

**ORDINANCE NO. 2006- 9**

**An ordinance adding Section 10-30 to the Victoria City Code to prohibit smoking in all public buildings; repealing Section 10-69 of the Victoria City Code, which prohibits smoking in some food establishments, providing for severability; providing for savings and codification; providing for a penalty and publication; and declaring an effective date.**

The City Council finds that secondhand tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer, and further finds as follows:

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 (NCI)*, August 1999);

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (See Environmental Health Information Service (EHIS), "Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens," *U.S. Department of Health and Human Services (DHHS), Public Health Service, NTP*, 2000; reaffirmed by the NTP in subsequent reports on carcinogens, 2003, 2005);

Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death. (Appendix II Findings of the Scientific Review Panel: Findings of the Scientific Review Panel on Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant as adopted at the Panel's June 24, 2005 Meeting," *California Air Resources Board (ARB)*, September 12, 2005);

There is no safe level of exposure to secondhand smoke. (Environmental Protection Agency (EPA), "Respiratory health effects of passive smoking: lung cancer and other disorders, the report of the U.S. Environmental Protection Agency. Smoking and Tobacco Control Monograph 4," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI); Environmental Protection Agency (EPA)*, August 1993; California Environmental Protection Agency, "Health Effects of Exposure to Environmental Tobacco Smoke," 1997; California Air Resources Board, "Proposed identification of environmental tobacco smoke as a toxic air contaminant," *Sacramento: California Environmental Protection Agency (Cal-EPA), Air Resources Board, Stationary Source Division, Air Quality Measures Branch, Office of Environmental Health Hazard Assessment (OEHHA)*, September 29, 2005);

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 smokefree 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);

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. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services. *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General*. Public Health Service, Centers for Disease Control, 1986);

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 smokefree 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 smokefree 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);

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.; Toutouzias, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002);

The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure, and \$4.6 billion in lost productivity. (Behan, D.F.; Eriksen, M.P.; Lin, Y., "Economic Effects of Environmental Tobacco Smoke," *Society of Actuaries*, March 31, 2005);

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L. The effect of ordinances requiring smokefree restaurants on restaurant sales in the United States. *American Journal of Public Health*, 87:1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," *GPI Atlantic*, September 2001);

Hundreds of communities in the U.S., plus numerous states, including California, Delaware, Florida, Massachusetts, Montana, New Jersey, New York, and Washington, have enacted laws requiring workplaces, restaurants, bars, and other public places to be smokefree, as have numerous countries, including Ireland, New Zealand, Norway, Scotland, Sweden, Uganda, and Uruguay;

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

The citizens of the City of Victoria voted May 13, 2006 by a margin of 69% to 31% to ban smoking in all public buildings. Based on these election results and other input from the citizens of the City of Victoria, the City Council finds the citizens of Victoria generally consider smoking to be a nuisance;

The City Council also finds there is no legal or constitutional "right to smoke." Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous;

The City Council finds the congregation of smokers within 12 feet of buildings in which smoking is prohibited can impair entry into and exit from these buildings, create noxious clouds of concentrated nuisance smoke that harm the rights of nonsmoking patrons and passerby, and create a hazard of such concentrated smoke drifting into the indoor environment; and

The City Council also finds the smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance. Accordingly, the City Council of the City of Victoria 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, (2) to guarantee the right of nonsmokers to breathe smoke-free air, and (3) to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

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

1.

The aforementioned findings are adopted by the City Council. The Victoria City Code is amended to add Section 10-30, which will read as follows:

**10-30. Smoking prohibited in all public buildings.**

a. The following definitions shall apply to this section:

“smoke” or “smoking” means inhaling, exhaling, or burning any lighted cigar, cigarette, pipe or other lighted tobacco product in any manner or form.

“public building” means any building other than a building used as a private residence. If portions of a building are used as a private residence and another portion of the building is used for business purposes or commercial activities, then “public building” as used herein shall apply to the portions of the building used for business purposes or commercial purposes, but not the portion used solely as a residence.

b. It shall be unlawful for any person to perform the following acts in any public building in the City of Victoria or within 12 feet of any entrance to any public building:

- (1) smoke,
- (2) carry a lighted cigarette, cigar, or tobacco-containing pipe, or
- (3) light a cigarette, cigar or tobacco-containing pipe.

c. It shall be unlawful for any owner of any food establishment that serves food for on-premise consumption to allow the operation of that food establishment unless one or more of the following signs have been posted at a location clearly visible to a person entering the food establishment:

- (1) a “No Smoking” sign, or
- (2) the international “No Smoking” symbol (depiction of a burning cigarette enclosed in a red circle with a red bar across it).

d. It shall be unlawful for any owner or operator of any public building to place or allow to be placed any of the following items in any public building or within 12 feet from an entrance to any public building:

- (1) ashtrays,
- (2) smoking paraphernalia, or
- (3) signs that indicate that smoking is permitted.

2.

Section 10-69 of the Victoria City Code is repealed.

3.

If any provision of this ordinance, or the application thereof to any person or circumstances, shall be held invalid or unconstitutional by a Court of competent jurisdiction, such invalidity shall not affect the other provisions, or application thereof, of this 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.

4.

It is the intention of the City Council that this ordinance shall become a part of the Code of the City of Victoria, Texas, and it may be renumbered and codified therein accordingly, in the manner approved by the City Attorney. The Code of the City of Victoria, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

5.

Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof may be fined any sum not to exceed \$500.00 as provided in Section 1-8 of the City Code. The City Secretary shall publish the caption or a descriptive title of this ordinance one time within 10 days after passage of the ordinance in a newspaper of general circulation in the City of Victoria in accordance with Article II, Section 10 of the City Charter.

6.

This ordinance shall become effective immediately upon publication that meets the requirements of the Charter of the City of Victoria, after final passage and approval by the City Council.

PASSED FIRST READING, this the 6th day of June, 2006.

AYES: 6  
NAYS: 0  
ABSTENTIONS: 0

PASSED SECOND READING, this the 20th day of June, 2006

AYES: 7  
NAYS: 0  
ABSTENTIONS: 0

PASSED THIRD READING, this the 20th day of June, 2006.

AYES: 7  
NAYS: 0  
ABSTENTIONS: 0


APPROVED AND ADOPTED, this the 20th day of June, 2006..

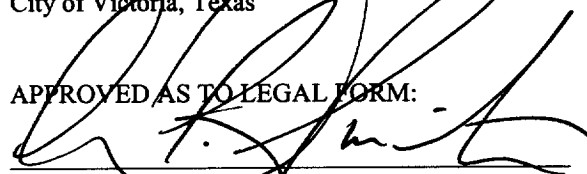


ATTEST:

  
SCARLET SWOBODA, City Secretary

Distribution: City Manager  
Legal Department  
The Victoria Advocate

  
WILL ARMSTRONG, Mayor of the  
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:  
  
DAVID A. SMITH, City Attorney

Copies Sent: JUNE 21, 2006

TRANSMISSION VERIFICATION REPORT

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Ord. 2006-9



**CITY OF VICTORIA**

Established 1824, Founded By Congress, Republic of Texas, 1839

**OFFICE OF CITY SECRETARY**

City Hall Square, Main at Juan Linn

**FAX TRANSMITTAL FOR:** Martina Resendez - Legal Notices

**COMPANY:** Victoria Advocate

**FAX NUMBER:** (361) 574-1274

**FROM:** Scarlet Swoboda - City Secretary

**FAX NUMBER:** (361) 485-3045

**DATE:** 06-21-2006

**NUMBER OF PAGES TO FOLLOW:** 3



**CITY OF VICTORIA**

Established 1824, Founded By Congress, Republic of Texas, 1839

**OFFICE OF CITY SECRETARY**

City Hall Square, Main at Juan Linn

TO: Victoria Advocate  
311 E. Constitution  
Victoria, Texas 77901

**REQUEST FOR PUBLICATION**

Date: 06/21/2006

Please publish the attached: Ordinance 2006-9

One (1) time only on the following date: 06/23/06

Two (2) times in the following editions of your publication:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Three (3) times in the following editions of your publication:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

See specific instructions attached.

Unless specific instructions are furnished with this request, the attached should be published as a Classified Ad under the "Legals" heading, one column wide, and charged per word. Please furnish an **Affidavit of Publication** and a **Tear Sheet** with the billing statement.

If there are any questions regarding the request for publications, please contact me at 485-3040.

  
Scarlet Swoboda, City Secretary

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