

## Chapter 13

### HEALTH AND HUMAN SERVICES\*

- Art. I. In General, §§ 13-1--13-25**  
**Art. II. Killeen Hospital Authority, §§ 13-26--13-40**  
**Art. III. Smoking in Public Places, §§ 13-41--13-57**

#### ARTICLE I. IN GENERAL

##### Sec. 13-1. Penalty.

Unless stated otherwise, violations of this article shall be punished as provided in section 1-8.

##### Sec. 13-2. Regulations for food service.

All owners or operators of food service establishments and all food service establishment employees shall comply with all applicable county health department and state rules and regulations.

**Cross reference(s)**--Licenses, permits and miscellaneous business regulations, Ch. 15.

##### Secs. 13-3--13-25. Reserved.

#### ARTICLE II. KILLEEN HOSPITAL AUTHORITY\*\*

##### Sec. 13-26. Created; name.

It is to the best interest of the city and its inhabitants to create a hospital authority to be comprised of the territory included within the boundaries of the city, and such hospital authority is hereby created. The same shall be a body politic and corporate under the name of Killeen Hospital Authority which is hereby designated as the name by which such authority shall be known. (Code 1963, Ch. 8½, art. 1, § 1 [Ord. No. 68-40, § 1, 12-23-68])

**State law reference(s)**--Authority to create hospital authority V.T.C.A., Health and Safety Code § 262.003.

##### Sec. 13-27. Membership.

The hospital authority shall be governed by a board of directors consisting of seven (7) members. Each director shall, unless other provision is made in the bond resolution or indenture in connection with the issuance of bonds, serve for a term of two (2) years from the date hereof and until their

---

\* **Cross reference**--Alcoholic beverages, Ch. 3; ambulances, Ch. 4; animals, Ch. 6; cemeteries, Ch. 9; mobile homes and mobile home parks, Ch. 17; nuisances, Ch. 18; solid waste, Ch. 24; water, sewers and sewage disposal, Ch. 30.

**State law reference**--Health, powers of home-rule municipalities, V.T.C.A., Health and Safety Code §§ 122.066, 341.081, 342.001 et seq.

\*\* **Charter reference**--Municipal hospital, §§ 14, 15.

**Cross reference**--Boards and commissions, § 2-116 et seq.

**State law reference**--Municipal hospital authorities, V.T.C.A., Health and Safety Code § 262.001 et seq.

successors have been appointed by the city council and have duly qualified. Each director shall qualify by executing the oath of office required of appointed officials of the state. (Code 1963, Ch. 8½, art. 1, § 2 [Ord. No. 68-40, § 1, 12-23-68; Ord. No. 76-58, § 1, 9-28-76])

**State law reference(s)**--Board of directors, V.T.C.A., Health and Safety Code § 262.011 et seq.

**Secs. 13-28--13-40. Reserved.**

### **ARTICLE III. SMOKING IN PUBLIC PLACES\***

#### **Sec. 13-41. Definitions.**

In this article:

*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 such beverages. In this article, “bar” does not include an establishment or area located within a hotel, motel or other similar transient occupancy establishment, a restaurant or an enclosed mall.

*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 non-profit entity.

*Employer* means a person who employs the services of one or more individuals.

*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.

*Fraternal organization* means a non-profit organization that:

- (1) is chartered by a national organization;
- (2) is tax exempt under section 501(c)(8), (10), or (19) of the Internal Revenue Code;
- (3) operates under a lodge system with a representative form of government; and
- (4) is organized for the exclusive benefit of the members of the organization and their dependents.

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

*Pool hall* means an establishment that:

- (1) has as its primary purpose and activity the playing of pool; and

---

\***Cross reference**--Building and construction regulations, Ch. 8; licenses, permits and miscellaneous business regulations, Ch. 15; taxicabs, § 29-26 et seq.; signs and outdoor advertising displays, § 31-501 et seq. The original ordinance #91-14, adopted 4-9-91, was replaced in its entirety on 2-10-09.

- (2) does not allow children under the age of eighteen to enter the establishment other than directly into an enclosed non-smoking area that is mechanically ventilated to ensure that smoke from the smoking area does not enter the non-smoking area.

*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, 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.

*Retail tobacco store* means a retail store used primarily for the sale of tobacco products, or weeds and/or plants intended for legal consumption by inhaling or exhaling, and accessories and in which the sale of other non-tobacco products, and other weed or plant products not intended for legal consumption, is incidental, and:

- (1) the store is in a separately leased or owned retail area separate from other businesses, and shares no common areas with other businesses, provided that smoke from the subject store does not infiltrate areas where smoking is prohibited under the provisions of this article; and
- (2) where sales of incidental products shall not exceed ten percent (10%) of total gross sales; sales of incidental products shall not include the sale of alcohol regardless of percentage of total gross sales; and
- (3) where no alcohol is consumed on the premises.

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

*Workplace* means an enclosed area in which employees work or have access during the course of their employment.

(Ord. No. 09-009, § I, 2-10-09)

### **Sec. 13-42. Smoking prohibited.**

- (a) A person commits an offense if the person smokes in a public place.
- (b) A person commits an offense if the person smokes in an enclosed area in a building, facility or vehicle owned, leased, or operated by the city.
- (c) A person commits an offense if the person smokes in an enclosed area of a workplace.
- (d) A person commits an offense if the person smokes within 15 feet from an entrance, operable window or ventilation system of an enclosed area where smoking is prohibited. This provision does not prohibit smoking within a public roadway.

(Ord. No. 09-009, § I, 2-10-09)

### **Sec. 13-43. Proprietor responsibilities.**

If the owner, operator or manager of a public place regulated by this article observes a person violating this ordinance, he or she shall immediately direct the person in violation to stop smoking. If the person violating this article does not comply with this request, the owner, operator or manager shall ask the person to leave the premises. If the person in violation refuses to leave, the owner, operator or manager shall report the violation to the building official, police department or fire department. (Ord. No. 09-009, § I, 2-10-09)

### **Sec. 13-44. Prohibition of smoking at public outdoor places and events.**

Smoking shall be prohibited:

- (a) in the seating areas, bleachers or grandstands of outdoor arenas, stadiums, amphitheaters, or facilities used for viewing sporting or other public events, and in the dining or concession areas, restrooms or service lines of such facilities;
- (b) in the outdoor patio area of the Stonetree golf club house;
- (c) inside the fenced area of a public swimming pool; and
- (d) in playgrounds in public parks.

(Ord. No. 09-009, § I, 2-10-09)

### **Sec. 13-45. Exceptions.**

This article does not apply to:

- (a) a dwelling, as defined in section 31-2 (*definitions*);
- (b) a hotel or motel room designated as a smoking room and rented to a person, provided that the hotel or motel complies with section 13-46 (*designation of smoking rooms by hotel and motel restricted*), or a hotel or motel room designated as a smoking/cigar room provided that the room is ventilated to prevent smoke from entering into a non-smoking area and no one under the age of twenty-one (21) is allowed to enter;
- (c) a retail tobacco store, as defined in section 13-41 (*definitions*);
- (d) 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;
- (e) an outdoor area of a workplace that is not in the areas described by section 13-42(D) (*smoking prohibited*) or 13-44 (*prohibition of smoking at public outdoor places and events*);
- (f) a bingo facility operated under the Bingo Enabling Act, chapter 2001 of the Occupations Code, if:
  - (1) an enclosed non-smoking area is provided;
  - (2) the smoking area is mechanically ventilated to prevent smoke from entering a non-smoking area; and
  - (3) no one under the age of 18 is admitted to the smoking area;

- (g) a facility operated by a fraternal organization for a charitable, benevolent, or educational function if the premises is controlled by the organization and only when not open to the general public;
- (h) a bar, as defined in section 13-41 (*definitions*);
- (i) a pool hall, as defined in section 13-41 (*definitions*); and
- (j) a bowling alley only during adult league play.

(Ord. No. 09-009, § I, 2-10-09)

**Sec. 13-46. Designation of smoking rooms by hotel and motel restricted.**

A hotel and motel may not designate more than 25 percent of its rooms that are rented for temporary overnight occupation by the public as smoking rooms. (Ord. No. 09-009, § I, 2-10-09)

**Sec. 13-47. Employer responsibilities.**

(a) Except as provided in subsection (b), an employer shall provide a smoke-free workplace for employees.

(b) If an employer requires employees to work in an area described in subsection 13-45(b) through (i) (*exceptions*), the employer shall make reasonable accommodations for an employee who requests assignment to a smoke-free area.

(c) An employer shall notify each employee and applicant for employment in writing that:

- (1) smoking in the workplace is prohibited; or
- (2) smoking is permitted in an area in the workplace under section 13-45 (*exceptions*).

(Ord. No. 09-009, § I, 2-10-09)

**Sec. 13-48. Voluntary designation of a non-smoking facility.**

Nothing in this chapter implies that the operator of an enclosed or outdoor public place is prohibited from designating the entire facility as non-smoking. (Ord. No. 09-009, § I, 2-10-09)

**Sec. 13-49. Designation of taxicabs as non-smoking.**

(a) The holder of a taxicab service franchise shall designate all taxicabs operated under the franchise as non-smoking.

(b) The holder of a taxicab service franchise shall conspicuously post a sign in each taxicab that smoking is prohibited in the taxicab.

(Ord. No. 09-009, § I, 2-10-09)

**Sec. 13-50. Signs required and smoking accessories to be removed.**

(a) The operator, manager, owner or other person having control of a public place or place of employment where smoking is prohibited by this article shall conspicuously post a sign clearly

stating “no smoking” and consisting of bold lettering not less than 1 inch in height or displaying the international “no smoking” symbol (depiction of a burning cigarette enclosed in a red circle with a red bar across it):

- (1) in each public place and workplace where smoking is prohibited by this chapter; and
- (2) at each entrance to a public place or workplace.

(b) The operator, manager, owner or other person having control of a public place shall conspicuously post signs in areas where smoking is permitted under section 13-45 (*exceptions*).

(c) The operator, manager, owner or other person having control of a public place and an employer shall remove any ashtray or other smoking accessory intended for use on the premises from a place where smoking is prohibited.

(d) It is not a defense to prosecution under this chapter that an operator, manager, owner, or other person having control of a public place failed to post a sign required under this section. (Ord. No. 09-009, § I, 2-10-09)

#### **Sec. 13-51. 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 chapter. (Ord. No. 09-009, § I, 2-10-09)

#### **Sec. 13-52. Enforcement.**

(a) A person may report a violation of this chapter to the building official or his designee, to the police department or the fire department.

(b) The city manager may authorize a city employee conducting an inspection under any provision of the code to also inspect for compliance with this chapter and issue a citation for a violation of this chapter.

(c) The city of Killeen may enforce this chapter and may seek injunctive relief. (Ord. No. 09-009, § I, 2-10-09)

#### **Sec. 13-53. Violation and penalty.**

(a) A person who violates the provisions of this chapter commits a Class C misdemeanor, punishable under section 1-8 (*general penalty; continuing violations; citation authority*) by a fine not to exceed \$500. A culpable mental state is not required for a violation of this chapter, and need not be proved.

(b) Each day an offense occurs is a separate violation. (Ord. No. 09-009, § I, 2-10-09)

**Sec. 13-54. Governmental agency cooperation.**

The city manager shall annually request that each federal, state, county, and school district agency with a facility in the city adopt local operating procedures and update its existing smoking control regulation in compliance with this chapter. (Ord. No. 09-009, § I, 2-10-09)

**Sec. 13-55. No duty or obligation.**

In undertaking the enforcement of this article, the city is assuming an undertaking only to promote the general health, safety and welfare of its citizens. The city is not assuming any duty or obligation, nor is it imposing any duty and/or obligation on its officers and/or employees, nor is it liable in money damages or otherwise to any person who claims that the city and/or one of its officers and/or employees breached any such obligation and the breach proximately caused the injury. (Ord. No. 09-009, § I, 2-10-09)

**Sec. 13-56. Application of other law.**

This article is cumulative of other laws that regulate smoking (section 1-8, *general penalty; continuing violations; citation authority*). (Ord. No. 09-009, § I, 2-10-09)

**Sec. 13-57. Effective date.**

This article shall become effective on June 1, 2009, after passage by the city council and publication according to law. (Ord. No. 09-009, § I, 2-10-09)