

**CITY OF HORSESHOE BAY**  
**ORDINANCE NO. ORD 09-08-25G**

**NO SMOKING ORDINANCE**

**AN ORDINANCE OF THE CITY OF HORSESHOE BAY, TEXAS, REPEALING ORDINANCE 07-02-20B, "SMOKING ORDINANCE," ESTABLISHING A NEW NO SMOKING ORDINANCE FOR THE REGULATION AND PROHIBITION OF SMOKING IN PUBLIC PLACES WITHIN THE LIMITS OF CITY OF HORSESHOE BAY; PROHIBITING SMOKING IN ENCLOSED PUBLIC PLACES, PLACES OF EMPLOYMENT, AND WITHIN 15 FEET OF THEIR ENTRANCES, PROHIBITING SMOKING IN THE SEATING AREAS OF OUTDOOR ARENAS, STADIUMS, AND AMPHITHEATERS; PROVIDING FOR DEFINITIONS; REQUIRING THAT NO SMOKING SIGNS BE POSTED; REQUIRING THAT FACILITIES FOR THE EXTINGUISHMENT OF SMOKING PRODUCTS BE PROVIDED; ESTABLISHING AN AFFIRMATIVE DEFENSE TO PROSECUTION; PROVIDING FOR ENFORCEMENT, INCLUDING CIVIL FINES NOT TO EXCEED \$100 AND CRIMINAL PENALTIES NOT TO EXCEED \$200; PROVIDING FOR FINDINGS OF FACT; SEVERABILITY; REPEALER; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING**

**WHEREAS**, the City Council of the City of Horseshoe Bay (the "City Council") acknowledges that numerous scientific studies have determined that tobacco smoke is a significant indoor air contaminant, associated with respiratory illnesses, including lung cancer, asthma and emphysema; and

**WHEREAS**, the City Council has been informed that smoking is a cause of preventable death in Texas; and

**WHEREAS**, the City Council is authorized to prohibit nuisances pursuant to Texas Local Government Code section 217.002; and

**WHEREAS**, pursuant to Texas Local Government Code section 51.001, the City Council may adopt an ordinance, rule or police regulation that is for the good government, peace or order of the City or the trade and commerce of the City; and

**WHEREAS**, the City Council finds that prohibiting smoking within certain buildings, facilities and enclosed public areas within the limits of the City promotes the health, safety, and welfare of the citizens of Horseshoe Bay; and

**WHEREAS**, the City Council has previously adopted ORD 07-02-20B, prohibiting smoking in City buildings and facilities;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HORSESHOE BAY, TEXAS:**

**I. FINDINGS OF FACT**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

**II. AMENDMENT**

Ordinance No. ORD 07-02-20B, enacted February 20, 2007 and commonly known as the “Smoking Ordinance,” is hereby repealed and replaced in its entirety with this Ordinance. For purposes of Section 10 of the City of Horseshoe Bay Personnel Policy, this Ordinance shall replace ORD 07-02-20B.

**III. POPULAR NAME**

This Ordinance shall be commonly referred to as the City’s “No Smoking Ordinance.”

**IV. SMOKING REGULATIONS**

**(a) Compliance Required**

It shall be unlawful for any person to violate the provisions of this Ordinance.

**(b) Definitions**

As used in this Ordinance, the following words shall have the definitions ascribed to them by this section, except where the context clearly indicates a different meaning:

*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, trust 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; governmental entities; and private clubs.

*City* means the City of Horseshoe Bay, an incorporated municipality located in Llano County, Texas and Burnet County, Texas, its agents and employees.

*City Council* or *Council* means the governing body of the City of Horseshoe Bay, Texas.

*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 a non-profit entity.

*Employer* means a person, business, partnership, association, corporation, including a municipal corporation, or trust, that employs the services of one or more individual 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 floor to ceiling.

*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, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, 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.

*Person* means an individual, corporation, partnership, association or any other legal entity.

*Place of Employment* means an area under the control of a public or private employer that employees access during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, private offices, meeting rooms, classrooms, employee cafeterias, hallways, 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. A private vehicle is not a place of employment unless it is being used in the course of employment.

*Private* means a gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement, or dining, where specific invitation is a prerequisite to entry and where the event is not intended to be open to the general public. A private residence is not a 'public place' unless used as a child care, adult day care, or health care facility. A private vehicle is not a 'public place.' A private club is a 'public place' when being used for a function to which the general public is invited.

*Public place* means an enclosed area to which the general public is invited or in which the public is permitted, including, but not limited to:

- (1) Aquariums, galleries, libraries, and museums;
- (2) Areas available to and customarily used by the general public in businesses;

- (3) Bars;
- (4) Bingo facilities;
- (5) Child care and adult day care facilities;
- (6) Convention facilities;
- (7) Educational facilities, both public and private;
- (8) Elevators;
- (9) Gaming facilities;
- (10) Governmental facilities, including buildings and vehicles;
- (11) Health care facilities;
- (12) Hotels and motels;
- (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (14) Polling places;
- (15) Pool and billiard halls;
- (16) Private clubs when being used for a function to which the general public is invited.
- (17) Public transportation facilities, including airports, public transit depots and ticket, boarding, and waiting areas under the authority of the City of Horseshoe Bay;
- (18) Resort facilities;
- (19) Restaurants;
- (20) Restrooms, lobbies, reception areas, hallways, and other common-use areas;
- (21) Retail establishments;
- (22) Service lines;
- (23) Shopping malls;
- (24) Sports arenas; and
- (25) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

*Resort Facilities:* Overnight lodging, restaurants, recreational facilities, resort business offices, and amenities and/or meeting rooms that are designed to provide for all the needs of members and visitors to the resort.

*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. A store shall be deemed as utilized primarily for the sale of tobacco products and accessories if at least 75% of the gross revenue of the store derives from tobacco products and tobacco accessories.

*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 a line in an enclosed area 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.

*Smoking or to smoke* means the possession of a burning tobacco product, weed or other plant product. The term includes, but is not limited to, 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.

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

*Tobacco product* means the product derived from the dried leaves of any one of the various species of nicotine, including but not limited to the species nicotine tabacum, the broad-leafed native American plant, which is utilized for smoking. For purposes of the City's tobacco-free workplace policy, it shall also include chewing tobacco, snuff, and any other form of "smokeless tobacco."

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

**(c) City Policy and Application of Article to City-Owned Facilities**

The City is a tobacco-free work place. Employees are prohibited from using any form of tobacco product while on duty except for designated break periods. Employees and visitors are prohibited from smoking or using any form of tobacco product inside any vehicle, building, facility or enclosed public area, or any portion thereof, owned by, leased by, operated by or otherwise under the management or control of the City.

All enclosed areas in city owned facilities, including buildings and vehicles owned, leased, or operated by the City of Horseshoe Bay, shall be subject to the provisions of this Article.

**(d) Prohibition of Smoking in Enclosed Public Places**

Smoking shall be prohibited in all enclosed areas in public places within the City.

**(e) Prohibition of Smoking in Places of Employment**

- (1) Smoking shall be prohibited in all enclosed areas within places 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.

- (2) This prohibition on smoking shall be communicated within four weeks of adoption to all employees and posted conspicuously in all workplaces under the employer's jurisdiction.

**(f) Prohibition of Smoking in Outdoor Arenas and Stadiums**

Smoking shall be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheaters.

**(g) Reasonable Distance**

Smoking is prohibited within a reasonable distance of fifteen (15) feet outside an enclosed area where smoking is prohibited.

**(h) Exemptions**

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt and not regulated by the provisions of this Article:

- (1) Private residences, except when used as a licensed child care, adult day care, or health care facility.
- (2) Private vehicles, except when being used in the course of employment.
- (3) Hotel and motel rooms that are rented to guests and designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel 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 this Article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- (4) Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
- (5) 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 Article.
- (6) Outdoor areas of places of employment except those covered by the provisions of section IV (e)(1).
- (7) Designated public and private outdoor dining, outdoor beverage and outdoor smoking areas, including patios, decks and balconies of restaurants, and resort facilities.

**(i) Declaration of Establishment as Nonsmoking**

Notwithstanding any other provision of this Article, 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 area. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section (j) is posted.

**(j) Posting of Signs and Facilities**

(1) Signs depicting the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) shall be clearly and conspicuously posted at the entrance of every public place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.

(2) All signs required under this section must be only 5 inches x 5 inches and shall include the information required in this section.

(3) The sign provisions of this ordinance do not in any way impair, affect, or otherwise invalidate the Sign Ordinance of the City of Horseshoe Bay.

(4) A person commits an offense if he destroys or defaces a sign posted as required by this Ordinance.

**(k) Non-retaliation; Non-waiver of Rights**

(1) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.

(2) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

**V. ENFORCEMENT**

**(a) Enforcement**

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. Any violation of this Ordinance is hereby declared to be a nuisance. There shall be no requirement of a culpable mental state for a violation of this Ordinance.

**(b) Criminal Prosecution**

(1) Any person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction and be fined a sum not exceeding two hundred dollars (\$200), except as may be otherwise expressly provided by state law. Each time that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a Class C misdemeanor.

(2) Any person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:

- (A) a fine not exceeding one hundred dollars (\$100) for a first violation.
- (B) a fine not exceeding two hundred dollars (\$200) for a second violation within a period of twelve (12) consecutive months and for each additional violation within a period of twelve (12) consecutive months

**(c) Civil Remedies**

Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, 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;
- (2) a civil penalty up to one hundred dollars (\$100) a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and
- (3) other available relief.

**VI. EFFECTIVE DATE**

This Ordinance shall be and become effective immediately upon and after its passage and publication as may be required by governing law.

**VII. REPEALER**

All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of such conflict.

