

Ordinance amending Chapter 23 of the Corpus Christi Code to prohibit operating and using retail tobacco stores, hookah lounges, vaping lounges and cigar bars from 2:00 am to 7:00 am; and providing for penalty

WHEREAS, the City Council of the City of Corpus Christi finds that smoking tobacco products creates nuisances. poses health risks. and causes fires; and

WHEREAS, the U.S. Surgeon General's report has stated that there is no safe level of second hand smoke, and secondhand smoke is a known cause of lung cancer. heart disease, low birth-weights, chronic lung ailments (such as bronchitis and asthma) other health risks and premature death in children and adults who do not smoke;

WHEREAS. the U.S Surgeon General's report has stated that despite significant progress since the first Surgeon General's report, issued over 50 years ago (1964), smoking remains the single largest cause of preventable disease and death in the United States;

WHEREAS. the U.S. Surgeon General's report states that involuntary exposure to secondhand smoke remains a serious public health hazard that can be prevented by making homes. workplaces. and public places completely smoke-free;

WHEREAS, the City Council finds that nicotine is addictive and that the use of nicotine containing electronic cigarettes can lead to some respiratory changes and dangers similar to those occurring through the use of traditional tobacco products;

WHEREAS, the City Council finds that liquid nicotine is often distributed in flavors, such as cherry. chocolate and vanilla. that are designed to appeal to young people and thereby creates a path for nonsmokers to become addicted to smoking. which can lead to the further spread of nuisances and health risks from smoking; and

WHEREAS, Hookah smoking is NOT a safe alternative to smoking cigarettes and hookah smoking has many of the same health risks as cigarette smoking.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:

SECTION 1. The Corpus Christi Code of Ordinance, Section 23-76 is amended by adding the following language that is underlined (added) and deleting the language that is stricken (~~deleted~~) as delineated below:

Sec. 23-76. - Smoking prohibitions.

- (a) *Declaration of policy.* It is the intent and purpose of this section to provide citizens' protection from exposure to tobacco, or other, smoke by placing restrictions on smoking within the City of Corpus Christi. The provisions of this section are designed to achieve a reasonable balance between the rights of nonsmokers to breathe clean air and the wishes of smokers. It is declared to be the policy of the City of Corpus Christi to give preferential treatment to nonsmokers when disputes arise.

(b) *Definitions.* The following definitions shall apply to this section:

Cigar bar means an establishment used primarily for the sale of cigar and cigar-related products, which sales constitute more than forty (40) per cent of the total retail sales of the establishment and in which the serving of alcoholic beverages are incidental to such retail operations.

Electronic Smoking Device means a device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device. This term shall include every variation and type of such devices whether they are manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah or any other product name or descriptor. The term does not include a prescription medical device unrelated to the cessation of smoking.

Home occupation means any professional or commercial activity which is carried on wholly within a residential building by a member, or members, of a family residing on the premises, in connection with which there are no persons outside the family employed, and which use is otherwise in compliance with the zoning ordinance provisions. When, within the previously stated requirements, such home occupation shall be considered a private residence for purposes of this section except when being used as a child care, adult day care, or health care facility.

Hookah Lounge means an establishment used primarily for the sale of shisha for consumption on the premises or for sale or rental of accessories used for smoking shisha on premises.

Private club means an organization, whether incorporated or not, which: (1) is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, (2) is operated solely for a fraternal purpose but not for pecuniary gain, (3) only sells alcoholic beverages incidental to its operation, (4) conducts its affairs and management through a board of directors, executive committee, or similar body chosen by the members at an annual meeting, (5) has established bylaws or a constitution to govern its activities, and (6) has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

Public building means any building other than a building used as a private residence, unless such residence is being used as a child care, adult day care, or health care facility. If a portion of a building is used as a private residence and another portion of the building is used for business purposes or commercial activities, then "public building," as used in this section, shall apply to the portions of the building used for business purposes or commercial purposes, but not the portion used solely as a residence.

Retail tobacco store means a specialty retail establishment used primarily for the sale of tobacco products and accessories and in which the sale of other non-tobacco products is incidental.

Shisha means flavored tobacco smoked in a hookah, usually mixed with molasses or honey and often fruit pulp or dried fruits.

Smoke or smoking means inhaling, exhaling, or burning any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or form.

Smoking lounge means an establishment engaged in the sale of tobacco product for on-premise consumption. Smoking lounge includes but is not limited to establishments known variously as cigar bars, hookah lounges, vape lounges, tobacco clubs, tobacco bars, etc.

Vape or Vaping means the inhaling, exhaling, or generation of any vapor from an electronic smoking device.

Vape lounge means an establishment used primarily for the sale or rental of electronic smoking devices or related tobacco product for on premise use or consumption.

(c) It shall be unlawful for any person to perform the following acts in any public building in the city or within ten (10) feet of an entrance used by the public to any public building except in passing:

- (1) Smoke;
- (2) Carry a lighted cigar, cigarette, or tobacco-containing pipe; or
- (3) Light a cigar, cigarette, or tobacco-containing pipe.

(d) *Posting of signs; removal of ashtrays.*

- (1) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted at every entrance of a public building where smoking is prohibited by this section. "No Smoking" signs or the international "No Smoking" symbol shall be posted by the owner, operator, manager, or other person in control of the premises.
- (2) All ashtrays and smoking paraphernalia must be removed by the owner, operator, manager, or other person in control of the premises from any area where smoking is prohibited by this section.

(e) It shall be unlawful for any owner or operator of any public building to place or allow to be placed any of the following items in any public building or within ten (10) feet of an entrance used by the public to any public building:

- (1) Ashtrays;
- (2) Smoking paraphernalia; or
- (3) Signs that indicate that smoking is permitted.

(f) *Retail tobacco stores and smoking lounges.*

(1) Between the hours of 7:00 a.m and 2:00 a.m., the ~~smoking prohibitions provisions~~ of this section do not apply to retail tobacco stores and ~~cigar bars~~ smoking lounges so long as smoke from these places does not infiltrate into areas where smoking is prohibited under this section.

(2) Retail tobacco stores, cigar bars, hookah lounges, vape lounges and smoking lounges shall be prohibited from operating between the hours 2:00 a.m. and 7:00 a.m.

(g) The provisions of this section do not apply to private clubs so long as smoke from these places does not infiltrate into areas where smoking is prohibited under this section;

however, the provisions of this section do apply to a private club when such club is being used for a function to which the general public is invited.

- (h) The provisions of this section do not apply to a bingo facility operated under the Bingo Enabling Act, V.T.C.A., Occupations Code ch. 2001, if:
 - (1) An enclosed smoking area is provided;
 - (2) The smoking area is mechanically ventilated to prevent smoke from entering a non-smoking area;
 - (3) No one under the age of eighteen (18) is admitted to the smoking area;
 - (4) Patrons do not enter or exit the facility through the smoking area; and
 - (5) Patrons do not have to access or cross through the smoking area to utilize any ancillary services of the facility which are available to any patron or employee of the facility, such as public restrooms, cashier counters, concession areas, etc.
- (i) Nothing in this section may be construed to prohibit smoking on outside patios, such as those located at bars, lounges, nightclubs, taverns, and restaurants, if otherwise conducted in compliance with this section, applicable city fire prevention ordinances, and state alcoholic beverage laws.
- (j) No area may be designated for smoking by an owner, operator, manager, or other person in control of the premises where prohibited by the city's fire prevention ordinances or another agency having jurisdiction.
- (k) *Inspection; enforcement.*
 - (1) The owner, operator, manager, or person in control of any premises subject to this section shall permit the director of health, or the director's designees, entrance to the premises to determine compliance with this section. Such responsibility belongs to all of said persons, and any or all may be prosecuted for a violation of this section.
 - (2) The director of public health and the director's designees are authorized to serve official notices of violations of this section.
 - (3) Any person who violates any part of this section commits an offense punishable under sections 1-6 and 1-6.1 of the Code of Ordinances.
- (l) *Miscellaneous.*
 - (1) Nothing in this section may be construed to permit the smoking of any substance otherwise illegal.
 - (2) When possession of burning tobacco or smoking tobacco is also prohibited by V.T.C.A., Penal Code § 48.01, as to a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, plane, or train which is a public place, such violation shall be prosecuted under state law.

(Ord. No. 19338, § 1, 5-27-1986; Ord. No. 21697, § 1, 7-6-1993; Ord. No. 026094, § 1, 1-11-2005; Ord. No. 027286, § 1, 5-22-2007; Ord. No. 028007, § 1, 12-16-2008)

SECTION 3. If for any reason any section, paragraph, subdivision, sentence, clause, phrase, word, or provision of this Ordinance shall be held to be invalid or unconstitutional by final judgment of a court of competent jurisdiction, such judgment

shall not affect any other section, paragraph, subdivision, sentence, clause, phrase, word, or provision of this Ordinance, for it is the definite intent of this City Council that every section, paragraph, subdivision, sentence, clause, phrase, word, or provision of this Ordinance be given full force and effect for its purpose. The City Council hereby declares that it would have passed this Ordinance, and each section, paragraph, subdivision, sentence, clause, phrase, word, or provision thereof, irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses, phrases, words, or provisions be declared invalid or unconstitutional.

SECTION 4. A violation of this ordinance, or requirements implemented under this ordinance, constitutes an offense punishable as provided Section 1-6 of the Corpus Christi Code of Ordinances.

SECTION 5. Publication shall be made in the City's official publication as required by the City's Charter.

SECTION 6. This ordinance takes effect after official publication.

That the foregoing ordinance was read for the first time and passed to its second reading on this the _____ day of _____, 2019, by the following vote:

Joe McComb _____

Michael Hunter _____

Roland Barrera _____

Ben Molina _____

Rudy Garza _____

Everett Roy _____

Paulette M. Guajardo _____

Greg Smith _____

Gil Hernandez _____

That the foregoing ordinance was read for the second time and passed finally on this the _____ day of _____ 2019, by the following vote:

Joe McComb _____

Michael Hunter _____

Roland Barrera _____

Ben Molina _____

Rudy Garza _____

Everett Roy _____

Paulette M. Guajardo _____

Greg Smith _____

Gil Hernandez _____

PASSED AND APPROVED on this the _____ day of _____, 2019.

ATTEST:

Rebecca Huerta
City Secretary

Joe McComb
Mayor