
ARTICLE VII. SMOKING¹

DIVISION 1. GENERALLY

Secs. 70-175—70-179. Reserved.

DIVISION 2. TOBACCO PRODUCTS

Sec. 70-180. Smokeless tobacco.

A person commits an offense if he uses or expectorates any smokeless tobacco product in any of the following indoor or enclosed areas: all buildings owned, operated or managed by the city in which public business is conducted or public activities occur whether or not the business or activity requires direct participation, observation, or no participation by the general public.

(Ord. No. 2010-07-024, § 2, 7-20-2010)

Sec. 70-181. Places where smoking is prohibited.

- (a) Smoking shall be prohibited in most public places and enclosed places of employment within the city, including, but not limited to, the following places:
- (1) Within any enclosed facility within all places of employment and/or within any enclosed area available to and customarily used by the general public in all businesses, including but not limited to, retail stores, offices, banks, laundry mats, warehouses, manufacturing facilities, leasing centers, food establishments and restaurants, including private club restaurants, and country clubs, except where specifically provided for in section 70-182(a), below;
 - (2) Hotels and motels, except as provided for in section 70-182(a)(8), below;
 - (3) Buses, bus terminals, taxicabs, airports and other facilities and means of public transit, as well as ticket, boarding, and waiting areas of public transit depots;
 - (4) Movie theaters, drama and recital theaters, lecture halls, galleries, libraries, museums, conference centers, meeting rooms, and outdoor amphitheaters;
 - (5) In or within 25 feet of sports stadiums, stadium seating, ticketing, queuing, and waiting areas, concession stands, and restrooms, whether public or private;
 - (6) In public parks, including but not limited to public recreation fields, pools, children's playground equipment, concession stands, and restrooms, except as provided for in section 70-182(a)(5), below;

¹Editor's note(s)—Ord. No. 2010-07-024, § 2, adopted July 20, 2010, amended the Code by, in effect, repealing former art. VII, §§ 70-180—70-185, and adding a new art. VII. Former art. VII pertained to similar subject matter, and derived from the Code of 1982, § 20-131; Ord. No. 1926, adopted December 17, 1991; and Ord. No. 2007-09-082, adopted September 4, 2007.

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- (7) Waiting rooms, hallways, wards, private and semiprivate rooms of physical and mental health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;
 - (8) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
 - (9) Elevators;
 - (10) Restrooms, lobbies, reception areas, hallways and any other common-use areas;
 - (11) Service lines and waiting queues, whether indoor or outdoor;
 - (12) Polling places;
 - (13) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city; and
 - (14) Within 25 feet of any door, operable window/vent or other opening to an indoor enclosed area.

(Ord. No. 2010-07-024, § 2, 7-20-2010)

Sec. 70-182. Places where smoking is not prohibited.

- (a) Notwithstanding any other provision of this Division 2 to the contrary, the following areas shall not be subject to the smoking restrictions of this Division 2:
 - (1) Private residences, including porch and yard areas, except when used as a child care, adult day care, health care facility, or home occupation;
 - (2) Personal automobiles;
 - (3) Outdoor places of employment, except where employees have to provide the public with service such as food or beverage service, within 25 feet of any door, operable window/vent or other opening to an indoor enclosed area, service lines and waiting queues, or as prohibited in section 70-181(a), above;
 - (4) Public sidewalks, except within 25 feet of any door, operable window/vent or other opening to an indoor enclosed area, service lines and waiting queues, or as prohibited in section 70-181(a), above;
 - (5) Parking lots within public parks, except within 25 feet of any door, operable window/vent or other opening to an indoor enclosed area, service lines and waiting queues, or as prohibited in section 70-181(a), above;
 - (6) Retail tobacco stores, where a retail store is utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. Separate ventilation and HVAC systems that prevent the commingling of air with other businesses, common areas, hallways and other non-smoking areas shall be required;
 - (7) Enclosed areas within ~~restaurants, private clubs, and country clubs that are not customarily used by or accessible to the general public~~ may be designated as a "Smoking Room" for the use of tobacco products, subject to the following definitions and requirements:
 - a. ~~For purposes of section 70-182, "private club" shall mean any club wherein:~~
 - i. ~~The membership is not open to the general public; and~~

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ii. ~~The club's land and improvements are owned or controlled by the members, where "controlled by" shall mean through a long term lease or other managing interest in real property such as may commonly be found in private country clubs or fraternal organizations.~~

b. ~~For purposes of section 70-175, "private club" shall not mean a private club restaurant as defined in the Zoning Ordinance of the City of McKinney or by Texas Alcoholic Beverage Commission.~~

c. Smoking R~~ooms~~ shall meet all of the following physical and operational standards:

- i. ~~Smoking rooms shall be required to post signs shall be posted at the each entrance to the Smoking R~~ooms~~ that state "Warning—Smoking Room, Members Only";~~
- ii. Smoking R~~ooms~~ shall be ~~required to provide physically separated from any non-smoking areas required to provide by~~ a foyer with ~~at least two (2) two doors , such that there is one (1) door on each terminus end of the foyer that prevent the commingling of air from the Smoking Room with any other part of the restaurant, private club, or country club separating the smoking and non-smoking areas;~~
- iii. Smoking rooms shall be required to provide ~~independent separate~~ ventilation and HVAC systems that ~~are separate from the ventilation and HVAC systems for any non-smoking areas to~~ prevent the commingling of air ~~from the Smoking Room~~ with any other part of the ~~restaurant, private club, or country club; and~~
- iv. Smoking rooms shall be ~~physically separated~~ from the ~~restaurant's, private club's, or country club's~~ banquet or dining areas, bar or lounge areas, employee areas, kitchens, retail and pro shop areas, locker rooms, restrooms, other common areas, hallways, and ~~all other non-smoking areas of the restaurant, private club, or country club; and~~
- v. ~~Smoking rooms shall not be operated with any restaurant's, private club's, or country club's food or beverage service except in a self-serve manner.~~

- (8) Not more than ten percent of hotel and motel rooms rented to guests shall be designated as smoking rooms. The following standards shall apply:
- a. All smoking rooms shall be on the same floor, shall be contiguous to the other smoking rooms and shall be configured and ventilated in a manner to restrict the smoke from these rooms from infiltrating into areas where smoking is prohibited under provisions of this division;
 - b. Separate ventilation and HVAC systems that prevent the commingling of air with other rooms, hallways and all other non-smoking areas shall be required; and
 - c. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

(Ord. No. 2010-07-024, § 2, 7-20-2010)

Sec. 70-183. Posting of signs.

- (a) The owner, manager or other person having control of such building or premise where smoking is prohibited by this division shall have a conspicuously posted sign clearly stating "No Smoking" at each entrance, whether for the public, employees or deliveries, and at restroom entrances.
- (b) Such "No Smoking" signs shall have bold lettering of not less than one inch in height. The international "No Smoking" symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).

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- (c) Any owner, manager, or other person having control of any establishment regulated by this division shall be responsible for posting appropriate signage.

(Ord. No. 2010-07-024, § 2, 7-20-2010)

Sec. 70-184. Enforcement.

- (a) Enforcement of this division shall be implemented by the city manager or his/her designee by issuance of a citation.
- (b) It is the duty of the owner, manager, operator or person-in-charge of any establishment regulated by this division:
 - (1) To post signs in accordance with section 70-183 of this division;
 - (2) To not provide ashtrays, matches, lighters or other smoking related paraphernalia in a regulated premise;
 - (3) To advise a person who violates this division that smoking is not allowed; and
 - (4) To request a person remove themselves from this location after that person has been advised that smoking is not allowed and that person willfully continues to smoke.

(Ord. No. 2010-07-024, § 2, 7-20-2010)

Sec. 70-185. Offenses and penalties.

- (a) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this division.
- (b) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this division to fail to comply with the following sections and subsections of this division:
 - (1) Section 70-184(b); and
 - (2) Sections 70-185(a) and 70-185(b).
- (c) Any person who violates any provision of this division shall be guilty of a misdemeanor infraction, punishable by a fine not to exceed \$500.00.
- (d) Every act in violation shall constitute a separate offense.
- (e) Unless otherwise specifically set forth herein allegation and evidence of culpable mental state are not required for the proof of an offense of this division.

(Ord. No. 2010-07-024, § 2, 7-20-2010)

Secs. 70-186—70-189. Reserved.

DIVISION 3. OTHER PROHIBITED SUBSTANCES

Sec. 70-190. Definitions.

Restricted smoking material shall mean any substance, however marketed, which can reasonably be converted for smoking purposes whether it is presented as incense, tobacco, herbs, spices or any blend thereof if it includes any of the following chemicals or a comparable chemical:

- (1) *Salvia divinorum* or salvinorin A; all parts of the plant presently classified botanically as *salvia divinorum*, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts;
- (2) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues;
- (3) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-211 or Dexanabinol);
- (4) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018);
- (5) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073); or
- (6) 1-pentyl-3-(4-methoxynaphthoyl)indole (also known as JWH-081).

Products containing some or all of the above substances are currently being marketed under the following commercial names:

"K-2", "K-2 SUMMIT", "K-2 SEX", "GENIE", "DASCENTS", "ZOHAI", "SAGE", "SPICE", "KO KNOCK-OUT 2", "SPICE GOLD", "SPICE DIAMOND", "YUCATAN FIRE", "SOLAR FLARE", "PEP SPICE", "FIRE N' ICE", AND "SALVIA DIVINORUM".

Any product containing any of the chemical compounds set forth above shall be subject to the provisions of this Ordinance, regardless of whether they are marketed under alternative names.

Restricted smoking material paraphernalia shall mean any paraphernalia, equipment or utensil that is used or intended to be used in ingesting or inhaling illegal smoking materials and may include:

- (1) A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
- (2) A water pipe;
- (3) A carburetion tube or device;
- (4) A smoking or carburetion mask;
- (5) A chamber pipe;
- (6) A carburetor pipe;
- (7) An electric pipe;
- (8) An air-driven pipe;
- (9) A chillum;
- (10) A bong; or
- (11) An ice pipe or chiller.

(Ord. No. 2010-07-024, § 2, 7-20-2010)

Sec. 70-191. Restricted smoking materials: purpose.

The purpose of this division is to prohibit the sale or delivery of restricted smoking materials as defined within the city limits of the city, and to prohibit the possession of restricted smoking materials within the city limits of the city. Any form of delivery to include a simple gift constitutes a violation of this division.

(Ord. No. 2010-07-024, § 2, 7-20-2010)

Sec. 70-192. Sale, delivery, offer, or gift.

It shall be unlawful for any person to sell, offer to sell, deliver to or to give any restricted smoking material to any person.

(Ord. No. 2010-07-024, § 2, 7-20-2010)

Sec. 70-193. Use or possession of restricted smoking material.

It shall be unlawful for any person to have in their possession or to use restricted smoking materials within the corporate limits of the city.

(Ord. No. 2010-07-024, § 2, 7-20-2010)

Sec. 70-194. Use or possession of restricted smoking paraphernalia.

It shall be unlawful for any person to have in their possession any restricted smoking paraphernalia with the intent to use it, to ingest, inhale or otherwise consume restricted smoking material. It is a violation of this section, if a person is found in possession of restricted smoking paraphernalia and appropriate forensic testing is done on the paraphernalia showing traces of restricted smoking material are present on the restricted smoking paraphernalia.

(Ord. No. 2010-07-024, § 2, 7-20-2010)

Sec. 70-195. Defenses to prosecution.

- (a) It shall be a defense to prosecution for a violation of this division if the use of the restricted smoking material is at the direction or under a prescription issued by a licensed physician or dentist authorized to prescribe controlled substances within the state.
- (b) It shall be a defense to prosecution under the terms of this division if an individual charged with a violation can provide proper and complete historic documentation that the use of such materials is a portion of a religious undertaking or activity of a religious denomination in which they have long standing historic membership supported by documentation from clergy or spiritual leader recognized by the state.

(Ord. No. 2010-07-024, § 2, 7-20-2010)

Sec. 70-196. Offenses and penalties.

- (a) Any person who violates any provision of this division shall be guilty of a misdemeanor infraction, punishable by a fine not to exceed \$500.00.

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- (b) Every act in violation of this division shall constitute a separate offense.
 - (c) Unless otherwise specifically set forth herein allegation and evidence of culpable mental state are not required for the proof of an offense of this division.

(Ord. No. 2010-07-024, § 2, 7-20-2010)