

CHAPTER 78: HEALTH AND SAFETY

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§ 78.00 Non-Smoking Ordinance

An ordinance designating certain areas as nonsmoking areas; prohibiting smoking in certain areas; providing an exemption; providing that this ordinance is cumulative of all ordinances; providing a severability clause; providing a savings clause; finding and determining that the meetings at which this ordinance is passed are open to the general public; providing for a general distribution; providing for publication in the official newspaper; and providing an effective date.

Smoking is the single largest preventable cause of premature death and disability in the United States. Every year 350,000 Americans die prematurely from diseases caused by cigarette smoking, such as lung cancer, emphysema, and coronary disease. Nicotine addiction is "the most widespread example of drug dependency in our country", according to the U.S. Public Health Service. Smoking accounts for 85-90% of emphysema mortality in America. Lung cancer, already the number one cause of cancer in American men, has surpassed breast cancer as the leading cancer killer of American women. The United States Environmental Protection Agency has concluded that passive smoking poses a public health risk greater than hazardous air pollutants from all industrial emissions combined. Rusk County has one of the highest lung cancer death rates in the nation. City Council of the City of Overton recognizes the increasing evidence that smoke creates a danger to the health of its citizens and is a cause of annoyance and discomfort to those who are confined to spaces where smoke is present. It is the right of citizens to be able to choose for themselves whether or not to smoke, either actively or passively. It is desirable to authorize employers to designate non-smoking areas in certain workplaces. In order to protect the health and welfare of its citizenry as well as protect the rights of smokers and non-smokers, it is necessary for the City of Overton to restrict smoking in public places except in areas designated as smoking areas. The citizens of Overton have demonstrated a desire to voluntarily comply with City ordinances which protect public health and welfare.

§ 78.01 Definitions.

- (a) "Administrative Area" means the area of a business establishment not generally accessible to the public, including, but not limited to, individual offices, stockrooms, employee lounges or meeting rooms.
- (b) "Enclosed" means closed in by a roof and walls with appropriate openings for ingress and egress, but does not include areas commonly described as public lobbies.

- (c) "Hospital" means any institution that provides medical, surgical and overnight facilities for patients.
- (d) "Movie Theatre" means any establishment engaged in the business of exhibiting motion pictures to the public.
- (e) "Public Service Area" means any areas to which the general public routinely has access for municipal services or which is designated a public service area in a written policy.
- (f) "Public Place" means any enclosed indoor areas that may be used by the general public and includes, but is not limited to, stores, offices and other commercial establishments, restaurants, theaters, movie theaters, public and private schools and institutions of higher education and hospitals and health care facilities.
- (g) "Smokes" or "smoking" includes:
 - (1) carrying or holding a lighted pipe, cigar, or cigarette of any kind or any other lighted smoking equipment or device;
 - (2) lighting a pipe, cigar, or cigarette of any kind or any other smoking equipment or device;
 - (3) or emitting or exhaling the smoke of a pipe, cigar, or cigarette of any kind or any other smoking equipment or device.
- (h) "Public Meeting" means a meeting required to be open to the public under Article 6252-17, Vernon 's Texas Civil Statutes.
- (i) "Smoking Area" means an area or portion of a public place, hospital, nursing home, health care center or school designated and clearly marked for smoking.

§ 78.02 Smoking Prohibited in Certain Areas.

- (a) A person commits an offense if he smokes or possesses a burning tobacco, weed or other plant product or any lighted or burning pipe, cigar, cigarette of any kind, or smoking equipment or device in a public meeting or in any of the following indoor enclosed areas:
 - (1) an elevator used or which may be used by the public;
 - (2) any conference room, meeting room or public service area of any facility owned, operated or managed by the City, except those conference rooms, meeting rooms, administrative areas or office areas which are not generally open to the public;
 - (3) an area within an enclosed public place marked with a "No Smoking" sign in accordance with subsection "C" hereof by the owner or person in control thereof;
- (b) Smoking shall be allowed and smoking signs are not required to be posted by the person in charge when smoking is permitted herein.
- (c) The owner or person in control of an establishment or area designated in subsection "A" of this section shall post a sign, conspicuous to ordinary public view, at or near each public entrance. The sign shall contain the words "No Smoking except in Designated Areas, City of Overton Ordinance," or have the universal symbol for no smoking or other language that clearly prohibits smoking.

(d) Owners, operators or persons in control of public places are not required, but may elect to be covered under this ordinance by giving written notice to the city inspector, by designating the area or areas to be marked "No Smoking" and by posting signs in accordance with subsection "C" hereof. It is not required that any area of public places be designated as "Smoking Areas."

(e) It is a defense to the prosecution under this section:

- (1) that the person was smoking in a situation in which a person is present at an event in which an entire room or hall is used for a social function sponsored by a private entity or individual and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of the place; or,
- (2) that the person was smoking as a participant in an authorized theatrical performance.

§ 78.03 Owner Not Responsible

This ordinance does not require the owner, operator, manager or employee of an establishment to report a violation or to take any action against any individual violating these prohibitions.

§ 78.04 Penalties

Any person, firm, corporation, agent or employer thereof who violates any of the provisions of this Chapter shall be fined an amount not less than TWENTY-FIVE DOLLARS (\$25.00) nor more than TWO HUNDRED DOLLARS (\$200.00); provided, however, in the event a defendant has previously been convicted under this section, said defendant shall be fined an amount not less than FIFTY DOLLARS (\$50.00) nor more than FIVE HUNDRED DOLLARS (\$500.00) for a second conviction hereunder, and shall be fined an amount not less than ONE HUNDRED DOLLARS (\$100.00) nor more than ONE THOUSAND DOLLARS (\$1,000.00) for a third conviction hereunder and for each conviction thereafter . Each day that a violation is permitted to exist shall constitute a separate offense.

§ 78.05 Ordinance Cumulative .

This Ordinance shall be cumulative of all provisions of Ordinances and of the Code of the City of Overton, Texas, as amended, except where provisions of this Ordinance are in direct conflict with the provisions of such Ordinances and such Code, in which event conflicting provisions of such Ordinances and such Code are hereby repealed.

78.06 Severability.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, section or article of this Ordinance shall be declared unconstitutional and invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality and invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, sections and articles of this Ordinance, since the same would have been enacted by the City Council without incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

§ 78.07 Certain Substances Banned (K-2 Substances Banned)

- (a) Possession, Sale or Ingestion of Certain Substances :It shall be unlawful for any person to use, possess, purchase, sell, publicly display for sale or attempt to sell, give, or barter any one or more of the following substances within the city limits of the City of Overton, Texas:
- (1) Salvia divinorium or Salvinorum A; all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts derivative, mixture or preparation of such plant, its seeds or extracts, (6aS, 10aS)-9(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10,10a-tetrahydrobenzo[c]chromen-1-ol commonly known as HU-211 or Dexannabinol,1-Pentyl-3-(1-naphthoyl) indole commonly known as JWH-018 Spice or K2,1-Butyl-3-(1naphthoyl) indole commonly known as JWH-073, N-benzylpiperazine commonly known as BZP,1-(3-[trifluoromethylphenyl]) piperazine commonly known as TFMPP, Any other synthetic cannabinoid, or, Any similar substance which when inhaled or otherwise ingested produces intoxication, stupefaction, giddiness, paralysis, irrational behavior, or in any manner, changes, distorts, or disturbs the auditory, visual, or mental process and the product or substance has no other apparent legitimate purpose for consumers.
- (b) It is not a violation of this Ordinance if a person was acting under the supervision of an authorized law enforcement officer to enforce or ensure compliance with this Ordinance.
- (c) It is unlawful for any person, knowingly, to breathe, inhale, drink, or otherwise ingest any compound, liquid or chemical listed within this Ordinance, or a similar substance for the purpose of inducing a condition of intoxication, stupefaction, giddiness, paralysis, irrational behavior, or in any manner, changing, distorting or disturbing the auditory, visual, or mental process.
- (d) This Ordinance does not apply to any person who commits any act described in this Ordinance pursuant to the direction or prescription of a licensed physician or dentist licensed by the State of Texas to direct or prescribe such act. This Ordinance likewise does not apply to the inhalation of anesthesia for a medical or dental purpose.
- (e) Any person who violates this Ordinance shall be guilty of a misdemeanor and subject to a fine upon conviction in Municipal Court.

(ORDINANCE NO. 092010)