



**RCA
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 5
AGENDA DATE: Thu 06/09/2005
PAGE: 1 of 2**

SUBJECT: Approve an ordinance waiving the annual renewal fees for currently issued smoking permits; extending the expiration date of current permits terminated by the effect of the citizen's initiative election to August 31, 2005, extending the expiration date of the eight restricted permits allowed by the effect of the citizen's initiative election to August 31, 2012, and continuing restrictions.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: N/A There is an unanticipated loss of revenue of \$71,436.

REQUESTING Health and Human
DEPARTMENT: Services

**DIRECTOR'S
AUTHORIZATION:** David Lurie

FOR MORE INFORMATION CONTACT: Shannon Jones, Asst. Director, Public Health and Community Services, 972-5416; David B. Lopez, Manager, HHSD Environmental and Consumer Health Unit, 972-5867; Linda Terry, Agenda Coordinator, 972-5023

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

Background

Effective September 1, 2005, the current Chapter 10-6 Smoking in Public Places ordinance is repealed and replaced by the citizen's initiative ordinance that passed on May 7, 2005. The new ordinance creates an exception for the eight restaurants that hold a restricted smoking permit as of November 2, 2004 (IHOP # 1421 @ 707 E. Cesar Chavez St, Trudy's North Star @ 8820 Burnet Road, Bennigan's @ 13995 N US HWY 183, Cool River Café @ 4001 W. Parmer Lane, Hooters @ 13701 N US Hwy 183, Shoal Creek Saloon @ 909 N. Lamar Blvd., Trudy's Brodie Oaks @ 4141 S. Capitol of TX Highway and Iron Cactus @ 10001 Stonelake Blvd.). The voters and proponents of the citizen's initiative ordinance clearly intended that the grandfathered restaurants with restricted permits would continue to be subject to the restrictions outlined in current Code §10-6-23, which permit smoking between 2:00 p.m. and 6:00 a.m. if the facility maintains a fully enclosed designated smoking area with a separate HVAC system, and no-one under the age of 18 is admitted to the designated smoking area. However, the initiative ordinance does not include this text.

To ensure that there is a readily accessible public record that documents the regulation, HHSD believes council should restate the terms of the continued regulation. Enforcement action relating to smoking in public places will continue under the enforcement guidelines adopted by HHSD effective June 1, 2004.

HHSD requests the Council approve an ordinance that:



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1. Waives the \$300 smoking permit fee for the renewal of all currently issued smoking permits;
2. Extends those restricted smoking permits that will terminate due to the effect of the citizen's initiative through August 31, 2005;
3. Extends the eight grandfathered restricted smoking permits issued as of November 2, 2004 (IHOP # 1421 @ 707 E. Cesar Chavez St, Trudy's North Star @ 8820 Burnet Road, Bennigan's @ 13995 N US HWY 183, Cool River Café @ 4001 W. Parmer Lane, Hooters @ 13701 N US Hwy 183, Shoal Creek Saloon @ 909 N. Lamar Blvd., Trudy's Brodie Oaks @ 4141 S. Capitol of TX Highway and Iron Cactus @ 10001 Stonelake Blvd.) to August 31, 2012; and
4. Restates the terms of current Code § 10-6-23 relating to restricted smoking facilities.

Requested Council Action

Council is requested to approve an ordinance waiving the annual renewal fees for currently issued smoking permits; extending the expiration dates of current permits terminated by the effect of the citizen's initiative election to August 31, 2005, extending the expiration date of the eight restricted permits allowed by the effect of the citizen's initiative election to August 31, 2012, and continuing restrictions.

ORDINANCE NO.

AN ORDINANCE WAIVING THE ANNUAL RENEWAL FEE FOR CURRENTLY ISSUED SMOKING PERMITS; EXTENDING THE EXPIRATION DATE OF CURRENT PERMITS; AND CONTINUING RESTRICTIONS.

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

PART 1. The council waives the 2005 annual renewal fee, due on or after June 1, 2005, for all currently issued restricted and unrestricted smoking permits.

PART 2. Except as provided in Part 3, the council extends the expiration date of all currently issued restricted and unrestricted smoking permits to August 31, 2005.

PART 3. Subject to the restrictions stated in Part 4, the council extends the expiration date of the restricted smoking permits issued to the operators of the following business premises to August 31, 2012:

- (1) Bennigan's, 13995 North U.S. Highway 183;
- (2) Cool River Café, 4001 West Parmer Lane;
- (3) Hooters, 13701 North U.S. Highway 183;
- (4) IHOP # 1421, 707 East Cesar Chavez Street;
- (5) Iron Cactus, 10001 Stonelake Boulevard;
- (6) Shoal Creek Saloon, 909 North Lamar Boulevard;
- (7) Trudy's Brodie Oaks, 4141 South Capitol of Texas Highway; and
- (8) Trudy's North Star, 8820 Burnet Road.

PART 4. The operator of a business premise with a permit authorized under Part 3 may permit smoking in a designated smoking area between 2:00 p.m. and 6:00 a.m. if:

- (1) the operator retains a restricted smoking permit;
- (2) no one under the age of 18 is admitted to the designated smoking area; and
- (3) the designated smoking area is equipped with a separate, operational

HVAC system designed to prevent smoke from entering a non-smoking area and is separate from a dining area and fully enclosed.

PART 5. This ordinance takes effect on _____, 2005.

PASSED AND APPROVED

_____, 2005

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Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Brown
City Clerk