

**TOWN OF LITTLE ELM**

**ORDINANCE NO. 1213**

**AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN, BY AMENDING CHAPTER 46 (ENVIRONMENT), ARTICLE II (NUISANCES & VEGETATION), BY AMENDING 46-21 (WEEDS, BRUSH, AND OTHER OBJECTIONABLE MATTER), IN PART, TO PROVIDE A MAINTENANCE EXCEPTION TO FLOODPLAIN AREAS; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Little Elm ("Town") is a home rule municipal corporation organized and existing by virtue of the Constitution and laws of the State of Texas and by its Charter adopted on May 1, 2001; and

**WHEREAS**, the Town possesses all the rights, powers, and authorities possessed by all home rule municipalities, including the authority to regulate nuisances; and

**WHEREAS**, the Town Council, after a thorough and informed discussion, directed Staff at its April 1st work session to proceed in revising the high grass and weeds ordinance to allow for a maintenance exception for floodplain areas; and

**WHEREAS**, the Town Council believes that floodplain areas provide environmental benefits when remaining in their natural and passive state; that many riparian areas within the Town are impractical and costly to maintain; and that an exception to the maintenance requirement is best administered at the staff level; and

**WHEREAS**, after due deliberations and consideration of any other information and materials received at the open meeting, the Town Council has determined that the amendments set forth herein should be adopted, and that such amendments are in the best interest of the public health, safety, and welfare of the citizens of the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS:**

**SECTION 1. INCORPORATION OF PREMISES.** The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

**SECTION 2. AMENDMENT AND ADOPTION.** That Chapter 46 (Environment) of the Town of Little Elm Code of Ordinances, is hereby amended, in part, by amending Article II (Nuisances & Vegetation), Section 21 (Weeds, Brush, & Other Objectionable Matter), in part, to add another exception (under the 46-21(a) list of exceptions) that reads as follows:

5. Open space land located on or adjacent to the floodplain (riparian buffers, creeks, USACE easements, or other designated shorelines) may be left in its natural state to help filter runoff, prevent erosion, increase vegetation and shade, improve water quality, and other conservation benefits, subject to discretionary review and approval by the Town Manager or his/her designee. The extent, to which these areas are maintained, whether owned privately, by an HOA, or by a governmental entity, shall be determined on a case by case basis by Town staff. Operations, environmental benefits, cost of maintenance, accessibility, proximity to floodplain and water, public use of the property, threat of fire, aesthetic factors, and other variables may be considered by staff.

**SECTION 3. SAVINGS.** This Ordinance shall be cumulative of all other ordinances of the Town, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance; provided, however, that any complaint, notice, action, cause of action, or claim which prior to the effective date of this Ordinance has been initiated or has arisen under or pursuant to such other ordinance(s) shall continue to be governed by the provisions of that ordinance or those ordinances, and for that purpose that ordinance or those ordinances shall be deemed to remain and shall continue in full force and effect.

**SECTION 4. PENALTY.** Any person, firm, or corporation violating any of the provision of this ordinance shall be punished by a penalty of a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense and each and every day such offense shall continue shall be deemed to constitute a separate offense.

**SECTION 5. SEVERABILITY.** The sections, paragraphs, sentences, phrases, and words of this Ordinance are severable, and if any section or provision of this ordinance or the application of that section or provision to any person, firm, corporation, situation or circumstance is for any reason judged invalid or unconstitutional, the adjudication shall not affect any other section or provision of this ordinance or the application of any other section or provision to any person, firm, corporation, situation or circumstance, nor shall adjudication affect any other section or provision of the Comprehensive Zoning Ordinance of the Town of Little Elm, Texas, and the Town Council hereby declares that it would have adopted the valid portions and applications of the ordinance without the valid parts and to this end the provisions of this ordinance shall remain in full force and effect.

**SECTION 6. REPEALER.** That all ordinances of the Town of Little Elm in conflict with the provisions of this ordinance be and the same are hereby repealed to the extent of that

conflict.

**SECTION 7. EFFECTIVE DATE.** That this Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**The Town of Little Elm, Texas**

\_\_\_\_\_  
David Hillock, Mayor

ATTEST:

\_\_\_\_\_  
Kathy Phillips, Town Secretary

**CHAPTER 70**  
**OFFENSES & MISCELLANEOUS PROVISIONS**  
**ARTICLE VIII (SMOKING)**

**Sec. 70-170. Definitions.**

*Cigar* as used herein shall mean, unless otherwise amended by the TEX. TAX CODE, Chapter 155, a roll of fermented tobacco that is wrapped in tobacco and the main stream of smoke from which produces an alkaline reaction to litmus paper.

*Cigarette* as used herein shall mean, unless otherwise amended by the TEX. TAX CODE, Chapter 154, a roll for smoking: (A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and (B) that is not a cigar.

*Electronic cigarette and/or e-cigarette* as used herein shall mean any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provides, or is manufactured or intended to provide, a vapor of liquid nicotine and/or other substances mixed with propylene glycol and/or other substances delivered or deliverable to the user that he/she can inhale in simulation of smoking. This term shall include every version and type of such devices whether they are manufactured or marketed as electronic cigarettes, e-cigarettes, electronic cigars, e-cigars, electronic pipes, e-pipes, or under any other product name or description.

*Employee* means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any persons who volunteers his or her services for a nonprofit entity.

*Employer* means any person, partnership, entity, corporation, including a municipal corporation, or nonprofit entity, which employs the services of one or more individual persons or entities.

*Liquid nicotine* as used herein shall mean any liquid product composed either in whole or in part of pure nicotine and propylene glycol and/or any other substance and manufactured for use with electronic cigarettes or e- cigarettes.

*Minor* as used herein means a person younger than eighteen (18) years of age.

*Open display unit* as used herein shall mean, in the context of the retail sale of electronic cigarettes or e-cigarettes and/or liquid nicotine, any device, furniture or furnishing within or upon which electronic cigarettes or e-cigarettes and/or liquid nicotine are displayed to customers, and includes, but is not limited to, any case, rack, shelf, counter, table, desk, kiosk, booth, stand, vending machine and other surface.

*Place of business* as used herein shall mean: (A) a commercial business location where cigarettes, tobacco products, electronic cigarettes or e-cigarettes and/or liquid nicotine is/are sold; (B) a commercial business location where cigarettes, tobacco products, electronic cigarettes or e-cigarettes and/or liquid nicotine are kept for sale of consumption or otherwise stored; or (C) a vehicle from which cigarettes, tobacco products, electronic cigarettes or e-cigarettes and/or liquid nicotine is/are sold.

*Place of employment* means any enclosed area under the control of public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it

is used as a licensed child care, adult day care or health care facility.

*Possess(es), possessing, or possession* as used herein shall mean actual care, custody, control or management.

*Retail electronic cigarette store* as used herein shall mean a retail store utilized solely for the sale and sampling of electronic cigarettes or e-cigarettes and/or liquid nicotine and related accessories.

*Retailer* as used herein shall mean a person, place of business or retail and service establishment, who/which engages in the practice of selling cigarettes, tobacco products, electronic cigarettes or e-cigarettes and/or liquid nicotine to consumers and includes, without limitation, the owner of an open display unit.

*Smoke(s) or smoking* as used herein shall mean and includes the carrying, possessing or holding of a pipe, cigarette, tobacco product, electronic cigarette or e-cigarette or liquid nicotine of any kind which is burning or emitting a vapor.

*Self-service merchandising* as used herein shall mean, in the context of the retail sale of electronic cigarettes or e-cigarettes and/or liquid nicotine, the open display, including, without limitation, the use of an open display unit of electronic cigarettes or e-cigarettes and/or liquid nicotine, whether packaged or otherwise, for direct retail customer access and handling prior to purchase without the intervention of assistance of the retailer or the retailer's owner, employee or agent.

*Tobacco product* as used herein shall mean: (A) cigar; (B) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette; (C) chewing tobacco, including Cavendish, Twist, plug scrap and any kind of tobacco suitable for chewing; (D) snuff or other preparations of pulverized tobacco; or (E) an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette.

*Sports arena* means sports stadiums, sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, indoor amusements, and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

#### **Sec. 70-171. Smoking Prohibited in Certain Public Places.**

A person commits an offense in violation of this article if he smokes, expectorates any smokeless tobacco product, or possesses a burning tobacco, weed, other plant product, electronic cigarette or e-cigarette or liquid nicotine in most public places and enclosed places of employment within the town, including, but not limited to, the following indoor and/or enclosed areas:

- a. Within any enclosed facility within all places of employment and/or within any enclosed area available to and customarily used by the general public in all businesses, including but not limited to, retail stores, offices, banks, restaurants, department stores, grocery stores, pharmacies, shopping malls, salons, bowling centers, bingo parlors, arcades, indoor amusements, laundry mats, warehouses, manufacturing facilities, leasing centers, food establishments, private clubs, and country clubs, including their respective service lines, except where specifically provided for in section 70-172, below;
- b. Hotels and motels;
- c. A public or private preschool, daycare, primary or secondary school; or

- d. Buses, bus terminals, taxicabs, airports and other facilities and means of public transit, as well as ticket, boarding, and waiting areas of public transit depots;
- e. Movie theaters, drama and recital theaters, lecture halls, galleries, libraries, museums, conference centers, meeting rooms, and outdoor amphitheaters not owned by the Town;
- f. Service lines and waiting queues, whether indoor or outdoor, including all polling locations;
- g. In or within 25 feet of sports arenas or athletic stadiums, stadium seating, ticketing, queuing, and waiting areas, concession stands, and restrooms, whether public or private;
- h. Public parks in and around assembly amenities such as recreation fields, pools, playground areas, concession stands, pavilions, restrooms, and the swim beach, but excluding parking lots, open space, trails, and the amphitheater during live music events;
- i. Waiting rooms, hallways, wards, private and semiprivate rooms of physical and mental health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;
- j. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- k. Elevators, restrooms, lobbies, reception areas, hallways, and other common-use areas;
- l. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city; and
- m. Within 25 feet of any entrance (door, window, vent, or other opening) of any facility where smoking is prohibited.

**Sec. 70-172. Places Where Smoking is Not Prohibited.**

Notwithstanding any other provision of this division to the contrary, the following areas shall not be subject to the smoking restrictions of this article, unless within 25 feet of any door, operable window/vent, or other opening to an indoor enclosed area, or service lines and waiting queues:

- a. Private residences, including porch and yard areas, except when used as an in-home child care facility, adult day care, health care facility, group home, or home occupation;
- b. Personal automobiles;
- c. Outdoor places of employment, except where employees have to provide the public with service or are in close proximity to the general public;
- d. Public sidewalks;
- e. Parking lots;
- f. Retail tobacco stores or hookah lounges, where the sale of tobacco products and accessories is the primary retail use and in which the sale of other products is merely incidental. Separate ventilation and HVAC systems that prevent the commingling of air with other businesses, common areas, hallways and other non-smoking areas shall be required;
- g. Designated exterior outdoor smoking areas; and
- h. Exterior outdoor patios of restaurants, which are exempt from the 25 foot standard.

**Sec. 70-173. Posting of Signs.**

1. The owner, manager, or other person having control of such building or premise where smoking is prohibited by this article shall have a conspicuously posted sign clearly stating "No Smoking" at each entrance, whether for the public, employees, or deliveries, and at restroom entrances. E-cigarettes shall also be sufficiently included on the notification signage.
2. Such "No Smoking" signs shall have bold lettering of not less than one inch in height. The international "No Smoking" symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).
3. Any owner, manager, or other person having control of any establishment regulated by this division shall be responsible for posting appropriate signage.

**Sec. 70-174. Enforcement.**

1. Enforcement of this division shall be implemented by the city manager or his/her designee by issuance of a citation.
2. It is the duty of the owner, manager, operator, or person-in-charge of any establishment regulated by this division:
  - a. To post signs in accordance with section 70-173 of this article;
  - b. To not provide ashtrays, matches, lighters, or other smoking related paraphernalia in a regulated premise;
  - c. To advise a person who violates this article that smoking is not allowed; and
  - d. To request a person remove themselves from this location after that person has been advised that smoking is not allowed and that person willfully continues to smoke.

**Sec. 70-175. Offenses and penalties.**

1. It shall be unlawful for any person to smoke, expectorate any smokeless tobacco product, or possess a burning tobacco, weed, other plant product, electronic cigarette or e-cigarette or liquid nicotine in any area where smoking is prohibited by the provisions of this article.
2. It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to regulation under this division to fail to comply with the sections 70-173 or 70-174 of this article.
3. Any person who violates any provision of this article shall be guilty of a misdemeanor infraction, punishable by a fine not to exceed \$500.00.
4. Every act in violation shall constitute a separate offense.
5. Unless otherwise specifically set forth herein allegation and evidence of culpable mental state are not required for the proof of an offense of this division.
6. This article shall not be interpreted nor construed to permit smoking where it is otherwise restricted by other applicable laws.

**Secs. 70-176 - 70-189. Reserved.**

