

Ordinance No. _____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF MARSHALL, TEXAS, ENACTING NEW PROVISIONS TO CHAPTER 24A TO SAID CODE, PROHIBITING SMOKING IN PUBLIC PLACES; SPECIFYING REQUIRED SIGNAGE; PROVIDING FOR ENFORCEMENT AND PENALTIES OF UP TO \$500 FOR VIOLATIONS HEREOF; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE PASSED COMPLIED WITH THE OPEN MEETINGS ACT; REPEALING ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE SEVERABILITY OF THE PROVISIONS HEREOF; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, numerous studies have determined that environmental tobacco smoke (ETS) is a significant source of exposure to toxic air indoor contaminants, causally associated with respiratory illnesses, including lung cancer, asthma, and emphysema; and,

WHEREAS, there is scientific research linking ETS with heart disease, responsible for an estimated 62,000 coronary heart disease deaths annually in the United States due to ETS exposure; and,

WHEREAS, ETS carcinogens and poisons have been identified in the body fluids of non-smokers with special risk posed to children, the elderly, food service employees and individuals with cardiovascular disease and/or impaired respiratory function, including asthmatics and those with obstructive airway disease; and,

WHEREAS, second smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, and children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer; and,

WHEREAS, accordingly, the City Commission recognizes that ETS poses a public health hazard and a public nuisance, therefore some regulation by the City Commission of the smoking in public places is warranted to protect the public health and welfare of the citizens of the City of Marshall; and,

WHEREAS, the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and, (2) to guarantee the right to nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke;

**NOW, THEREFORE,
BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF
MARSHALL, TEXAS:**

Section 1. That the findings set out in the preamble to this ordinance are hereby in all things approved.

Section 2. That Chapter 24 A “Smoking” is amended by repealing the following sections in their entirety: Section 24A-1 thru 24A-6.

Section 3. That there is hereby enacted a new Article I of Chapter 24A “Smoking” of the Code of Ordinances of the City of Marshall, Texas, entitled “ Article I *Smoking in Public Places - Prohibited*” (Article I shall consist of Section 24A-1 thru 24A- 12.) which said Article I shall read as follows:

“Article I. Smoking in Public Places – Prohibited.

Sec. 24A-1. Definitions.

"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.

"Business" means:

(A) a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including a retail establishment, where goods or services are sold;

(B) a professional corporation or other entity where legal, medical, dental, engineering, architectural, or other professional services are delivered; or

(C) a private club.

"Employee" means an individual who:

(A) is employed by an employer for direct or indirect monetary wages or profit; or

(B) volunteers the individual's services for an employer.

"Employer" means a person who employs one or more individuals or uses the volunteer services of one or more individuals. The term includes:

(A) a nonprofit entity, and

(B) any political subdivision of this state.

"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 in which care or treatment is provided for physical, mental, or emotional diseases or other medical, physiological, or psychological conditions.

"Place of employment" means an area under the control of an employer that is used by employees of the employer but is not generally open to the public.

"Private club" means an organization that:

- (A) owns, leases, or occupies a building used exclusively for club purposes at all times;
- (B) is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain;
- (C) sells alcoholic beverages only incidentally to its operation;
- (D) is managed by a board of directors or similar body chosen by the members at an annual meeting;
- (E) has established bylaws or a constitution to govern the club's activities; and
- (F) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as a club described by Section 501(c)(7) of that code.

"Public place" means:

- (A) an enclosed indoor area the public is invited or permitted to enter, including all or part of the following:
 - (i) a restaurant;
 - (ii) a bar;
 - (iii) a retail or service establishment;
 - (iv) a facility of a business or nonprofit entity;
 - (v) a shopping mall;
 - (vi) a convention facility;
 - (vii) a theater or other facility primarily used for exhibiting a performance;
 - (viii) a sports arena;
 - (ix) a health care facility;
 - (x) a licensed child-care or adult day-care facility;
 - (xi) a room in which a public meeting under the control of this state, an agency or branch of government of this state, or a political subdivision of this state is in progress;
 - (xiii) a common area in a multiple-unit residential facility;
 - (xiv) a public transportation facility, including a bus or taxicab, and a ticket, boarding, or waiting area of a public transportation depot;
 - (xv) a waiting room, hallway, room, or ward in a health care facility; or
 - (xvi) a restroom, lobby, reception area, service line, hallway, elevator, or other common-use area the public is invited or permitted to enter; or
- (B) a facility of the state or of a local government, including a building or vehicle owned, leased, or operated by the state or local government, regardless of whether the public is invited or permitted to enter.

"Restaurant" means an enclosed indoor establishment that is open to the public and is devoted primarily to the sale and service of food for immediate consumption. The term includes a bar located at the establishment.

"Retail or service establishment" means an establishment that sells goods or services to the public.

"Service line" means an indoor line in which one or more persons wait for or receive service, whether or not the service involves the exchange of money.

"Shopping mall" means an enclosed public walkway or hall area that connects retail, service, or professional establishments.

"Smoke" means to inhale, exhale, burn, or carry a lighted cigar, cigarette, pipe, or other smoking equipment in any manner.

"Sports arena" means a place in which a person engages in physical exercise, participates in athletic competition, or witnesses sports or other events.

Sec. 24A-2. Interpretation.

The provisions and requirements of this ordinance shall be in addition to any provision or requirement of any other applicable law, ordinance, rule or regulation. This article may not be construed to permit smoking where it is restricted by other applicable law.

Sec. 24A-3. Smoking prohibited in public places.

Smoking shall be prohibited in all public places 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 terminals, taxicabs, train stations, airports and other facilities and means of public transit under the authority of the city, as well as ticket, boarding, and waiting areas of public transit depots;
4. Service lines;
5. Retail stores;
7. Food establishments, nightclubs and bars;
8. Galleries, libraries, and museums.
9. 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;
10. Sports arenas and convention halls, including bowling facilities;
11. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city;
12. Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;
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.

Sec. 24A-4. Smoking prohibited in place of employment.

- (A) A person may not smoke in a place of employment.

(B) It shall be the responsibility of employers to provide a smoke-free workplace for all employees.

Sec. 24A-5. Prohibition of smoking in seating area at an outdoor event.

A person may not smoke in:

- (A) the seating area of an outdoor arena, stadium, or amphitheater; or
- (B) bleachers or grandstands for use by spectators at a sporting or other public event.

Sec. 24A-6. Reasonable distance; exceptions.

- (A) A person may not smoke within a distance of 30 feet from a primary public pedestrian entrance to or an operable window of an enclosed area in which smoking is prohibited.
- (B) Exceptions. A person may smoke within 30 feet of an entrance of an enclosed area where smoking is prohibited if:
 - (1) the entrance is not a primary public pedestrian entrance to the premises; or
 - (2) the distance between the entrance and the adjacent roadway is less than 30 feet.

Sec. 24A-7 Exceptions.

This subchapter does not apply to:

- (A) a private residence, except when used as a child-care, adult day-care, or health care facility;
- (B) a hotel or motel room rented to a guest and designated as a smoking room, if:
 - (1) not more than 20 percent of rooms rented to guests in a hotel or motel are designated as smoking rooms;
 - (2) all smoking rooms in the hotel or motel on the same floor are contiguous; and
 - (3) smoke from smoking rooms does not enter an area in which smoking is prohibited;
- (C) a private or semiprivate room in a nursing home or long-term care facility 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 the room does not enter an area where smoking is prohibited;
- (D) a private club, as defined in section 24A-1 of this article:
 - (1) unless the club is being used for a function to which the general

public is invited; and
(2) provided the private club is not established for the sole purpose of avoiding compliance with this chapter; or

(E) outdoor places of employment except those covered by sections 24A-5 and 24A-6.

Sec. 24A-8 Declaration of establishment as nonsmoking.

(A) 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.

(B) A person may not smoke in a place in which a sign conforming to the requirements of Section 24A-9 is posted.

Sec. 24A-9. Posting of signs.

(A) The owner, manager or other person having control of such building or other area where smoking is prohibited by this chapter shall have a conspicuously posted sign clearly stating that smoking is prohibited at each entrance and within the building or other areas where smoking is prohibited.

(B) Such "No Smoking" signs shall have bold lettering of not less than one inch in height. The international "No Smoking" symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).

(C) All ashtrays and other smoking paraphernalia shall be limited in facilities to that required for the enforcement of extinguishing of smoking materials in public places.

Sec. 24A-10. Enforcement.

(A) Enforcement of this chapter shall be implemented by the planning and community development department, fire and law enforcement agencies.

(B) Any owner, manager, operator or employee of any establishment regulated by this chapter shall be responsible for enforcement.

Sec. 24A-11. Retaliation prohibited.

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 chapter.

Sec. 24A-12. Penalties for violations.

- (A) Any person who violates any provision of this chapter shall be guilty of a class "C" misdemeanor and shall be punished by a fine of not less than \$25.00 nor more than \$200.00; provided, however, that if a defendant has been previously convicted under this chapter, the defendant shall be fined an amount not less than \$50.00 nor more than \$500.00.
- (B) Each day an offense occurs is a separate violation.”

Section 4. That the meeting at which this ordinance was passed was conducted in strict compliance with the Texas Open Meetings Act (Texas Government Code Chapter 551).

Section 5. That, except as expressly provided otherwise herein, this ordinance shall be cumulative of all ordinances of the City of Marshall, Texas, as amended; provided, however, that all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict only.

Section 6. This ordinance shall be in full force and effect from and after _____, 2007.

PASSED AND APPROVED this _____ day of _____, 2007.

AYES: _____

NOES: _____

ABSTAINED: _____

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2007.

AYES: _____

NOES: _____

ABSTAINED: _____

 EDWARD N. SMITH, III
 CHAIRMAN OF THE CITY COMMISSION OF
 THE CITY OF MARSHALL, TEXAS