

**ORDINANCE NO. 2016-01**

**AN ORDINANCE OF THE CITY OF LACY LAKEVIEW, TEXAS, AMENDING CHAPTER 99 "HEALTH AND SAFETY" OF THE CODE OF ORDINANCES BY ADDING SECTION 99.40, ET SEQ, "SMOKING REGULATIONS" IN ORDER TO PROVIDE REGULATIONS PROHIBITING SMOKING OF TOBACCO PRODUCTS AND ELECTRONIC SMOKING MATERIALS IN CERTAIN ENCLOSED AND NON-ENCLOSED AREAS WITHIN THE CITY LIMITS; PROHIBITING SMOKING ON CERTAIN CITY PREMISES AND OTHER PROPERTY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR A PENALTY; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**WHEREAS**, the City Council of the City of Lacy Lakeview finds that smoking tobacco products creates nuisances, poses health risks, and causes fires; and

**WHEREAS**, the U.S. Surgeon General's report has stated that there is no safe level of second hand smoke, and second hand smoke is a known cause of lung cancer, heart disease, low birth-weight births, chronic lung ailments (such as bronchitis and asthma) other health risks and premature death in children and adults who do not smoke; and

**WHEREAS**, the U.S Surgeon General's report has stated that despite significant progress since the first Surgeon General's report, issued over 50 years ago (1964), smoking remains the single largest cause of preventable disease and death in the United States; and

**WHEREAS**, the U.S. Surgeon General's report states that involuntary exposure to secondhand smoke remains a serious public health hazard; and

**WHEREAS**, the City Council finds that nicotine is addictive and that the use of nicotine-containing electronic cigarettes can lead to some respiratory changes and dangers similar to those occurring through the use of traditional tobacco products; and

**WHEREAS**, the City Council finds that liquid nicotine is often distributed in flavors, such as cherry, chocolate and vanilla, that are designed to appeal to young people and thereby creates a path for nonsmokers to become addicted to smoking, which can lead to the further spread of nuisances and health risks from smoking; and

**WHEREAS**, on April 25, 2014, the U.S. Food and Drug Administration proposed regulating electronic cigarettes as tobacco products, due to the presence of tobacco-derived nicotine therein and the dangers posed thereby, with said regulations to be at 21 CFR Parts 1100, 1140, and 1143, published at <http://federalregister.gov/a/2014-09491>; and

WHEREAS, the City Council is also mindful of the individual rights of its citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACY LAKEVIEW:**

**Section 1.** Chapter 99 of the Code of Ordinances for the City of Lacy Lakeview, Texas is hereby amended by adding Section 99.40, et seq, "Smoking Regulations" as follows:

**"SMOKING REGULATIONS**

**Section 99.40. Definitions.**

The following words, terms and phrases, when used in this Section 99.40, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *Bar* means an establishment which has more than fifty (50) percent of its annual gross sales from alcoholic beverages.
- (b) *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.
- (c) *Cigar Lounge* means an establishment that derives more than fifty (50) percent of its quarterly gross revenue from the sale of cigars for consumption on the premises by customers. A cigar lounge does not allow individuals under the age of 18 to enter the premises, and does not have a permit or license to sell alcoholic beverages, but may serve food and nonalcoholic beverages for consumption on the premises by customers.
- (d) *Director* means the Director of the Waco McLennan County Public Health District or the director's designated representative.
- (e) *Electronic Smoking Device* means an electronic, mechanical heating element or battery operated device that delivers nicotine or other substances for inhalation. This term shall include every variation and type of such devices whether they are manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah or any other product name or descriptor. The term does not include a prescription medical device unrelated to the cessation of smoking.
- (f) *Employee* means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit.
- (g) *Employer* means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.
- (h) *Enclosed or Enclosed Area* means all space between a floor and ceiling, that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or

permanent and whether or not containing openings of any kind. A parking garage shall be considered an enclosed area whether or not it is enclosed on at least two sides.

- (i) *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.
- (j) *Hookah Bar* means an establishment with a permit or license to sell alcoholic beverages pursuant to the Texas Alcoholic Beverage Code and: (a) generates 60 percent or more of its quarterly gross revenue from the sale of alcoholic beverages for consumption on the premises by customers; (b) generates 30 percent or more of its quarterly gross revenue from the sale of shisha for consumption on the premises by customers and the sale of accessories used for smoking shisha (not any other tobacco products); and (c) does not allow individuals under the age of 21 to enter the premises.
- (k) *Hookah Lounge* means an establishment that derives more than fifty (50) percent of its quarterly gross revenue from the sale of shisha for consumption on the premises by customers and the sale of accessories used for smoking shisha. A hookah lounge does not allow individuals under the age of 18 to enter the premises, and does not have a permit or license to sell alcoholic beverages, but may serve food and nonalcoholic beverages for consumption on the premises by customers.
- (l) *Park* means the outdoor areas of city-owned or controlled land used for a park or recreational purpose including, but not limited to, Veterans Park, city-owned athletic fields, nature preserves, and swimming pools.
- (m) *Place of Employment* means any area under the control of a public or private employer which employees may frequent during the course of employment, including, but not limited to, private offices, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias, hallways, enclosed portions of construction sites, temporary offices 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.
- (n) *Playground* means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City grounds.
- (o) *Public* means ordinary people in general; the community, open to or shared by all the people of an area.
- (p) *Public Event* means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.
- (q) *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: bars; 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.

- (r) *Retail Electronic Smoking Device Store* means any commercial establishment that derives at least fifty-one (51) percent of its annual gross receipts from the sale of electronic smoking devices and accessories.
- (s) *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.
- (t) *Shisha* means flavored tobacco smoked in a hookah, usually mixed with molasses or honey and often fruit pulp or dried fruits.
- (u) *Smoke* means the gases, particles or vapors released into the air as a result of combustion, electrical ignition or vaporization, including from an electronic smoking device, when the purpose of the combustion, electrical ignition or vaporization is human inhalation of the gases, particles or vapors. Smoke does not mean the combustion of material solely for olfactory purposes that does not contain any tobacco or nicotine.
- (v) *Smoking and "smokes"* means engaging in an act that generates smoke, such as possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, a lighted cigarette, or an operating electronic smoking device.
- (w) *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 99.41. Smoking prohibited areas. .**

- (a) Smoking is hereby prohibited in the following non-enclosed public places: Parks and playgrounds as defined in this Ordinance, and at public events held on property owned or occupied by the City and used for city purposes.
- (b) Smoking is hereby prohibited in all enclosed areas that are owned or occupied by the City and used for city purposes, including, but not limited to, buildings and vehicles. In addition, the City Manager may designate any non-enclosed areas owned or occupied by the City and used for city purposes, as nonsmoking. Smoking is prohibited in those designated areas.
- (c) Smoking is hereby prohibited in any enclosed public place, establishment, facility, place of employment, or business that the owner or operator has declared a portion of, or that entire establishment, facility, place of employment or business as nonsmoking and has posted the signage required in Section 99.43 below.
- (d) Smoking is hereby prohibited in any non-enclosed public place, establishment, facility, or business that the owner or operator has declared a portion of, or that entire establishment, facility or business as nonsmoking and has posted the signage required in Section 99.43 below.
- (e) Smoking is hereby prohibited at any place within fifteen (15) feet of any entrances, windows, ventilation systems or any other openings of an enclosed area where smoking is prohibited.

**Section 99.42. Defenses.**

- (a) Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from Section 99.41 and shall constitute a defense to prosecution for violation of such section:

- (1) Private residences, except for residences used as a day care, adult day care or health care facility.
  - (2) Retail Tobacco Stores and Retail Electronic Smoking Device Stores for sampling of the products sold in such stores, so long as such smoking does not cause smoke or vapor to cross into areas outside of the store where smoking is not allowed.
  - (3) Cigar Lounges, Hookah Bars and Hookah Lounges as defined herein that were in business and operating within the city limits of the City as of the date of adoption of this ordinance, met as of the date of adoption of this ordinance and continuously meet the applicable definitions herein, and do not expand in size or change locations after the date of adoption of this ordinance, but only for consumption on the premises of shisha or cigars sold by the business. Any such establishment that ceases to operate as such for longer than thirty (30) consecutive days or ceases to meet the definition of the same type of establishment at any time after the adoption of this ordinance shall cease to be exempt from the requirements of this Ordinance.
  - (4) Outdoor areas of places of employment except those areas described in Section 99.41 (d) - (e) of this Ordinance.
  - (5) Those outdoor areas within fifteen (15) feet of a door, that is not the main public ingress/egress of an establishment, and that leads only from a designated outdoor smoking area of the establishment to an area where smoking is prohibited. The door must remain closed except when someone is entering or exiting the area.
  - (6) Rooms in which smoking is allowed that are designated as smoking rooms and clearly marked both inside and outside the room as such by the hotel/motel.
  - (7) Those outdoor areas in city parks that are designated and clearly marked as areas where smoking is allowed.
- (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 a portion of, or that entire establishment as nonsmoking.
- (c) Smoking that is regulated under the Texas Education Code, the Texas Health and Safety Code, the Texas Penal Code or any other state or federal law shall be governed by such other applicable law instead of this Ordinance.

**Section 99.43. 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 Ordinance, by the owner, operator, manager or other person who has control of such building or other area.
- (b) All ashtrays shall be removed from any area where smoking is prohibited by this Ordinance by the owner, operator, manager or other person who has control of such area except for ashtrays displayed for sale and not for use on the premises.

**Section 99.44. Enforcement.**

- (a) The Police Department of the City and/or the Director or the Director's designated representative shall be responsible for the enforcement of this Ordinance.
- (b) Complaints against persons violating this Ordinance shall be made to the Chief of Police, the Chief's designated representative, or the Director or the director's representative for investigation.
- (c) The Director or his or her representative, the building official, code enforcement officer, or the fire department of the City, shall while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this ordinance.
- (d) Any owner, manager, operator or employee of any establishment regulated by this Ordinance shall inform any person violating this Ordinance of the appropriate provisions thereof.

**Section 99.45. No duty or obligation.**

In undertaking the enforcement of this Ordinance, 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.

**Section 99.46. 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 Ordinance 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 Section 99.41 of this Ordinance.
- (c) If an employer, building owner, person who controls any establishment, facility or business designates an area as nonsmoking and posts the signs required by this Section 99.43 it shall be unlawful to smoke in such designated nonsmoking area.
- (d) Any person who violates any provision of this Ordinance shall be subject to a penalty for violating this Ordinance as provided below, which shall be a minimum fine of not less than \$50.00 nor more than a maximum fine of \$500.00 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 Ordinance within one (1) calendar year of the first violation.
  - (3) A fine not to exceed five hundred dollars (\$500.00) for each additional (third or greater) violation of this Ordinance within one (1) calendar year of the first violation.”

**SECTION 2. Conflict with other ordinances.**

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

hereby repealed.

**SECTION 3. Severability.**

The terms and provisions of this ordinance shall be deemed to be severable and that if any section, subsection, sentence, clause, or phrase of this ordinance shall be declared to be invalid or unconstitutional, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase of this ordinance and the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

**SECTION 4. Savings Clause.**

Nothing in this ordinance shall be constructed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this ordinance.

**SECTION 5. Other applicable laws.**

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

**SECTION 6. Inclusion in the Code.**

It is the intention of the City Council and it is hereby ordained that the provisions of this ordinance shall become and be part of the Code of Ordinances of the City of Lacy Lakeview, Texas, and that sections of this ordinance be renumbered or re-lettered to accomplish such intention.

**SECTION 7. Effective date.**

This Ordinance shall be effective from and after March 1, 2016.

**SECTION 8. Compliance with 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, and that public notice of the time, place and purpose of said meeting was given as required by law.

**ORDAINED, PASSED AND APPROVED:**

First Reading: January 12, 2016

Second Reading: February 9, 2016

**CITY OF LACY LAKEVIEW, TEXAS**

By: Calvin Hodde

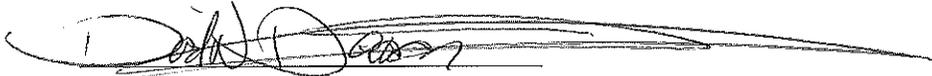
Calvin Hodde, Mayor

**Attest:**

  
Michelle Hicks, City Secretary



**APPROVED AS TO FORM AND LEGALITY:**

  
David Deaconson, City Attorney