



**ORDINANCE NO. D. 18-09**

**"Amending the Smoking Ordinance"**

**AN ORDINANCE OF THE CITY OF NOLANVILLE, TEXAS, TO AMEND THE NOLANVILLE CODE OF ORDINANCES AT CHAPTER 6 ("HEALTH AND SANITATION"), ART. 6.03 ("SMOKING"), BY ADDING A NEW SEC. 6.03.002 ("SMOKING IN CERTAIN AREAS"), AND A NEW SEC. 6.03.003 ("SMOKING IN PASSENGER VEHICLE WITH A CHILD"); PROVIDING FOR FINDINGS OF FACT, SAVINGS, SEVERABILITY, REPEALER, AN EFFECTIVE DATE, AND FINDING PROPER NOTICE AND MEETING.**

**WHEREAS**, on October 6, 1994 and pursuant to Ordinance 3002 (10/6/94) the City of Nolanville ("City"), Texas adopted a Smoking Ordinance, now codified as Article 6.03 ("Smoking") of the City's Code of Ordinances; and

**WHEREAS**, it is the intent of the City to protect the health, safety, welfare, and well-being of its citizens; and,

**WHEREAS**, the 2006 U.S. Surgeon General's Report, The Health Consequences of Involuntary Exposure to Tobacco Smoke, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory symptoms and slow lung growth; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry; and,

**WHEREAS**, according to the 2010 U.S. Surgeon General's Report, How Tobacco Smoke Causes Disease, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke; and,

**WHEREAS**, according to the 2014 U.S. Surgeon General's Report, The Health Consequences of Smoking – 50 Years of Progress, secondhand smoke exposure causes stroke in nonsmokers and the report also found that since the 1964 Surgeon General's Report on Smoking and Health, 2.5 million nonsmokers have died from diseases caused by tobacco smoke; and,

**WHEREAS**, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, lung cancer and the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually; and,

**WHEREAS**, the City of Nolanville finds that smoking tobacco is a form of air pollution, a positive danger to health and a material public nuisance; and,

**WHEREAS**, the City of Nolanville finds that the addition of Smoking Regulations in Public Buildings is necessary to protect the public health and welfare by prohibiting smoking in public places and places of employment.

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

**SECTION 1. FINDINGS OF FACT**

All of the above recitals 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.

**SECTION II. AMENDMENT**

**ARTICLE 6.03 SMOKING**, is hereby amended by adding a new Sec. 6.03.002 and a new Sec. 6.03.003, to read in full as follows:

**Sec. 6.03.002 Smoking in certain areas**

**(a) Definitions.**

For purposes of this article:

*"Bar"* means an establishment that is devoted to the serving of alcohol beverages and which derives 51% or more of its revenues from the sale of alcoholic beverages for on-premises consumption, including but not limited to taverns, nightclubs, cocktail lounges, and cabarets.

*"Business"* means any sole proprietorship, partnership, joint venture, corporation or other entity formed for profit-making or not-for-profit 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.

*"Electronic vaping device"* means any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provides, or is manufactured or intended to provide, a vapor of liquid nicotine and/or other substances mixed with propylene glycol and/or other substances delivered or deliverable to the user that he/she can inhale in

simulation of smoking. This term shall include every version and type of such devices whether they are manufactured or marketed as electronic cigarettes, e-cigarettes, electronic cigars, e-cigars, electronic pipes, e-pipes, electronic hookahs, e-hookahs or under any other product name or design.

*"Electronic vaping liquid"* also known as "e-juice" and "e-liquid" shall mean any liquid product composed of propylene glycol or other carrier solvent and may contain nicotine and/or any other substance and manufactured for the use with electronic vaping devices.

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

*"Employer"* means any person, partnership, corporation, including a municipal corporation, or nonprofit entity, which employs the services of one (1) or more individual persons.

*"Enclosed area"* means all space between a floor and 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 containing openings of any kind.

*"Food establishment"* means an eating establishment, including but not limited to restaurants, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere, and shall include the bar area within the establishment.

*"Minor"* means a person younger than eighteen (18) years of age.

*"Open display unit"* means any device, furniture or furnishing within or upon which electronic vaping devices are displayed to customers, and includes, but is not limited to, any case, rack, shelf, counter, table, desk, kiosk, booth, stand, vending machine and other surface.

*"Place of employment"* means any area under the control of a public or private employer in which employees may be present during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference rooms and classrooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it requires a conditional use permit or special use permit and is used as a child care, adult day care, health care, or similar facility, or for any use that allows non-residents to be present.

*"Possession"* means actual care, custody, control or management.

*"Private Club"* means an organization, whether incorporated or not, which:

- (1) Is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times;
- (2) Is operated solely for a social, recreational, patriotic, or fraternal purpose but not for pecuniary gain;
- (3) Only sells alcoholic beverages to its members and incidentally to its operation;
- (4) Conducts its affairs and management through a board of directors, executive committee, or similar body chosen by the members at an annual meeting;
- (5) Has established bylaws or a constitution to govern its activities; and

(6) Has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

*"Public place"* means any area to which the public is invited or in which the public is permitted, including but not limited to banks; educational facilities; health facilities; laundromats; public transportation facilities; reception areas; production and marketing establishments; retail service establishments; retail stores; theaters, and waiting rooms.

*"Retail electronic vaping store"* means a retail store utilized primarily for the sale of electronic vaping devices, accessories, and/or electronic vaping liquid or any other article or product that is for use in an electronic vaping device and in which the sale of other products is merely incidental.

*"Retail store"* means an establishment whose purpose is to offer for sale and sell to consumers, not for resale, goods, wares, merchandise or food, which items may be purchased primarily for use and/or consumption off premises, including but not limited to, supermarkets, convenience stores, drug stores, and warehouse stores.

*"Retail tobacco store"* means a retail store utilized primarily for the sale of tobacco products, smoking implements, or smoking accessories and in which the sale of other products is merely incidental, including but not limited to tobacco shops, hookah lounges, cigar bars, and humidors. In this definition, "primarily" means that the sale of tobacco products, smoking implements or smoking accessories shall be at least 51% of the total sales revenue.

*"Retailer"* means a person who engages in the practice of selling tobacco products and/or electronic vaping devices and/or their related products and/or accessories, to consumers in a retail store, retail electronic vaping store, or retail tobacco store.

*"Secondhand smoke"* means smoke inhaled involuntary from tobacco product being smoked by others.

*"Service line"* means any enclosed public area in which one (1) or more persons may wait for or receive service of any kind, whether or not such service involves the exchange of money or anything of value.

*"Smoking" or "smoke"* means inhaling, exhaling, burning, possessing or carrying any lighted cigar, cigarette, pipe, weed, plant, electronic vaping device or combustible substance in any manner or in any form and/or vaping or the use of any electronic vaping device or tobacco product.

*"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, whether enclosed or not.

*"Tobacco product"* means a cigarette; a cigar; an electronic vaping device; smoking tobacco, including granulated, plug-cut, crimp-cut, ready rubbed and any form of tobacco suitable for smoking in a pipe or as a cigarette; chewing tobacco, including plug, scrap, and any kind of tobacco suitable for chewing, snuff or other preparations of pulverized tobacco; nicotine product; dissolvable nicotine; electronic vaping liquid; or any other article or product that is for use in an electronic vaping device.

*"Vaping"* means inhaling or exhaling vapors of electronic vaping liquid from an electronic vaping device.

**(b) Places where smoking is prohibited.**

- (1) Smoking is prohibited in the enclosed areas of all public places and places of employment within the city, including, but not limited to, the following places, and of other places specified below:
  - (A) Elevators;
  - (B) Restrooms, lobbies, reception areas, hallways and any other common-use areas;
  - (C) Buses, bus terminals, taxicabs, train stations, airports and other facilities and means of public transit, as well as ticket, boarding, and waiting areas of public transit depots;
  - (D) Service lines;
  - (E) Retail and wholesale stores;
  - (F) All areas available to and customarily used by the general public in all businesses, including but not limited to, attorneys' offices and other offices, banks, laundromats and country clubs;
  - (G) Enclosed facilities within a place of employment;
  - (H) Food and beverage establishments;
  - (I) Galleries, libraries, museums, zoo facilities and their grounds;
  - (J) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance except when smoking is a part of a theatrical performance upon a stage or in the course of a film or television production and smoking is part of the performance or production;
  - (K) Sports arenas and convention halls, including bowling and billiard facilities, **whether enclosed or not**;
  - (L) 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 or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city;
  - (M) Waiting rooms, hallways, wards, private and semi-private rooms of physical and mental health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;
  - (N) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
  - (O) Polling places;
  - (P) Hotels and motels;
  - (Q) Within twenty-five (25) feet of any door, operable window/vent or other opening to an enclosed area.
  - (S) Bingo Halls, Billiards, Gaming Facilities and Comedy Clubs;

(T) Bars.

**(c) Places where smoking is not prohibited.**

- (1) Notwithstanding any other provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:
  - (A) Private residences, except if used as a child day care, adult day care or household care facility, or for any use that allows non-residents to be present and requires a conditional use permit or special use permit;
  - (B) Motor vehicles except when a child younger than eight years of age is present in the vehicle;
  - (C) Retail tobacco stores, and stores where electronic vaping devices and/or electronic vaping liquids are sold;
  - (D) Places of employment other than enclosed places, except when within twenty-five (25) feet of any door, operable window/vent or other opening to an enclosed area;
  - (E) Private Club premises when only members are present;
  - (F) Outdoor patios of restaurants and bars, provided it is not an enclosed area.

**(d) Duties; posting of signs.**

- (1) When smoking is prohibited in any establishment or place regulated by this article it shall be the duty of the owner, manager, operator and other person having control of any establishment or place regulated by this article:
  - (A) To post appropriate and conspicuous signs clearly designating smoking and non-smoking areas;
  - (B) To not provide ashtrays, matches, lighters or other smoking related paraphernalia in non-smoking areas, nor allow them therein;
  - (C) To promptly advise a person who violates this article that smoking is not allowed, and
  - (D) To request a person to vacate a non-smoking area after that person has been advised that smoking is not allowed and that person continues to smoke, and take any reasonable measures to ensure that person does vacate the area.

**(e) Enforcement.**

- (1) This article shall be enforced by the City of Nolanville Building Official and Police Department.
- (2) Any person may register a complaint under this article with the City of Nolanville Building Official and/or Police Department to initiate enforcement with the City of Nolanville.

**(f) Offenses and penalties.**

- (1) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article, to fail to do what this article requires or to do what this article prohibits.

- (2) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any provision of this article.
- (3) Any person who violates any provision of this article shall be guilty of a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500.00).
- (4) Each day on which a violation of this article occurs shall be a separate and distinct violation.

**Sec. 6.03.003 Smoking in passenger vehicle with a child.**

(a) A person commits an offense if:

(1) the person possesses a burning tobacco product or smokes tobacco product in a passenger vehicle, as defined by Section 545.412, Transportation Code; and

(2) a child who is required to be secured in a child passenger safety seat system under Section 545.412, Transportation Code is present in the vehicle.

(b) An offense under this section is punishable as a Class C misdemeanor.”

**SECTION III. SAVINGS**

The repeal of any ordinance or part of ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this Ordinance.

**SECTION IV. SEVERABILITY**

Should any sentence, paragraph subdivision, clause, phrase, or section of this Ordinance be adjusted or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this Ordinance in whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

**SECTION V. REPEALER**

The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This Ordinance shall not be construed to require or allow any act that is prohibited by any other ordinance.

**SECTION VI. EFFECTIVE DATE**

This Ordinance shall take effect November 24, 2018.

**SECTION VII. PROPER NOTICE AND MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code

**PASSED AND APPROVED this 6th day of September, 2018, by a vote of 3 (ayes) to 2 (nays) to 0 (abstentions) of the City Council of the City of Nolanville, Texas.**

**CITY OF NOLANVILLE:**

Attest

George French III  
Mayor Pro-tem



Crystal Briggs  
City Secretary