

ORDINANCE 10-06-01

AN ORDINANCE OF THE CITY OF ENNIS, TEXAS, PROHIBITING SMOKING IN PUBLIC PLACES; SPECIFYING REQUIRED SIGNAGE; PROVIDING FOR ENFORCEMENT AND PENALTIES OF UP TO \$500 FOR VIOLATIONS HEREOF; REPEALING ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE SEVERABILITY OF THE PROVISIONS RELATED TO THE SUBJECT; AND ESTABLISHING AN EFFECTIVE DATE AND PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE.

NOW THEREFORE BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ENNIS, TEXAS:

WHEREAS, numerous studies have determined that environmental tobacco smoke (ETS) is a significant source of exposure to toxic air indoor contaminants, causally associated with respiratory illnesses, including lung cancer, asthma, and emphysema; and,

WHEREAS, there is scientific research linking ETS with heart disease, responsible for an estimated 62,000 coronary heart disease deaths annually in the United States due to ETS exposure; and

WHEREAS, ETS carcinogens and poisons have been identified in the body fluids of non-smokers with special risk posed to children, the elderly, food service employees and individuals with cardiovascular disease and/or impaired respiratory function, including asthmatics and those with obstructive airway disease; and,

WHEREAS, secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, and children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer: and,

WHEREAS, accordingly, the City Commission recognizes that ETS poses a public health hazard and a public nuisance, therefore some regulation by the City Commission of the smoking in public places is warranted to protect the public health and welfare of the citizens of the City of Ennis; and,

WHEREAS, the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and, (2) to guarantee the right to nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke;

NOW THEREFORE,
BE IT ORDERED BY THE CITY COMMISSION OF THE CITY OF ENNIS, TEXAS:

Section 1. That the findings set out in the preamble to this ordinance are hereby in all things approved.

Section 2. That Ordinance No. 93-10-1 is hereby repealed in its entirety.

Section 3. That there is hereby enacted a new “Smoking” Ordinance of the City of Ennis, Texas which shall read as follows:

“Article I. Smoking in Public Places - Prohibited

Definitions.

“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.

“Business” means:

(A) a sole proprietorship, partnership, joint venture, corporation, or other business entities, either for-profit or not-for-profit, including a retail establishment, where goods or services are sold;

(B) a professional corporation or other entity where legal, medical, dental, engineering, architectural, or other professional services are delivered; or

“Employee” means an individual who:

(A) is employed by an employer for direct or indirect monetary wages or profit; or

(B) volunteers the individual’s services for an employer.

“Employer” means a person who employs one or more individuals or uses the volunteer services of one or more individuals. The term includes:

(A) a nonprofit entity, and

(B) any political subdivision of this state.

“Enclosed area” means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.

“Health care 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.

“Place of Employment” means an area under the control of an employer that is used by employees of the employer but is not generally open to the public.

“Public Place” means:

(A) an enclosed indoor area the public is invited or permitted to enter, including all or part of the following:

(I) a restaurant;

(ii) a bar;

(iii) a retail, wholesale or service establishment;

(iv) a facility of a business or nonprofit entity;

(v) a shopping mall;

(vi) a convention facility;

(vii) a theater or other facility primarily used for exhibiting a performance;

- (viii) a sports arena;
- (ix) a health care facility;
- (x) a licensed child-care or adult day-care facility.
- (xi) a room in which a public meeting under the control of this state, and agency or branch of government of this state, or a political subdivision of this state is in progress;
- (xii) a common area in a multiple-unit residential facility, hotel or motel;
- (xiv) a public transportation facility, including a bus or taxicab, and a ticket, boarding, or waiting area of a public transportation depot;
- (xv) a waiting room, hallway, room, or ward in a health care facility; or
- (xvi) a restroom, lobby, reception area, service line, hallway, elevator, or other common-use area the public is invited or permitted to enter; or

(B) a facility of the state or of a local government, including a building or vehicle owned, leased, or operated by the state or local government, regardless of whether the public is invited or permitted to enter.

(C) a primary or secondary school and any institution of higher education including all real property and facilities associated therewith.

“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 at the establishment.

“Retail or service establishment” means an establishment that sells goods or services to the public.

“Service line” means an indoor line in which one or more persons wait for or receive service, whether or not the service involves the exchange of money.

“Shopping mall” means an enclosed public walkway or hall area that connects retail, service, or professional establishments;

“Smoke” means to inhale, exhale, burn, or carry a lighted cigar, cigarette, pipe, or other smoking equipment in any manner.

“Sports arena” means a place in which a person engages in physical exercise, participates in athletic competition, or witnesses sports or other events;

Interpretation.

The provisions and requirements of this ordinance shall be in addition to any provision or requirement of any other applicable law, ordinance, rule or regulation. This article may not be construed to permit smoking where it is restricted by other applicable law.

Smoking prohibited in public places.

Smoking shall be prohibited in all public places within the city, including, but not limited

to, the following places:

1. Elevators;
2. Restrooms, lobbies, reception areas, hallways and any other common-use areas;
3. Buses, bus terminals, taxicabs, train stations, airports and other facilities and means of public transit under the authority of the city; as well as ticket, boarding, and waiting areas of public transit depots;
4. Service lines;
5. Retail stores;
6. Food establishments, nightclubs and bars;
7. Galleries, libraries, and museums;
8. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital, or other similar performance, except that performers may smoke when smoking is part of a stage performance;
9. Sports arenas and convention halls, including bowling facilities;
10. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city;
11. Waiting rooms, hallways, wards, and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;
12. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, hotels, motels and other multiple-unit residential facilities;
13. Polling places.

Smoking prohibited in place of employment.

- (A) A person may not smoke in a place of employment.
- (B) It shall be the responsibility of employers to provide a smoke-free workplace for all employees.

Prohibition of smoking in seating area at an outdoor event.

A person may not smoke in:

- (A) the seating area of an outdoor arena, stadium or amphitheater, or
- (B) bleachers or grandstands for use by spectators at a sporting or other public event.

Reasonable distance; exceptions:

- (A) a person may not smoke within a distance of 15 feet from a primary public pedestrian entrance to or an operable window of an enclosed area in which smoking is prohibited.
- (B) Exceptions. A person may smoke within 15 feet of an entrance of an enclosed area where smoking is prohibited if:

- (1) the entrance is not a primary public pedestrian entrance to the premises; or
- (2) the distance between the entrance and the adjacent roadway is less than 15 feet;

Exceptions.

This subchapter does not apply to:

- (A) a private residence, except when used as a child-care, adult day-care or health care facility;
- (B) a hotel or motel room rented to a guest and designated as a smoking room;
 - (1) not more than 20 percent of rooms rented to guests in a hotel or motel are designated as smoking;
 - (2) all smoking rooms in the hotel or motel on the same floor are contiguous; and
 - (3) smoke from smoking rooms does not enter an area in which smoking is prohibited;
- (C) outdoor places of employment.
- (D) fraternal, religious and military veterans organizations who are nonprofit and are exempt from taxation under Section 501 of the United States Internal Revenue Code.
- (E) Private Clubs, as defined by the Texas Alcoholic Beverage Code, which maintain a valid private club registration permit issued by the Texas Alcoholic Beverage Commission which are in full compliance with all regulations of the Texas Alcoholic Beverage Code as adopted and as may be amended.

Declaration of establishment as nonsmoking.

- (A) An owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place.
- (B) A person may not smoke in a place in which a sign conforming to the requirements of this ordinance is posted.

Posting of signs.

- (A) The owner, manager or other person having control of such building or other area where smoking is prohibited by this chapter shall have a conspicuously posted sign clearly stating that smoking is prohibited at each entrance and within the building or other areas where smoking is prohibited.

- (B) Such “No Smoking” signs shall have bold lettering of not less than one inch in height. The international “No Smoking” symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).
- (C) All ashtrays and other smoking paraphernalia shall be limited to facilities that is required for the enforcement of extinguishing of smoking materials in public places.

Enforcement.

- (A) Enforcement of this chapter shall be implemented by the zoning commission, fire and law enforcement agencies.
- (B). Any owner, manager, operator or employee of any establishment regulated by this chapter shall be responsible for enforcement.

Retaliation prohibited.

No person or employee shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee applicant or customer exercises any right to a smoke free environment afforded by this chapter.

Penalties for violations.

- (A) Any person who violates any provision of this chapter shall be guilty of a class “C” misdemeanor and shall be punished by a fine not to exceed \$500.00; provided, however, that if a defendant has been previously convicted under this chapter, the defendant shall be fined an amount not less than \$50.00 nor more than \$500.00.
- (B) Each offense shall be considered a separate violation.

Section 4. That, except as expressly provided otherwise herein, this ordinance shall be cumulative of all ordinances of the City of Ennis, Texas, as amended; provided, however, that all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict only.

Section 5. If any section, paragraph, subdivision, clause, phrase or provision of this Ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof other than the part so decided to be invalid or unconstitutional.

Section 6. This ordinance shall take effect immediately from and after its passage and publication in accordance with law and with the Charter of the City of Ennis and it is accordingly ordained.

Section 7. This ordinance shall be in full force and effect from and after adoption.

PASSED AND APPROVED on First reading this the 7th day of June, 2010

PASSED AND APPROVED on Second reading this the 21st day of June, 2010.

/Original Signed/Russell R. Thomas

RUSSELL R. THOMAS, Mayor
City of Ennis, Texas

ATTEST:

/Original Signed/Shirley Trull

SHIRLEY TRULL,
City Secretary