

ORDINANCE NO. 2015-121

AN ORDINANCE OF THE CITY OF DENTON, TEXAS DESIGNATING PORTIONS OF CERTAIN RETAIL ESTABLISHMENTS, PUBLIC BUILDINGS, AND FOOD ESTABLISHMENTS AS NONSMOKING AREAS; PROVIDING NOTIFICATION REQUIREMENTS; PROHIBITING SMOKING IN DESIGNATED NONSMOKING AREAS; PROVIDING EXCEPTIONS; PROVIDING PENALTIES; PROVIDING A SEVERABILITY CLAUSE, REPEALING ORDINANCE 2012-367, AND ANY OTHER ORDINANCE IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Denton recognizes that the smoking of tobacco, weeds or other plant products has been demonstrated to have a detrimental effect on not only the smoker but others in close proximity to the smoker; and

WHEREAS, the City Council of the City of Denton adopted Ordinance Number 2012-367 which recognized that the smoking of tobacco, weeds or other plant products has been demonstrated to have a detrimental effect on not only the smoker but others in close proximity to the smoker and which established regulations governing smoking in the City of Denton; and

WHEREAS, upon further review, the City Council of the City of Denton has determined that it is the best interest of the citizens of the City of Denton to adopt additional regulations governing in the City and expanding the said regulations to include vapor products within the definition of smoking; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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.

Billiard Hall means a place of amusement for which the chief purpose is providing the use of billiard/pool tables to the public.

Bingo parlor means an establishment owned, operated, or administered by a person or entity licensed or permitted by the State of Texas pursuant to V.C.T.A., Occupations Code, Chapter 2001.

Cigar Bar means an establishment used primarily for the sale of cigars, cigar-related products, and alcoholic beverages, and does not allow admittance to or employ persons under the age of eighteen (18), and is equipped with a commercial walk-in humidor of not less than 350 cubic feet or a reach-in humidor of not less than 180 cubic feet with a humidifier which maintains a set humidity through evaporation and diffusion and is connected to a reverse osmosis filtration

system for constant supply of water.

Electronic Cigarette (e-cigarette) means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor or aerosol of nicotine or any other substance, and the use or inhalation which stimulates the smoking of a tobacco cigarette, pipe or cigar. “Electronic cigarette” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, and electronic cigar, an electronic cigarillo, an electronic pipe, electronic hookah, or under any other similar produce name or descriptor. The term electronic cigarette does not include any asthma inhaler or other similar device that has been duly prescribed by a licensed physician.

Employee means an individual in the service of another under a contract of hire, whether express or implied, or oral or written, for direct or indirect monetary wages or profit, or an individual who volunteers the individual's services for an employer.

Employer means a person or entity who uses the services of another under a contract of hire, whether express or implied, or oral or written, or uses the volunteer services of one or more individuals.

Facility means improvements of a vertical nature, including, but not limited to, buildings, sheds, garages, and stadium structures and excluding horizontal improvements such as sidewalks, streets and parking lots.

Fraternal Organization means a non-profit organization that:

- (1) is tax exempt under Section 501(c)(8), (10), or (19) of the Internal Revenue Code;
- (2) operates under a lodge system with a representative form of government; and
- (3) is organized for the exclusive benefit of the members of the organization and their dependents.

Healthcare 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.

Operator means the owner or person in charge of a public place or place of employment, including an employer.

Open-aired Outdoor Patio means an outdoor space generally used for dining or recreation that adjoins a building and typically has an improved floor surface.

Place of Employment means an enclosed facility under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction areas, and temporary offices. This definition does not include such outdoor areas as construction sites, parking lots, or designated smoking areas, or any area where smoking is specifically allowed under this ordinance.

Private Club means an organization that owns, leases, or occupies a building used exclusively for club purposes at all times and:

- (1) is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain;
- (2) sells alcoholic beverages only incidentally to its operation;
- (3) 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;
- (4) has established bylaws or a constitution to govern the club's activities; and
- (5) is exempt from federal income taxation under Section 501(a), Internal Revenue Code, as a club described by Section 501(c) (7) of that code.

Public Place means an enclosed area the public is invited or allowed 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 within the establishment.

Retail establishment means any establishment which primarily sells goods and/or services to the general public.

Smoke/Smoking means to inhale, exhale, burn, or carry a lighted cigar, cigarette, pipe, or other smoking equipment, containing tobacco, weed, or other plant product or the use of an electronic cigarette or similar device.

Tobacco Bar means a business that:

- (1) holds a permit under V.C.T.A., Tax Code, Chapter 155;
- (2) holds an alcoholic beverage permit or license issued under V.C.T.A., Alcoholic Beverage Code, Chapters 25, 28, 32, or 69, or under V.C.T.A., Alcoholic Beverage Code, Section 11.10;
- (3) post a conspicuous sign at the main entrance of the establishment that contains the words "This is a Tobacco Bar. Smoking is permitted in this establishment." and which includes the universal symbol for smoking, or other language that clearly indicates that smoking is permitted in the said establishment;
- (4) does not employ or allow admittance of persons under the age of 18; and
- (5) generates at least 15% of its quarterly gross revenue from the sale of tobacco or tobacco-related products.

Tobacco Shop means a specialty retail establishment used primarily for the sale of tobacco products and accessories and in which the sale of other products is incidental.

Vape Shop means a specialty retail establishment used primarily for the sale of e-cigarette products and accessories and in which the sale of other products is incidental.

SECTION 2. Smoking prohibited in certain public places.

(a) It is unlawful for any person to smoke or possess a lit tobacco, weed or other plant product or to smoke an electronic cigarette (e-cigarette) in any of the following public places:

- (1) An elevator used by the public;
- (2) Healthcare facilities;
- (3) Any facility owned, operated or managed by the city;
- (4) Any vehicle owned by or under the control of the city;
- (5) Any retail establishment serving the general public except as otherwise permitted in this ordinance;
- (6) Lobbies, hallways, and other common areas in retirement facilities and nursing homes;
- (7) Any facility of a primary or secondary school;
- (8) Child care and adult day care facilities;
- (9) A privately owned theater auditorium, movie house, or other enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event, or any other performance or event;
- (10) Parks facilities and public libraries, including exterior corridors, and any area within 30 feet of any public entrance thereto;
- (11) Museums;
- (12) Restaurants;
- (13) Bars, except as otherwise permitted in this ordinance;
- (14) Lobbies, hallways, and other indoor public areas in hotels and motels;
- (15) Bowling alleys;

- (16) Pool/billiard halls;
- (17) Polling places;
- (18) Bingo Parlors, except as otherwise permitted in this ordinance;
- (19) Public transportation vehicles, including buses and trains, and within thirty (30) feet of facilities in support of public transportation such as ticket, boarding, shelter, and waiting areas; and
- (20) Any establishment or facility declared to be non-smoking under Section 4(b) of this ordinance.
- (21) Any location which is within thirty (30) feet of a street-front main entrance where smoking is allowed or, if a business has a front patio where smoking is allowed, within (30) feet of the boundaries of such patio.

SECTION 3. Smoking prohibited in places of employment.

- (a) It is unlawful for any person to smoke or possess a lit tobacco, weed or other plant product in places of employment, except as provided in this ordinance.
- (b) An employer shall communicate this prohibition to all prospective employees upon their application for employment.

SECTION 4. Smoking not prohibited in certain places.

- (a) Notwithstanding any other provision of this ordinance, the following areas shall not be subject to the smoking restrictions of this ordinance:
 - (1) Private residences, except when used as a child care, adult day care, or health care facility;
 - (2) Personal vehicles;
 - (3) Private clubs and fraternal organizations;
 - (4) Open-aired outdoor patio of a restaurant or bar;
 - (5) Bingo Parlors which provide a solid physical barrier to separate the non-smoking section. Any bingo parlors existing on the date of passage of this ordinance shall have until April 19, 2016 to construct such barrier. Any bingo parlor established after the effective date of this ordinance shall not be entitled to this exception and shall comply with all other provisions of this ordinance;
 - (6) Tobacco shops, tobacco bars, cigar bars, and vape shops;

(7) Bars operating as “smoking bars” as of the date of passage of this ordinance:

1. which do not allow admittance of persons under the age of 18;
2. which post a conspicuous sign at the main entrance of the establishment that contains the words “Smoking is permitted in this establishment” and which includes the universal symbol for smoking, or other language that clearly indicates that smoking is permitted in the said establishment; and
3. which do not have an open-aired outdoor patio.

A bar operating as a “smoking bar” as of the date of passage of this ordinance shall cease operating as a “smoking bar” on or before December 31, 2017 and shall thereafter comply with all provisions of this ordinance.

- (b) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility described in this section, may declare the entire establishment or facility as a nonsmoking establishment by posting the establishment or facility as such pursuant to Section 5 of this ordinance.

SECTION 5. Signage.

- (a) The owner or person in control of an establishment in which smoking is prohibited by this ordinance shall:
- (1) Post a conspicuous sign at the main entrance to the establishment that shall contain the words "No Smoking, by City of Denton Ordinance" and which includes the universal symbol for no smoking, or other language that clearly prohibits smoking; and
 - (2) Remove all ashtrays from any area in which smoking is prohibited.

SECTION 6. It shall be unlawful for any person to sell or give an electronic cigarette or any paraphernalia to any person under eighteen (18) years of age.


SECTION 7. If any section, subsection, paragraph, sentence, clause, phrase or word in this ordinance, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and the City Council of the City of Denton, Texas, hereby declares it would have enacted such remaining portions despite any such invalidity.

SECTION 8. Penalties. Any person violating this ordinance shall, upon conviction, be punished by a fine not to exceed Two Thousand Dollars (\$2,000.00).

SECTION 9. Ordinance 2012-367 is hereby repealed.


SECTION 10. This ordinance shall become effective one-hundred twenty (120) days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this ordinance to be published twice in the *Denton Record-Chronicle*, the official newspaper of the City of Denton, Texas, within ten (10) days of the date of its passage.

PASSED AND APPROVED this the 21 day of April, 2015.



CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: 
