

Section 310.1.1 Definitions. In this section:

Administrative area means the area of an establishment not generally accessible to the public, including, but not limited to individual offices, stockrooms, and employee lounges, or meeting rooms.

Bar means an establishment which derives more than 50 percent of its annual gross sales from the sale of alcoholic beverages.

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

Food products establishment means any fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tea room, sandwich shop, soda fountain, confectionery, ice cream store, refreshment stand, fruit stand, country club, catering service, industrial feeding establishment, or grocery store; private or public where food or drink is prepared for sale or for service on the premises or elsewhere; and any other eating or drinking is prepared for sale or for eating or drinking establishment or operation where food or drink is served or provided for the public with or without charge.

Health care facility means any institution that provides medical, surgical, or overnight facilities for patients.

Retail and service establishment means any establishment which sells goods or services to the general public.

Public service area means any area to which the general public routinely has access for municipal services or which is designated a public service area in a written policy prepared in compliance with this ordinance.

Sign means the official placard designating an area or facility where smoking is prohibited, and must conform to one of the following choices of wording, to-wit:

1. No smoking—~~City of Lewisville Ordinance No. 2757-12-2001~~. Violators fined up to \$~~5~~200.00.
2. The universal symbol for no smoking; or
3. Any other language indicating that the area marked is designated as a nonsmoking area.

All signs must be of sufficient size to accommodate the message contained thereon in letters at least one inch in height.

310.1.2 Smoking prohibited in certain public areas.

(a) A person commits an offense if he smokes or possesses a burning tobacco, weed, or other plant product in any of the following ~~indoor or enclosed areas~~:

- (1) A public library, or museum;
- (2) Hearing rooms, conference rooms, meeting rooms or any public service area of any facility owned, operated, or managed by the city in which public business is conducted, when the public business requires or provides an opportunity for direct participation or observation by the general public;
- (3) Every publicly or privately owned theater, auditorium, or other enclosed facility which is open to the public for primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event, or any other performance or event, in all areas except either in that area commonly known as the lobby, or in areas not open to the public;

- (4) An elevator used by the public; ~~or~~
- (5) Any retail or service establishment serving the general public, including, but not limited to any department store, grocery store, or drug store;
- (6) Any food product establishment;
- (7) Any bar, including any bar within a food product establishment;
- (8) In or within 25 feet of any door, operable window/vent or other opening to a place where smoking is prohibited, except as provided for in section 310.1.4, below; or
- (9) Hotels and motels, except as provided for in section 310.1.4, below.

(b) The owner or person in control of an establishment or area designated in subsection (a) of this section shall post a conspicuous sign at the main entrance to the establishment ~~or area, which shall contain the words, "No Smoking. City of Lewisville Ordinance No. 2757-12-2001."~~

(c) The owner or person in control of an establishment or area regulated by this section commits an offense if he fails to:

- (1) Post a sign in accordance with subsection (b) of this section;
- (2) Advise a person who violates this section that smoking is not allowed; or
- (3) Request a person to remove himself from the location after that person has been advised that smoking is not allowed and that person willfully continues to smoke.

~~(ed) It shall be a defense to prosecution under this section that the conveyance or public place establishment or area in which the offense takes place does not have prominently displayed a conspicuous reasonably sized sign that smoking is prohibited and that an offense is punishable by a fine not to exceed \$200.00.~~

~~(d) It shall also be a defense to prosecution under this section that the facilities for the extinguishment of smoking materials were not located within the conveyance or public place, or within 20 feet of the entrance to the public place within which the offense takes place.~~

~~(e) It is a defense to prosecution under this section that the food product establishment is:~~

- ~~(1) An establishment which has indoor seating arrangements for less than 50 patrons; or~~
- ~~(2) A physically separated bar area of a food products establishments otherwise regulated.~~

310.1.3 Food product establishments.

~~(a) A food product establishment which has indoor or enclosed dining areas shall provide separate indoor or enclosed dining areas for smoking and nonsmoking patrons.~~

~~(b) A nonsmoking area must:~~

- ~~(1) Be separated, where feasible, from smoking areas by a minimum of four feet of contiguous floor space;~~
- ~~(2) Be ventilated, where feasible and situated so that air from the smoking area is not drawn into or across the nonsmoking area;~~
- ~~(3) Be clearly designated by appropriate signs visible to patrons within the dining area indicating that the area is designated nonsmoking; and~~

~~— (4) Have ashtrays or other suitable containers for extinguishing smoking materials at the perimeter of the nonsmoking area.~~

~~— (c) Each food product establishment which has a dining area shall have signs at the establishment's entrance indicating that nonsmoking seating is available.~~

~~— (d) Non dining areas of any food product establishment affected by this section to which patrons have general access, excluding restrooms, but including food order areas, food service areas, and cashier areas, shall be designated as nonsmoking areas.~~

~~— (e) It is a defense to prosecution under this section that the food product establishment is:~~

~~— (1) An establishment which has indoor seating arrangements for less than 50 patrons; or~~

~~— (2) A physically separated bar area of a food product establishment otherwise regulated.~~

~~— (f) A person commits an offense if he smokes or possesses a burning tobacco, weed, or other plant product in an area of a food product establishment designated as nonsmoking in accordance with the provisions of this section.~~

310.1.43 Regulation of smoking —Workplace, schools, health care facilities.

Notwithstanding the provisions of this ordinance, any employer, primary or secondary school administrator, or health care facility provider may designate any building, or portion thereof, as a nonsmoking area. Any employer, primary or secondary school administrator, or health care facility provider who chooses to designate any building, or portion thereof, as a nonsmoking area shall:

(a) Adopt, implement, and maintain a written smoking policy which shall be communicated to all employees at least three weeks prior to its adoption;

(b) Prominently display reasonable sized signs that smoking is prohibited; and

(c) Provide facilities in sufficient numbers and at such locations to be readily accessible for the extinguishment of smoking materials.

310.1.54 Exceptions. The following areas are exempted from the provisions of this ordinance:

(a) A retail or service establishment which derives more than 50 percent of its annual gross sales from the sale of tobacco, tobacco products, or smoking implements.

(b) An administrative area within the workplace.

~~(c) Bowling centers and bars, including any bar within a restaurant, so long as more than 50 percent of their annual gross sales is derived from the sale of alcoholic beverages.~~

~~(d) Any public place and any food products establishment consisting of less than 500 square feet. An unenclosed outdoor seating area associated with a food product establishment, so long as:~~

~~(1) smoking is prohibited in or within 5 feet of any door, operable window/vent or other opening to a place where smoking is prohibited;~~

~~(2) the outdoor seating area is not adjacent to a playground or play area for children; or~~

~~(3) the outdoor seating area is not posted as a nonsmoking area by the owner, operator or person in control of the establishment.~~

~~(e) Hotel and motel meeting and assembly rooms rented to guests, areas, and rooms while in use for private social functions. Not more than ten percent of hotel and motel rooms rented to guests and designated as smoking rooms. 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 provisions of this ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.~~

~~(f) A food products establishment whose indoor seating accommodates less than 50 patrons.~~

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, AMENDING CHAPTER 5 OF THE LEWISVILLE CITY CODE; BY PROVIDING FOR THE PROHIBITION OF SMOKING IN FOOD PRODUCTS ESTABLISHMENTS, BARS, HOTEL AND MOTEL ROOMS WITH CERTAIN EXCEPTIONS, AND WITHIN 25 FEET ANY OPENING TO A PLACE WHERE SMOKING IS PROHIBITED; PROVIDING FOR AN OFFENSE IF THE OWNER OR PERSON IN CONTROL OF AN ESTABLISHMENT FAILS TO POST NO SMOKING SIGNS, ADVISE A PATRON THAT SMOKING IS NOT ALLOWED, OR REQUEST A PATRON TO LEAVE AFTER HAVING BEEN ADVISED THAT SMOKING IS NOT ALLOWED; DELETING CERTAIN DEFENSES AND EXCEPTIONS; PROVIDING FOR AN EXEMPTION FOR OUTDOOR SEATING AREAS OF FOOD PRODUCT ESTABLISHMENTS MEETING CERTAIN REQUIREMENTS; PROVIDING FOR A REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lewisville has determined for the health, welfare and safety of its citizens that an amendment to the Lewisville City Code, Chapter 5, is necessary;

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

SECTION 1. Chapter 5, Article III, Section 5-94, Amendments to the International Fire Code 2006 edition, section 310.1.1, Definitions, is hereby amended by adding the following new definition:

Bar means an establishment which derives more than 50 percent of its annual gross sales from the sale of alcoholic beverages.

SECTION 2. Chapter 5, Article III, Section 5-94, Amendments to the International Fire Code 2006 edition, section 310.1.1, Definitions, is hereby amended by deleting the current definition of “Sign” and in its place inserting the following new definition:

Sign means the official placard designating an area or facility where smoking is prohibited, and must conform to one of the following choices of wording, to-wit:

1. No smoking. Violators fined up to \$500.00.
2. The universal symbol for no smoking; or
3. Any other language indicating that the area marked is designated as a nonsmoking area.

All signs must be of sufficient size to accommodate the message contained thereon in letters at least one inch in height.

SECTION 3. Section 5-94, Amendments to the International Fire Code 2006 edition, section 310.1.2, Smoking Prohibited in Certain Public Areas, is hereby amended by deleting the current language in its entirety and in its place inserting the following new language:

310.1.2 Smoking prohibited in certain public areas.

(a) A person commits an offense if he smokes or possesses a burning tobacco, weed, or other plant product in any of the following:

- (1) A public library, or museum;
- (2) Hearing rooms, conference rooms, meeting rooms or any public service area of any facility owned, operated, or managed by the city in which public business is conducted, when the public business requires or provides an opportunity for direct participation or observation by the general public;
- (3) Every publicly or privately owned theater, auditorium, or other enclosed facility which is open to the public for primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event, or any other performance or event, in all areas except either in that area commonly known as the lobby, or in areas not open to the public;
- (4) An elevator used by the public;
- (5) Any retail or service establishment serving the general public, including, but not limited to any department store, grocery store, or drug store;
- (6) Any food product establishment;
- (7) Any bar, including a bar within a food product establishment;

(8) In or within 25 feet of any door, operable window/vent or other opening to a place where smoking is prohibited, except as provided for in section 310.1.4, below; or

(9) Hotels and motels, except as provided for in section 310.1.4, below.

(b) The owner or person in control of an establishment or area designated in subsection (a) of this section shall post a conspicuous sign at the main entrance to the establishment or area.

(c) The owner or person in control of an establishment or area regulated by this section commits an offense if he fails to:

(1) Post a sign in accordance with subsection (b) of this section;

(2) Advise a person who violates this section that smoking is not allowed; or

(3) Request a person to remove himself from the location after that person has been advised that smoking is not allowed and that person willfully continues to smoke.

(d) It shall be a defense to prosecution under this section that the establishment or area in which the offense takes place does not have displayed a conspicuous sign that smoking is prohibited.

SECTION 4. Section 5-94, Amendments to the International Fire Code 2006 edition, section 310.1.3, Food Product Establishments, is hereby amended by deleting the current language in its entirety.

SECTION 5. Section 5-94, Amendments to the International Fire Code 2006 edition, section 310.1.4, Regulation of Smoking – Workplace, Schools, Health Care Facilities, is hereby amended by renumbering the current section 310.1.4 to section 310.1.3.

SECTION 6. Section 5-94, Amendments to the International Fire Code 2006 edition, section 310.1.5, Exceptions, is hereby amended by renumbering the current section 310.1.5 to section 310.1.4 and by deleting the current language in its entirety and in its place inserting the following new language:

310.1.4 Exceptions. The following areas are exempted from the provisions of this ordinance:

- (a) A retail or service establishment which derives more than 50 percent of its annual gross sales from the sale of tobacco, tobacco products, or smoking implements.
- (b) An administrative area within the workplace.
- (c) Bowling centers.
- (d) An unenclosed outdoor seating area associated with a food product establishment, so long as:
 - (1) smoking is prohibited in or within 5 feet of any door, operable window/vent or other opening to a place where smoking is prohibited;
 - (2) the outdoor seating area is not adjacent to a playground or play area for children; or
 - (3) the outdoor seating area is not posted as a nonsmoking area by the owner, operator or person in control of the establishment.
- (e) Not more than ten percent of hotel and motel rooms rented to guests and designated as smoking rooms. 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 provisions of this ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

SECTION 7. REPEALER. Every ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

SECTION 8. SEVERABILITY. If any section, sentence, clause, or phrase of this ordinance shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this ordinance, but they shall remain in effect.

SECTION 9. PENALTY. Any person, firm or corporation who violates any provisions of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof in the Municipal Court, shall be subject to a fine of not more than \$500.00 for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

SECTION 10. EFFECTIVE DATE. This Ordinance shall take effect and be in full force and effect on October 1, 2012.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 2ND DAY OF JULY, 2012.

APPROVED:

Dean Ueckert, MAYOR

ATTEST:

Julie Heinze, CITY SECRETARY

APPROVED AS TO FORM:

Lizbeth Plaster, CITY ATTORNEY