

ORDINANCE NO. 2010-08-16-11

CONSIDER AN AMENDMENT TO CHAPTER 30, ENVIRONMENT, OF THE CODE OF ORDINANCES OF THE CITY OF HEWITT, TEXAS ESTABLISHING ARTICLE IX, SMOKING REGULATIONS; PROVIDING FOR THE CONTROL AND REGULATION OF SMOKING WITHIN PUBLIC PLACES; PROVIDING FOR A PENALTY NOT TO EXCEED \$500.00 FOR EACH OFFENSE; PROVIDING AN EFFECTIVE DATE.

Section 1. Definitions.

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

1. "Bar" means an establishment which has more than seventy (70) percent of its annual gross sales in alcoholic beverages and which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages and where minors are not allowed admittance unless accompanied by a parent or legal guardian. Food establishments that contain a bar are not considered a "bar."
 2. "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making or non-profit purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
 3. "Designated Smoking Area" means a designated area, which shall be a physically enclosed area and "separate ventilation" system as "enclosed" and "separate ventilation" are defined under Section 1.
 4. "Director" means the Director of the Waco-McLennan County Public Health District or the director's designated representative.
 5. "Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
 6. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.
 7. "Enclosed" means all space between a floor and ceiling, which is closed on all sides by solid walls or windows with appropriate openings for ingress or egress.
 8. "Food Establishment" means any operation engaged in the preparation of food, which gives food or offers food for sale to the public, guests or employees. A "food establishment" for purposes of this definition does not include a "bar" as defined under Section 1.
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9. "Place of Employment" means any area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias, hallways and vehicles. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.
10. "Public Place" means any enclosed area to which the public is invited or in which the public is permitted or is a place of employment and includes but is not limited to: retail stores; grocery stores; offices; professional, commercial or financial establishments; public and private institutions of education; food establishments; health care facilities; nursing and convalescent homes; residential treatment facilities; child care facilities; laundromats, buildings owned or occupied by political subdivisions; public transportation facilities and vehicles; reception areas; theaters and waiting rooms. For the purpose of this section, a "public place" does not include a private residence.
11. "Retail Tobacco Store" means any commercial establishment that derives at least fifty-one (51) percent of its annual gross receipts from the sale of tobacco and tobacco accessories.
12. "Separate Ventilation" means a separate heating, ventilation, and air conditioning (HVAC) system such that air from the smoking area is exhausting directly to the outside and not circulated within the building or mixed with the general dilution ventilation for the building and that creates a negative pressure away from the door into the room sufficient to prevent any flow of smoke from the smoking area to the non-smoking area. Such system shall supply a minimum of thirty cubic feet per minute (30 CFM) outdoor air exchange per person and be under negative pressure. An HVAC system must be designed by a licensed professional engineer to meet the requirements of the city mechanical code.
13. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, or plant.
14. "Tobacco" means any tobacco, cigarette, cigar, pipe, weed, or plant, which may be utilized for smoking, chewing, inhalation or other means of ingestion or absorption.

Section 2. Nonsmoking areas in public places.

- (a) Smoking is hereby prohibited in all enclosed public places within the city limits of the City of Hewitt, Texas.
 - (b) All enclosed facilities including buildings and vehicles owned or occupied by the City of Hewitt, Texas will be subject to the provisions of this article.
 - (c) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment, facility or business may declare that entire establishment, facility or business as nonsmoking.
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Section 3. Smoking prohibited in places of employment.

(a) It shall be the responsibility of employers to provide a smoke free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications.

(b) Within 90 days of the effective date of this article, each employer, who has an enclosed place of employment located within the City of Hewitt, Texas shall make known to employees that smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes but is not limited to common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms and vehicles.

Section 4. Reasonable distance.

Smoking shall occur at a reasonable distance of twenty (20) feet or more outside any entrances, windows, ventilation systems or any other openings of an enclosed area where smoking is prohibited to insure that tobacco smoke does not enter the area.

Section 5. Where smoking is not regulated.

(a) Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from Section 2:

- (1) Private residences, except for residences used as a day care, adult day or health care facility.
 - (2) Retail Tobacco Stores, which meet the definition of "retail tobacco store" under Section 1 of this article. This exemption shall not apply to an establishment that shares a common heating, ventilation and air conditioning (HVAC) system with any other tenants in the same building, to include shopping malls or strip shopping malls, in which the retail store that primarily provides tobacco products is located.
 - (3) Outdoor areas of places of employment except those covered in Section 4 of this article.
 - (4) No more than twenty-five percent (25%) of hotel and motel rooms rented to guests. Rooms for smoking must be clearly designated as such.
 - (5) In the designated smoking areas of any establishment or facility which has provided a designated smoking area equipped with a physical barrier that separates the designated smoking area from non-smoking areas with a separate ventilation system. All air ventilation systems shall be tested at least annually with a record of such test maintained by the establishment or facility and submitted to the City of Hewitt upon request.
 - (6) In any non-profit business or bar that serves a clientele that consists of ninety percent (90%) or more active duty military or military veterans.
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(b) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or business described in this section may declare that entire establishment as nonsmoking.

Section 6. Posting of Signs.

(a) "No Smoking" signs in English and Spanish or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted at every entrance to every building or other area where smoking is prohibited by this article, by the owner, operator, manager or other person who has control of such building or other area.

(b) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager or other person who has control of such area.

Section 7. Enforcement.

(a) The Director or the director's designated representative of the Waco-McLennan County Public Health District is responsible for the enforcement of this article.

(b) Complaints against persons violating this article shall be made to the Director or the director's representative for investigation and, if warranted, to the office of the city attorney for prosecution.

(c) The Waco-McLennan County Public Health District, City of Hewitt Director of Development, Hewitt building official, Hewitt Police Department, Hewitt code enforcement officer, or the Hewitt fire department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this ordinance.

(d) Any owner, manager, operator or employee of any establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof.

Section 8. Violations and Penalties.

(a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions.

(b) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.

(c) Any person who violates any provision of this article shall be subject to the penalty for violating this ordinance which shall be a minimum fine of not less than \$50.00 nor more than a maximum fine of \$500.00. Each day the violation exists shall be a separate violation, as follows:

- (1) A fine not to exceed fifty dollars (\$50.00) for a first violation.
 - (2) A fine not to exceed two hundred dollars (\$200.00) for a second violation of this article within one (1) year.
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- (3) A fine not to exceed five hundred dollars (\$500.00) for each additional violation of this article within one (1) year.

Section 9. Severability.

If any provision, section, subsection, sentence, clause, or phrase of this ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this ordinance that no portion hereof or provisions or regulation contained therein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this ordinance to be severable for that purpose.

Section 10. Conflict with other ordinances.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 11. No Duty of Obligation.

In undertaking the enforcement of this article, 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 offices 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.

Section 12. Other applicable laws.

Nothing in this article excuses noncompliance with any federal or state law, city ordinance or any rule or regulation adopted pursuant thereto that prohibits smoking.

Section 13. Inclusion in the Code.

It is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become and be part of the Code of Ordinances of the City of Hewitt, Texas, and that sections of this ordinance be renumbered or relettered to accomplish such intention.

Section 14. Effective date.

This article shall be effective thirty (30) days from and after the date of adoption.

Section 15. Compliance to notice and open meetings requirements of the Texas

Open Meetings Act.

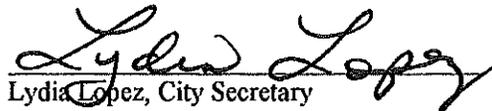
It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law, and that public notice of the time, place and purpose of said meeting was given as required.

PASSED AND APPROVED this 16th day of August, 2010.

CITY OF HEWITT, TEXAS

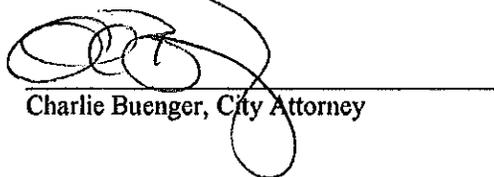

Charles D. Turner, Mayor

ATTEST:


Lydia Lopez, City Secretary



APPROVED AS TO FORM & LEGALITY:


Charlie Buenger, City Attorney