

TOWN OF FAIRVIEW, TEXAS

ORDINANCE NO. 2022-26

AN ORDINANCE OF THE TOWN OF FAIRVIEW, TEXAS, AMENDING THE TOWN OF FAIRVIEW CODE OF ORDINANCES, CHAPTER 6, BY AMENDING ARTICLE 6.03 REGULATING THE SMOKING OF TOBACCO PRODUCTS AND RESTRICTING LOCATIONS WHERE SMOKING IS ALLOWED; PROVIDING CERTAIN EXCEPTIONS INCLUDING CIGAR BARS; PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000; PROVIDING FOR SAVINGS, SEVERABILITY, AND REPEALING CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

**WHEREAS**, the Town of Fairview, Texas ("Town") Town Council ("Town Council") has adopted previous restrictions related to the areas where tobacco products may be smoked; and

**WHEREAS**, the Town Council desires to add an exception to said restrictions as relates to cigar bars; and

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FAIRVIEW, TEXAS, THAT:**

**Section 1. Recitals Incorporated.**

The above referenced recitals are incorporated herein as if set forth in full for all purposes.

**Section 2. Amendments.**

Article 6.03 (Tobacco Products) of the Fairview Code of Ordinances is hereby amended as follows:

**Sec. 6.03.001 Definitions**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Administrative area. The area of an establishment not generally accessible to the public or to a minor, including but not limited to individual offices, stockrooms, employee lounges, or meeting rooms.

Cigar. A roll of tobacco which is wrapped in leaf tobacco, or wrapped in a substance

that contains tobacco, and which does not include any separate filter as part of its design.

*Cigar Bar or Cigar Lounge.* A "cigar bar" or "cigar lounge" is strictly limited to those establishments as to which the operators seek to allow smoking by customers and that are cigar-themed and focused, as evidenced by the following: (1) clearly states in its name and marketing that it is a "cigar bar" or "cigar lounge," (2) derives at least thirty-three (33) percent of its gross revenue from the on-site sale of cigars, (3) maintains an on-site walk-in humidor for the intent of resale of cigar products; (4) posts outdoor signage notifying the public that entry will result in exposure to secondhand tobacco smoke, and (5) provides an independent ventilation system and must be separated from any adjoining non-smoking areas by an impermeable wall and ceiling. A "cigar bar" or "cigar lounge" shall not include any establishment which undertakes the retail offering of tobacco products as a means to circumvent any other town regulation. Unless otherwise specified by town regulation, undefined terms relating to a cigar bar or cigar lounge shall be construed according to the definitions in use by the United States Centers for Disease Control and Prevention (CDC), but the terms of town regulations shall control to the extent of any conflict.

*Cigar Products.* Products directly associated with cigars, and excludes all types of cigarettes (tobacco or otherwise), cigarillos, electronic smoking devices, vapes or vaping liquids, pipes, hookahs (or other shared pipes), or any smoking products which do not contain tobacco (e.g., those containing cloves, hemp, or other tobacco analog/substitute) for purposes of the definition of cigar bar or cigar lounge. The term "cigar products" also includes cigar-related accessory items such as cigar cutters and humidor boxes commonly associated with the smoking of cigars, but excludes any item designed or marketed for the purpose of repackaging the contents of any smoking product, including a tobacco cigar, into another form or device for ignition, aerosolization, other means of use (e.g., glass pipes which could be used to smoke tobacco removed from a cigar). Items such as apparel, memorabilia or artwork shall never constitute cigar products.

*Director.* The director of the department designated by the town manager to enforce and administer this article, or the director's designated representative.

*Eating establishment.* Any establishment that prepares or serves food or beverages, regardless of whether the establishment provides seating or facilities for on-premises consumption. The term includes, but is not limited to, restaurants, coffee shops, cafeterias, short order cafes, fast food establishments, luncheonettes, lunchrooms,

soda fountains, food carts, food vending vehicles, and catering establishments.

Employee. Any person who works for hire at a designated indoor area, including an independent contractor with an assigned indoor location.

Employer. Any person who employs five or more employees.

Enclosed. An area that:

- (1) Is closed in overhead by a roof or other covering of any material, whether permanent or temporary; and
- (2) Has 40% or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary.

Hospital. Any institution that provides medical, surgical, and overnight facilities for patients.

Minor. Any individual under 18 years of age.

Person. An individual, firm, partnership, association, or other legal entity.

Public service area. Any area to which the general public routinely has access for municipal services or that is designated a public service area in a written policy prepared in compliance with this article.

Restaurant bar. Any area of an eating establishment, excluding the dining area:

- (1) That is primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises; and
- (2) In which food service, if any, is only incidental to the consumption of alcoholic beverages.

Retail or service establishment. Any establishment that sells goods or services to the general public, including but not limited to any eating establishment, hotel, motel, department store, grocery store, drugstore, shopping mall, laundromat, bingo parlor, bowling center, or hair styling salon.

Secondhand smoke. Ambient smoke resulting from the act of smoking.

Smoke or smoking. Inhaling, exhaling, possessing, or carrying any lighted or burning cigar or cigarette, or any pipe or other device that contains lighted or burning tobacco or tobacco products.

Tobacco product vending machine. Any self-service device that, upon insertion of any coin, paper currency, token, card, key, or other item, dispenses one or more tobacco products. The term does not include any machine that is in storage, in transit, or otherwise not set up for use and operation, nor does it include any machine that is situated on a train, bus, or other public conveyance.

Workplace. Any indoor area where an employee works for an employer, including an administrative area but excluding:

- (1) A domestic residence;
- (2) A factory or warehouse where smoking is regulated by another town ordinance or a state or federal law;
- (3) An enclosed room with only one regular occupant; or
- (4) Any area that is generally accessible to the public or to a minor and that is regulated under [section 6.03.003](#).

(1998 Code, sec. 99.01) (Ordinance \_\_\_\_\_ adopted 12/6/22)

**Sec. 6.03.002 Penalty**

Any person, firm, or corporation violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction be subject to a fine in accordance with the general provisions of the Code of Ordinances. (1998 Code, sec. 99.99)

**Sec. 6.03.003 Smoking prohibited in certain public areas**

(a) A person commits an offense if he or she smokes in any of the following indoor or enclosed areas:

- (1) Any elevator used by the public.
- (2) A hospital or nursing home.

- (3) Any facility owned, operated, or managed by the town.
- (4) Any retail or service establishment.
- (5) Any establishment or area marked with a no smoking sign complying with subsection (b) by the owner or person in control of the establishment or area.
- (6) Any facility of a public primary or secondary school or any enclosed theater, movie house, library, museum, or transit system vehicle.

(b) The owner or person in control of an establishment or area in which smoking is prohibited under subsection (a) of this section shall post a conspicuous sign at the main entrance to the establishment or area. The sign shall contain the words "No Smoking, Town of Fairview Ordinance," the universal symbol for no smoking, or other language that clearly prohibits smoking.

(c) Notwithstanding any provision of this article, it is not a violation of this article if smoking occurs in a location that is:

- (1) A private residence, except that this exception does not apply when the residence is being used as a child care facility, adult day care facility, or health care facility;
- (2) An administrative area or office of an establishment described in subsection (a)(2), (a)(4), or (a)(6) of this section if the administrative area or office is physically separated from those areas of the establishment where smoking is prohibited, except that this exception does not apply if the location was posted as a nonsmoking area;
- (3) A retail or service establishment that:
  - (A) Derives 90% or more of its gross revenue on a quarterly basis from the sale of tobacco, tobacco products, or smoking implements; and
  - (B) Does not open into any other establishment in which smoking is prohibited under this section;
- (4) An unenclosed outdoor seating area of an eating establishment or

cigar bar/lounge, except that this exception does not apply if:

- (A) The outdoor seating area is adjacent to a playground or play area for children; or
  - (B) The location was posted as a nonsmoking area by the owner or person in control of the establishment with a sign complying with subsection (b);
- (5) A private rented guest room in a hotel or motel that has been designated as a smoking room by the owner or operator of the hotel or motel; or
- (6) A cigar bar or cigar lounge; provided, however, that this exception shall only apply to an establishment that is otherwise lawfully in operation and only upon the town council's approval of a major warrant allowing the establishment to operate as a cigar bar or cigar lounge as required by the Commercial Planned Development District (CPDD), as amended.

(1998 Code, sec. 99.02) (Ordinance \_\_\_\_\_ adopted 12/6/22)

**Sec. 6.03.004 Tobacco product vending machines**

(a) A person commits an offense if he owns or allows the display or use of any tobacco product vending machine upon any property within the town.

(b) It is a defense to prosecution under this section that the tobacco product vending machine was:

- (1) Situated in premises where entry by a minor is prohibited by law;
- (2) Situated in a hotel, motel, bar, or restaurant bar;
- (3) Located in a workplace with the permission of the employer, provided that:
  - (A) The employer usually has no person under 18 years of age employed at the workplace; and
  - (B) The tobacco product vending machine is situated at a location within the workplace to which no person other than an employee of the

workplace is usually permitted to have access; or

(4) Located in an eating establishment and equipped with a lock-out device that was installed, maintained, and operated in compliance with subsections (c), (d), and (e) below.

(c) A lock-out device on a tobacco product vending machine located in an eating establishment must be installed, maintained, and operated in compliance with this section.

(d) A lock-out device may be electrical or mechanical and must be approved by the director.

(e) An owner, operator, employee, or other person in charge of an eating establishment who is at least 18 years of age shall:

(1) Install and continuously maintain a lock-out device on a tobacco product vending machine in good working order;

(2) Require identification from any potential customer of the tobacco product vending machine who appears to be under 18 years of age;

(3) Physically observe all transactions in which the tobacco product vending machine is used; and

(4) Physically release the lock-out device before each sale from a tobacco product vending machine.

(1998 Code, sec. 99.03)

### **Section 3. Savings, Severability and Repealing Clauses.**

All ordinances of the Town in conflict with the provisions of this ordinance are repealed to the extent of that conflict. If any provision of this ordinance shall be held to be invalid or unconstitutional, the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof. The Town declares that it would have passed this ordinance, and each section, subsection, clause, or phrase thereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

**Section 4. Publication of the Caption Hereof and Effective Date.**

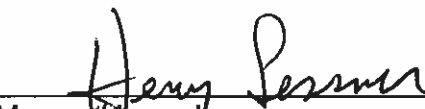
This ordinance shall be in full force and effective from and after its passage and upon the posting and/or publication, if required by law, of its caption and the Town Secretary is hereby directed to implement such posting and/or publication.

**PASSED** by the Town Council of the Town of Fairview, Texas, this 6<sup>th</sup> day of December 2022.

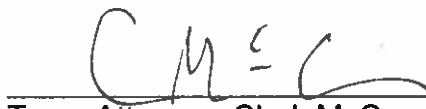
ATTESTED:

APPROVED:

  
Town Secretary, Tenitrus Bethel

  
Mayor, Henry Lessner

Approved as to form:

  
Town Attorney, Clark McCoy

