

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.50 (PUBLIC AND WORKPLACE SMOKING RESTRICTIONS) IN ITS ENTIRETY RELATING TO ALL PROVISIONS INCLUDING CLARIFICATION OF DEFINITIONS; CLARIFICATION OF IN WHICH PUBLIC PLACES SMOKING IS PROHIBITED AND WHERE SMOKING IS NOT REGULATED; CLARIFICATION REGARDING ENFORCEMENT, VIOLATIONS AND PENALTIES; THE PENALTY AS PROVIDED IN SECTION 9.50.130 OF THE EL PASO CITY CODE

WHEREAS, on January 2, 2002, the City adopted its currently effective smoking ordinance; and

WHEREAS, the City Council continues to recognize that environmental tobacco smoke (“ETS”) poses a serious public health hazard, that nonsmokers need protection from ETS, and that municipal regulation of the inhaling, exhaling, vaping and burning of tobacco in indoor and certain outdoor public places and places of employment is imperative in order to protect the public health and welfare of the citizens of the City; and

WHEREAS, the City wishes to clarify its smoking ordinance in order to protect the public health and welfare of its citizens.

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

Section 1. That Title 9 (Health and Safety), Chapter 9.50 (Public and Workplace Smoking Restrictions), shall be revised in its entirety to read as follows:

Article I – General Provisions

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, and certain outdoor areas; (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.

9.50.020 Definitions.

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

"Bar" means an area which is devoted primarily to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food or other products 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.

"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.

"E-cigarette" or "e-hookah" means any electronic oral device or nicotine delivery device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substance, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, hookah pen or under any other product name or description.

"Employee" means any person who is employed by or engaged under contract by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for an employer as defined in this Section 9.50.020.

"Employer" means any person, partnership, corporation, including a municipal corporation, or nonprofit entity which employs or contracts the services of one or more individual persons or uses the volunteer services of one or more individual persons.

"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.

"Food establishment" means food product or food service establishments, as those terms are defined in Chapter 9.12 of the El Paso City Code.

"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 physicians, chiropractors, physical therapists, psychiatrists, dentists, and all specialties within these professions. This definition shall include, but not be limited to, all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

"Park" means "city park" as set forth in the El Paso City Code Section 13.24.010, as amended, namely, any property in the city that is designated, set aside or operated by the city for public recreational purposes, whether dedicated or developed as a park or not, or that is located in any street right-of-way and is maintained as public open space, including all buildings, recreation facilities, playgrounds, parking lots, driveways, pathways, trails and other areas within a park, to include Scenic Drive. Designation of property as a city park pursuant to this subsection is solely

for the purposes of identifying areas governed by this chapter and shall not be construed to be a dedication of any property as a park.

"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. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility or there is an employee other than the occupant of the residence present.

"Playground" means any park or recreational area that is designed in part to be used by children and that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City property.

"Private club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used for club purposes, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for monetary 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.

"Private place" means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal residences; private clubs or personal automobiles. A privately-owned business, open to the public, is not a "private place."

"Retail tobacco store and smoking establishment" means a retail store or establishment utilized primarily for the sale and use of tobacco and smoking products and accessories and in which the sale of other products is merely incidental.

"Service line" means any indoor 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.

"Smoking" means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, e-cigarette, e-hookah, weed, plant or combustible substance in any manner or in any form, including any device that allows for combustion or conduction of a product for the purpose of inhaling smoke or vapor.

"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 either to engage in physical exercise or activities, participate in athletic competition, or witness sporting events, whether enclosed indoors or outdoors.

Article II Prohibition of Smoking

9.50.030 Prohibition of smoking in public places.

A. Smoking shall be prohibited in all enclosed areas of public places within the city, and within 20 feet of the entrance of such places, including, but not limited to, the following:

1. Elevators;
2. Restrooms, lobbies, reception areas, hallways and any other common-use areas;
3. Buses, semi-enclosed bus stops, bus terminals, taxicabs, shuttle vehicles, train stations, airports (except for certain outdoor areas specifically designated as smoking areas by the El Paso International Airport Director) and other facilities and means of public transit under the authority of the city (except for city property to which the city has contractually released a leasehold interest), as well as ticket, boarding, and waiting areas of all transit depots;
4. Service lines;
5. Retail stores and shopping malls;
6. All enclosed areas in all businesses and nonprofit entities;
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, bowling facilities and convention 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, to the extent such place is subject to the jurisdiction of the city;
12. Health care facilities;
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 venues;
16. Child care and adult day care facilities.

9.50.040 Prohibition of smoking in places of employment.

A. Except as herein provided, smoking shall be prohibited in every place of employment.

B. It shall be the responsibility of employers to provide a smoke-free workplace for all employees.

ORDINANCE NO. _____

13-1052-224/PL#262898_2 (5/29/14)/Smoking Ordinance Amendment/JF

9.50.050 Additional declaration of establishments as non-smoking.

Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment, facility or outdoor area may declare that the entire establishment, facility or outdoor area is a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 9.50.090 is posted.

9.50.060 Reserved.

9.50.070 Application of article to certain city-owned facilities.

Except for those areas designated as smoking areas by the El Paso International Airport Director, all City-owned enclosed areas and City-owned outdoor facilities, not subject to a leasehold interest provided to a non-City person or entity, shall be nonsmoking at all times, including, but not limited to, the following places:

- A. Sports arenas and stadiums.
- B. Parks and playgrounds.
- C. In and within 20 feet from the entrance of all outdoor public transportation stations, platforms and shelters under the authority of the city, except for those areas designated as smoking areas by the El Paso International Airport Director.
- D. Parking lots.

Article III. Places where smoking is not regulated.

9.50.080 Private and public places.

- A. Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:
 - 1. Private residences, except when used as a child care, adult day care or health care facility;
 - 2. No more than twenty-five percent of hotel and motel rooms rented to guests;
 - 3. Retail tobacco stores or establishments in isolated or contained physical facilities with isolated venting and air controls;
 - 4. Outdoor places of employment except those covered in [Section 9.50.070](#).
 - 5. Designated areas of the El Paso International Airport.

Article IV. Signs

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 chapter shall have a conspicuously posted sign at each entrance clearly stating that smoking is prohibited within the building or other areas where smoking is prohibited.

B. Such "No Smoking" signs shall have bold lettering of not less than one inch in height, or, the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with bar across it) may be used.

Article V. Reserved.

9.50.100 Reserved.

Article VI. Enforcement, violations and penalties

9.50.110 Enforcement.

A. Enforcement of this chapter shall be implemented by the City's department of environmental services, the City's department of public health, and the City's fire and police departments.

B. Any person may register a complaint under this chapter to initiate enforcement with the City's department of public health, the City's department of environmental services and the City's police department.

C. It shall be an affirmative defense to prosecution of an owner, manager or other person having control of an establishment regulated by this chapter if the owner, manager or other person having control of an establishment regulated by this chapter asks a smoker to stop smoking and if the smoker does not cease smoking inside that establishment regulated by this chapter, the owner, manager or other person having control of an establishment regulated by this chapter shall place a no smoking sign on the table and shall contact the departments identified in Subsection 9.50.110A.

9.50.120 Nonretaliation.

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 chapter.

ORDINANCE NO. _____

13-1052-224/PL#262898_2 (5/29/14)/Smoking Ordinance Amendment/JF

9.50.130 Violations and penalties.

A. It shall be unlawful for an owner, manager or other person having control of an establishment regulated by this chapter to fail to comply with all of its provisions, except for violations noted in Subsection 9.50.130B.

B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.

C. Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by:

1. Any person who violates any provision of this chapter shall be guilty of an infraction punishable by a fine not exceeding one hundred dollars;
2. Any person who violates any provision of this chapter within one year of receiving a fine under Subsection 9.50.130C.1, shall be guilty of an infraction punishable by a fine not to exceed two hundred dollars;
3. Any person who violates any provision of this chapter within one year of receiving a fine under Subsection 9.50.130C.2, shall be guilty of an infraction punishable by a fine not to exceed five hundred dollars.

9.50.140 Other applicable laws.

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

9.50.150 Severability.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of the Ordinance are severable and if any section, paragraph, sentence, clause, or phrase shall be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases herein.

9.50.160 Effective date.

This chapter shall be effective on and after _____, 20__.

Section 2. That except as expressly amended herein Title 9 (Health and Safety) shall remain in full force and effect.

PASSED AND APPROVED this _____ day of _____, 2014.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Josette Flores
Assistant City Attorney

Robert Resendes, MBA, MT (ASCP), CLS(RI)
Director, Department of Public Health

ORDINANCE NO. _____
13-1052-224/PL#262898_2 (5/29/14)/Smoking Ordinance Amendment/JF

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.50 (PUBLIC AND WORKPLACE SMOKING RESTRICTIONS) IN ITS ENTIRETY RELATING TO ALL PROVISIONS INCLUDING CLARIFICATION OF DEFINITIONS; CLARIFICATION OF IN WHICH PUBLIC PLACES SMOKING IS PROHIBITED AND WHERE SMOKING IS NOT REGULATED; CLARIFICATION REGARDING ENFORCEMENT, VIOLATIONS AND PENALTIES; THE PENALTY AS PROVIDED IN SECTION 9.50.130 OF THE EL PASO CITY CODE

Formatted: Justified

WHEREAS, on January 2, 2002, the City adopted its currently effective smoking ordinance; and

WHEREAS, the City Council continues to recognize that environmental tobacco smoke ("ETS") poses a serious public health hazard, that nonsmokers need protection from ETS, and that municipal regulation of the inhaling, exhaling, vaping and burning of tobacco in indoor and certain outdoor public places and places of employment is imperative in order to protect the public health and welfare of the citizens of the City; and

WHEREAS, the City wishes to clarify its smoking ordinance in order to protect the public health and welfare of its citizens.

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

Section 1. That Title 9 (Health and Safety), Chapter 9.50 (Public and Workplace Smoking Restrictions), shall be revised in its entirety to read as follows:

ARTICLE I – GENERAL PROVISIONS

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, and certain outdoor areas; (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.

9.50.020 Definitions.

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

"Bar" means an area which is devoted primarily to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food or other products 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.

ORDINANCE NO. _____

"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.

"E-cigarette" or "e-hookah" means any electronic oral device or nicotine delivery device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substance, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, hookah pen or under any other product name or description.

"Employee" means any person who is employed by or engaged under contract by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for an ~~nonprofit entity~~ employer as defined in this Section 9.50.020.

"Employer" means any person, partnership, corporation, including a municipal corporation, or nonprofit entity which employs or contracts the services of one or more individual persons or uses the volunteer services of one or more individual persons.

"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.~~

"Food establishment" means food product or food service establishments, as those terms are defined in Chapter 9.12 of the El Paso City Code.

"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 physicians, chiropractors, physical therapists, psychiatrists, dentists, and all specialties within these professions. This definition shall include, but not be limited to, all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

"Park" means "city park" as set forth in the El Paso City Code Section 13.24.010, as amended, namely, any property in the city that is designated, set aside or operated by the city for public recreational purposes, whether dedicated or developed as a park or not, or that is located in any street right-of-way and is maintained as public open space, including all buildings, recreation facilities, playgrounds, parking lots, driveways, pathways, trails and other areas within a park, to include Scenic Drive. Designation of property as a city park pursuant to this subsection is solely for the purposes of identifying areas governed by this chapter and shall not be construed to be a dedication of any property as a park.

"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. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility or there is an employee other than the occupant of the residence present.

"Playground" means any park or recreational area that is designed in part to be used by children and that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City property.

"Private club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used for club purposes, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for monetary 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.

"Private place" means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal residences; private ~~social~~ clubs or personal automobiles. A privately-owned business, open to the public, is not a "private place."

~~"Public place" means any enclosed area to which the public is invited or in which the public is permitted, 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 private residence is not a "public place."~~

"Retail tobacco ~~store and smoking establishment~~~~store~~" means a retail store or establishment utilized primarily for the sale and use of tobacco and smoking products and accessories and in which the sale of other products is merely incidental.

"Service line" means any indoor 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.

"Smoking" means inhaling, exhaling, burning or carrying any ~~lighted~~lighted or heated cigar, cigarette, pipe, e-cigarette, e-hookah, weed, plant or combustible substance in any manner or in any form, including any device that allows for combustion or conduction of a product for the purpose of inhaling smoke or vapor.

"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 either to engage in physical exercise or activities, participate in athletic competition, or witness sportings events, whether enclosed indoors or outdoors.

ARTICLE II Prohibition of Smoking

Formatted: Font: Bold

9.50.030 Prohibition of smoking in public places.

A. Smoking shall be prohibited in all enclosed areas of public places within the city, and within 20 feet of the entrance of such places, including, but not limited to, the following places:

1. Elevators;
2. Restrooms, lobbies, reception areas, hallways and any other common-use areas;
3. Buses, semi-enclosed bus stops, bus terminals, taxicabs, shuttle vehicles, train stations, airports (except for certain outdoor areas specifically designated as smoking areas by the El Paso International Airport Director) and other facilities and means of public transit under the authority of the city (except for city property to which the city has contractually released a leasehold interest), as well as ticket, boarding, and waiting areas of all public transit depots;
4. Service lines;
5. Retail stores and shopping malls;
6. All enclosed areas available to and customarily used by the general public in all businesses and nonprofit 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, bowling facilities and convention facilities~~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 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;
12. ~~Waiting rooms, hallways, wards and semiprivate rooms of h~~Health care facilities, including, but not 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 venue~~games~~;
16. Child care and adult day care facilities.

Formatted: Font: Bold

9.50.040 Prohibition of smoking in places of employment.

A. Except as herein provided, smoking shall be prohibited in every place of employment.

B. 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 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.~~

Formatted: Indent: Left: 0.5"

~~C. The smoking policy shall be communicated to all employees within four weeks of its adoption.~~

~~D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.~~

9.50.050 Additional declaration of of nonsmoking establishments as non-smoking.

Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment, facility or outdoor area described in this section may declare that the entire establishment, facility or outdoor area is as a nonsmoking place establishment. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 9.50.090 is posted.

9.50.060 Reserved.

9.50.070 Application of article to certain city-owned facilities.

Except for those areas designated as smoking areas by the El Paso International Airport Director, aAll enclosed City-owned enclosed areas and City-owned outdoor facilities, not subject to a leasehold interest provided to a non-City person or entity, owned by the city shall be nonsmoking at all times notwithstanding other provisions of this chapter, including, but not limited to, the following places:

A. Sports arenas and stadiums.

B. Parks and playgrounds.

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: List Paragraph

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Left, Indent: Left: 0.5", Space After: 10 pt, Line spacing: Multiple 1.15 li, No bullets or numbering

~~C. In and within 20 feet from the entrance of all outdoor public transportation stations, platforms and shelters under the authority of the city, except for those areas designated as smoking areas by the El Paso International Airport Director,~~

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

~~D. Parking lots,~~

Formatted: Font: (Default) Times New Roman, 12 pt

Article III. Places where smoking is not regulated.

Formatted: Font: (Default) Times New Roman, 12 pt

9.50.080 Private and public places.

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

A. Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

1. Private residences, except when used as a child care, adult day care or health care facility;
2. No more than twenty-five percent of hotel and motel rooms rented to guests;
3. Retail tobacco stores or establishments in isolated or contained stand-alone physical facilities with isolated venting and air controls;
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 cleanup activities or when the room is used for exhibit activities);~~
5. ~~Outdoor places of employment except those covered in Section 9.50.0750.~~
5. Designated areas of the El Paso International Airport.

Formatted: Font: (Default) Times New Roman, 12 pt

Article IV. Signs

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 chapter shall have a conspicuously posted sign at each entrance 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 one inch in height, or ~~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) may be used.

~~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 V. Reserved.

9.50.100 Reserved. Department of environmental services program.

~~The department of environmental services shall promote the purposes and requirements of this chapter to the public affected by it, and to guide owners, operators and managers in their~~

ORDINANCE NO. _____

~~compliance with it. Such promotion may include publication of a brochure for affected businesses and individuals explaining the provisions of this chapter.~~

Article VI. Enforcement, violations and penalties

9.50.110 Enforcement.

A. Enforcement of this chapter shall be implemented by the City's department of environmental services~~department~~, the City's department of public health~~department~~, and the City's fire and police departments.

~~B. Notice of the provisions set forth in this chapter shall be given to all applicants for a business license in the city.~~

~~C. Any person may register a complaint under this chapter to initiate enforcement with the City's department of public health, the City's department of environmental services~~department~~ and the City's police department.~~

~~D. The departments identified in subsection A shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this chapter.~~

~~E. Any owner, manager, operator or employee of any establishment regulated by this chapter shall be responsible for informing persons violating this chapter of the provisions through appropriate signage.~~

~~CF. Notwithstanding any other provision of this chapter, a private citizen may bring legal action to enforce this chapter. It shall be an affirmative defense to prosecution of an owner, manager or other person having control of an establishment regulated by this chapter if the owner, manager or other person having control of an establishment regulated by this chapter asks a smoker to stop smoking and if the smoker does not cease smoking inside that establishment regulated by this chapter, the owner, manager or other person having control of an establishment regulated by this chapter shall place a no smoking sign on the table and shall contact the departments identified in Subsection 9.50.110A.~~

Formatted: Font: Bold

9.50.120 Nonretaliation.

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 chapter.

9.50.130 Violations and penalties.

A. It shall be unlawful for any ~~person who~~ owners, managers, operates or other person having~~wise~~ controls ~~the use of of any establishment premises subject to regulation by under~~

ORDINANCE NO. _____

this chapter to fail to comply with all of its provisions, except for violations noted in ~~Subsection 9.50.130B of this section.~~

B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.

C. Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by:

1. ~~Any person who violates any provision of this chapter shall be guilty of an infraction punishable by a~~ fine not exceeding one hundred dollars ~~for the first violation;~~
2. ~~Any person who violates any provision of this chapter within one year of receiving a fine under Subsection 9.50.130C.1, shall be guilty of an infraction punishable by a fine not to exceeding~~ two hundred dollars ~~for a second violation within a one-year period of the first violation;~~
3. ~~Any person who violates any provision of this chapter within one year of receiving a fine under Subsection 9.50.130C.2, shall be guilty of an infraction punishable by a fine not to exceeding~~ five hundred dollars ~~for an additional violation within a one-year period of the first violation.~~

9.50.140 Other applicable laws.

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

9.50.150 Severability.

~~It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of the Ordinance are severable and if any section, paragraph, sentence, clause, or phrase shall be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases herein. If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.~~

9.50.160 Effective date.

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

Section 2. That except as expressly amended herein Title 9 (Health and Safety) shall remain in full force and effect.

ORDINANCE NO. _____

PASSED AND APPROVED this _____ day of _____, 2014.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Josette Flores
Assistant City Attorney

Robert Resendes, MBA, MT(ASCP), CLS(RI)
Director, Department of Public Health

ORDINANCE NO. _____
13-1052-224/PL#262898/Smoking Ordinance Amendment/JF (4-1-14)