ARTICLE III. SMOKING[1]

DIVISION 1. GENERALLY[2]

Sec. 54-61. Definitions.

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

Administrative area means area of an establishment not generally accessible to the public, including but not limited to individual offices, stockrooms, employee lounges or meeting rooms.

Bar and lounge means an establishment that is devoted to the serving of alcoholic beverages for consumption by guest on the premises and derives at least 51 percent of its gross sales from sale of alcoholic beverages for on-premises consumption, including, but not limited to, any tavern, nightclub, cocktail lounge, or cabaret.

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.

Dining area means any area in which meals or entrees are served but shall not include areas where the incidental service of hors' d'oeuves, snacks, pretzels, popcorn, or similar items are provided. Any area containing a counter, tables, booths upon which meals are served.

Director means the duly appointed fire marshal or his designee, who shall have the full authority to enforce and administer the smoking regulations of the city.

Educational facility means any public or private day care center, nursery school, elementary school, middle school, junior high school, senior high school, vocational school, special education center, college, or university.

Electronic Smoking Device means any device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine, THC, smoke, vapor, aerosol or other substances to the individual inhaling from the device. The term includes any such device, whether manufactured, distributed, marked, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, vape, vape pen, or under any other product name or descriptor. Including a component, part, or accessory for the device, regardless of whether such component, part, or accessory is sold separately from the device.

Employee means any person other than a domestic household worker in consideration of direct or indirect monetary wages, commissions or profits and any contract employee, or a person who volunteers services for a non-profit entity.

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[1]Cross reference(s)—Fire protection and prevention, ch. 46.

[2]Editor's note(s)—Ord. No. 2007-06, §2, adopted Jan. 23, 2007, deleted Art. III, Div. 1, in its entirety and enacted a new Art. III, Div. 1, to read as set out herein. Former Art. III, Div. 1, pertained to similar subject matter and derived from Code 1968, §§ 11-36—11-42; and Ord. No. 95-121, § 2, adopted Sept. 14, 1995.

Employer means any person, business, partnership, association, corporation, including a municipal corporation, or non profit entity that employs the services of one or more employees.

Enclosed areas means all space between a floor and ceiling that is enclosed on all sides by smoke-impermeable walls or windows (exclusive of doorways) that extend from that floor to the ceiling. An enclosed area may be a portion of a larger enclosed area.

Exception area means an area in which smoking is permitted pursuant to this division.

Health care facility means an office or institution providing care or treatment, including but not limited to any hospital, rehabilitation hospital or other clinic.

Minor means any person under 18 years of age.

Private function means a gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement, or dining where membership attendance, or specific invitation is a prerequisite for entry and where the event is not intended to be open to the public.

Public place means any enclosed indoor area to which the general public is invited or in which the general public is permitted, including but not limited to:

(1) Areas available to and customarily used by the general public in businesses;

(2) Bars and lounges;

(3) Bingo facilities;

(4) Child care and adult day care facilities;

(5) Convention facilities;

(6) Educational facilities, both public and private;

(7) Elevators;

(8) Governmental facilities, including buildings and vehicles;

(9) Health care facilities;

(10) Hotels and motels;

(11) Polling places;

(12) Pool and billiards halls;

(13) Restaurants and restaurant outdoor seating areas;

(14) Restrooms, lobbies, reception areas, hallways and other common-use areas;

(15) Retail establishments;

(16) Shopping malls;

(17) Sports arenas;

(18) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Public service area means any area to which the general public routinely has access for municipal services or which is designated a public service area in a written policy.

Restaurant means any eating establishment, including a food establishment as that term is defined under 25 TAC § 229.162(40), or any place where goods are manufactured, packaged, produced, processed, transported, stored, sold, commercially prepared, vended or otherwise handled. The term includes but is not limited to any

coffee shop, cafeteria, luncheonette, sandwich stand, fast food establishment, private and public school cafeteria or eating establishment, any other eating establishment, that gives or offers food to the general public, guests, or employees, including kitchens in which food is prepared on the premises for serving elsewhere, such as catering facilities, except that the term "restaurant" shall not be construed to include any portion of the establishment that constitutes a restaurant bar. A lounge or bar shall not constitute a restaurant for any purpose.

Restaurant outdoor seating area means any patio, sidewalk cafe, or similar unenclosed area in which a contiguously situated restaurant provides outdoor food service to its patrons.

Retail and service establishment means any enclosed area in which any goods or services of any nature are sold or offered for sale directly to consumers, including but not limited to grocery stores, convenience stores, dry goods stores, banks, department stores and specialty shops.

Service line means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

Smoke or smoking means inhaling, exhaling, burning, holding or carrying lighted pipe, cigar or cigarette or other lighted smoking equipment that contains tobacco, weed, plant, or other combustible substance. This definition is intended to include the use of electronic smoking devices.

Tobacco retail shop means an enclosed area utilized primarily for the sale of tobacco products and smoking accessories and in which the sale of other products is merely incidental.

Workplace means any enclosed area of a structure, or portion thereof, intended for occupancy by employees who provide primarily clerical, professional or business services of a business entity, or which provide primarily clerical, professional or business services to other business entities, or to the public, at that location. The enclosed indoor area under the control of the employer shall include those areas to which employees have access during the course of employment, including but not limited to work areas, employee lounges, employee restrooms, employee conference rooms and employee cafeterias. A private residence is not a place of employment.

(Ord. No. 2007-06, § 2, 1-23-2007; Ord No. 2022-38, § 1, 10-11-2022)

Sec. 54-62. Smoking prohibited in enclosed public places.

Smoking shall be prohibited in all enclosed public places within the city except as provided in section 54-65.

(Ord. No. 2007-06, § 2, 1-23-2007)

Sec. 54-63. Smoking prohibited in seating areas at outdoor events.

Smoking shall be prohibited within 25 feet of and in the seating areas and covered concourses of all outdoor sports stadiums as well as within 25 feet of and in bleachers and grandstands for use by spectators at sporting and other public events.

(Ord. No. 2007-06, § 2, 1-23-2007)

Sec. 54-64. Reasonable distance.

Smoking is prohibited within 25 feet of outside entrances, exits, or wheelchair ramps serving any entrance or exit, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

(Ord. No. 2007-06, § 2, 1-23-2007)

Sec. 54-65. Where smoking is not regulated.

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

(1) Billiard halls, where the establishment uses more than 50 percent of the premises for operational pool tables, provided that food sales constitute less than ten percent of gross sales;

(2) Bingo facilities, provided that food sales constitute less than ten percent of gross sales, and minors are not admitted, unless accompanied by their parent or legal guardian. Must provide non-smoking designated seating areas for any patron requesting such seating. Bingo facilities may establish no smoking hours during which minors may be admitted;

(3) *Bar and lounge.* An establishment having at least 51 percent of its gross sales from the sale of alcoholic beverages for on-premises consumption;

(4) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided however, that not more than 25 percent of rooms rented to guests in a hotel or motel may be so designated;

(5) Private residences, except when used as a licensed child care, adult day care, or health care facility;

(6) Tobacco specialty retail shops; provided however, that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this section;

(7) Stage areas of enclosed theaters, if smoking is an integral part of a theatrical performance;

(8) Those enclosed portions of a workplace area to which patrons and invitees do not have general access, provided the area is separately ventilated and situated such that air is not drawn into the common areas of the facility or workplace; and

(9) The locker rooms of any private club if the entrances to the locker rooms are posted for "members only".

(Ord. No. 2007-06, § 2, 1-23-2007; Ord. No. 2007-19, § 2, 4-10-2007)

Sec. 54-66. Posting of signs.

(a) The owner, operator, manager or person in control of any public place or establishment or area subject to this section shall clearly and conspicuously post "No Smoking" signs to ordinary public view, at or near every public entrance to the establishment. The sign shall contain the words "No Smoking, City of League City Ordinance," the universal symbol for no smoking, or other language that clearly prohibits smoking.

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

(Ord. No. 2007-06, § 2, 1-23-2007)

Sec. 54-67. Enforcement.

(a) This section is cumulative of other laws providing enforcement authority.

(b) The fire marshal's office of the city shall, while an establishment is undergoing otherwise mandated inspections, be responsible for the enforcement of these regulations. The fire marshal may promulgate rules and regulations consistent with this section to ensure compliance, including inspection, reporting, and

compliance procedures. The fire marshal may establish a program to explain and clarify the purposes of this section to citizens affected by it and to guide owners, operators and managers in their compliance with it.

(Ord. No. 2007-06, § 2, 1-23-2007)

Sec. 54-68. Violations and penalties.

A person commits an offense if he is smoking in an area where smoking is prohibited by the provisions of this division.

(1) It shall be the duty of every person in control of an area where smoking is prohibited by the provisions of this article to request any person known to be smoking in such area to cease smoking, and if applicable, extinguish the burning substance.

(2) Any person, agent or employee who violates any provision of this article shall, upon conviction, be fined an amount not more than the maximum allowable by law.

(3) Each violation shall constitute and be punishable as a separate offense. Prosecution or conviction under this provision is cumulative of and shall never be a bar to any other civil or administrative remedy provided or allowed in this article or by law.

(Ord. No. 2007-06, § 2, 1-23-2007)

Sec. 54-69. Applicability of fire code. Other smoking prohibitions not affected.

Nothing in this article shall be construed to repeal or excuse compliance with smoking prohibitions imposed by the fire code of the City of League City. To the extent that any offense specified in this article also constitutes an offense under the fire code of the City of League City, then the offense shall be punishable pursuant to the fire code.

(Ord. No. 2007-06, § 2, 1-23-2007)

Secs. 54-70—54-90. Reserved.

DIVISION 2. CITY FACILITIES AND VEHICLES

Sec. 54-91. Smoking prohibited.

It shall be unlawful for any person to be in possession of a burning tobacco product, or to smoke, in any city building or any city vehicle owned or leased by the city.

(Code 1968, § 11-31; Ord. No. 92-57, § 1, 9-22-1993)

Sec. 54-92. Display of signs required.

It is a defense to prosecution under this division that the building in which the offense takes place does not have prominently displayed therein a reasonably sized notice that smoking is prohibited by city ordinance in such building and that an offense is punishable by a fine not to exceed the maximum allowed by law.

(Code 1968, § 11-32; Ord. No. 92-57, § 1, 9-22-1993)

Sec. 54-93. Reserved.

Sec. 54-94. Penalty.

Any person who shall violate any provision of this division shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in an amount not to exceed the maximum allowed by law.

(Code 1968, § 11-34; Ord. No. 92-57, § 1, 9-22-1993)

Secs. 54-95—54-130. Reserved.