

ORDINANCE NO. O-2018-5621

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE IX, CODE OF ORDINANCES (2010 EDITION), CITY OF ROUND ROCK, TEXAS, REGARDING SMOKING OF TOBACCO PRODUCTS AND VAPING IN PUBLIC PLACES; AND PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROUND ROCK, TEXAS:

I.

That Chapter 14, Article IX, Code of Ordinances (2010 Edition), City of Round Rock, Texas, is hereby replaced in its entirety and shall read as follows:

Chapter 14 - ENVIRONMENT

Article IX. - SMOKING OF TOBACCO PRODUCTS AND VAPING IN PUBLIC PLACES

Sec. 14-241. 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:

~~Air purification system means an electrically powered hospital-grade filter that:~~

- ~~(1) Has an air-exchange rate of four times per hour or once every 15 minutes for the designated smoking/vaping bar;~~
- ~~(2) As its first stage, contains a minimum 30 percent rated pleated prefilter;~~
- ~~(3) As its second stage, contains a HEPA filter media that is rated to remove not less than 99.97 percent of 0.3 microns; and~~
- ~~(4) As its third stage, contains an industrial-grade processed carbon composite adsorber filter specifically designed for removal of environmental tobacco smoke, vapor, and gases.~~

~~Bar means any establishment:~~

- ~~(1) That derives more than 50 percent of its gross receipts from the sale of alcoholic beverages;~~
- ~~(2) That is not located within, and does not share any common entryway or common enclosed area (other than a covered sidewalk or pedestrian way) with any other place not otherwise listed in subsection 14-243(a); and~~
- ~~(3) In which the serving of food, if any, is merely incidental to the primary business of serving alcoholic beverages.~~

~~Common areas means areas such as restrooms, lobbies, service line areas, public telephone areas, and other areas commonly used by the public.~~

~~Designated smoking/vaping bar means a bar which serves food and/or mixed drinks and which the owner or operator has designated all or any portion thereof for smoking and/or vaping. All designated~~

~~smoking/vaping bars shall be equipped with an air purification system and/or an exhaust system, which shall be designed by a professional engineer and shall otherwise comply with the requirements of section 14-244.~~

Electronic cigarette or e-cigarette means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of 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 description.

Enclosed area means any area covered by a roof and having at least one wall. Vehicular drive-through lanes and open outdoor concourses of sports arenas shall not be considered enclosed areas.

~~*Exhaust* means air removed from a space and discharged to the exterior of the building.~~

Health care facility means any office or institution providing individual care or treatment of human medical, physiological or psychological illness, which definition shall include, but not be limited to, hospitals, doctor's offices, nursing and convalescent homes and senior citizen residential facilities.

Nonprofit private club means any building, premises or portion thereof which is wholly owned or leased and operated by an organization meeting the requirements of chapter 501(c) of the United States Internal Revenue Code, as amended.

Place of employment means any enclosed area under the control of a public or private employer and which employees normally frequent during the course of employment, including but not limited to, work areas, employee and employer offices, employee lounges, employee restrooms, conference rooms and employee cafeterias. A residence, including a home occupation, is not considered to be a place of employment.

Public conveyance means any mass transit vehicle or school bus.

Public place means any enclosed area to which the public is invited or in which the public is permitted, not including the offices or work areas not entered by the public in the normal course of business or use of the premises. A residence is not a public place.

Retail tobacco store means an establishment whose primary purpose is to offer for sale, and sell to consumers, tobacco and tobacco products and accessories.

Retail vaping store means an establishment whose primary purpose is to offer for sale, and sell to consumers e-cigarettes, vaping products and/or vaping accessories.

Service line means a line of persons formed for the securing of a service or product on a first-come first-served basis.

Smoking means the lighting, holding, carrying of, inhaling and exhaling of the smoke of a tobacco product, which definition includes, but is not limited to, the carrying or holding of a lighted pipe, cigar or cigarette of any kind or any other lighted smoking equipment or device.

Sports arena means an indoor or outdoor facility primarily used for sports, cultural or other similar events.

Tobacco product means the product derived from the dried leaves of any one of the various species of *Nicotiana*, including, but not limited to, the species *Nicotiana tabacum*, the broad leafed native American plant, which is utilized for smoking.

Vape or vaping means the act of inhaling and exhaling the vapor emitted by an e-cigarette.

Sec. 14-242. Prohibition.

(a) Except as provided in subsection 14-243(a), smoking and/or vaping is unlawful inside of and outside within five feet of any entrance or open window of the following places:

(1) Common areas, except as provided in subsection 14-243(a).

- (2) Elevators.
 - (3) Places of employment.
 - (4) Public conveyances.
 - (5) Public places.
 - (6) Public restrooms.
 - (7) Taxicabs.
 - (8) Service lines.
 - (9) Sports arenas.
- (b) No smoking and no vaping shall be designated by signs posted in conspicuous locations located at any entrance to and within all public places and places of employment. Such signs shall be visible to the public and clearly recite the phrase "No Smoking, No Vaping" and/or use the international no-smoking and no vaping symbols.

Sec. 14-243. Exemptions.

- (a) Smoking and vaping is lawful in the following places:
- (1) Retail tobacco stores and retail vaping stores, including any common areas.
 - (2) Smoking and/or vaping as a part of a theatrical production.
 - ~~(3) In bars, including common areas, which do not serve food and which serve alcoholic beverages pursuant to a wine and beer retailer's permit issued by the state alcoholic beverage commission.~~
 - ~~(4) Subject to compliance with section 14-244, in a designated smoking/vaping bar.~~
 - ~~(53)~~ Separate patient care and/or sleeping quarters of health care facilities and convalescence facilities which have been designated as a smoking/vaping room by the owner or operator, provided however that lobbies, hallways and other common or public areas shall remain no smoking and no vaping areas.
 - ~~(64)~~ Hotel and lodging rooms, provided however that hotel lobbies, hallways and other public areas shall remain no smoking and no vaping areas.
 - ~~(75)~~ Open outdoor concourse of a sports arena, which has been designated as a smoking/vaping area by the owner or operator.
 - ~~(86)~~ Nonprofit private clubs.
- (b) The owner or operator of all public places listed in subsection (a) of this section that have both no smoking/no vaping and areas where smoking/vaping is permitted shall post signs in conspicuous locations located at any entrance to and within such public places. Such signs shall be visible to the public and clearly recite the phrase "Smoking or Vaping in Designated Areas Only."
- (c) The owner or operator of all public places listed in subsection (a) of this section where the entire premises is or has been designated as a smoking/vaping area shall post signs in conspicuous locations located at any entrance to and within such public places. Such signs shall be visible to the public and clearly recite the phrase "Smoking and/or Vaping is Permitted Throughout the Premises."

~~Sec. 14-244. Requirements for designated smoking bars.~~

- ~~(a) In order to have a designated smoking/vaping bar, the owner or operator of a bar not included within subsection 14-243(a)(5) must have a valid permit issued therefor by the city pursuant to subsection (b) of this section and shall:~~

- ~~(1) Provide the designated smoking/vaping bar with exhaust and/or air purification systems that will provide a minimum of four air changes per hour for the entire designated smoking/vaping bar;~~
 - ~~(2) Properly maintain in accordance with manufacturer's recommendations the exhaust and air purification systems used in designated smoking/vaping bars and keep a log and receipts for all such maintenance, including filter replacement;~~
 - ~~(3) Allow city personnel to inspect such systems and maintenance logs at all reasonable times;~~
 - ~~(4) Provide signs conspicuously posted in the bar which state "Smoking/Vaping In This Area Only" or, if the entire premises has been designated a smoking bar, provide signs conspicuously posted at any entrances which state "Smoking/Vaping is Permitted Throughout the Premises"; and~~
 - ~~(5) Provide receptacles for the extinguishment of smoking materials located within all designated smoking/vaping bars.~~
- ~~(b) In order to maintain a designated smoking/vaping bar, the owner or operator of the premises must apply for and receive a permit issued by the city in compliance with the following:~~
- ~~(1) An application for the permit shall be submitted on forms provided by the city.~~
 - ~~(2) The fee for processing the application shall be as currently established or as hereafter adopted by resolution of the city council from time to time.~~
 - ~~(3) Prior to the permit being issued, the system as described in subsection (a)(1) of this section for the proposed designated smoking/vaping bar must successfully pass a test showing the system works properly.~~
 - ~~(4) If the system fails two successive tests, the applicant shall pay a re-testing fee as currently established or as hereafter adopted by resolution of the city council from time to time for each additional test.~~
- ~~(c) The owner or operator of a designated smoking/vaping bar shall be required to pass additional tests from time to time as determined by the city.~~
- ~~(d) Failure to pass a test shall result in the denial of the application for a permit, or the revocation of an existing permit to operate a designated smoking/vaping bar, and the bar shall be deemed to be nonsmoking and non-vaping until successfully tested or retested.~~
- ~~(e) Failure to maintain the exhaust and/or air purification systems so that said systems will not provide a minimum of four air changes per hour for the entire designated smoking/vaping bar shall result in the revocation of an existing permit to operate a designated smoking/vaping bar, and such bar shall be deemed to be nonsmoking and non-vaping until such time that it can be demonstrated that said systems are operating satisfactorily.~~

Sec. 14-2454. Unlawful.

A person commits an offense if he:

- (1) Knowingly, intentionally or by criminal negligence smokes or vapes in an area designated as prohibited under section 14-242;
- (2) Knowingly, intentionally or by criminal negligence fails to post any sign as required by this article;
- (3) Knowingly, intentionally or by criminal negligence fails to designate nonsmoking and non-vaping areas and smoking and vaping areas as required by this article;
- (4) Knowingly, intentionally or by criminal negligence designates or maintains a smoking/vaping area in violation of the requirements of this article; or
- (5) Knowingly, intentionally or by criminal negligence violates any other provision of this article.

Sec. 14-2465. Injunction.

In accordance with V.T.C.A., Local Government Code § 54.016, the city may obtain against the owner or owner's representative with control over the premises an injunction that:

- (1) Prohibits specific conduct that violates this article; and/or
- (2) Requires specific conduct that is necessary for compliance with this article.

II.

This Ordinance shall be effective on and after _____.

III.

A. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

B. The invalidity of any section or provision of this ordinance shall not invalidate other sections or provisions thereof.

C. The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this Ordinance and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

READ and **APPROVED** on first reading this the _____ day of _____, 2018.

READ, APPROVED and **ADOPTED** on second reading this the _____ day of _____, 2018.

CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:

SARA L. WHITE, City Clerk