

ARTICLE III. SMOKING*

***Editor's note:** Ord. No. 10,485, §§ 1, 2, adopted Nov. 20, 2006, repealed the former Art. III, §§ 42-96--42-106, and enacted a new Art. III as set out herein. The former Art. III pertained to similar subject matter and derived from Code 1967, §§ 17-23(a)--(i); Ord. No. 5328, § 1, adopted Aug. 24, 1989; Ord. No. 5473, § 1, adopted Feb. 22, 1990; Ord. No. 6513, § 1, adopted Jan. 28, 1993; Ord. No. 8518, §§ 2--8, adopted Feb. 25, 1999; Ord. No. 9453, § 1, adopted Oct. 24, 2002; Ord. No. 9882, §§ 1--3, adopted Sept. 23, 2004.

Cross references: Fire prevention and protection, ch. 38.

State law references: Smoking, V.T.C.A., Health and Safety Code § 382.111 et seq.; smoking prohibited in certain places, V.T.C.A., Penal Code § 48.01.

Sec. 42-96. 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 an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

Business means a sole proprietorship, partnership, joint venture, corporation, trust or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; governmental entities; and private clubs.

Employee means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

Employer means a person, business, partnership, association, corporation, including a municipal corporation, or trust, that employs the services of one or more individual persons.

Enclosed Area means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

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, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

Place of Employment means an area under the control of a public or private employer that employees access during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, private offices, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private

residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility. A private vehicle is not a place of employment unless it is being used in the course of employment.

Place of worship means an enclosed area under the operation and control of an organization that qualifies as a religious organization as provided by V.T.C.A., Tax Code § 11.20(c) and that is exempt from ad valorem taxation pursuant to V.T.C.A., Tax Code § 11.20.

Private club means a non-profit association of persons that: (1) Is organized for the promotion of some common object; (2) Is comprised of members who are passed on and elected by a committee or board made up of members of the club; (3) Is composed of members of which at least 50 percent reside in the county in which the premises of the club is located; (4) Grants membership to an applicant only after a written application has been filed with the chairman of the membership committee or board and approved by the chairman; (5) Owns, leases, or rents a building, or space in a building of such extent and character as is suitable and adequate for the club's members and their guests; (6) Provides regular food service adequate for its members and their guests; (7) Collects annual membership fees, dues, or other income, excluding proceeds from the disposition of alcoholic beverages but including service charges, which income must be sufficient to defray the annual rental of its leased or rented premises or, if the premises are owned by the club, sufficient to meet the taxes, insurance, and repairs and the interest on any mortgage on the premises; (8) Is managed by a board of directors, executive committee, or similar body chosen by the members at their annual meeting; and (9) Does not compensate, directly or indirectly, any member or any officer, agent, or employee of the club, from the disposition of alcoholic beverages to members of the club and their guests, other than charges for the service of the beverages.

Public place means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private club is a "public place" when being used for a function to which the general public is invited. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility. A private vehicle is not a "public place."

Restaurant means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

Retail tobacco store means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. A store shall be deemed as utilized primarily for the sale of tobacco products and accessories if at least 75 percent of the gross revenue of the store derives from tobacco products and tobacco accessories.

Service line means a line in an enclosed area in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

Shopping mall means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

Smoking means lighting, inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

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 to engage in physical exercise, participate in athletic competition, or witness sports or other events.

(Ord. No. 10,485, § 2, 11-20-06, Ord. No. 10,550, § 1, 2-22-07)

Cross references: Definitions generally, § 1-2.

Sec. 42-97. Application of article to city-owned facilities.

All enclosed areas in city owned facilities, including buildings and vehicles owned, leased, or operated by the City of Baytown, shall be subject to the provisions of this article.

(Ord. No. 10,485, § 2, 11-20-06)

Cross references: Administration, ch. 2.

Sec. 42-98. Prohibition of smoking in enclosed public places.

Smoking shall be prohibited in all enclosed areas in public places within the city, including but not limited to, the following places:

- (1) Aquariums, galleries, libraries, and museums.
- (2) Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.
- (3) Bars.
- (4) Bingo facilities.
- (5) Convention facilities.
- (6) Educational facilities, both public and private.
- (7) Elevators.
- (8) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- (9) Health care facilities.
- (10) Hotel and motel lobbies.
- (11) Licensed child care and adult day care facilities.
- (12) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (13) Polling places.
- (14) Private clubs when being used for a function to which the general public is invited.
- (15) Public transportation facilities, including buses and taxicabs, under the authority of the City of Baytown, and ticket, boarding, and waiting areas of public transit depots.
- (16) Restaurants.
- (17) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- (18) Retail stores.
- (19) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the city or a political subdivision of the state, to the extent the place is subject to the jurisdiction of the city.
- (20) Service lines.
- (21) Shopping malls.
- (22) Sports arenas, including enclosed places in outdoor arenas.

(Ord. No. 10,485, § 2, 11-20-06)

Sec. 42-99. Prohibition of smoking in places of employment.

(a) Smoking shall be prohibited in all enclosed areas within places 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.

(b) This prohibition on smoking shall be communicated within three weeks of adoption to all employees and posted conspicuously in all workplaces under the employer's jurisdiction.

(Ord. No. 10,485, § 2, 11-20-06)

Sec. 42-100. Prohibition of smoking in outdoor arenas and stadiums.

Smoking shall be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheatres.

(Ord. No. 10,485, § 2, 11-20-06)

Sec. 42-101. Reasonable distance.

Smoking is prohibited within a reasonable distance of 15 feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means.

(Ord. No. 10,485, § 2, 11-20-06)

Sec. 42-102. Where smoking not regulated.

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of sections 42-98 and 42-99:

(1) Private residences, except when used as a licensed child care, adult day care, or health care facility.

(2) Private vehicles, except when being used in the course of employment.

(3) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 20 percent of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

(4) Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.

(5) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.

(6) Private clubs that have no employees, except when being used for a function to which the general public is invited.

(7) Outdoor areas of places of employment except those covered by the provisions of sections 42-101, 42-102.

(8) Areas designated within a hospital psychiatric unit.

(9) Outdoor areas of places of employment except those covered by the provisions of sections 42-100, 42-101 and 42-103;

(Ord. No. 10,485, § 2, 11-20-06; Ord. No. 10,550, § 2, 2-22-07)

Sec. 42-103. Declaration of establishment as nonsmoking.

Notwithstanding any other provision of this article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking area. Smoking shall be prohibited in any place in which a sign conforming to the requirements of section 42-104 is posted.

(Ord. No. 10,485, § 2, 11-20-06)

Sec. 42-104. Posting of signs.

(a) Except as provided for in subsections (e) and (f) below, signs containing the words "No Smoking" and/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 in every public place and place of employment where smoking is prohibited by this article, by the owner, operator, manager, or other person in control of that place.

(b) Except as provided for in subsections (e) and (f), every public place and place of employment where smoking is prohibited by this article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited inside and within 15 feet of the entrance.

(c) All signs required under this section must be at least 8.5 inches x 11 inches and shall include the information required in this section and must be written in contrasting colors with block letters at least one inch in height.

(d) All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area, except those which are being offered for sale, those that are included as part of original equipment on a motor vehicle or are being stored for use in places where smoking is permitted.

(e) An organization that qualifies as a religious organization as provided by V.T.C.A., Tax Code, § 11.20(c) is not required to post signs at its place of worship as required by this section if the organization has adopted a nonsmoking policy consistent with this article.

(f) Signs shall not be required to be placed on vehicles; however, at least one sign as required in subsection (a) of this section must be posted conspicuously inside vehicles for hire and vehicles used for public transportation.

(Ord. No. 10,485, § 2, 11-20-06; Ord. No. 10,550, § 3, 2-22-07)

Sec. 42-105. Nonretaliation; nonwaiver of rights.

(a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this article or reports or attempts to prosecute a violation of this article.

(b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

(Ord. No. 10,485, § 2, 11-20-06)

Sec. 42-106. Enforcement.

(a) This article shall be enforced by the director of health or an authorized designee.

(b) Any citizen who desires to register a complaint under this article may initiate enforcement with the department of health.

(c) The health department, fire department, or their designees may, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this article, or they may inspect at such other times as they may determine at their discretion.

(d) An owner, manager, operator, or employee of an establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof.

(e) Notwithstanding any other provision of this article, an employee or private citizen may bring legal action to require the city to enforce this article.

(f) In addition to the remedies provided by the provisions of this section, the city manager or the director of health may apply for injunctive relief to enforce these provisions in any court of competent jurisdiction.

(Ord. No. 10,485, § 2, 11-20-06)

Sec. 42-107. Violations and penalties.

(a) A person who smokes in an area where smoking is prohibited by the provisions of this article shall be guilty of an infraction, punishable by a fine as provided in section 1-14 of this Code.

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this article shall be guilty of an infraction, punishable by:

(1) A fine not exceeding \$100.00 for a first violation.

(2) A fine not exceeding \$200.00 for a second violation within a period of 12 consecutive months.

(3) A fine not exceeding \$500.00 for each additional violation within a period of 12 consecutive months.

(c) Violation of this article is hereby declared to be a public nuisance, which may be abated by the director of health by restraining order, preliminary and permanent injunction, or other means provided for by law, and the city may take action to recover the costs of the nuisance abatement.

(Ord. No. 10,485, § 2, 11-20-06)

Sec. 42-108. Public education.

The director of health shall engage in a continuing program to explain and clarify the purposes and requirements of this article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

(Ord. No. 10,485, § 2, 11-20-06)

Sec. 42-109. Other applicable laws.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(Ord. No. 10,485, § 2, 11-20-06)

Sec. 42-110. Liberal construction.

This article shall be liberally construed so as to further its purposes.

(Ord. No. 10,485, § 2, 11-20-06; Ord. No. 10,550, § 1, 2-22-07)

Secs. 42-111--42-130. Reserved.

