

ORDINANCE NO. 2013 - 66

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE 5, DIVISION 2 OF THE SAN MARCOS CITY CODE REGULATING SMOKING IN PUBLIC PLACES, AS PREVIOUSLY ADOPTED BY ORDINANCE NO. 2013-057, BY ADDING A DEFINITION FOR "VAPE SHOP" OR "VAPOR SHOP" AND EXEMPTING THOSE BUSINESSES FROM THE PROHIBITION OF SMOKING IN PUBLIC PLACES; AND PROVIDING AN EFFECTIVE DATE

Recitals:

1. Subsequent to the adoption of Ordinance No. 2013-057 on October 2, 2013, the city received a request to exempt vape shops (vapor shops) from the prohibition of smoking in public places.
2. The San Marcos City Council hereby finds that Chapter 34, Article 5, Division 2, of the San Marcos City Code, as amended by Ordinance No. 2013-057, should be further amended to define the term "vape shop or vapor shop" and exempt such businesses from the prohibition of smoking in public places.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Chapter 34, Article 5, Division 2, Smoking in Public Places, of the San Marcos City Code is hereby amended to read as follows (added language is underlined)

DIVISION 2. SMOKING IN PUBLIC PLACES

Sec. 34.256. Definitions.

In this division:

- (1) **EMPLOYEE** means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, or a person who volunteers his or her services for a non-profit entity.
- (2) **EMPLOYER** means a person who employs the services of one or more individuals.
- (3) **ENCLOSED AREA** means all space from the floor to the ceiling that is fully enclosed or capable of being fully enclosed on all sides by walls, windows, or doors in any combination.

(4) OPERATOR means the owner or person in charge of a public place or workplace, including an employer.

(5) PARK means any area of real property owned, used or maintained by the city as a public park, playground or athletic facility.

(6) PUBLIC PLACE means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, bingo facilities, comedy clubs, indoor music venues, convention facilities, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.

(7) RETAIL TOBACCO STORE means a retail store used primarily for the sale of tobacco products and accessories and in which the sale of other non-tobacco products is incidental.

(8) SMOKING means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, tobacco, weed, plant, or other combustible substance in any manner or in any form. “Smoking” includes the use of an e-cigarette which creates a vapor in any manner or in any form.

(9) VAPE SHOP OR VAPOR SHOP shall mean a store used primarily for the sale of electronic cigarettes or substances used in those or similar devices to produce inhalable vapors and in which the sale of other products is incidental.

(10) WORKPLACE means an enclosed area in which employees work or have access during the course of their employment.

Sec. 34.257 Places where smoking is prohibited

(A) A person commits an offense if the person smokes in a public place or in a park.

(B) A person commits an offense if the person smokes on the grounds of or within an enclosed area in a building or facility owned, leased, or operated by the City.

(C) A person commits an offense if the person smokes in an enclosed area of a workplace.

(D) A person commits an offense if the person smokes within 10 feet from an entrance or openable window of an enclosed area in which smoking is prohibited.

(E) The owner or operator of a public place commits an offense if the person fails to take necessary steps to prevent or stop another person from smoking in an enclosed area in a public place.

Sec. 34.258 Exemptions

This division does not apply to:

- (1) a dwelling unit or private residence except when used as a child care, adult day care, or health care facility.
- (2) a hotel or motel room designated as a smoking room and rented to a person;
- (3) a retail tobacco store;
- (4) a private or semi-private room in a nursing home or long-term care facility that is occupied by individuals who smoke and have requested in writing to be placed in a room where smoking is permitted;
- (5) an outdoor area of a workplace provided, however, that this exemption does not apply to a park;
- (6) outdoor seating areas of restaurants, bars, or lounges if signs are posted at each entrance to such areas to inform potential patrons that the area allows smoking and warning patrons of the negative health effects associated with secondhand smoke; or
- (7) a vape shop or vapor shop.

Sec. 34.259. Designation of smoking rooms by hotels and motels restricted.

A hotel and motel may not designate more than 25 percent of its rooms that are rented for temporary overnight occupation by the public as smoking rooms.

Sec. 34.260 Prohibition of smoking in enclosed areas of workplaces

- (A) Smoking shall be prohibited in all enclosed areas within workplaces. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed areas.
- (B) This prohibition on smoking shall be communicated by employers to all existing employees by the effective date of this division and to all prospective employees upon their application for employment.

Sec. 34.261. Voluntary designation of a non-smoking facility

Nothing in this division implies that the operator of an enclosed or outdoor public place is prohibited from designating the entire facility as non-smoking.

Sec. 34.262 Designation of smoking or non-smoking taxicabs

(A) The holder of a taxicab permit may designate one or more of the taxicabs operated under the permit as non-smoking.

(B) The holder of a taxicab permit shall conspicuously post a sign in each taxicab that indicates if smoking is permitted or prohibited in the taxicab.

Sec. 34.263. Signs required.

(A) The operator of a public place shall conspicuously post a "No Smoking" sign, the international "No Smoking" symbol (depiction of a burning cigarette enclosed in a red circle with a red bar across it), or other sign containing words or pictures that reasonably prohibit smoking:

- (1) in each public place and workplace where smoking is prohibited by this division;
and
- (2) at each entrance to a public place or workplace.

(B) The operator of a public place shall conspicuously post signs in areas where smoking is permitted under Section 34.258 (Exemptions).

(C) The operator of a public place and an employer shall remove any ashtray or other smoking accessory from a place where smoking is prohibited.

(D) It is not a defense to prosecution under this division that an operator failed to post a sign required under this section.

Sec. 34.264. Retaliation prohibited.

A person commits an offense if the person discharges, refuses to hire, or retaliates against a customer, employee, or applicant for employment because the customer, employee or applicant for employment reports a violation of this division.

Sec. 34.265. Enforcement.

- (A) This section is cumulative of other laws providing enforcement authority.
- (B) A person may report a violation of this division to the director of the Environmental Health Division of the Community Services Department.
- (C) The city manager may authorize a City employee conducting an inspection under any other provision of the San Marcos City Code to also inspect for compliance with this division and issue a citation for a violation of this division.
- (D) This division may also be enforced by a suit for injunctive relief.

Sec. 34.266 Violation and penalty.

(A) A person who violates the provisions of this division commits a Class C misdemeanor, and shall, upon conviction, be fined in an amount not more than \$200.00; provided, however, that in the event a defendant has previously been convicted under this division, such defendant shall be fined in an amount not more than \$500.00 for a second conviction hereunder, and shall be fined in an amount not more than \$2,000.00 for a third conviction and for each conviction thereafter. A culpable mental state is not required and need not be proved. Each day that a violation is committed or permitted to exist or occur shall constitute a separate offense.

Sec. 34.267. Public education.

- (A) The city manager shall:
 - (1) obtain or develop a comprehensive tobacco education program to educate the public about the harmful effect of tobacco and its addictive qualities.
 - (2) conduct informational activities to notify and educate businesses and the public about this division; and
 - (3) coordinate the City's tobacco education program with other civic or volunteer groups organized to promote smoking prevention and tobacco education.
- (B) To implement this section, the city manager may publish and distribute educational materials relating to this chapter to businesses, their employees, and the public.

Sec. 34.268 Governmental agency cooperation.

The city manager shall annually request that each federal, state, county, and school district agency with a facility in the city adopt local operating procedures and update its existing smoking control regulation in compliance with this chapter.

Sec. 34.269. Application of other law.

This chapter is cumulative of other laws that regulate smoking.

SECTION 2. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

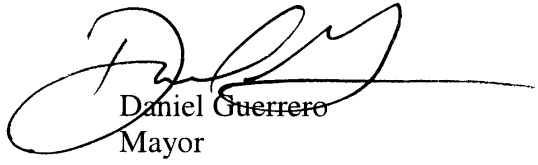
SECTION 3. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 4. The caption of this ordinance shall be published in a newspaper of general circulation within the City of San Marcos.

SECTION 5. The provisions of Section 34.257 (a) prohibiting smoking in city parks and Section 34.257(b) prohibiting smoking within or on the grounds of city buildings and facilities shall become effective on January 1, 2014. All other provisions of this ordinance shall become effective on June 1, 2014. Any bar, lounge, or restaurant that does not have an outdoor seating area as of June 1, 2014 and has a building permit posted on that date for construction of improvements necessary to accommodate smokers outside of an enclosed area shall comply with all provisions of this ordinance on and after the earlier of January 1, 2015 or the date such improvements pass final city inspection.


PASSED AND APPROVED on first reading on November 19, 2013.

PASSED, APPROVED AND ADOPTED on second reading on December 3, 2013.



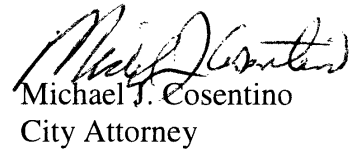
Daniel Guerrero
Mayor

Attest:



Jamie Lee Pettijohn
City Clerk

Approved:



Michael T. Cosentino
City Attorney