

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF COPPELL, TEXAS AMENDING THE CODE OF ORDINANCES BY REPEALING CHAPTER 9 ‘GENERAL REGULATIONS’, ARTICLE 9-14 ‘NO SMOKING ORDINANCE’ IN ITS ENTIRETY AND REPLACING IT WITH A NEW CHAPTER 9, ARTICLE 9-14, “NO SMOKING” BY ELIMINATING SMOKING IN PUBLIC AREAS; PROVIDING FOR PROHIBITION OF SMOKING IN ENCLOSED BUILDINGS, PLACES OF EMPLOYMENT; PROVIDING LIMITED AREAS OF SMOKING IN RESTAURANTS; PROVIDING FOR PROHIBITION OF SMOKING IN CERTAIN OUTDOOR AREAS; PROVIDING AN EXEMPTION; PROVIDING FOR POSTING OF SIGNS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES OR PERSONS SMOKING NOT TO EXCEED \$500.00; PROVIDING FOR PENALTIES FOR BUSINESS OR ESTABLISHMENTS NOT TO EXCEED \$2,000.00; BY PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING A PENALTY FOR VIOLATION OF THIS ORDINANCE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Coppel does hereby find that secondhand smoke exposure causes disease and premature death in children and adults who do not smoke, and children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children;

WHEREAS, exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer;

WHEREAS, there is no risk-free level of exposure to secondhand smoke; and

WHEREAS, establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services.)

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF COPPELL, DALLAS COUNTY, TEXAS, THAT:

SECTION 1. The Coppel Code of Ordinances, Chapter 9, “General Regulations”, Article 9-14 “No Smoking Ordinance” is hereby repealed in its entirety and replaced with new Article 9-14, “No Smoking”, which shall hereinafter read as follows:

Chapter 9

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ARTICLE 9-14 “NO SMOKING

Section 9-14-1 - Purpose

The purpose of this chapter is to improve and protect the public’s health by eliminating smoking in public areas, and to guarantee the right of non-smokers to breathe smoke free air.

Section 9-14-2 - 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:

“*Administrative*” area means the area of an establishment not generally accessible to the public, including but not limited to individual offices, stockrooms, employee lounges, or meeting rooms.

“*Bar*” means establishment licensed by the State which has more than fifty-one percent (51%) of its annual gross sales from alcoholic beverages for on premises consumption. Calculation of gross sales shall be made from combined sale of food and beverages. Restaurants that contain a bar are not considered a “bar” for that purpose of this chapter.

“*City*” means the City of Coppel, Texas.

“*Director*” means the director of the department designated by the city manager to enforce and administer this article, or the director's designated representative.

“*Electronic Cigarette*” (E-cigarette) means any electronic or battery operated device that is designed to deliver nicotine or other chemicals or substances by creating a vapor or mist that is deliverable to the user through inhalation in the simulation of

smoking. This term shall include every version and type of such devices whether they are manufactured or marketed as electronic cigarettes, e-cigarettes, electronic cigars, e-cigars, electronic pipes, e-pipes, or under any other product name or description.

“Employee” means any person who works for hire, including an independent contractor and any person who is working as a volunteer for a nonprofit entity.

“Employer” means any person (partnership, corporation, association or other entity) employing one or more employees.

“Enclosed” means an area that: (A) is closed-in by an overhead roof or other covering of any material, whether permanent or temporary; and (B) has 40 percent or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary

“Food Establishment” means an operation that stores, prepares, manufactures packages, serves, vends, or otherwise provides food for human consumption such as restaurants, mobile vendors, and concession stands.

“Health Care Facility” means any facility that provides health care, medical, surgical, psychological, psychiatric or personal care services including, but not limited to adult day-care facilities, assisted living facilities, community mental health centers, end stage renal disease facility, hospitals, nursing homes or special care facilities or special hospitals.

“Patio” means an improved and defined unenclosed outside area associated with a food service establishment or bar used for purposes of dining or entertainment, provided that walkways are not to be considered patios; and further provided such establishment has a defined entrance at least ten feet from the designated smoking area.

“Place of Employment” means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. An enclosed room with only one occupant is not considered place of employment and a private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility

“Physical Barrier” means a barrier that will form an effective membrane continuous from outside wall to outside wall, from a smoke barrier to a smoke barrier, from floor to floor, or roof above, or combination thereof, including continuity through all concealed spaces, such as above suspended ceiling, interstitial structural and mechanical spaces. Transfer grilles, louvers and similar openings shall not be used in these partitions. Self-closing, tight fitting doors are permitted in such barriers.

“Private Club” means an association of persons as members, whether incorporated or unincorporated under the laws of the state, for the promotion of some common object, and organized by a board of representatives, including but not limited to a fraternal organization, private social or dinner club. When used to describe a facility in this Chapter, Private club shall mean any enclosed area to which the public is not invited or in which the public is not permitted which is owned, leased or rented

by the Private club for its members and their guests. A privately-owned business, open to the public, is not a Private club.

"Private Function" means the rental of a ballroom, private club, or other facility for the sole purpose of entertaining, private parties, events or other social functions other than a city facility that the general public is not able to attend.

"Public place or common area" means any enclosed area to which the public is invited, permitted, or has access within any business, building, structure, or any other place of public accommodation, restaurant, retail or service establishment, including but not limited to, banks; educational facilities; health facilities; laundromats; public transportation facilities; reception areas; production and marketing establishments; retail service establishments; retail stores; theaters and waiting rooms. A public place does not include a private club as defined above.

"Retail and Service establishment" means any establishment that sells goods or services to the general public.

"Retail Tobacco Store" means a retail store which derives 70 percent or more of its gross revenue from the sale of tobacco products and accessories.

"Second-Hand Smoke" means ambient smoke resulting from the act of smoking.

"Service line" means any indoor or outdoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

"Smoke" or "smoking" means burning, inhaling or exhaling the fumes of any organic or synthetic material, including but not limited to plants, herbs, cigars, cigarette, pipe tobacco, tobacco or flavored tobacco, or possessing any product, device, or equipment producing smoke or vapors intended to be inhaled or exhaled.

"Smoke-free "entrance zone" means that area within 25 feet of any door, operable window/vent or other opening to a public building, place of employment or where smoking is prohibited

"Smoking Lounge" means a business establishment that is dedicated, in whole or part, to the selling or smoking of tobacco products, electronic cigarettes, or other substances, including but not limited to establishments known variously as cigar lounge, hookah lounge, or tobacco bars.

"Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

"Tobacco Product" means any tobacco, cigarette, cigar, pipe tobacco, water pipe, flavored tobacco, smokeless tobacco, snuff or any other form of tobacco, or any substance contained a detectable amount of nicotine which may be utilized for smoking, chewing, inhalation or other manner of ingestion or absorption.

Section 9-14-3 - Smoking prohibited in certain areas.

It shall be unlawful within the City of Coppell, except as otherwise permitted in this article, for any person to smoke in the following places:

- A. Health care facilities, elevators, restrooms, lobbies, hallways, and other common areas of any building, structure or business, apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple unit residential facilities.
- B. Any area of any building or grounds owned, operated or managed by the city, including, but not limited to parks, trails, farmers market, municipal swimming pools, recreation centers, senior center, criminal justice center, fire stations, police, utility location and fire training centers, municipal service center, city-owned theaters, city owned library, cultural facilities, and any seating area of an athletic facility (including an indoor or outdoor athletic facility).
- C. Every room, common area, chamber, place of meeting or public assembly, within any public or private buildings.
- D. Any retail business or establishment serving the general public, including, but not limited to, any department store, grocery store, or drug store, or shopping mall, retail store of any kind.
- E. Enclosed office or other facilities within place of employment to which the general public does not have access.
- F. Service line in a public or common area, regardless of whether the line is indoors or outdoors.
- G. Any area temporarily designated as nonsmoking by order of the city officials or by the owner or person in control of the facility.
- H. Any facility of a public primary or secondary school; or an enclosed theater, movie house, museum, or transit system vehicle.
- I. All areas available to and customarily used by the general public in all businesses, including, but not limited to, attorneys' offices and other offices, banks, laundromats and country clubs.
- J. Sport Arenas and Convention halls, including bowling and billiard facilities.
- K. Within 25 feet of any door, operable window/vent or other public access or any place where smoking is prohibited.

9-14-4- Smoking is not prohibited in the following areas.

Smoking is permitted and not otherwise unlawful in the following places:

- A. Private residences, including porch and yard areas, except when the residence is used as child care, adult day care, or health care facility.
- B. Personal automobiles.

- C. Outdoor places of employment except within 25 feet of any door, operable window/vent or other opening to an enclosed area to which the public has access.
- D. Parking lots within public parks, except within 25 feet of any door, operable window/vent or other opening to an indoor enclosed area or service line.
- E. Public sidewalks, except within 25 feet of any door, operable window/vent or other opening public building, place of employment or place where smoke is prohibited.
- F. Private clubs as defined in the above section.
- G. Hotel or motel rooms rented to guests if permitted by the hotel or motel. Not more than ten percent of hotel or motel rooms rented to guests and designated as rooms where smoking is allowed. All rooms where smoking is allowed must be on the same floor, contiguous, and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provision of this article.
- H. A bar as defined herein provided such establishment: (i) conspicuously posts a sign stating "This Is A Smoking Establishment" at all entrances to the establishment and in which the establishment has separate ventilation; (ii) and provides the city health authority, at the end of each calendar quarter, with a written report of the establishment's gross revenue of all food items and its gross revenue from the sale of alcoholic beverages; and (iii) provides an air filtration system that prevents the commingling of air with other businesses, common areas, hallways and other nonsmoking areas. For purposes of this section gross revenue shall be calculated using the normal selling price of all food items and all alcoholic beverages served in the establishment and shall reflect the price normally charged for such items in the particular establishment for which the establishment for which the gross revenue figure is calculated, whether such item is actually sold at normal selling price, below normal entrance fee or other consideration paid. Reduced prices charged during promotions, happy hours and other occasions when drinks are sold at reduced prices or served at no charge, shall not be considered "normal selling price" for calculation of the gross revenue.
- I. Smoking lounge that derives 70 percent or more of the establishment's gross revenue on a quarterly (three month basis) from the sale of tobacco products provided the establishment: (i) conspicuously posts a sign stating "This Is A Smoking Establishment" at all entrances to the establishment and in which the establishment has separate ventilation; (ii) and provides the city health authority, at the end of each calendar quarter, with a written report of the establishment's gross revenue of all food items and its gross revenue from the sale of alcoholic beverages; and (iii) provides an air filtration system that prevents the commingling of air with other businesses, common areas, hallways and other nonsmoking areas. For purposes of this section gross revenue shall be calculated using the normal selling price of all food items and all alcoholic beverages served in the establishment and shall reflect the price normally charged for such items in the particular establishment for which the establishment for which the gross revenue figure is calculated, whether such item is actually sold at normal selling price, below normal entrance fee or other consideration paid. Reduced prices charged

during promotions, happy hours and other occasions when drinks are sold at reduced prices or served at no charge, shall not be considered "normal selling price" for calculation of the gross revenue.

Section 9-14-5 - Smoking in food establishments.

- A. Smoking is permitted in a food establishment in designated indoor or enclosed dining areas, provided that the areas where smoking is permitted complies with the provision of this subsection.
- B. A designated smoking area must:
 - 1. Be separated from the non-smoking area by physical barrier which prohibits the smoke from leaving the smoking area.
 - 2. Provides an air filtration system that prevents the commingling of air with other businesses, common areas, hallways and other nonsmoking areas.
 - 3. All air filtration or ventilation systems in the designated smoking area shall provide a total air exchange every 15 minutes and shall exhaust that air to the exterior of the building
 - 4. A sign shall be posted on the premises in a conspicuous place to advise the public that smoking is permitted in the designated smoking area.
 - 5. Designated smoking areas shall not include restrooms, service lines, waiting areas, public telephone areas, and other areas commonly used by all patrons, including access thereto.

Section 9-14-6 - Duties of the owner, operator, or other person in charge.

- A. An owner operator or other person in control of any of the areas in section 9-14-3 shall prohibit smoking in nonsmoking areas.
- B. An owner, operator or other person in control of any of the areas in 9-14-4 shall provide adequate, receptacles for proper disposal of combustible material in smoking areas or at least 25 feet from entrances and exits.

Section 9-14-7 - Posting of signs

- A. The owner, manager or other person having control of such building or premises where smoking is prohibited by this article, may have a conspicuously posted sign clearly stating "Enjoy Our Smoking Free Environment" at each entrance, whether for the public, employees or deliveries, and at restroom entrances.
- B. "Enjoy Our Smoking Free Environment" and "This is a Smoking Establishment" 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).
- C. Any owner, manager, or other person having control of any establishment regulated by this article shall be responsible for posting appropriate signage.

Section 9-14-8 - Enforcement

- A. Enforcement of this article shall be enforced by the health department or other official as designated by the city manager by issuance of a municipal court citation.
- B. Any person may register a complaint under this article to initiate enforcement by the Environmental health department.
- C. It is the duty of the owner, manager, operator or person in charge of any establishment regulated by this article
 - 1. To post signs in accordance with this ordinance
 - 2. To not provide ashtrays, matches, lighters or other smoking related paraphernalia in a premise where smoking is prohibited;
 - 3. To advise a person who violates this article 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.

Section 9-14-9 -Offenses and penalties.

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply this ordinance.
- B. Any person who violates any provision of Sections 9-14-3 shall be guilty of a misdemeanor punishable by a fine not to exceed \$500.00.
- C. Any person, firm, corporation, partnership or business entity who violates any provision of Section 9-14-5 through 9-14-7 shall be guilty of a misdemeanor punishable by a fine not to exceed \$2000.00.
- D. Each day on which a violation of this article occurs shall be a separate and distinct violation.”

SECTION 2. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 3. That all provisions of the ordinances of the City of Coppel, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. That an offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 5. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances, as amended, and upon conviction in the municipal court shall be punished by a fine not to exceed the sum of as set forth herein for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 6. This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

DULY PASSED by the City Council of the City of Coppell, Texas, this the _____ day of _____, 2016.

CITY OF COPPELL, TEXAS

Karen Selbo Hunt, Mayor

ATTEST:

Christel Pettinos, City Secretary

APPROVED AS TO FORM:

ROBERT E. HAGER, City Attorney