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ORDINANCE NO. 1101

AN ORDINANCE AMENDING THE NICHOLS HILLS CITY CODE REGARDING RESTRICTIONS ON SMOKING AND USES OF TOBACCO PRODUCTS AND VAPOR PRODUCTS AND PROVIDING FOR PENALTIES AND FINES FOR VIOLATION OF SUCH RESTRICTIONS; REPEALING ALL CONFLICTING ORDINANCES OR PARTS OF ORDINANCES; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

**EMERGENCY ORDINANCE**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NICHOLS HILLS, OKLAHOMA:

Section 1. Chapter 24 of the Nichols Hills City Code is hereby amended by adding Article IV, which Article IV reads as follows:

**ARTICLE IV. RESTRICTIONS ON SMOKING AND USE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS**

**Sec. 24-121. – Definitions.**

- (a) *Indoor Area* means any enclosed area used or visited by employees or the public, at all times, regardless of whether work is being performed. Indoor Area includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees, as well as all space between a floor and ceiling that is predominantly or totally enclosed by walls or windows, regardless of doors, doorways, open or closed windows, stairways, or the like.
- (b) *City Property* means all buildings, Indoor Areas, and Outdoor Areas, including but not limited to parks and recreational areas, and other property, or portions thereof, owned or operated by the City, including but not limited to vehicles and equipment owned by the City.
- (c) *Outdoor Area* means any area that is not an Indoor Area, and includes parks and recreational areas, as well as sidewalks and paths located within such areas. Outdoor Area shall not include streets and sidewalks outside of parks and recreational areas.
- (d) *Smoking* means the carrying or possession of a lighted cigar, cigarette, pipe, or other lighted smoking device.
- (e) *Tobacco Product* means any product that contains tobacco and is intended for human consumption. Tobacco Product does not include any product approved by

the United States Food and Drug Administration for sale as a tobacco cessation product.

- (f) *Vapor Product* means any noncombustible product, that may or may not contain nicotine, that employs a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution or other form. Vapor Product shall include any vapor cartridge or other container with or without nicotine or other form that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of a solution, that may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, or electronic device.

**Sec. 24-122. – Prohibited Conduct.**

- (a) Smoking Tobacco Products is prohibited in all places in which Smoking Tobacco Products is prohibited by Oklahoma state law.
- (b) Smoking is prohibited on or within all City Property, including parks and recreational areas.
- (c) Using Tobacco Products or Vapor Products is prohibited on or within all City Property, including parks and recreational areas.
- (d) Nothing in this article prohibits any person or entity from separately prohibiting Smoking or the use of Tobacco Products or Vapor Products on their property, even if the Smoking or the use of Tobacco Products or Vapor Products is not prohibited in that area by this section.
- (e) No person or entity shall knowingly permit Smoking or the use of Tobacco Products or Vapor Products in an area that is under the control of that person or entity and in which Smoking or the use of Tobacco Products or Vapor Products is prohibited by this section.
- (f) No person or entity shall permit the placement of ash receptacles, such as ash trays or ash cans, within an area under the control of that person or entity and in which Smoking or the use of Tobacco Products or Vapor Products is prohibited by this section. The presence of ash receptacles shall not be a defense to a charge of Smoking or the use of Tobacco Products or Vapor Products in violation of any provision of this section.
- (f) No person or entity shall intimidate, threaten, or otherwise retaliate against another person or entity that seeks to attain compliance with this article.

**Sec. 24-123. – Signs.**

For restrictions on Smoking or the use of Tobacco Products or Vapor Products within City owned or operated property, including parks and recreational areas:

- (a) The City Manager or his/her designee shall be responsible for ensuring the posting of signs or decals within City owned or operated parks and recreational areas and Indoor Areas, where signs or decals are necessary in the judgment of the City Manager.
- (b) For restrictions on Smoking or the use of Tobacco Products or Vapor Products within City owned or operated parks and recreational areas, new signs shall be weather-resistant, at least 15 inches by 15 inches in size, with lettering of at least 1 inch, and shall clearly state that smoking and use of tobacco products or vapor products is prohibited.
- (c) For restrictions on Smoking or the use of Tobacco Products or Vapor Products within Indoor Areas, the sign or decal shall be at least 4 inches by 2 inches in size and shall clearly state that smoking and use of tobacco products or vapor products is prohibited or that a tobacco-free environment is provided.
- (d) The presence or absence of signs or decals shall not be a defense to a charge of Smoking or the use of Tobacco Products or Vapor Products in violation of any provision of this article.

**Sec. 24-124. – Penalties and Enforcement.**

- (a) Enforcement of this article shall be the responsibility of the City of Nichols Hills police department. In addition, any peace officer or code enforcement official may enforce this article.
- (b) Each instance of Smoking, use of Tobacco Products or Vapor Products or possession of lighted Tobacco Products or Vapor Products in violation of this article is a nuisance.
- (c) Any person who knowingly violates this article shall be punished in the first instance by a warning, and in the second and subsequent instances, shall, upon conviction, be punished as provided in section 14-106 of this Code.

**Section 24-125 – Statutory Construction and Severability.**

It is the intent of the City Council of the City of Nichols Hills to supplement applicable state and federal law and not to duplicate or contradict such law. The provisions of this ordinance are severable, and the invalidity of any provision of the ordinance shall not affect other provisions of the ordinance, which can be given effect without the invalid provision.

Section 2. Chapter 14, Section 14-106 of the Nichols Hills City Code is hereby amended as follows, with new language underlined, to wit:

**Sec. 14-106. Amount and Schedule of fines.**

Unless directed otherwise by the presiding municipal judge, for citations for violations of this Code issued on or after July 17, 2013, the amount of the fine (inclusive

of court costs imposed by section 14-103 of this chapter and state-mandated penalty assessments as provided in Title 20, Oklahoma Statutes, §§ 1313.2, 1313.3, 1313.4 and other applicable state law), which may be accepted by the clerk of the court in satisfaction of certain violations shall be as follows:

Charge	Oklahoma Statute/City Code Creating Offense	Fine, Assessments & Costs Total
Affixing improper tag	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 1151(A)(5)	\$234.00
Alcohol-related offenses	Nichols Hills City Code Chapter 4; Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 11-902(A)(2) and 47 O.S. § 11-904(A)(1)	\$234.00
Allowing unlicensed person to drive	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 6-305	\$234.00
Altering or changing tag	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 4-110(A)(2)	\$234.00
Animal at large	Nichols Hills City Code Sec. 6-49 and Nichols Hills City Code Sec. 6-83(b)	\$25.00 plus \$30.00 impounding fee and boarding fees at \$15.00 per day
Cutting through property (gas station)	Nichols Hills City Code Sec. 44-100	\$119.00
Defective vehicles	Nichols Hills City Code Sec. 44-196; Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 12-204	\$84.00
Depositing refuse on streets or sidewalks (Littering)	Nichols Hills City Code Sec. 36-25	\$234.00
Driving across fire hose	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 11-1109	\$234.00

Driving under the influence of drugs	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 11-902(A)(3);	\$234.00
Driving with revoked license	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 6-303(B)	\$234.00
Driving with suspended license	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 6-303.B;	\$234.00
Drug paraphernalia possession	Nichols Hills City Code Sec. 32-140	\$239.00
Expired driver's license	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 6-303(B)	\$74.00 (No fine or costs if a renewal or replacement driver's license is provided on or before court date)
Expired license plate	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 1151(A)(5)	\$74.00 (\$25.00 if proof of updated license plate provided before court date)
Failure to appear	Nichols Hills City Code Sec. 32-256	\$234.00
Failure to obey officer	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. Section 11-103; NH City Code Sec. 44-40	\$114.00
Failure to stop for school bus	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 11-705(A)	\$234.00
Failure to yield to emergency vehicle	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 11-405	\$234.00
Improper lights on motor vehicle	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 12-227(B)	\$84.00

Improper tag display	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 4- 107(d)	\$74.00
Improperly removing tag	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 4- 107(d)	\$74.00
Inattentive and careless driving	Nichols Hills City Code Sec. 44-95	\$234.00
Leaving the scene of a non-injury Accident	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 10-103	\$234.00
Leaving the scene of an injury accident	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 10-102(A)	\$234.00
Loaning driver's license to another	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 6- 301(1)(b)	\$234.00
Marijuana possession	Nichols Hills City Code Sec. 32-138	\$239.00
No child restraints	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 11-1112(A)	\$84.00 (\$15.00 if first offense and upon proof of purchase or acquisition by loan of a child restraint system)
No license in possession	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 6- 112	\$94.00 (No fine or costs if a driver's license, issued and valid at time of arrest, is provided on or before court date)
No Nichols Hills dog tag	Nichols Hills City Code Sec. 6-118	\$25.00
No security verification	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 7- 602.1	\$234.00 (No fine or costs if proof of insurance provided within one business

		day before first scheduled hearing; \$25.00 if proof of insurance provided on the same day as first scheduled hearing)
No valid operator's license	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 6-303(A)	\$234.00
Non-use of seatbelts	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 12-417(A)	\$20.00
Nuisance offences	Nichols Hills City Code Sec. Sec. 30-2; Sec. 30-26; and Sec. 30-27	\$234.00
Operating contrary to restrictions	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 6-101(D)	\$234.00
Operating without being licensed	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 6-303(B)	\$234.00
Operating without mobile food vendor permit	Nichols Hills City Code Sec. 24-101	\$215.00
Operating without proper license plate	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 1151(A)(5)	\$74.00
Operating without motorcycle endorsement	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 6-101(d)	\$234.00
Penalties for non-valid alarms to police department	Nichols Hills City Code Sec. 18-161	\$50.00
Parked facing oncoming traffic	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 11-1004(A)	\$50.00
Parking Between 2:00 a.m.—5:00 a.m.	Nichols Hills City	\$35.00

	Code Sec. 44-133(B)	
Parking in handicapped space	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 11-1007	\$215.00
Parking on private property	Nichols Hills City Code Sec. 44-141	\$35.00
Parking vehicle for display	Nichols Hills City Code Sec. 44-139(A)	\$215.00
Permitting unlicensed person to drive	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 6- 305	\$234.00
Reckless driving	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 11-901	\$234.00
Sign violation	Nichols Hills City Code Sec. 50-130	\$215.00
Skateboarding	Nichols Hills City Code Sec. 44-9	\$84.00
<u>Smoking, tobacco product and vapor product related offenses</u>	<u>Nichols Hills City Code Sec. 24-121 through 24-125</u>	<u>\$100.00</u>
Solicitation without permit	Nichols Hills City Code Sec. 10-25.	\$234.00
Soliciting where posted	Nichols Hills City Code Sec. 10-35	\$234.00
Speed greater than proper	Nichols Hills City Code Sec. 44-94	\$79.00
Speed in excess	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 11-801(B)	\$79.00
Speeding (radar checked)	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 11-801(A)	\$68.00 plus \$5.00 for every mile over the speed limit
Speeding in a school zone	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 11-801(B)(6)	\$234.00

Spinning wheels	Nichols Hills City Code Sec. 44-96	\$84.00
Sprinkler ordinance	Nichols Hills City Code Sec. 46-54	\$234.00
Tampering with traffic control	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 11-207	\$234.00
Tracking mud on streets	Nichols Hills City Code Sec. 44-199	\$234.00
Texting while driving	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 11-901d	\$100.00
Unlawful use of license	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 6- 301	\$234.00
Unsafe open door traffic side	Nichols Hills City Code Sec. 44-3, adopting 47 O.S. § 11-1105	\$84.00
Wrecked, junked, or abandoned vehicle	Nichols Hills City Code Sec. 30- 2(b)(15)	\$234.00
All other moving traffic violations not otherwise specified in this Schedule		\$84.00
All offenses under Chapter 32 of the Nichols Hills City Code (unless otherwise specified in this Code)		\$234.00
All other parking violations not otherwise specified in this Code		\$50.00

Section 3. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 4. The provisions of this ordinance are severable and if any part or provision hereof shall be adjudged invalid by any court of competent jurisdiction, such adjudication shall not affect or impair any of the remaining parts or provisions hereof.

Section 5. EMERGENCY SECTION. WHEREAS, in the judgment of the Council it is necessary for the preservation of the peace, health, welfare and safety of the City of Nichols Hills, Oklahoma, and of the inhabitants thereof that the provisions of this ordinance be put into full force and effect immediately, and therefore an emergency is hereby declared to exist by reason whereof this ordinance shall take effect and be in full force from and after its passage as provided by law.

PASSED by the Council of the City of Nichols Hills, Oklahoma, on the 9<sup>th</sup> day of May, 2017.

APPROVED by the Mayor of the City of Nichols Hills, Oklahoma, on the 9<sup>th</sup> day of May, 2017.

ATTEST:

*Kristi Hord*

City Clerk



*Andy H. Clements*  
Mayor

Reviewed as to Form and Legality:

*James M. Williams*

City Attorney