

Rules and Regulations  
Smoking Ordinance Enforcement

**Houston Department of Health and Human Services**

**City of Houston, Texas, Ordinance No. 2006-1054 (“Ordinance”), which prohibits or regulates tobacco smoke in public areas and places of employment, authorizes the director of the Houston Department of Health and Human Services (“Department”) to promulgate rules and regulations for enforcement. Sec. 21-246.**

- 1.0 Smoking is prohibited in seating areas of outdoor public events and covered concourses of outdoor sports arenas, stadiums and amphitheaters.
  - 1.1 It shall be the duty of every person in control of these areas to request any person known to be smoking in these areas to extinguish the burning tobacco product. Any knowing or intentional failure to maintain compliance with such duty shall constitute an offense. See Sec. 21-247 (b).
  - 1.2 The owner, operator, manager or other person in control of these areas shall remove all ashtrays from these areas. See Sec. 21-244 (c).
  - 1.3 Seating can be fixed or portable; however, the seating area must be under the control of an owner, operator, manager, or other person able to enforce the prohibitions against smoking. Restrictions against smoking do not apply to outdoor seating areas not subject to control of an owner, operator, manager, or similar person.
  - 1.4 The posting of signs that state “No Smoking” or display the international “No Smoking” symbol, as indicated in Sec. 21-244 of the Ordinance, is recommended.
  
- 2.0 Smoking is prohibited in covered outdoor public transportation facilities.
  - 2.1 It shall be the duty of every person in control of these areas to request any person known to be smoking in these areas to extinguish the burning tobacco product. Any knowing or intentional failure to maintain compliance with such duty shall constitute an offense.
  - 2.2 The owner, operator, manager or other person in control of these areas shall remove all ashtrays from these areas. See Sec. 21-244 (c).
  - 2.3 The posting of signs that state “No Smoking” or display the international “No Smoking” symbol, as indicated in Sec. 21-244 of the Ordinance, is recommended.
  
- 3.0 Tobacco bars are exempt from prohibitions against smoking in enclosed public places and places of employment, subject to several conditions. Sec. 21-242 (5).
  - 3.1 A tobacco bar must obtain and display a valid permit for operation. Applicants for a permit to operate a tobacco bar shall provide the following to the Houston Department of Health and Human Services:
    - 3.1.1 Proof that the establishment was in operation on or before September 1, 2006 as a tobacco bar. A tobacco bar is a bar in

which the on-site sales or rentals of tobacco products and smoking accessories for consumption or use on the premises exceeds 20% of gross revenues and into which entry is restricted to individuals 18 years of age and above. Sec. 21-236. The following are examples of proof acceptable to the Department:

- 3.1.1.1 Proof of a retailer permit and sales tax permit from the Texas Comptroller of Public Accounts, each valid without interruption since September 1, 2006. The license must be in the name of either the company or the owner of the establishment. The license address must match the address of the establishment site.
- 3.1.1.2 Proof of a license or permit issued by the Texas Alcoholic Beverage Commission and valid without interruption since September 1, 2006.
- 3.1.1.3 Sales records for a period of three consecutive months beginning June 2006 to document that the establishment receives at least 60% of gross revenues from alcoholic beverages for on-premise consumption. The Department may accept copies of tax returns submitted to the Texas Comptroller of Public Accounts that declare the gross sales receipts of the business for the appropriate tax or financial reporting periods as documentation.
- 3.1.1.4 Sales records for a period of three consecutive months beginning June 2006 to document that the on site sales or rentals of tobacco products and smoking accessories for consumption and use on premises exceeds 20% of gross revenues. The Department will accept copies of tax returns submitted to the Texas Comptroller of Public Accounts that declare the gross sales receipts of the business for the appropriate tax or financial reporting periods as documentation.
- 3.1.2 Proof as certified by a Texas licensed professional engineer that the establishment operates an air ventilation and purification system using best available technology.
- 3.1.3 Proof in a form acceptable to the Department that the owner/employer offers health benefits to each employee. The health benefit must meet or exceed the following standards: (1) the employer contributes no less than \$150 per participating employee per month toward the total premium cost; and (2) the employee contributes, if any amount, no greater than 50% of the total monthly premium cost.
- 3.1.4 A complete and notarized Tobacco Bar Permit Application (form attached). Note: The City of Houston Smoking Enforcement Program does not provide notarization. The name of the applicant or entity must be the same on all documentation submitted in support of the application.

- 3.1.5 The appropriate annual permit fee.
    - 3.1.5.1 Payment shall be made by company check, cashier's check, money order or cash. Personal checks shall not be accepted.
    - 3.1.5.2 Initial Tobacco Bar Permit - \$325.00
    - 3.1.5.3 Renewal Tobacco Bar Permit - \$125.00
  - 3.2 A Tobacco Bar permit shall be valid for one year. If a tobacco bar changes ownership, the new owner shall apply for an initial tobacco bar permit and provide all of the items required.
  - 3.3 Loss or revocation of the legal authority to sell or rent tobacco products and smoking accessories for consumption or use on the premises will be grounds for denial or revocation of a permit to operate a tobacco bar.
  - 3.4 Loss or revocation of the legal authority to sell alcoholic beverages for consumption on the premises of the establishment will be grounds for denial or revocation of a permit to operate a tobacco bar.
  - 3.5 The Department reserves the right to request additional documentation, including (1) original materials used to prepare the application for an initial or renewal permit, (2) a letter by a Certified Public Accountant attesting to the percentage of total gross receipts attributable to sales of tobacco products, or (3) other updated financial data to support an application for a renewal permit. By accepting the Tobacco Bar Permit issued by the Department, the applicant agrees to provide such information upon request.
- 4.0 Smoking may be permitted in designated enclosed meeting areas within convention centers, hotels, motels, and other meeting facilities only while in actual use for private functions.
- 4.1 A meeting facility is a building designed, operated and used primarily for private functions.
  - 4.2 A private function is a gathering of individuals for the purpose of deliberation, education, instruction, entertainment, amusement, or dining, where specific invitation is a prerequisite to entry at the event and where the event is not intended to be open to the public. The event is under the control of the sponsor of the function and not the owner/manager of the facility. The fact that the owner/manager provides food and/or entertainment to the invitees need not constitute control of the premises.
  - 4.3 Owners/managers may designate an enclosed meeting area for the use of private functions where participants or invitees wish to smoke. The designated meeting area must be enclosed and separate from the rest of the facility. Smoke from the designated enclosed meeting area must not infiltrate into areas where smoking is prohibited.
  - 4.4 To designate an enclosed meeting area for private functions in which smoking will be permitted, the owner/managers of the facility shall submit a Private Function/Meeting Area Notification form to the Houston Department of Health and Human Services (form attached) at least ten working days prior to the first event for which the Notification is required.

The designation shall remain valid for one year. The Department will reject any notification or designation that does not meet the criteria specified in this section.

- 4.5 The Houston Department of Health and Human Services may require the owner(s) and/or manager(s) to provide records or other documentation that the building meets the definition of a meeting facility and other requirements in the ordinance, including architectural plans certified by a Texas licensed professional engineer.
  
- 5.0 Responsibilities for the owner, manager, operator, or other person in control of an establishment or area where smoking is prohibited. For purposes of this document, all such individuals shall be referred to as “manager” in these rules.
  - 5.1 Post signs stating “No Smoking” or displaying the “No Smoking” symbol at the entrance to and within the establishment. Failure to do this shall be a violation under the ordinance. The health officer will issue a Notice of Violation (NOV). If the violation is not corrected within 3 business days of the date of the NOV, the health officer will issue a citation to the manager.
  - 5.2 Remove all ashtrays from enclosed and outdoor areas where smoking is prohibited, including within 25 feet of building entrance/exit doors, unless exempt by the ordinance. Failure to do this shall be a considered a violation under the ordinance. The health officer shall note such failure on the inspection report. If the violation is not corrected immediately, the manager shall be issued a citation.
  - 5.3 Ask any person known to be smoking in an area where smoking is prohibited to extinguish the burning tobacco product. Any knowing or intentional failure by the manager to maintain compliance with such duty shall constitute an offense. See Sec. 21-247. In the event that a health officer observes the failure or refusal of the manager to act despite awareness of the unlawful smoking behavior, the health officer will issue a citation to the manager. If the smoker does not extinguish the burning tobacco product, the health officer will recommend that the manager refuse service to the smoker. The health officer will note on the inspection report whether the manager accepts or rejects the recommendation to refuse service to the smoker.