

**ORDINANCE NO. 2757**

**AN ORDINANCE PROHIBITING SMOKING IN WORK PLACES AND PUBLIC PLACES AND AS MORE FULLY DESCRIBED IN THE ORDINANCE AND SETTING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS:**

The following provisions, attached as Exhibit "A" and made a part hereof, are placed and adopted as the City's ordinance prohibiting smoking in work places or public places (see attached Exhibit "A" and made a part hereof).

**NOW, THEREFORE,**

This ordinance is to be effective on the 18<sup>th</sup> day of September, 2014.

**PASSED, APPROVED AND ADOPTED** on this 18<sup>th</sup> day of August, 2014.



  
MAYOR

ATTEST:

  
City Secretary

**EXHIBIT "A"**

**ORDINANCE PROHIBITING SMOKING  
IN ALL WORKPLACES AND PUBLIC PLACES**

**Sec. 1000. Title**

This Article shall be known as the Waxahachie Smoke-free Air Ordinance.

**Sec. 1001. Findings and Intent**

The City of Waxahachie does hereby find that:

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services.)

*The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.) The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," Bethesda, MD: National Institutes of Health, National Cancer Institute, August 1999.) A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke free workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sargent, Richard P.; Shepard, Robert M.; Glantz, Stanton A., "Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study," *British Medical Journal* 328: 977-980, April 24, 2004.) Similar studies have been conducted in numerous places, including Bowling Green, Ohio; Monroe County, Indiana; Pueblo, Colorado; New York State; France; Greece; Italy; and Scotland. All of these studies have reached the conclusion that communities see an immediate reduction in heart attack admissions after the implementation of comprehensive smoke free laws. ([n.a.], "Bibliography of Secondhand Smoke Studies." American Nonsmokers' Rights Foundation, February 26, 2008.) In reviewing 11 such studies, the Institute of Medicine of the National Academies concluded that data consistently demonstrate that secondhand smoke exposure increases the risk of coronary heart disease and heart attacks and that smoke-free laws reduce heart attacks. (Institute of Medicine (IOM) of the National Academies, Board on Population Health and Public Health Practice, Committee on Secondhand Smoke Exposure and Acute Coronary Events, "Secondhand smoke exposure and cardiovascular effects: making sense of the evidence," Washington, DC: National Academies Press, October 2009.)

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 1(3): 220-225, September 2002.) Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.) The Americans with Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability. (Daynard, R.A., "Environmental tobacco smoke and the Americans with Disabilities Act," *Nonsmokers' Voice* 15(1): 8-9.) The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" *British Medical Journal* 328: 980-983, April 24, 2004.) Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smoke-free environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smoke-free in their entirety. (Samet, J.; Bohanon, Jr., H.R.; Coultas, D.B.; Houston, T.P.; Persily, A.K.; Schoen, L.J.; Spengler, J.; Callaway, C.A., "ASHRAE position document on environmental tobacco smoke," American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), 2005.)

Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent." ([n.a.], "Summary of results: laboratory analysis of electronic cigarettes conducted by FDA," *Food and Drug Administration* (FDA), July 22, 2009; <http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm> Accessed on: October 22, 2009.) E-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)

Accordingly, the City of Waxahachie finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke-free air.

## **Sec. 1002. Definitions**

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

Section:

- A. "Bar" means an 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 those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- B. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- C. "E-cigarettes" means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.
- D. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a nonprofit entity.
- E. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- F. "Enclosed Area" means all space between a floor and a ceiling that is bounded on all sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.
- G. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- H. "Hookah Lounge" means an establishment that derives more than 95% of its quarterly gross revenue from the sale of shisha for consumption on the premises by customers and the sale of accessories used for smoking shisha. A hookah lounge does not allow individuals under the age of 18 to enter the premises, and does not have a permit or license to sell alcoholic beverages, but may serve food and nonalcoholic beverages for consumption on the premises by customers.
- I. "Place of Employment" means an enclosed area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
- J. "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on [City or County] grounds.
- K. "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, 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 club under 26 U.S.C. Section 501.

- L. "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, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, 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.
- M. "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. The term "restaurant" shall include a bar area within the restaurant.
- N. "Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- O. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- P. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, hookah or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. "Smoking" also includes the use of an e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this article.
- Q. "Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.
- R. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

### **Sec. 1003. Application of Article to City of Waxahachie Owned Facilities**

All enclosed areas, including buildings, and vehicles owned, leased, or operated by the City of Waxahachie, shall be subject to the provisions of this Article.

### **Sec. 1004. Prohibition of Smoking in Enclosed Public Places**

Smoking shall be prohibited in all enclosed public places within the City of Waxahachie, including but not limited to, the following places:

- A. Aquariums, galleries, libraries, museums, zoo facilities and their grounds.
- B. Areas available to the general public in businesses and nonprofit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, retail service establishments and country clubs.
- C. Bars and night clubs.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gaming facilities, including but not limited to bowling and billiard facilities.
- J. Health care facilities.
- K. Hotels and motels.

- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Polling places.
- N. Public transportation vehicles, including buses and taxicabs, under the authority of the City, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
- O. Restaurants.
- P. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- Q. Retail stores.
- R. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.
- S. Service lines.
- T. Shopping malls.
- U. Sports arenas, including enclosed places in outdoor arenas.
- V. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

**Sec. 1005. Prohibition of Smoking in Enclosed Places of Employment**

- A. Smoking shall be prohibited in all enclosed areas of 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.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

**Sec. 1006. Prohibition of Smoking in Private Clubs**

Smoking shall be prohibited in all private clubs.

**Sec. 1007. Prohibition of Smoking in Enclosed Residential Facilities**

Smoking shall be prohibited in the following enclosed residential facilities:

- A. All private and semi-private rooms in nursing homes.
- B. At least 90% of hotel and motel rooms that are rented to guests.

**Sec. 1008. Prohibition of Smoking in Outdoor Areas**

Smoking shall be prohibited in the following outdoor places:

- A. Within a reasonable distance of 25 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- B. In, and within 25 feet of, outdoor seating or serving areas of restaurants and bars.
- C. In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within 25 feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- D. In, and within 25 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City.
- E. In all outdoor service lines.
- F. In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not

to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least 25 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

- G. In, and within 25 feet of, outdoor playgrounds.
- H. City's Public Parking Garage

#### **Sec. 1009. Where Smoking is Not Regulated**

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 1004 and 1005:

- A. Private residences, unless used as a childcare, adult day care or health care facility, and except as provided in Section 1007.
- B. Not more than ten percent (10%) of hotel and motel rooms rented to guests and designated as smoking rooms. All smoking rooms on the same floor must be contiguous. Smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- C. Outdoor areas of places of employment except those covered by the provisions of Section 1008.
- D. Retail tobacco stores in freestanding physical facilities or isolated venting and air controls.
- E. Personal automobiles.
- F. A Hookah Lounge that as of [date of amendment/date of enactment/effective date] was operating as a Hookah Lounge, if all of the following requirements are met:
  - i. The Hookah Lounge does not allow the smoking of any tobacco products, except [shisha], on the premises.
  - ii. Smoke from the Hookah Lounge does not migrate into any area where smoking is prohibited pursuant to this [Section].
  - iii. The Hookah Lounge is located in a freestanding structure that shares no common walls with other establishments and is occupied solely by the Hookah Lounge.
  - iv. The Hookah Lounge does not expand in size or change its location after [date of amendment/date of enactment/effective date].

#### **Sec. 1010. Declaration of Establishment as Nonsmoking**

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 1011(A) is posted.

#### **Sec. 1011. Posting of Signs and Removal of Ashtrays**

The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Article shall:

- A. Clearly and conspicuously post "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in that place.
- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
- C. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Article at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.

- D. Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

**Sec. 1012. Nonretaliation; Nonwaiver of Rights**

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 1014, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed \$1000 for each violation.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

**Sec. 1013. Possession, Purchase, Consumption or Receipt of Electronic Cigarettes or E-Cigarettes and/or Liquid Nicotine by Minors Prohibited**

- A. A person who is younger than 18 years of age commits an offense if the individual:
  - (1) Possesses, purchases, consumes or accepts an electronic cigarette, e-cigarette or liquid nicotine; or
  - (2) Falsely represents himself or herself to be 18 years of age or older by displaying proof of age that is false, fraudulent or not actually proof of the individual's own age in order to obtain possession of, purchase or receive an electronic cigarette, e-cigarette or liquid nicotine.
- B. It shall be a defense to prosecution for a violation of this section if the individual younger than 18 years of age possessed the electronic cigarette, e-cigarette or liquid nicotine in the presence of:
  - (1) An adult parent, a guardian or a spouse of the individual; or
  - (2) An employer of the individual, if possession or receipt of the electronic cigarette, e-cigarette or liquid nicotine is required in the performance of the employee's duties as an employee.
- C. It shall also be a defense to prosecution for a violation of this section that the individual younger than 18 years of age is participating in an inspection or test of compliance in accordance with Section 161.088, Health and Safety Code.

**Sec. 1014. Sale of Electronic Cigarette or E-Cigarette or Liquid Nicotine to Persons Younger than 18 years of Age Prohibited; Proof of Age Required**

- A. A person or retailer commits an offense if the person or retailer with criminal negligence:
  - (1) Sells, gives or causes to be sold or given an electronic cigarette or e-cigarette or liquid nicotine to someone who is younger than 18 years of age; or
  - (2) Sells, gives or causes to be sold or given an electronic cigarette or e-cigarette or liquid nicotine to another person who intends to deliver it to someone who is younger than 18 years of age.
- B. If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which electronic cigarettes, e-cigarettes and/or liquid nicotine is/are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

- C. It is a defense to prosecution under subsection (a)(1) that the person to whom the electronic cigarette, e-cigarette or liquid nicotine was sold or given presented to the defendant apparently valid proof of identification.
- D. A proof of identification satisfies the requirements of subsection if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport or an identification card issued by a state or the federal government.

**Sec. 1015. Vendor Assisted Sales Required; Self-Service Merchandising Prohibited.**

- A. Except as provided by Subsection (b), a retailer or other person may not:
  - (1) Offer electronic cigarettes, e-cigarettes or liquid nicotine for sale in a manner that permits a customer direct access to the electronic cigarettes, e-cigarettes or liquid nicotine;
  - (2) Offer for sale or display for sale electronic cigarettes, e-cigarettes or liquid nicotine by means of self--service merchandising; or
  - (3) Install or maintain an open display unit containing electronic cigarettes, e-cigarettes or liquid nicotine
- B. It is a defense to prosecution under subsection (a) if:
  - (1) A facility or business is not open to persons younger than 18 years of age at any time;
  - (2) A facility or business is a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code; or
  - (3) An open display unit is located in an area that is inaccessible to customers.

**Sec. 1016. Enforcement.**

This Section shall be enforced by the city's Police Department.

**Sec. 1017. Enforcement.**

- A. This Article shall be enforced by the Waxahachie [Department of Health, City Manager or his designee].
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Waxahachie.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the Waxahachie [Department of Health or City Manager or County Administrator].
- D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. An owner, manager, operator, or employee of an establishment regulated by this Article shall direct a person who is smoking in violation of this Article to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.

- F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- G. In addition to the remedies provided by the provisions of this Section, the Waxahachie [Department of Health or City Manager or County Administrator] or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

**Sec. 1018. Violations and Penalties**

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of a misdemeanor, punishable by a fine not exceeding fifty dollars (\$50).
- B. Except as otherwise provided in Section 1012(A), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:
  - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.
  - 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
  - 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. A person who violates Sections 1013 through 1016 is guilty of a misdemeanor punishable fine not to exceeding \$200.00.
- D. In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

**Sec. 1019. Public Education**

The City of Waxahachie will work with local health organizations and coalitions designated by the city to provide information to assist in meeting compliance with the ordinance.

**Sec. 1020. Other Applicable Laws**

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**Sec. 1021. Liberal Construction**

This Article shall be liberally construed so as to further its purposes.

**Sec. 1022. Severability**

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.