

CODE ALERT

Smoking Ordinance in Houston

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In 2002 Redding Linden Burr issued a Code Alert describing the then-current Smoking Ordinance and the requirements for exemption areas in a multi-tenant buildings. Effective September 1, 2007 the Smoking Ordinance (#2006-1054) took effect as the only smoking ordinance in Houston. It overrules any previous ordinances and no longer has any "exemption areas" for smoking in office buildings; there is no "grandfather" clause to allow continued use of existing smoking rooms of office buildings. Any existing smoking areas in an office building must cease to allow smoking in order to comply with the current smoking ordinance. The intention of this Code Alert is to update you on the current smoking ordinance.

Smoking is prohibited in the following areas:

- Enclosed public places. Public places are places in which the public is invited or permitted. Restaurants, bars, museums, libraries, public and private schools, convention centers, theaters, bingo halls, bowling alleys, buses, taxicabs, retail establishments, shopping malls, lobbies, restrooms, and hallways of apartment or condominium buildings are a few examples of enclosed public places where smoking is prohibited except under very limited circumstances.
- Enclosed workplaces. These are places of employment under the control of a public or private employer where employees work or where employees have access in the course of working. Work areas, private offices, employee lounges, restrooms, conference rooms, classrooms, cafeterias, and vehicles are examples of workplaces.
- Outdoors within 25 feet of building entrance and exit doors, wheelchair ramps serving the door, operable windows and air-conditioner intake vents.
- Covered concourses of outdoor arenas and outdoor seating areas of public spectator events.
- Covered public transportation facilities, such as covered bus stops and light rail stops.

Smoking is permissible in the following areas/conditions:

- Smoking is permitted in private residences, so long as the residence is not being used as a child care, adult day care, or health care facility.
- The management of a hotel or motel may set aside up to 35% of guest rooms for guests who wish to smoke. All smoking rooms on the same floor must be contiguous and the status of these rooms may not be changed except to add additional nonsmoking rooms.
- In private and semi-private rooms of nursing homes and long-term care facilities, but only if all occupants of the room are smokers and have requested in writing to be placed in a room where smoking is permitted.
- In retail tobacco stores. A retail tobacco store is a retail store that sells tobacco and smoking accessories which are at least 60% of the total sales and no on premises consumption of alcoholic beverages is permitted.

- During private functions held in convention centers, hotels, motels and other enclosed meeting facilities if designated in writing to the Houston Department of Health and Human Services. A private function is an event or gathering that is not open to the public and where specific invitation is required for entry. A meeting facility is a building designed, operated, and used primarily for private functions.
- In tobacco bars under certain conditions (*see link below for conditions*)
- On stage of a theatrical performance if it is an integral part of the performance.
- Section 21-241 excludes the outdoor seating areas of restaurant and bars from the 25 foot from building entrance requirement, effectively allowing smoking in these areas

Note: Smoke from any of the above areas or establishments must not infiltrate into any non-smoking areas.

Requirements of the owner, manager, operator, or other person in control of an establishment prohibiting smoking:

- Post signs stating "No Smoking" or display the "No Smoking" symbol at the entrance to and within the establishment. (first offense for lack of signage results in a notice and a short window to comply prior to any citations being filed)
- Remove ashtrays from areas where smoking is prohibited.
- Ask any person known to be smoking to extinguish burning tobacco products. "Knowing or intentional" failure by management to maintain compliance constitutes an offense.

Fines for violating the Ordinance:

Violation of the ordinance can result in fines of up to \$2,000 per offense (as an individual or as the person in control of an establishment). Violations may be observed by health inspectors during regular inspections or reported by citizens to smoke.health@cityofhouston.net for investigation.



This **CODE ALERT** is being distributed to building owners, architects, and facility managers as a topic of general interest in the industry. The information originates from established industry publications and City of Houston resources and is only a summary. The complete ordinance can be found at <http://www.houston.tx.gov/health/Environmental/2007smoking.pdf>. More information is available on the City of Houston Smoking Ordinance webpage at <http://www.houston.tx.gov/health/Environmental/smokingpage.html>