

ORDINANCE NUMBER 179

AN ORDINANCE DESIGNATING CERTAIN RETAIL AND SERVICE ESTABLISHMENTS, WORK PLACES, PUBLIC BUILDINGS, AND FOOD ESTABLISHMENTS AS NON-SMOKING AREAS; PROVIDING SIGN REQUIREMENTS; PROVIDING MINIMUM STANDARDS FOR NON-SMOKING AREAS; PROVIDING EXEMPTIONS; PROVIDING THAT THIS ORDINANCE IS CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Surgeon General of the United States has declared that smoking is the number one public health issue of our time; and

WHEREAS, the United States Environmental Protection Agency has concluded that passive smoking appears to pose a public health risk larger than the hazardous air pollutants from all industrial emissions combined; and

WHEREAS, the State of Texas has recognized the potential hazards of passive smoking by enacting Texas Penal Code Section 48.01; and

WHEREAS, the City of Magnolia, Texas recognized the increasing evidence that smoke creates a danger to the health of some citizens and is a cause of annoyance and discomfort to those who are in confined spaces where smoke is present; and

WHEREAS, it is the right of citizens to be able to choose for themselves whether to smoke either actively or passively; and

WHEREAS, the City Council of the City of Magnolia, Texas, desires to strike a reasonable balance between the need of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognized that, where these needs conflict, the need to breathe smoke-free air shall have priority;

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

ARTICLE I. IN GENERAL

Section 1. Definitions.

As used in this Ordinance, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Restaurant Bar: Any area of a restaurant, excluding the dining area, that is primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which food service, if any is only incidental to the consumption of such beverages;

Lounge Bar: All areas of any establishment having seventy percent (70%) of its gross sales from sale of alcoholic beverages for on-premises consumption;

Dining Area: Any area containing a counter, booths, or tables upon which meals are served;

Employee: Any person or persons who is employed for direct or indirect monetary wages or profit;

Employer: Any person or persons, partnership, corporation, association, or other entity, that employs one or more persons;

Enclosed: Closed in by a roof and walls with appropriate openings for ingress and egress, but does not include areas commonly described as public lobbies;

Food Establishment: Any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term also includes delicatessen-type operations that prepare sandwiches intended for individual portion service. The term does not include private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, and supply vehicles.

Medical Facility: Any institution, clinic or otherwise that provides medical, dental, surgical, or overnight facilities for patients;

Movie Theater: Any theater engaged in the business of exhibiting motion pictures to the public;

Retail and Service Establishment: Any establishment which sells goods or services to the public;

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 written policy;

Public Place: Any enclosed indoor area that is used by the general public, or that is a place of employment, and includes, but is not limited to stores, offices, and other commercial establishment, restaurants, public and private institutions of higher education and health care facilities;

Service Line: Any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such services involves the exchange of money;

Workplace: Any enclosed area of a structure, or portion thereof, intended for occupancy by ten (10) or more 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.

Reasonably Sized Signs at Entrances: Signs with lettering that are a minimum of 3/4 inches in size stating "NO SMOKING IN DESIGNATED AREAS" and in letters which are a minimum of 3/8 inches in size stating "CITY OF MAGNOLIA ORDINANCE". The universal emblem for "no smoking" will be used in addition to the wording. An example of the emblem is as follows:



ARTICLE II. SMOKING PROHIBITED IN CERTAIN PUBLIC AREAS

(a) A person commits an offense if he or she smokes or possesses burning tobacco, weed, or other plant product in any of the following indoor or enclosed areas:

- (1) an elevator used by the public;
- (2) a medical or nursing home corridor providing direct access to patients' rooms, examination facilities, or treatment areas;
- (3) any conference room, meeting room, or public service area of any facility owned, operated, or managed by the City;
- (4) all retail or service establishments, financial institutions serving the general public, and workplaces, including, but not limited to, any department store, grocery store, drug store, clothing store, shoe store, hardware store, bank, savings and loan, laundromat, hair salon, barbershop, and shall include all public areas and waiting rooms of public transportation facilities, including, but not limited to, bus facilities, common areas of theaters and cultural facilities; provided that smoking may be allowed in the common areas of shopping malls;
- (5) the common areas of any facility, public or private, excluding residences, within the City of Magnolia;
- (6) any facility of a public primary or secondary school; or an enclosed theater, movie theater, library, museum, transportation vehicles, such as buses; except on chartered buses for private hire or in taxicabs clearly designated by the operation to permit smoking; and
- (7) all rooms in which meetings and/or hearings are open to the public.

(b) The owner or person in control of an establishment or area designated in subsection (a) of this Article shall post a conspicuous and reasonably sized sign at the main entrance to the establishment.

(c) The owner or person in control of an establishment or area described in subsection (a)(4) or (a)(6) may designate an area, including, but not limited to lobbies, meeting rooms, waiting rooms, or lounges, as a smoking area; provided that the designated smoking area may not:

- (1) include the entire establishment;
- (2) include immediate cashier areas, over the counter sales areas, or service lines;
- (3) include the viewing area of any theater or movie theater; or
- (4) be larger in size than fifty percent (50%) of the common area of the establishment.

Absent this designation, it shall be unlawful for a person to smoke in any area of a facility described in (a)(4) or (a)(6). It shall be an affirmative defense to prosecution of this ordinance if a person was smoking in a designated smoking area pursuant to (c) herein.

ARTICLE III. REGULATION OF SMOKING IN FOOD ESTABLISHMENTS

(a) A food establishment which has indoor or enclosed dining shall provide separate dining areas for smoking and non-smoking patrons.

(b) A non-smoking area must:

(1) be separated, where feasible, from smoking areas by a minimum of four (4) feet of contiguous floor space;

(2) be ventilated, where feasible, and situated so that air from the smoking area is not drawn into or across the non-smoking area;

(3) be clearly designated by appropriate signs visible to patrons within the dining area indicating that the area is designated non-smoking;

(4) have ash trays or other suitable containers for extinguishing smoking materials at the perimeter of the non-smoking area; and

(5) be adequate in size to provide for the seating of all patrons who desire to be seated within a non-smoking section.

(c) Each food establishment which has a dining area shall:

(1) have a reasonably sized sign at the establishment's entrance indicating that non-smoking seating is available.

(d) Non-dining areas of any food establishment affected by this Article to which patrons have general access, including, but not limited to, food order areas, food service areas, restrooms and cashier areas, shall be designated as non-smoking areas.

(e) It is a defense to prosecution under this Article that the food establishment is:

(1) an establishment which has indoor seating arrangements for less than twenty (20) patrons;

(2) an establishment which has more than eighty percent (80%) of its annual gross sales in alcoholic beverages;

(3) a physically separated bar or lounge area of a food establishment otherwise regulated; or

(4) providing a designated non-smoking section for its patrons which is a minimum of fifty percent (50%) of the total seating capacity of the establishment.

(f) A person commits an offense if he or she smokes or possesses a burning tobacco, weed, or other plant product in an area of a food establishment designated as non-smoking.

ARTICLE IV. REGULATION OF SMOKING IN THE WORKPLACE

(a) Any employer may designate a portion of the workplace as a smoking area. Any employer who chooses to designate a portion of a workplace as a smoking area shall:

(1) prominently display appropriate signs indicating where smoking is allowed;

(2) the designated area may not exceed fifty percent (50%) of the entire workplace;

(3) provide facilities in sufficient numbers and at such locations to be readily accessible for the extinguishment of smoking materials.

(b) It shall be an affirmative defense to prosecution under this Article if a person was smoking in an area designated as smoking in accordance with this Article.

ARTICLE V. PENALTIES

Any person, firm, corporation, partnership, joint venture, agent, or employee thereof who violates any of the provision of this chapter shall be fined an amount not less than TWENTY FIVE DOLLARS (\$25.00) nor more that FIVE HUNDRED DOLLARS (\$500.00); provided, however, in the event a defendant has previously been convicted under this chapter, the defendant shall be fined an amount not less than FIFTY DOLLARS (\$50.00) for a second conviction, and shall be fined an amount no less than ONE HUNDRED DOLLARS (\$100.00)

for a third conviction and for each conviction thereafter. Each day that a violation is permitted to exist shall constitute a separate offense.

ARTICLE VI. EXEMPTIONS

The following establishments are exempt from this Ordinance:

- (1) single family residences;
- (2) multi-unit dwellings such as apartment complexes and/or duplexes;
- (3) work places employing 9 or fewer employees.

ARTICLE VII. GENERAL PROVISIONS

- (a) This Ordinance does not require affirmative action on the part of anyone to report a violation or to take any action against any individual violating this Ordinance.
- (b) Nothing in this Ordinance shall require any structural modifications in order to comply with the terms and conditions of this Ordinance. The posting of required signage is not considered structural modification.
- (c) All Ordinances of the City of Magnolia in conflict herewith are hereby repealed. This Ordinance shall be cumulative of federal and state ordinances and laws regulating smoking.
- (d) All articles, sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, article, 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, section, or articles of this Ordinance.
- (e) It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Article 6252-17, V.A.T.S., and that advance public notice of time, place, and purposed of said meetings was given.

(f) The City Secretary is directed to publish this ordinance as required by law in the official newspaper of the City of Magnolia, Texas.

(g) This ordinance shall go into effect May 1, 1993.

FIRST READING:

Read, Passed and Approved as set forth below at a regular meeting of the City Council of the City of Magnolia, Texas this 9th day of March, 1993.

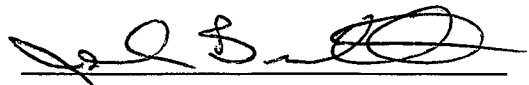
Councilwoman Ogden	Aye
Councilman Timmins	Aye
Councilman Ware	Absent
Councilman Chumley	Aye
Councilman Smith	Aye

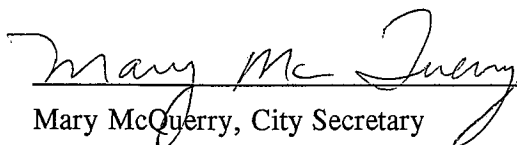
SECOND READING:

Read, Passed and Approved as set forth below at a regular meeting of the City Council of the City of Magnolia, Texas this 13th day of April, 1993.

Councilwoman Ogden	<u>Aye</u>
Councilman Timmins	<u>Aye</u>
Councilman Ware	<u>Aye</u>
Councilman Chumley	<u>Aye</u>
Councilman Smith	<u>Aye</u>

ATTEST:


John Bramlett, Mayor


Mary McQuerry, City Secretary

AFFIDAVIT OF PUBLICATION

BEFORE ME, the undersigned authority, on this day personally
appeared Jane Littlefield who on her oath stated:

ORDINANCE NO. 179

An ordinance of the City of Magnolia as follows: An ordinance designating certain retail and service establishments, work place, public buildings and food establishments as non-smoking areas, providing sign requirements, providing minimum standards for non-smoking areas,

I am the accountant of the POTPOURRI NEWS a newspaper published
in Montgomery County, Texas and know the facts stated in this affidavit.
The attached matter is a true and correct copy of the publication of the
citation of which it purports to be a copy, as the same appeared in such
newspaper in the respective issues of:

_____, April 21, 1993

_____, 1993

Jane Littlefield

Subscribed and sworn to this 21st day of April, 1993



Lenette Harris

Notary Public, Montgomery County, Texas

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LEGALS

ORDINANCE NO. 93-02
 An ordinance of the City of Tomball, Texas, amending the Code of Ordinances, Chapter 7, entitled "Electricity" by deleting Section 7-51 entitled "Temporary Permits", by substituting a new Section 7-170(f) which eliminates aluminum wiring for service entrance conductors to one family residences; by substituting a Section 7-170(g) which addresses the use of electrical metallic tubing an conduit; and substituting a new Section 7-172 Amendment to Section 220-13A "Load Demand Factors" of the National Electrical Code, which makes office installations subject to the stated wiring sizing requirements; substituting a new listing of permitted "Conductor Types and Sizes" in Section 7-172, being Section 300-5 of the National Electrical Code, "Underground Installations" Subsection (c); directing publications of the caption of this ordinance, find that the meetings at which this ordinance is considered are open to the public, providing for a penalty or fine not to exceed \$2,000.00 per offense, providing for severability and the repeal of conflicting ordinances and providing other details relating to the passage of this ordinance. Second reading passed and approved April 12, 1993.

ORDINANCE NO. 93-01
 An ordinance of the City of Tomball, Texas adopting Amendment Number 2 to the original budget of the City of Tomball, Texas for the fiscal year 1992-93, as adopted by Ordinance No. 92-13, providing funding in the amount of Three Thousand Dollars (\$3,000.00) for the contract by and between the City of Tomball and the non-profit Spring Creek County Historical Association, for the public purposes relating to the operations of the Tomball Community Museum Center, directing publications of the caption of this ordinance, finding that the meetings at which this ordinance is considered are open to the public, providing for severability and the repeal of conflicting ordinances, and providing other details relating to the passage of this ordinance. Second reading passed and approved April 12, 1993.

ORDINANCE NO. 93-03
 An ordinance of the City of Tomball, Texas, providing that the Code of Ordinances, City of Tomball, Texas, Chapter 2, en-

Credits; Increase In Annuities; Municipal Contributions, supplemental Death Benefits For Certain Employees"; granting to the city employees additional rights and credits in the Texas municipal retirement system as authorized by Section 853.303, Title 8 of the government code; finding and determining that the meetings at which the ordinance is passed are open to the public as required by law, providing that this ordinance is cumulative of all ordinances, providing a severability clause, providing a savings clause, providing for general distribution, providing for publication in the official newspaper, and providing an effective date, all to the code of ordinances of the City of Tomball, Texas. First reading passed and approved April 12, 1993.

PUBLIC NOTICE OF TEST OF AUTOMATIC TABULATING EQUIPMENT
 Notice is hereby given that the automatic tabulating equipment that will be used in the General City Election held on May 1, 1993 will be tested on April 29, 1993 at 9:00 a.m. at 401 W. Market Street, Tomball, Texas to ascertain that it will accurately count the votes cast for all offices and on measures.

Betty Doughtie, Presiding Judge
AVISO PUBLICO DE PROBAR EL EQUIPO PARA TABULAR AUTOMATICA-MENTE

Pro lo presente se do aviso que el equipio para tabular automaticamente que se usad en la Eleccion general de la ciudad que se llevara a cabo el uno de may de 1993 se porbara el veintinueve de abril de 1993 a las 9:00 a.m. en 401 W. Market Street, Tomball, Texas para determinar si el equipo contaata cpm exactitud los votos para todos los puestos oficiales y sobre todas los proyectado de ley.
 Betty Doughtie, Firma de Juez Presidente.

ORDINANCE NO. 179
 An ordinance of the City of Magnolia as follows:
 An ordinance designating certain retail and service establishments, work place, public buildings, and food establishments as non-smoking areas; providing sign requirements, providing minimum standards for non-smoking areas, providing exemptions, providing that this ordinance is cumulative of all

1993, passed. Second reading 13th of April, 1993, passed and approved. Effective date May 1, 1993.

NOTICE OF GENERAL & SPECIAL ELECTION
 To the registered voters of Stagecoach, Texas:

Notice is hereby given that the polling places listed below will be open from 7:00 a.m. to 7:00 p.m. on May 1, 1993 for voting in a General & Special Election, to fill positions for Mayor, Alderpersons #1, 2, 4 & 5.

LOCATION OF POLLING PLACES: 14217 Stagecoach Rd, (in City of Stagecoach). Early voting by personal appearance will be conducted each weekday at 15105 Stagecoach Rd between the hours of 9:30 a.m. and 4:30 p.m. beginning on April 12, 1993 and ending on April 27, 1993.

Also, please be informed that as a type (A) city on the Special Election ballot, all write-ins, declared or undeclared (any names written in) will be valid and will be counted.

Applications for ballot by mail shall be mailed to: KARLA HARDAMON, 15015 STAGE-COACH RD, MAGNOLIA, TEXAS 77355. Applications for ballots by mail must be received no later than the close of business on April 23, 1993.

Issued this the 14th day of April, 1993.
 Thomas. H. Wilson, Presiding Officer

AVISO DE ELECCION ESPECIAL Y GENERAL
 A los votantes registrados del Stagecoach, Texas:

Notifiquese, por las presente, que las casillas electorales sitados abajo se abriran desde las 7:00 a.m. hasta 7:00 p.m. el uno de mayo de 1993 para votar en las Eleccion para Especial y General.

DIRECCIONES DE LAS CASILLAS ELECTORALES: 14217 Stagecoach Rd, (en pueblo de Stagecoach.) La votacion en adelantada en persona se llevara a cabo de lunes a viernes en 15015 Stagecoach Rd entre las 9:30a.m. de la manana y las 4:30p.m. de la trde empezando el abril 12, 1993 y terminando el abril 27, 1993.

Also, please be informed that as a type (A) city on the special election ballot, all write-ins, declared or undeclared (any names written in) will be valid and will be counted.

Las solicitudes para boletas que