

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRYAN, TEXAS, AMENDING CHAPTER 50 “HEALTH AND SANITATION”, ARTICLE IV “NUISANCES”, DIVISION 3 “SMOKING” OF THE BRYAN CITY CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THE ORDINANCE IS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 14, 2019, the City of Bryan (“City”) City Council adopted Ordinance No. 2351 restricting smoking in public places, which was similar to, but not parallel to the existing City of College Station smoking ordinance; and

WHEREAS, on May 14, 2019, the City of Bryan City Council directed staff to bring the smoking ordinance back for review after the end of the 86th Session of the Texas Legislature to ensure it is compatible with any new State laws; and

WHEREAS, the City Council has determined that it is in the best interests of the health and safety of the citizens to amend the Smoking Ordinance as set forth herein.

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

1.

That Chapter 50, Article IV, Division 3 is amended as follows:

Sec. 50-147. - Definitions.

The following words, terms, and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bar shall mean an establishment dedicated predominately to the serving of alcohol rather than food.

Bar area shall mean an area physically separated from a food serving area dedicated predominately to the serving of alcohol rather than food.

Electronic cigarette shall mean any product containing or delivering nicotine, or a similar substance, for human consumption in a manner that simulates smoking, through the inhalation of vapor or aerosol. The term includes any such device, regardless of terminology or label, including but not limited to those marketed and sold as e-cigarettes, e-cigars, e-pipe, vape pen, vaping device, vaporizing device, etc.

Hookah or Cigar bar shall mean a bar with on-site sales or rentals of hookah devices, cigars, tobacco products, and smoking accessories for consumption or use on the premises.

Minor shall mean a person younger than 18-21 years of age, with specific exceptions as provided within the Texas Health and Safety Code relating to minors, cigarettes, e-cigarettes, and/or tobacco products.

Public meeting shall mean a meeting required to be open to the public under V.T.C.A., Government Code ch. 551.

Public place shall mean an enclosed, indoor area to which the public has access and includes, but is not limited to the following:

- (1) The common areas of a retail store, office, grocery store, or other commercial establishments;
- (2) A restaurant or cafeteria;
- (3) A public or private primary or secondary school;
- (4) A public or private institution of higher education;
- (5) A hospital or nursing home;
- (6) An elevator;
- (7) City and school buses;
- (8) City buildings, owned or leased by the city for city purposes;
- (9) An enclosed theater, auditorium, movie house, or arena;
- (10) A courtroom or jury waiting or deliberation room; or
- (11) A bar or bar area.

Smoke or smoking shall include:

- (1) Carrying or holding a lighted pipe, cigar, or cigarette of any kind or any other lighted smoking equipment or device, including an electronic cigarette;
- (2) Lighting a pipe, cigar, or cigarette of any kind or other smoking equipment or device, including an electronic cigarette; or
- (3) Emitting or exhaling the smoke or vapor of a pipe, cigar, or cigarette of any kind or any other smoking equipment or device, including an electronic cigarette.

Smoking related medical or scientific research shall mean the participation in a medical or scientific research study that has been sanctioned by an accredited university or medical institution.

Tobacco specialty shop shall mean any establishment predominately dedicated to the sale or rental of tobacco, tobacco-related products, and accessories for consumption or use on or off the premises and more than 60 percent of the gross revenue comes from same.

Workplace shall mean an enclosed area in which employees work or have access during the course of their employment.

Sec. 50-148. - Smoking prohibited in public places.

(a) A person commits an offense if the person smokes at a public meeting, in a public place, in a workplace, or in any other enclosed, indoor area in which "no smoking" signs are conspicuously posted by the person in charge.

(b) It is an exception to the application of subsection (a) of this section that the person is smoking:

- (1) As a participant in smoking related medical or scientific research;
- (2) As a participant in an authorized theatrical performance;
- (3) In a tobacco specialty shop;
- (4) In a Hookah or Cigar bar with a permit from the City;

- (5) During a bingo occasion in a bingo hall in operation as of May 14, 2019, to which entry by individuals of an age younger than ~~18-21~~ years of age has been prohibited at all times by means of a notice posted at all entrances to the premises by a bingo license holder; or
- (6) In a private event space, such as the Veterans of Foreign Wars or the American Legion, where entry is either restricted to members or to parties that have rented or reserved the space.

(c) A person commits an offense if they smoke within a 20-foot radius of the entryway of any workplace or public place.

Sec. 50-149. - Designation of smoking-areas.

(a) The person in charge may designate a smoking area that is outside a workplace or public place, provided that the smoking area is at least 20 feet away from the entrance, not including the door to the designated smoking area.

(b) It is not required that any smoking areas be designated.

Sec. 50-150. - Signs required.

(a) The person in charge of a workplace or public place shall place signs visible at each entrance of the building to notify persons entering that smoking is prohibited or that smoking is prohibited except in areas designated as smoking areas.

(b) The person in charge shall conspicuously post signs in areas designated as a smoking area that smoking is permitted in the area.

Sec. 50-151. - Facilities to extinguish smoking materials required.

All workplaces and public places shall be equipped for extinguishing smoking materials. Facilities for extinguishing smoking materials that are located in areas other than designated smoking areas shall be accompanied by clearly visible signs, stating "no smoking."

Sec. 50-152. - Owner/operator responsible.

A person commits an offense if he or she is the owner, operator, manager, or an employee of an establishment and he or she knowingly permits or fails to make a reasonable effort to prevent smoking on the premises of the establishment when smoking is prohibited by this Division.

Sec. 50-153 – 50-174. – ~~Electronic cigarettes~~Reserved.

~~(a) Possession and use of electronic cigarettes by minors.~~

~~(1) The possession, purchase, consumption, or use of electronic cigarettes by minors is prohibited.~~

~~(2) A minor is prohibited from misrepresenting his or her age for the purpose of acquiring or receiving electronic cigarettes.~~

~~(b) Solicitation or sale of electronic cigarettes to minors.~~

~~(1) No person or business shall sell, give, distribute, or otherwise transfer electronic cigarettes, or related products, to minors.~~

~~(2) No person or business shall sell, give, distribute, or otherwise transfer electronic cigarettes, or related products, to another person who apparently intends to deliver it to a minor.
(3) No person or business shall solicit or engage minors in the testing, product sampling, or other business related purpose involving the inhalation or other use of e-cigarettes, regardless of whether the minor is an employee, contractor, or volunteer.~~

~~Secs. 50-154 — 50-174. — Reserved.~~

2.

That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

3.

The Code of the City of Bryan, Texas, as amended, shall remain in full force and effect, save and except as amended by this Ordinance.

4.

Should any section, paragraph, sentence, clause, phrase, or word of this Ordinance be declared unconstitutional or invalid for any purpose by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby and to this end the provisions of this Ordinance are declared to be severable.

5.

It is hereby found and determined that the meeting at which this Ordinance was passed was open to the public, as required by Section 551.001 et seq., Texas Government Code, and that advance public notice of time, place, and purpose of said meeting was given.

6.

It is the intention of the City Council that this Ordinance shall become a part of the Code of the City of Bryan, Texas, and it may be renumbered and codified therein accordingly.

7.

This Ordinance shall take effect on September 1, 2019.

PASSED, ADOPTED, AND APPROVED the ____ day of _____, 2019, at a regular meeting of the City Council of the City of Bryan, Texas, by a vote of ____ yeses and ____ noes.

CITY OF BRYAN:

ATTEST:

Andrew Nelson, Mayor

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney