

ORDINANCE NO. 2017-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING CHAPTER 62-HEALTH AND SANITATION, ARTICLE 7, SMOKING IN PUBLIC PLACES, BY AMENDING DEFINITIONS; INCLUDING ELECTRONIC SMOKING DEVICES; PROHIBITING SMOKING IN BARS, PRIVATE CLUBS AND HOTEL/MOTEL ROOMS; ADDING VAPE SHOPS TO EXCEPTIONS; PROHIBITING OUTDOOR SMOKING WITHIN FIVE (5) FEET OF ENTRANCES, EXITS, WINDOWS AND VENTILATION SYSTEMS OF PLACES WHERE SMOKING IS PROHIBITED; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY, PUBLICATION AND DECLARING AN EFFECTIVE DATE.

WHEREAS, according to the U.S. Surgeon General's 2014 Report, *The Health Consequences of Smoking—50 Years of Progress*, most of the 20 million smoking-related deaths since 1964 have been adults with a history of smoking; however, 2.5 million of those deaths have been among nonsmokers who died from diseases caused by exposure to secondhand smoke; and

WHEREAS, according to *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General, 2016*, E-cigarette use by young people is a public health concern and that the use of such “e-cigs,” “e-hookahs,” “vape pens,” and “tank systems” by young people is not harmless as they typically contain nicotine, carbonyl compounds, and volatile organic compounds, known to have adverse health effects; and

WHEREAS, in May 2016, the Food and Drug Administration issued the deeming rule, exercising its regulatory authority over e-cigarettes as a tobacco product; and

WHEREAS, the US Surgeon General reports that secondhand smoke is known to cause strokes in nonsmokers; and

WHEREAS, employees need protection from secondhand smoke in their workplaces and should not be made to choose between their job and their health; and

WHEREAS, employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack, higher rates of death from cardiovascular disease and cancer, increased acute respiratory disease, and a measurable decrease in lung function; and

WHEREAS, the City Council of the City of New Braunfels, Texas, has the authority under its Home Rule Charter and under the laws of the State of Texas to adopt regulations aimed to protect the health, safety, and general welfare of its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

Section 1: That Chapter 62 of the New Braunfels Code of Ordinances shall be amended to hereinafter read as follows:

ARTICLE VII. - SMOKING IN PUBLIC PLACES & PLACES OF EMPLOYMENT

Sec. 62-336. - 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:

Adult daycare means any home-based licensed, registered, or other facility engaged in the practice or business of providing care for adults.

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.

Child Care means any home-based licensed, registered or listed facility that is engaged in the practice or business of providing care for children. These terms are defined by the Texas Department of Family and Protective Services (DFPS).

Director means the director of the department designated by the city manager to enforce and administer this article or the director's designated representative.

Electronic Smoking Device means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, tank system, or advanced personalized vaporizer (APV), or under any other product name or descriptor.

Employee means any person who is employed by any employer for direct or indirect monetary wages or profit, or is in a position that would lead a reasonable person to believe that such person is employed.

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 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 it contains openings of any kind.

Food establishment means any operation engaged in the preparation or sale of prepared ready-to-eat food, if such operation accounts for more than 51 percent of annual gross sales receipts. For the purpose of this section a food establishment does not include an outdoor patio.

Governmental entity means a municipality, county, school district, or appraisal district.

Health care facility means any home-based facility engaged in the practice or business of providing medical or psychological services for patients.

Movie theater means any establishment engaged in the business of exhibiting motion pictures to the public. This term does not include drive-in movie theaters.

Opening means the entrance for ingress and egress into a room or a means of gaining access into an area through which access is granted by way of self-closing doors.

Outdoor Area means any area that is not an enclosed area as defined in this section.

Owner means a manager, operator, person-in-charge, or proprietor of an establishment that is regulated by this article who has the authority to manage or control an area designated as a public place.

Place of Employment means an area under the control of a public or private employer, including, but not limited to, private clubs, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and temporary offices. A private residence is not a place of employment unless it is used as a child care, adult daycare, or health care facility.

Public place means any enclosed area that is open to or is used by the general public, or that is a place of employment as defined herein, and includes, but is not limited to: retail stores, grocery stores, offices, professional, commercial or financial establishments, bars, hotel and motel rooms, 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 section, the following places are not included in this definition: private residence that is not used as a child care, adult daycare, or health care facility; retail tobacco store; or outdoor areas other than those prohibited in Sec. 62-338.

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. For the purposes of this ordinance, a private club is considered a public place.

Retail Tobacco Store Means a retail store where at least 51% of the total annual gross sales receipts are from the sale of tobacco products, smoking implements, or smoking accessories in which the sale of other products is incidental.

Smoke or 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 as defined herein, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this ordinance.

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.

Vape Shop means any store where at least 51% of the total annual gross sale receipts are from the sale of electronic cigarettes or other electronic smoking devices or substances used in those or similar devices to produce inhalable vapors and in which the sale of other products is incidental.

Sec. 62-337. - Smoking prohibited.

- (a) Smoking is hereby prohibited in all public places and places of employment within the city limits.
- (b) It is an exception under this section that the person was smoking in a private residence that is not used as a child care, adult daycare, or health care facility; retail tobacco store; vape shop; or outdoor area other than those prohibited in Sec. 62-338.
- (c) The owner of a place covered by this prohibition commits an offense if he or she allows smoking in the establishment or facility in violation of this article.

Sec. 62-338. - Smoking prohibited in outdoor areas.

Smoking shall be prohibited in the following outdoor areas:

- (a) Within a distance of five (5) feet from entrances, exits, operable windows, and ventilation systems of enclosed areas where smoking is prohibited so as to prevent smoke from entering those areas.
- (b) For outdoor smoking restrictions in city parks, refer to Chapter 86 of this Code.

Sec. 62-339. - Signs.

The owner or other person having authority to manage and control any area designated as a public place, pursuant to this article, shall post or cause to be posted and prominently displayed, and shall maintain "No Smoking" signs in a form approved by the City Manager or his director, in conspicuous locations within such public place. Such signs shall clearly and conspicuously recite the phrase "No Smoking" in English and Spanish and/or use the international no-smoking symbol.

Sec. 62-340. - Reporting violations.

- (a) This Article shall be enforced by the Environmental Services Division or their designee such as: the fire department, code enforcement, building division, and police department.
- (b) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Environmental Services Division or their designee.
- (c) The Environmental Services Division, fire department, or their designees shall, in addition to the otherwise mandated inspections, inspect for compliance with this Article.
- (d) An owner, manager, operator, or employee of an establishment regulated by this Article shall inform persons violating this chapter of the appropriate requirements of this ordinance and then request immediate compliance.
- (e) In addition to the remedies provided by the provisions of this section the Environmental Services Division, fire department, police department or their designees, may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.
- (f) 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 ordinance or reports or attempts to prosecute a violation of this ordinance.

Sec. 62-341. - Penalties for violations.

Any person, firm, corporation, agent, employer or employee who violates any provision of this Article shall, upon conviction, be fined an amount not more than \$200.00; provided, however, that in the event a defendant has previously been convicted under this Article, such defendant shall be fined an amount not more than \$500.00 for a second conviction hereunder, and shall be fined an amount not more than \$2,000.00 for

a third conviction hereunder and for each conviction thereafter. Each day that a violation is committed or permitted to exist shall constitute a separate offense.

Secs. 62-342—62-375. - Reserved.

SECTION 2: REPEALER.

All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only. All provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

SECTION 3: SEVERABILITY.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 4. EFFECTIVE DATE AND PUBLICATION.

This Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, and filing with the City Secretary's Office. This ordinance must also be published in a newspaper of general circulation at least one time within ten (10) days after its final passage, as required by the City Charter of the City of New Braunfels.

PASSED AND APPROVED: First reading this _____ day of _____, 2017.

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CITY OF NEW BRAUNFELS, TEXAS

Barron Casteel, Mayor

ATTEST:

Patrick Aten, City Secretary

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney