

Memorandum



DATE: October 31, 2008

TO: Honorable Mayor and Members of the City Council

SUBJECT: Discussion of Amendments to the Smoking Ordinance

On Wednesday, November 5, 2008, you will be briefed on amendments to the smoking ordinance. Attached is the briefing material for your review prior to Wednesday's discussion.

If you have questions or need additional information, please let me know.

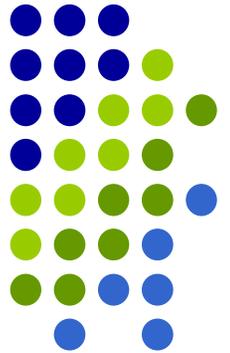


Forest E. Turner
Interim Assistant City Manager

cc: Mary K. Suhm, City Manager
Deborah A. Watkins, City Secretary
Thomas P. Perkins, Jr., City Attorney
Craig D. Kinton, City Auditor
Judge C. Victor Lander, Judiciary
Ryan S. Evans, First Assistant City Manager
Ramon F. Miguez, P.E., Assistant City Manager
A.C. Gonzalez, Assistant City Manager
Jill A. Jordan, P.E., Assistant City Manager
David K. Cook, Chief Financial Officer
Helena Stevens-Thompson, Assistant to the City Manager

Discussion of Amendments to the Smoking Ordinance

Council Briefing
November 5, 2008



History



- On January 22, 2003, Council amended the smoking ordinance (Chapter 41)
- The current ordinance includes:
 - Smoking prohibited in certain public areas (indoors or enclosed areas)
 - Elevators used by the public
 - Hospital or nursing home
 - Any facility owned, operated or managed by the city
 - Any retail or service establishment
 - Any establishment or area marked with a no smoking sign by the owner or person in control of the establishment or area
 - Any facility of a public primary or secondary school or any enclosed theater, movie house, library, museum, or transit system vehicle
- Ordinance provided for a distinction between eating establishments and bars
- Ordinance pertained specifically to eating establishments and bars were left exempt

Current Policy



- Ordinance prohibits smoking in eating establishments
- Bars that do not open into any other establishment where smoking is prohibited:
 - to qualify as a bar, 75% or more of gross revenue must be from sales or services of alcohol beverages
 - billiard halls that do not open into any other establishment where smoking is prohibited
 - to qualify as a billiard hall, 70% or more of gross revenue must be from sale or services of alcoholic beverages and rental of billiard tables and equipment

Current Policy



- **Areas where smoking is allowed:**
 - A private residence, except when that residence is used as a child care facility, adult day care facility, or health care facility
 - A physically separated administrative area or office of an establishment where smoking is prohibited, unless posted as nonsmoking
 - A retail or service establishment that derives 90 percent or more of its gross revenue on a quarterly basis from the sale of tobacco, tobacco products or smoking implements and does not open into an establishment where smoking is prohibited
 - An unenclosed outdoor seating area of an eating establishment
 - A private, rented guest room in a hotel or motel that has been designated as a smoking room by the owner / operator
- **An employer who owns, occupies or controls a workplace shall:**
 - Have and implement a written policy on smoking
 - Designates nonsmoking areas

Current Enforcement Process



- Current provisions allow for enforcement actions (citations):
 - Against the owner or person-in-charge (P.I.C.) if:
 - a “No Smoking” sign is not posted at the main entrance
 - a bar/tavern or billiard hall exempt from the smoking ordinance hall has not designated a smoking area
 - the owner or P.I.C. designates the entire facility of an exempt establishment or its restrooms or cashier areas as smoking areas
 - no written smoking policy is established for a workplace
 - Against the patrons if they are smoking in a Non-Smoking establishment or Non-Smoking area.
- Enforcement is complaint driven
- Compliance enforcement with ordinance is also conducted during semi-annual inspections of food establishments
- Smoking violations by patrons are punishable by a fine of not less than \$25 or more than \$200
- Establishment violations are punishable by a fine of not less than \$50 or more than \$500

A wide spectrum of options are available to regulate smoking. They range from no restrictions at all to a completely smoke-free environment.

Where is Dallas on the Spectrum?

On January 22, 2003, the Council amended the smoking ordinance to restrict / limit smoking in eating establishments and public venues.



Smoke-free Model



- Smoking would be **prohibited** everywhere in the city, including, but not limited to:
 - Public places
 - Defined as any public or private place open to the general public regardless of any fee or age requirement, including for example, streets, sidewalks, plazas, bars/taverns, restaurants, clubs, stores, stadiums, parks, playgrounds, taxis and buses
 - Places of employment
 - Multi-unit residence common areas
 - Enclosed and unenclosed places of hotels, businesses, restaurants, and bars/taverns, and other public accommodations

Smoke-free Model



- Smoking would be **allowed**:
 - A private residence, except when that residence is used as a child care facility, adult day care facility, or health care facility
 - At a multi-unit residence with no more than 20% designated as smoking (with no more than 25% of the total outdoor area designated)
 - Up to 20% of guest rooms in any hotel or motel
 - Designated unenclosed areas in shopping mall common areas
 - Any outdoor area in which no nonsmoker is present and due to the time of day or other factors, it is not reasonable to expect another person to arrive

Worksheet for Amendments to the Smoking Ordinance

Worksheet for Possible Amendments to the Smoking Ordinance

Area	Current Policy	Insert One (1) Checkmark Below	
		Maintain Current Policy	Prohibit
1) Bars / Taverns	Smoking is allowed		
2) Billiard Halls	Smoking is allowed		
3) Tobacco Shops	Smoking is allowed		
4) Ashtrays / Matches in Restaurants / Bars	Items can be provided		
5) Streets / Sidewalks / Unenclosed Areas	Smoking is allowed		
6) Public Parks	Smoking is allowed		
7) In Car with Child	Smoking is allowed		
8) Specified Distance from Entrance of Public Facilities	Not currently regulated		
9) Indoor / Enclosed Areas	Smoking is prohibited in specified locations		

Continued on next page

Worksheet for Possible Amendments to the Smoking Ordinance

Area	Current Policy	Insert One (1) Checkmark Below		
		Maintain Current Policy	Prohibit Smoking	Non-Smoking Section
10) Bar Patio	Smoking allowed			
11) Restaurant Patio	Smoking allowed			
12) Other Facilities Patio	Smoking allowed			
Area	Current Policy	Maintain Current Policy	Prohibit Smoking	Prohibit Only in Enclosed Areas
13) Employer Workplace	Allowed in designated area			

Continued on next page

Worksheet for Possible Amendments to the Smoking Ordinance

Area	Current Policy	Insert One (1) Checkmark Below		
		Maintain Current Policy	Allow in no more than 20% of rooms	Allow in designated rooms / meeting rooms with distance requirements
14) Hotels	Smoking allowed in designated guest rooms			
Area	Current Policy	Maintain Current Policy	Fine not less than \$50 or more than \$2,000	Hold owners and patrons liable
15) Enforcement / Penalty	Fine of not less than \$25 or more than \$500			

Budget Impacts Related to Smoking Policy Changes



- If we continue **complaint-driven** enforcement, this will limit the number of new positions needed.
- An estimate of three (3) additional sanitarians may be necessary to respond to an anticipated higher call volume related to smoking complaints

Three (3) Sanitarian Positions	
Personnel Cost	\$141,600
Supplies and Equipment	34,600
Fuel and Vehicle Maintenance	12,999
Operation and Maintenance	\$189,199
Capital Equipment (one time costs)	81,900
Total	\$271,099

Budget Impacts Related to Smoking Policy Changes



- If we adopt a **proactive** enforcement approach, this will require a significant increase in the number of new positions needed.
- A preliminary estimate of fourteen(14) additional sanitarians will be assumed while analysis is completed to meet the required service level

Fourteen (14) Sanitarian Positions	
Personnel Cost	\$658,000
Supplies and Equipment	64,587
Fuel and Vehicle Maintenance	60,662
Operation and Maintenance	\$783,249
Capital Equipment (one time costs)	382,200
Total	\$1,165,449

Next Steps



- Develop consensus on approach pertaining to ordinance and staffing levels
- Fashion a draft smoking policy based on consensus
- Council consideration on the November 19, 2008 Council Agenda
- Establish an effective date for the ordinance to go into effect

APPENDIX

APPENDIX A

SMOKING ORDINANCE COMPARISON CHART (TEXAS CITIES)

Cities	Restaurants	Outdoor Dining Patios	Bars	Entrances/Exits	Bingo Parlors	Billiard Halls	Bowling Centers	Retail Tobacco	Office Buildings	Private Clubs	Rented Facilities
Austin	Prohibited	Allowed, but not within 15 feet of entrance or openable window	Prohibited	Prohibited within 15 feet of entrance or openable window of regulated facility	Allowed with air filtration equipment; must provide enclosed non-smoking area; minors not allowed in smoking areas	Prohibited	Prohibited	Allowed	Allowed if issued a restricted permit by the city before ordinance effective date -- otherwise prohibited	Allowed if facility operated by a fraternal organization for a charitable, benevolent or educational function	Allowed up to 25% of smoking rooms in hotel or motel
Dallas	Prohibited	Allowed unless adjacent to playground or play area for children	Allowed if: 75% of sales from alcohol; not generally accessible by a minor; designated smoking areas cannot include the entire facility; facility does not open into a hotel or motel	Allowed	Prohibited	Allowed if facility does not open into regulated facility; not accessible by minors	Prohibited	Allowed if 90% of sales from tobacco products; does not open into regulated facility	Require employers to have written nonsmoking policy and can designate nonsmoking areas with proper ventilation	Prohibited	Allowed in designated smoking rooms in hotel or motel
El Paso	Prohibited	Allowed	Prohibited	Not Addressed	Prohibited	Prohibited	Prohibited	Allowed in stand-alone facilities	Prohibited	Allowed	Allowed except while contracted food or beverage service functions are taking place
San Antonio	Prohibited except for enclosed bar areas; enclosed dining areas and outdoor seating areas designated as smoking and	Allowed if designated as smoking with proper signage	Allowed if stand-alone bars	Allowed	Allowed if food sales less than 10%; minors not allowed	Allowed if food sales less than 10%; minors not allowed	Prohibited	Allowed if smoke cannot infiltrate into non-smoking areas	Prohibited	Private functions / Allowed if smoke cannot infiltrate into non smoking area	Allowed if smoke cannot infiltrate into non-smoking areas
Arlington	Prohibited	Prohibited within 50 feet of entrances or openable window of regulated facility	Allowed if no one under the age of 18 is employed an if the area does not open into a food establishment, hotel, motel, or other prohibited place.	Prohibited within 50 feet of entrances or openable window of regulated facility	Allowed if no one under the age of 18 is employed an if the area does not open into a food establishment, hotel, motel, or other prohibited place.	Allowed if no one under the age of 18 is employed an if the area does not open into a food establishment, hotel, motel, or other prohibited place.	Allowed if no one under the age of 18 is employed an if the area does not open into a food establishment, hotel, motel, or other prohibited place.	Not Addressed in Ordinance	Allowed in designated areas of the workplace	Allowed at the determination of the owner - in designed areas	Not Addressed in Ordinance

APPENDIX A (cont.)

SMOKING ORDINANCE COMPARISON CHART

Cities	Restaurants	Outdoor Dining Patios	Bars	Entrances/ Exits	Bingo Parlors	Billiard Halls	Bowling Center	Retail Tobacco	Office Buildings	Private Clubs	Rented Facilities
Houston	Prohibited	Allowed	Prohibited	Prohibited within 25 ft outside entrance. Not applicable to bars	Prohibited	Prohibited	Prohibited	Allowed if it does not infiltrate into prohibited areas	Prohibited	Not addressed	Allowed in no more than 35% of rooms. Require signange.
Plano	Prohibited	Allowed if not within 25Ft of main entrance	Prohibited	Prohibited within 25 ft of entrance or exit	Prohibited	Prohibited	Prohibited	Not Prohibited in stand alone physical facilities	Prohibited	Prohibited	Hotels and motels including at least 90% of rooms are non-smoking
Fort Worth	Prohibited	Allowed if not within 20 feet of main entrance	Allowed in bar that derives 70% or more of the establishment's revenue from the sale of alcohol for on premise consumption. Not allowed in restaurants bars.	Prohibited within 20 ft of entrance or openable window of regulated facility	Allow if no one under age of 18 and has enclosed designated no smoking area	Not Addressed	Prohibited	Not Prohibited in stand alone physical facilities	Prohibited Except designated smoking areas	Allowed as long as used by member	Hotels and motels including at least 75% of rooms are non-smoking
Richardson	Prohibited	Prohibited	Allowed in bar that derives 70% or more of the establishment's revenue from the sale of alcohol for on premise consumption. Separate HVAC . Business producing 50% - 70% income from alcohol sales can provide a smoking area if no commingling of air	Prohibited within 50 ft of entrances or openable window of regulated facility	Prohibited	Prohibited	Prohibited	Not Prohibited in stand alone physical facilities	Prohibited in areas used by the general public in all businesses	Not Addressed in ordinance	Not Addressed in ordinance

APPENDIX B

MUNICIPALITY SMOKING REGULATED AREAS (NATIONWIDE)

Cities	Building Entrance	Ash Trays In Non-Smoking Areas	Work Place Smoking	Parks As Public Place Regulated	Sidewalks As Public Place Regulated
Atlanta	Not Regulated	Not Addressed	Designated indoor areas	Allowed unless Safety conditions prohibited	Allowed unless Safety conditions prohibited
Ft. Worth	20 Ft.	Prohibited in non smoking areas	Prohibited unless establishment is exempt	Not Regulated	Not Regulated
Phoenix	Not Regulated	Not Regulated	Designated indoor o.k. with written policy	Not Regulated	Not Regulated
Austin	15 Ft.	Not Regulated	Prohibited in enclosed area	Not Regulated	Not Regulated
Toront/Ontario/ Canada	Not Regulated, except schools	Must be removed	Prohibited in enclosed area	Not Regulated	Not Regulated
Minneapolis	Not Regulated	Must be removed	Designated indoor	Not Regulated	Not Regulated
St. Paul	Not Regulated	Must be removed	Designated	Not Regulated	Not Regulated
Tacoma	25 Ft.	Not Addressed	Designated indoor areas	Not Regulated	Not Regulated
Cincinnati	Not Regulated	Prohibited	Prohibited	Prohibited in open office landscaping	Not Regulated
Boston	Not Regulated	Not Addressed	Smoking Prohibited	Not addressed	Not addressed
Plano	25 Ft.	Prohibited	Prohibited	Not addressed	Not addressed

APPENDIX C

ENFORCEMENT ACTIONS/RESULTS

Since the enactment of the smoking ordinance in March 2003, there have been a total of 798 complaints which resulted in 356 citations issued for violations of the smoking ordinance in Dallas.

Smoking Complaints and Enforcement

	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08
Complaints*	241	213	141	91	70	42
Citations*	44	110	67	32	90	13

*Violators are not always present when complaints are followed by inspections.