

ORDINANCE NO. 3710

AN ORDINANCE OF THE CITY OF RICHARDSON, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF RICHARDSON, TEXAS BY AMENDING CHAPTER 4, ARTICLE IV BY ESTABLISHING SMOKING REGULATIONS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED (\$500.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RICHARDSON, TEXAS:

SECTION 1. That the Code of Ordinances of the City of Richardson, Texas, be, and the same is hereby amended by amending Chapter 4, Article IV. Smoking in part, to establish new smoking regulations to read as follows:

“ARTICLE IV. SMOKING

Sec. 10-96. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“*Bar*” means an establishment which is devoted to serving of alcoholic beverages for the consumption by guests on the premises and in which the serving of food is only incidental to the consumption of alcoholic beverages.

“*Business*” means any sale proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making or not-for-profit 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.

“*Director of Health*” means the director of the health department or the department's designated representative.

“*Employee*” means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

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

“*Enclosed area*” means all space between a floor and ceiling which is enclosed on all sides by walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling.

“Food establishment” means food product or food service establishments.

“Patio” means an improved and defined unenclosed outside area associated with a food service establishment or bar used for purposes of dining or entertainment, provided that walkways are not to be considered patios; and further provided such establishment has a defined entrance at least 10 feet from the designated smoking area.

“Place of employment” means any enclosed area under the control of a 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 child care, adult day care or health care facility

“Private Place” means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal or private residences; private social clubs or personal automobiles.

“Public place” means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks; educational facilities; health facilities; laundromats; public transportation facilities; reception areas; production and marketing establishments; retail service establishments; retail stores; theaters and waiting rooms.

“Retail tobacco store” means a retail store which derives 90 percent or more of its gross revenue from the sale of tobacco products and accessories.

“Service line” means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

“Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or combustible substance in any manner or in any form.

“Sports arena” means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys 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. 10-97. Places where smoking is prohibited.

(a) Smoking shall be prohibited in all enclosed public places and enclosed places of employment within the city, including, but not limited to, the following places:

1. Elevators;
2. Restrooms, lobbies, reception areas, hallways and any other common-use areas;
3. Buses, bus terminals, taxicabs, train stations, airports and other facilities and means of public transit, as well as ticket, boarding, and waiting areas of public transit depots;

4. Service lines;
5. Retail stores;
6. All areas available to and customarily used by the general public in all businesses, including but not limited to, attorneys' offices and other offices, banks, laundromats and country clubs;
7. Enclosed facilities within a place of employment;
8. Food establishments, nightclubs and bars;
9. Galleries, libraries, museums, zoo facilities and their grounds;
10. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance except when smoking is a part of a theatrical performance upon a stage or in the course of a film or television production and smoking is part of the performance or production, including outdoor special events;
11. Sports arenas and convention halls, including bowling and billiard facilities;
12. 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;
13. 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;
14. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
15. Polling places;
16. Bingo games/parlors;
17. Hotels and motels, including at least ninety percent (90%) of rooms rented to guests;
18. Within 25 feet of any door, operable window/vent or other opening to an indoor enclosed area; and
19. Public parks including but not limited to public recreation fields, pools, children's playground equipment, concession stands, restrooms.

Sec. 10-98. Places where smoking is not prohibited.

(a) Notwithstanding any other provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

1. Private residences, except when used as a child care, adult day care or health care facility;
2. Personal automobiles;
3. Retail tobacco stores in stand alone physical facilities;
4. Retail tobacco stores, where a retail store is utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental provided such establishment provides separate ventilation and HVAC systems that prevent the commingling of air with other businesses, common areas, hallways and other non-smoking areas;
5. Not more than ten percent (10%) of hotel and motel rooms rented to guests and designated as smoking rooms. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under provisions of this article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms;
6. Outdoor places of employment except within 25 feet of any door, operable window/vent or other opening to an enclosed area;
7. Parking lots within public parks, except within 25 feet of any door, operable window/vent or other opening to an indoor enclosed area or service line; and
8. Patios;
9. A bar that derives 70% or more of the establishment's gross revenue on a quarterly (three month basis) from the sale of alcoholic beverages for on-premise consumption provided the establishment: (i) conspicuously posts a sign stating "This Is A Smoking Establishment" at all entrances to the establishment and in which the establishment has separate ventilation; (ii) and provides the Health Director, at the end of each calendar quarter, with a written report of the establishment's gross revenue of all food items and its gross revenue from the sale of alcoholic beverages; (iii) and provides a HVAC system that prevents the commingling of air with other businesses, common areas, hallways and other non-smoking areas. For purposes of this section gross revenue shall be calculated using the normal selling price of all food items and all alcoholic beverages served in the establishment and shall reflect the price normally charged for such items in the particular establishment for which the establishment for which the gross revenue figure is calculated, whether such item is actually sold at normal selling price, below normal entrance fee or other consideration paid. Reduced prices charged during promotions, happy hours and other occasions when drinks are sold at reduced prices or served at no charge, shall not be considered "normal selling price" for calculation of the gross revenue; and

10. A separate enclosed area designated for smoking that does not open into any other establishment or area in which smoking is prohibited under this article of a bar that derives more than 50% but less than 70% of the establishment's gross revenue on a quarterly (three month basis) from the sale of alcoholic beverages for on-premise consumption provided the establishment: (i) conspicuously posts a sign stating "This Is A Smoking Establishment" at all entrances to the establishment and provides a separate ventilation; (ii) provides the Health Director, at the end of each calendar quarter, with a written report of the establishment's gross revenue of all food items and its gross revenue from the sale of alcoholic beverages; (iii) and provides a HVAC system that prevents the commingling of air with other businesses, common areas, hallways and other non-smoking areas. For purposes of this section gross revenue shall be calculated using the normal selling price of all food items and all alcoholic beverages served in the establishment and shall reflect the price normally charged for such items in the particular establishment for which the establishment for which the gross revenue figure is calculated, whether such item is actually sold at normal selling price, below normal entrance fee or other consideration paid. Reduced prices charged during promotions, happy hours and other occasions when drinks are sold at reduced prices or served at no charge, shall not be considered "normal selling price" for calculation of the gross revenue.

Sec. 10-99. Posting of signs.

(a) 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.

(b) "No Smoking" and "This is a Smoking Establishment" 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).

(c) Any owner, manager, or other person having control of any establishment regulated by this article shall be responsible for posting appropriate signage.

Sec. 10-100. Enforcement.

(a) Enforcement of this article shall be enforced by the Health Department or other official as designated by the City Manager by issuance of a municipal court citation.

(b) Any person may register a complaint under this article to initiate enforcement by the Health Department.

(c) It is the duty of the owner, manager, operator or person-in-charge of any establishment regulated by this article:

(1) To post signs in accordance with Section 10-99 of this article and;

(2) To not provide ashtrays, matches, lighters or other smoking related paraphernalia in a regulated premise and;

- (3) To advise a person who violates this article that smoking is not allowed and;
- (4) 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. 10-101. Offenses and penalties.

- (a) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.
- (b) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with the following sections and subsections of this article:
 - (1) Section 10-99 (a), (b) and (c), and;
 - (2) Section 10-100;
- (c) Any person who violates any provision of this article shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).
- (d) Each day on which a violation of this article occurs shall be a separate and distinct violation.”

Secs. 10-102-10-125. Reserved.

SECTION 2. That should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof other than the part thereof decided to be unconstitutional, illegal or invalid.

SECTION 3. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 4. That all provisions of the ordinances of the City of Richardson in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other

provisions of the ordinances of the City of Richardson not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 5. That any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the of the City of Richardson, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Five Hundred dollars (\$500.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 6. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such case provide, except that the new smoking regulations established herein by this ordinance shall take effect beginning on January 1, 2009.

DULY PASSED by the City Council of the City of Richardson, Texas, on the _____ day of _____, 2008.

APPROVED:

MAYOR

CORRECTLY ENROLLED:

CITY SECRETARY

APPROVED AS TO FORM:

CITY ATTORNEY

(PGS:tc 27372 5/5/08)