

**ORDINANCE NO. 2015-3933**

**AN ORDINANCE AMENDING THE CITY OF EDINBURG CODE OF ORDINANCES AT TITLE IX. GENERAL REGULATIONS, CHAPTER 94, HEALTH AND SANITATION, SMOKING DIVISION BY AMENDING §94.40 DEFINITIONS AND AMENDING §94.41 SMOKING PROHIBITED IN CERTAIN PLACES, §94.42 REGULATION IN SMOKING IN FOOD ESTABLISHMENTS, §94.43 REGULATION OF SMOKING IN WORKPLACES BY RENAMING AND AMENDING SAID SECTIONS AS: §94.41 APPLICATION OF CHAPTER TO CITY-OWNED FACILITIES, §94.42 PROHIBITION OF SMOKING IN PUBLIC PLACES, §94.43 PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT; AND ADDING SECTIONS: §94.44 DISTRIBUTION, DISPLAY AND SALE OF TOBACCO PRODUCTS, AND CIGARETTE MACHINES, §94.45 PROHIBITION OF SMOKING IN OUTDOOR AREAS, §94.46 WHERE SMOKING NOT REGULATED, §94.47 PERSONS UNDER AGE OF EIGHTEEN (18) YEARS IN SMOKING AREA, §94.48 DECLARATION OF ESTABLISHMENT AS NONSMOKING, §94.49 POSTING OF SIGNS, §94.50 RETALIATION PROHIBITED, §94.51 ENFORCEMENT, §94.52 VIOLATIONS AND PENALTIES, §94.53 ADDITIONAL FEE FOR RESTAURANTS, §94.54 GOVERNMENTAL AGENCY COOPERATION, AND §94.55 OTHER APPLICABLE LAWS; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR CODIFICATION; PROVIDING A WAIVER OF THE THREE (3) SEPARATE READINGS; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.**

**WHEREAS**, the City of Edinburg is a home rule municipality established by its Charter and the laws of Texas; and,

**WHEREAS**, it is the intent of the City to protect the health, safety, welfare, and wellbeing of its citizens; and

**WHEREAS**, the 2006 U.S. Surgeon General's Report, The Health Consequences of Involuntary Exposure to Tobacco Smoke, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do no smoke; (2) children exposed to

secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry; and,

**WHEREAS**, according to the 2010 U.S. Surgeon General's Report, How Tobacco Smoke Causes Disease, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke; and,

**WHEREAS**, according to the 2014 U.S. Surgeon General's Report, The Health Consequences of Smoking – 50 Years of Progress, secondhand smoke exposure causes stroke in nonsmokers and the report also found that since the 1964 Surgeon General's Report on Smoking and Health, 2.5 million nonsmokers have died from diseases caused by tobacco smoke; and,

**WHEREAS**, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, lung cancer and the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually; and,

**WHEREAS**, the City of Edinburg finds that smoking tobacco is a form of air pollution, a positive danger to health and a material public nuisance; and,

**WHEREAS**, the City of Edinburg finds that amendment to the City's current smoking ordinance under Chapter 94 Health & Sanitation, is necessary to protect the public health and welfare by prohibiting smoking in public places and places of employment.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EDINBURG, TEXAS, THAT:**

**SECTION I.** Title IX. GENERAL REGULATIONS, CHAPTER 94, HEALTH AND SANITATION, SMOKING DIVISION of the Code of Ordinances of the City of Edinburg is hereby amended and shall read in its entirety as follows:

## **SMOKING**

### **§94.40 DEFINITIONS.**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

**BAR** means an establishment that 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 those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

**BUSINESS** means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making 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.

**CIGARETTE VENDING MACHINE** means any self-service device which, upon insertion of coin(s), paper currency, token(s), card(s) or key(s) or any other item(s) dispenses one (1) or more cigarettes, as defined above, provided that the term shall neither be deemed to include any machine that is in storage, in transit or otherwise not set up for use and operation nor be deemed to include any machine that is situated on a train, bus or other public conveyance.

**COMEDY CLUB** means an establishment that is primarily used for live comedic entertainment.

**EMPLOYEE** means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

**EMPLOYER** means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one (1) or more individual persons.

**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 providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

**PARK** includes neighborhood/community/large urban/natural area and greenways/sports complex parks that are the basic unit of a park system and are recreational and social centers for those living in the nearby service area or from several neighborhoods and possibly may serve a broader community-based recreation need. Parks include areas that preserve unique landscapes and open spaces and include features that emphasize harmony with the natural environment. Parks include areas that accommodate group activities and recreational facilities, consolidated programmed athletic fields, and their associated facilities.

**PLACE OF EMPLOYMENT** means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

**PRIVATE CLUB** means an organization, whether incorporated or not, which:

- (1) Is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times;
- (2) Is operated solely for a fraternal purpose but not for pecuniary gain;
- (3) Only sells alcoholic beverages incidental to its operation;
- (4) Conducts its affairs and management through a board of directors, executive committee, or similar body chosen by the members at an annual meeting;
- (5) Has established bylaws or a constitution to govern its activities; and
- (6) Has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

**PUBLIC PLACE** means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, bingo facilities, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

**RESTAURANT** means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

**RETAIL TOBACCO STORE** means a retail store utilized primarily for the sale of tobacco products, smoking implements, or smoking accessories for on-premises consumption and in which the sale of other products is merely incidental, which shall include but not be limited to hookah lounges, cigar bars and humidors. In this definition, "primarily" means that the sale of tobacco products, smoking implements or smoking accessories shall be at least 65% of the total sales revenues

**SHOPPING MALL** means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

**SMOKING** means inhaling, exhaling, burning, or carrying any lighted or heated cigar,

cigarette, including electronic cigarette, pipe, or any other lighted or heated tobacco, nicotine or plant product intended for inhalation, in any manner or in any form, including vaping.

**SPORTS ARENA** means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

#### **§94.41 APPLICATION OF CHAPTER TO CITY-OWNED FACILITIES.**

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the city, shall be subject to the provisions of this chapter.

#### **§94.42 PROHIBITION OF SMOKING IN PUBLIC PLACES.**

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

- (1) Aquariums, galleries, libraries, and museums;
- (2) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels;
- (3) Bars;
- (4) Billiard halls;
- (5) Bingo facilities;
- (6) Comedy clubs;
- (7) Convention facilities;
- (8) Elevators;
- (9) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance;
- (10) Gaming facilities;
- (11) Health care facilities;
- (12) Childcare and adult day care facilities;
- (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;

- (14) Polling places;
- (15) Public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots;
- (16) Restaurants, except for outdoor seating areas designated as smoking in accordance with subsection §94.49(d);
- (17) Restrooms, lobbies, reception areas, hallways, and other common-use areas;
- (18) Retail stores;
- (19) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the city or a political subdivision of the state when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the city;
- (20) Shopping malls; and
- (21) Sports arenas, including enclosed areas in outdoor arenas.

#### **§94.43 PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT.**

(a) Smoking shall be prohibited in all enclosed areas within places of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed areas.

(b) This prohibition on smoking shall be communicated by employers to all existing employees by effective date of this chapter, and to all prospective employees upon their application for employment.

#### **§94.44 DISTRIBUTION, DISPLAY AND SALE OF TOBACCO PRODUCTS, AND CIGARETTE MACHINES.**

(a) Distribution, display, and sale of smoking tobacco products or smoking paraphernalia on any public right-of-way, city park or any city-owned building or facility is hereby prohibited.

(b) Cigarette vending machines.

(1) Subject to the defenses provided in subsection (2) below, it shall be unlawful for any business owner, manager and employee in control of cigarette vending machines within the city to intentionally, knowingly, recklessly, or with criminal negligence allow the display or use of any cigarette vending machine upon any property within the city.

(2) It is a defense to prosecution under the provisions of this subsection (b) that:

a. The cigarette vending machine is situated in a premise where entry by any person under eighteen (18) years of age is prohibited by law, or

b. The cigarette vending machine is located in a workplace with the permission of the employer, provided that the employer has no persons under the age of eighteen (18) years employed at the workplace, and further provided that the cigarette vending machine is situated at a location within the workplace to which persons other than those employed at the workplace are not permitted to have access.

(3) Penalty. A violation of this subsection is hereby declared to be a misdemeanor crime, and upon conviction, shall be punishable by a fine of not more than two thousand dollars (\$2,000.00).

#### **§94.45 PROHIBITION OF SMOKING IN OUTDOOR AREAS.**

Smoking shall be prohibited in the following outdoor places:

- (1) Within a reasonable distance of twenty (20) feet outside entrances, operable windows and ventilation system of enclosed areas, where smoking is prohibited so as to ensure tobacco smoke does not enter those areas;
- (2) Zoo facilities and grounds;
- (3) In, and within twenty (20) feet of, all outdoor sports arenas, stadiums, and amphitheaters;
- (4) In, and within twenty (20) feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the city;
- (5) In, and within twenty (20) feet of, all pavilions and playgrounds located within city-owned parks;
- (6) Within the public right-of-way and any seating located within the public right-of-way or on other city-owned property along the entire parade route of all city-sponsored parades for a period beginning two (2) hours before the start of each parade until one hour after the conclusion of each parade. This prohibition will not apply to those areas where smoking is permitted under §94.46(3) or to any other private property.

#### **§94.46 WHERE SMOKING NOT REGULATED.**

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of sections 94.42, 94.43 and 94.45:

- (1) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty-five (25) percent of rooms rented to guests in a hotel or motel may be so designated;

- (2) Outdoor areas except those listed specifically in the provisions in section 94.45;
- (3) Outdoor seating areas of restaurants designated as smoking areas in accordance with subsection 94.49(d);
- (4) Private clubs in existence as of the effective date of this chapter, and as defined in §94.40, including Veterans of Foreign War (VFW) posts;
- (5) Private residences, except when used as a child care, adult day care, or health care facility;
- (6) Retail tobacco stores; provided, however, that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this chapter; and
- (7) Tobacco product manufacturing facilities.

#### **§94.47 PERSONS UNDER AGE OF EIGHTEEN (18) YEARS IN SMOKING AREA.**

Notwithstanding any other provision of this chapter, persons under the age of eighteen (18) years may be admitted in establishments, facilities or other areas that allow smoking in accordance with the provisions of this chapter if such persons are accompanied by their parent or legal guardian.

#### **§94.48 DECLARATION OF ESTABLISHMENT AS NONSMOKING.**

Notwithstanding any other provision of this chapter, 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. Smoking shall be prohibited in any place in which a sign conforming to the requirements of subsection 94.49(a) and (b) of this chapter is posted.

#### **§94.49 POSTING OF SIGNS.**

(a) "No Smoking" signs 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 in every public place and place of employment where smoking is prohibited by this chapter, by the owner, operator, manager, or other person in control of that place.

(b) Every public place and place of employment where smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this chapter by the owner, operator, manager, or other person having control of the area.

(d) Areas which are exempt from the provisions of sections 94.42 and 94.43 of this

chapter shall post a standard sign at each entrance, to be designated by the city informing potential patrons that the area allows smoking, and warning patrons of the negative health effects associated with secondhand smoke.

(e) The city will provide the signs required under subsection 94.49(d) to the owners or operators required to comply with subsection 94.49(d) at a reasonable and appropriate cost.

#### **§94.50. RETALIATION PROHIBITED.**

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this chapter or reports or attempts to prosecute a violation of this chapter.

#### **§94.51 ENFORCEMENT.**

(a) The Police Department, Fire Department and Code Enforcement Division, in addition to any authority having jurisdiction to enforce city ordinances, shall have authority to enforce the provisions of this chapter.

(b) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Police Department.

(c) The Police Department, Fire Department and Code Enforcement Division, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this chapter.

(d) An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the appropriate provisions thereof.

(e) Notwithstanding any other provision of this chapter, an employee or private citizen may bring legal action to enforce this chapter.

(f) In addition to the remedies provided by the provisions of this section, the Police Department, Fire Department, Code Enforcement Division, or their designees, or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

#### **§94.52 VIOLATIONS AND PENALTIES.**

Any person, firm, corporation, agent, employer or employee who intentionally, knowingly, recklessly or with criminal negligence violates any provision of this chapter shall, upon conviction, be fined an amount not more than two hundred dollars (\$200.00); provided, however, that in the event a defendant has previously been convicted under this chapter, such defendant shall be fined an amount not more than five hundred dollars (\$500.00) for a second conviction hereunder, and shall be fined an amount not more than two thousand dollars (\$2,000.00) for a third conviction hereunder and for each conviction thereafter. Each day that a violation is committed or permitted to exist shall

constitute a separate offense.

#### **§94.53 ADDITIONAL FEES FOR RESTAURANTS.**

A reasonable fee to cover staff costs associated with inspections and program expenses may be charged by the city to the owner or operator of a restaurant in order to establish that outdoor seating areas of restaurants designated as smoking areas are so designated in accordance with subsections 94.42(16) and 94.49 of this chapter.

#### **§94.54 GOVERNMENTAL AGENCY COOPERATION.**

The city manager shall annually request other governmental and educational agencies having facilities within the city to establish local operating procedures in cooperation and compliance with this chapter. This includes urging all federal, state, county and school district agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

#### **§94.55 OTHER APPLICABLE LAWS.**

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**SECTION II. REPEALER CLAUSE:** This Ordinance shall be cumulative of all other ordinances dealing with the same subject and any provision of any ordinance in direct conflict with any provision of this ordinance is hereby repealed and the provisions of this Ordinance shall supersede any provisions in conflict herewith; all provisions of any other ordinance not in conflict herewith shall remain in full force and effect.

**SECTION III. SAVINGS CLAUSE:** If any section, part, or provision of this Ordinance is declared unconstitutional or invalid, by a court of competent jurisdiction, then, in that event, it is expressly provided, and it is the intention of the City Council in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

**SECTION IV. PUBLICATION AND EFFECTIVE DATE:** This Ordinance shall take effect immediately upon its passage and publication according to law.

**SECTION V. CODIFICATION:** The contents of Section I of this Ordinance shall be published in the appropriate location of the Code of Ordinances of the City of Edinburg, Texas.

**SECTION VI. WAIVER CLAUSE:** This requirement of three separate readings of this Ordinance is hereby dispensed with by a vote of not less than a majority of all the members of the City Council.

**READ, CONSIDERED, PASSED AND APPROVED** at a regular meeting of the City

Council of the City of Edinburg, Texas at which a quorum was present and which was held in accordance with V.T.C.A., Government Code, Section 551.041, on the 1<sup>st</sup> day of December, 2015.

|