

ORDINANCE NO. 2007-4-6

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, REPEALING SECTIONS 14-66 THROUGH 14-72 OF ARTICLE IV, SMOKING, OF CHAPTER 14, OFFENSES – MISCELLANEOUS OF THE CODE OF ORDINANCES OF THE CITY OF PLANO AND ADOPTING NEW REGULATIONS TO BE DESIGNATED AS SECTIONS 14-66 THROUGH 14-71 OF ARTICLE IV, SMOKING, OF CHAPTER 14, OFFENSES – MISCELLANEOUS TO REVISE THE SMOKING REGULATIONS MAKING THE CITY OF PLANO A SMOKEFREE ENVIRONMENT; PROVIDING A PENALTY CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, A REPEALING CLAUSE, A PUBLICATION CLAUSE; AND AN EFFECTIVE DATE.

WHEREAS, the Director of Health of the City of Plano recommended revisions of the current smoking regulations to protect the health, safety and welfare of citizens by creating a smokefree environment for the City of Plano; and

WHEREAS, on November 14, 1994, the City Council of the City of Plano passed Ordinance Nos. 94-11-22 and 94-11-33, amending Article IV, to regulate smoking; and

WHEREAS, on August 28, 1995, the City Council of the City of Plano passed Ordinance No. 95-8-42, amending Section 14-66, Section 14-72 and Section 14-66.1; and

WHEREAS, it is a generally accepted principle that the use of cigarettes, second-hand smoke and other tobacco products constitute a hazard to a person's health; and

WHEREAS, the purpose of this chapter is to improve and protect the public's health by eliminating smoking in public places and places of employment and;

WHEREAS, upon recommendations of the City staff and upon full review and consideration of all matters attendant and related thereto, the City Council finds and determines that it is necessary to repeal Ordinance Nos. 94-11-22, 94-11-33 and 95-8-42, codified in Article IV, Smoking, of Chapter 14, Offenses – Miscellaneous, of the Code of Ordinances for the City of Plano, Texas and replace those ordinances with these new regulations designated as Sections 14-66 through 14-71 of Article IV, Smoking, of Chapter 14, Offenses – Miscellaneous.

NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. Ordinance Nos. 94-11-22 and 94-11-33 passed on November 14, 1994, and Ordinance No. 95-8-42, passed on August 28, 1995, codified in Article IV, Chapter 14 of the Code of Ordinances, are hereby repealed in their entirety.

Section II. Sections 14-66 through 14-71 of Article IV, Smoking, of Chapter 14, Offenses – Miscellaneous, of the Code of Ordinances of the City of Plano, Texas, is hereby replaced to read verbatim as follows:

“ARTICLE IV. SMOKING

Section 14-66 Definitions.

In this Article:

"Bar" means an area which 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 such beverages. A "bar" includes those facilities located within a hotel, motel or other similar transient occupancy establishment.

"Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making or not-for-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.

"Director of Health" means the director of the health department or the department's designated representative.

"Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

"Employer" means any person, partnership, corporation, including a municipal corporation, or nonprofit entity, which employs the services of one or more individual persons.

"Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling.

"Food establishment" means food product or food service establishments.

"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 and hallways. 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 place" means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal or private residences; private social clubs or personal automobiles.

"Public place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks; educational facilities; health facilities; laundromats; public transportation facilities; reception areas; production and marketing establishments; retail service establishments; retail stores; theaters and waiting rooms.

"Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

"Service line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

"Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or combustible substance in any manner or in any form.

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

Section 14-67 Places where smoking is prohibited.

- A. Smoking shall be prohibited in all enclosed public places and enclosed places of employment within the city, including, but not limited to, the following places:
1. Elevators;
 2. Restrooms, lobbies, reception areas, hallways and any other common-use areas;
 3. Buses, bus terminals, taxicabs, train stations, airports and other facilities and means of public transit, as well as ticket, boarding, and waiting areas of public transit depots;
 4. Service lines;
 5. Retail stores;
 6. All areas available to and customarily used by the general public in all businesses, including but not limited to, attorneys' offices and other offices, banks, laundromats and country clubs;

7. Enclosed facilities within a place of employment;
8. Food establishments, nightclubs and bars;
9. Galleries, libraries, museums, zoo facilities and their grounds;
10. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance except when smoking is a part of a theatrical performance upon a stage or in the course of a film or television production and smoking is part of the performance or production;
11. Sports arenas and convention halls, including bowling and billiard facilities;
12. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city;
13. Waiting rooms, hallways, wards, private and semiprivate rooms of physical and mental health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;
14. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
15. Polling places;
16. Bingo games/parlors;
17. Hotels and motels, including at least ninety percent (90%) of rooms rented to guests;
18. Within 25 feet of any door, operable window/vent or other opening to an indoor enclosed area.

Section 14-68 Places where smoking is not prohibited.

- A. Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:
 1. Private residences, except when used as a child care, adult day care or health care facility;
 2. Personal automobiles;

3. Retail tobacco stores in stand alone physical facilities;
4. Not more than ten percent (10%) of hotel and motel rooms rented to guests and designated as smoking rooms. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under provisions of this article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms;
5. Outdoor places of employment except within 25 feet of any door, operable window/vent or other opening to an enclosed area.

Section 14-69 Posting of signs.

- A. The owner, manager or other person having control of such building or premise where smoking is prohibited by this chapter shall have a conspicuously posted sign clearly stating "no smoking" at each entrance, whether for the public, employees or deliveries, and at restroom entrances.
- B. Such "No Smoking" signs shall have bold lettering of not less than one inch in height. The international "No Smoking" symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).
- C. Any owner, manager, or other person having control of any establishment regulated by this chapter shall be responsible for posting appropriate signage.

Section 14-70 Enforcement.

- A. Enforcement of this chapter shall be implemented by the City of Plano Health Department or other official as designated by the City Manager by issuance of a municipal court citation.
- B. Any person may register a complaint under this chapter to initiate enforcement with the City of Plano Health Department.
- C. It is the duty of the owner, manager, operator or person-in-charge of any establishment regulated by this chapter:
 - (1) To post signs in accordance with Section 14-69 of this article and;
 - (2) To not provide ashtrays, matches, lighters or other smoking related paraphernalia in a regulated premise and;
 - (3) To advise a person who violates this article that smoking is not allowed and;

- (4) To request a person remove themselves from this location after that person has been advised that smoking is not allowed and that person willfully continues to smoke.

Section 14-71 Offenses and penalties.

- A. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.
- B. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with the following sections and subsections of this ordinance:
- (1) Section 14.69 (A), (B) and (C), and;
- (2) Section 14-70 (C).
- C. Any person who violates any provision of this chapter shall be guilty of a misdemeanor infraction, punishable by a fine not to exceed five hundred dollars (\$500).
- D. Each day on which a violation of this article occurs shall be a separate and distinct violation.”

Section III. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine not to exceed five hundred dollars (\$500) for each offense. Every day a violation continues shall constitute a separate offense.

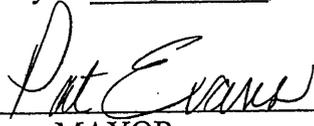
Section IV. The repeal of any ordinance or part of ordinances caused by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinances at the time of passage of this ordinance.

Section V. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

Section VI. All provisions of the ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

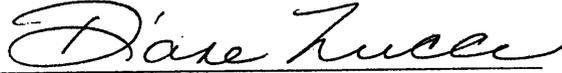
Section VII. This ordinance shall become effective on June 1, 2007.

DULY PASSED AND APPROVED this the 9th day of April, 2007.



Pat Evans, MAYOR

ATTEST:



Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY