

11A 7-23-09

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF GALVESTON, TEXAS, AMENDING "THE CODE OF THE CITY OF GALVESTON 1982, AS AMENDED" BY REPEALING CHAPTER 11.5 "CLEAN INDOOR AIR" IN ITS ENTIRETY TO ADOPT A NEW CHAPTER 11.5, ENTITLED "CLEAN AIR: SMOKING IN PUBLIC PLACES" TO FURTHER RESTRICT SMOKING IN PUBLIC PLACES AND AREAS WHERE THE PUBLIC IS INVITED; PROHIBITING SMOKING IN ENCLOSED PUBLIC PLACES INCLUDING RESTAURANTS, BARS, AND PLACES OF EMPLOYMENT; PROHIBITING SMOKING WITHIN A REASONABLE DISTANCE OUTSIDE AN ENCLOSED AREA WHERE SMOKING IS PROHIBITED; PROVIDING DEFINITIONS; PROVIDING GENERAL EXCEPTIONS; PROVIDING FOR A PENALTY; PROVIDING FOR THE POSTING OF SIGNS; PROVIDING FOR PUBLIC EDUCATION; PROVIDING FOR AN EFFECTIVE DATE OF OCTOBER 1, 2009; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT.

WHEREAS, on December 15, 1988 City Council adopted Ordinance No. 88-99, and subsequently amended, to restrict smoking in public places except in areas designated as exception areas in order to protect the welfare of its citizens; and,

WHEREAS, the Surgeon General of the United States has declared that smoking is the number one preventable cause of death and disease in our country; and,

WHEREAS, numerous studies have found that tobacco is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a leading cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer; and,

WHEREAS, the City of Galveston recognizes the increasing evidence that tobacco smoke endangers the health and comfort of smokers and nonsmokers who are in confined spaces where smoke is present; and,

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

WHEREAS, the City Council deems it in the public interest to further restrict smoking in public places and in workplaces to protect persons in public places and employees in their occupational environments from exposure to secondhand smoke; and,

WHEREAS, the City Council of the City of Galveston, Texas finds and declares that the purposes of this Ordinance are (1) to protect the public health, safety, and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke.

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

SECTION 1. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. Chapter 11.5, "Clean Indoor Air" of the Code of the City of Galveston 1982, as amended is hereby repealed in its entirety.

SECTION 3. The Code of the City of Galveston 1982, as amended is hereby amended by adding a new Chapter 11.5, entitled "Clean Air: Smoking in Public Places" to read and provide as follows:

11.5- 1. Purpose.

The purpose of this chapter is to

- (1) improve and protect the public's health by eliminating smoking in public places and workplaces;
- (2) promote 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 of smoke.

11.5 - 2. Definitions.

(1) BAR means an area that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. A "bar" includes those facilities located within a restaurant, hotel, motel or other similar transient occupancy establishment and those establishments that allow guests to bring their own alcoholic beverages for consumption on premises. For purposes of this chapter, a bar includes any place where alcohol is consumed, whether purchased on or brought to the premises.

(2) BUSINESS means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for 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.

(3) EMPLOYEE means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a nonprofit entity.

(4) EMPLOYER means a person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more persons.

(5) ENCLOSED AREA means a space that is enclosed on all sides by solid walls that extend from the floor to the ceiling (exclusive of windows, doors or passageways), including all space therein screened by partitions which do not extend to the ceiling or are not solid.

(6) FRATERNAL ORGANIZATION means a non-profit organization that:

(a) is chartered by a national organization in existence since 1953;

(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 respective form of government; and

(d) is organized for the exclusive benefit of the members of the organization and their dependents.

(7) "HEALTH CARE FACILITY" means 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, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, 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.

(8) "NECESSARY STEPS" as used in this chapter means that the owner/operator shall take the first step listed, and so many of the subsequent steps as are necessary to prevent occupants from smoking:

(a) post signs advising occupants that smoking is prohibited, and remove all ashtrays from the premises;

(b) advise a smoking occupant that smoking is prohibited on the premises;

(c) refuse to serve any occupant who persists in smoking despite the above;

(d) ask any occupant who persists in smoking despite the above, to leave the premises;

(e) follow standard business procedures taken when any occupant violates house rules;

(f) if none of the previous steps causes the occupant to leave or stop smoking, notify the police department.

(9) OPERATOR means the owner or person in charge of a public place or workplace, including an employer.

(10) OUTDOOR SEATING AREA means any patio, sidewalk café, or similar unenclosed area in which a contiguously situated restaurant or bar provides outdoor service to its patrons.

(11) PRIVATE CLUB means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, 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.

(12) PRIVATE PLACE means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal residences, fraternal clubs or personal automobiles. A privately-owned business, open to the public, is not a "private place".

(13) PUBLIC PLACE means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, cruise ship terminals, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, 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 child care, adult day care, or health care facility.

(14) RESTAURANT means 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.

(15) RETAIL TOBACCO STORE means a retail store used primarily for the sale of tobacco products and smoking accessories and in which the sale of other non-tobacco products is incidental. Sales of incidental products shall not include the sale of alcohol regardless of percentage of total gross sales.

(16) SERVICE LINE means a line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

(17) SMOKING means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

(18) SPORTS ARENA means sport 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.

(19) WORKPLACE means an 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 restroom, conference and classrooms, employee cafeterias and hallways. A private residence is a "workplace" if it is used as a child care, adult day care or health facility.

11.5 – 3. Prohibition of smoking in enclosed public places.

(A) Smoking shall be prohibited in all enclosed public places within the City of Galveston, including but not limited to, the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, hotels, and laundromats.
- C. Areas where prohibited by City Fire Code.
- D. Bars including Restaurant Bars, Lounge Bars, and Taverns.
- E. Bingo facilities.
- F. Bowling centers.
- G. City facilities and vehicles.
- H. Convention facilities.
- I. Educational facilities, both public and private.
- J. Elevators.
- K. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.

- L. Government facilities and vehicles.
- M. Health care facilities.
- N. Hotel, motel, and bed and breakfast lobbies.
- O. Licensed childcare and adult day care facilities.
- P. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- Q. Polling places.
- R. Private clubs when being used for a function to which the general public is invited.
- S. Public transportation facilities, including buses, trolleys, taxicabs, ferries, cruise ship terminals and ticket, boarding, covered or enclosed waiting areas of public transit depots.
- T. Restaurants.
- U. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- V. Retail establishments.
- W. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or Council of the City of Galveston or a political subdivision of the State of Texas, to the extent the place is subject to the jurisdiction of the City of Galveston.
- X. Service lines.
- Y. Shopping malls.
- Z. Sports arenas, including enclosed places in outdoor arenas.

(B) Smoking shall be prohibited in an enclosed area of a workplace. 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) Smoking shall be prohibited within five (5) feet from an entrance, operable window, or ventilation system of an enclosed area in which smoking is prohibited.

(D) The owner or operator of a public place shall to take necessary steps to prevent or stop another person from smoking in an enclosed area in a public place.

11.5 – 4. Prohibition of smoking in outdoor areas.

Smoking shall be prohibited in the following outdoor areas:

- A. The seating area of an outdoor arena, stadium or amphitheater.
- B. In all outdoor service lines.
- C. In all outdoor public transportation stations, platforms, and shelters
- D. City parks.

11.5 – 5. Reasonable Distance.

Smoking is prohibited within a reasonable distance of not less than five (5) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

11.5 – 6. Application of chapter to city-owned facilities and public transportation facilities.

All facilities, including parks, playgrounds, transportation facilities including buses, trolleys, ticket, boarding, covered or enclosed waiting areas of public transit depots, buildings, and vehicles owned, leased or operated by the City, shall be subject to the provisions of this chapter.

11.5 – 7. Exceptions from prohibition.

This chapter does not apply to:

- (1) A dwelling unit that is used exclusively for a residential use;
- (2) Private vehicles, except when being used in the course of employment;
- (3) A hotel or motel room designated as a smoking room and rented to a person, provided, however, that no more than twenty percent (20%) of hotel and motel rooms rented to guests may be so designated. 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. That status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

(4) Retail tobacco stores, provided that smoke from these establishments does not infiltrate into areas where smoking is prohibited under the provisions of this chapter.

(5) 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; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this chapter.

(6) Private clubs, if not open to the general public.

(7) Outdoor seating or serving area of restaurants or bars.

11.5 – 8. Outdoor distance exceptions.

A person may smoke within five (5) feet of an entrance to a restricted smoking facility if:

- (1) the entrance is not a primary public pedestrian entrance to the premises; or
- (2) the distance between the entrance and the adjacent roadway is less than five (5) feet.

11.5 – 9. Employer Responsibilities.

(A) Except as provided in Subsection (B), an employer shall provide a smoke-free workplace for employees.

(B) If an employer requires employees to work in an area described in Sec. 11.5-7 (Exceptions from Prohibition), the employer shall make reasonable accommodations for an employee who requests assignment to a smoke-free area.

(C) Each employer having any enclosed workplace located within the City shall adopt, implement and maintain a written smoke policy, which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a workplace. 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.

Additionally, smoking is prohibited with a reasonable distance of not less than 5 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

(D) The smoking policy shall be communicated to all employees within four (4) weeks of its adoption and posted conspicuously in all workplaces under the employer's jurisdiction.

(E) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employees.

11.5 – 10. Voluntary designation of a non-smoking facility.

Nothing in this chapter implies that the operator of any public or private place is prohibited from designating the entire facility as non-smoking.

11.5 – 11. Signs required.

(A) The operator of a public place shall conspicuously post a "No Smoking" sign, the international "No Smoking" symbol (depiction of a burning cigarette enclosed in a red circle with a red bar across it), or other sign containing words or pictures that reasonably prohibit smoking. The signs shall be written in contrasting colors with bold block lettering of not less than one (1) inch in height and must be posted:

(1) in each public place and workplace where smoking is prohibited by this chapter: and

(2) at each entrance to a public place or workplace.

(B) The operator of a public place shall conspicuously post signs in areas where smoking is permitted under Sec. 11.5-7 (Exceptions fro Prohibition).

(C) The operator of a public place and an employer shall remove any ashtray or other smoking accessory from a place where smoking is prohibited.

(D) It is not a defense to prosecution under this chapter that an operator failed to post a sign required under this section.

11.5 – 12. Retaliation prohibited.

(A) A person commits an offense if the person discharges, refuses to hire, or retaliates against a customer, employee, or applicant for employment because the customer, employee or applicant for employment reports a violation of this chapter.

(B) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

11.5 – 13. Enforcement.

(A) This section is cumulative of other laws regulating smoking providing enforcement authority.

(B) This chapter shall be enforced by the Fire Department, Police Department, Building Inspections Division, or Code Enforcement Officers.

(C) Any citizen may report a violation of this chapter to the City Manager or his designee.

(D) An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the appropriate provisions thereof.

(E) In addition to the remedies provided by the provisions of this Section, the City may apply for injunctive relief to enforce these provisions in any court of competent jurisdiction.

11.5 – 14. Violation and penalties.

(A) A person who smokes in violation of any provision of this chapter commits a Class C misdemeanor, punishable by a fine not to exceed \$500. A culpable mental state is not required for a violation of this chapter, and need not be proved. However, if the violation was done intentionally, knowingly or recklessly, the offense is punishable by a fine not to exceed \$2000.

(B) An operator or employer who owns, manages, operates, or otherwise controls a public place or workplace and who fails to comply with the provisions of this chapter shall be guilty of a Class C misdemeanor, punishable by:

(1) A fine not exceeding two hundred dollars (\$200) for a first violation.

(2) A fine not exceeding four hundred dollars (\$400) for a second violation within a period of twelve (12) consecutive months.

(3) A fine not exceeding five hundred dollars (\$500) for each additional violation within a period of twelve (12) consecutive months.

(C) Violation of this chapter is hereby declared to be a public nuisance, which may be abated by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may recover the costs of the nuisance abatement.

(D) It shall be presumed that a violation of this chapter is intentional if a sign is posted near the main entrance of the premises, indicating that smoking is prohibited.

11.5 – 15. Public education.

(A) The City Manager, or designee, shall:

(1) obtain or develop a comprehensive tobacco education program to educate the public about the harmful effect of tobacco and its addictive qualities.

(2) conduct informational activities to notify and educate businesses and the public about this chapter; and

(3) coordinate the City's tobacco education program with other civic or volunteer groups organized to promote smoking prevention and tobacco education.

(B) To implement this section, the City Manager, or designee, may publish and distribute educational materials relating to this chapter to businesses, their employees, and the public.

11.5 – 16. Governmental agency cooperation.

The City Manager, or designee, shall annually request that each federal, state, county, and school district agency with a facility in the City adopt local operating procedures and update its existing smoking control regulation in compliance with this chapter.

11.5 – 17. Application of other law.

This chapter is cumulative of other laws that regulate smoking. This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable ordinance, law or policies.

SECTION 4. It is hereby declared to be the intention of the City Council that the sections, paragraphs, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.


SECTION 5. (a) With the exception of subsection b below, all Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

(b) No ordinance regulating smoking is repealed by this ordinance. Where two or more ordinances regulate smoking, a person may be prosecuted under either ordinance.

SECTION 6. In accordance with the provisions of Sections 12 and 13 of Article II of the City Charter this Ordinance has been publicly available in the office of the City Secretary for not less than 72 hours prior to its adoption; that this Ordinance may be read and published by descriptive caption only.

SECTION 7. This Ordinance shall become effective on October 1, 2009.

APPROVED AS TO FORM:



SUSIE GREEN
CITY ATTORNEY

I Barbara S. Lawrence, Secretary of the City Council of the City of Galveston, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the City Council of the City of Galveston at its regular meeting held on the 23rd day of July, 2009 as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this ____ day of _____, 2009

Secretary for the City Council
Of the City of Galveston