

ORDINANCE NO. 014878
AN ORDINANCE AMENDING CHAPTER 9.50 (SMOKING IN PUBLIC PLACES), BY
ADOPTING A COMPREHENSIVE REVISION OF CHAPTER 9.50 (PUBLIC AND
WORKPLACE SMOKING RESTRICTIONS)

WHEREAS, numerous studies have determined that environmental tobacco smoke (ETS) is a significant source of exposure to toxic air indoor contaminants, causally associated with respiratory illnesses, including lung cancer, asthma and emphysema; and

WHEREAS, there is scientific research linking ETS with heart disease, responsible for an estimated 62,000 coronary heart disease deaths annually in the United States due to ETS exposure. ETS carcinogens and poisons have been identified in the body fluids of non-smokers with special risk posed to children, the elderly, food service employees and individuals with cardiovascular disease and/or impaired respiratory function, including asthmatics and those with obstructive airway disease; and

WHEREAS, ETS exposure has also been causally associated with developmental, respiratory, carcinogenic and cardiovascular effects, including fatal outcomes such as sudden infant death syndrome; and

WHEREAS, Tobacco use is the single largest cause of preventable death in Texas, accounting for an estimated 26,427 deaths in Texas in 1995; each year killing more Texans than alcohol, AIDS, heroin, auto accidents, suicides, handguns, murders and fires combined (20% of all deaths in Texas); and

WHEREAS, the simple separation of smokers from nonsmokers within the same airspace does not eliminate the exposure of nonsmokers to ETS, given that no safe level of exposure to carcinogens has been found; and

WHEREAS, accordingly, the City Council recognizes that ETS poses a serious public health hazard, that nonsmokers need protection from ETS exposure and that therefore, regulation by the City Council of the burning of tobacco in public places and places of employment is imperative in order to protect the public health and welfare of the citizens of the City of El Paso;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO,

1. That Chapter 9.50 of the El Paso Municipal Code be amended in its entirety and is superseded by the following new Chapter 9.50 (Public and Workplace Smoking Restrictions) which shall read as follows:

Chapter 9.50

PUBLIC AND WORKPLACE SMOKING RESTRICTIONS

Sections:

Article I. General Provisions

Sec. 9.50.010 Purpose

Sec. 9.50.020 Definitions

Article II. Prohibition of Smoking

Sec. 9.50.030 Prohibition of Smoking in Public Places

Sec. 9.50.040 Prohibition in Places of Employment

Sec. 9.50.050 Additional Declaration of Non-smoking Establishments

Sec. 9.50.060 Reserved

Sec. 9.50.070 Application of Article to City Owned Facilities

Article III. Where Smoking Is Not Regulated

Sec. 9.50.080 Private and Public Places

Article IV. Signs

Sec. 9.50.090 Posting of Signs

Article VI. Public Health Education

Sec. 9.50.100 City-County Health and Environmental District Program

Article VII. Enforcement, Violations and Penalties

Sec. 9.50.110 Enforcement

Sec. 9.50.120 Non-retaliation

Sec. 9.50.130 Violations and Penalties

Sec. 9.50.140 Other Applicable Laws

Sec. 9.50.150 Severability

Sec. 9.50.160 Effective Date

Article I. General Provisions

Sec. 9.50.010 Purpose

The purpose of this chapter is to (1) improve and protect the public's health by eliminating smoking in public places and places of employment; (2) guarantee the right of nonsmokers to breathe smoke-free air; and, (3) recognize that the need to breathe smoke-free air shall have priority over the choice to smoke.

Sec. 9.50.020 Definitions

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

- A. **"Bar"** means an area which 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 such beverages. A "bar" includes those facilities located within a hotel, motel or other similar transient occupancy establishment.
- B. **"Business"** means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
- C. **"Employee"** means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any persons who volunteers his or her services for a non-profit entity.
- D. **"Employer"** means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.
- E. **"Enclosed Area"** means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.
- F. **"Food Establishment"** means food product or food service establishments.
- G. **"Place of Employment"** means any enclosed area under the control of 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. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility.

6. All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including but not limited to, attorneys' offices and other offices, banks, laundromats, hotels and motels.
7. Food Establishments, nightclubs and bars.
8. Galleries, libraries, museums and zoo facilities and grounds.
9. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except that performers may smoke when the smoking is part of a stage production.
10. Sports arenas and convention halls, including bowling facilities.
11. 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 of El Paso 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 of El Paso.
12. Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but no limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
13. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
14. Polling places.
15. Bingo games.

Sec. 9.50.040 Prohibition of Smoking in Places of Employment

- A. It shall be the responsibility of employers to provide a smoke-free workplace for all employees.
- B. Each employer having any enclosed place of employment located within the City of El Paso shall adopt, implement, make known and maintain a written smoking policy, which shall contain the following requirements.

Smoking shall be prohibited in all enclosed facilities within a place 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.

- C. The smoking policy shall be communicated to all employees within four (4) weeks of its adoption.
- D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

Sec. 9.50.050 Additional Declaration of Non-smoking Establishment

Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a non smoking establishment.

Sec. 9.50.060 Reserved

Sec. 9.50.070 Application of Article to City-Owned Facilities

All enclosed facilities owned by the City of El Paso shall be non-smoking at all times notwithstanding other provisions of this article.

Article III. Where Smoking Is Not Regulated

Section 9.50.080 Private and Public Places

- A. Notwithstanding any other provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:
 - 1. Private residences, except when used as a child care, adult day care or health care facility.
 - 2. No more than twenty-five percent (25%) of hotel and motel rooms rented to guests.
 - 3. Retail tobacco stores in stand alone physical facilities.
 - 4. Restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while places are being used for private functions except while contracted food or beverage service functions are taking place (including set-up, service and clean-up activities or when the room is used for exhibit activities).

5. Outdoor places of employment except those covered in Sec. 9.50.050.

Article V. Signs

Sec. 9.50.090 Posting of Signs

- A. The owner, manager or other person having control of such building or other area where smoking is prohibited by this article shall have a conspicuously posted sign clearly stating that smoking is prohibited at each entrance and within the building or other areas where smoking is prohibited.
- B. Such "No Smoking" signs shall have bold lettering of not less than 1 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. All ashtrays and other smoking paraphernalia shall be limited in facilities to that required for the enforcement of extinguishing of smoking materials in public places.

Article VI. Public Health Education

Sec. 9.50.100. City-County Health and Environmental District Program

The City-County Health and Environmental District shall promote the purposes and requirements of this ordinance to the public affected by it, and to guide owners, operators and managers in their compliance with it. Such promotion may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Article VII. Enforcement, Violations and Penalties

Sec. 9.50.110 Enforcement

- A. Enforcement of this article shall be implemented by the El Paso City-County Health and Environmental District, Building Services, Fire and law enforcement agencies.
- B. Notice of the provisions set forth in this article shall be given to all applicants for a business license in the City of El Paso.
- C. Any person may register a complaint under this chapter to initiate enforcement with the El Paso City-County Health and Environmental District.
- D. The Health District, Building Services or the Fire Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this ordinance.

- E. Any owner, manager, operator or employee of any establishment regulated by this article shall be responsible for informing persons violating this article of the provisions through appropriate signage.
- F. Notwithstanding any other provision of this article, a private citizen may bring legal action to enforce this article.

Sec. 9.50.120. Non-retaliation

No person nor employee shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke free environment afforded by this article.

Sec. 9.50.130. Violations 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 with all of its provisions, except for violations noted in section B, below.
- B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.
- C. Any person who violates any provision of this article shall be guilty of an infraction, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100.00) for the first violation.
 - 2. A fine not exceeding two hundred dollars (\$200.00) for a second violation within a one (1) year period of the first violation.
 - 3. A fine not exceeding five hundred dollars (\$500.00) for an additional violation within a one (1) year period of the first violation.

Sec. 9.50.140. Other Applicable Laws

This article shall not be interpreted nor construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 9.50.150. Severability

If any provision, clause, sentence or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, such 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. 9.50.160. Effective Date

This article shall be effective on and after January 2, 2002.

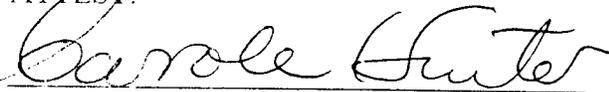
PASSED AND APPROVED this 26th day of June, 2001.

CITY OF EL PASO



Hon. Raymond C. Caballero
Mayor

ATTEST:



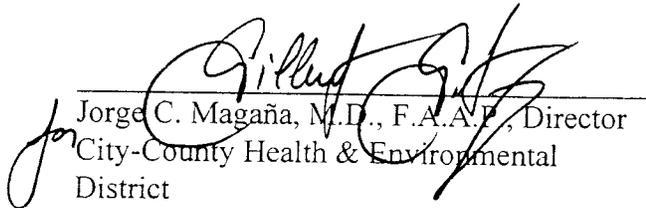
Carole Hunter
City Clerk

APPROVED AS TO FORM:



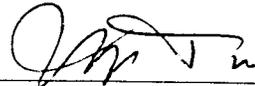
Reginald Bussey
Assistant City Attorney

APPROVED AS TO CONTENT:



Jorge C. Magaña, M.D., F.A.A.P., Director
City-County Health & Environmental
District

APPROVED:



John M. Tune, M.D.
Chairperson
El Paso City-County Board of Health