

**ORDINANCE NO. 10-26**

**AN ORDINANCE AMENDING ARTICLE III (REGULATION OF SMOKING) OF CHAPTER 10 OF THE CODE OF ORDINANCES OF THE CITY OF SOUTH PADRE ISLAND, TEXAS PROHIBITING SMOKING IN CERTAIN PUBLIC PLACES ESTABLISHING DEFINITIONS; DISPENSING WITH A CULPABLE MENTAL STATE; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR CRIMINAL PENALTY FOR VIOLATION NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00); PROVIDING FOR SEVERABILITY; AND AUTHORIZING PUBLICATION IN CAPTION FORM; AND ESTABLISHING AN EFFECTIVE DATE OF APRIL 11, 2011.**

WHEREAS, the City Council of the City of South Padre Island, Texas believes that primary and secondary tobacco smoke inhalation has been shown to be harmful to health, contributing to several different cancer formations, respiratory deterioration, cardiac and circulatory diseases, that smoking in public places creates a nuisance and a health hazard for those persons gathered in and occupying public places, and that in order to promote the public health safety and welfare that smoking in public places should be limited as hereinafter set out.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH PADRE ISLAND, TEXAS:

**Section 1.** Article III of Chapter 10 of the Code of Ordinances, City of South Padre Island is hereby amended regarding Regulation of Smoking which said Article III shall hereafter read as follows:

“ARTICLE III

REGULATION OF SMOKING

**Sec. 10-50. 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:

(a) **Bar** means any commercial establishment that derives fifty-one percent (51%) 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 or a portion of a commercial/food establishment that is physically separated from the rest of the establishment by an impermeable barrier exclusive of appropriate openings for ingress and egress and that portion of the establishment is independently ventilated and that portion of the establishment derives fifty-one percent (51%) 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.

(b) **Director** means the director of the department designated by the City Manager to enforce and administer this article or the director's designated representative.

(c) **Employee** means any person who is employed by any employer from direct or indirect monetary wages, commissions or profit, or is in a position that would lead one to believe that such person is so employed.

(d) **Employer** means any person, partnership, corporation, association or other entity that employs one or more persons.

(e) **Enclosed** means closed in by a roof and solid walls, with or without windows and with appropriate openings for ingress and egress.

(f) **Food establishment** means any operation engaged in the preparation or sale of prepared ready-to-eat food, if such operation accounts for more than fifty-one percent (51%) of annual gross sales receipts. For the purpose of this section a food establishment does not include an outdoor patio or deck which may or may not be covered.

(g) **Governmental entity** means a state, a municipality, county, school district, or appraisal district.

(h) **Health care facility** means any hospital or institution that provides medical or surgical services for patients.

(i) **Independently ventilated** means that the heating, ventilation and air conditioning system for a bar area does not allow for the mixing of air from the bar area to a public area or public place served by the same ventilation system or another ventilation system.

(j) **Public place** means any enclosed area that is open to or is used by the general public, or that is a place of employment and includes, but is not limited to: retail stores, grocery stores, offices, professional, commercial or financial establishments, food establishments, movie theaters, public and private institutions of education, health care facilities, nursing and convalescent homes, residential treatment facilities, buildings owned or occupied by political subdivisions and public restrooms. For the purpose of this article, a public place does not include a private residence, bar, tobacco shop, hotel and motel rooms that are rented to guests, private clubs or outdoors or private offices. Any public places regulated by other statutes or other governmental administrative rules which conflict with or which preempt local regulation are exempt from the provisions hereof to the extent of such conflict or preemption.

(k) **Private club** means any building, premises or portion thereof which is wholly owned or leased from other than a governmental entity by a non-profit corporation organized under Chapter 501 (c)(3) of the United States Internal Revenue Code, as amended.

(l) **Private Office** is an individual's office from which the public is not barred but to which the public goes primarily by invitation or appointment. Such office shall be an office in which there are no employees.

(m) **Movie theater** means any establishment engaged in the business of exhibiting motion pictures to public. The same are regulated hereby even if meeting the definition of private club.

(n) **Outdoors** means any area that is not enclosed.

(o) **Smoke or smoking** means the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking material, equipment or device, and the lighting, emitting or exhaling the smoke of a pipe, cigar, or cigarette of any kind.

(p) **Tobacco** means any tobacco, cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco, which may be utilized for smoking, chewing, inhalation or other means of ingestion or absorption.

(q) **Tobacco shop** means any commercial establishment that derives fifty-one percent (51%) of its annual gross receipts from the sale of tobacco and tobacco accessories.

#### **Sec. 10-51. Smoking Prohibited in Public Places.**

Smoking is hereby prohibited in all public places within the city limits of the City of South Padre Island.

It is an affirmative defense to prosecution under this article that the person was smoking in a bar, tobacco shop, a rented hotel or motel room of any kind, private clubs, outdoors, or in a place where these regulations are in conflict with or preempted by other laws.

#### **Sec 10-52. Signs and Receptacles.**

A) "Designated Smoking Area" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch (1") in height 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, sufficiently and conspicuously posted at every entrance to every building where smoking is regulated by this Ordinance. Such signs shall state, "No Smoking City Ordinance No. 10-26".

B) Receptacles shall be provided in sufficient numbers and locations so that the same are readily accessible for the extinguishment of smoking materials prior to entry into buildings and other places where smoking is regulated by this Ordinance.

#### **Sec. 10-53. Reporting Violations.**

This article does not require the owner, operator, employer, manager or any employee to report a violation of this Article.

**Sec. 10-54. Penalties for Violation.**

A) Any person, firm, partnership or corporation who violates any provision of this section shall be guilty of a Class "C" Misdemeanor and upon conviction thereof shall be fined an amount not less than Twenty-Five Dollars (\$25.00) nor more than Two Thousand Dollars (\$2,000.00). Each day that violation is permitted to exist shall constitute a separate offense.

B) It is hereby declared that the culpable mental state required by Chapter 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with, and such offense is declared to be a strict liability offense.

**Sec. 10-55. Other Applicable Laws**

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

B) This Article shall be and is hereby declared to be cumulative of all other ordinances of the City of South Padre Island, and this Article shall not operate or repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provision, if any, in such other ordinance or ordinances are hereby repealed.

C) All of the regulations provided by this Ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any City Official or employee charged with the enforcement of this Ordinance, acting for the City of South Padre Island in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of said duties.

D) Any violation of this Ordinance can be enjoined by a suit filed in the name of the City of South Padre Island in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this Ordinance or in the Code of the City of South Padre Island.

E) It shall be a violation of this Article for any person to smoke where the owner of the property has posted a "No Smoking" sign even if smoking is not prohibited by this Article."

**Section 2.** This Ordinance repeals all portions of any prior ordinances or parts of ordinances of the Code of Ordinances in conflict herewith.

**Section 3.** Any violation of this Ordinance may be punished by a fine not to exceed Two Thousand Dollars (\$2,000.00) for each offense or for each day such offense shall continue and the penalty provisions of Section 21-1 of the Code of Ordinances is hereby adopted and incorporated for all purposes.

**Section 4.** If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this Ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this Ordinance for it is the definite intent of this City Council that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

**Section 5.** This Ordinance shall become effective on April 11, 2011 and by publishing its caption.

PASSED, APPROVED AND ADOPTED on First Reading, this 18th day of August 2010.

PASSED, APPROVED AND ADOPTED on Second Reading, this 1st day of September 2010.

ATTEST:

**CITY OF SOUTH PADRE  
ISLAND, TEXAS**

  
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Susan Hill, CITY SECRETARY

  
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JoAnn Evans, MAYOR PRO-TEM

