

ORDINANCE NO. 2012-6

AN ORDINANCE ADOPTING A COMPREHENSIVE INDOOR SECOND-HAND SMOKING ORDINANCE; PROVIDING FOR PROHIBITION IN PUBLIC PLACES, PLACES OF EMPLOYMENT AND OTHER AREAS AND PUBLIC FACILITIES; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE OF THE ORDINANCE IN THE CITY OF JACINTO CITY, TEXAS

WHEREAS, the U. S. Surgeon General recently released a report focusing on the effects of secondhand smoke. Secondhand smoke is composed of side stream smoke (the smoke released from the burning end of a cigarette) and exhaled mainstream smoke (the smoke exhaled by the smoker). Secondhand smoke has been designated as a known human carcinogen by the U. S. Environmental Protection Agency, the National Toxicology Program, and the International Agency for Research on Cancer, and an occupational carcinogen by the National Institute for Occupational Safety and Health; and,

WHEREAS, the findings of said report state there is no risk-free level of exposure to secondhand smoke and that breathing even a little secondhand smoke can be harmful to your health; and,

WHEREAS, the U. S. Surgeon General has concluded that secondhand smoke causes lung cancer, heart disease, acute respiratory effects and can cause sudden infant death syndrome and other health consequences in infants and children; and,

WHEREAS, Tobacco use is the single largest cause of preventable death in Texas, each year killing more Texans than alcohol, AIDS, heroin, auto accidents, suicides, handguns, murders and fires combined (20% of all deaths in Texas); and,

WHEREAS, the simple separation of smokers from nonsmokers within the same airspace does not eliminate the exposure of nonsmokers to secondhand smoke, given that no safe level of exposure to carcinogens has been found; and,

WHEREAS, accordingly, the City Council recognizes that secondhand smoke poses a serious public health hazard, that nonsmokers need protection from secondhand smoke exposure and that therefore, regulation by the City Council of the burning of tobacco in public places and places of employment is imperative in order to protect the public health and welfare of the citizens of the City of Jacinto City;; **NOW THEREFORE,,**

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Sec. 1. Purpose.

The purpose of this chapter is to (1) improve and protect the public's health by eliminating smoking in public places and places of employment; (2) promote the right of nonsmokers to breathe smoke-free air; and, (3) recognize that the need to breathe smoke-free air shall have priority over the choice to smoke.

Sec.2. Definitions.

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

A. **"Bar"** means an area 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 such beverages. A "bar" includes those facilities located within a restaurant, hotel, motel or other similar transient occupancy establishment and those establishments that allow guests to bring their own alcoholic beverages for consumption on premises. For purposes of this ordinance, a bar includes any place where alcohol is consumed, whether purchased on or brought to the premises.

B. **"Business"** means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

C. **"Employee"** means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

D. **"Employer"** means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.

E. **"Enclosed Area"** means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid.

F. **"Place of Employment"** means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is a "place of employment" if it is used as a child care, adult day care or health care facility.

G. **“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.

H. **“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”.

I. **“Public Place”** means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundry mats, public transportation and affiliated facilities, reception areas, production and marketing establishments, retail service establishments, retail stores and malls, theaters and waiting rooms. A private residence is not a “public place”.

J. **“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.

K. **“Retail Tobacco Store”** means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. For purposes of this Ordinance, other products that are merely incidental means not exceeding ten percent (10%) of gross sales. Sales of incidental products shall not include the sale of alcohol regardless of percentage of total gross sales.

L. **“Service Line”** means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

M. **“Smoking”** means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, or plant in any manner or in any form.

N. **“Sports Arena”** means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Sec. 3. Prohibition of Smoking in Public Places.

A. Smoking shall be prohibited in all enclosed public places, as well as those outdoor areas designated in Sec. 5 and Sec. 6, within the City of Jacinto City, including, but not limited to, the following places:

1. Elevators.
2. Restrooms, lobbies, reception areas, hallways and any other common-use areas.
3. Buses, bus terminals, taxicabs, train stations, airports and other facilities and means of public transit under the authority of the City of Jacinto City, as well as ticket, boarding, and waiting areas of public transportation facilities.
4. Service lines.
5. Retail stores, shopping malls and restaurants.
6. All enclosed areas available to and customarily used by the general public in all businesses, including but not limited to, attorneys' offices and other offices, banks, laundry mats, hotels and motels.
7. Bars.
8. Galleries, libraries, and museums.
9. 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.
10. Indoor sports arenas and convention halls.
11. 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 of Jacinto City or any political subdivision of the State during such time as a public meeting is in progress.
12. Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
13. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
14. Polling places.

15. Bingo facilities.

16. Adult entertainment enterprises.

Sec. 4. Prohibition of Smoking in Places of Employment.

A. It shall be the responsibility of employers to provide a smoke-free place of employment for all employees.

B. Each employer having any enclosed place of employment located within the City of Jacinto City shall adopt, implement 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.

Additionally, smoking is prohibited within a reasonable distance of not less than 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

C. The smoking policy shall be communicated to all employees within four (4) weeks of its adoption.

D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

Sec. 5. Prohibition of Smoking at Public Outdoor Events.

Smoking shall be prohibited at all public outdoor events, including seating areas for use by spectators.

Sec. 6. Reasonable Distance

Smoking is prohibited within a reasonable distance of not less than 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

Sec. 7. Application of Ordinance to City-Owned Facilities.

All facilities, including parks, playgrounds, golf courses, buildings and vehicles owned, leased or operated by the City of Jacinto City, shall be subject to the provisions of this Ordinance..

Sec. 8. Exemptions from Prohibition.

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

1. Private residences, except when used as a child-care, adult day care or health care facility.
2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that no more than twenty percent (20%) of hotel and motel rooms rented to guests may be so designated. 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 the provisions of this Ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
3. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.
4. Outdoor areas at places of employment except those covered in Sec. 5 and Sec. 6 and B, below.
5. Retail Tobacco Stores:
 - a. in stand alone physical facilities or other retail space provided that smoke from the subject store does not infiltrate areas where smoking is prohibited under the provisions of this Ordinance; and
 - b. where sales of incidental products shall not exceed ten percent (10%) of total gross sales; sales of incidental products shall not include the sale of alcohol regardless of percentage of total gross sales; and
 - c. where no alcohol is consumed on the premises.
6. Private clubs that have no employees, except when being used for a function to which the general public is invited. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this Ordinance.

B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any public place or place of employment described in this section may declare the entire establishment to be non-smoking.

Sec. 9. Posting of Signs.

A. The owner, manager or other person having control of a public place or place of employment or other area where smoking is prohibited by this Ordinance shall have a conspicuously posted sign clearly stating **NO SMOKING** or displaying the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it). The signs shall have bold lettering of not less than 1 inch in height and must be posted at each entrance and within the building or other areas where smoking is prohibited.

B. All ashtrays and other smoking paraphernalia shall be limited in facilities to that required for the enforcement of extinguishing of smoking materials in public places and places of employment.

Sec. 10. Enforcement.

A. Enforcement of this Ordinance shall be by the Building Official or designee, City of Jacinto City Firefighters, Peace Officers, Code Enforcement Officers and the City Manager or designee.

B. Notice of the provisions set forth in this Ordinance shall be given to all applicants for a certificate of occupancy or any other license to operate a business in the City of Jacinto City.

C. Any person may register a complaint under this Ordinance to initiate enforcement with any agency or official designated herein.

D. The Building Inspections Division and the Jacinto City Fire Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this ordinance.

E. 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.

Sec. 11. Non-retaliation.

No person or employee shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke-free environment afforded by this Ordinance.

Sec. 12. Violations and Penalties.

A. It shall be unlawful for the owner, manager or other person having control of a public place or place of employment or other area where smoking is prohibited by this Ordinance to fail to comply with all of its provisions.

B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Ordinance.

C. Any person who violates any provision of this Ordinance shall be guilty of a misdemeanor, punishable by a fine not to exceed \$200.00..

Sec. 13. Other Applicable Laws.

This Ordinance shall not be interpreted nor construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 14. Severability.

If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Sec. 15. Effective Date.

This Ordinance shall be effective on and after January 3, 2013. Signage as required by Sec. 9 shall be in place within four (4) weeks after the effective date.

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PASSED ON THIS THE ____ DAY OF DECEMBER, 2012.

RACHEL NUNEZ, MAYOR

ATTEST:

JOYCE RAINES, CITY SECRETARY

PASSED AND ADOPTED ON THE SECOND AND FINAL READING HEREOF ON
THIS THE _____DAY OF DECEMBER, 2012.

RACHEL NUNEZ, MAYOR

ATTEST:

JOYCE RAINES, CITY SECRETARY

APPROVED:

JIM L. DEFOYD, CITY ATTORNEY