

ORDINANCE NO. _____

3-3-05
#5
revised

AN ORDINANCE ORDERING A SPECIAL ELECTION TO BE HELD IN THE CITY OF AUSTIN ON MAY 7, 2005 TO SUBMIT TO THE VOTERS OF THE CITY AN ORDINANCE INITIATED BY PETITION RELATING TO SMOKING IN PUBLIC PLACES; AND PROVIDING FOR THE CONDUCT OF THE ELECTION.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. A special municipal election shall be held in the City on May 7, 2005, to submit to the voters of the city an ordinance initiated by petition relating to smoking in public places. The ballot shall be prepared to permit voting "for" or "against" the following proposition:

An ordinance repealing Austin's current ordinance relating to smoking in public places and replacing it with a new ordinance providing that a person commits an offense punishable by a fine if the person smokes in, or within 15 feet of an entrance to or openable window of a building or enclosed area to which the public is invited or permitted, including a bar or restaurant; an enclosed area of a workplace; or a building owned, leased, or operated by the City of Austin. The ordinance does not prohibit smoking in private residences; hotel or motel rooms designated as smoking rooms; outdoor areas not within 15 feet of an entrance or openable window of a building; a bingo facility; a facility operated by a fraternal organization; or the smoking area of a bar or restaurant that was issued a restricted permit for a designated smoking area on or before November 2, 2004.

PART 2. The election shall be conducted as provided in Ordinance No. 050217-04. The provisions of Ordinance No. 050217-04 relating to the conduct of the election are incorporated by reference as part of this ordinance.

PART 3. If the proposition provided in Part 1 is approved by the majority of voters voting at the election, Chapter 10-6 of the City Code is repealed and replaced, effective September 1, 2005, as provided in the ordinance initiated by petition, with a new Chapter 10-6 to read:

CHAPTER 10-6. SMOKING IN PUBLIC PLACES.

§ 10-6-1 DEFINITIONS.

In this chapter:

- (1) **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.
- (2) **EMPLOYER** means a person who employs the services of one or more individuals.
- (3) **ENCLOSED AREA** means a space that is enclosed on all sides by solid walls that extend from the floor to the ceiling, exclusive of windows and doors.
- (4) **FRATERNAL ORGANIZATION** means a non-profit organization that:
 - (a) is chartered by a national organization in existence since 1953;
 - (b) is tax exempt under Section 501(c)(8), (10), or (19) of the Internal Revenue Code;
 - (c) operates under a lodge system with a representative form of government; and
 - (d) is organized for the exclusive benefit of the members of the organization and their dependents.
- (5) **OPERATOR** means the owner or person in charge of a public place or workplace, including an employer.
- (6) **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, educational facilities, health care facilities, 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.
- (7) **RETAIL TOBACCO STORE** means a retail store used primarily for the sale of tobacco products and accessories and in which the sale of other non-tobacco products is incidental.

(8) **SMOKING** means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

(9) **WORKPLACE** means an enclosed area in which employees work or have access during the course of their employment.

§ 10-6-2 SMOKING PROHITED.

(A) A person commits an offense if the person smokes in a public place.

(B) A person commits an offense if the person smokes in an enclosed area in a building or facility owned, leased, or operated by the City.

(C) A person commits an offense if the person smokes in an enclosed area of a workplace.

(D) A person commits an offense if the person smokes within 15 feet from an entrance or openable window of an enclosed area in which smoking is prohibited.

(E) The owner or operator of a public place commits an offense if the person fails to take necessary steps to prevent or stop another person from smoking in an enclosed area in a public place.

§ 10-6-3 EXCEPTIONS.

This chapter does not apply to:

(1) a dwelling unit, as defined in Section 25-1-2(35), that is used exclusively for a residential use, as defined in Section 25-2-3 (*Residential Uses Described*);

(2) a hotel or motel room designated as a smoking room and rented to a person, provided that the hotel or motel complies with Section 10-6-4 (*Designation of Smoking Rooms by Hotel and Motel Restricted*);

(3) a retail tobacco store;

(4) a private or semi-private room in a nursing home or long-term care facility that is occupied by individuals who smoke and have requested in writing to be placed in a room where smoking is permitted;

(5) an outdoor area of a workplace that is not in the area described by Section 10-6-2(D)(Smoking Prohibited);

(6) a bingo facility operated under the Bingo Enabling Act, Chapter 2001 of the Occupations Code, if:

(a) an enclosed non-smoking area is provided;

(b) the smoking area is mechanically ventilated to prevent smoke from entering a non-smoking area; and

(c) no one under the age of 18 is admitted to the smoking area;

(7) a facility operated by a fraternal organization for a charitable, benevolent, or educational function if the premises is controlled by the organization; and

(8) a business premise that was issued a restricted permit by the city on or before November 2, 2004.

§ 10-6-4 DESIGNATION OF SMOKING ROOMS BY HOTEL AND MOTEL RESTRICTED.

A hotel and motel may not designate more than 25 percent of its rooms that are rented for temporary overnight occupation by the public as smoking rooms.

§ 10-6-5 EMPLOYER RESPONSIBILITIES.

(A) Except as provide in Subsection (B), an employer shall provide a smoke-free workplace for employees.

(B) If an employer requires employees to work in an area described in Subsection 10-6-3(2) through (8) (Exceptions), the employer shall make reasonable accommodations for an employee who requests assignment to a smoke-free area.

(C) An employer shall notify each employee and applicant for employment in writing that:

(1) smoking in the workplace is prohibited; or

(2) smoking is permitted in an area in the workplace under Section 10-6-3 (Exceptions).

§ 10-6-6 VOLUNTARY DESIGNATION OF A NON-SMOKING FACILITY.

Nothing in this chapter implies that the operator of an enclosed or outdoor public place is prohibited from designated the entire facility as non-smoking.

§ 10-6-7 DESIGNATION OF SMOKING OR NON-SMOKING TAXICABS.

(A) The holder of a taxicab service franchise may designate one or more of the taxicabs operated under the franchise as non-smoking.

(B) The holder of a taxicab service franchise shall conspicuously post a sign in each taxicab that indicates if smoking is permitted or prohibited in the taxicab.

§ 10-6-8 SIGNS REQUIRED.

(A) The operator of a public place shall conspicuously post a "No Smoking" sign, the international "No Smoking" symbol (depiction of a burning cigarette enclosed in a red circle with a red bar across it), or other sign containing words or pictures that reasonably prohibit smoking:

(1) in each public place and workplace where smoking is prohibited by this chapter; and

(2) at each entrance to a public place or workplace.

(B) The operator of a public place shall conspicuously post signs in areas where smoking is permitted under Section 10-6-3 (Exceptions).

(C) The operator of a public place and an employer shall remove any ashtray or other smoking accessory from a place where smoking is prohibited.

(D) It is not a defense to prosecution under this chapter that an operator failed to post a sign required under this section.

§ 10-6-9 RETALIATION PROHIBITED.

A person commits an offense if the person discharges, refuses to hire, or retaliates against a customer, employee, or applicant for employment because the customer, employee or applicant for employment reports a violation of this chapter.

§ 10-6-10 ENFORCEMENT.

(A) This section is cumulative of other laws providing enforcement authority.

(B) A person may report a violation of this chapter to the director of the Health and Human Services Department.

(C) The city manager may authorize a City employee conducting an inspection under any provision of the Code to also inspect for compliance with this chapter and issue a citation for a violation of this chapter.

(D) The director of the Health and Human Services Department may enforce this chapter and may seek injunctive relief.

§ 10-6-11 VIOLATION AND PENALTY.

(A) A person who violates the provisions of this chapter commits a Class C misdemeanor, punishable under Section 1-1-99 (*Offenses; General Penalty*) by a fine not to exceed \$2,000. A culpable mental state is not required for a violation of this chapter, and need not be proved.

(B) The city manager may suspend or revoke a permit or license issued to the operator of a public place or workplace where a violation of this chapter occurs.

(C) Each day an offense occurs is a separate violation.

§ 10-6-12 PUBLIC EDUCATION.

(A) The city manager shall:

(1) obtain or develop a comprehensive tobacco education program to educate the public about the harmful effect of tobacco and its addictive qualities.

(2) conduct informational activities to notify and educate businesses and the public about this chapter; and

(3) coordinate the City's tobacco education program with other civic or volunteer groups organized to promote smoking prevention and tobacco education.

(B) To implement this section, the city manager may publish and distribute educational materials relating to this chapter to businesses, their employees, and the public.

§ 10-6-13 GOVERNMENTAL AGENCY COOPERATION.

The city manager shall annually request that each federal, state, county, and school district agency with a facility in the City adopt local operating procedures and update its existing smoking control regulation in compliance with this chapter.

§ 10-6-14 APPLICATION OF OTHER LAW.

This chapter is cumulative of other laws that regulate smoking.

PART 4. If the proposition in Part 1 is approved by the majority of voters voting at the

election, the exception listed in Section 10-6-3(8) of the ordinance initiated by petition will terminate on September 1, 2012, as provided in the initiative ordinance.

PART 5. The Council finds that the need to immediately begin required preparations for this election constitutes an emergency. Because of this emergency, this ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health, and safety.

PASSED AND APPROVED

_____, 2005

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Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Brown
City Clerk