

ARTICLE 6.06 - SMOKING

Sec. 6.06.001 Purpose

The purpose of this article is to:

- (1) Improve and protect the public's health by eliminating smoking in public places and places of employment/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 to smoke in the city.

Sec. 6.06.002 Definitions

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

Bar. An area which 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 hotel, motel or other similar transient occupancy establishment.

Bingo hall. Any premises in which an establishment or organization as its sole or predominant function offers the playing of bingo. A "not for profit" or private organization offering the playing of bingo as a secondary function is not a bingo hall.

Business. Any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making or nonprofit purposes, including all establishments where goods or services are sold.

Employee. Any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

Employer. Any person, partnership, corporation, including a municipal corporation, or nonprofit entity, which employs the services of one or more individual persons.

Enclosed area. All space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid.

Health-care facility. Any institution that provides medical, surgical, and overnight facilities for patients, including, but not limited to, hospitals, clinics, physical therapy facilities, doctor's

offices, dentists offices, nursing homes, adult care facilities, convalescent homes and residential treatment centers/homes.

Place of employment/workplace. Any 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 restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a place of employment unless it is used as a residential child-care, residential adult day-care, bed and breakfast or health-care facility.

Private organization. An entity, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for such organization's purposes, 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 nonprofit organization under 26 U.S.C., section 501. The term "private organization" shall not include any portion of a building or premises, whether owned or leased by a nonprofit corporation when said portion is in use by an entity that is not a nonprofit corporation organized under 26 U.S.C. section 501.

Private place. 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, premises owned or used by private organizations or personal automobiles. A privately owned business open to the public is not a private place.

Public place. Any enclosed area to which the public is invited or in which the public is permitted, including but not limited to: banks, educational facilities, health facilities, laundromats, public transportation and affiliated facilities, reception areas, production and marketing establishments, retail service establishments, retail stores and malls, theaters and waiting rooms. A private residence is not a public place.

Residential adult day-care facility. Any facility operated to provide care for and designed to meet the needs of functionally or cognitively impaired adults for less than twenty-four hours per day at the caregiver's own residence.

Residential child-care facility. Any facility operated to provide care for one or more child for less than twenty-four hours per day at the caregiver's own residence.

Restaurant. 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.

Retail tobacco store (or cigar bar). A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. For purposes of this article, other products that are merely incidental means not exceeding thirty percent (30%) of annual gross sales.

Service line. Any indoor 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.

Smoking. Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, tobacco, weed, or plant in any manner or in any form.

Sports arena. Sports 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.

Sec. 6.06.003 Prohibition of smoking in public places

Smoking shall be prohibited in all places of employment/workplaces and enclosed public places as well as those outdoor areas designated in [sections 6.06.004](#) and [6.06.005](#), within the city, including, but not limited to, the following places:

- (1) Elevators.
- (2) Restrooms, lobbies, reception areas, hallways and any other common-use areas.
- (3) Buses, bus stops, taxicabs, train stations, Granbury Airport, and other facilities and means of public transit under the authority of the city, as well as ticket, boarding, and waiting areas of public transportation facilities.
- (4) Service lines.
- (5) Retail stores, shopping centers and malls except as provided in [section 6.06.006](#).
- (6) All enclosed areas available to and customarily used by the general public for public assembly or for all public businesses, including but not limited to: professional offices, banks, service waiting areas, laundromats, hotels, motels and bed and breakfast establishments. Hotels and motels may allow for a percentage of rooms designated as smoking rooms as set forth in [section 6.06.006\(6\)](#).
- (7) Restaurants, cafes, bakeries, diners and other eateries.
- (8) Fuel dispensing stations, convenience stores, auto wash.
- (9) Galleries, libraries, zoos, and museums.

- (10) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except that performers may smoke when the smoking is part of a stage production.
- (11) Indoor sports arenas and convention halls.
- (12) Every room, chamber, place of meeting or public assembly, under the control of any board, council, commission, committee, including joint committees, or agencies, of the city.
- (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (14) Polling places.
- (15) Bingo halls and sports arenas.
- (16) Sexually oriented businesses (SOB's).
- (17) Places of employment/workplaces.
- (18) Library.
- (19) Any portion of any publicly or privately owned unenclosed area to which the public or a substantial group of the public has access, which has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area.
- (20) Any common area of a multi-family development, unless it is an owner occupied condominium.
- (21) Health-care facility.
- (22) Bars and nightclubs.

Sec. 6.06.004 Prohibition of smoking in places of employment/workplace and within a reasonable distance of fifteen feet (15') of places where smoking is prohibited

- (a) It shall be the responsibility of employers to provide a smoke-free place of employment/workplace for all employees.
- (b) Smoking shall be prohibited in all indoor areas in places of employment without exception. 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 and the placement of any smoking receptacle is prohibited within a distance of not less than fifteen feet (15') outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited in any public place or place of employment/workplace without exception. Measurement shall be taken from the outer dimension of the operating doors, window frames or air induction or ventilation systems.

(d) Each employer having control of any enclosed place of employment/workplace shall post a no smoking – city ordinance sign, displaying the international no smoking symbol in the place of employment/workplace within thirty (30) calendar days after the effective date of this article and in the future prior to receiving any required certificate of occupation from the city.

(e) Upon annexation and entry into the city corporate boundary, each business shall have no greater than thirty (30) days from the adoption date of the annexation to strictly comply with the provisions contained in this article. The council may, on its motion consider a different compliance term provided that the term is stated during the approval of the ordinance annexing the particular area into the city.

Sec. 6.06.005 Prohibition of smoking in specified outdoor areas

Smoking shall be prohibited in the following outdoor areas.

- (1) Boarding and waiting areas of public transportation facilities.
- (2) City parks, playgrounds, public docks and boat launch areas, and public recreation areas, excepting however private boats on city lakes.
- (3) Public and private athletic and stadium seating areas and service lines for sports venues and recreational activities.
- (4) Sidewalks along both sides of the right-of-way located on the historic downtown square and a distance of one-hundred and fifty feet (150') off of the corners, traversing away from the historic downtown square, see exhibit A attached to Ordinance 08-305.

Sec. 6.06.006 Exemptions from prohibition

The following are exemptions to this article where smoking is not prohibited, unless the area is designated as nonsmoking by the owner, operator, manager or person in control of the establishment or facility, in which case the regulatory affect of this article would apply in full:

- (1) A private residence, unless it is used as a residential child-care or residential adult day-care facility, bed and breakfast or health-care facility.
- (2) A retail tobacco store or cigar bar.

(3) Any premises controlled and used by a private organization. This exemption shall not apply to any private organization that is established for the purpose of avoiding compliance with this article.

(4) Any bar or nightclub which is currently operating under private club registration permit in accordance with TABC regulations not serving any food.

(5) Outdoor patios which are open-aired, located in the rear or side with no front and or main entry point, adjacent to bars or restaurants and served by employees of such bars or restaurants provided that no smoking shall be allowed within 15' from outside entrances, operable windows, and ventilation systems of areas where smoking is prohibited by this article. Open-aired means no solid fencing of any type or to any degree surrounding the seating area of the patio. The exemption would apply only to decorative open-aired fencing (such as wrought iron, slats or lattice work which would allow for >50% light and air penetration) surrounding the patio area. Any outdoor patio area encased with one or more solid walls or partial wall extending vertically, excluding the solid wall of the bar or restaurant, shall not be included in this exemption.

(6) Hotel and motel rooms may be rented to guests which are designated as smoking rooms; 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 article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms. The exemption does not apply to any bed and breakfast facility.

(7) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested to be placed in a room where smoking is permitted; provided that approval has been granted by the health-care administrator and that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.

(8) Designated smoking areas at outdoor events or festivals. The designated smoking areas must be delineated on an attached site plan to the event/festival permit application for city consideration. Approval may only be granted to those areas which are separated from the ingress/egress of the general public attending the festival or event. All smoking receptacles, depositories or ashtrays shall be located within the designated smoking area and conspicuous signage designating the smoking area shall be required at the entry points.

Sec. 6.06.007 Posting of signs

(a) The owner, manager or other person having control of a public place or place of employment/workplace or other area where smoking is prohibited by this article shall have a

conspicuously posted sign clearly stating “No Smoking – City Ordinance,” displaying the international no smoking symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it). The owner or manager of an establishment governed by this article commits an offense if he or she fails to post and maintain the required signs.

(b) All children’s playgrounds associated with eating establishments shall be nonsmoking. All doors and gates leading to such play areas shall be posted: “No Smoking – City Ordinance.”

(c) All ashtrays, receptacles, smoking depositories and other smoking paraphernalia shall be placed outside of the smoking prohibited areas, but appropriately located for the enforcement of extinguishing of smoking materials in public places and places of employment/workplace.

Sec. 6.06.008 Viable defense

It is a defense to prosecution under this article that the location of the receptacle, depository or ashtray for the extinguishment of the smoking materials was not properly located within the conveyance of public entrances and placed inside of the prohibited areas by either the employer or business owner or manager regulated by this article. This defense extends only to the smoker attempting to extinguish the tobacco product and not to the business owner or employer of the public place or place of employment/workplace whose responsibility it is to place the receptacle, depository or ashtray in manner to become compliant with intent, terms and provisions of this article.

Sec. 6.06.009 Enforcement

(a) Enforcement of this article shall be by any police officer, city health inspector or as designated or assigned by the city manager.

(b) Notice of the provisions set forth in this article shall be given to all applicants for a certificate of occupancy or any other license to operate a business in the city.

(c) Any person may register a complaint under this article to initiate enforcement with any agency or official designated herein.

(d) The above-designated enforcement persons shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this article.

(e) Any owner, manager, operator or employee of any establishment regulated by this article shall be responsible for ensuring a smoke-free workplace and informing persons violating any the provisions this article.

Sec. 6.06.010 Special areas designated by council

The city council may establish designated smoking areas by resolution on public property, provided that the designated smoking area is separated, removed and is not infringing on the

nonsmokers enjoyment to breathe smoke-free air in the prohibited areas. The areas will specifically be described in the resolution and clearly marked on site as a smoking area. Smoking outside of the area delineated will constitute a violation of this article.

Sec. 6.06.011 Nonretaliation

No person or employee shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke-free environment afforded by this article.

Sec. 6.06.012 Violations and penalties

(a) It shall be unlawful for the owner, manager or other person having control of a public place or place of employment or other area where smoking is prohibited by this article to allow smoking or to fail to comply with any of the provisions of this article.

(b) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article, or to violate any provision of this article.

(c) Any person who violates any provision of this article shall be guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars (\$300.00). If a defendant has been previously convicted under this article, the defendant shall be punished by a fine of not more than five hundred dollars (\$500.00). Each violation of this article shall constitute a separate offense.

(d) The city manager may suspend or revoke a permit or license issued to the operator of a public place or workplace where a violation of this article occurs.

Sec. 6.06.013 Other applicable laws

This article shall not be interpreted nor construed to permit smoking where it is otherwise restricted by other applicable laws.

(Ordinance 08-305 adopted 4/15/08)