

ORDINANCE NO. 24-H-07

**AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS
AMENDING SCHERTZ CODE OF ORDINANCES, CHAPTER 34 HEALTH, ARTICLE
IV – SMOKING IN PUBLIC PLACES.**

WHEREAS, the City staff of the City of Schertz (the “**City**”) recommended that the City Council approve the amended Code of Ordinances, Chapter 34 Health, Article IV to address proposed updates to smoking ordinance.

WHEREAS, the City staff has provided the amended Code of Ordinances, Chapter 34 attached hereto as Exhibit A.

WHEREAS, on May 7, 2024, the City Council conducted a public hearing and after consideration of the amendments to Chapter 34 Health has determined that the proposed amendments are appropriate and in the interest of the public safety, health, and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF SCHERTZ, TEXAS:**

Section 1. The current Code of Ordinances, Chapter 34 Health, Article IV is hereby amended as set out in Exhibit A attached hereto.

Section 2. Article VI – Illegal Smoking Materials of Chapter 34 of the current Code of Ordinances is deleted in its entirety.

Section 3. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

Section 4. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 5. This ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 6. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 7. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

Section 8. This ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

PASSED ON FIRST READING, the ____ day of _____ 2024.

PASSED APPROVED and ADOPTED ON SECOND READING, the ____ day of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

Exhibit "A"

Code of Ordinances

Chapter 34 Health

Article IV- Smoking in Public Places

Sec. 34-89. Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Bar means any commercial establishment that derives 51 percent or more of its annual gross sales receipts from the sale of alcoholic beverages as defined by the Texas Alcoholic Beverage Code and has a valid on-premises consumption license issued by the Texas Alcoholic Beverage Commission.

City facility means any building owned or operated by the City of Schertz.

Electronic smoking device means an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device; or a consumable liquid or other material aerosolized or vaporized during the use of an electronic cigarette or device. 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, and aerosol, liquid, or vapor used in such a device.

Employee means any person who is employed by an employer in consideration for monetary compensation or profit.

Employer means any person, partnership, corporation, association, or other entity that employs one or more persons.

Enclosed Area means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not it contains openings of any kind.

Place of employment means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a place of employment unless it is used as a child care, adult day care, or health care facility.

Public place means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to banks, bars, bingo facilities, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, recreational facilities, city facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

Recreational facilities means any public or private area open to the public for recreational purposes, including but not limited to, parks, swimming pools, athletic facilities, athletic fields, playgrounds, or other city owned or operated areas with athletic, play, recreational equipment, or trails.

Restaurant means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term restaurant includes the bar area within a restaurant.

Retail Tobacco Store/Electronic Vaping Store means a retail store used primarily for the sale of tobacco products, electronic smoking devices, and related accessories in which the sale of other non-tobacco products is incidental, and includes vape shops or other establishments that primarily sell electronic smoking devices.

Smoke or smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, including marijuana/cannabis, in any manner or in any form. Smoking includes the use of electronic smoking devices which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

Vaping means inhaling or exhaling vapors of electronic vaping liquid from an electronic vaping device.

(Ord. No. 01-H-24, § 7½-80, 11-20-2001; Ord. No. 11-M-06, § 1, 4-19-2011)

Sec. 34-90. Article not to excuse noncompliance with other measures.

Nothing in this article excuses noncompliance with any state or federal law, provisions of this Code, or any other applicable ordinance of the city, or any rule or regulation adopted pursuant thereto, which prohibits smoking.

(Ord. No. 01-H-24, § 7½-81, 11-20-2001; Ord. No. 11-M-06, § 1, 4-19-2011)

Sec. 34-91. Prohibition of smoking in public places, and other offenses.

A person commits an offense if he/she:

- (1) Knowingly smokes in an enclosed public place within the city, including but not limited to, the following places:
 - (a) Recreational facility;
 - (b) Lobbies, elevators, hallways, restrooms, reception areas, and other common areas;
 - (c) Restaurants and bars, except for outdoor seating areas designated as smoking;
- (2) The owner or operator of a public place commits an offense if the person fails to take necessary steps to prevent or stop another person from smoking in an enclosed area in a public place; or

(Ord. No. 01-H-24, § 7½-82, 11-20-2001; Ord. No. 07-H-32, I, 7-3-2007; Ord. No. 11-M-06, § 1, 4-19-2011)

Sec. 34-92. Prohibition of smoking in places of employment.

Each employer who operates a place of employment in the city shall:

- (1) Prohibit smoking in all enclosed areas within places of employment. This includes common work areas, auditoriums, conference and meeting rooms, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, reception areas, lobbies, restrooms and all other enclosed areas.

(Ord. No. 01-H-24, § 7½-85, 11-20-2001; Ord. No. 07-H-32, I, 7-3-2007; Ord. No. 11-M-06, § 1, 4-19-2011)

Sec. 34-93. Certain places exempt.

- (a) Smoking may be permitted in the following areas and if smoking is permitted the provisions of section 34-91 shall not apply:
 - (1) Retail Tobacco Store/Electronic Vaping Stores; provided, however, that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article; or
 - (2) Private residences (unless used as a child care, adult day care, or health care facility); or
 - (3) Hotel and motel rooms rented to guests and designated as a smoking room; or

- (4) Outdoor seating areas of restaurants, bars, or lounges if signs are posted at each entrance to such areas to inform potential patrons that the area allows smoking.
- (b) Notwithstanding any other provisions of this section, any owner, operator, manager, or other person who controls any public place described in this section may declare that entire public place or any portion of the public place as a nonsmoking area.

(Ord. No. 01-H-24, § 7½-84, 11-20-2001; Ord. No. 11-M-06, § 1, 4-19-2011)

Sec.34-94. Signs required in public places and place of employment.

(a) “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted at every entrance in a public place and place of employment where smoking is prohibited by this ordinance, by the owner, operator, manager, or other person in control.

(b) The operator of a public place or place of employment shall conspicuously post signs in areas where smoking is permitted under Sec. 34-93

(Ord. No. 01-H-24, § 7½-83, 11-20-2001; Ord. No. 11-M-06, § 1, 4-19-2011)

Sec. 34-95. Penalties.

Any person who violates any provision of this article shall be subject to a fine not exceeding two hundred dollars (\$200.00) for the first offense and shall be fined an amount not more than five hundred dollars (\$500) for each conviction after the first.

(Ord. No. 01-H-24, § 7½-87, 11-20-2001; Ord. No. 11-M-06, § 1, 4-19-2011)

Sec. 34-96. Inconsistent provisions.

All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this article are hereby repealed to the extent of such conflict, and the provisions of this article shall be and remain controlling as to the matters ordained herein.

(Ord. No. 01-H-24, § 3, 11-20-2001; Ord. No. 11-M-06, § 1, 4-19-2011)

Secs. 34-97, 34-98, 34-99. Reserved.