



ORDINANCE NO. 654-2018-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS, ORDERING CHAPTER 24, STREETS, SIDEWALKS AND OTHER PROPERTIES, ARTICLE I. IN GENERAL, SECTIONS 24-1, SMOKING PROHIBITED IN CITY BUILDINGS AND SECTION 24-33, SMOKING PROHIBITED OF THE SAME CHAPTER, BE REPEALED AND CHAPTER 24 SECTIONS RENUMBERED AND RETITLED TO REFLECT THE CHANGE AND REPEALING CHAPTER 16, OFFENSES AND MISCELLANEOUS PROVISIONS, ARTICLE III. REGULATION OF ELECTRONIC CIGARETTES AND/OR E-CIGARETTES AND LIQUID NICOTINE AND REPLACING IT WITH NEW ARTICLE III. SMOKING, SECTIONS 16-50 THROUGH 16-56 TO PROHIBIT SMOKING IN PUBLIC SPACES, PROVIDING EXEMPTIONS AND PROVIDING A CRIMINAL PENALTY FOR AN OFFENSE, CONFIRMING TEXAS OPEN MEETINGS ACT COMPLIANCE, PROVIDING A SEVERABILITY CLAUSE, PROVIDING A REPEALER CLAUSE, PROVIDING A PUBLICATION CLAUSE, PROVIDING AN EFFECTIVE DATE, AND PROVIDING A CERTIFICATION OF ADOPTION.

WHEREAS, the City of Venus, Texas (“City”), is a Type A general law city operating pursuant to the laws of the State of Texas, by and through its duly elected council members;

WHEREAS, the City is authorized and empowered to adopt and enforce ordinances, not inconsistent with state law, that are necessary to protect the welfare and safety of its inhabitants (TEXAS LOCAL GOVERNMENT CODE § 51.012);

WHEREAS, the City Council (“Council”) of the City serves as the elected governing body; directly responsible for the promotion and protection of the public health and safety of its citizens and inhabitants;

WHEREAS, cigarettes and secondhand smoke contain more than 7,000 chemicals, including 69 known or suspected substances that cause cancer;

WHEREAS, nicotine is a known neurotoxin that is also one of the most highly addictive substances available for public consumption;

WHEREAS, every year, use of tobacco products creates more than \$268 billion in directly related healthcare and lost worker productivity costs, and leads to the deaths of almost half a million Americans;

WHEREAS, smoking in public places creates a public health risk for adults and children inhaling secondhand smoke;

WHEREAS, city staff and council members hear regular complaints regarding secondhand smoke on sidewalks, near entryways and in areas the public wish to be smoke-free;

WHEREAS, Council, acting on the public health concern, adopted Ordinance No. 273-2003 on May 22, 2003, creating Chapter 24, Streets, sidewalks and other properties, Article I. In general, Sec. 24-1, Smoking prohibited in city buildings to prohibit smoking in city buildings, and then amended the section to include electronic cigarettes with Ordinance 397-2014 on March 10, 2014, now found in Chapter 16, Offenses and Miscellaneous Provisions, Article III. Regulation of Electronic Cigarettes and/or E-Cigarettes and Liquid Nicotine;

WHEREAS, Council, further adopted Ordinance 410-2015 on November 9, 2015 adding Sec. 24-33. Smoking Prohibited to Chapter 24 of the CITY OF VENUS CODE OF ORDINANCES to prohibit smoking in city parks and on the town square;

WHEREAS, the 84th Texas Legislature, responding to cities across the state adopting ordinances like the City's Chapter 16, Offenses and Miscellaneous Provisions, Article III. Regulation of Electronic Cigarettes and/or E-Cigarettes and Liquid Nicotine, passed TEXAS HEALTH AND SAFETY CODE Sections 161.251, 161.252, 161.253, 161.254, 161.255 and 161.256 effectively preempting the city's provision governing the same matter;

WHEREAS, city staff recommend repealing Chapter 16, Offenses and Miscellaneous Provisions, Article III. Regulation of Electronic Cigarettes and/or E-Cigarettes and Liquid Nicotine as state law now governs;

WHEREAS, Council finds the time has arrived for the city to implement a broader, more comprehensive smoking ban to incorporate all public places, not just city-owned buildings, city parks and the town square;

WHEREAS, Council and city staff have reviewed research materials held by the Texas Department of State Health Services regarding tobacco prevention programs, listings of Texas cities adopting smoking bans, and articles and studies on the strong, positive effect such bans have on overall public health for communities;

WHEREAS, city staff recommend the repeal of Chapter 24, Streets, sidewalks and other properties, Article I. In General, Sec. 24-1, Smoking prohibited in city buildings and Chapter 24, Streets, sidewalks and other properties, Article I. In General, Sec. 24-33. Smoking Prohibited replacing both with the new smoking in public places prohibition of this ordinance; and

WHEREAS, the ordinances of the City are codified together in the CITY OF VENUS CODE OF ORDINANCES, hosted and managed by Municode.com as authorized and directed by TEXAS LOCAL GOVERNMENT CODE Section 53.001 and as such any new ordinance or regulation adopted should be included and codified in the Code to promote public awareness and to provide an easy way for citizens to learn of this new ordinance.

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

SECTION A. CHAPTER 16 AMENDMENT

Chapter 16 – Offenses and Miscellaneous Provisions, Article III. Regulation of Electronic Cigarettes and/or E-Cigarettes and Liquid Nicotine of the CITY OF VENUS CODE OF ORDINANCES is hereby repealed in its entirety and replaced as follows:

Article III. SMOKING

Sec. 16-50. 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:

Bar means any indoor area that is operated and licensed primarily for the sale and service of alcoholic beverages for on-premises consumption and where the receipts from the sale of alcoholic beverages at the location is greater than sixty (60) percent of the total receipts from the location.

Electronic smoking device means any electronic oral device such as one composed of a heating element, battery, and/or electronic circuit which provide a vapor of nicotine or any 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 pen, an electronic pipe, or an electronic hookah or any other product name or descriptor.

Enclosed area means a space that is enclosed on all sides by solid walls that extend from the floor to the ceiling, exclusive of windows and doors.

Operator means the owner or person in charge of a public place, including an employer.

Park means the outdoor areas of land dedicated and used as parkland, or city- owned land used for a park or recreational purpose. The term includes city-owned athletic fields, gazebos, trails, nature preserves, golf courses, the town square and publicly accessible swimming pools.

Private club means any club, organization, or lodge operating an indoor area that is permitted by the Texas Alcoholic Beverage Commission (T.A.B.C.) under a private club registration permit for the sale of alcohol.

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, 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, 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. All city-owned buildings, including city hall, the police department building, city council chambers and the civic center are specifically included in this definition of "public place".

Retail tobacco store means a retail store used primarily for the sale of tobacco products, electronic smoking devices, and related accessories in which the sale of other non-tobacco products is incidental and includes vape shops or other establishments that primarily sell electronic smoking devices.

Smoking means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, any electronic smoking device, or other combustible substance in any manner or in any form.

Sec. 16-51. Smoking 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 in a building or facility owned, leased, or operated by the city.
- (c) A person commits an offense if the person smokes within twenty-five (25) feet from an entrance or openable window of an area in which smoking is prohibited by this section.
- (d) 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 a public place.

Sec. 16-52. Exemptions.

This article does not apply to:

- (a) a dwelling unit that is used exclusively for residential use;
- (b) a hotel or motel room designated as a smoking room and rented to a person;
- (c) a retail tobacco store;
- (d) a bar/private club; and/or
- (e) 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.

Sec. 16-53. Designation of smoking rooms by hotel and motel restricted.

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

Sec. 16-54. 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 article.

Sec. 16-55. Posting required.

It is a defense to prosecution under this article that the public place in which an offense is alleged to have occurred did not have a prominently displayed and reasonably sized notice that smoking is prohibited by this article in that area and that a violation is punishable by a fine not to exceed \$500.00. It is not required for an offender to have actual notice of the smoking prohibition, only that it be posted to give reasonable notice.

Sec. 16-56. Violation and criminal penalty.

- (a) A person who violates the provisions of this article commits a Class C misdemeanor, punishable by a fine not to exceed \$500.00. A culpable mental state is not required and need not be proved for an offense under this article.
- (b) The city administrator may suspend or revoke a permit or license issued to the operator of a public place or workplace where a violation of this article occurs.
- (c) Each day an offense occurs is a separate violation.

SECTION B. CHAPTER 24 AMENDMENT

Chapter 24 – Streets, Sidewalks and Other Public Properties, Article I. In General, Sections 24-1, Smoking prohibited in city buildings and 24-33, Smoking prohibited of the CITY OF VENUS CODE OF ORDINANCES shall be removed in their entirety and the remaining sections renumbered as follows:

Sec. 24-1. – Prohibition of skateboards and other vehicles on sidewalks.

Secs. 24-2. – 24.22. – Reserved.

Secs. 24.23. – 24-32. – *(Remain the same.)*

Sec. 24-33. – Outdoor burning prohibited.

Sec. 24-34. – Destruction of public property.

Sec. 24-35. – Vehicles.

Sec. 24-36. – Offensive noise.

Sec. 24-37. – Structures.

Sec. 24-38. – City square electronic marquee.

SECTION C. OPEN MEETINGS COMPLIANCE

That the meeting at which this ordinance was approved was in all things conducted in strict compliance with the TEXAS OPEN MEETINGS ACT, TEXAS GOVERNMENT CODE, Chapter 551.

SECTION D. SEVERABILITY

Should any section, clause, subsection, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this ordinance shall remain in full force and effect. The city council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and/or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and/or phrases be declared unconstitutional or invalid.

SECTION E. REPEALER

All ordinances or parts of ordinances not consistent or conflicting with the provisions of this ordinance are hereby repealed; provided that such repeal shall be only to the extent of such

inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered in this ordinance. Any cause of action accruing prior to the passage of this ordinance shall continue as if this ordinance was not passed or any other ordinance had not been repealed.

SECTION F. PUBLICATION

The city secretary is hereby directed, if required by law, to post or publish in the official newspaper of the city, the caption, publication clause and effective date clause of this ordinance in one issue of the official newspaper of the city, provided that the official newspaper is a weekly paper, in accordance with Section 52.011 of the TEXAS LOCAL GOVERNMENT CODE. The city secretary is also hereby directed to incorporate the provisions of this ordinance into the CITY OF VENUS CODE OF ORDINANCES by submitting it to *www.municode.com* for incorporation and online publication.

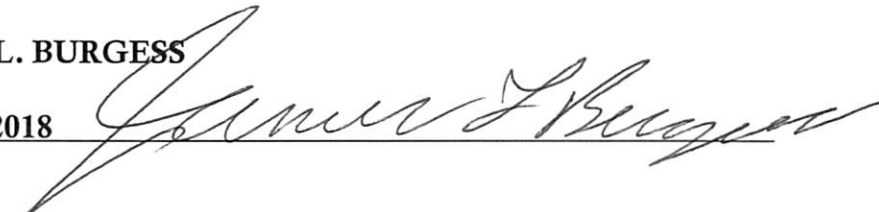
SECTION G. EFFECTIVE DATE

That this ordinance shall become effective from and after its passage.

SECTION H. CERTIFICATION OF ADOPTION

APPROVED: MAYOR JAMES L. BURGESS

PASSED: MONDAY, MAY 14, 2018



ORDINANCE BECOMES EFFECTIVE: MONDAY, MAY 14, 2018

I, the undersigned, City Secretary do hereby certify that the above is a true and correct copy of an ordinance duly adopted by the City of Venus City Council at a regular meeting duly convened on Monday, May 14, 2018.

ATTEST:



RANA GAMEL – City Secretary

APPROVED AS TO FORM:



CASS CALLAWAY, City Attorney

