

Guidelines for the Implementation and Enforcement of Texarkana, Texas, “Prohibiting Smoking in Indoor Public Places and All Workplaces” Ordinance

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(Effective February 19, 2005)

Approved: _____

Section I. Purpose:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke respiratory disease, and lung cancer. Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstruction airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer. The Americans With Disabilities act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability.

The simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke, and secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a higher risk of heart attach and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.

The City Council of the City of Texarkana, Texas, finds and declares that the purpose of this ordinance are (1) to protect the public health and welfare by minimizing exposure to smoke in public places and places of employment; and (2) to recognize that the need to breathe smoke free air shall have priority over the desire to smoke.

Section II. Authority

This ordinance is promulgated by the Building Official of Texarkana, Texas, pursuant to Offenses and Miscellaneous Provisions; Section 15-20.001-15-20.016 “Prohibiting Smoking in Indoor Public Places and All Workplaces”

Section III. Definitions

- (1) “**Bar**” means an establishment 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 those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- (2) “**Business**” means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishment 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 non-profit entity.
- (4) “**Employer**” means a person, business, partnership, association, corporation, including municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- (5) “**Enclosed Area**” means all space between a floor and ceiling that is enclosed on all sides by a solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
- (6) “**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.
- (7) “**Place of Employment**” means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to work areas, 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.
- (8) “**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, 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 a child care, adult day care, or health care facility.

- (9) “**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. The term “restaurant” shall include a bar area within the restaurant.
- (10) “**Retail Tobacco Store**” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- (11) “**Service Line**” means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
- (12) “**Shopping Mall**” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- (13) “**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.
- (14) “**Sports Arena**” means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.
- (15) “**City-Owned Buildings**” means those buildings or facilities that are operated, owned or managed in part or whole by the city.
- (16) “**Minor**” means persons age 17 and below.
- (17) “**Public Area**” means the area of a public place in which the public is generally permitted to enter or occupy by express or implied invitation of the owner/operator.
- (18) “**Non-public Area**” means the area of a public place in which the public is not generally permitted access by express or implied invitation and/or in which the public is expressly prohibited from entering or occupying.
- (19) “**Bingo Facility**” means any facility used for the purpose of operating bingo gaming by a person or entity licensed by the Bingo Enabling Act.

- (20) **“Conspicuous”** Obvious, prominent, capable of being seen. Signs that are small, obstructed, not adequately lighted, within 3 feet of the floor or over 7 feet off the floor will be considered *per se not* conspicuous.

Section IV. Application of Ordinance

A. General Application

The ordinance applies to all enclosed public places, as defined in the Ordinance, including but not limited to restaurants, offices, government buildings, public transportation, hotels and motels, banks, laundromats, convention facilities, shopping malls, sports arenas, bowling facilities, outdoor arenas, museums and zoo facilities and grounds, and health care facilities

B Outdoor Spaces

1. Outdoor spaces that are 10 feet from any workplace entry and are not described in Section IV. A, (sports arenas, outdoor arenas, museums and zoo facilities and grounds) and are not enclosed are not covered by the ordinance. This type of space includes outdoor porches; patios; yards and sidewalks.
2. Outdoor spaces may be covered with an awning or other overhead covering.
3. Outdoor spaces must remain open to the air at all times and cannot be enclosed by any sort of wall or side covering.
4. If the outdoor space is capable of being enclosed by walls or covers, regardless of the materials or the removable nature of the walls or covers, the space will be considered enclosed for the purposes of the ordinance when such walls or covers are in place.
5. All outdoor spaces must be physically separated from an enclosed workspace by 10 feet. If doors, windows, sliding or folding windows or doors or other fenestrations form any part of the border to the outdoor space, all such openings must be closed so as to prevent the migration of smoke into the enclosed workspace. If the windows, sliding or folding windows or doors or other fenestrations are opened or otherwise do not prevent the migration of smoke into the workspace, the outdoor space shall be considered an extension of the enclosed workspace and subject to all provisions of the ordinance.

C. Employee

1. The term employee includes contract employees, temporary employees and vendors who perform services in the workplace. For example, a large building management company has an office

within an apartment building to process new applications and receive calls regarding maintenance issues. The office manager, who is the only onsite employee, works an eight-hour shift, five days a week in the building. For the purposes of this ordinance, the office manager is considered an “employee” of the building management company, which is responsible for providing a smoke free workplace.

2. The term employee includes an individual who volunteers his/her service for a non-profit entity. For example, an individual who volunteer her/his time to assist a non-profit organization, such as the YWCA. These individuals would be considered as an employee of the organization and will be protected by this ordinance.
3. In order to qualify as an employer under the ordinance, the business or other entity must have one or more employees or volunteers performing services in the workplace. For example, an attorney maintains an office and has no other employees. On a daily basis a delivery company picks-up and drops off packages. The delivery company’s person unloads the packages, picks-up the packages and fills out paper work in the office. The delivery person would not be considered an employee of the attorney for the purposes of this ordinance.

D. Workplaces

1. All enclosed areas of the workplace including function rooms, halls and other enclosed spaces rented to the public, shall be considered workplaces under the ordinance.
2. If a function room, hall or other enclosed area rented to the public, is operated by an entity not considered an employer because it does not have one or more employees, the rented function room, hall or other enclosed rented space, shall not be considered a workplace. However, if an employee, or any employer as defined by the ordinance, is hired or volunteers to perform services as part of the function, the rented area shall be considered a smoke free workplace for the duration of the rental period, unless 15-20.006 of the ordinance applies. For example, if a function room or hall is rented for a wedding, party or other event in which food and beverage services or entertainment is provided by a company that qualifies as an employer under the ordinance, the function room or hall would be a workplace and smoking would be prohibited during the rental period. It is the responsibility of the establishment to ensure that the appropriate signage is displayed and the individual or group renting the space enforces the prohibition against smoking.

3. If an entity believes that it does not qualify as an employer or a workplace under the ordinance, it can request a ruling by the Texarkana, Texas, City Manager. The manager will provide a suitable form, setting forth the supporting documentation that needs to be filed with the request.

E. Public Places

The term public place means an enclosed area to which the public is invited or in which the public is permitted. See 15-20.003 of the ordinance for a complete listing

Section V. City-Owned Facilities

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of Texarkana, Texas, shall be nonsmoking at all times.

Section VI. Establishments that provide a smoking area

A. Public smoking areas

1. A public smoking area can be designated.
2. Up to 25% of the square footage of the combined public areas within the public place can be designated as “smoking.”
3. Smoking area must be equipped with a physical barrier that separates the designated smoking area from the nonsmoking area with a separate negative pressure ventilation system.
4. The physical barrier must be a continuous barrier from the ceiling to the floor and from wall to wall. A barrier up to a suspended ceiling is not acceptable. The barrier must be from the physical ceiling to the floor. It is not acceptable to have a door grille, louvers and similar openings with the partitions. The smoking area requires a self-closing, tight fitting door.
5. The negative pressure ventilation system must be a HVAC system that does not allow air from a smoking area to enter a non-smoking area. It must also have a capacity to remove tobacco smoke from the inside of the smoking area at the rate of one cubic foot per minute per square foot of area.
6. The “smoking area” shall not be placed in a location that requires anyone to enter or go through the smoking area when entering the building or when accessing the restrooms.
7. The physical barrier will be inspected by the Building Official, and the ventilation system must be inspected and approved by a licensed professional engineer. The licensed professional engineer

must furnish a notarized copy of her/his license to the Texarkana, Texas, city inspector.

8. The following signage must be placed on all entrances to the designated smoking area:

“NOTICE: This area may contain tobacco smoke. No person under the age of eighteen may enter this area.”

9. The following signage must be placed on all entrances to establishments with a designated smoking area:

“NOTICE: This establishment contains regulated smoking and nonsmoking areas.”

B. Employee Smoking Areas

1. An employer can designate an employee smoking area.
2. If an employer designates an employee smoking area, it must be in a Non-public area.
3. The designated smoking area may not be located in an area accessible to the general public, except by expressed invitation of the employer or an employee.
4. The designated employee smoking area may not include an area with a food or drink dispensing facility intended for use by all employees.
5. The designated employee smoking area may not be located in a common employee work area.
6. The smoking area must be equipped with a physical barrier that separates the designated smoking area from the nonsmoking area with a separate negative pressure ventilation system.
7. The physical barrier must be a continuous barrier from the ceiling to the floor and from wall to wall. A barrier up to a suspended ceiling is not acceptable. The barrier must be from the physical ceiling to the floor. It is not acceptable to have a door grille, louvers and similar openings with the partitions. The smoking area requires a self-closing, tight fitting door.
8. The negative pressure ventilation system must be a HVAC system that does not allow air from a smoking area to enter a non-smoking area. It must also have a capacity to remove tobacco smoke from the inside of the smoking area at the rate of one cubic foot per minute per square foot of area.
9. The smoking area shall not be placed in a location that requires anyone to enter or go through the smoking area when entering the building or when accessing the restrooms.
10. The physical barrier and ventilation system must be inspected and approved by a licensed professional engineer.

11. The following signage must be placed on all entrances to the designated smoking area:

“NOTICE: This area may contain tobacco smoke. No person under the age of eighteen may enter this area.”

C. Outdoor patios

A restaurant can have outdoor patios that allow smoking if the area is beyond ten (10) feet of a public entrance.

Section VII Hotel and motel rooms

- A. Hotels and motels can provide up to 20% of their rooms to be designated as “smoking” rooms without any requirements.
- B. Hotel & Motels Rooms where smoking is allowed must have the universal smoking symbol and the words “Smoking Allowed” and all signs must be clearly visible and permanently affixed to the door.

Section VIII Bingo Facilities

- A. A Bingo facility can be either 100% smoking or allow up to 80% of the square footage of the public area to be smoking. If the bingo facility allows 100% smoking, it must prohibit entry and access to the premises to persons under 18 years of age at all times. It must be clearly labeled as a “Smoking Establishment” and must have the following notices on all entrances to the establishments open to the public:

“NOTICE: This establishment may contain tobacco smoke. No person under the age of eighteen may enter the premises.”

- B. If the Bingo facility is not 100% smoking, it can allow up to 80% of the square footage of the public area to be smoking, but must meet the following requirements:
 1. Must be equipped with a physical barrier that separates the designated smoking area from the nonsmoking area with a separate negative pressure ventilation system.
 2. The physical barrier must be a continuous barrier from the ceiling to the floor and from wall to wall. A barrier up to a suspended ceiling is not acceptable. The barrier must be from the physical ceiling to the floor. It is not acceptable to have a door grille, louvers and similar openings with the partitions. The smoking area requires a self-closing, tight fitting door.

3. The negative pressure ventilation system must be a HVAC system that does not allow air from a smoking area to enter a non-smoking area. It must also have a capacity to remove tobacco smoke from the inside of the “smoking area” at the rate of one cubic foot per minute per square foot of area.
4. The smoking area shall not be placed in a location that requires anyone to enter or go through the smoking area when entering the building or when accessing the restrooms.
5. The physical barrier will be inspected by the Building Official, and the ventilation system must be inspected and approved by a licensed professional engineer.
6. The following signage must be placed on all entrances to the designated smoking area:

“NOTICE: This area may contain tobacco smoke. No person under the age of eighteen may enter this area.

Section IX. Nightclubs and Bars

- A. Nightclubs and Bars as defined in the ordinance, are exempt from the ordinance, but must install a commercial air cleaning system having sufficient capacity to remove tobacco smoke from the interior of the building at the rate of one cubic foot per minute per square foot or area.
- B. The commercial air cleaning system must be inspected by a licensed professional engineer.
- C. All Nightclubs and Bars must prohibit entry and access to the premises to persons under 18 years of age at all times.
- D. All Nightclubs and Bars must be clearly labeled as a “Smoking Establishment” and must have the following notices on all entrances to the establishments open to the public:

“NOTICE: This establishment may contain tobacco smoke. No person under the age of eighteen may enter the premises.”

Section X. Retail Tobacco Stores

Retail Tobacco Stores are exempt from this ordinance but must have the following notice on all entrances to the establishments open to the public:

“NOTICE: This establishment may contain tobacco smoke. No person under the age of eighteen may enter the premises.”

Section XI. Posting of Signs

A. “No Smoking” signs or the international “No Smoking” symbol shall be clearly and conspicuously posted in every public place and places of employment where smoking is prohibited.

1. Establishments that do not have a designated smoking area are required to place the “No Smoking” signs in the following places:

- All entrances
- Restrooms
- Break Rooms

It is recommended that signs are also placed in the following places:

- Lobbies
- Hallways
- Cafeterias
- Kitchens
- Locker Rooms
- Customer Service Areas
- Offices where the public is invited
- Conference rooms
- Lounges
- Waiting areas
- Elevators

All signs necessary to comply with paragraph 1 of this section and at least one (1) sign in each of the designated areas in paragraph “A” of this section, must be permanently attached, at eye level, to a wall or permanent fixture.

2. Ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by the owner, operator, manager, or other person having control of the area.

3. Establishments that have designated smoking areas will place “No Smoking” signs in the following places:

- Areas where smoking is not allowed
- Restrooms
- Employee Break Room

It is recommended that signs are also placed in the following places:

- Lobbies
- Hallways
- Cafeterias
- Kitchens
- Locker Rooms
- Customer Service Areas
- Offices where the public is invited
- Conference rooms
- Lounges
- Waiting areas
- Elevators

All signs necessary to comply with paragraph 1 of this section and at least one (1) sign in each of the designated areas in paragraph “B” of this section, must be permanently attached, at eye level, to a wall or permanent fixture.

4. Hotel & Motels Rooms where smoking is allowed must have the universal smoking symbol and the words “Smoking Allowed” and all signs must be clearly visible and permanently affixed to the door.
5. Ashtrays and other smoking paraphernalia shall be removed by the owner, operator, or manager, from any area where smoking is prohibited by the owner, operator, manager, or other person having control of the area.

B. All “No Smoking” signs must:

1. Be made of durable material
2. Be red and white
3. Contain the words “NO SMOKING,” at least 1 inch in height
4. Contain the international symbol for no smoking, a lighted cigarette in a red circle with a red line through it
5. In those establishments where there is no smoking area provided, the sign must contain the words, “This is a smoke free establishment. To report a violation, call the Texarkana, Texas Building Official at (903) 798-3912. By the order of the City of Texarkana, Texas Ordinance #162-04”
6. In those establishments where there is a smoking area provided, the sign within the non smoking area must contain the words, “This area is designated smoke free. To report a violation, call the Texarkana, Texas Building Official at (903) 798-3912. By the order of the City of Texarkana, Texas Ordinance #162-04”

7. Approved signs and templates for signage design may be obtained from the Texarkana, Texas, Building Official, (903) 798-3912 or www.ci.texarkana.tx.us.
8. A workplace may post alternative signage that is conspicuous and has been approved, in advance, by the Texarkana, Texas, Building Official, (903) 798-3912 or www.ci.texarkana.tx.us.

Section XII. Employer Policy

- A. Each employer who operates a workplace in the City of Texarkana, Texas, must implement, distribute, maintain and conspicuously post, for all employees to see a written smoking policy. The policy must be adopted, implemented and conspicuously posted in all workplace locations within thirty (30) days of becoming an employer.
- B. Two model smoking policy for employers are attached to these Guidelines. One is for those employers that are completely smoke free and the other that has an enclosed separated smoking area.

Section XIII. Enforcement

- A. Owners, managers, or other persons having control of a public place or workplace are encouraged to seek the assistance of the Texarkana, Texas, Building Official, (903) 798-3912, Fire Department, (903) 798-3994, or Health Department, (903) 798-3250, for advice or with questions regarding enforcement of the ordinance.
- B. The following are considered to be reasonable steps to prevent smoking in the non-smoking areas of the workplace or public place in violation of this ordinance:
 1. Posting required signage;
 2. Removing ashtrays and other like receptacles;
 3. Informing any person smoking in the workplace or public place that is not in an approved smoking area as described by the ordinance, that s/he is in violation of the ordinance;
 4. Informing any person smoking in the workplace or public place that is not in an approved smoking area as described by the ordinance, to extinguish her/his smoking material;
 5. If a smoker is not in an approved smoking area and refuses to extinguish her/his smoking material, request that a smoker leave the workplace or public place.
 6. Self-reporting violations to the Texarkana, Texas, City Manager by documenting when a violation has occurred and the actions taken to correct it.

- C. The Texarkana, Texas, City Building Official; Police Department and/or Fire Department shall enforce the provisions of the ordinance through:
1. Investigation of any complaints filed; and,
 2. Unannounced inspections of the premises and records regarding compliance with the ordinance.
- D. Owners, managers, or persons having control of a workplace or public place who observe or are made aware of a violation of the Ordinance should take all reasonable steps to ensure that the violation is not repeated.
- E. Any one or more of the following shall be considered evidence of a violation of this ordinance:
1. Statement of complaint;
 2. Observation of an individual smoking in the workplace or public place that is a smoke free establishment;
 3. Observation of an individual smoking in the non-smoking area in the workplace or public place that has an approved separate smoking area as established by this ordinance;
 4. Serving individuals smoking in violation of this regulation;
 5. Cigarette butts in the workplace or public place that is a smoke free establishment;
 6. Cigarette butts in the workplace or public place in the smoke free area of an establishment that has an approved smoking area.
 7. Visual smoke in a smoke free establishment or in the non-smoking areas of establishments with an approved smoking area.
 8. Odor of tobacco smoke in the smoke free establishments
 9. Odor of tobacco smoke in the smoke free areas of establishments that have an approved smoking area.
 10. Observation of an employer, manager, employee or other person having control of the workplace or public place, knowingly or intentionally permitting smoking in the establishment or providing service to an individual smoking in the non approved areas.
- F. A person who smokes in an area where smoking is prohibited by the provisions of Sections 15-20.001 through 15-20.016 shall be guilty of an infraction, punishable by a fine not exceeding two-hundred dollars (\$200). Each day of any such violation shall be deemed a separate offense.
- G. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of Sections 15-20.001 through 15-20.016 shall be guilty of an infraction, punishable by:
1. A fine not exceeding fifty dollars (\$50) for a first violation.

2. A fine not exceeding one hundred dollars (\$100) for a second violation within one (1) year of the previous violation.
 3. A fine not exceeding two hundred fifty dollars (\$250) for each additional violation within one (1) year of the previous violation.
- H. Each day on which a violation of Sections 15-20.001 through 15-20.016 occurs shall be considered a separate and distinct violation.