

City of Frankston, Texas, Ordinance 07-9-2019

AN ORDINANCE PROHIBITING SMOKING TOBACCO PRODUCTS AND VAPING IN PUBLIC PLACES INSIDE THE CITY OF FRANKSTON, TEXAS, ANDERSON COUNTY, TEXAS; PROVIDING FOR A PENALTY AND THE EFFECTIVE DATE THEREOF:

WHEREAS, cumulative scientific data indicates that exposure to second-hand smoke in indoor areas is dangerous to human health; and

WHEREAS, studies undertaken across the county demonstrate that there is no significant adverse economic impact as a result of indoor smoking bans; and

WHEREAS, given these considerations, as well as the recognized dangers of vaping, the City Council finds and determines that increasing the number of smoke-free and vape-free indoor areas is necessary to protect the public health and welfare;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRANKSTON, TEXAS, AS FOLLOWS:

That the findings contained in the preamble of the Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

**Section I.
Definitions.**

The following words, terms and phrases, whenever used in the article, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates a different meaning:

Smoking refers to the use of traditional tobacco products.

Vaping refers to the use of electronic nicotine delivery systems or electronic smoking devices. These are commonly called e-cigarettes, e-pipes, e-hookahs and e-cigars.

Business means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including any retail establishment where goods or services are sold; any professional corporation or other entity where legal, medical, dental, engineering, architectural, or other professional services are delivered.

Employee means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his services for a non-profit entity or provides such services on a contract basis.

Employer means a person, business, partnership, association, corporation, including Municipal Corporation, trust, or non-profit entity that employs the services of one or more individuals.

Enclosed when used in reference to an area or a building or portion thereof, means closed in on all sides from floor to ceiling by solid walls, with or without windows and exclusive of doorways.

Health Care Facility means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including, but not limited to, any hospital, rehabilitation hospital or other clinic.

Place of Employment means an enclosed area under the control of a public or private employer where employees work or to which employees have access during the course of employment including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

Private Function means a gathering of individuals for the purpose of deliberation, education, instruction, entertainment, amusement, or dining, where the event is not intended to be open to the public.

Public Place means an enclosed area to which the public is invited or in which the public is permitted, including, but not limited to:

1. Areas available to and customarily used by the general public in businesses;
2. Child Care facilities;
3. Educational Facilities;
4. Gaming Facilities;
5. Governmental facilities, including building and vehicles;
6. Libraries and Museums;
7. Health Care facilities;
8. Restaurants;
9. Retail Establishments;
10. Convenience Stores;
11. Public Play Grounds.

Section II.

Prohibition of smoking and vaping in enclosed public places.

Smoking and vaping shall be prohibited in all enclosed areas within places of employment, except as provided in Section V.

Section III.

Prohibition of smoking and vaping in places of employment.

- (a) Smoking and vaping shall be prohibited in all enclosed areas within places of employment, except as provided in Section V.
- (b) An employer shall communicate this prohibition to all prospective employees upon their application for employment.

Section IV.

Reasonable distance.

Smoking and vaping is prohibited within 25 feet outside entrances, exits, or wheelchair ramps serving any entrance or exit, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to ensure that tobacco smoke does not enter those areas.

Section V.

Where smoking not regulated.

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of this Ordinance:

- 1. Private residences except when used as a childcare or health care facility.
- 2. Private or semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers or vapers and have requested in writing to be placed in a room where smoking and vaping is permitted, provided that smoke and vape from these places does not infiltrate into areas where smoking and vaping is prohibited under the provisions of this article.
- 3. In open areas of public parks except for 25 feet of public playgrounds where children are at play.

Section VI.

Declaration of establishment as nonsmoking or no vaping area.

Notwithstanding any other provision of this article, an owner operator, manager, or other person in control of an establishment, facility, or outdoor area may declare the entire establishment, facility, or outdoor area as nonsmoking place or no vaping area. Smoking and vaping shall be prohibited in any place in which a sign conforming to the requirements of this Ordinance is posted.

**Section VII.
Enforcement.**

- (a) The City of Frankston, in addition to any authority having jurisdiction to enforce city ordinances, shall have authority to enforce the provisions of this article.
- (b) Any citizen who desires to register a complaint under this article may initiate enforcement with the Frankston Police Department.
- (c) The City of Frankston is authorized to promulgate rules and regulations for the enforcement of this Ordinance.

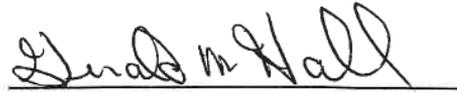
**Section VIII.
Violations and penalties.**

- (a) A person commits an offense if he is smoking or vaping in an area where smoking and vaping is prohibited by provisions of this article.
- (b) It shall be the duty of every person in control of an area where smoking and vaping is prohibited by the provisions of this article to request any person known to be smoking or vaping in such area to extinguish the burning tobacco product, electronic nicotine delivery systems, or electronic smoking devices. Any knowing or intentional failure to maintain compliance with such duty shall constitute an offense.
- (c) Whenever in this article an act is prohibited or is made or declared unlawful or an offense or misdemeanor, or whenever in this article the doing of any thing or act is required or the failure to do any thing or act is prohibited, the violation of the provision shall be and constitute a misdemeanor punishable, upon conviction, by a fine not to exceed \$500.00. Each violation shall constitute and be punishable as a separate offense.

**Section IX.
Other applicable laws.**

- (a) This article shall not be interpreted or construed to permit smoking or vaping where it is otherwise restricted by other applicable laws.
- (b) All Employers shall communicate the prohibition of smoking and vaping in places of employment enacted by this Ordinance to all existing employees within 60 days after effective date of this Ordinance.
- (c) That, if any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

INTRODUCED, READ AND PASSED by the affirmative vote of the City Council of the City of Frankston, Anderson County, Texas this 9TH Day of July, 2019



Mayor, City of Frankston, Texas
Gerald M. Hall

ATTEST:



City Secretary
Kelli Landreth-Smith