

**ORDINANCE NO. 1992**

**AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, AMENDING THE TERRELL CITY CODE OF ORDINANCE BY ADDING SECTION 10 OF CHAPTER 7 “SMOKING REGULATION”; DESIGNATING CERTAIN RETAIL AND SERVICE ESTABLISHMENTS, PUBLIC BUILDINGS, AND FOOD PRODUCTS ESTABLISHMENTS AS NONSMOKING AREAS; PROVIDING SIGN REQUIREMENTS; PROVIDING MINIMUM STANDARDS FOR NONSMOKING AREAS; REQUIRING WRITTEN POLICIES IMPLEMENTING THIS CHAPTER; PROHIBITING SMOKING IN DESIGNATED NONSMOKING AREAS; PROVIDING EXEMPTIONS; PROVIDING FOR PENALTIES; PROVIDING FOR REPEAL OF CONFLICTING SECTIONS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE AND DECLARING AN EMERGENCY.**

**BE IT ORDAINED BY THE CITY COUCIL OF THE CITY OF TERRELL, TEXAS:**

**SECTION I.**

That Chapter 7, Section 10 Smoking Regulation of the Terrell City Code read as follows:

A. Definitions

As used in this section:

1. Administrative Area means the area of an establishment not generally not accessible to the public, including, but not limited to, individual offices, stockrooms, employee lounges, or meeting rooms.
2. Director means the director of the department designated by the city manager to enforce and administer this chapter of the director’s designated representative.
3. Food Products Establishment means any restaurant defined as such in the City of Terrell Code of Ordinances.
4. Retail and Service Establishment means any establishment which sells goods or services to the general public.
5. Public Service Area means any area to which the general public routinely has access for municipal services or which is designated a public service area in a written policy prepared in compliance with this chapter.

B. Smoking Prohibited in Certain Public Areas

1. A person commits an offense if he smokes or possesses a burning tobacco, weed or other plant product in any of the following indoor or enclosed areas:

- a. an elevator used by the public;
  - b. any conference room, meeting room, or public service area of any facility owned, operated, or managed by the city;
  - c. an area in a publicly owned governmental building (to which the provisions of this ordinance legally apply) where the general public must conduct business
  - d. any facility of a public primary or secondary school; or an enclosed theater, movie house, library, museum or transit system vehicle; or
  - e. any area marked with a no smoking sign in accordance with Subsection (2) by the owner or person in control.
2. The owner or person in control of an establishment or area designated in Subsection (1) of this section shall post a conspicuous sign at the main entrance to the establishment. The sign shall contain the words “NO Smoking, City of Terrell Ordinance,” the universal symbol for no smoking, or other language that clearly prohibits smoking.
3. The owner or person in control of an establishment or area described in Subsection (1)(d) may designate an area, including, but not limited to, lobbies, meeting rooms, or waiting rooms, as a smoking area; provided that the designated smoking area may not include:
- a. the entire establishment;
  - b. cashier area or over the counter sales area; or
  - c. the viewing area of any theater or movie house;
4. It is a defense to prosecution under this section if the person was smoking in a location that was:
- a. a designated smoking area of a facility or establishment described in Subsection B (1)(d) of this section which is posted as a smoking area with appropriate signs;
  - b. an administrative area of office of an establishment described in Subsection B (1)(d) of this section;
  - c. a retail or service establishment serving the general public with less than 500 square feet of public showroom or service space or having only one employee on duty, unless posted as designated in Subsection B (1)(g) of this section;
  - d. a retail or service establishment which is primarily engaged in the sale of tobacco, tobacco products or smoking implements; or
  - e. a retail or service establishment which is a food products establishment regulated by Section D.

C. Written Policy Required

The owner or person in control of any facility or area designated as a no smoking area in Section B (1)(c) or (1)(d) shall:

1. have and implement a written policy on smoking which conforms to this Article; and
2. make the policy available for inspection by employees and the director.

D. Food Products Establishments

1. A food product establishment which has indoor or enclosed dining areas shall provide separate indoor or enclosed dining areas for smoking and nonsmoking patrons.
2. A nonsmoking area must:
  - a. be separated, where feasible, from smoking areas by a minimum of four feet of contiguous floor space.
  - b. be ventilated, where feasible, and situated so that air from the smoking area is not drawn into or across the nonsmoking area;
  - c. be clearly designated by appropriate signs visible to patrons within the dining area indicating that the area is designated nonsmoking; and
  - d. have ashtrays or other suitable containers for extinguishing smoking materials at the perimeter of the nonsmoking area.
3. Each food products establishment which has a dining area shall:
  - a. have and implement a written policy on smoking which conforms to this article;
  - b. make the policy available for inspection by employees and the director or his authorized representatives; and
  - c. have signs at the establishment's entrance indicating that nonsmoking seating is available.
4. Nondining areas of any food products establishment affected by this section to which patrons have general access, including, but not limited to, food order areas, food service areas, restrooms, and cashier areas, shall be designated as nonsmoking areas.
5. It is a defense to prosecution under this section that the food products establishment is:
  - a. an establishment which has indoor seating arrangements for less than 50 patrons;
  - b. a physically separated bar area of a food products establishment otherwise regulated.

E. Smoking in Food Products Establishments

A person commits an offense if he smokes or possesses a burning tobacco, weed, or other plant product in an area of a food products establishment designated as nonsmoking.

F. Manager's Responsibilities

The owner, operator, manager or employee of an establishment wherein smoking is prohibited, or any section or area thereof wherein smoking is prohibited, shall be required to orally inform persons violating this ordinance of the provisions

thereof (“violator”). The duty to inform such violator shall arise when such owner, operator, manager or employee or same becomes aware of such violation. If the violator continues to violate this ordinance after requested to cease smoking in a prohibited area, it shall then become the responsibility of the owner, operator, manager or employee to immediately notify the Terrell Police Department and to file a complaint against the violator within ten (10) days of the incident in Terrell Municipal Court. Any such owner, operator, manager or employee who knowingly violates the provisions of this article when such duty arises as herein described shall be subject to the penalties provided for in Section II, B.

## **SECTION II**

A. Severability

If any section or part of any section or paragraph of this Ordinance is declared invalid, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

B. Penalties

It shall be unlawful and a violation of this section for any such person to whom an order is given under this section to fail or refuse to comply therewith. Any person who shall violate the terms and provisions of this section upon conviction thereof, be deemed guilty of a misdemeanor and each and every day this section is violated shall constitute a separate offense.

## **ARTICLE III.**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

## **ARTICLE IV.**

This ordinance will take effect immediately from and after its passage and the publication of the caption as the law in such cases provides.

PASSED on first reading on the 2<sup>nd</sup> day of November, 1999.

PASSED on second reading on the 16<sup>th</sup> day of November, 1999.

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Henry Madgwick, Mayor

Attest:

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John Rounsavall, City Secretary

Approves as to Form:

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Mary Gayle Ramsey, City Attorney