

# Definitions

## Section 34.256

**EMPLOYEE** means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, or a person who volunteers his or her services for a non-profit entity.

**EMPLOYER** means any person who employs the services of one or more individuals.

**ENCLOSED AREA** means all space from the floor to the ceiling that is fully enclosed or capable of being fully enclosed on all sides by walls, windows, or doors in any combination.

**OPERATOR** means the owner or person in charge of a public place or workspace, including an employer.

**PARK** means any area of real property owned, used or maintained by the city as a public park, playground or athletic facility.

**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, bingo facilities, comedy clubs, indoor music venues, convention facilities, 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 and accessories and in which the sale of other non-tobacco products is incidental.

**SMOKING** means inhaling, exhaling burning, or carrying any lighted or heated cigar, cigarette, pipe, tobacco, weed, plant, or other combustible substance in any manner or in any form. "Smoking" includes the use of e-cigarette which creates a vapor in any manner or in any form.

**VAPE SHOP OR VAPOR SHOP** means a store used primarily for the sale of electronic cigarettes or substances used in those or similar devices to produce inhalable vapors and in which the sale of other products is incidental.

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



## *Community Services Environmental Health*

### Smoking in Public Places Ordinance (SIPPO) #2013-66



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## Article 5 DIVISION 2. Smoking in Public Places

### Sec. 34.257. Places where Smoking is Prohibited

- (A) A person commits an offense if the person smokes in a public place or in a park.
- (B) A person commits an offense if the person smokes on the grounds of or within an enclosed area in a building or facility 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 (10) ten feet from an entrance or open-able window of an enclosed area in which smoking is prohibited.
- (E) The owner or operator of a public place commits an offense if the person fails to take necessary steps to prevent or stop another person from smoking in an enclosed area in a public place.

### Sec. 34.258. Exemptions

This division does not apply to:

- (1) a dwelling unit or private residence except when used as a child care, adult care, or health care facility;
- (2) A hotel or motel room designated as a smoking room and rented to a person;
- (3) a retail tobacco store;
- (4) 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;
- (5) outdoor area of a workplace provided, however, that this exemption does not apply to a park;
- (6) Outdoor seating areas of restaurants, bars, or lounges if signs are posted at each entrance to such areas to inform patrons that the area allows smoking with warning regarding the negative health effects of second hand smoke; or
- (7) A vape shop or vapor shop

## Chapter 34 Environment

### Sec.34.259. Designation of Smoking Rooms by Hotels and Motels 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

### Sec. 34.260. Prohibition of Smoking in Enclosed Areas of Workplaces

(A) Smoking shall be prohibited in all enclosed areas within workplaces. This includes common work areas, auditoriums, classrooms, conference and meeting rooms and all other enclosed areas

(B) This prohibition on smoking shall be communicated by employers to all existing employees by the effective date of this division and to all prospective employees upon their application for employment.

### Sec. 34.261 Voluntary Designation of a Non- Smoking Facility

Nothing in this division implies that the operator of an enclosed or outdoor public place is prohibited from designating the entire facility as non-smoking.

### Sec. 34.262. Designation of Smoking or Non- Smoking Taxicabs

(A)The holder of a Taxi Cab permit may designate one or more of the taxicabs operated under the permit as non-smoking.

(B)The holder of a taxicab permit shall conspicuously post a sign in each taxicab that indicates if smoking is permitted or prohibited in the taxicab



No Smoking



Smoking

### Sec. 34.263. Signs Required

(A)The operator of a public place shall conspicuously post a “No Smoking” sign, using the international symbol depiction of 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 division and

(2) at each entrance to a public place or workplace.

(B) The operator of a public place shall conspicuously post signs in areas where smoking is permitted under section 34.258 (Exemptions)

(C) The operator of a public place and an employer shall remove any ashtray or other smoking accessory from a place where smoking is prohibited.

(D) It is not a defense to prosecution under this division that an operator failed to post a sign required.

### Sec. 34.265 Enforcement

(A)This section is cumulative of other laws providing enforcement authority.

(B)A person may report a violation of this division to the Director of the Environmental Health Division of the Community Services Department.

(C)The City Manager may authorize a City employee conducting an inspection under any other provision of the San Marcos City Code to also inspect for compliance with this division and issue a citation for a violation of this division.

### Sec. 34.266. Violation and Penalty

(A) A person who violates the provisions of this division commits a class C misdemeanor and shall, upon conviction, be fined in an amount not more than \$200.00 for first conviction. \$500.00 for second offense and up to \$2,000.00 for a third offense. A culpable mental state is not required and need not be proved. Each day that a violation is committed or permitted to exist or occur shall constitute a separate offense.