

11-9-16

ORDINANCE NO 30258

An ordinance amending Chapter 41, "Smoking," of the Dallas City Code by amending Sections 41-1 and 41-2; providing definitions for park partner and park property; prohibiting smoking on park property; providing defenses to prosecution for smoking on park property; providing a penalty not to exceed \$200; providing a saving clause; providing a severability clause; and providing an effective date. Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 41-1, "Definitions," of Article I, "General Prohibitions," of Chapter 41, "Smoking," of the Dallas City Code is amended as follows:

**"SEC. 41-1. DEFINITIONS.**

In this chapter:

(1) BAR means an establishment principally for the sale and consumption of alcoholic beverages on the premises that derives 75 percent or more of its gross revenue on a quarterly (three-month) basis from the sale or service of alcoholic beverages, as defined in the Texas Alcoholic Beverage Code, for on-premises consumption. If an establishment is located in a hotel or motel, the gross revenues of the particular establishment, rather than the gross revenues of the entire hotel or motel, will be used in calculating the percentage of revenues derived from the sale or service of alcoholic beverages.

(2) BILLIARDS means any game played on a cloth-covered table with balls and cue sticks where the balls are struck by the sticks and the balls strike against one another.

(3) BILLIARD HALL means an establishment that:

(A) holds a valid billiard hall license issued by the city under Chapter 9A of this code;

(B) has at least 12 billiard tables that are not coin-operated available for rent to persons desiring to play billiards on the premises; and

(C) derives 70 percent or more of its gross revenue on a quarterly (three-month) basis from the sale or service of alcoholic beverages, as defined in the Texas Alcoholic Beverage Code, for on-premises consumption and from the rental of billiard tables and billiard equipment to persons desiring to play billiards on the premises.

(4) CIGAR BAR means a bar that derives 15 percent or more of its gross revenue on a quarterly (three-month) basis from the sale or rental of tobacco, tobacco products, smoking implements, or smoking accessories for on-premises consumption.

(5) DIRECTOR means the director of the department designated by the city manager to enforce and administer this chapter, or the director's designated representative.

(6) EATING ESTABLISHMENT means any establishment that prepares or serves food or beverages, regardless of whether the establishment provides seating or facilities for on-premises consumption. The term includes, but is not limited to, restaurants, coffee shops, cafeterias, short order cafes, fast food establishments, luncheonettes, lunchrooms, soda fountains, food carts, food vending vehicles, and catering establishments.

(7) EMPLOYEE means any person who works for hire at an indoor or enclosed area including an independent contractor with an assigned indoor location.

(8) EMPLOYER means any person who employs one or more employees.

(9) ENCLOSED means an area that:

(A) is closed in overhead by a roof or other covering of any material, whether permanent or temporary; and

(B) has 40 percent or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary.

(10) HOSPITAL means any institution that provides medical, surgical, and overnight facilities for patients.

(11) MINOR means any individual under 18 years of age.

(12) PARK PARTNER means any entity that contracts with the city for the operation, maintenance, or management of park property.

(13) PARK PROPERTY means property under the control and jurisdiction of the park board.

(14) PERSON means an individual, firm, partnership, association, or other legal entity.

(15[3]) RETAIL OR SERVICE ESTABLISHMENT means any establishment that sells goods or services to the general public, including but not limited to any eating establishment, bar, hotel, motel, department store, grocery store, drug store, shopping mall, laundromat, bingo parlor, bowling center, billiard hall, or hair styling salon.

(16[4]) SECOND-HAND SMOKE means ambient smoke resulting from the act of smoking.

(17[5]) SMOKE OR SMOKING means inhaling, exhaling, possessing, or carrying any lighted or burning cigar or cigarette, or any pipe or other device that contains lighted or burning tobacco or tobacco products.

(18[6]) TOBACCO SHOP means a retail or service establishment that derives 90 percent or more of its gross revenue on a quarterly (three-month) basis from the sale of tobacco, tobacco products, or smoking implements.

(19[7]) WORKPLACE means any indoor or enclosed area where an employee works for an employer.”

SECTION 2. That Subsection (a) of Section 41-2, “Smoking Prohibited in Certain Areas,” of Article II, “Smoking Prohibitions,” of Chapter 41, “Smoking,” of the Dallas City Code is amended to read as follows:

“(a) A person commits an offense if he smokes:

- (1) in any indoor or enclosed area in the city;
- (2) within 15 feet of any entrance to an indoor or enclosed area in the city; [œ]
- (3) in any area designated as nonsmoking by the owner, operator, or person in control of the area and marked with a no smoking sign complying with Section 41-3; or
- (4) on park property.”

SECTION 3. That Section 41-2, “Smoking Prohibited in Certain Areas,” of Article II, “Smoking Prohibitions,” of Chapter 41, “Smoking,” of the Dallas City Code is amended by adding Subsection (f) to read as follows:

“(f) It is a defense to prosecution under Subsection (a)(4) of this section if the person was smoking in a location that was:

- (1) a golf course, if the location was:
  - (i) between the tee box of the first hole and the end of the green of the 18<sup>th</sup> hole;
  - (ii) on the driving range; or

- (iii) on the outdoor patio;
- (2) the Elm Fork Shooting Range; or
- (3) at a park partner site.”

SECTION 4. That, unless specifically provided otherwise by this ordinance or by state law, a person violating a provision of this ordinance is, upon conviction, punishable by a fine not to exceed \$200.

SECTION 5. That Chapter 41 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 6. That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.

SECTION 7. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 8. That this ordinance shall take effect on March 1, 2017, and it is accordingly so ordained.

APPROVED AS TO FORM:

LARRY E. CASTO, City Attorney

By   
Assistant City Attorney

Passed NOV 09 2016



## PROOF OF PUBLICATION – LEGAL ADVERTISING

The legal advertisement required for the noted ordinance was published in the Dallas Morning News, the official newspaper of the city, as required by law, and the Dallas City Charter, Chapter XVIII, Section 7.

DATE ADOPTED BY CITY COUNCIL NOV 09 2016

ORDINANCE NUMBER 30258

DATE PUBLISHED NOV 12 2016

ATTESTED BY: