

City of Houston, Texas, Ordinance No. 2006- 1054

**AN ORDINANCE AMENDING ARTICLE IX OF CHAPTER 21 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO SMOKING; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

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**WHEREAS**, cumulative scientific data indicates that exposure to second-hand smoke in indoor areas is dangerous to human health; and

**WHEREAS**, studies undertaken across the country, including a study undertaken by MGT of America, Inc., on behalf of the City in September 2006, demonstrate that there is no significant adverse economic impact as a result of indoor smoking bans; and

**WHEREAS**, recent surveys suggest that Houstonians desire an increase in the number of smoke-free areas; and

**Whereas**, given these considerations, the City Council finds and determines that increasing the number of smoke-free indoor areas is necessary to protect the public health and welfare; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

**Section 2.** That Chapter 21 of the Code of Ordinances, Houston, Texas, is hereby amended by amending Article IX thereof in its entirety to read as follows:

**"ARTICLE IX. SMOKING**

**Sec. 21-236. Definitions.**

The following words, terms and phrases, whenever used in this article, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates a different meaning:

*Bar* means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and derives at least 60 percent of gross revenues from the sale of

alcoholic beverages for on premise consumption, including, but not limited to, any tavern, nightclub, cocktail lounge, or cabaret.

*Business* means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including any retail establishment where goods or services are sold; any professional corporation or other entity where legal, medical, dental, engineering, architectural, or other professional services are delivered.

*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 services for a non-profit entity or provides such services on a contract basis.

*Employer* means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individuals.

*Enclosed*, when used in reference to an area or a building or portion thereof, means closed in on all sides from floor to ceiling by solid walls, with or without windows and exclusive of doorways.

*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, any hospital, rehabilitation hospital or other clinic, including any weight control clinic, nursing home, home for the aging or chronically ill, laboratory, or the office of any surgeon, chiropractor, physical therapist, physician, dentist, or specialist within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within a health care facility.

*Meeting facility* means a building designed, operated and used primarily for private functions.

*Place of employment* means an enclosed area under the control of a public or private employer where employees work or to which employees have access during the course of employment including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is

not a 'place of employment' unless it is used as a child care, adult day care, or health care facility.

*Private function* means a gathering of individuals for the purpose of deliberation, education, instruction, entertainment, amusement, or dining, where specific invitation is a prerequisite to entry and where the event is not intended to be open to the public.

*Public place* means an enclosed area to which the public is invited or in which the public is permitted, including, but not limited to:

- (1) Aquariums, galleries, libraries, and museums;
- (2) Areas available to and customarily used by the general public in businesses;
- (3) Bars;
- (4) Bingo facilities;
- (5) Child care and adult day care facilities;
- (6) Convention facilities;
- (7) Educational facilities, both public and private;
- (8) Elevators;
- (9) Gaming facilities;
- (10) Governmental facilities, including buildings and vehicles;
- (11) Health care facilities;
- (12) Hotels and motels;
- (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (14) Polling places;

- (15) Pool and billiard halls;
- (16) Public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots;
- (17) Restaurants;
- (18) Restrooms, lobbies, reception areas, hallways, and other common-use areas;
- (19) Retail establishments;
- (20) Service lines;
- (21) Shopping malls;
- (22) Sports arenas; and
- (23) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

A private residence is not a 'public place' unless used as a child care, adult day care, or health care facility.

*Restaurant* means food service establishment, including but not limited to, any coffee shop, cafeteria, sandwich stand, and private and public school cafeteria, that gives or offers for sale food to the public, guests, or employees, as well as any kitchen or catering facility 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* means any retail establishment utilized primarily for the sale of tobacco products and smoking accessories in which the sale of other products, including food and beverages, does not exceed 40 percent of gross revenues.

*Service line* means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

*Shopping mall* means an enclosed public walkway or hall area that serves to connect customer entrances to two or more retail or other businesses and is used for customer pedestrian traffic.

*Smoking* means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

*Sports arena* means any sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling alley, pool hall or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

*Tobacco bar* means a bar in which the on site sales or rentals of tobacco products and smoking accessories for consumption or use on the premises exceeds 20% of gross revenues and into which entry is restricted to individuals 18 years of age and above.

**Sec. 21-237. Prohibition of smoking in enclosed public places.**

Smoking shall be prohibited in all enclosed public places within the city, except as provided in section 21-242 of this Code.

**Sec. 21-238. Prohibition of smoking in places of employment.**

(a) Smoking shall be prohibited in all enclosed areas within places of employment, except as provided in section 21-242 of this Code.

(b) An employer shall communicate this prohibition to all prospective employees upon their application for employment.

**Sec. 21-239. Prohibition of smoking in seating areas at outdoor events.**

Smoking shall be prohibited in the seating areas and covered concourses of all outdoor sports arenas, stadiums, and amphitheaters, as well as in bleachers and grandstands for use by spectators at sporting and other public events.

**Sec. 21-240. Prohibition of smoking in covered public transportation facilities.**

Smoking shall be prohibited in any covered public transportation facilities, including ticket, boarding, and waiting areas of public transit depots.

**Sec. 21-241. Reasonable distance.**

Smoking is prohibited within 25 feet outside entrances, exits, or wheelchair ramps serving any entrance or exit, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to ensure that tobacco smoke does not enter those areas. This section shall not apply to restaurant and bar outdoor seating areas.

**Sec. 21-242. Where smoking not regulated.**

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of sections 21-237 and 21-238 of this Code:

- (1) Private residences, except when used as a childcare, adult day care, or health care facility.
- (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 35 percent of rooms rented to guests in a hotel or motel 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 article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- (3) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers 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 article.
- (4) Retail tobacco stores, provided that no on-premise consumption of alcoholic beverages is permitted and smoke from these establishments does not infiltrate into areas where smoking is prohibited under the provisions of this article.

- (5) Tobacco bars in operation on or before September 1, 2006; provided that the establishment operates an air ventilation and purification system using best available technology, offers comprehensive health insurance to its employees, including a substantial employer contribution, and obtains a permit from the department. The director is authorized to issue a permit for such establishments that are consistent with rules and regulations developed by the director regarding air ventilation and purification systems and comprehensive health insurance for the purpose of mitigating the effects of secondhand smoke on employees. The director is authorized to require a permit fee, not to exceed \$2,000, that reflects the actual cost of processing and issuing said permit.
- (6) Designated enclosed meeting areas in convention centers, hotels, motels, and other meeting facilities, only during times the meeting areas are in actual use for private functions; provided that the owners of such facilities must designate in writing to the department the meeting areas in which smoking will be permitted. The designated meeting areas must be separately enclosed from the rest of the facility, and smoke from these areas must not infiltrate into areas where smoking is prohibited under the provisions of this article.
- (7) *Reserved.*
- (8) Stage areas of enclosed theaters, if smoking is an integral part of a theatrical performance.

**Sec. 21-243. Declaration of establishment as nonsmoking.**

Notwithstanding any other provision of this article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of subsection (a) of section 21-244 of this Code is posted.

**Sec. 21-244. Posting of signs.**

(a) The owner, operator, manager, or other person in control of a public place or place of employment shall clearly and conspicuously post 'No Smoking' signs or the international 'No Smoking' symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in every public place and place of employment where smoking is prohibited by this article.

(b) The owner, operator, manager, or other person in control of a public place or place of employment shall conspicuously post at every entrance thereto a sign clearly stating that smoking is prohibited therein.

(c) The owner, operator, manager, or other person in control shall remove all ashtrays from any area where smoking is prohibited by this article.

**Sec. 21-245. Enforcement.**

(a) The department, in addition to any authority having jurisdiction to enforce city ordinances, shall have authority to enforce the provisions of this article.

(b) Any citizen who desires to register a complaint under this article may initiate enforcement with the department.

(c) The health officer and the fire marshal shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this article.

(d) The health officer, after proper identification, shall be permitted to enter any public place and place of employment at any reasonable time, for the purpose of making inspections and examining applicable records of the establishment to determine compliance with this article.

**Sec. 21-246. Rules and regulations.**

The director is authorized to promulgate rules and regulations for the enforcement of this article.

**Sec. 21-247. Violations and penalties.**

(a) A person commits an offense if he is smoking in an area where smoking is prohibited by the provisions of this article.

(b) It shall be the duty of every person in control of an area where smoking is prohibited by the provisions of this article to request any person known to be smoking in such area to extinguish the burning tobacco product. Any knowing or intentional failure to maintain compliance with such duty shall constitute an offense.

(c) Whenever in this article an act is prohibited or is made or declared to be unlawful or an offense or misdemeanor, or whenever in this article the doing of any thing or act is required or the failure to do any thing or act is prohibited, the violation of the provision shall be and constitute a misdemeanor punishable, upon conviction, by a fine not to exceed \$2,000.00. Each violation shall constitute and be punishable as a separate offense. Prosecution or conviction under this provision is cumulative of and shall never be a bar to any other civil or administrative remedy provided or allowed in this article or by law.

**Sec. 21-248. Other applicable laws.**

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws."

**Section 3.** That all employers shall communicate the prohibition of smoking in places of employment enacted by this Ordinance to all existing employees within 60 days after the effective date of this Ordinance.

**Section 4.** That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or

fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 5.** That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect at 12:01 a.m. on September 1, 2007.

**PASSED AND APPROVED** this 18<sup>th</sup> day of October, 2006.

Bill White  
 Mayor of the City of Houston

*AL*  
*ARM*

Prepared by Legal Dept.  
 KO:asw 09/28/2006  
 Requested by Mayor Bill White  
 L.D. File No. 0420600128001

Thurvilla Danner  
 Assistant City Attorney

*ROLL CALL VOTE*

AYE	NO	
✓		<b>MAYOR WHITE</b>
••••	••••	<b>COUNCIL MEMBERS</b>
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		EDWARDS
	✓	WISEMAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		ALVARADO
✓		BROWN
✓		LOVELL
✓		SEKULA-GIBBS
✓		GREEN
	✓	BERRY
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT  
 REVIEW  
 DATE: OCT 24 2006