

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, AMENDING FRISCO'S CODE OF ORDINANCES, ORDINANCE NO. 06-03-31, AS AMENDED, CHAPTER 54 (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE II (SMOKING), MODIFYING CERTAIN REGULATIONS RELATING TO SMOKING; PERMITTING SMOKING IN FRATERNAL ORGANIZATION MEMBER SPACES, SMOKING LOUNGES AND SMOKING ROOMS UNDER CERTAIN CONDITIONS; DEFINING TERMS; PROVIDING A PENALTY CLAUSE, SAVINGS/REPEALING CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City Council of the City of Frisco, Texas ("City Council") has investigated and determined that it would be advantageous and beneficial to the citizens of the City of Frisco, Texas ("Frisco" or "City") to amend Frisco's Code of Ordinances, Ordinance No. 06-03-31, as amended ("Code of Ordinances"), Chapter 54 (Offenses and Miscellaneous Provisions), Article II (Smoking) for the purposes of modifying certain regulations relating to smoking and permitting smoking in fraternal organization member spaces, smoking lounges and smoking rooms under certain conditions; and

WHEREAS, the City Council has further investigated and determined that in order to promote the public health, safety and welfare of Frisco and its citizens, it is in the best interest of Frisco and its citizens to amend the Code of Ordinances, Chapter 54 (Offenses and Miscellaneous Provisions), Article II (Smoking), as set forth below.

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

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Amendment to the Code of Ordinances, Chapter 54 (Offenses and Miscellaneous Provisions), Article II (Smoking). The Code of Ordinances, Chapter 54 (Offenses and Miscellaneous Provisions), Article II (Smoking) is hereby amended as follows¹:

"ARTICLE II. SMOKING

DIVISION 1. GENERALLY

Sec. 54-19 Definitions

¹ Deletions are evidenced by ~~strikethrough~~.

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~~Air barrier system. A system that creates an air curtain to prevent drift or penetration of tobacco smoke from a smoking area to a nonsmoking area not allowing drift or penetration from the ceiling down to 24 inches above the floor.~~

~~Air purification system. An electrically powered hospital grade, hepa media filter that will clean all of the air in the designated smoking area every 15 minutes as follows: not less than 95 percent of 0.3 micron particulate efficiency including, but not limited to, dust, smoke, pollen, mold spores, bacteria, tobacco smoke, viruses and allergens and not less than 95 percent removal of gases, vapors, Volatile Organic Compounds (VOC) and odors.~~

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~~Designated smoking area. An area which shall not exceed 50 percent of the net floor area and is equipped with an air purification system or a separate ventilation system and having a physical barrier or air barrier system, if required by a licensed professional engineer approved by the City, between it and the nonsmoking area to prevent air from the smoking area from being drawn across the nonsmoking area.~~

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~~Fraternal organization member space. An enclosed space used by a recreational, fraternal, social, patriotic, political, benevolent, or athletic organization exclusively for organizational purposes at all times, and not for pecuniary gain, and in which the sale of alcoholic beverages is merely incidental to the 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 under 26 U.S.C. Section 501, as amended.~~

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~~Net floor area. The floor area of the interior of the establishment normally utilized and accessible by patrons and/or the general public, as determined by the building official pursuant to the City's building code, as amended.~~

...

~~Physical barrier. A barrier that will form an effective membrane continuous from outside wall to outside wall, from a smoke barrier to a smoke barrier, from floor to floor or roof above, or a combination thereof, including continuity through all~~

concealed spaces, such as above suspended ceilings, interstitial structural and mechanical spaces. Transfer grilles, louvers and similar openings shall not be used in these partitions. Self-closing, tightfitting doors are permitted in such barriers. Membrane penetrations must be effectively sealed to prevent the free passage of air.

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Smoking lounge. A room common to, or within, a retail or service establishment that provides patrons an area for smoking. Other services not directly related to the activity of smoking may be provided by the establishment in a smoking lounge.

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Retail or service establishment. Any establishment which sells goods or services to the general public.

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Smoke or smoking. Includes the carrying, possessing or holding of a pipe, hookah, cigarette, tobacco product, tobacco substitute, electronic cigarette or e-cigarette or liquid nicotine of any kind which is burning or emitting a vapor.

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Smoking room. A room within a retail tobacco store that provides patrons an area designated specifically for smoking products purchased on the premises or elsewhere. Other services not directly related to the activity of smoking shall not be offered in a smoking room.

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Tobacco substitute. An herbal-based non-tobacco product used for smoking.

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Ventilation system. A supply, return, ventilation and circulation system designed by a licensed professional engineer to meet the requirements of Section 54-24 of this Article, and meeting all the other requirements of the City's mechanical code, as amended.

Sec. 54-191 Purposes

The purposes of this Article are to protect the public's health by eliminating smoking in public places and the right of nonsmokers to breathe smoke-free air by

prohibiting smoking in public places in the City, with certain exceptions, to reduce detrimental effects on not only smokers, but also others in close proximity to smokers and to further the health, safety and welfare of the City and its citizens.

Sec. 54-20 Smoking and smokeless tobacco prohibited

(a) Smoking prohibited in certain public areas.

- (1) A person commits an offense in violation of this Article if he smokes or possesses a burning tobacco, tobacco substitute, weed, other plant product, electronic cigarette or e-cigarette or liquid nicotine in any of the following indoor and/or enclosed areas:
 - a. A public or private preschool, primary or secondary school;
 - b. Elevators, museums, libraries, galleries, public transportation facilities open to the public and service lines of establishments doing business with the general public;
 - c. Hearing rooms, conference rooms, meeting rooms or any public service area of any facility owned, operated or managed by the City in which business is conducted, when the public business requires and/or provides an opportunity for direct participation and/or observation by the general public;
 - d. Any building or indoor or outdoor sports arena which is used for or designated for the purpose of exhibiting any motion picture, stage drama, lecture, musical recital, athletic event or any other event whenever open to the public, including all restrooms and any area commonly referred to as a lobby; however, smoking, which is a part of a stage performance, is permitted;
 - e. Any retail or service establishment serving the general public, including but not limited to, any food products establishment, department store, restaurant, grocery store, private club, bingo parlor, bowling center, drug store, shopping mall, hair styling salons, including service lines;
 - f. All restrooms open for public use;
 - g. All areas in a laundromat open to and available to use by the public;

- h. Within all areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including, but not limited to, commercial, financial and professional offices, including banks, hotels and motels; or
 - i. Within 20 linear feet of any entrance of any facility where smoking is prohibited.
- (2) Notwithstanding any other provision of this Section, any owner, operator, manager or other person who controls any establishment or facility described in this Section may declare the entire establishment or facility as a nonsmoking establishment.
- (3) It shall be a defense to prosecution under this Section that the public place in which the offense takes place does not have prominently displayed a conspicuous notice that smoking is prohibited and that an offense is punishable by a fine not to exceed \$2,000.00.

(b) Prohibition of smoking in places of employment.

- (1) Where smoking is prohibited, it shall be the responsibility of employers to provide a smoke-free workplace for all employees.
- (2) Each employer having any enclosed place of employment located within the City shall adopt, implement, make known and maintain a written smoking policy, which shall contain the following requirements:
 - “Smoking shall be prohibited in all enclosed facilities within a place of employment except where expressly permitted under City ordinance. 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.”
- (3) The smoking policy shall be communicated to all employees within four (4) weeks of its adoption.
- (4) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

- (c) Prohibited in parks. A person commits an offense in violation of this Article if, in any park, he smokes or smokeless tobacco is contained within the person's mouth.
- (d) Prohibited on portions of outdoor patios. A person commits an offense in violation of this Article if he smokes or possesses a burning tobacco, tobacco substitute, weed, other plant product, electronic cigarette or e-cigarette or liquid nicotine in an outdoor patio area of a retail or service establishment that is defined fully or partially by a barrier or that provides seating for patrons where any portion of the outdoor patio is located fewer than 10 linear feet from public property, an outdoor patio of another establishment or an operable window into a building.

Sec. 54-21 Hospitals; health care facilities

A person commits an offense in violation of this Article if he smokes or possesses a burning tobacco, weed, other plant product, electronic cigarette or e-cigarette or liquid nicotine in any public area of a health care facility or hospital, including, but not limited to, clinics, physical therapy facilities, doctor's offices, nursing and convalescent homes, residential treatment centers/homes and dentists' offices. In bed space areas of health care facilities or hospitals, smoking shall be prohibited unless the smoking of a lawful substance is authorized by a physician as part of a medical directive or procedure. Separate ventilation exhaust may be required by the building official to accommodate such orders.

Sec. 54-22 Posting of signs

The owner, operator or person in charge of an establishment or facility in which smoking is prohibited shall post signs in one or more conspicuous locations stating that smoking is prohibited and that an offense is punishable by a fine not to exceed \$2,000.00.

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Sec. 54-24 Where smoking is not prohibited

Notwithstanding any other provision of this Article to the contrary, smoking is not prohibited in the following areas:

- (1) Private residences, except when used as a licensed child care, adult day care or health care facility;
- (2) Hotel and motel rooms rented to guests, if permitted by the hotel or motel;
- (3) Retail tobacco stores that have an enclosed smoking room provided that the following requirements are met:

- (A) Smoking rooms shall have a physical barrier to prevent the escape of visible smoke, vapor or other objectionable nonvisible products of smoking without any action required of adjacent tenant spaces.
 - (B) Smoking rooms shall have dedicated ventilation systems separate from all other rooms or spaces where smoking is prohibited. Ventilation systems shall consist of exhaust, air purification, filtration, air exchange or a combination of methods to eliminate all visible and non-visible products of smoking from the indoor environment.
 - (C) Patrons shall not be required to enter or pass through smoking rooms to access required public sanitary facilities.
 - (D) No person under 18 years of age shall be allowed entrance into or be required to work in a smoking room.
 - (E) Entrance doors into a smoking room shall not allow entry into the smoking room directly from the exterior of the building. Entrance doors must allow entry only from a vestibule or an interior portion of a retail tobacco store.
- (4) Retail and service establishments that have an enclosed smoking lounge provided that the following requirements are met:
- (A) Smoking lounges shall have a physical barrier to prevent the escape of visible smoke, vapor or other objectionable nonvisible products of smoking without any action required of adjacent tenant spaces.
 - (B) Smoking lounges shall have dedicated ventilation systems separate from all other rooms or spaces where smoking is prohibited. Ventilation systems shall consist of exhaust, air purification, filtration, air exchange or a combination of methods to eliminate all visible and non-visible products of smoking from the indoor environment.
 - (C) Patrons shall not be required to enter or pass through smoking lounges to access required public sanitary facilities.
 - (D) No person under 18 years of age shall be allowed entrance into or be required to work in a smoking lounge.

- (E) The smoking lounge area shall be limited to a maximum of 15 percent of the gross floor area of the common or associated retail or service establishment.
- (F) Entrance doors into a smoking lounge shall not allow entry into the smoking lounge directly from the exterior of the building. Entrance doors must allow entry only from a vestibule or an interior portion of a retail or service establishment.
- (5) Any area of fraternal organization member space not serving the general public.
- (6) Any area exterior to the building in which the establishment or facility is located, except as otherwise regulated under Section 54-20 of this Article.
- (7) In retail electronic cigarette stores provided that only the smoking of e-cigarettes may be permitted and further provided that a physical barrier exists to prevent the escape of visible smoke, vapor or other objectionable nonvisible products of smoking without any action required of adjacent tenant spaces.

Sec. 54-25 Operation of smoking rooms, smoking lounges and retail electronic cigarette stores

- (1) The building official may deny or order the cessation of the continued use of a smoking room, smoking lounge or retail electronic cigarette store if he determines that:
 - (A) Visible smoke, vapor or other objectionable nonvisible products of smoking is migrating from the smoking room, smoking lounge or retail electronic cigarette store into a space, establishment, occupancy or use where smoking is prohibited; or
 - (B) The smoking room, smoking lounge or retail electronic cigarette store has failed to meet any of the standards set forth in this Article or tests prescribed by the building official.
- (2) Upon such a determination, the smoking room, smoking lounge or retail electronic cigarette store shall be prohibited from further use until compliance has been demonstrated to the building official through testing or other means.

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Sec. 54-27 Appeal

The owner or operator of a smoking room, smoking lounge or retail electronic cigarette store that has been denied or ordered to cease the continued use of the smoking room, smoking lounge or retail electronic cigarette store under Section 54-25 may appeal such denial or order as follows:

- (1) The owner or operator shall file a written notice of appeal with the building official within five business days of the date the decision was rendered or the action occurred. The notice must state the grounds for the appeal. The building official shall provide a written decision on the appeal within five business days. Failure to render a decision within five business days shall constitute a denial.
- (2) If the owner or operator's appeal to the building official is denied, the owner or operator may file a written notice of appeal to the director of the Development Services Department within five business days of receipt of the building official's decision. The director of the Development Services Department shall provide a written decision within five business days of receipt of an appeal in accordance with this section. Failure to render a decision within five business days shall constitute a denial.
- (3) If the owner or operator's appeal to the director of the Development Services Department is denied, the owner or operator may file a written notice of appeal to the City Manager within five business days of receipt of the director of the Development Services Department's decision. The City Manager shall provide a written decision within five business days of receipt of an appeal in accordance with this section. Failure to render a decision within five business days shall constitute a denial. The City Manager's decision shall be final."

SECTION 3: Penalty. Any person, firm, entity or corporation who violates any provision of this Ordinance or the Code of Ordinances, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction therefore, shall be fined in a sum not exceeding TWO THOUSAND AND 00/100 DOLLARS (\$2,000.00). Each continuing day's violation shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Frisco from filing suit to enjoin the violation. Frisco retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 4: Savings/Repealing. The Code of Ordinances shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 5: Severability. Should any Section, subsection, sentence, clause or phrase of

this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof regardless of whether any one or more sections, subsections, sentences, clauses and/or phrases may be declared unconstitutional and/or invalid.

SECTION 6: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by the City Charter and by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this 5th day of March, 2019.





Jeff Cheney, Mayor

**ATTESTED TO AND
CORRECTLY RECORDED BY:**


Kristi Morrow, City Secretary

APPROVED AS TO FORM:


Abernathy Roeder Boyd & Hullett, P.C.
Ryan D. Pittman, City Attorneys

Dates of Publication: March 8 and 15, 2019, *Frisco Enterprise*