
Sec. 34-89. Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Bar means any commercial establishment that derives 51 percent or more of its annual gross sales receipts from the sale of alcoholic beverages as defined by the Texas Alcoholic Beverage Code and has a valid on-premises consumption license issued by the Texas Alcoholic Beverage Commission.

City facility means any building owned or operated by the City of Schertz.

Dining area means any area in which meals or entrees are served but shall not include areas where the incidental service of hors d'oeuvres, snacks, pretzels, popcorn, or similar items are provided, or where food sales in the area are less than five percent of gross receipts.

Electronic smoking device means an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device; or a consumable liquid or other material aerosolized or vaporized during the use of an electronic cigarette or device. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor, and aerosol, liquid, or vapor used in such a device.

Employee means any person who is employed by an employer in consideration for monetary compensation or profit.

Employer means any person, partnership, corporation, association, or other entity that employs one or more 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. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not it contains openings of any kind.

~~*HVAC system* means a single heating, ventilating, and air conditioning system.~~

Place of employment means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a place of employment unless it is used as a childcare, adult day care, or health care facility. ~~any enclosed indoor area under the control of an employer to which employees have access during the course of employment, and includes but is not limited to stores, offices, professional, financial, and other commercial establishments; restaurants; enclosed shopping malls; public and private institutions of higher education; the common areas of health care facilities, and nursing and convalescent home.~~

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, bingo facilities, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, recreational facilities, city facilities, 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. The term "public place" also includes the area within 25 feet of the exterior of any public entrance or public exit from any city facility. If any "recreational facility" is fenced or otherwise enclosed, for purposes of the definition of "public place", such "recreational facility" shall include all areas within 25 feet outside of such fence or enclosure. If any "recreational facility" is not fenced or otherwise enclosed, for purposes of the definition of "public place", such "recreational facility" shall include all areas within 25 feet of each item of athletic, play, or recreational equipment. A private residence is not a "public place" unless if it is used as a childcare, adult day care, or health care facility.

Recreational facilities means any public or private area open to the public for recreational purposes, including but not limited to, ~~city owned or operated~~ parks, swimming pools, athletic facilities, athletic fields, playgrounds, or other city owned or operated areas with athletic, play, ~~or~~ recreational equipment, or trails.

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 includes the bar area within a restaurant.

Retail Tobacco Store/Electronic Vaping Store means a retail store used primarily for the sale of tobacco products, electronic smoking devices, and related accessories in which the sale of other non-tobacco products is incidental, and includes vape shops or other establishments that primarily sell electronic smoking devices.

Smoke or smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, including marijuana/cannabis, in any manner or in any form. Smoking includes the use of electronic smoking devices which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article. ~~the carrying or holding of a lighted pipe, cigar, or cigarette of any kind, or any other lighted smoking equipment or device, or the lighting of, emitting, or exhaling the smoke of a pipe, cigar, or cigarette of any kind.~~

Vaping means inhaling or exhaling vapors of electronic vaping liquid from an electronic vaping device.

(Ord. No. 01-H-24, § 7½-80, 11-20-2001; Ord. No. 11-M-06, § 1, 4-19-2011)

Sec. 34-90. Article not to excuse noncompliance with other measures.

Nothing in this article excuses noncompliance with any state or federal law, provisions of this Code, or any other applicable ordinance of the city, or any rule or regulation adopted pursuant thereto, which prohibits smoking.

(Ord. No. 01-H-24, § 7½-81, 11-20-2001; Ord. No. 11-M-06, § 1, 4-19-2011)

Sec. 34-91. Prohibition of sSmoking in public places generally prohibited, and other offenses.

A person commits an offense if he/she:

- (1) Knowingly smokes in an enclosed public place within the city, including but not limited to, the following places: ~~and is not in an area designated as an employee smoking area or as a smoking area under this article; or~~
 - (a) Recreational facility;
 - (b) Lobbies, elevators, hallways, restrooms, reception areas, and other common areas;
 - (c) Restaurants and bars, except for outdoor seating areas designated as smoking;
- (2) ~~Is the owner, lessee, or other person in charge of a public place or restaurant and knowingly or intentionally permits, or fails to make a reasonable effort to prevent commission, by another, of the offense described within subsection (1) of this section;~~ The owner or operator of a public place commits an offense if the person fails to take necessary steps to prevent or stop another person from smoking in an enclosed area in a public; place or
- (3) ~~Fails to have prominently displayed a no-smoking sign, a designated smoking area sign as required by this article; or~~

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- (4) ~~Is an employer who operates a place of employment in the city and fails to adopt and implement a smoking policy which is consistent with the requirements of this article within three months of adoption of this article or upon opening for business, or fails to maintain thereafter a written smoking policy which is consistent with the requirements of this article; or~~
 - (5) ~~Is an employer who operates a place of employment in the city and fails to communicate a smoking policy which is consistent with the requirements of this article to all employees within three weeks of adoption of the policy or fails to post the smoking policy conspicuously in all workplaces under the employer's jurisdiction.~~

(Ord. No. 01-H-24, § 7½-82, 11-20-2001; Ord. No. 07-H-32, I, 7-3-2007; Ord. No. 11-M-06, § 1, 4-19-2011)

Sec. 34-94 Sec. 34-92. Prohibition of smoking in places of employment.

~~Each employer who operates a place of employment in the city shall, within three months of adoption of this article or upon opening for business, adopt, implement, and maintain a written smoking policy which is consistent with the requirements of this article. If smoking will be permitted, the policy shall contain, at a minimum, the following provisions and requirements:~~

- (1) ~~The owner, lessee, or other person in charge of a public place may, but is not required to, designate one or more areas as smoking areas for the use of the employees as part of the smoking policy provided for in this section. A designated employee smoking area may include private enclosed offices. Designated employee smoking areas may be located in areas to which employees, but not the general public, except by invitation only, have access during the course of employment. A common employee work area shall not be designated as an employee smoking area unless every person who works in that area agrees in writing to the designation. In no event shall an employee restroom or an area containing food or drink dispensing facilities be designated as an employee smoking area. **Prohibit smoking in all enclosed areas within places of employment. This includes common work areas, auditoriums, conference and meeting rooms, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, reception areas, lobbies, restrooms and all other enclosed areas.**~~
- (2) ~~If such employee smoking area is designated, each such smoking area shall:~~
 - a. ~~Be in an area set aside for the use of employees, but not accessible to members of the general public except by specific invitation of the employer or employee;~~
 - b. ~~Be ventilated to prevent the mixing of air from the designated employee smoking area to other areas or the public area;~~
 - c. ~~Be a physically enclosed area separated from nonsmoking areas;~~
 - d. ~~Be designated by appropriate signs which are clearly visible to employees and members of the public entering the area; and~~
 - e. ~~Contain ashtrays, containers, or other facilities for the extinguishment of smoking materials.~~
- (3) ~~The smoking policy shall be communicated within three weeks of adoption of all employees and shall be posted conspicuously in all workplaces under the employer's jurisdiction.~~
- (4) ~~The owner, lessee, or other person in charge of a public place that designates one or more areas as designated smoking areas for the public shall not require employees to work in a designated smoking area if the employee request to work in a nonsmoking area.~~

(Ord. No. 01-H-24, § 7½-85, 11-20-2001; Ord. No. 07-H-32, I, 7-3-2007; Ord. No. 11-M-06, § 1, 4-19-2011)

Sec. 34-93. Certain places exempt.

- (a) Smoking may be permitted in the following areas and if smoking is so permitted the provisions of section 34-91 shall not apply:
- (1) ~~Tobacco specialty retail shops~~ **Retail Tobacco Store/Electronic Vaping Stores**; provided, however, that **smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article**; or
 - (2) Private residences (unless used as a child care, adult day care, or health care facility); or
 - (3) Hotel and motel rooms rented to guests **and designated as a smoking room**; or
 - (4) ~~Enclosed meeting or assembly rooms in restaurants, hotels, motels, and other public places if the entire room is used for a private function; or~~
 - (4) **Outdoor seating areas of restaurants, bars, or lounges if signs are posted at each entrance to such areas to inform potential patrons that the area allows smoking.**
 - (5) ~~Businesses licensed to sell alcoholic beverages on premises or nonprofit commercial facilities, provided in either case that food sales do not constitute more than 25 percent of such business's or organization's gross receipts; or~~
 - (6) ~~Any facility other than a restaurant otherwise described as a public place which has installed a separate HVAC system and air filtering equipment for a designated smoking area encompassing not more than 25 percent of the total seating area; or~~
 - (7) ~~A special separate dining area of any restaurant with an area serving as a dining area in compliance with this Article, if the separate dining area is enclosed on all sides and has a separate HVAC system or if it is enclosed on three sides, has a separate HVAC system, and is removed by 15 feet from any area in which smoking is not allowed and has air filtering equipment installed by April 1, 2002; the smoking section shall be situated so the ventilation minimizes the effect of smoke in nonsmoking areas and so that air from the smoking area is not drawn across a nonsmoking area; or~~
 - (8) ~~Outdoor seating areas of restaurants if an area encompassing at least 25 percent of the seating is reserved for nonsmoking.~~
- (b) ~~(1) Notwithstanding any other provisions of this section, any owner, operator, manager, or other person who controls any public place described in this section may declare that entire public place or any portion of the public place as a nonsmoking area. The owner, operator, manager, or other person who controls the public place shall place a sign or signs, visible at each entrance to the premises, notifying persons entering the premises that smoking is prohibited, or that smoking, other than within designated smoking areas, is prohibited.~~
- ~~(2) A person commits an offense if he knowingly smokes in any public place or portion thereof declared a nonsmoking area in accordance with subsection (b)(1) of this section.~~

(Ord. No. 01-H-24, § 7½-84, 11-20-2001; Ord. No. 11-M-06, § 1, 4-19-2011)

~~Sec. 34-92~~ **Sec.34-94. Signs required in public places and place of employment.**

- (a) "No Smoking" signs 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 at every entrance in a public place and place of employment where smoking is prohibited by this ordinance, by the owner, operator, manager, or other person in control.

(b) The operator of a public place or place of employment shall conspicuously post signs in areas where smoking is permitted under Sec. 34-93

~~The owner, lessee, or other person in charge of a public place shall place a sign or signs, visible at each entrance to the premises, notifying persons entering the premises that smoking is prohibited, or that smoking, other than within designated smoking areas, is prohibited. The owner, lessee, or other person in charge of a public place shall post a sign, or signs, in each area designated as smoking.~~

(Ord. No. 01-H-24, § 7½-83, 11-20-2001; Ord. No. 11-M-06, § 1, 4-19-2011)

Sec. 34-95. Disposition of filters.

~~All filter used in HVAC systems and other air filtration devices under this article shall be disposed of in compliance with requirements established by the Texas Commission on Environmental Quality.~~

(Ord. No. 01-H-24, § 7½-86, 11-20-2001; Ord. No. 11-M-06, § 1, 4-19-2011)

Sec. 34-965. Penalties.

Any person who violates any provision of this article shall be subject to a fine not exceeding **two hundred dollars (\$200.00) for the first offense and shall be fined an amount not more than five hundred dollars (\$500) for each conviction after the first.** ~~each offense.~~

(Ord. No. 01-H-24, § 7½-87, 11-20-2001; Ord. No. 11-M-06, § 1, 4-19-2011)

Sec. 34-976. Inconsistent provisions.

All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this article are hereby repealed to the extent of such conflict, and the provisions of this article shall be and remain controlling as to the matters ordained herein.

(Ord. No. 01-H-24, § 3, 11-20-2001; Ord. No. 11-M-06, § 1, 4-19-2011)

Secs. 34-97, 34-98, 34-99. Reserved.