



## ARTICLE VIII. SMOKING

### Section 13-130. Purpose.

It is the purpose of this ordinance to safeguard public health from smoke and second hand smoke by prohibiting smoking in public places. 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 comingling of air between smoking and nonsmoking areas.

### Section 13-131. Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

*Bar*: Means an establishment that is devoted to the serving of alcoholic beverages for the consumption by patrons on the premises and in which the serving of food is only incidental to the serving of alcoholic beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

*Billiard hall*: Means a place of amusement whose chief purpose is providing the use of billiard/pool tables to the public for a fee.

*Bingo parlor*: Means a facility regulated under Bingo Enabling Act, Chapter 2001 of the Occupations Code.

*Business*: Any sole proprietorship, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional offices where legal, medical, dental, engineering, architectural, or other professional services are delivered.

*City*: Means the City of Grand Prairie or any authorized person acting on its behalf.

*Deliver*: Means 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*: Means an electronic or battery-operated device, the use of which resembles smoking, which can be used to deliver nicotine or other substances to the person inhaling from the device. Electronic smoking device includes, but is not limited to, an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, or an electronic hookah.

*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 their services for a non-profit entity.

*Employer:* Means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one (1) or more individual persons.

*Enclosed area:* Means all space between a floor and ceiling that is bounded on all sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

*Environmental tobacco smoke:* Means ambient smoke resulting from the act of smoking, including exhaled mainstream smoke and side-stream smoke.

*Food establishment:* Means a place where food is manufactured, packaged produced, processed, transported, stored, sold, commercially prepared, vended, or otherwise handled. The term includes any such place regardless of the duration of the permit or whether there is a charge for the food. The term includes, but is not limited to, restaurants, coffee shops, cafeterias, sandwich shops, private or public school cafeterias, fast-food establishments, lunchrooms, catering establishments, and any other eating establishment that gives or offers food to the public, guests, or employees. The term "food establishment" shall include a bar area within the restaurant and does not include private homes where food is prepared or served for guests and individual family consumption.

*Health care facility:* Means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging and chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

*Minor:* Means any person less than eighteen (18) years of age.

*Person:* Means any individual, partnership, cooperative, association, corporation, or venture.

*Private club:* Means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affair and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from payment of federal income taxes as a club under 26 U.S.C Section 501.

*Public place:* An enclosed indoor area in which the public is permitted or that may be used by the general public and includes, but is not limited to, banks, stores, offices and other commercial

establishments, restaurants, public and private institutions of higher education, and child care and health care facilities.

*Regulatory authority:* Any municipal officer or department of the city appointed by the City Manager to administer this article.

*Retail and service establishment:* Any establishment which sells goods or services to the general public.

*Retailer:* Means a person who sells goods or services to the general public.

*Sell:* Means to offer for sale, convey, exchange, barter, or trade.

*Service line:* Means 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 information, directions, advice, and the transfer of money or goods.

*Smoking:* Means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or any form.

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

*Tobacco retail shop:* Means a retail or service establishment utilized primarily for the sale of tobacco, tobacco products, or smoking implements for on-premises consumption and in which the sale of other products is merely incidental, which shall include but not be limited to cigar bars and humidors.

### **Section 13-132. Smoking Prohibited.**

- (a) A person commits an offense if the person smokes in any of the following areas:
- (1) Any facility owned or operated by a public or private primary or secondary school;
  - (2) The buildings of a hospital or health care facility;
  - (3) Child care and adult care facilities;
  - (4) An elevator in buildings generally used by and open to the public, including elevators in office, hotel, or multifamily buildings;
  - (5) Public restrooms;
  - (6) Service lines;

- (7) 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;
- (8) 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;
- (9) Libraries, museums, galleries, and their grounds;
- (10) Any hallway, lobby, corridor, playground, seating area, pool and/or recreation area or any common area of an apartment building, retirement facility, nursing home or other multiple unit residential development;
- (11) Retail and service establishments;
- (12) Food establishments;
- (13) Sports arenas, including enclosed areas in outdoor arenas;
- (14) Any outdoor sports arenas, stadiums, and amphitheatres;
- (15) Within 25 feet of an outside entrance, operable window, or ventilation system of enclosed areas where smoking is prohibited by this article;
- (16) Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments;
- (17) Any other public place.

### **Section 13-133. Smoking Prohibited - City Facilities and Grounds**

- (a) No person shall smoke at or on any city owned or operated facilities, grounds, vehicles, and work sites. It shall be a defense to prosecution that the smoking is or occurs at Loyd Park campsites, Lynn Creek Park, and on-course areas of city golf facilities.
- (b) This prohibition shall apply to all employees, visitors, volunteers, and contractors.
- (c) The City Manager or designated city staff shall be authorized to implement variances to this prohibition for specific city owned or operated recreational venues on a continual or event-by-event basis.

### **Section 13-134. Places Where Smoking is Allowed.**

- (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) A tobacco retail shop which is primarily engaged in the sale of tobacco, tobacco products, or smoking accessories; provided that establishment does not allow or employ persons under the age of eighteen (18) years within the establishment;
  - (2) A bar, nightclub, billiard hall, hookah lounge, or sexually oriented business that:
    - a. Does not allow or employ persons under the age of eighteen (18) years within the establishment; and
    - b. Does not open into a food establishment, hotel, motel, or any other establishment in which smoking is prohibited under this article.
  - (3) Private residences, except when used as a child care, adult day care, group home, or health care facility;
  - (4) Private club;
  - (5) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty-five (25) percent of rooms rented to guests in a hotel or motel may be so designated;
  - (6) Lone Star Park;
  - (7) An outdoor dining area and/or patio, as long as the dining area and/or patio is more than twenty-five (25) feet from a primary entrance, operable window, or ventilation system of an enclosed area in which smoking is prohibited under this article and is not immediately adjacent to a playground or play area for children;
  - (8) Bowling centers; with the exception that smoking shall be prohibited within the building at times when there are junior bowling league activities and that smoking is prohibited in the area immediately adjacent to the bowling lanes at all times.
  - (9) Bingo parlor that:
    - a. Does not allow or employ persons under the age of eighteen (18) years within the establishment; and
    - b. Does not open into a food establishment, hotel, motel, or any other establishment in which smoking is prohibited under this article.
- (b) Smoke from the places listed in 13-134(a) is prohibited from infiltrating into areas where smoking is prohibited under the provisions of this article. It shall be an offense under this article for a person to allow such infiltration to occur.

**Section 13-135. Owner/Operator Responsibilities.**

- (a) It shall be the duty of the owner, operator, manager or other persons having control of any room, building or other place where smoking is regulated by this article to post properly worded signs of a size and in places set out in this section.
- (b) All signs required hereby shall conform to the wording required by this section.
- (1) All signs which designate an area or facility where smoking is prohibited must conform to one of the following choices of wording, to-wit:
    - a. "NO SMOKING, CITY ORDINANCE CHAPTER 13, ARTICLE 8, VIOLATORS FINED UP TO \$2000.";
    - b. The universal symbol for non-smoking; or
    - c. Any other language which indicates that the area marked is for non-smoking.
  - (2) All facilities listed in 13-134 (a), except for 13-134 (a)(3), shall be required to post signs at public entrances that conforms to one of the following choices of wording, to wit:
    - a. "SMOKING PERMITTED WITHIN THIS FACILITY"; or
    - b. Any other language which indicates that the facility permits smoking.
  - (3) All signs which designate an area or facility where smoking is permitted are not required but are encouraged.
- (c) All signs required by this article must be of sufficient size to accommodate the message contained thereon in letters at least one (1) inch in height.
- (d) The owner, operator, manager, or other persons having control of any room, building or other place where smoking is prohibited by this article is encouraged to place facilities for the extinguishment of smoking materials at such places or within twenty-five (25) feet of the entrance to said places.
- (e) The owner/operator shall remove any and all ashtrays or other smoking accessories from a place where smoking is prohibited.
- (f) An owner/operator commits an offense if he/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.
- (g) 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.
- (h) An owner/operator commits an offense if he/she violates any provision of this section.

**Section 13-136. Places of Employment.**

(a) Any employer may designate any workplace, or portion thereof, as a non-smoking area. Any employer who chooses to designate any workplace, or portion thereof, as a non-smoking area shall:

(1) Adopt, implement and maintain a written policy, which shall be communicated to all employees;

(2) Prominently display signs of the type and size hereafter set out that smoking is prohibited; and

(b) It shall be unlawful for any person to violate any of the provisions of an employer's written smoking policy which is adopted, implemented, and maintained, in accordance with subsection (a) of this section.

### **Section 13-137. Tobacco Product Vending.**

(a) It shall be unlawful for any business owner, manager, or employee in control of the premises where a tobacco product or electronic smoking device vending machine is located to have the product vending machine located in an area accessible to an individual under the age of eighteen (18) years.

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

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

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

(c) A retailer commits an offense if:

(1) An agent or employee of the retailer commits an offense under section 13-137(b); or

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

(d) It is a defense to prosecution under subsection 13-137(b)(1) that the person to whom the tobacco product or electronic smoking device was sold or given presented an apparently valid proof of identification.

(e) Proof of identification satisfies the requirements of subsection 13-137(d) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is eighteen (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.

(f) A retailer or other person may not offer tobacco products or electronic smoking devices for sale in a manner that permits a customer direct access to the tobacco products or electronic smoking devices unless the facility or business is not open to persons younger than eighteen (18) years of age at any time.

(g) A retailer may not sell, give, or cause to be sold or given a tobacco product or electronic smoking device to someone who is younger than twenty-seven (27) years of age unless the person to whom the tobacco product or electronic smoking device is sold or given presents an apparently valid proof of identification showing the person's age to be eighteen (18) years of age or older. Proof of identification described in subsection 13-137(e) satisfies the requirements of this subsection.

(h) A retailer shall adequately supervise and train the retailer's agents and employees to prevent a violation of this section.

### **Section 13-138. Prohibition of Possession of a Tobacco Product by a Minor.**

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

- (1) Possesses, purchases, consumes, or accepts receipt of a tobacco product or electronic smoking device; or
- (2) Falsely represents himself or herself to be eighteen (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 tobacco product or electronic smoking device.

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

(d) It is an exception to the application of this section that the individual younger than eighteen (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.

### **Section 13-139. Electronic Smoking Devices.**

An establishment that has as a primary source of business the sale, distribution, and/or on premise

use of electronic smoking devices and related products shall not allow or employ persons under the age of eighteen (18) years within the establishment. This shall include, but not be limited to, vapor lounges, vapor bars, vapor salons, and vapor stores. Such establishments shall display signage prominently at entrances stating that persons under the age of eighteen (18) years are prohibited within the establishment.

#### **Section 13-140. Right of Entry And Search Warrants.**

The city's representative(s) shall have the right to enter the premises of any person to determine whether that person is in compliance with all requirements of this article. Persons shall allow inspecting or monitoring personnel ready access to all parts of the premises for the purposes of inspection, monitoring, records examination and copying, and the performance of any additional duties.

(a) Where security measures are in force which requires proper identification and clearance before entry into the premises, that person shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the city's representative will be permitted to enter without delay for the purposes of performing specific responsibilities.

(b) Unreasonable delays in allowing inspecting or monitoring personnel access to any person's premises shall be a violation of this article.

(c) If the Regulatory Authority has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Regulatory Authority may seek issuance of a search warrant from the appropriate court.

#### **Section 13-141. Penalty - For violations; Other Remedies.**

(a) Any person, firm, or corporation who violates any provision of this article or any permit issued under this article is guilty of a misdemeanor and upon conviction is punishable by a fine as provided in section 1-8 of the Code of Ordinances of the City of Grand Prairie, or any amendment thereto or renumbering thereof, for violations of public health for each act of violation and for each day of violation. A violation is punishable by a fine not to exceed \$2,000. A culpable mental state is not required for fines of \$500.00 or less, and need not be proved.

(b) Any person, firm, or corporation who obstructs, impedes, or interferes with a representative of the City, with a representative of a City department, with surveillance equipment, or with a person who has been ordered to abate a situation pursuant to this article and who is lawfully engaged in such abatement is guilty of a misdemeanor and upon conviction is punishable by a fine as provided in section 1-8 of the Code of Ordinances of the City of Grand Prairie, or any amendment thereto or renumbering thereof, for violations of public health for each act of violation and for each day of violation. A violation is punishable by a fine not to exceed \$2,000. A culpable mental state is not required for fines of \$500.00 or less, and need not be proved.

(c) In addition to proceeding under authority of subsections (a) and (b) of this section, the City is entitled to pursue all criminal and civil remedies to which it is entitled under authority of statutes

or other ordinances against a person, firm, or corporation that remains in violation of this article.

(d) Permit Suspension or Revocation

- (1) Upon notice and a hearing, the Regulatory Authority may suspend or revoke a permit, license, or certificate of occupancy issued by the city to the operator of a public place where a violation of this chapter occurs.
- (2) Prior to the revocation or suspension of a permit or license, the Regulatory Authority shall set a hearing to determine if grounds exist to revoke or suspend a permit or license due to a violation of this chapter.
- (3) The city manager or his/her designee shall act as the hearings officer.
- (4) Written notice of the hearing shall be served on the petitioner/violator at least fifteen (15) business days prior to the hearing. Notice shall be served in person or by certified mail, return receipt requested.
- (5) Notice shall specify the date, time, and place of the hearing. The petitioner/violator must request the hearing be rescheduled within five (5) business days of receiving the written notice if the petitioner/violator cannot attend the hearing at the originally scheduled time.
- (6) For the purposes of this section, the hearing officer shall be empowered to administer oaths and to promulgate procedural rules for the conduct of the hearing.
- (7) The hearing officer shall base the decision to revoke or suspend the permit or license on a preponderance of the evidence. The petitioner/violator shall bear the burden of proof to show that the permit or license should not be revoked or suspended.
- (8) 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.
- (9) A hearing shall exhaust all administrative remedies of the petitioner/violator.
- (10) Failure to abide by the decision of the hearing officer shall be considered an offense under this article.

(e) The Regulatory Authority may take any, all, or any combination of these actions against a noncompliant person.

**Section 13-142. Remedies Nonexclusive.**

The remedies provided for in this ordinance are not exclusive. This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**Section 13-143. Administrative Liability.**

(a) No officer, agent, or employee of the City shall be personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of such person's duties under this article.

(b) Any suit brought against any officer, agent, or employee of the City as a result of any act required or permitted in this discharge of such duties under this article shall be defended by the City Attorney until the final determination of the proceedings therein.

**SECTION 2.** That if any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such shall be deemed a separate, distinct, and independent provision and such holding shall not affect validity of the remaining portions thereof.

**SECTION 3:** That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

**SECTION 4:** All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Grand Prairie, Texas, in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of said duties.

**SECTION 5:** That this ordinance shall be in full force and effect upon its passage and publication.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF GRAND PRAIRIE, TEXAS, ON THIS THE 21ST DAY OF JANUARY, 2014.**