

ORDINANCE NO. 3273

AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER 42 OF THE NORTH RICHLAND HILLS CODE OF ORDINANCES AND RESTRICTING THE LOCATION WHERE SMOKING IS ALLOWED; ESTABLISHING A PENALTY FOR VIOLATION; PROVIDING FOR SEVERABILITY AND PROVIDING FOR PUBLICATION.

WHEREAS, it is recognized throughout the country that smoking is injurious to the health of both smokers and those who are in the presence of those who are smoking, including workplaces and locations where the public gathers, such as in restaurants, grocery stores, hospitals, schools, and retail establishments; and,

WHEREAS, current city regulations prohibit smoking in many public areas, while state law prohibits smoking on public school property and in courtrooms; and,

WHEREAS, the city council has been requested by its Youth Advisory Committee to investigate the possibility of enacting additional restrictions against smoking in the city and city staff has developed proposed restrictions which have been reviewed by the Council and which appear to meet the objective of providing reasonable restrictions with appropriate exceptions; and,

WHEREAS, the City Council desires to amend the restrictions on smoking within the city as a measure promoting public health and safety; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH RICHLAND HILLS, TEXAS:

Section 1: THAT Article IV of Chapter 42 of the North Richland Hills Code of Ordinances be amended to read as follows:

“ARTICLE IV. SMOKING AND OTHER TOBACCO USE REGULATIONS

Sec. 42-171. Definitions.

The following definitions shall apply to this article:

Patio means an unconditioned eating area physically adjoining an existing eating establishment with at least two (2) sides of its perimeter open to an exterior yard, court and/or parking area. The exterior perimeter may have full or partial height walls provided at least 40% of the wall area is equipped with permanent openings that do not restrict ventilation or the free flow of air.

Person means any individual.

Private Club means an association of persons as members, whether incorporated or unincorporated under the laws of the state, for the promotion of some common object, and organized by a board of representatives, including but not limited to a fraternal organization, private social club or dinner club. Private Club described as a facility in this chapter shall mean any enclosed area to which the public is not invited or in which the public is not permitted which is owned, leased or rented by the Private Club for its members and their guests. A privately-owned business, open to the public, is not a Private Club.

Public building means any building other than a building used as a private residence. If portions of a building are used as a private residence and another portion of the building is used for business purposes or commercial activities, then "public building" as used herein shall apply to the portions of the building used for business purposes or commercial purposes, but not the portion used solely as a residence. The term "public building" includes, but is not limited to, restaurants, offices and other workplaces, warehouses, health care facilities, and elevators, and enclosed common areas of multifamily developments. For purposes of this definition, it does not include a private area not accessible to the public.

Smoke or *smoking* means inhaling, exhaling, or burning a lighted cigar, cigarette, pipe or other lighted tobacco, weed, or other plant product in any manner or form.

Sec. 42-172 - Smoking prohibited in public buildings, near an entrance or exit to a public building; signs required; and prohibited acts.

- (a) It shall be unlawful for any person to perform the following acts in any public building in the city or within 25 feet of any public entrance or exit to any public building:
 - (1) Smoke,
 - (2) Carry a lighted cigarette, cigar, or tobacco-containing pipe, or
 - (3) Light a cigarette, cigar or tobacco-containing pipe.
- (b) It shall be unlawful for any owner of any public building to allow the operation of the establishment unless one or more of the following signs have been posted at a location clearly visible to a person entering the establishment:
 - (1) A "No Smoking" sign, or
 - (2) The international "No Smoking" symbol (depiction of a burning cigarette enclosed in a red circle with a red bar across it).

- (c) It shall be unlawful for any owner or operator of any public building to place or allow to be placed any of the following items in any public building or within 25 feet from an entrance or exit to any public building:
 - (1) Ashtrays,
 - (2) Smoking paraphernalia, or
 - (3) Signs that indicate that smoking is permitted.
- (d) It shall be unlawful for the owner or operator of any public building to allow smoking in any public building or within 25 feet of a public entrance or exit to any such public building.
- (e) It shall be unlawful for the owner of any restaurant to allow smoking in any location on the property where food is served.
- (f) The following are excepted from the prohibitions of this section:
 - (1) An owner or operator may allow smoking in a designated outdoor public patio area of a restaurant located more than twenty five (25) feet from the main public entrance;
 - (2) A private or semi-private room in a nursing home or long term health care facility that is occupied by persons who smoke and have requested in writing to be placed in rooms where smoking is permitted; or
 - (3) A retail or service establishment which derives at least 60% of its income from the sale of tobacco, tobacco products or smoking implements; and the establishment has a primary public entrance and restroom facilities not connected with any other businesses; and is posted for no one under the age of eighteen (18) years is allowed to be admitted.
 - (4) An adult bar as defined in Section 118-711 of the City Code.
 - (5) A fraternal organization or private club not serving the general public; or
 - (6) A private, rented guest room in a hotel or motel that has been designated as a smoking room by the owner or operator of the hotel or motel, as long as no more than twenty percent (20%) of the rooms are designated smoking and all smoking rooms are located on the same floor.

- (7) Any facility which is primarily used for exhibiting any stage, drama, lecture, musical recital or other similar performance, when smoking is part of a stage production.

Sec. 42-173. - Tobacco use in city-owned buildings and parks.

(a) *Prohibited; exception.* It shall hereafter be unlawful for any person to smoke tobacco, chew tobacco or dip tobacco or snuff within the confines of any city-owned and operated building or any city-owned park or trail maintained by the city.

(b) *Intent.* It is the intent of the city council in passing this section to create a smoke-free and tobacco-free environment within all city buildings and city parks including trails maintained by the parks department.

(c) *Notice.* Notice of this section shall be given by posting written "THIS FACILITY IS TOBACCO FREE" signs at or near the main entrance of each building. Each letter in the sign shall be at least 1.5 inches in height. Notice of this section shall be given on all rules and regulations signs located in all parks.

Sec. 42-174 - Penalty.

Any person who violates this article shall be guilty of a health and sanitation misdemeanor violation and subject to a fine as set forth in Section 1-13 of this Code of Ordinances. Each day that a violation is permitted to exist shall constitute a separate offense. Any association, partnership or cooperation that violates this article shall be guilty of a health and sanitation misdemeanor violation and subject to such fine.

Sec. 42-175 – Enforcement

The city manager and his designees are authorized to issue citations and take all action necessary to enforce this ordinance.”

Section 2: Violation of this ordinance shall be punishable by a fine of up to two thousand dollars (\$2,000.00). Each separate violation shall be punishable hereunder and each day each such violation shall be allowed to exist or continue shall constitute a separate violation punishable hereunder.

Section 3: It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or otherwise invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the city council without the incorporation in

this ordinance of any such invalid phrase, clause, sentence, paragraph or section.

Section 4: The City Secretary is hereby authorized and directed to cause the publication of the descriptive caption and penalty clauses of this ordinance as an alternative method of publication provided by law.

Section 5: This ordinance shall be effective January 1, 2014.

AND IT IS SO ORDAINED.

PASSED AND APPROVED on this 23rd day of September, 2013.

CITY OF NORTH RICHLAND HILLS

By: _____
Oscar Trevino, Mayor

ATTEST:

Patricia Hutson, City Secretary

APPROVED AS TO FORM AND LEGALITY:

George A. Staples, City Attorney

APPROVED AS TO CONTENT:

John Pitstick, Planning & Development Director