

**ORDINANCE NO. 2019-03**

**AN ORDINANCE OF THE CITY OF SAGINAW, TEXAS ADDING A NEW ARTICLE VII, "SMOKING IN PUBLIC PLACES" TO CHAPTER 42 "HEALTH AND SANITATION" OF THE CITY CODE, AND REPEALING SECTION 42-2 "SMOKING AT SENIOR CITIZENS CENTER OR A COMMUNITY CENTER" OF THE CITY CODE; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Saginaw, Texas is a home rule City acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

**WHEREAS**, there is a substantial body of evidence which concludes that smoking is a danger to health and a material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined spaces; and

**WHEREAS**, the City Council finds that there is no safe level of exposure to secondhand smoke; and

**WHEREAS**, the City Council finds that there is no legal or constitutional "right to smoke"; and

**WHEREAS**, in order to promote the health, safety and welfare of the citizens of Saginaw, the City Council deems it necessary to adopt comprehensive regulations governing smoking in public places.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAGINAW, TEXAS:**

**SECTION 1.**

That a new Article VII "Smoking in Public Places" shall be added to Chapter 42 "Health and Sanitation" of the Saginaw City Code, to read as follows:

**"ARTICLE VII – SMOKING IN PUBLIC PLACES**

**Sec. 42-260. – 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:

*Bar* means any commercial establishment that derives 51 percent or more of its annual gross sales receipts from the sale of alcoholic beverages as defined by the Texas Alcoholic Beverage Code and has a valid on-premises consumption license issued by the state alcoholic beverage commission or a portion of a commercial/food establishment that is physically separated from the rest of the establishment by an impermeable barrier exclusive of appropriate openings for ingress and egress and that portion of the establishment is independently ventilated and that portion of the establishment derives 51 percent or more of its annual gross sales receipts from the sale of alcoholic beverages as defined by the Texas Alcoholic Beverage Code and has a valid on-premises consumption license issued by the state alcoholic beverage commission.

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

*Employee* means any person who is employed by any employer from direct or indirect monetary wages, commissions or profit, or is in a position that would lead one to believe that such person is so employed.

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

*Enclosed* means closed in by a roof and walls with appropriate openings for ingress and egress.

*Food establishment* means any operation engaged in the preparation or sale of prepared ready-to-eat food, if such operation accounts for more than 51 percent of annual gross sales receipts. For the purpose of this section a food establishment does not include an outdoor patio.

*Governmental entity* means a state, a municipality, county, school district, or appraisal district.

*Health care facility* means any hospital or institution that provides medical or surgical services for patients.

*Independently ventilated* means that the heating, ventilation and air conditioning system for a bar area does not allow for the mixing of air from the bar area to a public area or public place served by the same ventilation system or another ventilation system.

*Movie theater* means any establishment engaged in the business of exhibiting motion pictures to public. The same are regulated hereby even if meeting the definition of private club.

*Outdoors* means any area that is not enclosed.

*Private club* means any building, premises or portion thereof which is wholly owned or leased from other than a governmental entity by a non-profit corporation organized under chapter 501 (c)(3) of the United States Internal Revenue Code, as amended.

*Private office* is an individual's office from which the public is not barred but to which the public goes primarily by invitation or appointment. Such office shall be an office in which there are no employees.

*Public place* means any enclosed area that is open to or is used by the general public, or that is a place of employment and includes, but is not limited to: retail stores, grocery stores, offices, professional, commercial or financial establishments, food establishments, movie theaters, public and private institutions of education, health care facilities, nursing and convalescent homes, residential treatment facilities, buildings owned or occupied by political subdivisions and public restrooms. For the purpose of this article, a public place does not include a private residence, bar, tobacco shop, hotel and motel rooms that are rented to guests, private clubs or outdoors or private offices. Any public places regulated by other statutes or other governmental administrative rules which conflict with or which preempt local regulation are exempt from the provisions hereof to the extent of such conflict or preemption.

*Smoke or smoking* means the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking material or tobacco product, equipment or device, and the lighting, ingestion, emitting or exhaling the smoke of a pipe, cigar, or cigarette of any kind, including electronic cigarettes or vapor products.

*Tobacco* 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 means of ingestion or absorption.

*Tobacco shop* means any commercial establishment that derives 51 percent of its annual gross receipts from the sale of tobacco and tobacco accessories.

*Vapor product* (electronic cigarette) means a noncombustible product that uses a mechanical heating element, battery, or electronic circuit to heat a liquid nicotine solution in a vapor cartridge.

**Sec. 42-261. – Smoking prohibited in public places.**

- (a) Smoking is hereby prohibited in all public places within the city limits.
- (b) It is an affirmative defense to prosecution under this article that the person was smoking in a bar, tobacco shop, a rented hotel or motel room of any kind, private clubs, outdoors, or in a place where these regulations are in conflict with or preempted by other law as defined above.

**Sec. 42-262. – Signs and receptacles.**

- (a) The owner or other person having authority to manage and/or control any area designated as a public place, pursuant to this article, shall post or cause to be posted and visibly displayed, and shall maintain "No Smoking" signs in a form approved by the director, in conspicuous locations within such public place. Such signs shall clearly and conspicuously recite the phrase "No Smoking" in the English and Spanish language and/or use the international no-smoking symbol.
- (b) The owner or other person having authority to manage and/or control any area designed as a public place pursuant to this article shall cause to be placed a receptacle for smoking materials which is approved by the fire marshal of the city outdoors at each entrance to all public places as defined herein.

**Sec. 42-263. – Reporting violations.**

- (a) This article requires that the owner, operator, employer, manager or any employee enforce the regulations set forth in this article within any public place under their care, custody or control by verbally instructing any person violating this article to cease smoking and/or cease the use of tobacco or vapor product while occupying such public place.
- (b) It is an affirmative defense to prosecution under this article that the owner, operator, employer, manager or employee verbally instructed the person smoking and/or using tobacco or vapor product to cease such use while occupying the public place under the care, custody or control of such owner, operator, employer, manager or employee.

**Sec. 42-264. – Smoking permit.**

A public place allowing smoking as of the effective date hereof may seek a permit from the Director to continue to allow smoking in such public place, provided that such permit is sought within ninety (90) days of the effective date of this Ordinance.

**Sec. 42-265. – Penalties for violation.**

- (a) Any person, firm, partnership or corporation who violates any provision of this article shall be guilty of a Class "C" Misdemeanor and shall be punished by a fine of not to exceed Two Thousand Dollars (\$2,000.00). Each day that a violation is permitted to exist shall constitute a separate offense.
- (b) It is hereby declared that the culpable mental state required by the V.T.C.A., Penal Code ch. 6.02 is specifically negated and clearly dispensed with, and such offense is declared to be a strict liability offense."

## **SECTION 2.**

That Section 42-2 "Smoking at senior citizens center or at community center" of Chapter 42 of the Saginaw City Code is hereby repealed.

## **SECTION 3.**

This Ordinance shall be cumulative of all other ordinances of the City of Saginaw and shall not repeal any of the provisions of such ordinances, except in those instances where provisions of such ordinances are in direct conflict with the provisions of this ordinance. Section 42-2 of the Saginaw City Code is hereby specifically repealed.

## **SECTION 4.**

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 section, paragraph, sentence, clause, or phrase of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining sections, paragraphs, sentences, clauses, and phrases of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional section, paragraph, sentence, clause or phrase.

## **SECTION 5.**

All rights and remedies of the City of Saginaw are expressly saved as to any and all violations of the provisions of any ordinances governing smoking in public places that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

## **SECTION 6.**

Any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined an amount not to exceed \$2000.00, as provided by Sec. 1-13 of the Saginaw City Code. Each day a violation continues shall be deemed a separate offense.

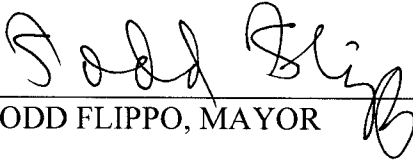
## **SECTION 7.**

The City Secretary of the City of Saginaw is hereby directed to publish at least twice in the official newspaper of the City of Saginaw, the caption and the penalty clause of this ordinance in accordance with Section 52.013(b) of the Local Government Code.

**SECTION 8.**

This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the laws of the State of Texas.

**PASSED AND APPROVED ON this the 5<sup>th</sup> day of February, 2019.**

  
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TODD FLIPPO, MAYOR

ATTEST:

  
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JANICE ENGLAND, CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
BRYN MEREDITH, CITY ATTORNEY

