

Exhibit A

Chapter 6 Health and Sanitation Amendments

ARTICLE 6.05 SMOKING REGULATIONS

Sec. 6.05.001 Penalties

Each violation of this article if a first offense shall be punished by a penalty of a fine of not less than \$25.00 nor more than \$200.00; a second conviction shall be punished by a penalty of a fine of not less than \$50.00 nor more than \$500.00 for a second conviction; and shall be fined an amount no less than \$100.00 for third or more convictions nor more than \$2,000.00.

Sec. 6.05.002 Purpose

The Surgeon General of the United States has declared that smoking is the number one public health issue. The United States Environmental Protection Agency has concluded that passive smoking poses a public risk larger than the hazardous air pollutants from all industrial emissions combined. The city recognizes the evidence that smoke creates a danger to the health of some citizens and is a cause of annoyance and discomfort to those who are in confined spaces where the same is present. The city also recognizes that it is the right of citizens to choose whether or not to smoke actively or passively and it is the policy of the city to encourage food service establishments that have enclosed dining areas to provide adequate seating for patrons and employers and employees of such establishments who prefer a smoke-free environment. In order to protect the health, safety and welfare of the general public as well as protect the rights of smokers and non-smokers, this article has been created to restrict smoking in public places, except in areas designated as smoking areas.

Sec. 6.05.003 Definitions

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

Electronic Smoking Device (ESD) means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, dab rig or vape pen, or under any other product name or descriptor.

Employee. Any person employed by any employer for direct or indirect monetary wages or profit or is in a position that would lead one to believe that such person is employed.

Employer. Any person, partnership, corporation, association, or other entity that employs one or more persons.

Enclosed. Closed in by a roof and walls with appropriate openings for ingress and egress, but does not include areas commonly described as public lobbies.

Food establishment. Any operation defined as such in section 6.02.003 of this Code.

Hospital. Any institution that provides medical, surgical, and overnight facilities for patients.

Movie theater. Any establishment engaged in the business of exhibiting motion pictures to the public.

Public-owned facilities. All buildings or structures whatsoever owned or operated by the city, including the entirety thereof, where the public has access or not.

Public place. Any enclosed indoor area that may be used by the general public, and includes, but is not limited to: stores, offices, and other commercial establishments; restaurants; public and private institutions of higher education; and health care facilities.

Retail and service establishments. Any establishment which offers goods or services for sale to the general public.

Service line. Any indoor service line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, including marijuana/cannabis, in any manner or in any form. Smoking includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Chapter.

Workplace. Any enclosed area of a structure, or portion thereof, intended for occupancy by employees who provide primarily clerical, professional or business services of a business entity, or who provide primarily clerical, professional, or business services to other business entities, or to the public, at that location. The enclosed indoor area under the control of the employer shall include those areas to which employees have access during the course of employment, including but not limited to work areas, employee lounges, employee restrooms, employee conference rooms, and employee cafeterias. A private residence is not considered a place of employment.

Sec. 6.05.004 Smoking prohibited in certain public areas

- (a) A person commits an offense if he smokes or possesses a burning tobacco, weed or other plant product or any lighted burning pipe, cigar or cigarette of any kind, or smoking equipment or device, in any of the following indoor or enclosed areas:
- (1) An elevator used or that may be used by the public;
 - (2) A hospital or nursing home corridor providing direct access to patients;
 - (3) Any publicly owned facility or operated by the city as defined in section 6.05.003 above;

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- (4) All retail or service establishments and financial institutions serving the general public, including but not limited to any department store, grocery store, drugstore, clothing store, shoe store, hardware store, bank, savings and loan, laundromat, hair salon or barbershop, and shall include all public areas and waiting rooms of public transportation facilities, including but not limited to common areas of city-owned theaters, concert halls, and cultural facilities; provided that smoking may be allowed in common areas of the shopping malls and designated areas of public facilities;
 - (5) An area marked with a no smoking sign in accordance with section 6.05.005 by the owner or person in control of a hospital, nursing home, or retail or service establishment serving the general public; or
 - (6) Any facility of a public primary or secondary school; or an enclosed theater, motion picture theater, library, museum, and transportation vehicles, such as buses and taxicabs, except on charter buses for private hire or in taxicabs clearly designated by the operator to permit smoking;
 - (7) All rooms in which meetings and/or hearings are open to the public.
- (b) The owner or person in control of an establishment or area designated in this section shall post a sign, conspicuous to ordinary public view, at or near each public entrance to the establishment. The sign shall contain the words "No Smoking Except in Designated Areas, City of Leon Valley Ordinance," the universal symbol for no smoking, or other language that clearly prohibits smoking.
 - (c) The owner of a person in control of an establishment or areas described in subsection (a)(4) or (a)(6) may designate an area, including but not limited to lobbies, meeting rooms, waiting rooms, or lounges, as a smoking area; provided that the designated smoking area may not:
 - (1) Include the entire establishment;
 - (2) Include cashier areas, over-the-counter service or sales areas, or service lines;
 - (3) Include the viewing area of any theater or motion picture theater.
 - (d) It is the defense to prosecution under this section if the person was smoking:
 - (1) In a location that is not a designated nonsmoking area of a facility or establishment described in subsection (a)(4) or (a)(6) of this section;
 - (2) In a location that is an administrative area or office area of an establishment described in subsection (a)(4) or (a)(6) of this section;
 - (3) In a location that is a retail or service establishment serving the general public with less than 750 square feet of public showroom or service space or having one employee on duty, unless posted as designated in subsection (b) of this section;
 - (4) In a location that is a retail or service establishment that is primarily engaged in the sale of tobacco, tobacco products or smoking implements;

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- (5) In a retail or service establishment, which is a food service establishment regulated by section 6.05.005;
 - (6) As a participant in an authorized theatrical performance; or
 - (7) In a situation in which the person is present at an event in which an entire room or hall is used for a social function, seating arrangements are under the control of the sponsor of the function and not the proprietor or person in charge of the place. However, the sponsor of the social function may designate a nonsmoking area.

Sec. 6.05.005 Regulation of smoking in food establishments

- (a) A food service establishment that has indoor or enclosed dining areas shall provide areas for both smoking and nonsmoking patrons.
- (b) A nonsmoking area must:
 - (1) Be separated from the smoking areas by a minimum of four feet of contiguous floor space, a partition or a wall;
 - (2) Be ventilated and situated so that air from the smoking area is not drawn into or across the nonsmoking area, or the smoking area shall be separately ventilated;
 - (3) Be clearly designated by appropriate signs visible to patrons within the dining area indicating the area that is designated nonsmoking; and
 - (4) Have ashtrays or other suitable containers for extinguishing smoking materials at the perimeter of the nonsmoking area.
- (c) Each food establishment which has a dining area shall:
 - (1) Have and implement a written policy on smoking which conforms to this article;
 - (2) Make the policy available for inspection by employees; and
 - (3) Have signs, conspicuous to ordinary public view, at each public entrance to the establishment indicating that nonsmoking seating is available.
- (d) Non-dining areas of any food establishment affected by this section to which the public has general access, including, but not limited to, food order areas, food service areas and restrooms, shall be designated as nonsmoking areas.
- (e) It is a defense to the prosecution under this section that the food establishment is:
 - (1) An establishment which has indoor seating arrangements for less than 50 patrons;
 - (2) An establishment which has more than 70 percent of its annual gross sales in alcoholic beverages; or
 - (3) A physically separated bar area of a food service establishment otherwise regulated.
 - (4) The establishments covered in subsections (1) through (3) above shall post a sign, conspicuous to the ordinary public view, at each public entrance to the

establishment which shall contain the words "This Establishment Does Not Provide for a Nonsmoking Section."

Sec. 6.05.006 Regulation of smoking in the workplace

Notwithstanding the provisions of sections 6.05.004 and 6.05.005, any employer may designate a portion of the workplace as a nonsmoking area. Any employer who chooses to designate any portion thereof as a nonsmoking area shall:

- (1) Have and implement a written policy on smoking which conforms to this article;
- (2) Make the policy available for inspection by employees;
- (3) Prominently display reasonably sized signs conspicuous to ordinary public view, indicating that smoking is prohibited in certain areas; and
- (4) Provide facilities in sufficient numbers and at such locations to be readily accessible, for the extinguishment of smoking materials.

Sec. 6.05.007 Reporting of violations not required

This article does not require the owner, operator, employer, manager or any employee of an establishment to report a violation or to take any action against any individual violating sections 6.05.002 through 6.05.006 of this article.

(Ordinance 08-053 adopted 11-18-08; 2008 Code, sec. 6.05.007)

Sec. 6.05.008 Distribution, display and sale of tobacco products; and cigarette machines

(a) *Definition.* For purposes of this section only:

Tobacco products. Any product that is made from or derived from tobacco and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or an electronic smoking device or liquids used in electronic smoking devices. Tobacco products do not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(b) *Prohibited.* Distribution, display, and sale of smoking tobacco products, or smoking paraphernalia on any public right-of-way, city park or any city-owned building or facility is hereby prohibited.

(c) The sale of tobacco products to persons under twenty-one (21) years of age is prohibited by Chapter 161 of the Texas Health and Safety Code.

(d) Each person who sells tobacco products at retail or by vending machine shall post a sign as required by Texas Health and Safety Code Section 161.084.

(e) *Cigarette vending machines.*

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- (1) Subject to the defenses provided in subsection (2) below, it shall be unlawful for any business owner, manager and employee in control of cigarette vending machines within the city to intentionally, knowingly, recklessly, or with criminal negligence allow the display or use of any cigarette vending machine upon any property within the city.
- (2) It is a defense to prosecution under the provision of subsection (f)(1) that:
- (A) The cigarette vending machine is situated in a premises where entry by any person under 21 years of age is prohibited by law; or
- (B) The cigarette vending machine is located in a workplace with the permission of the employer, provided that the employer has no persons under the age of 21 years employed at the workplace, and further provided that the cigarette vending machine is situated at a location within the workplace to which persons other than those employed at the workplace are not permitted to have access.
- (f) *Penalty.* A violation of any subsection of this section is hereby declared to be a misdemeanor crime, and upon conviction, shall be punishable as set out below:
- A violation of subsections (b) or (e) shall be punishable by a fine of not more than \$2,000.00.

Sec. 6.05.009 Posting of signs.

- (a) "No Smoking" signs shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this chapter, by the owner, operator, manager, or other person in control of that place. The City Manager shall prescribe the content of the "No Smoking" sign required to be posted under this article and have an example sign available on the City's website.
- (b) Every public place and place of employment where smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- (c) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this chapter by the owner, operator, manager, or other person having control of the area.
- (d) Areas which are exempt from the provisions of sections 6.05.004 and 6.05.005 of this chapter shall post a standard sign at each entrance, to be designated by the city informing potential patrons that the area allows smoking, and warning patrons of the negative health effects associated with secondhand smoke, inhaling vapor and aerosol from electronic smoking devices.

(e) The owners or operators will provide the signs required under subsection 6.05.009 (d) at their own expense following City sign posting guidelines within 90 days of the adoption of the ordinance.

Sec. 6.05.010 Governmental agency cooperation.

The city manager shall annually request other governmental and educational agencies having facilities within the city to establish local operating procedures in cooperation and compliance with this chapter. This includes urging all federal, state, county and school district agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke and vapors and aerosols from electronic smoking devices.