



**ORDINANCE NO. 19-0514-01**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITEHOUSE, TEXAS, REPEALING ORDINANCE 296 (PASSED 11-28-1989) AND ORDINANCE 342 (PASSED 1-24-1993); PROHIBITING SMOKING IN PUBLIC PLACES AND IN PLACES OF EMPLOYMENT / WORKSITES, PROVIDING FOR EXCEPTIONS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING A PENALTY PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, it is the intent of the City Council to promote the public health, safety and welfare; and

**WHEREAS**, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

**WHEREAS**, the City of Whitehouse is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

**WHEREAS**, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent by implication or otherwise, the municipality from exercising the authority incident to self-government; and

**WHEREAS**, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for good government, peace, or order of the municipality; and

**WHEREAS**, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

**WHEREAS**, Section 2 of the Whitehouse City Charter states that the City of Whitehouse may make any and all rules and regulations by ordinances and resolutions; and

**WHEREAS**, Section 2.01(k) of the Whitehouse City Charter states that the City may Make and enforce all police, health, sanitary, and other regulations; pass ordinances and enact such regulations as may be expedient for the protection and maintenance of good government, peace, and welfare of the City for the performance of the functions thereof; and

**WHEREAS**, Section 2.01 of the Whitehouse City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all

such powers, whether express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, and when not prescribed by the Charter, in such manner as shall be provided by ordinances and resolutions of the City Council; and

**WHEREAS**, Section 2.02 of the Whitehouse City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

**WHEREAS**, Section 2.01 of the Whitehouse City Charter states that pursuant to the provisions of and subject only to the limitations imposed by State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

**WHEREAS**, in 2006, the U. S. Surgeon General released a report focusing on the effects of secondhand smoke. Secondhand smoke is composed of sidestream smoke (the smoke released from the burning end of a cigarette) and exhaled mainstream smoke (the smoke exhaled by the smoker). Secondhand smoke has been designated as a known human carcinogen by the U.S. Environmental Protection Agency, the National Toxicology Program, and the International Agency for Research on Cancer, and an occupational carcinogen by the National Institute for Occupational Safety and Health; and

**WHEREAS**, the findings of said report state there is no risk-free level of exposure to secondhand smoke and that breathing even a little secondhand smoke can be harmful to your health; and

**WHEREAS**, the U. S. Surgeon General has concluded that secondhand smoke causes lung cancer, heart disease, acute respiratory effects and can cause sudden infant death syndrome and other health consequences in infants and children; and

**WHEREAS**, the impact of second-hand vaping on long-term health has not yet been determined; and

**WHEREAS**, the simple separation of smokers from non-smokers within the same airspace does not eliminate the exposure to secondhand smoke; and

**WHEREAS**, other Texas cities have enacted similar smoking ordinances prohibiting smoking and vaping in all public places including Tyler and Austin; and

**WHEREAS**, many health professionals in Whitehouse have expressed concern for stronger smoking regulations and a need to eliminate exposure to secondhand smoke in public places; and

**WHEREAS**, on March 26, 2019, Mayor Charles Parker announced the formation of a Mayor's Special Committee on Smoking and charged the committee with making recommendations to the City Council regarding changes to the current City of Whitehouse Smoking Ordinance; and

**WHEREAS**, the Committee members appointed by Mayor Parker represent several segments of the community, law enforcement, Whitehouse ISD administration and public health organizations including NET Health and ETCADA (East Texas Council on Alcoholism and Drug Abuse); and

**WHEREAS**, the Committee has conducted meetings and has received community input about current and potential smoking regulations both in verbal and written communications; and

**WHEREAS**, on April 22, 2019, the Smoking Committee reviewed the attached ordinance and it was the consensus of the group that the City Council should approve said ordinance; and

**WHEREAS**, accordingly, the City Council recognizes that secondhand smoke pose a serious public health hazard, that non-smokers need protection from secondhand smoke exposure and that therefore, regulation by the City Council of smoking and vaping in public places and places of employment is imperative in order to protect the public health and welfare of the citizens of the City of Whitehouse; and

**WHEREAS**, accordingly, the City Council recognizes that secondhand vape poses a potentially serious public health hazard, that non-vapers need protection from secondhand vape exposure and that therefore, regulation by the City Council of the usage of vape devices in public places and places of employment is imperative in order to protect the public health and welfare of the citizens of the City of Whitehouse; and

**WHEREAS**, it is important to delete Chapter 34 Section 34.01, "SMOKING PROHIBITED IN CITY BUILDINGS; SIGNS REQUIRED."

**NOW, THEREFORE, BE IT ORDIANED BY THE CITY COUNCIL OF THE CITY OT WHITEHOUSE THAT:**

**SECTION 1. FINDINGS**

All the above premises are hereby found to be true and correct legislative and factual findings and are hereby approved and incorporated for all purposes into the body of this Ordinance as if copied in their entirety.

**SECTION 2. JURISDICTION**

This Ordinance shall apply within and throughout the incorporated municipal boundary (i.e., City limits) of the City of Whitehouse.

**SECTION 3. GENERAL PROVISIONS – SMOKING PROHIBITED 3.1 Purpose.**

The purpose of this Article is to (1) improve and protect the public's health by eliminating Smoking and Vaping in Public Places and Places of Employment/Workplaces; (2) promote the right of non-smokers and non-vapers to breathe smoke and vape free air; and (3) recognize that the need to breathe smoke and vape free air shall have priority over the choice to smoke or vape.

**3.1 Definitions.**

The following words and phrases, whenever used in this Article, shall be construed as defined in this section:

- A. Bar means any enclosed establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages, and where minors are not allowed admittance unless they are accompanied by a parent or guardian. For purposes of this definition, the serving of food is

incidental to the consumption of alcoholic beverages if the gross receipts from the sale of food is thirty percent (30%) or less of the annual gross receipts of the establishment.

- B. Business means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making 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.
- C. Employee means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.
- D. Employer means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.
- E. Enclosed Area means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid.
- F. Place of Employment/Workplace means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a Place of Employment unless it is used as a child care, adult day care or health care facility.
- G. Private Organization means an entity, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for such organization's purposes, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a non-profit organization under 26 U.S.C. Section 501. The term "Private Organization" shall not include any portion of a building or premises, whether owned or leased by a non-profit corporation, when said portion is in use by an entity that is not a non-profit corporation organized under 26 U.S.C. Section 501.
- H. Private Place means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal residences, private clubs or personal automobiles. A privately-owned business, open to the public, is not a private place.
- I. 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 and affiliated facilities, reception areas, production and marketing
- J. Restaurant means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.
- K. Retail Nicotine Store means a retail store utilized primarily for the sale of nicotine products and accessories and in which the sale of other products is merely incidental. For purposes of this article, other products that are merely incidental means not exceeding ten percent (10%) of annual gross sales. Sales of incidental products shall not include the sale of alcohol regardless of percentage of total gross sales.
- L. Service Line means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

- M. Electronic Smoking Device means an electronic, mechanical heating element or battery-operated device that delivers nicotine or other substances for inhalation. This term shall include every variation and type of such devices whether they are manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah or any other product name or descriptor.
- N. Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, electronic smoking device or plant in any manner or in any form. In the sections below vaping is considered a form of smoking.
- O. 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.

### **3.2 Prohibitions.**

#### **3.2 (1) Prohibition of Smoking in Public Places.**

- A. Smoking shall be prohibited in all places of employment or workplaces and enclosed public places as well as those outdoor areas designated in Sec. **3.2(3) and 3.2(4)**, within the City of Whitehouse, including, but not limited to, the following places:
  - 1. Elevators.
  - 2. Restrooms, lobbies, reception areas, hallways and any other common-use areas.
  - 3. Buses, bus terminals, taxicabs, train stations, Whitehouse Pounds Regional Airport, and other facilities and means of public transit under the authority of the City of Whitehouse, as well as ticket, boarding, and waiting areas of public transportation facilities.
  - 4. Service lines.
  - 5. Retail stores and shopping malls.
  - 6. All enclosed 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, hotels and motels.
  - 7. Bars, restaurants, and nightclubs.
  - 8. Galleries, libraries, zoos, and museums.
  - 9. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except that performers may smoke when the smoking is part of a stage production.
  - 10. Indoor sports arenas and convention halls.
  - 11. Every room, chamber, place of meeting or public assembly, under the control of any board, council, commission, committee, including joint committees, or agencies, of the City of Whitehouse during such time as a public meeting is in progress.
  - 12. Waiting rooms, hallways, wards and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
  - 13. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
  - 14. Polling places.
  - 15. Bingo facilities and bowling alleys.
  - 16. Sexually oriented businesses.
  - 17. Places of Employment/Workplaces.

3.2 (2) Prohibition of Smoking in Places of Employment/Workplace and within a Distance of Thirty Feet of Places where Smoking is Prohibited.

- A. It shall be the responsibility of employers to provide a smoke-free place of employment for all employees.
- B. Smoking shall be prohibited in all indoor and outdoor areas served by employees, in Places of Employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities. As used in this subsection, the term "served" shall not include routine maintenance or routine cleaning activities such as waste removal, sweeping, mopping, and similar activities.
- C. Each employer having control of any enclosed Place of Employment/Workplace shall post a sign stating:  
**NO SMOKING OR VAPING**  
**SMOKING OR VAPING PROHIBITED INSIDE THIS BUILDING AND WITHIN 30 FEET OF PUBLIC ENTRANCES**  
**Whitehouse City Ordinance 19-0514-01**
- D. in the Place of Employment within sixty (60) calendar days after the effective date of this Article and in the future prior to receiving any required Certificate of Occupation from the City.

3.2 (3). Prohibition of Smoking in Specified Outdoor Areas.

Smoking shall be prohibited in the following outdoor areas.

- A. Boarding and waiting areas of public transportation facilities.
- B. Zoos.
- C. City parks, playgrounds, and recreation areas, excepting however private boats on City lakes.
- D. Within the public right-of-way and any seating located within the public right-of-way or on other city-owned property along the entire parade route of all city-sponsored parades for a period beginning two (2) hours before the start of each parade until one hour after the conclusion of each parade. This prohibition will not apply to those areas where smoking is permitted under section 3.3(5) or to any other private property.

3.2 (4). Reasonable Distance. Prohibition of Smoking within Distance of 30 feet of Public Place or Place of Employment/Workplace.

Smoking is prohibited within a distance of not less than thirty (30) feet outside public entrances, operable windows, and ventilation systems of Enclosed Areas where smoking is prohibited in any Public Place or Place of Employment/Workplace.

3.2 (5) Exemptions from Prohibition.

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. A private residence, unless it is used as a child care, adult day care or healthcare facility.
- B. A Retail Nicotine Store.
- C. Facilities and property otherwise defined by this ordinance that are under the ownership, custody or control of another governmental or educational institution.
- D. Outdoor areas, including outdoor patios, that are adjacent to bars or restaurants and that are served by employees of such bars or restaurants, but which are at least thirty (30) feet from outside public entrances, operable windows, and ventilation systems of Enclosed Areas where smoking is prohibited by this Article. For purposes of this subsection, the term "outdoor area"

shall mean an outdoor area that does not have a roof, and has at least one side which does not extend to the ceiling or is not solid.

- E. Any person or organization that owns or operates a public space shall be given the opportunity to file for an exception from prohibition to be brought before and decided upon by the city council. If granted, the term of the exemption from prohibition shall last for a period of five (5) years.

### 3.2 (6). Posting of Signs.

- A. The owner, manager or other person having control of a Public Place or Place of Employment/Workplace or other area where smoking is prohibited by this Article shall have a conspicuously posted sign clearly stating NO SMOKING OR VAPING or displaying the international No Smoking symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it) and a symbol representing no vaping. The signs shall have bold lettering of not less than one (1) inch in height. Symbols must be at least two (2) inches in height. The signs must be posted at each entrance and within the building or other areas where smoking is prohibited.
- B. All ashtrays and other smoking paraphernalia shall be limited in facilities to that required for the enforcement of extinguishing of smoking materials in Public Places and Places of Employment.

## SECTION 4. ENFORCEMENT

- A. Enforcement of this Article shall be by City employees and/or contractors as designated by the City Manager or designee.
- B. Notice of the provisions set forth in this Article shall be given to all applicants for a certificate of occupancy or any other license to operate a business in the City of Whitehouse.
- C. Any person may register a complaint under this Article to initiate enforcement with any agency or official designated herein.
- D. The above designated enforcement persons shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. Any owner, manager, operator or employee of any establishment regulated by this Article shall be responsible for informing persons violating this Article of the provisions.

## SECTION 5. NON-RETALIATION

No person or employee shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke-free environment afforded by this Article.

## SECTION 6. VIOLATIONS AND PENALTIES

- A. It shall be unlawful for the owner, manager or other person having control of a Public Place or Place of Employment or other area where smoking is prohibited by this Article to allow smoking or to fail to comply with any of the provisions of this Article.
- B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Article, or to violate any provision of this Article.
- C. Any person who violates any provision of this Article shall be guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars (\$300.00). If a defendant has been previously convicted under this Article, the defendant shall be punished by a fine of not more than five hundred dollars (\$500.00). It is hereby declared that the culpable mental state required by Texas Penal Code Section 6.02 or successor, is specifically negated and clearly dispensed with, and an offense under this Article is declared to be a strict liability offense.

**SECTION 7. OTHER APPLICABLE LAWS**

This Article shall not be interpreted nor construed to permit smoking where it is otherwise restricted by other applicable laws.

**SECTION 8. REPEALER**

That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**SECTION 9. PENALTY**

That any person, firm, or corporation violating any of the provision or terms of this Ordinance, upon conviction in Municipal Court, shall be punishable by a fine not to exceed the sum of Five Hundred Dollars (\$500.00) for each offense and each and every day any violation or non-compliance continues shall constitute a new and separate offense.

**SECTION 10. SEVERABILITY**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentences, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

**SECTION 11. EFFECTIVE DATE**

This Ordinance shall take effect after its passage and the publication of the caption, as the law and charter in such case provide.

**PASSED AND APPROVED by the City of Whitehouse City Council on this 14th day of May 2019.**



Charles Parker – Mayor

**Attested by:**



Susan Hargis - City Secretary