

**ARTICLE VII. SMOKING RESTRICTIONS****Sec. 12-91. 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) *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.
- (2) *Community services director* means the director of the community services department of the City of Woodway or the community services director's designated representative.
- (3) *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.
- (4) *Employer* means any person, partnership, corporation, including a municipal corporation, or non-profit entity which employs the services of one (1) or more individual persons.
- (5) *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.
- (6) *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 this section.
- (7) *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 classrooms, 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.
- (8) *Public health director* means the director of the Waco-McLennan County Public Health District or the public health director's designated representative.
- (9) *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 and operated 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.
- (10) *Public safety director* means the director of the public safety department of the City of Woodway or the public safety director's designated representative.
- (11) *Retail tobacco store* means any commercial establishment that derives at least fifty-one (51) per cent of its annual gross receipts from the sale of tobacco and tobacco accessories.
- (12) *Smoking* means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, or plant.
- (13) *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.

(Ord. No. 04-10, § 1, 6-14-04)

### **Sec. 12-92. Smoking prohibited areas in public places.**

(a) Smoking is hereby prohibited in all enclosed public places within the city limits of the City of Woodway, Texas.

(b) All enclosed facilities including buildings and vehicles owned or occupied by the city 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.

(Ord. No. 04-10, § 2, 6-14-04)

### **Sec. 12-93. 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 thirty (30) days of the effective date of this article, each employer who has an enclosed place of employment located within the city limits, shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements: 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 and restrooms.

(c) The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.

(d) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

(Ord. No. 04-10, § 3, 6-14-04)

### **Sec. 12-94. Reasonable distance.**

Smoking shall only 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 ensure that tobacco smoke does not enter the enclosed area where smoking is prohibited.

(Ord. No. 04-10, § 4, 6-14-04)

### **Sec. 12-95. Where smoking is not regulated.**

(a) Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from section 12-93.

(1) Private residences, except for residences used as a day care, adult day care or health care facility.

(2) Retail tobacco stores which meet the definition of "retail tobacco store" under section 12-91 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 12-94 of this article.

(4) No more than twenty-five (25) per cent of hotel and motel rooms rented to guests.

(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.

(Ord. No. 04-10, § 5, 6-14-04)

### **Sec. 12-96. 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.

(Ord. No. 04-10, § 6, 6-14-04)

### **Sec. 12-97. Enforcement.**

(a) Primary enforcement of this article will be the responsibility of the City of Woodway Community Services Director or Public Safety Director as defined under section 12-91 of this article.

(b) Secondary enforcement of this article will be the responsibility of the public health director as defined under section 12-91 of this article.

(c) The Waco-McLennan County Public Health District, City of Woodway Community Services Department, or City of Woodway Public Safety Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this article.

(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.

(Ord. No. 04-10, § 7, 6-14-04)

### **Sec. 12-98. 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 a penalty which shall be a minimum fine of not less than fifty dollars (\$50.00) nor more than a maximum fine of five hundred dollars (\$500.00) as follows:

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

(Ord. No. 04-10, § 8, 6-14-04)

**Sec. 12-99. Public education.**

The Waco-McLennan County Public Health District shall engage in a continuing education program to explain and clarify the purposes and requirements of this ordinance to residents affected by it, and to guide owners, operators and managers in their compliance with this article.

(Ord. No. 04-10, § 9, 6-14-04)

**Sec. 12-100. Severability; conflict with other ordinances; other applicable laws.**

(a) *Severability.* If any provision, section, subsection, sentence, clause, or phrase of this article, 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 article 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 article 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 article shall be severable for that purpose.

(b) *Conflict with other ordinances.* All ordinances or parts of ordinances in conflict with the provisions of this article are hereby repealed.

(c) *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.

(Ord. No. 04-10, §§ 10--12, 6-14-04)