EG/efg
08/19/10
Item #5

AN ORDINANCE 2010-08-19-0697

**AMENDING CHAPTER 36, OF THE CITY CODE OF SAN ANTONIO, TEXAS ENTITLED "SMOKING," TO INCLUDE THE PROHIBITION OF SMOKING IN RESTAURANTS, BARS IN RESTAURANTS AND STAND-ALONE BARS AS WELL AS OTHER OUTDOOR AREAS TO MEET THE NATIONAL STANDARDS TO BE CONSIDERED A SMOKE-FREE CITY, ESTABLISHING ENFORCEMENT AUTHORITY, ESTABLISHING PENALTIES AND FINES FOR VIOLATIONS AND SETTING THE EFFECTIVE DATE FOR AUGUST 19, 2011; AND PROVIDING FOR PUBLICATION; AND AUTHORIZING THE WAIVER OF PERMIT FEES FOR THE CONSTRUCTION OF PATIO AREAS IN COMPLIANCE WITH THE REVISED CHAPTER 36 UNTIL AUGUST 19, 2011.**

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**WHEREAS,** numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease in healthy nonsmokers, including heart disease. stroke, respiratory disease and lung cancer; and

**WHEREAS,** the Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen (U.S. Department of Health and Human Services, 2000, citing California Environmental Protection Agency, 1997); and

**WHEREAS,** 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; and

**WHEREAS,** it has been determined that children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer; and

**WHEREAS,** the United States Surgeon General has stated that there is no risk-free level of exposure to second-hand smoke (U.S. Surgeon General's Report – 2006, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*); and

**WHEREAS,** in 2003, the City enacted an ordinance prohibiting smoking in public and private workplaces, and in some areas of restaurants; and

**WHEREAS,** a study by the American Journal of Public Health in May 2010 found that smoking bans reduce hospitalizations for smoking-related diseases; and

**WHEREAS,** San Antonio is the largest Texas city without a comprehensive smoke-free ordinance; and

**WHEREAS,** the City now wishes to expand the prohibition of smoking to all areas of restaurants and bars to meet the national standard for a municipality to be designated as a "Smoke-Free" city; and

**WHEREAS,** on April 19, 2010, City Councilman Justin Rodriguez initiated a Council Consideration Request asking for the review of the current smoking ordinance and the removal of exclusions allowing smoking in: bars, bars in restaurants, smoking areas within restaurants, billiard halls, bingo facilities, comedy clubs, and gaming facilities; and

**WHEREAS**, staff reviewed the ordinance and made presentations and recommendations to the City Council's Governance Committee on May 19, 2010 and June 16, 2010; and

**WHEREAS,** a public hearing was had on June 10, 2010; and

**WHEREAS,** staff made a presentation and recommendation to the City Council's Quality of Life Committee on August 9, 2010 and citizens were given an opportunity to speak; and

**WHEREAS,** the City Council of San Antonio finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in enclosed places and specified outdoor areas within the city; and (2) to guarantee the right of nonsmokers to breathe smoke-free air, and recognizing that the need to breathe smoke-free air shall have priority over the desire to smoke; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1**. The current Chapter 36, of the City Code of San Antonio, Texas, entitled "Smoking," is amended by adding language that is underlined (added) and deleting language that is stricken (~~deleted~~) to the existing text as set forth in this Ordinance. Chapter 36 is amended as follows and such amendments will become effective on August 19, 2011:

## CHAPTER 36 – SMOKING

### Sec. 36-1. - Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

*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 those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets. ~~and in which at least ninety (90) percent of gross sales must be from the sale of alcoholic beverages.~~

*Business* means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

*Cigarette vending machine* means any self-service device which, upon insertion of coin(s), paper currency, token(s), card(s) or key(s) or any other item(s) dispenses one (1) or more cigarettes, as defined above, provided that the term shall neither be deemed to include any machine that is in storage, in transit or otherwise not set up for use and operation nor be deemed to include any machine that is situated on a train, bus or other public conveyance.

*Comedy club* means an establishment that~~:~~ <u>is primarily used for live comedic entertainment.</u>

~~(1) is primarily used for live comedic entertainment.~~

~~(2) Has no more than fifteen (15) percent of gross sales from the sale of food for on-premise consumption,~~

~~(3) Has at least thirty-five (35) percent of gross sales from the sale of alcoholic beverages for on-premise consumption, and~~

~~(4) Provides a non-smoking area within the establishment.~~

*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, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one (1) or more individual persons.

*Enclosed area* means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling. ~~except up to fifty (50) percent of one wall may be open to an adjoining room.~~

~~*Enclosed bar area* means all space in a bar between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling, except up to fifty (50) percent of one (1) wall may be open to an adjoining room. Food may be served in an enclosed bar area. If an enclosed bar area is within a restaurant:~~

~~(1) it must be separate and enclosed from the general seating area of the restaurant,~~

~~(2) any opening to an adjoining room and any partially partitioned wall must be at least ten (10) feet from the closest general seating of the restaurant, and~~

~~(3) the enclosed bar area may not exceed twenty (20) percent of the restaurant's total floor space; provided, however, that for enclosed bar areas existing or permitted prior to the effective date of Ordinance No. 97895, the requirement that the enclosed bar area not exceed twenty (20) percent of the restaurant's total floor space is not a requirement to obtaining a smoking designation for such enclosed bar area.~~

~~*Enclosed dining area* means all space in a restaurant between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling. The enclosed dining area may not exceed twenty (20) percent of the restaurant's total floor space.~~

*Health care facility* means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

*Park* includes Neighborhood/Community/Large Urban/Natural Area and Greenways/Sports Complex parks that are the basic unit of a park system and are recreational and social centers for those living in the nearby service area or from several neighborhoods and possibly may serve a broader community-based recreation need. Parks include areas that preserve unique landscapes and open spaces and include features that emphasize harmony with the natural environment. Parks include areas that accommodate group activities and recreational facilities, consolidated programmed athletic fields, and their associated facilities.

*Place of employment* means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

*Private club* means an organization, whether incorporated or not, which (1) is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, (2) is operated solely for a fraternal purpose but not for pecuniary gain, (3) only sells alcoholic beverages incidental

to its operation, (4) conducts its affairs and management through a board of directors, executive committee, or similar body chosen by the members at an annual meeting, (5) has established bylaws or a constitution to govern its activities, and (6) has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

*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, educational facilities, gaming facilities, health care facilities, hotels and motels, 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.

~~*Private function* means a gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement, or dining, where membership or specific invitation is a prerequisite to entry and where the event is not intended to be open to the public.~~

*Restaurant* means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

*Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products, ~~and~~ smoking implements, or smoking accessories for on-premises consumption and in which the sale of other products is merely incidental, which shall include but not be limited to cigar bars and humidors.

~~*Service line* means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.~~

*Shopping mall* means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

*Smoking* means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation, ~~weed, plant, or other combustible substance~~ in any manner or in any form.

*Sports arena* means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in

physical exercise, participate in athletic competition, or witness sports or other events.

~~*Stand-alone bar* means a bar not located within a restaurant.~~

**Sec. 36-2. - Application of chapter to city-owned facilities.**

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the city of San Antonio, shall be subject to the provisions of this chapter.

**Sec. 36-3. - Prohibition of smoking in public places.**

Smoking shall be prohibited in all enclosed public places within the city of San Antonio, including but not limited to, the following places:

(1) Aquariums, galleries, libraries, and museums;

(2) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels;

(3) Bars;

(4) Billiard halls;

(5) Bingo facilities;

(6) Comedy clubs;

(7)~~(3)~~ Convention facilities;

(8)~~(4)~~ Elevators;

(9)~~(5)~~ Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance;

(10) Gaming facilities;

(11)~~(6)~~ Health care facilities;

(12)~~(7)~~ ~~Licensed~~ Cchildcare and adult day care facilities;

(13)~~(8)~~ Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;

(14)~~(9)~~ Polling places;

(15)~~(10)~~ Public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots;

(16)~~(11)~~ Restaurants, except for ~~enclosed bar areas, enclosed dining areas and~~ outdoor seating areas designated as smoking in accordance with subsection 36-910(d); ~~provided, however, that:~~

~~a. All outdoor seating areas so designated as smoking shall provide a non-smoking area therein;~~

~~b. Persons under the age of eighteen (18) years shall not be admitted in any enclosed bar area or enclosed dining area so designated as smoking; and~~

~~c. A restaurant may only have either an enclosed bar area or an enclosed dining area and may not have both.~~

(17)~~(12)~~ Restrooms, lobbies, reception areas, hallways, and other common-use areas;

(18)~~(13)~~ Retail stores;

(19)~~(14)~~ Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the city or a political subdivision of the state when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the city;

~~(15) Service lines;~~

(20)~~(16)~~ Shopping malls; and

(21)~~(17)~~ Sports arenas, including enclosed areas in outdoor arenas.

**Sec. 36-4. - Prohibition of smoking in places of employment.**

(a) Smoking shall be prohibited in all enclosed areas within places of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed areas.

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

**Sec. 36-5. - ~~Sampling,~~ Distribution, display and sale of tobacco products, and cigarette machines.**

(a) ~~*Sampling*~~. Distribution, display, and sale ~~of free samples~~ of smoking tobacco products or smoking paraphernalia on any public right-of-way, city park or any city-owned building or facility is hereby prohibited.

(b) Cigarette vending machines.

(1) Subject to the defenses provided in subsection (2) below, it shall be unlawful for any business owner, manager and employee in control of cigarette vending machines within the city to intentionally, knowingly, recklessly, or with criminal negligence allow the display or use of any cigarette vending machine upon any property within the city.

(2) It is a defense to prosecution under the provisions of ~~section 36-5 B of~~ this ~~Chapter~~ subsection (b) that:

a. The cigarette vending machine is situated in a premise where entry by any person under eighteen (18) years of age is prohibited by law; or

b. The cigarette vending machine is located in a workplace with the permission of the employer, provided that the employer has no persons under the age of eighteen (18) years employed at the workplace, and further provided that the cigarette vending machine is situated at a location within the workplace to which persons other than those employed at the workplace are not permitted to have access.

(3) Penalty. A violation of this subsection ~~36-5 B~~ is hereby declared to be a misdemeanor crime, and upon conviction, shall be punishable by a fine of not more than two thousand dollars ($2,000.00).

**Sec. 36-6. – Prohibition of Smoking in Outdoor Areas**

Smoking shall be prohibited in the following outdoor places:

(1) San Antonio Zoo facilities and grounds;

(2) In all outdoor sports arenas, stadiums, and amphitheaters;

(3) In, and within 20 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the city; and

(4) In all pavilions and playgrounds located within city-owned parks.

**Sec. 36-76. - Where smoking not regulated.**

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of sections 36-3, ~~and~~ 36-4, and 36-6:

~~(1) Billiard halls, where the establishment uses more than fifty (50) percent of the premises for operational pool tables, provided that food sales constitute less than ten (10) percent of gross sales, and persons under the age of eighteen (18) years are not admitted. Billiard halls may establish no smoking hours during which persons under the age of eighteen (18) years may be admitted;~~

~~(2) Bingo facilities, provided that food sales constitute less than ten (10) percent of gross sales, and persons under the age of eighteen (18) years are not admitted. Bingo facilities may establish no smoking hours during which persons under the age of eighteen (18) years may be admitted;~~

~~(3) Comedy clubs;~~

~~(4) Enclosed bar areas within restaurants designated as smoking areas in accordance with subsection 36-9(d), provided that the bar is in an enclosed area where persons under the age of eighteen (18) years are not admitted;~~

~~(5) Enclosed dining areas within restaurants designated as smoking areas in accordance with subsection 36-9(d), provided that persons under the age of eighteen (18) years are not admitted;~~

(1)~~(6)~~ Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty-five (25) percent of rooms rented to guests in a hotel or motel may be so designated;

~~(7) Outdoor bus stops;~~

(2) Outdoor areas except those listed specifically in the provisions in section 36-6;

(3)~~(8)~~ Outdoor seating areas of restaurants designated as smoking areas in accordance with subsection 36-10~~9~~(d); ~~provided, however, that a non-smoking area shall be provided in outdoor seating areas of restaurants so designated;~~

(4) Private clubs in existence as of the effective date of this chapter, and as defined in section 36-1, including Veterans of Foreign War (VFW) posts;

(5)~~(9)~~ Private residences, except when used as a ~~licensed~~ child care, adult day care, or health care facility;

~~(10) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted;~~

~~(11) Restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms, when these places are being used for private functions; provided, however, that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this chapter; additionally, the establishments delineated in this subsection are not required to post signs in accordance with section 36-9(d);~~

(6)~~(12)~~ Retail tobacco stores; provided, however, that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this chapter; and

~~(13) Stand-alone bars, where persons under the age of eighteen (18) years are not admitted; and~~

(7)~~(14)~~ Tobacco product manufacturing facilities.

**Sec. 36-8~~7~~. - Persons under age of eighteen (18) years in smoking area.**

Notwithstanding any other provision of this chapter, persons under the age of eighteen (18) years may be admitted in establishments, facilities or other areas that allow smoking ~~or are smoking areas~~ in accordance with the provisions of this chapter if such persons are accompanied by their parent or legal guardian.

**Sec. 36-9~~8~~. - Declaration of establishment as nonsmoking.**

Notwithstanding any other provision of this chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of subsection 36-10~~9~~(a) and (b) of this chapter is posted.

**Sec. 36-10~~9~~. - Posting of signs.**

(a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this chapter, by the owner, operator, manager, or other person in control of that place.

(b) Every public place and place of employment where smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this chapter by the owner, operator, manager, or other person having control of the area.

(d) Areas which are exempt from the provisions of sections 36-3 and 36-4 of this chapter shall post a standard sign at each entrance, to be designated by the city informing potential patrons that the area allows smoking, and warning patrons of the negative health effects associated with secondhand smoke. ~~provided, however, that those establishments delineated in subsection 36-6(11) of this chapter are not required to comply with this subsection.~~

(e) The city of San Antonio will provide the signs required under subsection 36-10~~9~~(d) to the owners or operators required to comply with subsection 36-10~~9~~(d) at a reasonable and appropriate cost.

**Sec. 36-11~~0~~. – ~~Nonr~~Retaliation prohibited.**

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this chapter or reports or attempts to prosecute a violation of this chapter.

~~(1) This chapter shall be enforced by the city metropolitan health department, the fire department, or their authorized designees.~~

~~(2) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the city metropolitan health department.~~

~~(3) The city metropolitan health department, fire department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this chapter.~~

~~(4) An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the appropriate provisions thereof.~~

~~(5) Notwithstanding any other provision of this chapter, an employee or private citizen may bring legal action to enforce this chapter.~~

~~(6) In addition to the remedies provided by the provisions of this section, the city metropolitan health department, fire department, or their designees, or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.~~

**Sec. 36-12. – Enforcement.**

(1) The San Antonio Metropolitan Health District, in addition to any authority having jurisdiction to enforce city ordinances, shall have authority to enforce the provisions of this chapter.

(2) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the San Antonio Metropolitan Health District.

(3) The San Antonio Metropolitan Health District, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this chapter.

(4) An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the appropriate provisions thereof.

(5) Notwithstanding any other provision of this chapter, an employee or private citizen may bring legal action to enforce this chapter.

(6) In addition to the remedies provided by the provisions of this section, the San Antonio Metropolitan Health District, Fire Department, or their designees, or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

**Sec. 36-13~~2~~. - Violations and penalties.**

Any person, firm, corporation, agent, employer or employee who intentionally, knowingly, recklessly or with criminal negligence violates any provision of this chapter shall, upon conviction, be fined an amount not more than two hundred dollars ($200.00); provided, however, that in the event a defendant has previously been convicted under this chapter, such defendant shall be fined an amount not more than five hundred dollars ($500.00) for a second conviction hereunder, and shall be fined an amount not more than two thousand dollars ($2,000.00) for a third conviction hereunder and for each conviction thereafter. Each day that a violation is committed or permitted to exist shall constitute a separate offense.

**Sec. 36-14~~2~~. - Additional fee for restaurants ~~with bars~~.**

A reasonable fee to cover staff costs associated with inspections and program expenses may be charged by the city to the owner or operator of a restaurant in order to establish that~~:~~ outdoor seating areas of restaurants designated as

smoking areas are so designated in accordance with subsections 36-3 (16) and 36-10 of this chapter.

~~(1) A bar and a dining area within a restaurant comply with the definition of an enclosed area as set forth in section 36-1 of this chapter; and~~

~~(2) Outdoor seating areas of restaurants designated as smoking areas are so designated in accordance with subsection 36-6 (8) of this chapter.~~

**~~Sec. 36-13. - Public education.~~**

~~The city metropolitan health department shall engage in a continuing program to explain and clarify the purposes and requirements of this chapter to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this chapter.~~

**Sec. 36-15. - Governmental agency cooperation.**

The city manager shall annually request other governmental and educational agencies having facilities within the city to establish local operating procedures in cooperation and compliance with this chapter. This includes urging all federal, state, county and school district agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

**Sec. 36-16~~5~~. - Other applicable laws.**

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**Sec. 36-17~~6~~. - Severability.**

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this chapter are severable, and if any phrase, clause, sentence, paragraph or section of this chapter shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this chapter, since the same would have been enacted by the city council without the incorporation in this chapter of any such unconstitutional phrase, clause, sentence, paragraph or section.

**Sec. 36-18~~7~~. - Effective date.**

This chapter shall become effective on ~~January 1, 2004~~August 19, 2011.

**SECTION 2.** All other provisions of Chapter 36 of the City Code of San Antonio, Texas shall remain in full force and effect unless expressly amended by this ordinance.

**SECTION 3.** Violations occurring on or after August 19, 2011 shall be punished as provided in the revised Chapter 36 of the City Code of San Antonio, Texas. Violations prior to August 19, 2011 shall be punished under the former applicable Sections which shall remain in effect for that purpose.

**SECTION 4.** Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

**SECTION 5.** The City Clerk is directed to publish public notice of this ordinance in accordance with Section 17 of the City Charter of San Antonio, Texas.

**SECTION 6.** The publishers of the City Code of San Antonio, Texas are authorized to amend said code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

**SECTION 7.** The Director of the Planning and Development Services Department is hereby authorized to waive permit fees associated with the construction of wholly new outdoor patios on restaurants and bars existing and legally in operation as of the date of passage of this ordinance, in compliance with the proposed smoking ordinance, until August 19, 2011.

**SECTION 8.** This ordinance shall become effective ten (10) days from the date of passage hereof.

**SECTION 9.** Penalties provided for in this Chapter 36 of the City Code of San Antonio, Texas shall be effective five days after publication by the City Clerk.

PASSED AND APPROVED this 19th day of August, 2010.

**M A Y O R**
Julián Castro

**ATTEST:**

Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

for Michael Bernard, City Attorney