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ORDINANCE NO. 1804.01

CITY OF SAN ELIZARIO SMOKE-FREE AIR ORDINANCE

AN ORDINANCE DEFINING AND REGULATING A NUISANCE, TO WIT: TO CREATE REQUIREMENTS AND ESTABLISH REGULATIONS FOR SMOKE-FREE ENVIRONMENTS IN THE CITY, INCLUDING PROHIBITING SMOKING IN PUBLIC AND WORK PLACES; PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT, ADOPTION, ENACTMENT, REPEALER, SEVERABILITY, EFFECTIVE DATE; DECLARING A VIOLATION OF THE ORDINANCE AS A MISDEMEANOR OFFENSE WITH A MAXIMUM PENALTY OF \$500 FOR EACH OFFENSE.

RECITALS

WHEREAS, the Surgeon General of the United States has declared that smoking is the largest preventable cause of premature death and disability in the United States, and

WHEREAS, the United States Environmental Protection Agency has concluded that passive smoking poses a public health risk larger than the hazardous air pollutants from all industrial emissions combined; and

WHEREAS, the City Council of San Elizario ("City Council") finds that cigarettes and secondhand smoke contain more than 7,000 chemicals, including 69 known or suspected carcinogens, and cigarette butts take up to ten years to decompose; and

WHEREAS, the chemicals in discarded cigarette butts pollute land and waterways and can be ingested by children and animals; and

WHEREAS, the City Council finds that secondhand smoke and discarded cigarette butts pose a nuisance and menace to the health, safety and welfare of the City of San Elizario’s (“City”) citizens; and

WHEREAS, the City seeks to promote the health, safety and general welfare of the community; and

WHEREAS, smoke-free parks protect the health, safety and welfare of all community members; and

WHEREAS, pursuant to Texas Local Government Code Chapter 217, the City has the statutory authority to define nuisances and impose fines; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City Council finds that it is necessary and proper for the good government, peace, or order of the City and for proper health and sanitation in the City to adopt an ordinance regulating smoking and creating smoke-free air environments in the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of San Elizario:

ORDINANCE I. FINDINGS OF FACT

The foregoing recitals are adopted as facts and are incorporated fully herein.

ORDINANCE II. ADOPTION AND ENACTMENT

The City Council hereby adopts and enacts the Ordinance “City of San Elizario Smoke-free Air Ordinance,” attached hereto as “Attachment A” and incorporated fully herein this Ordinance for all intents and purposes.

ORDINANCE III. REPEALER AND SEVERABILITY

REPEALER: All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

SEVERABILITY: Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or

Section 12. Violations and penalties.

A. Civil and Criminal Penalties.

The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations.

B. Criminal Penalties.

1. It shall be unlawful for an owner, manager or other person having control of an establishment regulated by this Ordinance to fail to comply with all of its provisions.
2. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Ordinance.
3. Violation of any provision of this Ordinance is a misdemeanor offense and punishable, upon conviction, by a fine as set forth below. Each day of the violation is a separate offense.
 - a. Any person who violates any provision of this Ordinance shall be guilty of a misdemeanor punishable by a fine not exceeding one hundred dollars;
 - b. Any person who violates any provision of this Ordinance within one year of a conviction or deferred adjudication for a violation of this Ordinance and was ordered to pay a fine or special expense fee under subsection B. 3. a., shall be guilty of a misdemeanor punishable by a fine not to exceed two hundred dollars;
 - c. Any person who violates any provision of this Ordinance within one year of a conviction or deferred adjudication for a violation of this Ordinance and was ordered to pay a fine or special expense fee under subsection B. 3. b., shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars.

C. Civil Remedies

Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to seek civil remedies, including but not limited to the following:

1. injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
2. a civil penalty not to exceed \$100.00 a day upon a showing that the defendant was notified of the provisions of the Ordinance and after receiving notice, nonetheless committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and
3. other available relief.

Section 13. Other Applicable Laws

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

establishment, facility or outdoor area is a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 6 is posted.

Section 8. Places Where Smoking Is Not Regulated; Private and public places.

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

1. Private residences, except when used as a child care, adult day care or a health care or residential care facility;
2. No more than twenty-five percent of hotel and motel rooms rented to guests; and
3. Retail tobacco stores and smoking establishments in isolated or contained physical facilities with isolated venting and air controls.

Section 9. Declaration of Establishment or Outdoor Area as Nonsmoking

Notwithstanding any other provision of this Ordinance, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 6 is posted.

Section 10. City of El Paso Health Department.

At such times that the City of San Elizario enters into an Interlocal Agreement with the City of El Paso, the City of El Paso Health Department or other appropriate department or employees are authorized to promote the purposes and requirements of this Ordinance to the public affected by it, and to guide owners, operators, and managers in their compliance with it. Such promotion may include publication of a brochure for affected businesses and individuals explaining the provisions of this Ordinance.

Section 11. Enforcement

Enforcement of this Ordinance shall be implemented by the City Marshal and his deputies and by the Code Compliance Officers of the City.

1. Notice of the provisions set forth in this Ordinance shall be given to all applicants for a business permit in the City.
2. The City of El Paso Health Department, the building official and his designees, city code compliance employees or the Fire Marshal of the ESD #2 and his deputies may, while an establishment is undergoing otherwise mandated inspections or investigations, may inspect for compliance with this Ordinance.
3. Any owner, manager, operator, or employee of any establishment regulated by this Ordinance shall be responsible for informing persons violating this Ordinance of the provisions through appropriate signage.
4. Notwithstanding any other provision of this Ordinance, a private citizen may bring legal action to enforce this Ordinance.

16. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
17. Polling places;
18. Bingo venues;
19. Child care and adult day care facilities.

Section 5. Prohibition of Smoking in Places of Employment

- A. It shall be the responsibility of employers to provide a smoke-free workplace for all employees.
- B. Except as herein provided, smoking shall be prohibited in every place of employment.
- C. 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 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
- D. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Ordinance and to all prospective employees upon their application for employment.

Section 6. Posting of Signs and Removal of Ashtrays

- A. The owner, operator, manager, or other person in control of a place of employment, public place, private club, or residential facility where smoking is prohibited by this Ordinance shall:
- B. Clearly and conspicuously post "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) in that place.
- C. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited or, in the case of outdoor places, clearly and conspicuously post "No Smoking" signs in appropriate locations as determined by the City Administrator or an authorized designee.
- D. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Ordinance at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- E. Remove all ashtrays from any area where smoking is prohibited by this Ordinance, except for ashtrays displayed for sale and not for use on the premises.

Section 7. Additional declaration of establishments as non-smoking.

Notwithstanding any other provision of this Ordinance, any owner, operator, manager or other person who controls any establishment, facility or outdoor area may declare that the entire

pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

Section 3. Application of Ordinance to City Facilities and Property

All City enclosed areas, including buildings and vehicles owned, leased, or operated by the City of San Elizario as well as all outdoor property adjacent to such buildings and under the control of the City of San Elizario shall be subject to the provisions of this Ordinance.

City-owned outdoor facilities, not subject to a leasehold interest provided to a non-City person or entity, shall be nonsmoking at all times, including, but not limited to, the following places:

- A. Sports arenas and stadiums.
- B. Parks and playgrounds.
- C. In and within 20 feet from the entrance of all outdoor public transportation stations, platforms and shelters under the authority of the city.
- D. Parking lots.

Section 4. Prohibition of Smoking in Public Places

Smoking shall be prohibited in all enclosed areas of public places within the city, and within 20 feet of the entrance of such places, including, but not limited to, the following (except for certain outdoor areas specifically designated as smoking areas by city council or designee for certain city facilities):

- 1. Aquariums, galleries, libraries, and museums.
- 2. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, churches and other places of worship, laundromats, professional offices, and retail service establishments.
- 3. Elevators;
- 4. Restrooms, lobbies, reception areas, hallways and any other common-use areas;
- 5. Buses, semi-enclosed bus stops, bus terminals, taxicabs, shuttle vehicles, and other facilities and means of public transit under the authority of the city (except for city property to which the city has contractually released a leasehold interest). as well as ticket, boarding, and waiting areas of all transit depots;
- 6. Service lines;
- 7. Retail stores and shopping malls;
- 8. All enclosed areas in all businesses and nonprofit entities;
- 9. Food establishments, nightclubs and bars;
- 10. Galleries, libraries, museums and zoo facilities and grounds;
- 11. 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;
- 12. Sports arenas, bowling facilities and convention facilities;
- 13. Dance halls, rental halls and assembly halls;
- 14. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the city, to the extent such place is subject to the jurisdiction of the city;
- 15. Health care facilities;

"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."

"Public Event" means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

"Public Place" means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, waiting rooms, and other locations as listed in Sections 3 and 4. A private residence is not a "public place" unless it is used as a child care, adult day care, or a health care or residential care facility.

"Recreational Area" means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, amusement parks, athletic fields, beaches, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.

"Retail tobacco store and smoking establishment" means a retail store or establishment utilized primarily for the sale and use of tobacco and smoking products and accessories and in which the sale of other products is merely incidental.

"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" shall include a bar area within the restaurant.

"Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

"Shopping Mall" means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.

"Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device 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 Ordinance.

"Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports

“Enclosed Area” means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

“Food Establishment” means food product or food service establishments, as those terms are defined in this Ordinance.

“Health Care Facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities

“Hookah” means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.

“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 child care, adult day care, or health care facility.

"Playground" means any park or recreational area that is designed in part to be used by children and that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City property.

"Park" means "city park" or any property in the city that is designated, set aside or operated by the city for public recreational purposes, whether dedicated or developed as a park or not, or that is located in any street right-of-way and is maintained as public open space, including all buildings, recreation facilities, playgrounds, parking lots, driveways, pathways, trails and other areas within a park. Designation of property as a city park pursuant to this Ordinance is solely for the purposes of identifying areas governed by this chapter and shall not be construed to be a dedication of any property as a park.

“Private Club” means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, 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 club under 26 U.S.C. Section 501.

CITY OF SAN ELIZARIO
SMOKE-FREE AIR ORDINANCE Section 1. – Purpose and Application

State Law reference— Smoking tobacco in certain locations prohibited, V.T.C.A., Penal Code § 48.01; Texas Clean Air Act, V.T.C.A., Health and Safety Code § 382.001 et seq.; authority of municipalities to enact and enforce ordinances regarding air pollution, V.T.C.A., Health and Safety Code § 382.113.

The purpose of this Ordinance is to:

- A. Improve and protect the public's health by eliminating smoking in public places and places of employment;
- B. Guarantee 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.

Section 2. Definitions

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

“Bar” means an 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 those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

“Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

“Electronic Smoking Device” means any electronic oral device or nicotine delivery device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substance, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e- cigarette, e-cigar, e-pipe, e-hookah, hookah pen or under any other product name or description.

“Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for an entity.

“Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

administrative agency with jurisdiction over the matter, such action shall not construed to affect any other valid portion of this Ordinance.

ORDINANCE IV. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication.

PASSED AND APPROVED this, the 26 day of June, 2018, by a vote of 5 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of San Elizario, Texas.

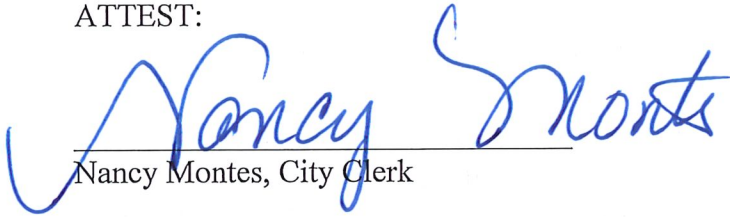
CITY OF SAN ELIZARIO, TEXAS



Araujo, Mayor

Antonio

ATTEST:



Nancy Montes, City Clerk