

ORDINANCE NO. 2017-014

AN ORDINANCE OF THE CITY OF ROBINSON, TEXAS AMENDING ARTICLE IV, SMOKING, OF THE CODE OF ORDINANCES OF THE CITY OF ROBINSON, TEXAS TO: RE-ARRANGE CERTAIN SECTIONS AND PROVIDE DEFINITIONAL CLARIFICATION; INCLUDE THE USE OF ELECTRONIC SMOKING DEVICES AS SMOKING REGULATED UNDER ARTICLE IV; CONTINUE PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES AND ENCLOSED PLACES OF EMPLOYMENT; PROHIBIT SMOKING ON CITY PROPERTY, WHETHER OR NOT ENCLOSED, INCLUDING OUTDOOR CITY PARKS AND RECREATION AREAS; EXPAND SMOKING PROHIBITION TO INCLUDE CERTAIN UNENCLOSED PUBLIC PLACES OPEN TO THE PUBLIC, INCLUDING BUT NOT LIMITED TO STADIUMS, ATHLETIC FIELDS; OUTDOOR PUBLIC EVENTS, AND AMUSEMENT PARKS; CLARIFYING REASONABLE DISTANCE FROM A NON-SMOKING AREA; PROVIDING CLARIFICATION ON AREAS NOT REGULATED AND ANY TERMS OR CONDITIONS OF SUCH EXEMPTION; CONTINUING EXISTING ENFORCEMENT AND PENALTY SECTIONS OF ARTICLE 4; PROVIDING FOR SEVERABILITY AND REPEALER CLAUSES; PROVIDING FOR AN EFFECTIVE DATE AND DIRECTING PUBLICATION OF CAPTION; AND OPEN MEETING FINDING

WHEREAS, the research showing smoking and exposure to second-hand smoke to cause a myriad of health problems is vast; and

WHEREAS, persons with respiratory conditions can be susceptible to increased breathing difficulties when exposed to second-hand smoke; and

WHEREAS, non-smokers have the right to enjoy public places and events without exposure to second-hand smoke; and

WHEREAS, persons have the right to work in environments that do not expose them to the irritants and potential health issues created by second-hand smoke; and

WHEREAS, both for public health reasons and in recognition of everyone's right to enjoy benefits available to the public without having to subject themselves to the toxic by-products of smoking, the City Council has found it necessary and in the best interest of the citizens of the City of Robinson to clarify and strengthen the City's smoking regulations in the manner set forth in this Ordinance.

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

SECTION 1. The foregoing recitals are incorporated herein and made findings of fact.

SECTION 2. Article IV Smoking is amended to Repeal and Replace the current Sections 12-50, 12-51, 12-52, 12-53, and 12-54 with the following amended Sections:

ARTICLE IV. - SMOKING

Sec. 12-50. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. *Business* means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making or non-profit 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.
2. *Electronic Smoking Device* means a device used for the purpose of delivery of vapor or aerosol containing nicotine or substances simulating nicotine.
3. *Employee* means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
4. *Employer* means any person, partnership, corporation, including a municipal corporation, or non-profit entity which employs the services of one (1) or more individual persons.
5. *Enclosed* means all space between a floor and ceiling, which is closed on all sides by solid walls or windows with appropriate openings for ingress or egress.
6. *Event Area* means any portion of a property where an outdoor event open to the public is taking place, and includes all areas where any activities, functions or operations of the event are taking place, including support areas such as parking areas, and fixed or portable restroom facilities.
7. *Food and/or beverage establishment* means any operation engaged in the preparation of food which gives food or offers food for sale to the public, guests or employees. This includes establishments which generate more than 51% of their revenue from the sale of alcoholic beverages.
8. *Place of employment* means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, hallways and vehicles. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.

9. *Public health director or Director* means the director of the Waco-McLennan County Public Health District or the public health director's designated representative.

10. *Public place* means any enclosed area to which the public is invited or in which the public is permitted or is a place of employment and includes, but is not limited to: retail stores; grocery stores; offices; professional, commercial or financial establishments; public and private institutions of education; food and/or beverage establishments; health care facilities; nursing and convalescent homes; residential treatment facilities; child care facilities; laundromats; buildings owned and operated by political subdivisions; public transportation facilities and vehicles; reception areas; theaters; and waiting rooms. For the purpose of this section, a "public place" does not include a private residence.

11. *Retail tobacco store* means any commercial establishment that derives at least fifty-one (51) per cent of its annual gross receipts from the sale of tobacco and tobacco accessories.

12. *Smoking* means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, or plant, or any extract thereof or chemically simulated substitute therefor, or utilizing an Electronic Smoking Device, electronic cigarette, personal vaporizer or similar device that simulates smoking a tobacco product.

13. *Tobacco* means any type of tobacco, including that used in cigarettes, cigars, pipes, or other delivery methods, and includes any derivations thereof or simulated substances, including materials used in electronic cigarettes, personal vaporizers or similar devices which may be utilized for smoking (or the simulation thereof), or other delivery methods of inhalation or other means of ingestion or absorption.

14. *Unenclosed Public Places which are Regulated* means playgrounds, parks, bus stops, waiting or que areas for public transportation or public services, stadiums, athletic fields and bleacher/spectator areas, outdoor public events (for example: festivals, parades, farmers' markets, outdoor concerts or plays, outdoor movies, and other special events), amusement parks, and other outdoor recreational facilities open to the public, whether or not a fee is charged.

Sec. 12-51. - Smoking Prohibited in Certain Areas.

a. Smoking is prohibited in all enclosed *Public Places* within the city limits of the City of Robinson, Texas.

b. Smoking is prohibited in all City of Robinson buildings and vehicles, and on all City of Robinson properties, whether or not enclosed, including, but not limited to all parks and recreational properties of the City.

c. Smoking is prohibited at all *Unenclosed Public Places which are Regulated* as defined in this Article.

d. Smoking is prohibited in enclosed *Places of Employment* as defined in this Article.

Sec. 12-52. - Reasonable distance.

Smoking shall not occur within a reasonable distance of where smoking is prohibited. For enclosed Public Places and Places of Employment, this means at least 20 feet away from any entrance, exit, window, or ventilation system.

For City property, this means nowhere on the City property.

For *Unenclosed Public Places which are Regulated* this means:

- a. At least 20 feet outside of the boundaries of any park, playground, athletic field or athletic complex, stadium, amusement park, or other recreational facility open to the public;
- b. At least 20 feet outside of the Event Area of an outdoor public event (for example: festivals, parades, farmers' markets, outdoor concerts or plays, outdoor movies, and other special events);
- c. At least 20 feet away from any bus stop, waiting or que area for public transportation, or waiting or que area for any public service.

In all circumstances, nothing in this Article prohibits the owner or operator of the property involved from completely banning smoking anywhere on the property.

12-53 Smoking Not Regulated in Certain Areas

The regulations on smoking set forth in this Article do not apply to:

- a. Private residences and yards, except for residences used as a day care, adult day care or health care facility;
- b. Retail tobacco stores which meet the definition of "retail tobacco store" under Section 12-51 of this article. This exemption shall not apply to an establishment that shares a common heating, ventilation and air conditioning (HVAC) system with any other tenants in the same building, to include shopping malls or strip shopping malls, in which the retail store that primarily provides tobacco products is located;
- c. Outdoor areas of property which is not City-owned, except as regulated in this Article as *Unenclosed Public Places which are Regulated* or as required to provide a *reasonable distance* as set forth in Section 12-52; and
- d. No more than twenty-five (25) per cent of hotel and motel rooms rented to guests, provided that measures to avoid incursion of smoke or smoking byproducts into the areas where non-smoking rooms are located are in place.

Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or business described in this section may declare that entire establishment as nonsmoking.

12-54 Enclosed Places of Employment

- a. It is the responsibility of employers to provide a smoke-free workplace for employees in all enclosed work areas.
- b. The changes made to this Article have not changed the prohibition on smoking in enclosed Places of Employment that already existed under this Article, and employers should have already notified all employees of this prohibition. If an employer has not done so, the employer must do so immediately.
- c. Employers must post signs as provided for elsewhere in this Article.
- d. Nothing herein prevents an employer from making all work areas non-smoking, even if unenclosed.

SECTION 3. Sections 12-55 through 12-58 shall remain unchanged and continue in full force and effect as written.


SECTION 4. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.


SECTION 5. All ordinances or portions thereof in conflict with this Ordinance regarding the subject matter of this Ordinance are repealed.

SECTION 6. This ordinance shall become effective upon passage and publication of its caption. The City Secretary is directed to publish the caption of this Ordinance in the Official Newspaper of the City.

SECTION 7. It is found and declared that the City Council meeting at which this Ordinance has been adopted was open to the public and was noticed and held in accordance with Chapter 551 of the Government Code.

PASSED AND APPROVED on the 1st day of August, 2017.


Bert Echterling Mayor
City of Robinson, Texas


Jana Lewellen
City Secretary

