

ORDINANCE NUMBER 2012-1556

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BROWNSVILLE, REPEALING CHAPTER 54 ARTICLE VI, SMOKING IN PUBLIC PLACES SEC. 54-171 THRU 54-179 AND ENACTING ORDINANCE NUMBER 2012-1556 CHAPTER 54, ARTICLE VI SMOKING IN PUBLIC PLACES BY REPLACING NEW SECTION 54-171 THRU 54-188.

WHEREAS, the City of Brownsville, is repealing Chapter 54 ARTICLE VI, Smoking in Public Places Section 54-171 thru 54-179 and enacting Ordinance Number 2012-1556 under Chapter 54, Article VI Smoking in Public Places by adding Sections 54-171 thru 54-188; and

WHEREAS, the City of Brownsville, Texas has acted by and through its city commissioners to enact Article VI Smoking Public Places,

WHEREAS, the city commission now desires to act to further restrict the usage and public consumption of tobacco and tobacco related products in public places which function as food establishments; and

WHEREAS, in order to promote the health, safety, and general welfare of the community, and its orderly development, it is proposed that the said Ordinance be hereinafter set forth;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BROWNSVILLE:

That current Chapter 54 Article VI, Smoking in Public Places sections 54-171 thru 54-179 are hereby repealed and replaced with the following

Sec. 54-171. Definitions

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

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

B. "*Business*" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

C. “*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 his or her services for a non-profit entity.

D. “*Employer*” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

E. “*Enclosed Area*” means all space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

F. “*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, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, 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.

G. “*Place of Employment*” means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, 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.

H. “*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 affairs 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 the payment of federal income tax as a club under 26 U.S.C. Section 501.

I. “*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, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and 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 club is a “public place” when being used for a function to which the general public is invited. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.

J. “*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” shall include a bar area within the restaurant.

K. “*Service Line*” means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

L. “*Shopping Mall*” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

M. “*Smoking*” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe in any manner or in any form.

N. “*Sports Arena*” means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, 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.

Sec. 54-172. Application of Article to City-Owned Facilities

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of Brownsville, shall be subject to the provisions of this Article.

Sec. 54-173. Prohibition of Smoking in Enclosed Public Places

Smoking shall be prohibited in all enclosed public places within the City of Brownsville, including but not limited to, the following places:

A. Aquariums, galleries, libraries, and museums.

B. Areas available to and customarily used by 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.

C. Bars.

D. Bingo facilities.

E. Child care and adult day care facilities.

F. Convention facilities.

G. Educational facilities, both public and private.

H. Elevators.

I. Gaming facilities.

J. Health care facilities.

K. Hotels and motels.

L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

M. Polling places.

N. Private clubs when being used for a function to which the general public is invited.

O. Public transportation vehicles, including buses and taxicabs, under the authority of the City of Brownsville, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.

P. Restaurants.

Q. Restrooms, lobbies, reception areas, hallways, and other common-use areas.

R. Retail stores.

S. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City of Brownsville or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of Brownsville.

T. Service lines.

U. Shopping malls.

V. Sports arenas, including enclosed places in outdoor arenas.

W. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

X. Municipal City Buildings

Sec. 54-174. Prohibition of Smoking in Places of Employment

A. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting

rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Sec. 54-175. Prohibition of Smoking in Enclosed Residential Facilities

Smoking shall be prohibited in the following enclosed residential facilities:

A. All private and semi-private rooms in nursing homes.

B. At least 80% of hotel and motel rooms that are rented to guests.

Sec. 54-176. Prohibition of Smoking in Outdoor Areas

Smoking shall be prohibited in the following outdoor places:

A. Within a reasonable distance of 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

B. In outdoor seating or serving areas of restaurants and within 20 feet thereof.

C. In all outdoor arenas, public playgrounds, zoo, stadiums, and amphitheaters, except in designated smoking areas, which may be established only in perimeter areas at least 20 feet from any seating areas or concession stands. Smoking shall also be prohibited in, and within 20 feet of, bleachers and grandstands for use by spectators at sporting and other public events.

D. In all public transportation stations, platforms, and shelters under the authority of the City of Brownsville.

E. In all outdoor service lines.

F. In outdoor common areas of nursing homes, except in designated smoking areas, which must be located at least 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

G. In all indoor and outdoor Flea Markets.

Sec. 54-177. Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 54-173 and 54-174:

A. Private residences, except when used as a childcare, adult day care, or health care facility, and except as provided in Section 54-175.

B. Not more than twenty percent (20%) of hotel and motel rooms rented to guests and designated as smoking rooms. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

C. Private clubs that have no employees, except when being used for a function to which the general public is invited; provided that smoke from such clubs does not infiltrate into areas where smoking is prohibited under the provisions of this Article. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this Article.

D. Outdoor areas of places of employment except those covered by the provisions of Section 54-176.

Sec. 54-178. Declaration of Establishment as Nonsmoking

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 54-179(A) is posted.

Sec. 54-179. Posting of Signs

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 in every public place and place of employment where smoking is prohibited by this Article, both in the English and Spanish language, by the owner, operator, manager, or other person in control of that place.

B. Every public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. Every vehicle that constitutes a place of employment under this Article shall have at least one conspicuous sign, visible from the exterior of the vehicle, clearly stating that smoking is prohibited.

C. All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.

Sec. 54-180. Nonretaliation; Nonwaiver of Rights

A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 54-182, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed \$1000 for each violation.

B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 54-181. Enforcement

A. This Article shall be enforced by the City Manager or an authorized designee.

B. Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Brownsville.

C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the City Manager or an authorized designee.

D. The Health Department, Building Inspections Department, Fire Department, Police Department, Public Works Department Directors, or their designee(s) shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

E. An owner, manager, operator, or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.

F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.

G. In addition to the remedies provided by the provisions of this Section, the City Manager or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 54-182. Violations and Penalties

A. Any person violating any section of this article is subject to punishment as set forth in Chapter 1, General Provisions, Sec. 1-13 General Penalty, of the code of Ordinances of the City of Brownsville. Such person shall be deemed guilty of a separate offense for each and every day or portion thereof in which the violation is continued or permitted.

B. In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

C. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the City Manager or designee by restraining order, preliminary and permanent injunction, or

other means provided for by law, and the City of Brownsville may take action to recover the costs of the nuisance abatement.

D. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

E. Any, code compliance officer, code enforcement officer, health sanitation/food inspector, building inspector, planning/zoning compliance officer, environmental compliance officer, Fire Marshall and peace officer are authorized to issue citations for any violation under this article.

Sec. 54-183. Public Education

The City Manager or his designees shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Sec. 54-184. Governmental Agency Cooperation

The City Manager or his designees shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, City, and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Sec. 54-185. Other Applicable Laws

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 54-186. Liberal Construction

This Article shall be liberally construed so as to further its purposes.

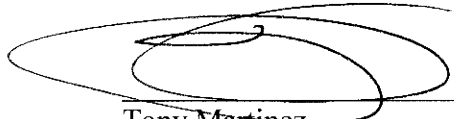
Sec. 54-187. Severability

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Sec. 54-188. Effective Date

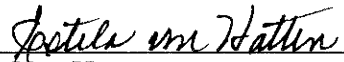
This Article shall be effective sixty (60) days from and after the date of its adoption.

Passed on FIRST READING this 3rd day of July, 2012, and passed on
SECOND AND FINAL reading this 4th day of December, 2012.



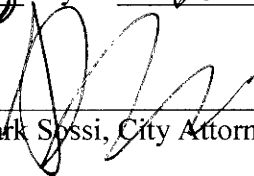
Tony Martinez,
Mayor

Attest:



Estela Von Hatten
City Secretary

Approved as to form and legality this the
5 day of Dec, 2012



Mark Sossi, City Attorney

