

**CHAPTER 29.5: SMOKING**

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**Cross-reference:**

*Health and sanitation, see Ch. 16*

**Editor's note:**

*Ord. 13009, adopted May 20, 1997, amended in its entirety former Chapter 29.5, consisting of §§ 29.5-1 through 29.5-7, relative to smoking, and re-enacted §§ 29.5-01 through 29.5-30 to read as herein set out. The provisions of former §§ 29.5-1 through 29.5-7 derived from Ord. 9572, § 1(31A-1 through 31A-7), adopted February 25, 1986; Ord. 10315, § 1(1) through (4), adopted May 30, 1989; Ord. 11285, § 1(1) through (5), adopted March 30, 1993. Subsequently, Ord. 17719, § 1, adopted August 21, 2007, amended Ch. 29.5, in its entirety, to read as herein set out. Prior to inclusion of said ordinance, Ch. 29.5 pertained to similar subject matter. See also the Code Comparative Table.*

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## § 29.5-01 TITLE, PURPOSE.

This chapter may be referred to as the "smoke free ordinance." The purpose of this chapter is to improve and protect the public health by eliminating smoking in public places and places of employment. It is also the intent of this chapter to define distinct and separate areas for smoking and nonsmoking use, to assure a smoke-free atmosphere in public places and prohibit the commingling of air between smoking and nonsmoking areas.

(Ord. 17719, § 1, passed 8-21-2007)

## § 29.5-1 DEFINITIONS.

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

**BILLIARD HALL.** A place of amusement whose chief purpose is providing the use of billiard/pool tables to the public for a fee.

**BUSINESS.** Any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making or non-profit purposes, including, but not limited to, banks, laundromats, hotels, motels, retail establishments, professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

**CIGAR LOUNGE.** An establishment where onsite sales of cigar products and cigar accessories for consumption or use on the premises is at least 30% of its gross annual sales and is restricted to individuals 18 years of age and above.

**CITY.** The City of Fort Worth.

**CUSTOMER DIRECT ACCESS.** That a customer has access to a product without the assistance of the vendor.

**DELIVER.** To actually or constructively transfer possession of a tobacco product from one person to another and includes an offer to transfer possession from one person to another.

**ELECTRONIC SMOKING DEVICE.** Any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

**EMPLOYEE.** Any person who is employed for the consideration of direct or indirect monetary wages or profit, and any person who volunteers his or her services for a profit or non-profit entity.

**EMPLOYER.** Any person, partnership, corporation, municipal corporation, non-profit entity or other entity who employs the services of one or more individual persons.

**ENCLOSED AREA.** An area closed in by a roof and walls with appropriate openings for ingress and egress.

**HEALTH CARE FACILITY.** Any institution that provides medical, surgical and overnight facilities for patients, including, but not limited to, hospitals, clinics, physical therapy facilities, doctor's offices, dentist's offices, nursing homes, adult care facilities, convalescent homes and residential treatment centers/homes.

**MINOR.** Any person under 18 years of age.

**PARK.** The areas of land dedicated and used as parkland, or city-owned land used for a park or recreational purpose that is under the administrative control of the park and recreation department. The term includes the botanic garden, buildings, playgrounds, athletic fields, nature preserves, swimming pools and parking lots, driveways, pathways, trails and other areas within a park. The term does not include the outdoor areas of a city golf course or the unenclosed areas of Will Rogers Memorial Center.

**PERSON.** Any individual, partnership, cooperative, association, corporation or venture.

**PLACE OF EMPLOYMENT.** Any enclosed area under the control of an employer including, but not limited to, work areas,

employee lounges, rest rooms, conference rooms, classrooms, employee cafeterias and hallways. A private residence shall not be considered a **PLACE OF EMPLOYMENT**.

**PRIVATE CLUB.** A building or portion thereof that is owned, leased or otherwise occupied by an organization, whether incorporated or not, exclusively for use at all times solely for the recreational, fraternal, social, patriotic, political, benevolent or athletic purpose of the organization, but not for pecuniary gain, and at which alcoholic beverages are sold only incidentally in connection with such operations; provided that this term only applies to an organization (i) whose affairs and management are conducted by a board of directors, executive committee, or similar body chosen by its members at an annual meeting; (ii) whose activities are governed by established bylaws, a constitution, or other published articles; and (iii) which has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

**PRIVATE FUNCTION.** The rental of a ballroom, private club or other facility for the sole purpose of entertaining, private parties, events or other social functions that the general public is not able to attend.

**PUBLIC PLACE.** Any enclosed area in which the public is invited or permitted, including, but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, bars, bingo parlors, marketing establishments, retail service establishments, retail stores, theaters, waiting rooms, bowling alleys and billiard halls.

**RETAIL SMOKE SHOP.** A store that derives 90% or more of its gross annual sales from the sale of tobacco, cigarettes, smoking and electronic smoking devices, or related products and accessories and does not sell alcoholic beverages for onsite consumption.

**RETAILER.** A person who sells goods or services to the general public.

**SELL.** To offer for sale, convey, exchange, barter or trade.

**SERVICE LINE.** Any line or area where persons wait for goods or services of any kind, regardless of whether or not an exchange of money will occur. Such service includes, but is not limited to, sales, giving of information, directions, advice and the transfer of money or goods.

**SMOKING.** Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, tobacco product, electronic smoking device, weed, plant or other combustible substance whose smoke is intended to be inhaled.

**TOBACCO PRODUCT.** Any tobacco, cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco, which may be utilized for smoking, chewing, inhalation or other manner of ingestion or absorption.

**TOBACCO VENDING MACHINE.** Any mechanical, electric or electronic self-serving device which, upon insertion of money, tokens or any other form of payments, dispenses tobacco products.

**VALID PROOF OF IDENTIFICATION.** A driver's license or an identification card issued by Texas or another state, a passport or an identification card issued by a state or the federal government and that contains a physical description and a photograph consistent with the person's appearance.

**VENDOR-ASSISTED SALE.** A sale in which only the vendor has had access to a tobacco product and assists the customer by supplying the product to the customer when it is purchased.

(Ord. 17719, § 1, passed 8-21-2007; Ord. 23047-12-2017, § 1, passed 12-12-2017, eff. 3-12-2018; Ord. 23221-05-2018, § 1, passed 5-15-2018, eff. 8-13-2018)

## **§ 29.5-2 SMOKING PROHIBITED.**

- (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 place of employment.
- (d) A person commits an offense if the person smokes within 20 feet from a primary entrance or openable window of an enclosed area in which smoking is prohibited.
- (e) A person commits an offense if the person smokes in a park. This prohibition does not apply to those areas of a park to which

an outdoor special event permit was issued under the rules and regulations set by the director of the parks and recreation department.

(f) Notwithstanding any other provision of this section, any owner, operator, manager or any other person who controls any establishment or facility may declare the entire establishment or facility as a nonsmoking establishment.

(Ord. 17719, § 1, passed 8-21-2007; Ord. 23221-05-2018, § 2, passed 5-15-2018, eff. 8-13-2018)

### **§ 29.5-3 EXCEPTIONS.**

(a) Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking prohibitions in § 29.5-2.

- (1) Private residences, except when used as a child care, adult day care or health care facility;
- (2) A private or semi-private room in a nursing home or long term health care facility that is occupied by persons who smoke and have requested in writing to be placed in a room where smoking is permitted;
- (3) Hotel and motel rooms that comply with § 29.5-4;
- (4) Retail smoke shops and cigar lounges in stand alone physical facilities or that operate an air ventilation system that prevents the migration of smoke into neighboring facilities;
- (5) Hotel and motel conference or meeting rooms and public facilities while being used for a private function. This exception shall not include restaurants or bars;
- (6) Private clubs, as defined in this chapter, as long as the facility is used or operated by the members and is not open to the general public;
- (7) An outdoor dining area and/or patio, as long as the section of the outdoor dining area and/or patio where smoking is permitted, is more than 20 feet from a primary entrance or openable window of an enclosed area; and
- (8) Any facility which is primarily used for exhibiting any stage, drama, lecture, musical recital or other similar performance, when smoking is part of a stage production.

(b) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may designate the entire establishment as a nonsmoking establishment.

(Ord. 17719, § 1, passed 8-21-2007; Ord. 23047-12-2017, § 2, passed 12-12-2017, eff. 3-12-2018)

### **§ 29.5-4 DESIGNATION OF SMOKING ROOMS BY HOTEL AND MOTEL RESTRICTED.**

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

(Ord. 17719, § 1, passed 8-21-2007)

### **§ 29.5-5 OWNER/OPERATOR RESPONSIBILITIES.**

(a) The owner and/or 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 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 owner/operator of a public place shall conspicuously post signs in areas where smoking is permitted under § 29.5-3.
- (c) The owner/operator of a public place and an employer shall remove any and all ashtrays or other smoking accessories from a place where smoking is prohibited.

(d) An owner/operator commits an offense if he or she violates any provision of this section.

(e) An owner/operator commits an offense if he or she knowingly allows a person to remain in a place under the owner/operator's control while such person is smoking in violation of this chapter. This offense is punishable, upon conviction, by a fine of an amount not to exceed \$2,000 for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

(f) It is not a defense to prosecution of any offense under this chapter that an owner/operator failed to post a sign required under this section.

(Ord. 17719, § 1, passed 8-21-2007)

### **§ 29.5-6 EMPLOYER RESPONSIBILITIES.**

(a) Except as provided in § 29.5-3, an employer shall provide a smoke-free place of employment.

(b) Employers shall designate all areas of the place of employment including, but not limited to, conference rooms, break rooms, rest rooms and dining areas as nonsmoking.

(c) If an employer requires employees to work in an area described in § 29.5-3, the employer shall make reasonable accommodations for an employee who requests an assignment to a smoke free area.

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

(1) Smoking in the place of employment is prohibited; or

(2) Smoking is permitted in the place of employment because it is exempted from the prohibition of smoking under § 29.5-3.

(e) A person, employer, building manager, building owner or lessee commits an offense if he or she violates any provision of this section.

(Ord. 17719, § 1, passed 8-21-2007)

### **§ 29.5-7 VOLUNTARY DESIGNATION OF A NON-SMOKING FACILITY.**

Nothing in this chapter shall prevent the owner/operator of an enclosed area or public place from designating the entire facility and/or area as non-smoking.

(Ord. 17719, § 1, passed 8-21-2007)

### **§ 29.5-8 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.

(Ord. 17719, § 1, passed 8-21-2007)

### **§ 29.5-9 SALE OF CIGARETTES OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN EIGHTEEN YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED.**

(a) A person commits an offense if the person with criminal negligence:

(1) Sells, gives or causes to be sold or given a cigarette or tobacco product to someone who is younger than 18 years of age; or

(2) Sells, gives or causes to be sold or given a cigarette or tobacco product to another person who intends to deliver it to someone who is younger than 18 years of age.

(b) A retailer commits an offense if:

(1) An agent or employee of the retailer commits an offense under subsection (a) above; or

(2) The retailer, with criminal negligence, failed to prevent the offense through adequate supervision and training of the agent or employee.

(c) It is a defense to prosecution under subsection (a)(1) above that the person to whom the cigarette or other tobacco product was sold or given presented an apparently valid proof of identification.

(d) Proof of identification satisfies the requirements of subsection (c) above if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older and was issued by a governmental agency. The proof of identification may include a driver's license issued by Texas or another state, a passport or an identification card issued by a state or the federal government.

(e) An offense under this section is a misdemeanor punishable, upon conviction, by a fine of an amount not to exceed \$2,000 for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

(Ord. 17719, § 1, passed 8-21-2007)

### **§ 29.5-10 VENDOR ASSISTED SALES REQUIRED.**

(a) Except as provided by subsection (b) below, a retailer or other person may not offer cigarettes or tobacco products for sale in a manner that permits a customer direct access to the cigarettes or tobacco products.

(b) Subsection (a) above does not apply to:

(1) A facility or business that is not open to persons younger than 18 years of age at any time; or

(2) A retail tobacco stores as defined in this chapter.

(c) A person commits an offense if the person violates subsection (a) above.

(Ord. 17719, § 1, passed 8-21-2007)

### **§ 29.5-11 VENDING MACHINES.**

(a) A person commits an offense if that person sells, offers for sale, allows the sale of, allows the offer for sale of or allows the display for sale of tobacco products by use of a vending machine.

(b) Exceptions.

(1) It is an exception to subsection (a) above that a cigarette vending machine is located within an enclosed facility which does not admit any persons under the age of 18 years. The establishment shall post a sign at each entrance of the enclosed facility that persons under the age of 18 years are prohibited from the enclosed facility. **ENCLOSED FACILITY** means an area surrounded by a wall and which area may not be accessed except by doorway.

(2) It shall also be an exception to subsection (a) above that a cigarette vending machine is located in a portion of a facility to which the general public or members of a private club do not have access. The establishment shall post a sign at the entrances to the area to which the general public or members of a private club are prohibited.

(Ord. 17719, § 1, passed 8-21-2007)

### **§ 29.5-12 SALE OF CIGARETTES OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 27 YEARS OF AGE.**

(a) A retailer may not sell, give or cause to be sold or given a cigarette or tobacco product to someone who is younger than 27 years of age unless the person to whom the cigarette or tobacco product was sold or given presents an apparently valid proof of identification showing the person's age to be 18 years of age or older.

(b) A retailer shall adequately supervise and train the retailer's agents and employees to prevent a violation of subsection (a) above.

(c) Proof of identification described in § 29.5-9(d) satisfies the requirements of subsection (a) above.

(d) A retailer commits an offense if the person violates this section.

(Ord. 17719, § 1, passed 8-21-2007)

### **§ 29.5-13 NOTIFICATION OF EMPLOYEES AND AGENTS.**

Each retailer shall notify each individual employed by the retailer who is to be engaged in retail sales of cigarettes or tobacco products that state law:

(a) Prohibits the sale or distribution of cigarettes or tobacco products to any person who is younger than 18 years of age as provided in § 29.5-9 and that a violation of this provision is a Class C misdemeanor; and

(b) Prohibits the sale or distribution of cigarettes or tobacco products to any person who is younger than 27 years of age unless the person to whom the cigarette or tobacco product is sold or given presents an apparently valid proof of identification as provided by § 29.5-12.

(Ord. 17719, § 1, passed 8-21-2007)

### **§ 29.5-14 DISTRIBUTION AND SALE OF CIGARETTES OR TOBACCO PRODUCTS.**

(a) A person commits an offense if he or she distributes to persons younger than 18 years of age:

(1) A free sample of a cigarette or tobacco product; or

(2) A coupon or other item that the recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product.

(b) A person commits an offense if the person sells cigarettes in quantities less than an individual package containing at least 20 cigarettes.

(c) Retail smoke shops shall be prohibited within 300 feet of schools, universities and hospitals.

(Ord. 17719, § 1, passed 8-21-2007; Ord. 23047-12-2017, § 3, passed 12-12-2017, eff. 3-12-2018)

### **§ 29.5-15 POSSESSION, PURCHASE, CONSUMPTION AND RECEIPT OF TOBACCO PRODUCTS BY MINORS PROHIBITED.**

(a) A person who is younger than 18 years of age commits an offense if that person:

(1) Possesses, purchases, consumes or accepts receipt of a cigarette or tobacco product; or

(2) Falsely represents himself or herself to be 18 years of age or older by displaying proof of age that is false, fraudulent or not actually his or her own for the purpose of possessing, purchasing, consuming or receiving a cigarette or tobacco product.

(b) It is an exception to this section that the minor possessed, purchased, consumed or received the cigarette or tobacco product in the presence of the minor's parent, guardian or spouse.

(c) It is an exception to this section that the minor possessed or received the cigarette or tobacco product in the presence of the minor's employer, if possession or receipt of the tobacco product is required in the performance of the employee's duties as an employee.

(d) It is an exception to the application of this section that the individual younger than 18 years of age is participating in an inspection or test compliance of the ordinance.

(e) In addition to assessing a fine, the court may require the minor to attend a smoking awareness course and the court may require the parent or guardian of the minor to attend the course with the minor.

(f) If a smoking awareness course is not readily available, the court may require the minor to perform additional tobacco-related

community service hours.

(Ord. 17719, § 1, passed 8-21-2007)

### **§ 29.5-16 ADVERTISEMENT OF CIGARETTES AND TOBACCO PRODUCTS.**

(a) A sign containing an advertisement for cigarettes or tobacco products may not be located closer than 1,000 feet to a school.

(b) The measurement of the distance between the sign containing an advertisement for cigarettes or tobacco products is from the nearest property line of the school to a point on a street or highway closest to the sign, along street lines and in direct lines across intersections.

(c) This section does not apply to a sign located on or in a facility owned or leased by a professional sports franchise or in a facility where professional sports events are held at least ten times during a 12- month period.

(d) A *SIGN* in this section shall mean an outdoor medium, including a structure, display, light device, figure, painting, drawing, message, plaque, poster or billboard that is:

- (1) Used to advertise or inform; or
- (2) Visible from the main-traveled way of a street or highway.

(Ord. 17719, § 1, passed 8-21-2007)

### **§ 29.5-17 STRUCTURAL MODIFICATION.**

Nothing in this chapter shall require the owner, operator, manager or other persons in control of any building, facility, room, establishment to make any structural modifications to comply with the terms of this chapter.

(Ord. 17719, § 1, passed 8-21-2007)

### **§ 29.5-18 ENFORCEMENT.**

(a) The public health department shall be primarily responsible for the implementation and enforcement of this chapter.

(b) A citizen may file a complaint with the public health department.

(c) Any owner, manager, operator or employer of any establishment regulated by this chapter must inform persons violating this chapter of the appropriate provisions thereof.

(d) The public health department shall investigate complaints and may issue warnings and citations to persons violating this chapter.

(Ord. 17719, § 1, passed 8-21-2007)

### **§ 29.5-19 CULPABILITY.**

Except as otherwise provided in this chapter, there shall be no requirement of a culpable mental state for a violation of this chapter.

(Ord. 17719, § 1, passed 8-21-2007)

### **§ 29.5-20 OTHER APPLICABLE LAWS.**

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

(Ord. 17719, § 1, passed 8-21-2007)



## **§ 29.5-21 VIOLATION AND PENALTY.**

(a) Unless otherwise stated in this chapter, a person who violates the provisions of this chapter commits a Class C misdemeanor, punishable by a fine not to exceed \$500.

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

(Ord. 17719, § 1, passed 8-21-2007)

## **§ 29.5-22 PERMIT SUSPENSION OR REVOCATION; HEARING.**

(a) Upon notice and a hearing, the city manager may suspend or revoke a permit or license issued by the city to the operator of a public place or place of employment where a violation of this chapter occurs.

(b) Prior to the revocation or suspension of a permit or license, the city manager or his or her designee shall set a hearing to determine if grounds exist to revoke or suspend a permit or license due to a violation of this chapter.

(c) The city manager or his or her designee shall act as the hearings officer.

(d) Written notice of the hearing shall be served on the petitioner/violator at least 15 business days prior to the hearing. Notice shall be served in person or by certified mail, return receipt requested.

(e) Notice shall specify the date, time and place of the hearing. The petitioner/violator must request the hearing be rescheduled within five business days of receiving the written notice if the petitioner/violator cannot attend the hearing at the originally scheduled time.

(f) For purposes of this section, the hearing officer shall be empowered to administer oaths and to promulgate procedural rules for the conduct of the hearing.

(g) The hearing officer shall base the decision to revoke or suspend the permit or license on a preponderance of the evidence. The petitioner shall bear the burden of proof to show that the permit or license should not be revoked or suspended.

(h) After the conclusion of the hearing, the hearing officer shall make written findings of fact and conclusions of law and shall issue a written decision without undue delay.

(i) A hearing shall exhaust all administrative remedies of the petitioner/violator.

(Ord. 17719, § 1, passed 8-21-2007)