

ORDINANCE NO. 2574

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESQUITE, AMENDING THE CODE OF THE CITY OF MESQUITE TO ADD A NEW CHAPTER 14B.2 "SMOKING"; PROVIDING DEFINITIONS; PROVIDING PROVISIONS REGULATING SMOKING IN CERTAIN PLACES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR A PENALTY.

WHEREAS, studies by the Surgeon General of the United States, the National Academy of Sciences, and other health organizations have linked passive exposure tobacco smoke (second-hand smoke) to a variety of negative health conditions in nonsmokers; and

WHEREAS, the Council of the City of Mesquite seeks to strike a reasonable balance between the rights of smokers and nonsmokers by regulating smoking in certain public places and places of employment;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the Code of the City of Mesquite, Texas is hereby amended by adding a new Chapter 14B.2, "Smoking", to read as follows, in all other respects said code to remain in full force and effect:

Section A. Definitions.

a) "Bar" or "Cocktail Area." That portion of a restaurant primarily engaged in the business of selling or dispensing alcoholic or other beverages.

b) "Health care facility." Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological conditions.

c) "Person." Any individual, firm, partnership, association, corporation, company or organization of any kind.

d) "Place of employment." Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment. A private residence is not a place of employment.

e) "Public conveyance." Any mass transit vehicle or school bus.

f) "Public meeting." Any meeting or assembly held in any room or chamber wherein public, civic or governmental business is conducted and which is open to the public either as participants or spectators.

g) "Public place." Any enclosed area to which the public is invited or in which the public is permitted, not including the offices or work areas not entered by the public in the normal course of business or use of the premises. A private residence is not a public place. A public place includes but is not limited to:

- 1) all or any part of a building used for local governmental purposes;
- 2) a retail store, office, or other commercial establishment;
- 3) a grocery store;
- 4) a restaurant, cafeteria, delicatessen, commissary, or mobile food unit;
- 5) a public primary or secondary school;

- 6) a public institution of higher education;
- 7) a restroom;
- 8) a theater, movie house, auditorium, or arena;
- 9) an elevator;
- 10) a library or a museum;
- 11) a health care facility;
- 12) a child care nursery;
- 13) a court room, or a jury waiting or deliberation room;
- 14) a recreational facility;
- 15) a service line, cashier area, over-the-counter sales area, or common traffic area.

h) "Restaurant." Any establishment, or place within an establishment, open to the public that offers food and beverages for consumption on the premises.

i) "Retail store." Any establishment whose primary purpose is to sell or offer for sale to consumers, not for resale, any goods, wares, merchandise, articles or food for consumption off the premises.

j) "Smoking." The lighting, holding or carrying of, or emitting or exhaling the smoke of, a pipe, cigar or cigarette of any kind.

k) "Sports arena." Any indoor facility primarily used for sports, cultural or similar events.

l) "Theater." Any indoor facility primarily used for the exhibition of any motion picture, stage drama, musical recital, dance, lecture or other similar performance.

Section B. Prohibition.

a) Smoking is unlawful in the following public places during the hours in which they are open to the public:

- 1) Art galleries, libraries and museums;
- 2) Classrooms and lecture halls;
- 3) Elevators;
- 4) Health care facilities, not including the in-patient sleeping quarters of any facility; each such facility shall make a reasonable effort to assign patients to sleeping rooms according to the patient's smoking or non-smoking preference; provided, however, that the owner or other person with authority to manage and control such facility may designate separate rooms or areas in which smoking is permitted, using existing physical barriers and ventilation systems to the greatest extent possible to minimize the smoke in adjacent non-smoking areas;
- 5) Public conveyances;

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- 6) Public meetings;
- 7) Retail stores, other than retail tobacco stores whose primary activity is the sale or promotion of tobacco and tobacco products and accessories; provided, however, that smoking may be permitted in those areas of enclosed shopping centers or malls that are external to the retail stores and are used by customers as a route of travel from one store to another and consist primarily of walkways and seating arrangements;
- 8) Theaters and sports arenas, except when smoking is part of a theatrical production; provided, however, that smoking may be permitted in the area that serves as a lobby if physically separate from the spectator area.
- 9) Grocery stores, except in portions of restaurant areas designated for smoking.

Section C. Restaurants.

- a) Every restaurant, whether currently in existence or to be established in the future, with an indoor seating capacity of 50 or more seats shall designate a no-smoking area consisting of at least 50% of the indoor seating capacity of the restaurant.
- b) In areas where smoking is permitted, existing physical barriers and ventilation systems shall be used to the greatest extent possible to minimize the smoke in adjacent no-smoking areas.
- c) This section shall not apply to:
 - 1) Bars and cocktail areas; nor shall the seating capacity of any bar or lounge located within a restaurant be included in the calculation of the total seating capacity of the restaurant;
 - 2) Rooms used for private functions or banquets.

Section D. Designation of Smoking Areas in other public places.

- a) A proprietor or person in charge of a public place who desires to permit smoking in the public place, shall designate areas as smoking areas.
- b) The proprietor or person in charge is not required to make structural or physical modifications to accommodate the smoking area, but existing physical barriers and ventilation systems shall be used to minimize the effect of smoke in adjacent nonsmoking areas.
- c) The proprietor or person in charge shall provide ash trays or other suitable containers for extinguishing smoking materials at the perimeter of the smoking area.
- d) The proprietor or person in charge is encouraged to locate the designated smoking area so that air from the smoking area is not drawn into or across the nonsmoking area.
- e) The proprietor or person in charge shall provide a sign in those areas of the building where smoking is allowed.
- f) The proprietor or person in charge is encouraged to attempt to locate the designated smoking area so that nonsmokers shall not have to travel through the smoking area.

Section E. Violation and Penalty.

- a) A person commits an offense if:

- 1) at a public meeting or in a public place at an area not designated as a smoking area the person smokes and fails or refuses to extinguish smoking materials or move to a designated smoking area upon a request by any person to do so.
 - 2) he willfully destroys or defaces a sign posted or required by this article.
- b) The proprietor or person in charge of a business or other public place commits an offense if:
- 1) the proprietor or person in charge allows smoking but fails to comply with the requirements of this article as to designation of a smoking area, including the posting of signs; or
 - 2) the proprietor or person in charge fails or refuses upon the request of any person to ask a person smoking while not in a designated smoking area to extinguish smoking materials or move to a designated smoking area.
- c) This article does not require the owner, operator, manager, or any employee of an establishment to report a violation of this ordinance or to take legal action against any individual violating this article.
- d) The responsibility for administering and enforcing this article shall be that of the City of Mesquite Environmental Health Department. A City of Mesquite Environmental Health Department Inspector or any affected person may file a complaint in Municipal Court for a violation of this act.
- e) Any person convicted of violating this article shall be guilty of a Class C Misdemeanor punishable by a fine of not less than One (\$1.00) Dollar nor more than Two Thousand (\$2,000.00) Dollars.

Section F. Signs.

- a) A proprietor or person in charge of a public place shall place signs visible at each public entrance to the premises to notify persons entering the premises that smoking is prohibited or that smoking is prohibited except in areas designated as smoking areas. This provision does not include exits used exclusively as emergency exits.
- b) A proprietor or a person in charge of a public place shall conspicuously post signs in each area designated as a smoking area stating that smoking is permitted in the area. The proprietor or person in charge may post signs in the premises stating "No Smoking" or "Smoking Permitted in Designated Areas" or an equivalent sign as appropriate.

Section G. General Provisions.

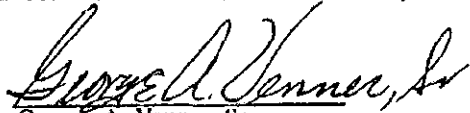
- (a) Nothing in this article shall be construed to permit smoking where it is otherwise prohibited by law or regulation.
- (b) Nothing in this article shall be construed to preclude any owner or other person having the authority to manage and control any public place or place of employment from prohibiting smoking to a greater extent than is provided by this article.
- (c) If any provision of this article, or the application thereof to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are hereby declared to be severable.

SECTION 2. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 3. That any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punished by a fine not to exceed Two Thousand (\$2000.00) Dollars for each offense.

PASSED ON 1ST READING ON THIS THE 21ST DAY OF NOVEMBER, 1988.

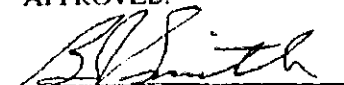
PASSED ON 2ND READING ON THIS THE 19TH DAY OF DECEMBER, 1988.


George A. Venner, Sr.
Mayor

ATTEST:


Lynn Prugel
City Secretary

APPROVED:


B.J. Smith
City Attorney

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