing additional signage requirements for electronic smoking devices; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date.

Now, Therefore,

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

SECTION 1. That Section 41-1, “Definitions,” of Article I, “General Provisions,” of Chapter 41, “Smoking,” of the Dallas City Code, is amended to read as follows:

“SEC. 41-1. DEFINITIONS.

In this chapter:

(1) **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) **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) **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) ELECTRONIC SMOKING DEVICE means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, dab rig or vape pen, or under any other product name or descriptor.

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

(9[8]) EMPLOYER means any person who employs one or more employees.

(10[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.

(11[10]) HOSPITAL means any institution that provides medical, surgical, and overnight facilities for patients.

(12[11]) MINOR means an individual:

(A) under 21 years of age; or

(B) at least 18 years of age and presenting a valid military identification card of the United States military forces or the state military forces.

(13[12]) PARK PARTNER means any entity that contracts with the city for the operation, maintenance, or management of park property.

(14[13]) PARK PROPERTY means property under the control and jurisdiction of the park board.

(15[14]) PERSON means an individual, firm, partnership, association, or other legal entity.

(16[15]) 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.

(17[16]) SECOND-HAND SMOKE means ambient smoke resulting from the act of smoking.

(18[17]) SMOKE OR SMOKING means inhaling, exhaling, burning, possessing, or carrying any lighted or heated [~~burning~~] cigar, [~~or~~] cigarette, hookah, electronic smoking device, or any pipe or other device that contains lighted or burning tobacco or plant [~~tobacco~~] products intended for inhalation, whether natural or synthetic, including marijuana or cannabis in any manner or in any form.

(19[18]) 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.

(20[19]) WORKPLACE means any indoor or enclosed area where an employee works for an employer.”

SECTION 2. That Section 41-2, “Smoking Prohibited in Certain Areas,” of Article II, “Smoking Prohibitions,” of Chapter 41, “Smoking,” of the Dallas City Code, is amended to read as follows:

“SEC. 41-2. **SMOKING AND ELECTRONIC SMOKING DEVICES PROHIBITED IN CERTAIN AREAS.**

- (a) A person commits an offense if he smokes or uses an electronic smoking device:
- (1) in any indoor or enclosed area in the city;
 - (2) within 15 feet of any entrance to an indoor or enclosed area in the city;

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

(4) on park property.

(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 or use an electronic smoking device 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:

(1) An elevator.

(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.

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

(d) It is a defense to prosecution under Subsection (a)(1), (a)(3), or (b) of this section if the person was smoking or using an electronic smoking device 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;

(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 in which smoking is prohibited under this section;

(C) is not generally accessible by a minor; and

(D) keeps all windows and doors closed at all times except as reasonably necessary for the expeditious entering and exiting of the cigar bar;

(4) a tobacco shop that:

(A) does not open into any other indoor or enclosed area 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 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; or

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

(e) It is a defense to prosecution under Subsection (a)(2) of this section if the person was smoking or using an electronic smoking device 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.

(f) It is a defense to prosecution under Subsection (a)(4) of this section if the person was smoking in a location that was:

(1) a golf course, if the location was:

(i) between the tee box of the first hole and the end of the green of the 18th hole;

(ii) on the driving range; or

- (iii) on the outdoor patio;
- (2) the Elm Fork Shooting Range; or
- (3) at a park partner site.”

SECTION 3. That Section 41-3, “Signage and Other Requirements,” of Article II, “Smoking Prohibitions,” of Chapter 41, “Smoking,” of the Dallas City Code, is amended to read as follows:

“SEC. 41-3. SIGNAGE AND OTHER REQUIREMENTS.

(a) The owner, operator, or person in control of an establishment or other area in which smoking and the use of an electronic smoking device 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 or Use Of An Electronic Smoking Device, City of Dallas Ordinance,” the universal symbol for no smoking, or other language that clearly prohibits smoking or the use of an electronic smoking device.

(b) The owner, operator, or person in control of an indoor or enclosed area to which the smoking or the use of an electronic smoking device 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 or Use Of An Electronic Smoking Device within 15 Feet of Entrance, City of Dallas Ordinance.” The universal symbol for no smoking and no electronic smoking device may be substituted for the words “No Smoking and No Electronic Smoking Device.”

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

(d) It is a defense to prosecution under this section that the establishment or area is a location for which a defense to prosecution is provided under Section 41-2(d).”

SECTION 4. That, unless specifically provided otherwise by this ordinance or by state law, a person violating a provision of this ordinance is, upon conviction, punishable by a fine not to exceed \$500.

SECTION 5. That Chapter 41 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 6. That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.

SECTION 7. 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.

SECTION 8. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

TAMMY L. PALOMINO, City Attorney

By _____
Assistant City Attorney

Passed _____