



**CITY OF TYLER, TEXAS
CITY COUNCIL COMMUNICATION**

Agenda Number: O-1

Date: February 6, 2008

Subject: Request that the City Council consider adopting an Ordinance amending Tyler City Code Chapter 4 to adopt new smoking regulations prohibiting smoking in public places and in places of employment/workplaces, and providing for some exceptions.

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Item Reference: Tyler City Code Chapter 4; Article II.

PREVIOUS REVIEWS OF TYLER SMOKING REGULATIONS

1987. On July 10, 1987, the City Council adopted Ordinance Number 0-87-29, which established certain smoking regulations in the Tyler City Code. This original ordinance included a partial ban on smoking in public places and in places of employment, in that it prohibited smoking in specified areas and required the person in charge of specific “public places” or “places of employment” to designate at least 75% of the area as “No Smoking”, but it also authorized designation of up to 25% of the remaining area of the public place or place of employment as “Smoking”. Specific exceptions in the 1987 ordinance included an event in which an entire room or hall is used for a private social function and the seating arrangements are under control of the sponsor; a participant in a theatrical performance; an establishment which has more than 70% of its annual gross sales from alcoholic beverages; a physically separated bar area for the sale of alcoholic beverages, a tobacco specialty shop, and restaurants and cafeterias.

Since adoption of the smoking regulations in 1987, there has been a series of amendments or actions by the City Council with regard to the smoking regulations:

1989. The City Council directed an increase in both enforcement and publicizing of the Smoking Ordinance.

1990. On August 21, 1990, the City Council adopted Ord. No. 0-90-36, which updated the maximum fine as authorized in State law.

1992. On September 9, 1992, in Ord. No. 0-92-42, the City Council considered 4 options:

Alternative #1: Leave the 1987 ordinance as is (i.e., keeping the 75%/25% No Smoking Designation for public places and places of employment and other provisions);

Alternative #2: Exempt bowling alleys and bingo businesses;

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Alternative #3: Allow for up to 50% of the total area of a bowling alley or bingo business as “Smoking” upon the development of a Written Plan. Such Plan could be subject to revocation by the Fire Marshal, thus returning to the 75% designation;

Alternative #4: Remove Exemptions for restaurants and cafeterias.

In Ord. No. 0-92-42, the City Council ultimately kept the 75%/25% provision and other requirements, kept the exemption for restaurants and cafeterias, but also added an exemption for bingo businesses.

1994. On March 22, 1994, in Ord. No. 0-94-24, the City Council expressly authorized all City inspectors and other code enforcement personnel to issue citations for violations of the Smoking Ordinance.

1995. On February 15, 1995, the City Council adopted Ord. No. 0-95-7, which provided for a major re-codification of the City Code. The provisions in Chapter 20, including the smoking regulations, were moved to Chapter 4.

1996. On August 21, 1996, the City Council adopted Ord. No. 0-96-17, which consolidated sign provisions and provided for small increases in the minimum fines for violation of the Smoking Ordinance.

REVIEW BY MAYOR’S SMOKING TASK FORCE IN 2008

In 2006, the U.S. Surgeon General released a report detailing the harmful effects of secondhand smoke. The U.S. Surgeon General’s report concluded that secondhand smoke can be harmful to the health of all persons, including infants and children. Since the original adoption of the Tyler Smoking Ordinance, it has also been determined that the separation of smokers from nonsmokers within the same airspace does not eliminate the exposure of nonsmokers to the harmful effects of secondhand smoke. Employees of businesses are subjected to the carcinogens in secondhand smoke as well.

On December 18, 2007, Mayor Joey Seeber announced the formation of a Smoking Task Force and charged the group with making recommendations to the City Council regarding the current Tyler Smoking Ordinance. The Task Force, chaired by City Councilmember Nathaniel Moran and including City Councilmember Chris Simons and restaurant and hospitality services representatives as well as health professionals, considered the U.S. Surgeon General’s report, received information from persons in the medical community, examined the smoking regulations of other Texas municipalities, and reviewed the current Tyler ordinance. Members of the Task Force also included: Dr. Bruce Carter, Bobby Curtis, Rick Eltife, Dr. Jonathan MacClements, Brian McCalla, Felicity Reedy, and Robert Westbrook. The Task Force also conducted a series of meetings, and received input from citizens in a public meeting held on January 22, 2008. The City also sought and obtained both written and e-mail comments from the public.

Following completion of its review, the Mayor’s Smoking Task Force now recommends the following:

1. That stricter smoking regulations should be adopted to serve the following purposes:

- a. Improve and protect the public's health by eliminating smoking in Public Places and Places of Employment/Workplaces. This would include restaurants, bars and other places of employment;
 - b. Promote the right of nonsmokers to breathe smoke-free air; and
 - c. Recognize that the need to breathe smoke-free air shall have priority over the choice to smoke.
2. That smoking should be prohibited within twenty (20) feet of outside entrances, operable windows, and ventilation systems of any Public Place or Place of Employment/Workplace.
 3. That smoking should be prohibited at outdoor public events.
 4. That the Smoking Ordinance should apply to all City of Tyler facilities and property.
 5. That the proposed ordinance should have the following Exceptions:
 - a. Private residences, except when a private residence is used as a child care, adult daycare or health facility;
 - b. Retail tobacco stores;
 - c. Facilities being used by Private organizations (such as Veterans of Foreign Wars);
 - d. Facilities and property under the ownership, custody or control of other governmental and educational institutions;
 6. That the ordinance should require the posting of signs by employers, and that employers should make their employees aware of the Smoking prohibitions.
 7. That it will be unlawful for the person in control of a Public Place or Place of Employment to allow smoking, or to violate any provision of the Smoking Ordinance. Similarly, persons who smoke in prohibited areas would also be in violation of the ordinance.

It is also recommended that the Effective Date of this Ordinance be sixty (60) calendar days after its adoption, in order to make the public more aware of its requirements.

RECOMMENDATION:

It is recommended that the City Council adopt the attached ordinance amending Tyler City Code Chapter 4 to adopt new regulations prohibiting smoking in public places and in places of employment/workplaces, and providing for some exceptions.

Gary C. Landers

Drafted/Recommended By:
Department Leader Gary Landers, City Attorney

Edited/Submitted By: **Bob Turner, City Manager**
City Manager

RESOLUTION NO. 2008-1

**A RESOLUTION OF THE NORTHEAST TEXAS PUBLIC HEALTH
DISTRICT GOVERNING BOARD SUPPORTING AND ENCOURAGING
THE CITY OF TYLER TO BY ORDINANCE ELIMINATE SMOKING
IN ALL WORKPLACES AND PUBLIC PLACES**

WHEREAS, the Northeast Texas Public Health District does hereby find that: The 2006 U.S. Surgeon General's Report, The Health Consequences of Involuntary Exposure to Tobacco Smoke, has concluded that:

1. Secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; and
2. Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that, smoking by parents causes respiratory symptoms and slows lung growth in their children; and
3. Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; and
4. There is no risk-free level of exposure to secondhand smoke; and
5. Establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and
6. Evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry; and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of 53,000 Americans annually; and

WHEREAS, the Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen as of 2000, and has reaffirmed this position in subsequent reports on carcinogens in 2003 and 2005; and

WHEREAS, the U.S. Centers for Disease Control has issued a warning that anyone at risk for heart disease should avoid entering all smoke-filled environments; and

WHEREAS, secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

WHEREAS, the Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion per year—\$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion in lost productivity; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive impact after enactment of laws requiring workplaces to be smokefree; and

WHEREAS, creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety; and

WHEREAS, there is no legal or constitutional right to smoke and business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke; and

WHEREAS, the smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance;

WHEREAS, local and state governments throughout the country have successfully passed smokefree air laws to protect people against the harmful effects of secondhand smoke; and

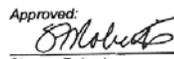
WHEREAS, it is consistent with the policy of the Northeast Texas Public Health District to strongly favor policies and laws that limit exposure to secondhand smoke; and

THEREFORE, BE IT RESOLVED THAT:

The Northeast Texas Public Health District Governing Board hereby supports and encourages the City Council of the City of Tyler to enact an Ordinance eliminating smoking from all workplaces and public places.

Signed this 24th day of January, 2008.


John Adcock, D.D.S., Board Chair
Northeast Texas Public Health District

Approved:

Sharon Roberts
NETPHD Board Attorney

ORDINANCE NO. 0-2008-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 4, "OFFENSES AND MISCELLANEOUS PROVISIONS", ARTICLE II, "SMOKING PROHIBITED", OF THE CODE OF ORDINANCES, CITY OF TYLER, TEXAS, BY ADOPTING NEW REGULATIONS PROHIBITING SMOKING IN PUBLIC PLACES AND IN PLACES OF EMPLOYMENT/WORKSITES, WITH SOME EXCEPTIONS; ESTABLISHING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to promote the public health, safety and welfare; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent by implication or otherwise, the municipality from exercising the authority incident to self-government; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City may license and regulate persons, corporations, and associations engaged in any business, occupation, profession or trade; and

WHEREAS, Section 1 of the Tyler City Charter states that the City may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, and when not prescribed by the Charter, in such manner as shall be provided by ordinances and resolutions of the City Council; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

WHEREAS, in 2006, the U. S. Surgeon General released a report focusing on the effects of secondhand smoke. Secondhand smoke is composed of sidestream smoke (the smoke released from the burning end of a cigarette) and exhaled mainstream smoke (the smoke exhaled by the smoker). Secondhand smoke has been designated as a known human carcinogen by the U.S. Environmental Protection Agency, the National Toxicology Program, and the International Agency for Research on Cancer, and an occupational carcinogen by the National Institute for Occupational Safety and Health; and

WHEREAS, the findings of said report state there is no risk-free level of exposure to secondhand smoke and that breathing even a little secondhand smoke can be harmful to your health; and

WHEREAS, the U. S. Surgeon General has concluded that secondhand smoke causes lung cancer, heart disease, acute respiratory effects and can cause sudden infant death syndrome and other health consequences in infants and children; and

WHEREAS, the simple separation of smokers from nonsmokers within the same airspace does not eliminate the exposure of nonsmokers to secondhand smoke, given that no safe level of exposure to carcinogens has been found; and

WHEREAS, other Texas cities have enacted similar smoking ordinances prohibiting smoking in all public places including Abilene, Austin, Baytown, Beaumont, Benbrook, Copperas Cove, El Paso, Laredo, Marshall, Pasadena, Pearland, Plano, Socorro, Southlake, Vernon, and Victoria; and

WHEREAS, many health professionals in Tyler have expressed concern for stronger smoking regulations and a need to eliminate exposure to secondhand smoke in public places; and

WHEREAS, on December 18, 2007, Mayor Joey Seeber announced the formation of a Task Force charged with making recommendations to the City Council for updating the City of Tyler's smoking ordinance; and

WHEREAS, the Task Force members appointed by Mayor Seeber represent several segments of the community, including business owners, the hospitality industry, the medical community, and the legal community; and

WHEREAS, the Task Force has conducted meetings and has received community input about current and potential smoking regulations both in verbal and written communications; and

WHEREAS, on January 28, 2008, the Smoking Task Force reviewed the attached ordinance and it was the consensus of the group that the City Council should approve said ordinance; and

WHEREAS, accordingly, the City Council recognizes that secondhand smoke poses a serious public health hazard, that nonsmokers need protection from secondhand smoke exposure and that therefore, regulation by the City Council of the burning of tobacco in public places and places of employment is imperative in order to protect the public health and welfare of the citizens of the City of Tyler; and

WHEREAS, it is important to amend Chapter 4, "Offenses and Miscellaneous Provisions," Article II., "Smoking Prohibited," of the Code of Ordinances, City of Tyler, Texas;

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

PART 1: That Tyler City Code Chapter 4, "Offenses and Miscellaneous Provisions", Article II., "Smoking Prohibited", is hereby amended by deleting current Article II in its entirety.

PART 2: That Tyler City Code Chapter 4, "Offenses and Miscellaneous Provisions", Article II., "Smoking Prohibited", is hereby amended by adding new Article II. to read as follows:

ARTICLE II. SMOKING PROHIBITED

Sec. 4-40. Purpose.

The purpose of this Article is to (1) improve and protect the public's health by eliminating smoking in Public Places and Places of Employment/Workplaces; (2) promote the right of nonsmokers to breathe smoke-free air; and (3) recognize that the need to breathe smokefree air shall have priority over the choice to smoke.

Sec. 4-41. Definitions.

The following words and phrases, whenever used in this Article, shall be construed as defined in this section:

a. *Bar* means any enclosed 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 such beverages, and where minors are not allowed admittance unless

they are accompanied by a parent or guardian. For purposes of this definition, the serving of food is incidental to the consumption of alcoholic beverages if the gross receipts from the sale of food is thirty percent (30%) or less of the annual gross receipts of the establishment.

b. *Business* means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

c. *Employee* means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

d. *Employer* means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.

e. *Enclosed Area* means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid.

f. *Place of Employment/Workplace* means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a Place of Employment unless it is used as a child care, adult day care or health care facility.

g. *Private Organization* means an entity –, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for – such organization’s purposes , which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a non-profit organization under 26 U.S.C. Section 501. The term “Private Organization” shall not include any portion of a building or premises, whether owned or leased by a non-profit corporation, when said portion is in use by an entity that is not a non-profit corporation organized under 26 U.S.C. Section 501.

h. *Private Place* means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal residences, private clubs or personal automobiles. A privately-owned business, open to the public, is not a private place.

i. *Public Place* means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundromats, public transportation and affiliated facilities, reception areas, production and marketing establishments, retail service establishments, retail stores and malls, theaters and waiting rooms. A private residence is not a public place.

j. *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.

k. *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. For purposes of this article, other products that are merely incidental means not exceeding ten percent (10%) of annual gross sales. Sales of incidental products shall not include the sale of alcohol regardless of percentage of total gross sales.

l. *Service Line* means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

m. *Smoking* means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, or plant in any manner or in any form.

n. *Sports Arena* means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Sec. 4-42. Prohibition of Smoking in Public Places.

a. Smoking shall be prohibited in all places of employment or workplaces and enclosed public places as well as those outdoor areas designated in Sec. 4-44 and 4-45, within the City of Tyler, including, but not limited to, the following places:

1. Elevators.
2. Restrooms, lobbies, reception areas, hallways and any other common-use areas.
3. Buses, bus terminals, taxicabs, train stations, Tyler Pounds Regional Airport, and other facilities and means of public transit under the authority of the City of Tyler, as well as ticket, boarding, and waiting areas of public transportation facilities.
4. Service lines.
5. Retail stores and shopping malls.
6. All enclosed areas available to and customarily used by the general public in all businesses, including but not limited to, attorneys offices and other offices, banks, Laundromats, hotels and motels.
7. Bars, restaurants, and nightclubs.
8. Galleries, libraries, zoos, and museums.
9. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except that performers may smoke when the smoking is part of a stage production.
10. Indoor sports arenas and convention halls.
11. Every room, chamber, place of meeting or public assembly, under the control of any board, council, commission, committee, including joint committees, or agencies, of the City of Tyler during such time as a public meeting is in progress.
12. Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors offices, and dentists offices.

13. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

- 14. Polling places.
- 15. Bingo facilities and bowling alleys.
- 16. Sexually oriented businesses.
- 17. Places of Employment/Workplaces.

Sec. 4-43. Prohibition of Smoking in Places of Employment/Workplace and within a Distance of Twenty Feet of Places where Smoking is Prohibited.

a. It shall be the responsibility of employers to provide a smoke-free place of employment for all employees.

b. Smoking shall be prohibited in all indoor and outdoor areas served by employees, in 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. As used in this subsection, the term “served” shall not include routine maintenance or routine cleaning activities such as waste removal, sweeping, mopping, and similar activities.

c. Each employer having control of any enclosed Place of Employment/Workplace shall post a copy of Section 4-43 in the Place of Employment within thirty (30) calendar days after the effective date of this Article and in the future prior to receiving any required Certificate of Occupation from the City.

Sec. 4-44. Prohibition of Smoking in Specified Outdoor Areas.

Smoking shall be prohibited in the following outdoor areas.

- a. Boarding and waiting areas of public transportation facilities.
- b. Zoos.
- c. City parks, playgrounds, and recreation areas, excepting however private boats on City lakes.

Sec. 4-45. Reasonable Distance. Prohibition of Smoking within Distance of 20 feet of Public Place or Place of Employment/Workplace.

Smoking is prohibited within a distance of not less than twenty (20) feet outside entrances, operable windows, and ventilation systems of Enclosed Areas where smoking is prohibited in any Public Place or Place of Employment/Workplace.

Sec. 4-46. Exemptions from Prohibition.

Notwithstanding any other provision of this Article to the contrary, the following areas shall not be subject to the smoking restrictions of this Article:

- a. A private residence, unless it is used as a child care, adult daycare or health care facility.

b. A Retail Tobacco Store.

c. A Private Organization . This exemption shall not apply to any Private Organization that is established for the purpose of avoiding compliance with this Article.

d. Facilities and property otherwise defined by this ordinance that are under the ownership, custody or control of another governmental or educational institution.

e. Outdoor areas, including outdoor patios, that are adjacent to bars or restaurants and that are served by employees of such bars or restaurants, but which are at least twenty (20) feet from outside entrances, operable windows, and ventilation systems of Enclosed Areas where smoking is prohibited by this Article. For purposes of this subsection, the term "outdoor area" shall mean an outdoor area that does not have a roof, and has at least one side which does not extend to the ceiling or is not solid.

Sec. 4-47. Posting of Signs.

a. The owner, manager or other person having control of a Public Place or Place of Employment/Workplace or other area where smoking is prohibited by this Article shall have a conspicuously posted sign clearly stating NO SMOKING or displaying the international No Smoking symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it). The signs shall have bold lettering of not less than one (1) inch in height and must be posted at each entrance and within the building or other areas where smoking is prohibited.

b. All ashtrays and other smoking paraphernalia shall be limited in facilities to that required for the enforcement of extinguishing of smoking materials in Public Places and Places of Employment.

Sec. 4-48. Enforcement.

a. Enforcement of this Article shall be by City employees and/or contractors as designated by the City Manager or designee.

b. Notice of the provisions set forth in this Article shall be given to all applicants for a certificate of occupancy or any other license to operate a business in the City of Tyler.

c. Any person may register a complaint under this Article to initiate enforcement with any agency or official designated herein.

d. The above designated enforcement persons shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

e. Any owner, manager, operator or employee of any establishment regulated by this Article shall be responsible for informing persons violating this Article of the provisions.

Sec. 4-49. Non-retaliation.

No person or employee shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke-free environment afforded by this Article.

Sec. 4-50. Violations and Penalties.

a. It shall be unlawful for the owner, manager or other person having control of a Public Place or Place of Employment or other area where smoking is prohibited by this Article to allow smoking or to fail to comply with any of the provisions of this Article.

b. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Article, or to violate any provision of this Article.

c. Any person who violates any provision of this Article shall be guilty of a misdemeanor and shall be punished by a fine of not more than *three hundred dollars (\$300.00)*. If a defendant has been previously convicted under this Article, the defendant shall be punished by a fine of not more than *five hundred dollars (\$500.00)*. It is hereby declared that the culpable mental state required by Texas Penal Code Section 6.02 or successor, is specifically negated and clearly dispensed with, and an offense under this Article is declared to be a strict liability offense.

Sec. 4-51. Other Applicable Laws.

This Article shall not be interpreted nor construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 4-52 – 4-59. Reserved.

PART 3: That Tyler City Code Chapter 4, “Offenses and Miscellaneous Provisions”, Article III., “Home Solicitation”, is hereby amended by renumbering the sections to begin at Sec. 4-60.

PART 4: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 5: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it can not become effective until its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas or later. The effective date of this ordinance shall be June 1, 2008.

PASSED AND APPROVED this 6th day of February, A. D., 2008.

JOSEPH O. SEEBER, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

CITY ATTORNEY