

CITY OF WATAUGA, TEXAS
ORDINANCE NO. 1700-A

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF WATAUGA, TEXAS ADOPTING CHAPTER 26, ARTICLE VII OF THE CODE OF ORDINANCES FOR THE CITY OF WATAUGA, TEXAS, ESTABLISHING THE CITY OF WATAUGA SMOKING ORDINANCE; PROVIDING THAT ALL ORDINANCES IN CONFLICT HERewith ARE HEREBY REPEALED TO THE EXTENT THEY ARE IN CONFLICT; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Watauga, Texas (“City”) recognizes that the addition of Chapter 26, Article VII (“Smoking Ordinance”) of the Code of Ordinances is required to better enforce the prohibition of smoking within City facilities and public places. Article VII provides definitions, prohibits smoking in certain public areas and City facilities, provides exceptions to the prohibitions, and creates a violation and penalty for failure to abide by the Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Watauga, Texas as follows:

I.

Chapter 26, Article VII of the Code of Ordinances for the City of Watauga, Texas shall be adopted to read as follows:

ARTICLE VII. SMOKING ORDINANCE

Sec. 26-314. – Definitions.

As used in this Article, the following words, terms and phrases shall have the following meanings, except where the context clearly indicates a different meaning:

Bar means an establishment licensed by the state which has more than 50% (fifty percent) of its annual gross sales from alcoholic beverages for consumption by guests on the premises. Calculation of gross sales shall be made from the combined sales of food and beverages. Restaurants that contain a bar are not considered a “Bar” for purposes of this Article.

Consumer means a person who possesses cigarettes for personal consumption.

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

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

Fraternal organization means a brotherhood or a type of social organization whose members freely associate for a mutually beneficial purpose such as for social, professional or honorary principles.

Minor means a person under the age of 18 (eighteen) years of age.

No-smoking sign means a sign stating “Non-Smoking Area” or “Smoking Prohibited in this Building (Area)” or bearing other appropriate words and displaying the universal no-smoking symbol.

Person means an individual, firm, partnership, association, corporation, partnership, wholesaler, retailer or any licensed or unlicensed business or any other legal entity.

Place of employment means any enclosed area under the control of an employer including, but not limited to, work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias and hallways. A private residence shall not be considered a place of employment.

Possession means to have on or about the person or otherwise exercise actual care, custody, management or control over a tangible object or substance.

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 club or dinner club. Private club described as a facility in this Chapter 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.

Public area means any area to which the general public routinely has access, which would not include areas which have been contracted for use by a private group.

Public building means any building other than a building used as a private residence. If portions of a building are used as a private residence and another portion of the building

is used for business purposes or commercial activities, then “public building” as used herein shall apply to the portions of the building used for business purposes or commercial purposes, but not the portion used solely as a residence. The term “public building” includes, but is not limited to, restaurants, offices and other workplaces, warehouses, health care facilities, and elevators, and enclosed common areas of multifamily developments. For purposes of this definition, it does not include a private area not accessible to the public.

Public transportation means Uber, Lyft, buses, taxis, van services, or any transportation to which the general public has access.

Restaurant means any place where food or drink is manufactured, packaged, produced, processed, transported, stored, sold, commercially prepared, or furnished for human consumption. The term includes but is not limited to a coffee shop, cafeteria, sandwich shop, and any other eating establishment that gives or offers food to the public, guests or employees, including catering facilities and mobile food vendors. This term does not apply to private homes where food is prepared and served for guests and individual family consumption. The term shall not include a cocktail lounge or tavern if said establishment is a “bar” as defined in this Article.

Retail and service establishment means any establishment which sells goods or services to the general public.

Retailer means a person who engages in the practice of selling tobacco products to consumers and/or includes the owner of a coin-operated tobacco product vending machine.

Retail sale means a transfer of possession from a retailer to a consumer in connection with a purchase, sale, or exchange for value of tobacco products.

Service line or queue means any line in 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 includes the carrying or holding of a lighted pipe, cigar, or cigarette of any kind, or any other lighted smoking equipment or device, and the lighting of, emitting, or exhaling the smoke of a pipe, cigar, or cigarette of any kind.

Theater means a building or designated area in which live performances are presented to an audience.

Tobacco product means any tobacco, cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco, which may be utilized for smoking, chewing, inhalation, or other manner of ingestion or absorption.

Sec. 26-315. – Smoking Prohibited in Certain Areas.

- (a) It shall be unlawful for any person to perform the following acts in any public transportation, public building, public or enclosed workplace in the City or within 50 (fifty) feet of any public entrance or exit to any public building or enclosed workplace:
- (1) Smoke,
 - (2) Carry a lighted tobacco product or
 - (3) Light a tobacco product.
- (b) It shall be unlawful for any owner of any public building to allow the operation of the establishment unless one or more of the following signs have been posted at a location clearly visible to a person entering the establishment:
- (1) A “No Smoking” sign, or
 - (2) The international “No Smoking” symbol (depiction of a burning cigarette enclosed in a red circle with a red bar across it).
- (c) It shall be unlawful for any owner or operator of any public building or enclosed workplace to place or allow to be placed any of the following items in any public building or enclosed workplace or within 50 (fifty) feet from an entrance or exit to any public building or enclosed workplace:
- (1) Ashtrays,
 - (2) Smoking paraphernalia or
 - (3) Signs that indicate that smoking is permitted.
- (d) It shall be unlawful for the owner or operator of any public building or enclosed workplace to allow smoking in any public building or enclosed workplace or within 50 (fifty) feet of a public entrance or exit to any such public building or enclosed workplace.
- (e) It shall be unlawful for the owner of any restaurant to allow smoking in any location where food is prepared or served.
- (f) It shall be unlawful for the owner of any bar to allow smoking in any location where food is prepared.
- (g) The following are excepted from the prohibitions of this Section:
- (1) An owner or operator may allow smoking in a designated outdoor public patio area of a restaurant located more than 50 (fifty) feet from the main public entrance or exit. The smoking portion of the patio area shall not be more than 25% (twenty-five percent) of the overall patio area.
 - (2) A private or semi-private room in a nursing home or long-term health care facility that is occupied by persons who smoke and have requested in writing to be placed in rooms where smoking is permitted, provided the HVAC system

does not allow the transfer of smoke fumes or vapors to non-smoking rooms or areas.

- (3) A retail or service establishment which derives at least 60% (sixty percent) of its income from the sale of tobacco, tobacco products or smoking implements; the establishment has a primary public entrance and restroom facilities not connected with any other businesses; and it is posted that no one under the age of 18 (eighteen) years is allowed to be admitted.
- (4) A bar, as defined in Section 26-314 of the Code of Ordinances.
- (5) A fraternal organization or private club not serving the general public.
- (6) A private, rented guest room in a hotel or motel that has been designated as a smoking room by the owner or operator of the hotel or motel, as long as no more than 20% (twenty percent) of the rooms are designated smoking and all smoking rooms are located on the same floor and provided the HVAC system does not allow the transfer of smoke fumes or vapors to non-smoking rooms or areas.
- (7) Any facility which is primarily used for exhibiting any stage, drama, lecture, musical recital or other similar performance, when smoking is part of a stage production and not within the seating area of the general public.

Sec. 26-316. – Tobacco use in City-owned buildings, properties and parks.

- (a) *Prohibited; exception.* It shall hereafter be unlawful for any person to smoke tobacco, chew tobacco or dip tobacco or snuff within the confines of any City-owned building, property, City-owned park or trail maintained by the City, except for buildings or locations designated as a smoking area.
- (b) *Notice.* Notice of this Section shall be given by posting written “THIS FACILITY IS TOBACCO FREE” signs at or near the main entrance of each building. Each letter in the sign shall be at least 1.5 inches in height. Notice of this Section shall be given on all rules and regulations signs located in all parks.

Sec. 26-317. – Violation and Penalty

A person who violates this Article shall be guilty of a class C misdemeanor and on conviction may be punished by a fine in accordance with the general penalty provision found in Section 1-7 of this Code. Each day that the violation continues shall constitute a separate offense.

II.

This Ordinance shall be and is hereby cumulative of all other ordinances of the City of Watauga, Texas, and this Ordinance shall not operate to repeal or affect any of such other ordinances, except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, in such other ordinance(s) are hereby repealed.

III.

If any section, sub-section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

IV.

This Ordinance shall become effective and be in full force and effect from and after the date of passage and adoption by the City Council and upon approval thereof by the Mayor of the City of Watauga, Texas and publication hereof as prescribed by law.

PASSED AND ADOPTED by the City Council of the City of Watauga, Texas, on the 13th day of May, 2019.

APPROVED:

/s/ Arthur L. Miner
ARTHUR L. MINER, MAYOR

ATTEST:

/s/ Terri Johnson
TERRI JOHNSON, INTERIM CITY SECRETARY