

SMOKING IN PUBLIC FACILITIES

Sec. 12-57. Definitions.

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

Bar means a retail business which does not hold a package store permit issued by the Texas Alcoholic Beverage Commission, derives forty (40) percent or more of its taxable sales from the sale of alcoholic beverages and twenty (20) percent or less of its taxable sales from the sale of food.

Business means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, 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.

City means the City of Brenham.

Enclosed area means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

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.

Non-public business means, generally, industrial or manufacturing facilities where the general public is prohibited.

Retail liquor store means an establishment which holds a package store permit issued by the Texas Alcoholic Beverage Commission.

Private club means an area under the control of private management, where access is granted to said area only through a process of individual request for membership and access by the general public is restricted.

Public place means a place where the general public is invited or permitted. The invitation may be direct in the form of signage, advertising, or display, or indirect by the absence of signage prohibiting public access.

Restaurant means a retail business which does not hold a package store permit issued by the Texas Alcoholic Beverage Commission, derives twenty (20) percent or less of its taxable

sales from the sale of alcoholic beverages and forty (40) percent or more of its taxable sales from the sale of food. A restaurant includes any 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 for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant. A restaurant can have an unenclosed outdoor patio for food and drink service and where smoking is allowed, if the patio area is beyond ten (10) feet of a public entrance.

Retail tobacco store means a business which derives fifty (50) percent or more of its revenue from the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Shopping mall means an enclosed public walkway or hall area that serves to connect retail, business or professional establishments.

Smoking, also to smoke, means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, or plant in any manner or in any form.

Sports arena means sports pavilions, stadiums, gymnasiums, health spas, arenas, swimming pools, roller skating rinks, bowling alleys, and other similar places, both enclosed and outdoor, where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.
(Ord. No. O-09-12, § 1, 6-18-09)

Sec. 12-58. Application of article to city-owned facilities.

Smoking shall be prohibited in all facilities, including buildings, enclosed and outdoor sports arenas, enclosed areas in parks, and vehicles owned, leased, or operated by the city.
(Ord. No. O-09-12, § 1, 6-18-09)

Sec. 12-59. Prohibition of smoking in public places.

Smoking shall be prohibited in all enclosed areas which are available to and customarily used by the general public within the city, including but not limited to, the following places:

- (1) Business offices, professional offices, and banks.
- (2) Laundromats.
- (3) Churches.
- (4) Galleries, libraries, and museums.
- (5) Convention facilities.

- (6) Hotels and motels, except those covered by the provisions of subsection 12-63(3).
 - (7) Educational facilities, both public and private.
 - (8) Facilities primarily used for exhibiting a motion picture, stage drama, lecture, musical recital, or other similar performance.
 - (9) Health care facilities.
 - (10) Any portion of a private home which is used in a home based business as permitted by the City of Brenham Code of Ordinances, Appendix A, part II, Division I, Section 14, during the hours the home based business is open to the public.
 - (11) Lobbies, hallways, elevators, restrooms, reception areas and other common-use areas in office buildings, malls, apartment buildings, condominiums, retirement facilities, and other multi-unit business and residential facilities.
 - (12) Lobbies and reception areas of non-public businesses.
 - (13) Public transportation facilities, including buses and taxicabs, under the authority of the city, and ticketing, boarding, and waiting areas of public transit depots.
 - (14) Restaurants.
 - (15) Retail stores, including retail liquor stores.
 - (16) Enclosed sports arenas.
- (Ord. No. O-09-12, § 1, 6-18-09)

Sec. 12-60. Prohibition of smoking in areas of outdoor sports arenas.

Smoking shall be prohibited in the outdoor group seating areas, such as but not limited to bleachers; and in enclosed places in, such as but not limited to concession areas and bathrooms; and within ten (10) feet of any concession area entrances or service windows, restroom entrances and common walkways of all outdoor sports arenas.

(Ord. No. O-09-12, § 1, 6-18-09)

Sec. 12-61. Reasonable distance.

Smoking is prohibited within a ten-foot radius of any operable door, window, or ventilation intake outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means. It is recommended that businesses which allow smoking outdoors on their property designate a smoking area to address this specific distance requirement.

(Ord. No. O-09-12, § 1, 6-18-09)

Sec. 12-62. 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 12-59 and 12-60:

- (1) Private residences, except that portion of a private home which is used in a home based business as permitted by the City of Brenham Code of Ordinances, Appendix A, Part II, Division I, Section 14, during the hours the home based business is open to the public.
- (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty (20) percent of rooms rented to guests in a hotel or motel may be so designated. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- (3) Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.
- (4) Private clubs; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.
- (5) Non-public businesses, except lobbies and reception area, when the required signage conforming to the requirements of subsection 12-64(c) is posted.
- (6) Bars; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.

(Ord. No. O-09-12, § 1, 6-18-09)

Sec. 12-63. 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. Therefore, smoking shall be prohibited in any place in which a sign conforming to the requirements of subsection 12-65(b) is posted.

(Ord. No. O-09-12, § 1, 6-18-09)

Sec. 12-64. Posting of signs.

(a) Every public place shall have posted, at every entrance, a sign conforming to subsection 12-64(b), clearly stating smoking is prohibited.

(b) Signage conveying the prohibition of smoking shall measure at least nine (9) inches by six (6) inches. The signs must be easily visible with the international "No Smoking"

symbol at least four (4) inches high, or say "No Smoking" in letters at least one (1) inch high. The letters and background of the signs must be highly contrasting colors.

(c) Signage shall be posted to clearly indicate "public area" and "employee only" portions of a non-public business. If smoking is allowed in the "employee only" portion of the business, a sign stating, "Designated Smoking Area" must be posted at entrances to the smoking areas within the establishment.

(d) All ashtrays and other smoking accessories shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager, or other person having control of the area.

(Ord. No. O-09-12, § 1, 6-18-09)

Sec. 12-65. Sale of smoking materials.

Nothing in this article shall be construed to prohibit the legal sale of smoking materials and accessories in any business.

(Ord. No. O-09-12, § 1, 6-18-09)

Sec. 12-66. Enforcement.

(a) This article shall be enforced by the city manager or an authorized designee.

(b) Notice of the provisions of this article shall be given to all applicants for a business license in the city.

(c) The health department, fire department, and building inspection department or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this article; and shall investigate any complaints filed; and have the right to conduct unannounced inspections of public places regarding compliance with this article.

(d) An owner, manager, operator, or employee of an establishment regulated by this article shall take necessary steps to prevent or stop persons from violating this article by smoking in an enclosed area in a public place, including:

(1) Post signage as required in section 12-64.

(2) Verbally ask a person who is smoking to extinguish their smoking materials. This may be in written form for the hearing impaired.

(3) Verbally ask a person who is smoking to leave the premises. This may be in written form for the hearing impaired.

(4) Apply standard business procedures in the same manner as used for violations of house rules, local ordinances or state laws.

(Ord. No. O-09-12, § 1, 6-18-09)

Sec. 12-67. Violations and penalties.

(a) Owners, managers, or persons having control of a public place who observe or are made aware of a violation of the ordinance should take all reasonable steps to ensure that the violation ceases and is not repeated.

(b) Evidence of a violation of this article includes, but is not limited to, the following:

- (1) Statement of complaint;
- (2) Observation of an individual smoking in a public place;
- (3) Serving individuals who are smoking in violation of this article;
- (4) Cigarette butts in a public place;
- (5) Visual observation of smoke in a public place;
- (6) Odor of tobacco smoke in a public place, or
- (7) Observation of an employer, manager, employee or other person having control of the workplace or public place, knowingly or intentionally permitting smoking in the public place or providing service to an individual smoking in the public place.

(c) A person who smokes in an area where smoking is prohibited by the provisions of this article shall be guilty of an infraction, punishable by a fine not exceeding two hundred dollars (\$200.00). Each day of any such violation shall be deemed a separate offense.

(d) A person who owns, manages, operates, or otherwise controls a public place and who fails to comply with the provisions of this article shall be guilty of an infraction, punishable by:

- (1) A fine not exceeding fifty dollars (\$50.00) for a first violation.
- (2) A fine not exceeding one hundred dollars (\$100.00) for a second violation within one (1) year of the previous violation.
- (3) A fine not exceeding two hundred fifty dollars (\$250.00) for each additional violation within one (1) year of the previous violation.
- (4) Each day on which a violation occurs shall be considered a separate and distinct violation.

(Ord. No. O-09-12, § 1, 6-18-09)

Sec. 12-68. Other applicable laws.

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

(Ord. No. O-09-12, § 1, 6-18-09)

Sec. 12-69. Severability.

If any provision, clause, sentence, or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of the article are declared to be severable.

(Ord. No. O-09-12, § 1, 6-18-09)

Sec. 12-70. Effective date.

This article shall be effective ninety (90) days from and after the date of its adoption.

(Ord. No. O-09-12, § 1, 6-18-09)

Sec. 12-71. Repeal of prior conflicting ordinances.

All ordinances, orders, or resolutions previously passed and adopted by the city council are hereby repealed to the extent that said ordinances, orders, or resolutions, or parts thereof, are in conflict with this article.

(Ord. No. O-09-12, § 1, 6-18-09)

Secs. 12-72--12-76. Reserved.