



# City of Rowlett

## Official Copy

Ordinance: ORD-003-09

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File Number: 2009-042

Enactment Number: ORD-003-09

**AN ORDINANCE OF THE CITY OF ROWLETT, TEXAS, AMENDING THE ROWLETT CODE OF ORDINANCES BY AMENDING CHAPTER 22 ("ENVIRONMENT"), BY REPEALING ARTICLE VI ("SMOKING"), IN ITS ENTIRETY AND REPLACING IT WITH A NEW ARTICLE VI, SMOKING, SECTIONS 22-241 THROUGH 22-244; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITING SMOKING IN CERTAIN PUBLIC AND PRIVATE AREAS; PROVIDING FOR THE POSTING OF SIGNS; PROVIDING FOR VIOLATIONS AND PENALTIES; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO HUNDRED DOLLARS (\$200.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 22 of the Code of Ordinances provides for the environment by regulating such things as junked vehicles, weed, dangerous conditions, litter, noise, smoking, and graffiti; and

**WHEREAS**, it is the City's desire to take all action necessary to promote a cleaner, healthy environment within the City of Rowlett; and

**WHEREAS**, it is the City's position that establishing more stringent smoking regulations would assist in this effort; and

**WHEREAS**, after full and final consideration, the City Council has determined that Chapter 22, Environment, should be amended by repealing Article VI, Smoking, in its entirety and replacing with a new Article VI, to provide new regulations regarding smoking in public places.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS:**

**Section 1:** That Chapter 22, "Environment," of the Code of Ordinances of the City of Rowlett, Texas, be and is hereby amended by replacing Article VI, "Smoking," and Sections 22-241 - 22-248, in their entirety in order to establish new smoking regulations, said new Article VI, consisting of Sections 22-241 through 22-244, reserving Sections 22-245 through 22-250 for future expansion, shall hereafter read in their entirety as follows:

**"CHAPTER 22**

**ENVIRONMENT**

...

**ARTICLE IV. SMOKING**

**Sec. 22-241. 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 principally for the sale and consumption of alcoholic beverages on the premises that derives 75 percent or more of its gross revenue on a quarterly (three-month) basis from the sale or service of alcoholic beverages, as defined in the Texas Alcoholic Beverage Code, for on-premises consumption. If an establishment is located in a hotel or motel, the gross revenues of the particular establishment, rather than the gross revenues of the entire hotel or motel, will be used in calculating the percentage of revenues derived from the sale or service of alcoholic beverages.

*Billiards* means any game played on a cloth-covered table with balls and cue sticks where the balls are struck by the sticks and the balls strike against one another.

*Billiard Hall* means an establishment that:  
holds a valid billiard hall license issued by the city;  
has at least 12 billiard tables that are not coin-operated available for rent to persons desiring to play billiards on the premises; and  
derives 70 percent or more of its gross revenue on a quarterly (three-month) basis from the sale or service of alcoholic beverages, as defined in the Texas Alcoholic Beverage Code, for on-premises consumption and from the rental of billiard tables and billiard equipment to persons desiring to play billiards on the premises.

*Cigar Bar* means a bar that derives 15 percent or more of its gross revenue on a quarterly (three-month) basis from the sale or rental of tobacco, tobacco products, smoking implements, or smoking accessories for on-premises consumption.

*Director* means the director of the department designated by the city manager to enforce and administer this chapter, or the director's designated representative.

*Eating Establishment* means any establishment that prepares or serves food or beverages, regardless of whether the establishment provides seating or facilities for on-premises consumption. The term includes, but is not limited to, restaurants, coffee shops, cafeterias, short order cafes, fast food establishments, luncheonettes, lunchrooms, soda fountains, food carts, food vending vehicles, and catering establishments.

*Employee* means any person who works for hire at an indoor or enclosed area including an independent contractor with an assigned indoor location.

*Employer* means any person who employs one or more employees.

*Enclosed* means an area that:  
is closed in overhead by a roof or other covering of any material, whether permanent or temporary; and  
has 40 percent or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary.

*Hospital* means any institution that provides medical, surgical, and overnight facilities for patients.

*Minor* means any individual under 18 years of age.

*Person* means an individual, firm, partnership, association, or other legal entity.

*Retail or Service Establishment* means any establishment that sells goods or services to the general public, including but not limited to any eating establishment, bar, hotel, motel, department store, grocery store, drug store, shopping mall, laundromat, bingo parlor, bowling center, billiard hall, or hair styling salon.

*Second-Hand Smoke* means ambient smoke resulting from the act of smoking.

*Smoke or Smoking* means inhaling, exhaling, possessing, or carrying any lighted or burning cigar or cigarette, or any pipe or other device that contains lighted or burning tobacco or tobacco products.

*Tobacco Shop* means a retail or service establishment that derives 90 percent or more of its gross revenue on a quarterly (three-month) basis from the sale of tobacco, tobacco products, or smoking implements.

*Workplace* means any indoor or enclosed area where an employee works for an employer

**Sec. 22-242. Smoking prohibited in certain areas.**

(a) A person commits an offense if he smokes:

1. in any indoor or enclosed area in the city;
2. within 15 feet of any entrance to an indoor or enclosed area in the city; or
3. in any area designated as nonsmoking by the owner, operator, or person in control of the area and marked with a no smoking sign complying with this article.

(b) An owner, operator, or person in control of an indoor or enclosed area in the city commits an offense if he, either personally or through an employee or agent, permits a person to smoke in the indoor or enclosed area.

(c) For purposes of this article, an indoor or enclosed area includes but is not limited to the following:

1. an elevator.
2. a hospital or nursing home.
3. any facility owned, operated, or managed by the city.
4. any retail or service establishment.
5. any workplace.
6. any facility of a public or private primary or secondary school or any enclosed theater, movie house, library, museum, or transit system vehicle.

- (d) It is a defense to prosecution under Subsection (a)(1), (a)(3), or (b) of this section if the person was smoking in a location that was:
1. a private residence, except that this defense does not apply when the residence is being used as a child care facility, adult day care facility, or health care facility;
  2. a stage or set of a production of a television program, a theatrical presentation, or a motion picture or filming event where smoking by an actor or performer is essential to the production.
  3. a cigar bar that:
    - (A) was lawfully operating as a cigar bar on February 3, 2009 (except that this defense does not apply if the cigar bar is expanded, is relocated, or changes majority ownership after February 3, 2009);
    - (B) does not open into any other indoor or enclosed area in which smoking is prohibited under this article;
    - (C) is not generally accessible by a minor; and
    - (D) keeps all windows and doors closed at all times except as reasonably necessary for the expeditious entering and exiting of the cigar bar.
  4. a tobacco shop that:
    - (A) does not open into any other indoor or enclosed area in which smoking is prohibited under this article; and
    - (B) keeps all windows and doors closed at all times except as reasonably necessary for the expeditious entering and exiting of the tobacco shop.
  5. an unenclosed outdoor seating area associated with an indoor or enclosed area, including but not limited to a bar, hotel, motel, or eating establishment, except that this defense does not apply if:
    - (A) the outdoor seating area is adjacent to a playground or play area for children; or
    - (B) the location was posted as a nonsmoking area by the owner, operator, or person in control of the establishment or area with a sign complying with this article;
  6. a private, rented guest room in a hotel or motel that has been designated as a smoking room by the owner, operator, or person in control of the hotel or motel; or,
  7. a bar that was lawfully operating as a bar on February 3, 2009 (except that this defense does not apply if the bar is expanded, is relocated, or changes majority ownership after February 3, 2009).
- (e) It is a defense to prosecution under Section (a)(2) of this section if the person was smoking in a location that was an unenclosed outdoor seating area associated with an indoor or enclosed area, including but not limited to a bar, hotel, motel, or eating establishment, except that this defense does not apply if:
1. the outdoor seating area is adjacent to a playground or play area for children; or
  2. the location was posted as a nonsmoking area by the owner, operator, or person in control of the establishment or area with a sign complying with this article.

**Sec. 22-243. Signage and other requirements.**

- (a) The owner, operator, or person in control of an establishment or other area in which smoking is prohibited under Section 22-242(a)(1) or (a)(3) shall post a conspicuous sign at the main entrance to the establishment or area. The sign must contain the words "No Smoking, City of Rowlett Ordinance," the universal symbol for no smoking, or other language that clearly prohibits smoking.
- (b) The owner, operator, or person in control of an indoor or enclosed area to which the smoking prohibition of this article applies shall post a conspicuous sign at each entrance to the indoor or enclosed area. The sign must contain the words "No Smoking within 15 Feet of Entrance, City of Rowlett Ordinance." The universal symbol for no smoking may be substituted for the words "No Smoking."
- (c) The owner, operator, or person in control of an establishment or area in which smoking is prohibited under this article shall remove all ashtrays from the establishment or area.
- (d) It is a defense to prosecution under this section that the establishment or area is a location for which a defense to prosecution is provided under this article.

**Sec. 22-244. Offenses and penalties**

- (a) A person who violates a provision of this article, or who fails to perform an act required of the person by this article, commits an offense. A person commits a separate offense each day or portion of a day during which a violation is committed, permitted, or continued.
- (b) Unless specifically provided otherwise in this article, an offense under this article is punishable by a fine of \$200.
- (c) No culpable mental state shall be required to be proven to substantiate guilt in the prosecution of any case in which an offense under this article is alleged.

**Secs. 22-245 - 22-250. Reserved."**

**Section 2:** That all ordinances of the City of Rowlett in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the City of Rowlett not in conflict with the provisions of this ordinance shall remain in full force and effect.

**Section 3:** That an offense committed before the effective date of this ordinance is governed by the 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 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 hereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

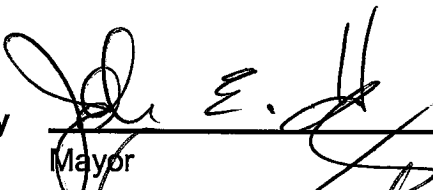
**Section 5:** That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Rowlett, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of two hundred dollars (\$200.00) for each offense.

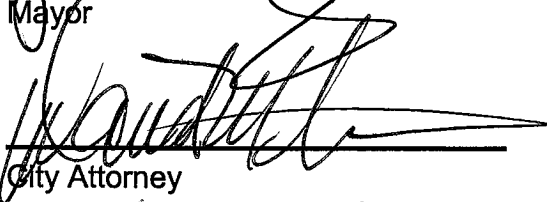
**Section 6:** This ordinance shall take effect on May 1, 2009 after the publication of the caption as the law and Charter in such cases provide.

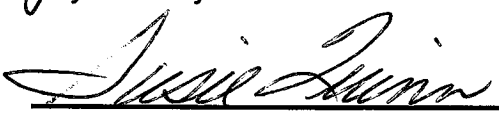
At a meeting of the City Council on 2/3/2009, a motion was made by Deputy Mayor Pro Tem Maggiotto, seconded by Councilmember Kilgore, that this Ordinance be approved as amended. The motion passed by the following vote:

**Ayes:** 4 Mayor Harper, Deputy Mayor Pro Tem Maggiotto, Councilmember Jackson and Councilmember Kilgore

**Noes:** 3 Mayor Pro Tem Gottel, Councilmember Phillips and Councilmember Rushing

Approved by  Date February 03, 2009  
Mayor

Approved to Form by  Date February 03, 2009  
City Attorney

Certified by  Date February 03, 2009  
City Secretary