

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 10 OF THE CODE OF THE CITY OF MESQUITE, TEXAS, BY DELETING ARTICLE IV IN ITS ENTIRETY AND ADDING A NEW ARTICLE IV THEREBY UPDATING SMOKING REGULATIONS; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EFFECTIVE DATE THEREOF.

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

SECTION 1. That Chapter 10 of the Code of the City of Mesquite, Texas, is hereby amended by deleting Article IV in its entirety and adding a new Article IV to read as follows, in all other respects said Code and Chapter to remain in full force and effect:

ARTICLE IV. SMOKING

Sec. 10-96. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bar means an enclosed indoor establishment that is open to the public and is devoted primarily to the sale and service of alcoholic beverages for on-premises consumption.

Common use areas or *common areas* means areas within a building not leased or designated for use by a particular individual or individuals which are available for use by all of the occupants of the building and, in many instances, members of the public, including but not limited to lobbies, reception areas, hallways, elevators, restrooms, vending machine areas, break rooms and similar amenity areas.

Consumer means a buyer of goods or services.

Employee means an individual who is employed by an employer for direct or indirect monetary wages or profit or volunteers their services for an employer.

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

Grocery store is a retail store that primarily sells food for off-premises consumption and other household goods.

Health care facility means any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions.

Multi-tenant business building means a business building that houses more than one tenant.

Pedestrian service line means an indoor or outdoor 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. This includes, but is not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines and sporting events lines.

Person means any individual, firm, partnership, association, corporation, company or organization of any kind.

Place of employment means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment. A private residence is not a place of employment except when used as a child-care, adult day-care or health care facility.

Proprietor or person in charge means any owner, manager or operator of a public place or a place of employment that is responsible for the management or operation of said public place or place of employment.

Public conveyance means any mass transit vehicle or school bus.

Public meeting means any meeting or assembly held in any room or chamber wherein public, civic or governmental business is conducted and which is open to the public either as participants or spectators.

Public place means any area to which the public is invited or in which the public is permitted. A private residence is not a public place except when used as a child care, adult day-care or health care facility. A facility operated by a fraternal or veterans' organization for a charitable, benevolent, veteran related or educational function if the premises are controlled by the organization is not a public place. A public place includes, but is not limited to:

- (a) All or any part of a building used for local governmental purposes;
- (b) A retail store, office or other commercial or business establishment;
- (c) A grocery store;
- (d) A restaurant, cafeteria, delicatessen, commissary or mobile food unit;
- (e) A public primary or secondary school;
- (f) A public institution of higher education;
- (g) A restroom;

- (h) A theater, movie house, auditorium or arena;
- (i) An elevator;
- (j) A library or a museum;
- (k) A health care facility;
- (l) A child care nursery;
- (m) A courtroom or a jury waiting or deliberation room;
- (n) A recreational facility;
- (o) A public park; or
- (p) A pedestrian service line, cashier area, over-the-counter sales area or common traffic area.

Restaurant means any establishment or place within an establishment, open to the public that offers food and beverages for consumption on the premises including, but not limited to, coffee shops, sandwich stands, drive-ins, and private and public school cafeterias, which gives or offers for sale food to the public, guests or employees, as well as kitchens, catering facilities, commissaries or mobile food units, in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include the bar area within the restaurant.

Retail store means any establishment whose primary purpose is to sell or offer for sale to consumers, not for resale, any goods, merchandise or food for consumption off the premises.

Smoking means the lighting, holding or carrying of, or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.

Sports arena means any indoor facility primarily used for sports, cultural or similar events.

Theater means any indoor facility primarily used for the exhibition of any motion picture, stage drama, musical recital, dance, lecture or other similar performance.

Sec. 10-97. Violation; enforcement, penalty.

- (a) A person commits an offense if:
 - (1) At a public meeting or in a public place fails or refuses to extinguish smoking materials or move to a designated smoking area upon a request by any person to do so; or
 - (2) He willfully destroys or defaces a sign posted or required by this article.
- (b) The proprietor or person in charge of a business or other public place commits an offense if the proprietor or person in charge fails or refuses upon the request of

any person to ask a person smoking to extinguish smoking materials or move to a designated smoking area.

- (c) This article does not require the owner, operator, manager or any employee of an establishment to report a violation of this article or to take legal action against any individual violating this article.
- (d) Any person convicted of violating this article shall be guilty of a misdemeanor punishable by a fine of not less than one dollar (\$1.00) nor more than two thousand dollars (\$2,000.00).

Sec. 10-98. Construction; severability.

- (a) Nothing in this article shall be construed to permit smoking where it is otherwise prohibited by law or regulations.
- (b) Nothing in this article shall be construed to preclude any owner or other person having the authority to manage and control any public place or place of employment from prohibiting smoking to a greater extent than is provided by this article.

Sec. 10-99. Smoking prohibited in public places.

Smoking is unlawful in the following public places during the hours in which they are open to the public:

- (a) Airports;
- (b) Art galleries, libraries and museums;
- (c) Bars or night clubs;
- (d) Billiard halls;
- (e) Bingo facilities;
- (f) Bowling centers;
- (g) Classrooms and lecture halls;
- (h) Day care centers;
- (i) Elevators;
- (j) Grocery stores;
- (k) Health care facilities;
- (l) Hotels, motels, or public or private convention centers as follows:

- (1) Any conference room, meeting room or assembly room of any hotel, motel, or public or private convention center;
 - (2) Any indoor common areas of hotels and motels; and
 - (3) At least 90 percent of rooms rented to guests;
- (m) Indoor or outdoor pedestrian service lines in which one or more persons is giving or receiving goods or services of any kind;
 - (n) Lobbies, reception areas, waiting rooms, hallways and any other common use areas;
 - (o) Any areas available to and customarily used by the general public in all businesses;
 - (p) Any indoor common areas of a multi-family development;
 - (q) Multi-tenant business buildings and service establishments including, but not limited to buildings with insurance, medical, accountant, therapist or attorney's offices with the exception as provided for tobacco stores in paragraph (z) below;
 - (r) Polling places;
 - (s) Public conveyances including school buses and mass transit vehicles;
 - (t) Public meetings;
 - (u) Public parks in the following areas:
 - (1) Concession stands;
 - (2) Dugouts, bleachers and ball fields and within 50 feet of a dugout, bleacher or ball field;
 - (3) A playground or within 50 feet of a playground;
 - (4) Plaza areas at athletic complexes or within 50 feet of such area; or
 - (5) Restroom facilities or within 50 feet of a restroom facility.
 - (v) Primary or secondary schools. Any facility of a public primary or secondary school including parking lots and courtyards, indoor and outdoor common use areas;
 - (w) Public transit depots. Indoor waiting areas of public transit depots or shelters;
 - (x) Restaurants;
 - (y) Restrooms;

- (z) Retail stores with the exception of retail tobacco stores whose primary activity is the sale or promotion of tobacco, tobacco products and accessories, and wherein all smoking is conducted within a sealed, ventilated room approved by the Building Official and is dedicated exclusively to smoking;
- (aa) Sexually-oriented businesses;
- (bb) Taxicabs;
- (cc) Theaters and sports arenas;
- (dd) Train stations;
- (ee) Within 50 feet of the outside entrance to a prohibited smoking area; or
- (ff) Indoor common areas of places of employment.

Sec. 10-100. Management responsibilities.

- (a) A proprietor or person in charge of a public place or an employer in a place of employment shall:
 - (1) Post clearly and conspicuously in the public place or place of employment, as applicable:
 - a. A sign with the words "No Smoking;" or
 - b. A sign with the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across the cigarette;
 - (2) Post at each entrance to the public place or place of employment, as applicable, a conspicuous sign clearly stating that smoking is prohibited; and
 - (3) Remove all ashtrays from any area in which smoking is prohibited.
- (b) An employer shall provide written notice that smoking is prohibited in the place of employment to each:
 - (1) Prospective employee in any application the employer supplies; and
 - (2) Employee on the first day of employment.

Sec. 10-101. Affirmative Defense.

It is a defense to prosecution under this article that smoking prohibited by section 10-99 took place:

- (a) In a theater as part of a theatrical production.

- (b) In a bingo facility licensed under the Bingo Enabling Act, Chapter 2001 of the Occupations Code, where the bingo facility:
 - (1) Provides an enclosed non-smoking area;
 - (2) Provides mechanical ventilation in the smoking area to prevent smoke from entering a non-smoking area;
 - (3) Prohibits admittance to the bingo facility to anyone under the age of 18;
 - (4) Provides a separate entrance from the building exterior to the non-smoking area; and
 - (5) Pays an annual smoking permit fee of \$1,000.

SECTION 2. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 4. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punished by a fine not to exceed Two Thousand (\$2,000.00) Dollars for each offense.

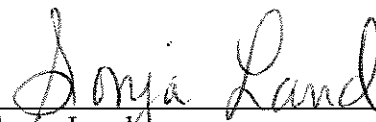
SECTION 5. That this ordinance shall take effect immediately from and after June 14, 2009.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 16th day of March, 2009.




John Monaco
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED:



B. J. Smith
City Attorney