



## **ORDINANCE NO. 3564**

**AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE FARMERS BRANCH CODE OF ORDINANCES CHAPTER 34 "ENVIRONMENT," ARTICLE III "AIR POLLUTION" BY AMENDING IN ITS ENTIRETY DIVISION 2 "SMOKING"; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00); AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Farmers Branch finds that secondhand smoke exposure causes disease and premature death in children and adults who do not smoke, and children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children;

**WHEREAS**, exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer;

**WHEREAS**, there is no risk-free level of exposure to secondhand smoke; and

**WHEREAS**, 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 evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services.)

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:**

**SECTION 1.** The City of Farmers Branch Code of Ordinances is amended by amending in its entirety Division 2 "Smoking" of Chapter 34 "Environment," Article III "Air Pollution" to read as follows:

### **DIVISION 2. SMOKING**

#### **Sec. 34-141. - Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Bar or tavern* means an establishment that derives seventy-five percent (75%) or more of the establishment's gross revenue from the on-premises sale of alcoholic beverages.

*Cigar bar* means a bar that derives fifteen percent (15%) or more of its gross revenue from the sale or rental of tobacco, tobacco products, smoking implements, or smoking accessories for on-premises consumption.

*E-cigarette* means an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device. The term does not include a prescription medical device unrelated to the cessation of smoking. The term includes:

(a) a device described by this definition regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and

(b) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

*Person* means any individual.

*Public building* means any building other than a building used as a private residence. If portions of a building are used as a private residence and another portion of the building is used for business purposes or commercial activities, then "public building" as used herein shall apply to the portions of the building used for business purposes or commercial purposes, but not the portion used solely as a residence. A private residence operated as a licensed, registered, or listed day care facility (as defined by state law) shall be considered a "public building" during the hours in which care is provided in the residence to children younger than 18 years of age who are not related to the owner or tenant of the residence. The term "public building" includes, but is not limited to, restaurants, bars and taverns.

*Restaurant* means an establishment that primarily serves food prepared in the kitchen of the same establishment for patrons and may serve alcohol with a valid Texas Alcoholic Beverage Commission license as long as the establishment derives less than 50 percent of its gross revenues from alcohol sales and includes all indoor and outdoor seating areas, kitchen, bar areas, restrooms and lobbies.

*Smoke or smoking* means inhaling, exhaling, or burning a lighted cigar, cigarette, pipe or other lighted tobacco product in any manner or form; or inhaling or exhaling from an e-cigarette.

*Tobacco shop* means a retail or service establishment that derives 90 percent or more of its gross revenue from the sale of tobacco, tobacco products, or smoking implements.

#### **Sec. 34-142 - Smoking prohibited**

(a) It shall be unlawful for any person to perform the following acts in any public building in the city or within 20 feet of any entrance, exit, open window, or ventilation intake to any public building:

- (1) Smoke;
- (2) Carry a lighted cigarette, cigar, or tobacco-containing pipe, or an operating e-cigarette; or
- (3) Light a cigarette, cigar or tobacco-containing pipe or operate an e-cigarette.

(b) It shall be unlawful for an owner or operator of a public building to fail to place at least one sign at each entrance to the public building in a location clearly visible to a person entering the establishment containing the following text and/or symbols:

- (1) A "No Smoking Within this Building" sign; or
- (2) The international "No Smoking" symbol depicting a burning cigarette enclosed in a red circle with a red bar across it along with the words "within this building".

(c) For purposes of Subsection (b) herein, each entrance of a public building at which a sign required by this Subsection (b) is not located shall constitute a separate offense.

(d) It shall be unlawful for any owner or operator of any public building to place or allow to be placed any of the following items in any public building or within twenty (20) feet from an entrance or exit to any public building:

- (1) Ashtrays;
- (2) Smoking paraphernalia; or
- (3) Signs that indicate that smoking is permitted.

(e) It shall be unlawful for the owner or operator of any public building to allow smoking in such public building in violation of the provisions of this division.

(f) It is a defense to prosecution of a violation of Subsection (a) of this section if the person was, at the time of the violation:

(1) On a golf course, provided that the person was between the tee box of the first hole and the end of the green of the 18th hole of the golf course;

(2) In a cigar bar that:

(i) Was lawfully operating as a cigar bar on March 19, 2019 (except that this defense does not apply if the cigar bar is expanded, is relocated, or changes majority ownership after March 19, 2019);

(ii) Does not open into any other indoor or enclosed area in which smoking is prohibited under this section;

(iii) Is not generally accessible by a minor; and

(iv) Keeps all windows and doors closed at all times except as reasonably necessary for the expeditious entering and exiting of the cigar bar;

(3) In a tobacco shop that:

(i) Does not open into any other indoor or enclosed area in which smoking is prohibited under this section; and

(ii) Keeps all windows and doors closed at all times except as reasonably necessary for the expeditious entering and exiting of the tobacco shop;

(4) In any restaurant whose owners and operators are subject to the exemption provided in Section 34-142(g) herein.

(g) The owner or operator of any restaurant where smoking was permitted on March 19, 2019, shall be exempt from the prohibitions set forth in Sections 34-142 (b)-(e) herein; provided, however, that said exemption shall immediately and permanently cease upon the City's issuance of any new certificate of occupancy after March 19, 2019, to a new owner or tenant for the subject property where said restaurant was located on March 19, 2019.

**Sec. 34-143 - City parks.**

(a) It is unlawful for a person to smoke on any property owned, leased, or otherwise operated by a governmental entity as a public park or recreational facility.

(b) It is not a defense to a violation of this section that the person was on the exterior of any building when the person was smoking.

(c) It is a defense to a violation of this section if the person was smoking:

(i) in an area designated by the Director of Parks and Recreation as a smoking area by the placement of signs designating the smoking area; or

(ii) in a motor vehicle parked within a parking area of the public park or recreational facility with the doors and windows of the vehicle closed so that smoke or vapor cannot emanate from the vehicle.

**Sec. 34-144 - Penalty.**

(a) Any person, business, legal entity, association, partnership or corporation that violates any provision of this division shall be guilty of a Class C misdemeanor violation and subject to a fine of not less than \$1.00 and not more than \$500.00. Each day that a violation is permitted to exist shall constitute a separate offense.

(b) The culpable mental state required by Chapter 6.02 of the Texas Penal Code, as amended is specifically negated and dispensed with for any offense brought under this section, and any said offense shall be a strict liability offense.

**SECTION 2.** All provisions of the ordinances of the City of Farmers Branch in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Farmers Branch not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 3.** Should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

**SECTION 4.** An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

**SECTION 5.** Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be punished by a fine not to exceed the sum of Five Hundred Dollars (\$500) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

**SECTION 6.** This Ordinance shall take effect on October 1, 2019, and the publication of the caption, as the law and charter in such cases provide; provided, however, enforcement of Code of Ordinances Section 2.

**DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THIS THE 19<sup>th</sup> DAY OF MARCH 2019.**

**ATTEST:**

**APPROVED:**

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Amy Piukana, City Secretary

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Robert C. Dye, Mayor

**APPROVED AS TO FORM:**

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Peter G. Smith, City Attorney  
(kbl:3/12/19:106541)