

ORDINANCE NO. 502

AN ORDINANCE OF THE CITY OF MANOR, TEXAS, AMENDING CHAPTER 4 OF THE MANOR CITY CODE BY ADDING ARTICLE 4.08 TO PROHIBIT SMOKING IN FOOD PRODUCTS ESTABLISHMENTS, BARS, HOTEL AND MOTEL ROOMS WITH CERTAIN EXCEPTIONS, AND WITHIN 15 FEET OF ANY OPENING TO A PLACE WHERE SMOKING IS PROHIBITED; PROVIDING FOR AN OFFENSE IF THE OWNER OR PERSON IN CONTROL OF AN ESTABLISHMENT FAILS TO POST NO SMOKING SIGNS, ADVISE A PATRON THAT SMOKING IS NOT ALLOWED, OR REQUEST A PATRON TO LEAVE AFTER HAVING BEEN ADVISED THAT SMOKING IS NOT ALLOWED; PROVIDING FOR AN EXEMPTION FOR OUTDOOR SEATING AREAS OF FOOD PRODUCT ESTABLISHMENTS; PROVIDING FOR A PENALTY; PROVIDING FOR A REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING AN OPEN MEETINGS CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Manor has determined that prohibiting smoking and the burning of tobacco-related products is reasonable and necessary to protect the health, welfare, and safety of its citizens and visitors to the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANOR, TEXAS, THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

Section 2. Addition to Chapter 4. New Article 4.08 (Smoking Ordinance); New Sections

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ARTICLE 4.08 SMOKING PROHIBITIONS

Sec. 4.08.001 Definitions

The following words, when used in this article, shall have the meanings ascribed to them in this section:

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

Bar. Any establishment which derives more than 50 percent of its annual gross sales from the sale of alcoholic beverages.

Food products establishment. Any fixed or mobile restaurant, coffee shop, cafeteria, short order café, luncheonette, grill, tea room, sandwich shop, soda fountain, confectionery, ice cream store, refreshment stand, fruit stand, country club, catering service, industrial feeding establishment, or grocery store; private or public where food or drink is prepared for sale or for service on the premises or elsewhere; and any other eating or drinking is prepared for sale or for eating or drinking establishment or operation where food or drink is served or provided for the public with or without charge.

Health care facility. Any institution that provides medical, surgical, or overnight facilities for patients.

Public service area. 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 prepared in compliance with this ordinance.

Retail and service establishment. Any establishment which sells goods or services to the general public.

Sign. The official placard designating an area or facility where smoking is prohibited, and must conform to one of the following choices of wording, to-wit:

1. No smoking. Violators fined up to \$500.00
2. The universal symbol for no smoking; or
3. Any other language indicating that the area marked is designated as a nonsmoking area.

All signs must be of sufficient size to accommodate the message contained thereon in letters at least one inch in height.

Sec. 4.08.002 Smoking Prohibited in Certain Public Areas

- (a) A person commits an offense if the person smokes or possesses a burning tobacco, marijuana, or other plant product in any of the following:
 - (1) A public library, or museum;
 - (2) Hearing rooms, conference rooms, meeting rooms or any public service area of any facility owned, operated, or managed by the city in which public business is conducted, when the public business requires or provides an opportunity for direct participation or observation by the general public;
 - (3) Every publicly or privately-owned theater, auditorium, or other enclosed facility which is open to the public for primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event, or any other performance or event, in all areas except either in that area commonly known as the lobby, or in areas not open to the public;
 - (4) An elevator used by the public;
 - (5) Any retail or service establishment serving the general public, including, but not limited to any department store, grocery store, or drug store;

- (6) Any food product establishment;
- (7) Any bar, including a bar within a food product establishment;
- (8) In or within 15 feet of any door, operable window/vent or other opening to a place where smoking is prohibited, except as provided for in section 4.08.004 below; or
- (9) Hotels and motels, except as provided for in section 4.08.004 below;
- (b) The owner or person in control of an establishment or area designated in subsection (a) of this section shall post a conspicuous sign at the main entrance to the establishment or area.
- (c) The owner or person in control of an establishment or area regulated by this section commits an offense if he fails to:
 - (1) Post a sign in accordance with subsection (b) of this section;
 - (2) Advise a person who violates this section that smoking is no allowed; or
 - (3) Request a person to remove himself from the location after that person has been advised that smoking is not allowed and that person willfully continues to smoke.
- (d) It shall be a defense to prosecution under subsection (a) that the establishment or area in which the offense takes place does not have a displayed conspicuous sign that smoking is prohibited.

Sec. 4.08.003 Regulation of smoking

Notwithstanding the provisions of this ordinance, any employer, primary or secondary school administrator, or health care facility provider may designate any building, or portion thereof, as a nonsmoking area. Any employer, primary or secondary school administrator, or health care facility provider who chooses to designate any building, or portion thereof, as a nonsmoking area shall:

- (a) Adopt, implement, and maintain a written smoking policy which shall be communicated to all employees at least three weeks prior to its adoption;
- (b) Prominently display reasonable sized signs that smoking is prohibited; and
- (c) Provide facilities in sufficient numbers and at such locations to be readily accessible for the extinguishment of smoking materials.

Sec. 4.08.004 Exceptions

The following areas are exempted from the provisions of this ordinance:

- (a) A retail or service establishment which derives more than 50 percent of its annual gross sales from the sale of tobacco, tobacco products, or smoking implements.
- (b) An administrative area within the workplace.
- (c) An unenclosed outdoor seating area associated with a food product establishment, so long as:
 - (1) smoking is prohibited in or within 15 feet of any door, operable window/vent or other opening to a place where smoking is prohibited;
 - (2) the outdoor seating area is not adjacent to a playground or play area for children; or
 - (3) the outdoor seating area is not posted as a nonsmoking area by the owner, operator or person in control of the establishment

(d) Not more than ten percent of hotel and motel rooms rented to guests and designated as smoking rooms. All smoking rooms on the same floor must be contiguous and smoke from these rooms must no infiltrate into areas where smoking is prohibited under provisions of this ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

Section 3. **Penalty.** Any person, firm, or corporation who violates any provision of this ordinance shall be guilty of a misdemeanor and, upon conviction thereof in the Municipal Court, shall be subject to a fine of not more than \$500.00 for each offense. Proof of a culpable mental state shall not be required to establish a violation of this ordinance. Each and every day such offense is continued shall constitute a new and separate offense.

Section 4. **Severability.** If any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

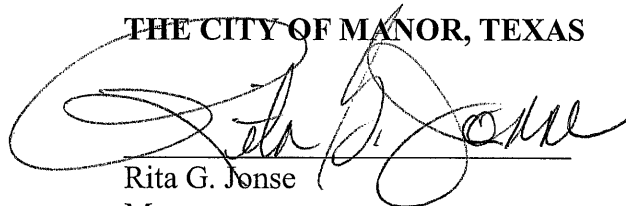
Section 5. **Repeal.** All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent with or in conflict with the terms and provisions contained herein are hereby repealed only to the extent of such conflict.

Section 6. **Open Meetings.** It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Government Code.

Section 7. **Effective Date.** This Ordinance shall take effect and be in full force and effect on January 3, 2018.


PASSED AND APPROVED this 3rd day of January 2018.

THE CITY OF MANOR, TEXAS



Rita G. Jonse
Mayor

ATTEST:


Lluvia Tijerina
City Secretary