

**ORDINANCE NO. 2619**

**AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS, AMENDING CHAPTER 7, HEALTH AND SANITATION, SECTION 10: SMOKING REGULATIONS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Terrell is permitted to establish ordinances to protect the health, safety and general welfare of its residents; and

**WHEREAS**, cumulative scientific data indicates that exposure to second-hand smoke in indoor areas is dangerous to human health; and

**WHEREAS**, according to a 2010 U.S. Surgeon General's Report, even occasional exposure to secondhand smoke is harmful; and

**WHEREAS**, a significant amount of secondhand smoke exposure occurs in unregulated areas of the workplace, within public restaurants and within other public buildings and areas; and

**WHEREAS**, studies undertaken across the country demonstrate that there is no significant adverse economic impact as a result of smoking regulations.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS:**

**ARTICLE I.**

That Chapter 7, Health and Sanitation, Section 10, Smoking Regulations, shall be amended as follows:

**Sec. 7-10 Smoking Regulations.**

(a) *Definitions.* As used in this section:

*Administrative area* means the area of an establishment not generally accessible to the public, including, but not limited to, individual offices, stockrooms, employee lounges or meeting rooms.

*Director* means the director of the department designated by the city manager to enforce and administer this section or the director's designated representative.

*Food products establishment* means any establishment defined as such in the City of Terrell Code of Ordinances which is required by state law to have a health food permit and subject to annual inspections.

*Bar/Private Club* means any establishment licensed or permitted under the provisions of the Texas Alcoholic Beverage Code.

*Retail and service establishment* means any establishment which sells goods or services to the general public.

*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 section.

*Electronic cigarette or "E cigarette"* means an electronic device usually composed of a mouthpiece, a heating element or atomizer, a battery, and electronic circuits that provide a gas derived from liquid nicotine and/or other substances which is inhaled by a user simulating smoking. The term includes such devices, regardless of the details of the product appearance or marketed name, generally manufactured to resemble cigarettes, cigars, pipes, or other smoking devices.

*Liquid nicotine* means any liquid product composed either in whole or in part of nicotine, propylene glycol and/or similar substances and manufactured for use with an e-cigarette to be converted into a gas for inhaling.

(b) *Smoking prohibited in certain public areas.*

A person commits an offense in violation of this section if he/she smokes or possesses an electronic cigarette containing nicotine products or derivatives, burning tobacco, weed or other plant product in any form in any of the following indoor and/or enclosed areas:

- 1) Public or private preschools, primary or secondary schools, public or private colleges or universities, child-care facilities; or
- 2) Elevators, museums, libraries, galleries, public transportation facilities open to the public and service lines of establishments doing business with the general public; or
- 3) Any property or any portion thereof that is owned or leased by the city and/or used for city purposes including, but not limited to, city buildings, city parks and city owned vehicles; or

- 4) Any building which is used for or designated for the purpose of exhibiting any motion picture, stage drama, lecture, musical recital, athletic event or any other event whenever open to the public, including all restrooms and any area commonly referred to as a lobby; or
- 5) Any retail or service establishment serving the general public, including but not limited to, any food products establishment, department store, restaurant, grocery store, private club, bingo parlor, bowling center, drug store, shopping mall, hair styling salons, including service lines; or
- 6) All restrooms open for public use; or
- 7) All areas in a Laundromat open to and available to use by the public; or
- 8) Within all areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including, but not limited to, commercial, financial and professional offices, including banks, hotels and motels; or
- 9) Within 25 linear feet of any entrance of any establishment or facility where smoking is prohibited including, but not limited to, outdoor patio areas where food or alcoholic beverages are served; or
- 10) In any public area of a health care facility or hospital, including, but not limited to, clinics, physical therapy facilities, doctor's offices, nursing and convalescent homes, residential treatment centers/homes and dentist's offices except in bed space areas of health facilities if all patients within the room are smokers and such smoking is ordered on the health care facility's admission form by an attending physician, in keeping with the guidelines by the facility; or
- 11) Any establishment or facility, or any portion thereof, that has been designated as nonsmoking by the owner, operator, manager, or other person who controls any establishment or facility.

(c) *Affirmative defense.*

It shall be an affirmative defense to prosecution for an offense committed under subsection (b) above that the establishment or facility in which the offense takes place has not conspicuously displayed a sign or signs that smoking is prohibited.

(d) *Posting of signs.*

The owner, operator, manager or person in charge of an establishment or facility in which smoking is prohibited in all or a portion thereof shall conspicuously post signs informing the public that smoking is prohibited in the establishment or facility. The manner of such posting shall be at the discretion of the owner, operator, manager or person in charge of an establishment or facility so long as the signs are conspicuous and state that smoking is prohibited and that an offense is punishable by a fine.

(e) *Locations where smoking is not prohibited.*

Smoking is not prohibited in the following establishments or facilities, or portions thereof, unless designated as nonsmoking by the owner, manager or person in control of the establishment or facility:

- 1) Private residences, except when used as a licensed child care or health care facility; or
- 2) Up to twenty five percent of hotel and motel rooms rented to guests, provided each room so designated is on the same floor and/or contiguous to each other as much as possible and has a sign on the front door showing it is a smoking room; or
- 3) Retail tobacco stores (which means establishments that derive at least fifty one percent of their annual gross receipts from the sale of tobacco and tobacco accessories) that have an enclosed, separately ventilated smoking room that exhausts directly to the outside environment; or
- 4) Any area exterior to an establishment or facility that is not in violation of any other provision of this section; or
- 5) Any bar, private club, or other establishment or facility that does not have a food permit and whose gross receipts for alcohol sales are in excess of fifty percent of the total gross receipts of the establishment or facility.
  - i. If the ownership or operator of an establishment or facility changes, but the sale of alcoholic beverages continue on the premises, smoking is not prohibited unless said owner or operator designates the premises as nonsmoking.
  - ii. A non-conforming establishment or facility may be renovated provided it is not enlarged or expanded.
  - iii. If a non-conforming establishment or facility is damaged or destroyed to an extent of less than sixty percent of its fair market value by fire, explosion, act of God, or other action beyond the control of the owner or operator, the establishment or facility may be reconstructed, but not expanded or enlarged.
  - iv. If the sale of alcoholic beverages is discontinued for any reason for a period of one year, then the establishment or facility is no longer exempt under subsection (7) from the application of the smoking prohibition.

(f) *Enforcement.*

The City Manager shall designate the director of the department or the director's designated representative that shall be responsible for compliance with this section. The director, building official, health inspector, police department or fire department may, while an establishment is undergoing mandated or routine inspections, inspect

for compliance with this article. In addition, if a person is observed smoking in a nonsmoking area, the person may be cited for violating this section.

(g) *No duty or obligation.*

In undertaking the enforcement of this section, the City is assuming an undertaking only to promote the general health, safety and welfare of its citizens. The City is not assuming any duty or obligation, nor is it imposing any duty and/or obligation on its officers and/or employees, nor is it liable in money damages or otherwise to any person who claims that the City and/or one of its officers and/or employees breached any such obligation and the breach proximately caused injury.

(h) *Penalty for Violation*

Any person violating any of the provisions of this section shall be subject to a fine not to exceed \$500.00 for each offense.

## **ARTICLE II.**

All Ordinances or parts of Ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

## **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 on February 2, 2015 from and after its passage and the publication of the caption as the law in such cases provides.

PASSED AND APPROVED THIS the 18th day of November, 2014.

PASSED AND ADOPTED THIS the 2nd day of December, 2014.

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HAL RICHARDS, MAYOR

ATTEST:

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JOHN ROUNSAVALL, CITY SECRETARY

APPROVED AS TO FORM:

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MARY GAYLE RAMSEY, CITY ATTORNEY