



**NOTICE OF WORK SESSION AGENDA  
LANCASTER CITY COUNCIL  
JAMES R. WILLIAMS PUMP STATION  
TRAINING ROOM, 1999 JEFFERSON, LANCASTER, TEXAS**



**Monday, June 19, 2017 - 7:00 PM**

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**CALL TO ORDER**

**Regular Items:**

1. Receive a presentation from The Retail Coach regarding the development of a Retail Recruitment Strategy.
2. Discuss and receive a presentation on the selection of a consultant to develop an economic development strategic plan.
3. Receive a presentation to discuss and consider deal points regarding the management agreement for the operations of Country View Golf Course.
4. Discuss amending Chapter 3 Article 3.800, "Fence Regulations," of the Lancaster Code of Ordinances to remove eight (8) foot fences with the exception of the side or back of a property that faces a major thoroughfare or intense commercial use and amending Chapter 3.16 "Fence and Site Elements" of the Lancaster Historic Residential Design Guidelines requiring fences in the historic district to reflect the structures historic time period.
5. Discuss an ordinance amending the Code of Ordinances by amending Chapter 14 Titled "Offenses and Additional Provisions", Article 14.05 Titled "Smoking in Public Places and Places of Employment" setting forth regulations prohibiting smoking in all workplaces and public places located within the City; providing regulations for electronic cigarettes and liquid nicotine; providing for prohibition of smoking in certain outdoor areas; providing for posting of signs; providing for penalties for business or establishments not to exceed two thousand dollars (\$2,000).
6. Discuss City Council Strategic Goal "Update our Compensation Survey" and provide data to the Council on where our pay is relative to the established policy.

**ADJOURNMENT**

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**EXECUTIVE SESSION:** The City Council reserve the right to convene into executive session on any posted agenda item pursuant to Section 551.071(2) of the Texas Government Code to seek legal advice concerning such subject.

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**ACCESSIBILITY STATEMENT:** Meetings of the City Council are held in municipal facilities are wheelchair-accessible. For sign interpretive services, call the City Secretary's office, 972-218-1311, or TDD 1-800-735-2989, at least 72 hours prior to the meeting. Reasonable accommodation will be made to assist your needs.

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**PURSUANT TO SECTION 30.06 PENAL CODE (TRESPASS BY HOLDER WITH A CONCEALED**

HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A CONCEALED HANDGUN.

CONFORME A LA SECCION 30.06 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO 411, CODIGO DEL GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO OCULTADA.

PURSUANT TO SECTION 30.07 PENAL CODE (TRESPASS BY HOLDER WITH AN OPENLY CARRIED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A HANDGUN THAT IS CARRIED OPENLY.

CONFORME A LA SECCION 30.07 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO AL AIRE LIBRE CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO H, CAPITULO 411, CODIGO DE GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO AL AIRE LIBRE.

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**Certificate**

**I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on June 16, 2017 @ 5:00 p.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.**



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Sorangel O. Arenas  
City Secretary

## LANCASTER CITY COUNCIL

### City Council Work Session

1.

**Meeting Date:** 06/19/2017

**Policy Statement:** This request supports the City Council 2016-2017 Policy Agenda

**Goal(s):** Quality Development

**Submitted by:** Shane Shepard, Economic Development Director

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#### **Agenda Caption:**

Receive a presentation from The Retail Coach regarding the development of a Retail Recruitment Strategy.

#### **Background:**

The City Council, during its strategic planning session identified a goal for a more intentional approach to attract and recruit retailers to the City of Lancaster. In August 2016, the City entered into an agreement with The Retail Coach. The Retail Coach promoted Lancaster at the Retail Live mini-conference in Austin, shortly after the contract was signed. In October 2016, staff participated in a regional ICSC conference to continue focus on retail recruitment.

The Retail Coach participated in the Builder/Developer Luncheon, in November 2016 to provide additional information regarding the trade area and options for enhanced retail options in Lancaster.

In May 2017, staff along with Mayor Knight and Councilmember Strain-Burk attended the ICSC/ReCon conference in Las Vegas.

#### **Operational Considerations:**

The City received a presentation from the Retail Coach on the following dates below:

- July 17, 2016 Work Session;
- August 8, 2016 Regular Meeting (entered into an agreement);
- December 19, 2016 Work Session

Council will receive an update from The Retail Coach.

## LANCASTER CITY COUNCIL

### City Council Work Session

2.

**Meeting Date:** 06/19/2017

**Policy Statement:** This request supports the City Council 2016-2017 Policy Agenda

**Goal(s):** Financially Sound Government  
Quality Development

**Submitted by:** Shane Shepard, Economic Development Director

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#### **Agenda Caption:**

Discuss and receive a presentation on the selection of a consultant to develop an economic development strategic plan.

#### **Background:**

The City Council during its Strategic Planning Session identified the objective to review the Economic Development and Incentive policy.

#### **Operational Considerations:**

In fulfillment of the above stated objective, a request for qualifications was issued in February 2017. There were seven proposals received, of which none were minority and/or women owned enterprises. Willdan is the company selected. City Council will receive a presentation.

## LANCASTER CITY COUNCIL

### City Council Work Session

3.

**Meeting Date:** 06/19/2017

**Policy Statement:** This request supports the City Council 2016-2017 Policy Agenda

**Goal(s):** Healthy, Safe & Vibrant Community  
Civic Engagement

**Submitted by:** Sean Johnson, Managing Director of Quality Life and Cultural Services

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#### **Agenda Caption:**

Receive a presentation to discuss and consider deal points regarding the management agreement for the operations of Country View Golf Course.

#### **Background:**

On January 9, 2017 City Council received an "Opportunity Assessment" from Touchstone Golf, LLC regarding the review and evaluations of the Country View Golf Course. This assessment was a result of the FY 2016 annual strategic planning session. City Council requested an assessment of the Country View Golf Club course and its operations be conducted in an effort to provide information to consider the future direction.

The "Opportunity Assessment" presented gave an extensive overview and SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis of Country View Golf Course.

The current extended/ amended contract ends on December 31, 2017, and upon expiration shall be automatically renewed for a period of six (6) months unless either party gives the other part written notice to terminate the Agreement ninety (90) days prior to the expiration of the then current term. The parties agree to meet during the ninety (90) days prior to the expiration of the then current term to discuss the renewal of this Agreement.

The terms of the extended contract was ten years, ending in 2015 with an automatic six month renewal unless either party gives notice of termination. In 2013, City Council extended this contract to end on December 2017 in an effort to assist David Royar to go into a four year term lease for cart lease payments. Terms of the new agreement included modifying the existing agreement to relinquish the City of Lancaster of any financial obligations arising from or pertaining to the lease of said golf carts, as well as, the providing of a discounted rate of (25%) for City of Lancaster residents on green and cart fees.

Mr. Royar provided deal points to staff regarding a new agreement that was presented to City Council on April 10, 2017. The deal points consisted of the following:

- 8 year Contract with first 2 years at \$0 lease payments
- Years 3 - 8 @ 10% Gross (Merchandising removed from 10%)
- No minimum monthly payment of \$4,167 years 3 - 8

In Lieu of the current lease payment requirements (e.g. 10% gross with a minimum monthly payment of \$4,167) Mr. Royar is proposing to make improvements at the Golf Course.

Mr. Royar will be available to present a counter proposal on comments received from City Council.

**Operational Considerations:**

Staff will receive direction from City Council as to “next steps” regarding contract that expires on December 31, 2017.

**Attachments**

Presentation (April 10, 2017 Work Session)

Proposed Deal Points

Current Contract Agreement

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City of Lancaster  
City Council Work Session  
April 10, 2017  
City Hall Council Chambers

City of Lancaster

# Country View Golf Course

City Council Goal: Healthy, Safe & Vibrant Neighborhoods

# Overview





# HISTORY OF COUNTRY VIEW GOLF COURSE



Lancaster Country View Golf Course



# Lancaster Country View Golf Course

- » **Personal Services agreement to manage concessions, pro shop, driving range 1997 – 2003 (city personnel maintained course)**
- » **Management agreement (full operations) executed in 2003 – 2015**
- » **Two year extension in 2013 (extending to 2017)**
- » **Opportunity Assessment completed in December 2016 (presented Jan. 2017)**





# OPPORTUNITY ASSESSMENT FINDINGS



Lancaster Country View Golf Course

# Opportunity Assessment Findings

## Rationale for Investment

- ◆ Upgrade/modernize
- ◆ Build the foundation for a renaissance at Country View Golf Club
- ◆ Support & enhance the value proposition
- ◆ Position CVGC for operational and financial success
- ◆ Upgrade & strengthen infrastructure; extend useful life; optimize ongoing maintenance expenditures

## Capital Improvements Plan

<u>Area of Improvement</u>	<u>Cost Estimate</u>
Golf Course	\$ 4,070,000
Maintenance Building & Yard	250,000
Golf Course Operations	390,000
Clubhouse	1,290,000
<b>Capital Improvements Plan Total</b>	<b><u>\$ 6,000,000</u></b>

## Estimated Timeline

- ◆ March 2017 – October 2017: Architectural & Engineering Plans
- ◆ November 2017 – October 2018: Construction & Grow-in
- ◆ November 2018: “Soft Opening”
- ◆ March 2019: Grand Opening

# Renovation: Capital Improvements Plan (CIP)

<b>CVGC Capital Improvements Plan</b>	<b>FY 2018</b>
<b>Golf Course</b>	
Architectural & Engineering	\$ 150,000
Irrigation System	1,200,000
Golf Course Drainage System	200,000
Greens Re-build/Renovation	900,000
Tee Leveling/Renovation	360,000
Fairway Sanding/Turfing/Renovation	360,000
Lakes/Ponds Repair, Rehab, Dredge	100,000
Creek Restoration/Rehabilitation	180,000
Vegetation Rehab/Off-fairway Areas	200,000
Cart Path Renovation & Re-paving	200,000
Driving Range Renovation	100,000
Bridges	120,000
<b>Golf Course Total</b>	<b>\$ 4,070,000</b>
<b>Maintenance Building &amp; Yard</b>	
Renovate/remodel building	\$ 200,000
Roofing	15,000
Fencing	15,000
Fuel tank	10,000
Paving (parking area)	10,000
<b>Maintenance Building &amp; Yard Total</b>	<b>\$ 250,000</b>

<b>CVGC Capital Improvements Plan</b>	<b>FY 2018</b>
<b>Golf Course Operations</b>	
GC Amenities (benches, ball washers, etc)	\$ 18,000
On-course Restrooms (2) Remodel	40,000
Signage	12,000
Renovations' Period Operations Expenses	320,000
<b>Golf Course Operations Total</b>	<b>\$ 390,000</b>
<b>Clubhouse</b>	
Architectural & Engineering	\$ 80,000
Interior Redesign & Remodel - Main Floor 6,000 SF @ \$ 125 per SF	750,000
Remodel & Rehabilitate - Basement 6,000 SF @ \$ 35 per SF	210,000
Clubhouse Exterior, Stairs, etc.	150,000
Events Pavilion	-
Parking, Landscape, Fuel Tank, Sand Storage	100,000
<b>Clubhouse Total</b>	<b>\$ 1,290,000</b>
<b>Capital Improvements Plan Total</b>	<b>\$ 6,000,000</b>

# Previous improvements made by the City

- » **New Irrigation pump system (\$81K)**
- » **Exterior painting and refinishing of club house and outdoor restrooms (\$18K)**
- » **Annual cart path materials (\$4K)**
- » **Replaced irrigation pump house(\$9K)**
- » **New exterior roof of club house (\$17K)**
- » **Replaced/ restored patio flooring (\$4K)**
- » **Erosion Control/ Sewer Main repair (\$400K)**



# Previous improvements by Golf Pro

- » Renovated greens (\$150K)
- » Remodeled Interior of pro shop/ restaurant (\$20K)
- » Annual Cart path repairs and improvements (labor)





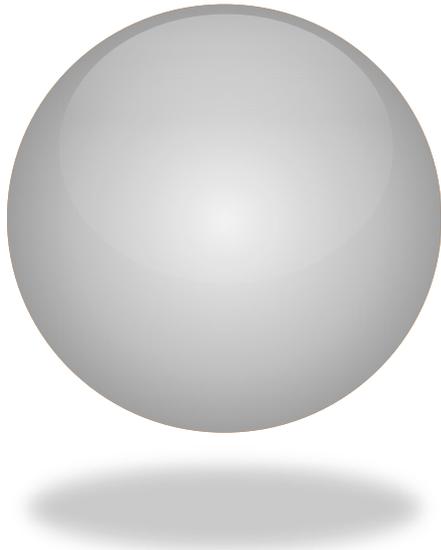
# DEAL POINTS AND CONSIDERATION FOR NEW AGREEMENT

Lancaster Country View Golf Course

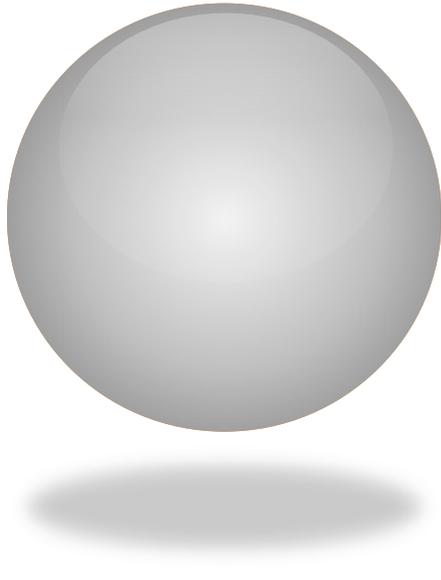


# Current Deal Points

- **City of Lancaster is responsible for necessary repairs and upkeep of the Club house**
- **City responsible for approved and agreed upon Capital Improvements**
- **City responsible for general liability insurance of golf course and property assets as with other city properties and facilities**
- **City absorbs water and refuse cost and does not pass this cost along to David Royar.**
- **City responsible for all associated debt payments associated with golf course**

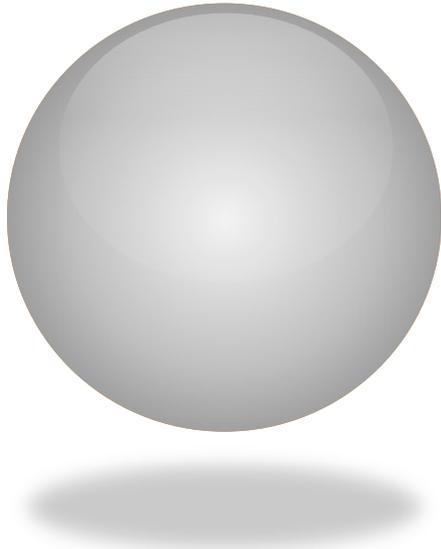


# Current Deal Points



- **David Royar pays license fee of four thousand one hundred and sixty-seven dollars (\$4,167.00) per month or ten percent (10%) of gross revenues generated from green fees, cart rentals, food and beverage and other revenues of the GOLF COURSE, whichever amount is greater.**
- **David Royar offers golf instructions at the GOLF COURSE and retain all income from such instruction.**
- **David Royar retains all income from the operation of the Golf Driving Range.**
- **David Royar purchases all supplies and materials necessary to properly maintain and operate GOLF COURSE.**
- **David Royar pays Service/Utility cost (i.e. electrical, telephone/ cable, gas, janitorial services, etc) for the entire operation of the GOLF COURSE (e.g. Clubhouse, cart storage facility, maintenance facility and irrigation system.**

# David Royar Proposed New Deal Points



- 8 year contract  
(First 2 years at \$0 lease payments)
- Years 3-8 @ 10%
  - Merchandising removed from 10%
  - No minimum monthly payment of \$4,167 years 3-8)

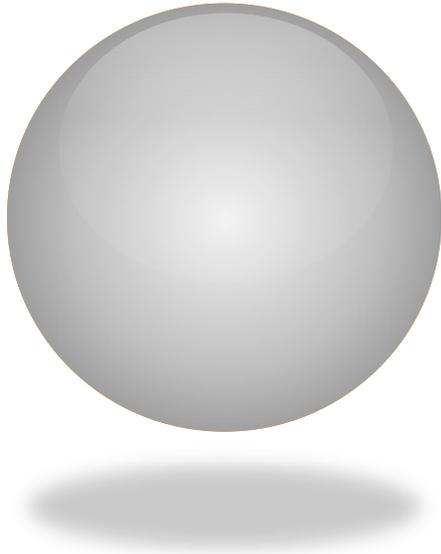
*Golf pro estimates the city will wave approximately \$150,000 in lease payments in exchange for:*



Lancaster Country View Golf Course

# David Royar Proposed New Deal Points Deliverables

## Course improvements to be expected for the proposed reduction in lease:



### Irrigation

David Royar will make the necessary repairs and upgrades; under the proposed agreement, to keep this system going through the life of the contract.

### Greens

David Royar will be able to make the necessary cultural practices to keep these greens through the life of the contract.

### Clubhouse upgrades

David Royar will be able to make a noticeable improvement to the clubhouse and pro shop under the conditions of the proposed agreement.



Lancaster Country View Golf Course

# Management Structures

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## **City Management**

- ◆ City employees supervise, manage, and operate the Golf Course

## **3<sup>rd</sup>-party Management**

- ◆ City hires a 3<sup>rd</sup>-party – firm or individual (e.g., a PGA Professional), to supervise, manage, and operate the Golf Course. City pays Management Fee to the 3<sup>rd</sup>-party.

## **Management Lease**

- ◆ City leases the Golf Course to a 3<sup>rd</sup>-party – a firm or individual (e.g., a PGA Professional), to supervise, manage, and operate the Golf Course. City collects Rent from the 3<sup>rd</sup>-party.

# Considerations

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- **Continue with existing contract as currently executed**
- **Execute a new agreement with requested deal points from Golf Pro with staff input and municipal owned golf courses best management practices**
- **Consider other options/ alternatives**



Questions?



# COUNTRY VIEW GOLF COURSE

Partnership for the Future  
2017



# STATE OF THE COURSE

## – Cons

- We are battling an aging facility
- Declining revenue
- Declining profit margins due to creative pricing to maintain volume
- Industry price compression
- Double digit industry participation decline
- Elevated greens

## – Pros

- Experience in maximizing the asset
- Experience in understanding the golfer
- History and reputation for being the best value in the metroplex
- Industry is being right sized (more closings than openings)

# OPPORTUNITIES

- Assessment by Touchstone
- Creative financing
- Shared burden
- Understanding our options
- Proposal

# OPTIMUM

- 8 year contract
- First 2 years at \$0 lease
- Years 3-8 @ 10%
- Merchandising removed from 10%
- No minimum payment years 3-8

# COMMUNITY INVOLVEMENT INITIATIVE

- **Community involvement initiative**
- We see the best way to allow the city residents to take advantage of having the course, is to offer a no cost way to practice the game or just enjoy some activity.
  - On a trial basis we will offer free range buckets to all Lancaster residents for 3 months.
  - Depending on the response, we will either make this permanent or tweak it to handle the demand.
- As we discussed, The First Tee program is a first class charitable organization that offers kids a no cost way to start the game of golf.
  - We will make sure The First Tee program visits each school in the community to make sure all residents are aware of this opportunity.
  - Countryview and The First Tee will be offering after school clinics, weekend clinics and summer camps this year.
  - The cost for these are subsidized by The First Tee charity.
- We will also still have the discounted green fees for residents.

# EXPECTATIONS UNDER PROPOSAL

- **Course improvements to be expected for the reduction in lease**
- Irrigation
  - In the Touchstone assessment; I believe they had this as a \$1.2 million dollar line item to replace the system.
  - We will be able to make the necessary repairs and upgrades; under the proposed agreement, to keep this system going through the life of the contract.
- Greens
  - In the Touchstone assessment; I believe this was a \$900,000 line item to replace the greens.
  - We will be able to make the necessary cultural practices to keep these greens through the life of the contract.
- Clubhouse upgrades
  - In the Touchstone assessment; I believe this was a \$1.4 million dollar line item to make the necessary upgrades.
  - We will be able to make a noticeable improvement to the clubhouse and pro shop under the conditions of the proposed agreement.

# SUMMARY

- We are proposing:
- The city will pay approximately \$150,000 in lease payments in exchange for;
- Making the necessary improvements to extend the life of the asset, that would cost approximately \$3.5 million dollars to replace.

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

**GOLF MANAGER AGREEMENT**

This Agreement is made by and between the City of Lancaster, Texas, a Texas municipal corporation (hereinafter referred to as the "CITY") and David Royar Golf Shop, Inc., a Texas Corporation, and David Royar, individually (hereinafter referred to collectively "MANAGER") under the following conditions and terms:

**WITNESSETH:**

**WHEREAS**, the CITY and the MANAGER entered into a personal services contract on July 1, 2003, and subsequently entered into an extended golf manager agreement on December 12, 2005 for the full supervision, operation, and management of the Lancaster Country View Golf Course (hereinafter referred to as the "GOLF COURSE"); and

**WHEREAS**, the MANAGER possesses unique skills required for a golf MANAGER; and

**WHEREAS**, the parties desire to enter into a new agreement for the supervision, operation, and management of the GOLF COURSE, and the Pro Shop and Restaurant (hereinafter referred to collectively as the "AMENITIES");

**NOW, THEREFORE**, in consideration of the foregoing and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

**I. Golf Course Operations**

A. Relationship. The MANAGER is an independent MANAGER and is not an employee or servant of the CITY. The MANAGER shall determine the legal means to accomplish the services described herein. The CITY is not responsible for withholding FICA or taxes of any kind from any payment which it owes the MANAGER. Neither the MANAGER nor persons employed by the MANAGER shall be entitled to receive any benefits that employees of the CITY are entitled to receive, and shall not be entitled to workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing, or Social Security on account of their work for the CITY.

B. Term. This Agreement will commence on the date of execution (the "Effective Date"), shall end on December 31, 2017, and upon expiration shall be automatically renewed for a period of six (6) months unless either party gives the other part written notice to terminate the Agreement ninety (90) days prior to the expiration of the then current term. The parties agree to meet during the ninety (90) days prior to the expiration of the then current term to discuss the renewal of this Agreement.

C. GOLF COURSE Operations.

- (1) The MANAGER shall control all ways and means incident to the GOLF COURSE operations, under the direction of the City Manager or designee. It is the intent of the CITY that the MANAGER shall be on the GOLF COURSE premises as much as is practicable and not away for recurring extended time periods. Any leave of more than two weeks (14 consecutive days) shall not be taken without the written approval of the City Manager or designee.
- (2) MANAGER shall employ and pay sufficient staff of his own to operate the AMENITIES including, but not limited to, Head Golf Professional (certified by the Professional Golfers Association), Assistant Golf Pro (certified by the Professional Golfers Association), Grounds Superintendent (certified by the Golf Course Superintendents Association of America), sufficient starters, marshals, cashiers, clerical persons, restaurant personnel, sales personnel, golf cart maintenance personnel, maintenance and landscape personnel, and custodial personnel for Clubhouse. MANAGER may establish salaries, bonuses and similar incentive programs for his employees as he deems appropriate.
- (3) The MANAGER will plan and prepare an annual budget for the GOLF COURSE operations and will provide timely financial reports as required by the City Manager or designee.
- (4) The MANAGER shall attend CITY staff meetings and functions as determined by the City Manager or designee.

D. Golf Lessons.

- (1) The MANAGER agrees to establish and maintain a program of golf instruction adequate to meet the demands of the public and to employ a sufficient number of competent golf instructors to meet demand. Time spent on golf instruction by any personnel retained by the MANAGER shall not interfere with the normal day to day operations of the GOLF COURSE.
- (2) MANAGER shall have the exclusive right to provide lessons at the GOLF COURSE, although sufficient allowance should be made for LISD golf teams and coaches to be able to use the facility. Such school activities should be undertaken with the approval of the MANAGER and subject to the authorization of the City Manager or designee.
- (3) MANAGER shall be permitted to give golf instructions at the GOLF COURSE and retain all income from such instruction. Time spent on golf instruction by any personnel retained by the MANAGER shall not interfere with the normal day to day operations of the GOLF COURSE.

- (3) MANAGER may retain all income from golf lessons.

E. Golf Carts.

- (1) The MANAGER shall provide and maintain all motorized golf carts in adequate numbers, as agreed upon after consultation with the City Manager or designee. Maintenance shall include, but is not limited to, repair service, preventive maintenance, damage repair, tire repair or replacement, battery replacement and other maintenance necessary to keep carts in good working order. All maintenance cost shall be paid by the MANAGER. The MANAGER may charge customary and reasonable fees for the rental of the golf carts.
- (2) MANAGER shall provide sufficient personnel to keep carts clean, operable and presentable at all times, to park carts in the storage area, and to retrieve said carts from storage as necessary to make available for patron's use.
- (3) MANAGER shall be required to provide new carts every three (3) years.
- (4) MANAGER, at his sole expense, shall provide for the cleaning and painting of parking areas in the cart storage facility.
- (5) MANAGER shall pay a portion of the gross revenues from golf cart rentals in accordance with Article VI. Financial Considerations in this agreement.

F. Golf Driving Range.

- (1) MANAGER shall provide, maintain, staff and operate a golf driving range at the GOLF COURSE.
- (2) MANAGER shall provide an adequate supply of golf balls and shall provide, maintain, and operate adequate golf ball dispensing machines, ball cleaning equipment, and any other equipment necessary to operate the driving range.
- (3) MANAGER shall provide new golf ball retrieving equipment as needed. MANAGER shall operate retrieving equipment with GOLF COURSE personnel in a prudent manner so as to properly operate the Golf Driving Range. MANAGER, at his sole expense, shall provide maintenance as may be needed on the golf ball retrieving equipment. MANAGER, at his sole expense, shall replace golf ball retrieving equipment as necessary.
- (4) MANAGER shall maintain the Driving Range grass and turf areas.

- (5) MANAGER may retain all income from the operation of the Golf Driving Range.

G. Pro Shop. The MANAGER shall provide, maintain, equip and operate a Pro Shop at the GOLF COURSE. The Pro Shop may include sales of golf clubs, golf balls, clothing, golf equipment, and other merchandise. MANAGER shall also supply and maintain basic first aid supplies and necessary fire protection equipment. MANAGER agrees that the pricing of all items sold in the Pro Shop shall be reasonable and competitive with similar retail sales operations in the area. The MANAGER shall own all merchandise. The MANAGER shall have the exclusive right to retrieve lost balls from the ponds, lakes, creeks, etc., and to sell retrieved golf balls in the Pro Shop. It shall be the responsibility of the MANAGER to supply all other equipment or supplies necessary to provide for the successful operation of the Pro Shop. The MANAGER agrees to supply and maintain all equipment necessary for the proper maintenance of all grass, natural growth, trees and shrubbery surrounding the Pro Shop area.

MANAGER shall pay a portion of the gross revenues from the Pro Shop in accordance with Article VI. Financial Considerations in this agreement.

H. Clubhouse, Food and Beverage Operations. The MANAGER shall provide, maintain, staff, and operate food and beverage concessions at the GOLF COURSE. The MANAGER agrees to supply and maintain all equipment necessary for the proper maintenance of all grass, natural growth, trees and shrubbery surrounding the Clubhouse/pro shop area.

- (1) The MANAGER shall maintain all equipment, furniture, fixtures, including kitchen equipment, located in the Clubhouse area, at the MANAGER'S sole cost and expense, whether said equipment is owned by the CITY or the MANAGER. The MANAGER shall maintain the Clubhouse and equipment in a clean and sanitary manner at all times. The MANAGER shall supply and maintain basic first aid supplies and necessary fire protection equipment. The MANAGER agrees to supply and maintain all equipment required for the Food and Beverage Operations and to supply, at the MANAGER'S sole cost and expense, other equipment or supplies which may be necessary to provide for the successful operation of the Food and Beverage Operations concessions. The MANAGER shall operate and maintain the Food and Beverage Operations in accordance with all applicable CITY and State laws, rules, and regulations.
- (2) The MANAGER shall provide a menu featuring foods, snacks, candies, beverages and refreshments of every kind for which there may be a reasonable demand. It is the intention of both parties that the Food and Beverage Operations will be a high quality food operation with a sufficiently varied menu to attract and hold increasing clientele.
- (3) The CITY will perform a Food and Beverage Operations audit at the end of every twenty-four (24) months of operation to determine any future needs or plans to expand or change the current Food and Beverage Operations.

- (4) The MANAGER shall not authorize or permit the installation of any amusement device without the written consent of the City Manager or designee. The MANAGER shall maintain adequate, qualified personnel to staff the Food and Beverage Operation and proper supervision of said staff. The employees of the MANAGER shall serve the patrons of the Golf Course promptly and in a courteous manner.
- (5) The MANAGER may sublease or contract for the operation of the Food and Beverage Operations located at the GOLF COURSE.
- (6) MANAGER shall pay a portion of the gross revenues from all Food and Beverage Operations concessions in accordance with Article VI. Financial Considerations in this agreement.

## **II. Maintenance of GOLF COURSE Premises**

A. MANAGER shall maintain the landscaping on the GOLF COURSE premises so that all grass, natural growth, trees and shrubbery appear trimmed and attractive. MANAGER shall supply and maintain all equipment necessary for the proper maintenance of all grass, natural growth, trees and shrubbery.

B. MANAGER shall provide for all maintenance required to operate and provide a first class golf facility. This maintenance shall include those activities that are considered normal and customary for a GOLF COURSE of similar design including, but not limited to, fertilization, irrigation, weed control, insect and vermin control. Turf management to be provided by MANAGER includes, but is not limited to, general mowing, reseeding, over seeding, aeration and specialized mowing of greens.

C. MANAGER shall, at MANAGER'S sole expense, purchase all supplies and materials necessary to the proper maintenance and operation of the GOLF COURSE. Such supplies and materials may include, but are not limited to, fuel, oil, seed, landscaping plants, flowers, fertilizer, herbicide and other chemicals.

D. The MANAGER shall inform the City Manager or designee of any necessary maintenance to any building or fence at the GOLF COURSE. All buildings and fences shall be maintained by the CITY, at CITY'S sole cost and expense.

E. MANAGER, at the termination of this Agreement, shall relinquish the PREMISES in good condition, normal wear and tear excepted.

## **III. Promotional Programs**

MANAGER shall provide for all promotional, marketing and public relations activities necessary to improve and enhance the public image and level of play at the GOLF COURSE. Expenses for said promotional, marketing and public relations activities shall be borne and paid entirely by MANAGER. MANAGER shall provide a marketing plan for review by the City

Manager or designee. MANAGER may discount green fees, cart rentals or other fees in order to increase overall revenues for the GOLF COURSE.

#### **IV. Transition, Capital Improvements, Accounting and Reporting**

A. City-Owned Equipment: MANAGER will assume operational responsibility for all CITY-owned equipment currently used in the maintenance of the GOLF COURSE. All such owned equipment shall be the property of the CITY. All insurance, maintenance, repair or necessary replacement will be at the MANAGER'S expense. Any replacement equipment will be owned by the MANAGER. Any CITY-owned equipment that is replaced will be disposed of through normal city processes.

B. Capital Improvements. MANAGER, in the performance of his duties, shall from time to time prepare recommendations for capital improvements and submit to the City Manager or designee for consideration. It is assumed that these improvements would improve the value of the GOLF COURSE and therefore would be paid by the CITY should they decide in favor of the suggested improvements.

C. Accounting Records and Reports.

- (1) During the term of this Agreement, MANAGER shall establish and maintain separate records and accounts, including a separate bank account, for the operation of this facility. Such records and accounts shall be subject to examination and audit by the CITY at any reasonable time. The form of such records and reports shall conform with generally accepted accounting practices and shall be subject to approval by the CITY Director of Finance.
- (2) MANAGER shall permit only those who have paid required green fees to play and receipts will be issued to each customer for said fees.
- (3) All green fees, cart fees, and other fees as may be required by the CITY, shall be developed and recommended by MANAGER and approved by the City Manager or designee. All fees, prices and rates shall be conspicuously posted at the GOLF COURSE.
- (4) MANAGER shall prepare a daily report showing the amounts, totals, and types of revenues collected, including number of players, green fees, types of green fees (i.e., week-day, week-end, Jr., Sr., TWI), number of golf carts rented, number of discounted rounds, and other daily items as required by the Director of Finance. Reports shall be submitted to the Director of Finances without demand or on a schedule as approved by the Director of Finance.
- (5) MANAGER shall also prepare monthly reports on revenues collected as may be required by the City Manager or designee, which shall segregate

green fees, cart rentals, restaurant, Pro shop, driving range, and golf lessons, or as otherwise may be requested by the City Manager or designee.

## V. Financial Considerations

- A. In consideration of the Grant of Privileges contained herein, MANAGER agrees to pay a monthly GOLF COURSE license fee of four thousand one hundred and sixty-seven dollars (\$4,167.00) per month or MANAGER agrees to pay ten percent (10%) of gross revenues generated from green fees, cart rentals, food and beverage and other revenues of the GOLF COURSE, whichever amount is greater.
- B. MANAGER agrees to allow City of Lancaster Residents play at a reduced rate of 25% lower than the offered rate per round.
- C. Payment of fees to CITY shall be monthly on the 15<sup>th</sup> day of each month, unless otherwise specified and approved by the City Manager or designee.

## VI. Structural Changes

A. MANAGER shall not make any structural alterations, repairs, or improvements to the GOLF COURSE premises or any building or structure thereon without the written consent of the City Manager or designee. Any such alterations made shall be done at the expense of the MANAGER and shall become the property of the CITY at the termination of this Agreement. The MANAGER shall make a written report to the City Manager or designee of any needed repairs, suggested alterations or improvements required.

## VII. Utilities

- A. Electrical service for the entire operation of the GOLF COURSE including, Clubhouse, cart storage facility, cart recharging, maintenance facility and irrigation system, shall be paid for by the MANAGER.
- B. Natural gas service for Clubhouse shall be paid for by MANAGER.
- C. All telephone service, local and long distance, for all GOLF COURSE operations shall be paid for by the MANAGER.
- D. All water and refuse collection to include associated cost resulting from irrigation of course shall be paid for by the MANAGER.

## VIII. Indemnification

A. MANAGER assumes all risks of loss or injury to MANAGER'S property or to the property or person of all its agents, employees, invitees, customers, or others arising from the MANAGER'S operations on CITY premises; and MANAGER shall, at his own cost and expense, defend and protect the CITY and indemnify and hold harmless the CITY from any and all claims,

demands, suits, judgments, costs or expenses (including attorney's fees and other cost of litigation) on account of any such loss or injury related to MANAGER operations. MANAGER further agrees to indemnify and hold the CITY harmless from any and all claims or losses which may result from any negligence or misconduct on the part of the MANAGER, his agents, employees or representative.

B. MANAGER agrees to name the CITY a co-insured party and supply the CITY with a duplicate copy of an insurance policy acceptable to the CITY providing public liability insurance in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) for each person, Five Hundred Thousand Dollars (\$500,000.00) for each single occurrence for bodily injury or death, and One Hundred Thousand Dollars (\$100,000.00) for each single occurrence for injury to or destruction of property arising out of MANAGER'S operations on CITY premises, whether the sole responsibility of MANAGER, his agents or employees, or the joint responsibility of the CITY, its agents or employees.

C. MANAGER shall be responsible to provide worker's compensation insurance coverage or a worker's accident insurance policy for all its employees.

D. CITY shall provide general liability, through its Risk Management Program, insurance coverage at the GOLF COURSE similar to other CITY facilities. Such coverage shall be for appropriate liability coverage for CITY property and vehicle liability.

### **IX. Termination**

A. It is understood and agreed that either party may terminate this Agreement ninety (90) days after delivering to the other party, notice in writing, of its intention to terminate.

B. If the CITY elects to terminate for cause or convenience upon ninety (90) days notice, MANAGER agrees to either:

- (1) Continue payment of golf cart lease at MANAGER'S expense; or
- (2) Arrange for a successor manager or other person to purchase such inventory and equipment at a price to be negotiated.

### **X. Default**

If the MANAGER defaults in the performance of any duties or obligations under this Agreement, or fails to pay the amounts which become due to the CITY hereunder, or if the MANAGER makes an assignment of assets or places assets in the possession of a receiver, then and in any such case, the CITY may, at its option, declare this Agreement null and void for cause and repossess the GOLF COURSE and AMENITIES. It is further agreed that one or more instances of forbearance by the CITY in the exercise of its rights hereunder shall in no way constitute a waiver of said rights.

### **XI. Notice**

Any and all payments, notices, demands, or other communication shall be in writing and shall be deemed given when hand delivered or sent Registered or Certified Mail, Postage Prepaid, in the United States Mail, addressed as set forth below, or to such other address as either of the parties shall advise the other in writing.

If intended for **CITY**:

City Manager  
City of Lancaster  
P.O. Box 940  
Lancaster, Texas 75146-0940

If intended for **MANAGER**:

Mr. David Royar  
Manager  
Lancaster Country View Golf Course  
240 West Beltline Road  
Lancaster, Texas 75146

## **XII. Amendments**

This Agreement may only be amended by mutual written agreement amending the same and being executed by both parties.

## **XIII. Miscellaneous Provisions**

A. Laws and Regulations. MANAGER shall abide by all local, state and federal laws and regulations in operating the entire Golf facility and shall abide by all CITY regulations and policies as directed by the City Manager or designee.

B. Transfer in the Event of Death. In case of death of the MANAGER, this Agreement shall terminate. In such event, CITY shall make arrangements for the temporary management of the GOLF COURSE and AMENITIES to a replacement MANAGER and CITY shall also make arrangements for payment to MANAGER'S estate of MANAGER'S equity in inventory and/or equipment as may be appropriate.

C. Private Club License. MANAGER must be capable of obtaining, at his sole cost and expense, a private club license under the appropriate provisions of TABC rules, for the purpose of serving alcoholic beverages in a private club.

D. Attorney's Fees. In the event legal action is undertaken by the CITY to collect rentals due or to collect damages for breach of this Agreement by the MANAGER, the CITY shall be entitled to reasonable attorney's fees which shall be deemed to be not less than ten percent (10%) of any amount recovered in such action.

E. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in Dallas County, Texas.

F. Entire Agreement. This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter.

G. Assignment. This Agreement shall not be assigned by MANAGER, nor shall MANAGER permit any other person, firm, or corporation to conduct any part of the GOLF COURSE operations without the prior written approval of the City Council of the CITY of Lancaster.

H. Disposition of MANAGER'S Property. Upon termination of this Agreement by expiration or for cause, the CITY will not be liable in any way for costs or expenses associated with MANAGER'S inventory, equipment or other property. MANAGER assumes full responsibility for the sale or other disposition of any such property, and CITY has no obligation whatsoever to MANAGER in connection therewith. For the purposes of this Agreement, the death of the MANAGER during the term of this Agreement shall not be treated as a termination by expiration or for cause, and the MANAGER'S inventory, equipment and other property shall be disposed of pursuant to the provisions of this Agreement.

I. Severability. Should any section, paragraph, sentence, clause or phrase hereof be held or determined to be invalid or unconstitutional for any reason, such holding shall not affect the validity of the remaining portions hereof which are declared to be severable.

**EXECUTED** on this \_\_\_\_ day of \_\_\_\_\_, 2005.

**MANAGER:**

**DAVID ROYAR GOLF SHOP, INC.**

By: \_\_\_\_\_

David Royar  
Lancaster Country View Golf Course  
240 W. Belt Line Road  
Lancaster, Texas 75146

**DAVID ROYAR, INDIVIDUALLY**

By: \_\_\_\_\_

David Royar

**CITY:**

**CITY OF LANCASTER, TEXAS**

By: \_\_\_\_\_

Opal Mauldin-Robertson, City Manager  
City of Lancaster  
P. O. Box 940  
211 North Henry Street  
Lancaster, Texas 75146-0946

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert E. Hager, City Attorney  
(REH/cdb 11/8/13)

## LANCASTER CITY COUNCIL

### City Council Work Session

4.

**Meeting Date:** 06/19/2017

**Policy Statement:** This request supports the City Council 2016-2017 Policy Agenda

**Goal(s):** Healthy, Safe & Vibrant Community  
Quality Development

**Submitted by:** Bester Maunyaradzi, Senior Planner

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### **Agenda Caption:**

Discuss amending Chapter 3 Article 3.800, "Fence Regulations," of the Lancaster Code of Ordinances to remove eight (8) foot fences with the exception of the side or back of a property that faces a major thoroughfare or intense commercial use and amending Chapter 3.16 "Fence and Site Elements" of the Lancaster Historic Residential Design Guidelines requiring fences in the historic district to reflect the structures historic time period.

### **Background:**

As prescribed in the City Council rules and procedures as amended September 2016, Section D. City Council Agenda Process, Subsection 1.b., Councilmember Carol Strain-Burk requested that an item be placed on the agenda for the purpose of Council reviewing the fence regulations and considering amendments to removing 8 foot fences with exceptions for properties facing a major thoroughfare or intense commercial use and to remove 8 foot fences from the historic district residential guidelines.

After much discussion at the April 17th Work Session concerning fence regulations, City Council requested for more information concerning fence requirements for Lancaster as well as survey cities. Staff prepared a comparison chart of the materials, height, agriculture use and other requirements as it relates to screening of residential properties from non-residential uses from a list of Lancaster's Survey cities. Attached are the research results comparing the survey cities.

### **Attachments**

Fence Ordinance

Historic District Guidelines (Fence)

Fence Ordinance Comparison Chart

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ORDINANCE NO. 2011-03-06

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE LANCASTER CODE OF ORDINANCES, CHAPTER 3, BY REPEALING ARTICLE 3.800, "FENCE REGULATIONS", IN ITS ENTIRETY AND REPLACING WITH A NEW ARTICLE 3.800, "FENCE REGULATIONS"; PROVIDING FOR DEFINITIONS; PROVIDING A PERMIT REQUIREMENT, APPLICATION AND FEE; PROVIDING FOR THE ENCROACHMENT OF PUBLIC PROPERTY; PROVIDING FOR CONSTRUCTION WITHIN EASEMENTS; PROVIDING FOR HEIGHT LIMITATIONS – REAR AND SIDE YARDS; PROVIDING FOR FENCES ON REVERSE FRONTAGE LOTS; PROVIDING FOR THE USE OF BARBED WIRE OR ELECTRONICALLY CHARGED FENCES; PROVIDING FOR FENCE CONSTRUCTION AND MATERIALS; PROVIDING FOR GATES; PROVIDING FOR INSPECTION; PROVIDING FOR MAINTENANCE AND STANDARD OF FENCE; PROVIDING FOR THE APPEAL OF SPECIFIC REQUIREMENTS; PROVIDING FOR THE APPEAL PROCESS; AND BY AMENDING CHAPTER 14, LANCASTER DEVELOPMENT CODE, BY REPEALING ARTICLE 14.500, SECTION 14.501, SUBSECTION (h), "FENCES", IN ITS ENTIRETY AND RESERVING THE SAME FOR FUTURE USE; PROVIDING FOR SEVERABILITY; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING FOR A PENALTY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

SECTION 1. That the Lancaster Code of Ordinances be, and the same is, hereby amended by Chapter 3, by repealing Article 3.800, "Fence Regulations", in its entirety and replacing with a new Article 3.800, "Fence Regulations", which shall read as follows:

**"ARTICLE 3.800 FENCE REGULATIONS**

**Sec. 3.801 Definitions**

For the purpose of this article, the following terms, phrases and words shall have meanings respectively ascribed to them by this section:

Code Official. The administrative official or the designated representative charged with the responsibility of enforcement of this article.

Approved. Approved by the code official or the city council of Lancaster, Texas.

Corner Lot. A lot situated at the intersection of two (2) streets, the interior angle of such intersection not to exceed one hundred thirty-five 135 degrees.

Fence. Any wall, berm or structure more than two and one-half (2 ½) feet in height erected or maintained for the purpose of enclosing, screening, restricting access to or decorating the surrounding lot, parcel, building or structure; located entirely on private property.

Front Yard. An open, unoccupied space on a lot facing a street and extending from the building or the required building line across the front of a lot.

Height (of fence). Measured from ground level at the base of fence to the uppermost part of the fence.

Interior Lot. A lot other than a corner lot.

Interior Lot Line. The side yard lot line that is adjacent to a corner lot or an interior lot's side yard line.

Rear Yard. A yard extending across the rear of a lot between the side lot lines and being the minimum horizontal distance between the rear lot line and the rear of the principal buildings.

Reverse Frontage Corner Lot. A corner lot where the rear lot line is adjacent to a side lot line of an adjoining lot or across an alley from such side lot line.

Side Yard. An open unoccupied space on the same lot with the building, extending from the building or the required building line and the same lot line.

Street. For the purpose of this article, street shall refer to public and private streets.

Through Lot (Double Frontage Lot). A building lot not a corner lot, where both the front and rear lot lines adjoin street lines. For the purpose of this section, both street lines shall be deemed front lot lines.

Vision Triangle. Vision triangle is that imaginary area created by measuring along two (2) intersecting property lines a distance as indicated below, then drawing a line diagonally. Fence or fences in these vision triangles shall not exceed two and one-half (2 ½) feet in height.

- 1) Street-Street Intersections. The vision is determined by measuring back from the intersecting point of the two (2) property lines parallel to the intersecting streets a distance of twenty-five (25) feet, and drawing an imaginary line across these two (2) points.

- 2) Alley Intersections. The vision triangle is determined by measuring back from the intersecting point of the two (2) property lines parallel to the intersecting alley a distance of ten (10) feet, and drawing an imaginary line across the two (2) points. (See Figure #5 at the end of this ordinance.)

**Sec. 3.802 Permit to Erect Required**

It shall be unlawful for any person, firm or corporation to erect or have erected, or to make substantial repairs, suffer or permit a fence or any part of a fence of permanent construction without first obtaining a fence permit from the office of the code official.

**Sec. 3.803 Application for Permit**

Any person making application for a fence permit shall sign an application which shall contain the following information:

- 1) Applicants name, address and if the applicant represents a corporation, the name and address of the registered agent of the corporation, and if the applicant represents an association, the name and address of the higher manager or agent of the association.
- 2) Name of the owner of the property.
- 3) Address where the fence is proposed to be erected.
- 4) Type of fence construction and buildings to be utilized.
- 5) Height of fence.
- 6) Site plan showing proposed location of the fence and listing relevant dimensions between the fence and other structures on the lot and the location of property lines, easements and public rights-of-way.

**Sec. 3.804 Permit Fee**

Upon approval of application and at the time of issuance of permit, the applicant shall pay a fee as set forth in the Master Fee Schedule. Any fence constructed without first being issued the required building permit the permit fee may be doubled.

**Sec. 3.805 Encroachment of Public Property**

No fence, guy wires, braces or any post of such fence constructed pursuant to this Article shall be constructed upon or caused to extend or otherwise encroach over public property that the city or the general public has dominion and control, owns or has a right of access over, under, around or through, except upon utility easements which are permitted to be fenced.

**Sec. 3.806 Construction Within Easements**

- a) Permission to build a fence upon a utility easement does not remove the obligation of the owner of said fence to remove the fence upon demand of the utility company. Removal of any fence and any rebuilding of any fence shall be the responsibility of the owner of said fence and at the owner's expense.
- b) Fences shall be designed, constructed and maintained so as not to interfere with utility lines.
- c) Fences shall be designed, constructed and maintained so as not to interfere with normal drainage.

**Sec. 3.807 Height Limitation-Rear and Side Yards**

It shall be unlawful to erect, maintain, suffer or permit a fence at a height exceeding (8) feet in any rear yard or along any rear yard lot line, or in any side yard or along any side yard line, except by appeal to the Zoning Board of Adjustment Board and by favorable vote from same.

**Sec. 3.808 Height Limitation-Front Yards**

- a) Front Yard Fences shall be constructed within the required front yard according to the following:
  - 1) The fence is forty-eight (48) inches or less in height, and the fence is fifty (50) percent visibility open (no solid fences). (See Figure #1.)
  - 2) In the case of a corner lot, the fence is forty-eight (48) inches or less in height, and the fence is fifty (50) percent visibility open (no solid fences). (See Figure #2.)
  - 3) Metal fabric material (chain link) fence materials are not allowed within the required front yard except for the repair or replacement of existing chain link fences to its original height.

**Sec. 3.809 Fences on Reverse Frontage Lots**

- a) On all reverse frontage lots located on property zoned for residential use, or used for residential use, it shall be unlawful to construct, maintain, suffer or permit a fence within the required side yard area that is adjacent to a front yard area at a distance closer than ten (10) feet of the side property line.
- b) It shall be an affirmation of defense to subsection (a) above that:
  - 1) The fence is four (4) feet or less in height and the fence allows at least fifty (50) percent through vision. (See Figure #3.)

**Sec 3.810 Use of Barbed Wire or Electrically Charged Fences**

- a) Only fences as part of an agricultural or farming or ranching related activities erected, maintained or permitted shall be electrically charged in any manner or form. The exclusion includes but is not limited to fences electrically charged by battery or those tied in with the regular electrical outlet.
- b) No fence erected, maintained or permitted shall be made with barbed wire unless as part of an agricultural or farming or ranching related activities.
- c) No fence erected, maintained or permitted shall be made with concertina wire, razor wire or anything capable of causing significant harm to the general public.
- d) Any barbed wire portion of a fence for a commercial application must be on that portion of the fence over six (6) feet in height. The barbed arms shall not extend over public rights-of-way or easements or over private property of another person. When adjoining property is zoned or used for residential purposes or public rights-of-way, barbed arms shall extend inward. (See Figure #4.)

**Sec. 3.811 Fence Construction and Materials**

- a) All fences, unless prohibited elsewhere in this Article, shall be constructed or maintained with wire or metal fabric material (chain link), wood, brick, stone, concrete, vinyl, ornamental iron or other approved materials as approved by the code official. Fence posts shall be constructed or made of metal, brick, stone, concrete, fiberglass or other material approved by the code official. All fence posts must be placed at a depth of at least twenty-four (24) inches into the ground filled and anchored with concrete footers or encasement.
- b) The Zoning Board of Adjustments of the City of Lancaster is hereby designated the appeal body to hear any appeals to decisions rendered from the strict application of this section. Any material proposed not outlined in the above ordinance is considered prohibited for use as fence construction materials.
- c) Fencing in Commercial and Industrial districts behind the front building line shall be constructed of the primary masonry materials of the building, wrought iron, chain link, living plant material or other material as approved by the code official.

**Sec. 3.812 Gates**

It shall be unlawful for any person to erect, construct or maintain any fence without providing a gate or other means of entrance and exit into and out of the area which the fence encloses; and it shall further be unlawful for any person to erect, construct or maintain any fence along or near a rear property line which adjoins an alley or easement without providing a reasonable means of access to such alley or easement. Gates must swing inward toward private property and are not allowed to swing outward across property lines into public rights-of-way.

### **Sec. 3.813 Inspection**

Upon completion of the installation of a fence, the building inspection department shall be called upon for inspection. An acceptance tag will then be issued or a rejection tag indicating the defects in the same not in compliance with approved plans of city ordinances.

### **Sec. 3.814 Maintenance and Standard of Fence**

All fences shall be maintained by the owners of the property so as to comply with the requirements of this article and shall also be maintained in good condition, such condition shall not deviate from the maintenance standards as follows:

- 1) The fence shall not be out of vertical alignment more than twenty (20) degrees.
- 2) Any and all broken damaged, removed or missing parts of said fence shall be replaced within ten (10) days of receiving notification by regular mail, or notice delivered in person by the code official or his authorized representative. The code official may, upon written notice from the owner that unusual circumstances prevent the timely repair of a fence, extend the replacement time as necessary. Replacement materials to be the same material, size, shape and quality of original fence to which the repair is being made except when a post is damaged, removed or missing. Replacement materials of fence posts shall conform to the standards established by Section 3.811 above. Such post shall be replaced with metal or steel (095 or schedule 40) or other material approved by the code official. Except in cases where a fence or fences are ordered to be constructed on property as a result of a specific order of the city council or through operation of the zoning ordinances of the city, the above requirements shall not be construed so as to not allow a fence or fences to be removed.

### **Sec. 3.815 Appeal of Specific Requirements**

Upon denial of a fence permit application by the code official, an applicant may appeal in writing to Zoning Board of Adjustment Board for consideration of variances. Whenever the applicant can show that a strict application of the terms of this article will impose upon him unusual or practical difficulties, the Zoning Board of Adjustment may consider such variances when the board is satisfied that granting of such variation will not merely serve as a convenience but will alleviate some demonstrable and unusual hardship or difficulty to warrant a variance and at the same time, the surrounding property will be properly protected.

Areas that warrant a hearing before the Zoning Board of Adjustments would be fence materials, fence setbacks and overall height of the fence. These are the only areas that may be considered for considering a variance by the Zoning Board of Adjustments.

**Sec. 3.816 Process of Appeal**

- a) After denial of a fence permit, the applicant may file an application for appeal for a variance hearing with the Planning Department to be considered or scheduled for a hearing before the Zoning Board of Adjustments.
- b) An appeal fee as provided for in the Master Fee Schedule shall accompany such application.
- c) Site plan drawings and elevations of proposed fence shall accompany application.
- d) The Zoning Board of Adjustment shall hear the appeal from the applicant and render a decision.”

**SECTION 2.** That the Lancaster Development Code be, and the same is, hereby amended by repealing Article 14.500, Section 14.501, Subsection (h), “Fences”, in its entirety and reserving the same for future use, which shall read as follows:

**“ARTICLE 14.500. DISTRICT DEVELOPMENT REGULATIONS  
AND STANDARDS**

.....

**Sec. 14.501 General**

.....

- (h) Reserved for future use
- (i) Chart of District Standards. ....”

**SECTION 3.** That all provisions of the Code of Ordinances and Lancaster Development Code in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Code of Ordinances and Lancaster Development Code not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 4.** That should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, or of the Code of Ordinances or Lancaster Development Code, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances or Lancaster Development Code, as amended hereby, which shall remain in full force and effect.

## CHAPTER 3.16: FENCES AND SITE ELEMENTS

### Introduction to Fences

As with other site elements, fences at historic properties vary in style and materials – from historic twisted wire fences, open wood fences, fences with masonry bases and wood pickets to newer wood privacy fences in rear yards.

#### 3.16.1 Historic Fences

Historically fences served more uses than their modern counterparts. Historic fences separated the “living” areas of the yard from the “working” areas (rear yards) in developed as well as rural areas. Many residents in Lancaster kept chickens, horses and had gardens in their large back yards. Fences provided separation between these different uses in a yard and from adjacent properties. Fences between neighbors were typically open and low, and allowed visibility and access between adjacent properties.

Historic fences often express the style, craftsmanship and status of a house and are an important aspect of the landscape of a historic house.

Property owners are encouraged to replicate historic fences that no longer exist, or to replace with a fence that reflects the historic fences' design or one that is simpler in design and constructed of similar materials. Photographs may be used to determine the historic fence design.

#### *Recommendations:*

- Original and historic wood or wire fences are important character-defining features of a historic house and should be preserved and maintained.
- Existing non-historic fences in a front yard should be replaced with a fence that reflects the design of the historic fence or one that is simpler in design.
- Additions to historic fences should be carefully designed to complement and not visually overwhelm the historic fence.

#### 3.16.2 New Fences

In the 1950s the concept of privacy fences in residential neighborhoods began with the construction of 5' and 6' high wood fences. Such high, solid fences are now quite typical, even at historic properties and neighborhoods.

New fencing that is appropriate for the type and style of house and its status within the community is encouraged. For example,



Simple Wood Fence



Decorative Wood Fence



Elaborate Wood Fences should complement the Style of a Historic House

while it may be appropriate for a historic mansion to have a simple 6' wood privacy fence around their back yard, it would not be appropriate for a modest 1910s Arts and Craft Bungalow to have a 8' high fence with stone columns with decorative urns on top with infilled wrought iron fence with decorative fleur-de-lis metal caps. This fence would be more appropriate at the aforementioned historic mansion.

### *Recommendations*

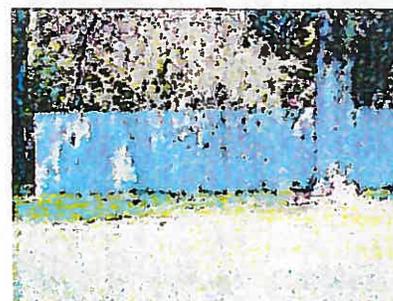
- The side of the fence facing a street or alley should be "finished."
- For properties located on a corner, corner side yard fences shall be located in the rear 50% of the side yard and shall not obscure projecting features of the historic house.
- A fence in a corner side yard located adjacent to a public right-of-way shall be located a minimum of 2' from the inner edge of a public sidewalk, or 6' from the curb or edge of street where there is no curb.
- Fences shall be constructed of wood, twisted wire, and metal or other appropriate materials; these materials are consistent with the historic fence materials in Lancaster.
- Stone shall only be used at fences or walls where stone is used elsewhere in the historic house or property. If used at a wall or fence, stone should be similar in size, pattern and color to that used elsewhere.
- Chain link fences shall have a bottom and top rail, and should be galvanized or clad in green or black vinyl.
- Tops of new fences shall be horizontal and stepped, scooped or arched as appropriate for the fence surfaces. Tops of fences should not be parallel to the grade where the grade is not level.
- New wood fences that are painted shall be painted in colors and finishes appropriate to the style and period of the historic house, or stained gray or brown.

### *Not recommended nor allowed*

- Fences should not obscure views from the public right-of-way to a historic structure.
- Chain link fences may be used at side and rear yards and should not exceed 4' in height. Chain link fences shall not be used in the front yard.
- Decorative painting or murals applied to fence surfaces should not be visible from the public way.



Simple Metal Fence

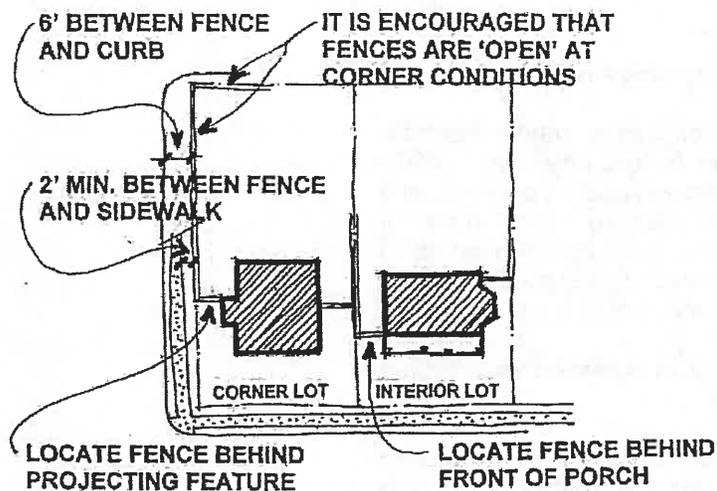


Simple Wood Fence Appropriate for Rear Yard

- Fences should not exceed 8' in height at the rear property line or alley except for chain link fences (see guidelines for chain link fences). Fences at side yards or front-facing portion of front yards (and behind the front façade of the historic house) should not exceed 6' in height except for chain link fences (see guidelines for chain link fences).

The following fence materials shall not be used:

- Chain link with slat inserts.
- Concrete masonry units.
- Fences should not obscure the views to and vistas from a historic structure within the district. In addition, these features should be typical for structures of this type, age and location.



Fence Locations

Plastic or vinyl fences are discouraged.

Non-Residential Use & Screening for Residential Properties

	Materials	Height	Other Requirements	Agricultural Use
DeSoto	Solid brick or masonry screening wall. For businesses that have tractors and trailers that are stored on site, tractors and trailers must be screened from view along any adjoining streets. Screenings must consist of a masonry wall that must be at least eight feet in height.	Not less than six feet and no more than eight feet in height on the property line separating the districts.	When screening is required between nonresidential and residential uses it shall be the responsibility of the nonresidential use to construct and maintain the screening wall.  All required screening walls shall be equally finished on both sides of the wall.	No fence or wall shall be permitted in front of any single-family or duplex structure except platted lots within the Single-Family Estate District and Agricultural District where the fence may be constructed to the front property line.
Duncanville	Solid brick or masonry screening wall (reinforced concrete, concrete block, concrete panels). It shall be finished grade.	Not less than six feet and no more than eight feet in height on the property line.	The owner of the apartment property shall be responsible for and shall build and maintain the required wall on the property line dividing the property from the single-family or duplex residential district. This construction requirement applies only when an apartment use is adjacent to residential uses at the time of the apartment's construction.  When screening is required between non-residential and residential uses, it shall be the responsibility of the non-residential use to construct and maintain the screening wall.	A barbed wire fence is used in part for agriculture or farming or ranching related activities.
Cedar Hill	Solid brick/masonry screening wall and finished on both sides.	Not less than six feet and no more than eight feet in height shall be erected	The owner of the multi-family property shall be responsible for and shall build and maintain	None in direct relevance to non-residential use and screening for residential

Non-Residential Use & Screening for Residential Properties

	<p>Screening walls should be constructed of low maintenance, high quality materials, which are consistent with the exterior finish of the main building in material and color.</p> <p>Where possible and economically feasible, screening walls around sales, storage, display and service areas, and around dumpster enclosures, should be extensions of the development's architectural design, as well as consistent with the exterior building finish in color and materials.</p>	<p>on the property line separating the districts.</p>	<p>the required wall on the property line dividing the property from the one or two-family zoning.</p>	<p>properties.</p>
Lancaster	<p>None in direct relevance to non-residential use and screening for residential properties.</p>	<p>None in direct relevance to non-residential use and screening for residential properties.</p>	<p>None in direct relevance to non-residential use and screening for residential properties.</p>	<p>Only fences as part of an agricultural or farming or ranching related activities erected, maintained or permitted shall be electrically charged in any manner or form. The exclusion includes but is not limited to fences electronically charged by battery or those tied in with the regular electrical outlet.</p>
Coppell	<p>None in direct relevance to non-residential use and screening for residential properties.</p>	<p>None in direct relevance to non-residential use and screening for residential properties.</p>	<p>None in direct relevance to non-residential use and screening for residential properties.</p>	<p>Materials prohibited in fences are barbed wire, razor ribbon, sheet metal, chain-link, vinyl or polyvinyl, or any other similar material, except that barbed wire and/or</p>

Non-Residential Use & Screening for Residential Properties

				chain link is permitted for fencing for agriculture- or industrial-zoned property.
Farmers Branch	None in direct relevance to non-residential use and screening for residential properties.	It may exceed eight feet in height with city council approval of a site plan; provided, however, that such fence is approved by the city's chief building official and, in the opinion of the building official, poses no threat to safety, is not a nuisance, and in no way violates any other pertinent city code, ordinance, section or provision.	None in direct relevance to non-residential use and screening for residential properties.	None in direct relevance to non-residential use and screening for residential properties.
Grand Prairie	<p>All non-residential development shall provide a screening fence in accordance with the following provisions:</p> <p>All non-residential development, except for schools and day care centers, shall be required to erect a "Type 1" fence on property lines adjacent to any property which is zoned for single family detached, single family attached, two-family, and multifamily residential uses.</p> <p>"Type 1" fences must have a minimum of a six (6) inch mow strip constructed from a minimum of four (4) inch thick</p>	<p>Type 1: The wall will be a minimum of six (6) feet in height and a maximum of eight (8) feet in height.</p> <p>Type 2: The fence will be a minimum of six (6) feet in height and a maximum of eight (8) feet in height.</p> <p>Type 3: The fence will be a minimum of six (6) feet in height and a maximum of eight (8) feet in height.</p>	<p>For Type 2 fences, the fence columns will be positioned at a maximum distance of 24 feet on center.</p> <p>For Type 3 fences, The fence shall be constructed so that the stringers are not visible from public rights-of-way or park facilities. Fences that face both a park facility and public rights-of-way will be constructed with the stringers not visible from either.</p>	None in direct relevance to non-residential use and screening for residential properties.

Non-Residential Use & Screening for Residential Properties

	<p>reinforced concrete. The wall will be constructed from kiln-fired brick of natural earth tone colors. The wall will have stone or masonry columns at a maximum distance of 50 foot centers situated on lot corners. The wall will incorporate rowlock brick, cast stone or a similar feature as a cap at all walls, columns and pilasters along with other design elements to articulate the top of the wall. The wall will not incorporate tension cables or straps to support the suspended panels.</p> <p>All schools and day care centers shall be required to erect a "Type 3" fence on property lines adjacent to any property, which is zoned for single-family detached, single-family attached or two-family residential uses.</p> <p>"Type 3" fences will have a minimum of a six (6) inch mow strip constructed from a minimum of four (4) inch thick reinforced concrete. The fence will be constructed of decay resistant materials. Type 3 fences adjacent to an alley will require two (2) additional stringers (bottom and middle) to be paced on the opposite side of the three (3) required stringers to stabilize and add rigidity.</p> <p>Religious institutions shall be required</p>			
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Non-Residential Use & Screening for Residential Properties

	<p>to erect a “Type 2” fence along all property lines adjacent to any property, which is zoned for single-family detached, single family attached or two-family residential uses.</p> <p>“Type 2” fences shall have a minimum of a six (6) inch mow strip constructed from a minimum of four (4) inch thick reinforced concrete. The fence columns will be constructed from kiln-fired brick of natural earth tone colors or split face concrete masonry units (CMUs), or other appropriate CMU texture.</p>			
Halton City	<p>Stone, brick, wood, wood composite, vinyl panel, plaster, open ornamental/tubular metal, landscape hedge or other material approved by the zoning administrator.</p>	<p>Maximum height shall not exceed eight feet.</p>	<p>A ten-foot in width landscaped open space buffer strip shall be installed and maintained by the owner, developer or operator of the non-residential or multiple family use property between such use and the adjacent residentially zoned property. Not less than one tree shall be planted and maintained for each 25 linear feet or portion thereof of said open space buffer strip.</p>	<p>None in direct relevance to non-residential use and screening for residential properties.</p>
Keller	<p>Masonry material such as brick, stone, concrete panels, or similar materials consistent in material, finish, and color with the primary buildings within the development or adjacent buildings in the area.</p>	<p>Screening walls shall be a minimum of six feet (6’) in height. An eight feet (8’) wall may be required on a case-by-case basis at the time of the site plan review.</p>	<p>The construction responsibility is with the multi-family or the non-residential development.</p>	<p>No barbed wire, chain link, or electrical fencing shall be allowed except as used for farm or ranching purposes on undeveloped land over two (2) acres in area.</p>

Non-Residential Use & Screening for Residential Properties

Rockwall	None in direct relevance to non-residential use and screening for residential properties.	No nonresidential fence shall exceed 12 feet in height.	None in direct relevance to non-residential use and screening for residential properties.	Barbed wire fences may be used without restrictions when in conjunction with agricultural and related activities; provided, however, no barbed wire fence shall be located on any platted property zoned for single-family use.
The Colony	None in direct relevance to non-residential use and screening for residential properties.	None in direct relevance to non-residential use and screening for residential properties.	None in direct relevance to non-residential use and screening for residential properties.	None in direct relevance to non-residential use and screening for residential properties.
Rowlett	None in direct relevance to non-residential use and screening for residential properties.	None in direct relevance to non-residential use and screening for residential properties.	None in direct relevance to non-residential use and screening for residential properties.	Barbed wire and electric fences may only be used to fence large livestock as defined in Article I, Chapter 6 of the Rowlett Code of Ordinances. Electric fence chargers must be approved by a nationally recognized testing laboratory.

For the City of Lancaster:

1. No fence erected, maintained or permitted shall be made with barbed wire unless as part of an agricultural or farming or ranching related activities.
2. No fence erected, maintained or permitted shall be made with concertina wire, razor wire or anything capable of causing significant harm to the general public.
3. Any barbed wire portion of a fence for a commercial application must be on that portion of the fence over six feet in height. The barbed arms shall not extend over public rights-of-way or easements or over private property of another person. When adjoining property is zoned or used for residential purposes or public rights-of-way, barbed arms shall extend inward.

## LANCASTER CITY COUNCIL

### City Council Work Session

5.

**Meeting Date:** 06/19/2017

**Policy Statement:** This request supports the City Council 2016-2017 Policy Agenda

**Goal(s):** Healthy, Safe & Vibrant Community

**Submitted by:** Rona Stringfellow, Assistant City Manager

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#### **Agenda Caption:**

Discuss an ordinance amending the Code of Ordinances by amending Chapter 14 Titled " Offenses and Additional Provisions", Article 14.05 Titled "Smoking in Public Places and Places of Employment" setting forth regulations prohibiting smoking in all workplaces and public places located within the City; providing regulations for electronic cigarettes and liquid nicotine; providing for prohibition of smoking in certain outdoor areas; providing for posting of signs; providing for penalties for business or establishments not to exceed two thousand dollars (\$2,000).

#### **Background:**

As prescribed in the City Council Rules and Procedures as amended in September 2016, Section D. City Council Agenda Process, Subsection 1.b. Mayor Marcus Knight, and Councilmembers Marco Mejia and Stanley Jaglowski requested an item be included on the agenda for the purpose of reviewing and discussing the smoking regulations that exist in the Lancaster Code of Ordinances. Currently, the Lancaster Code of Ordinances prohibits smoking in certain public areas.

On April 10, 2017, the City Council received a presentation from Smoke Free Texas affiliate Aschelle Morgan with the American Heart Association outlining the case for adopting a more comprehensive Smoke Free ordinance. City Council received ordinances from surrounding municipalities(DeSoto, Duncanville, Red Oak, Coppell and Waxahachie) for review during the City Council work session.

The City of Desoto adopted their ordinance in September 2015. It defined public places upon which smoking is not allowed as well as addressed e-cigarrete, e-cigar, e-pipe, e-hookah, or vape pen etc. It also updated the use list of prohibited places both inside and outside; it defined where smoking is not regulated and lastly, it outlined enforcement. Their ordinance followed the model ordinance provided by the Smoke Free Texas organization.

The City of Duncanville adopted their ordinance in January 2016. It defined public places upon which smoking is not allowed as well as addressed e-cigarrete, e-cigar, e-pipe, e-hookah, or vape pen etc. It also updated the use list of prohibited places both inside and outside; it defined where smoking is not regulated and lastly, it outlined enforcement. The City worked with Smoke Free Texas to adopt the model ordinance that most Texas cities are following.

The City of Red Oak adopted their policy in December of 2015, following the same model ordinance.

The City of Coppell updated their ordinance in September of 2016 to define and include e-cigarettes. It appears to follow the model ordinance from Smoke Free Texas.

The City of Waxahachie adopted their ordinance in September of 2014. They too followed the model

ordinance from Smoke Free Texas.

At the April work session City Council requested staff to bring forward an updated ordinance for consideration at a regular meeting.

**Operational Considerations:**

The purpose of this item is to amend Chapter 14 *Offenses and Additional Provisions*, Article 14.05, *Smoking in Public Places and Places of Employment*.

The new ordinance will eliminate smoking in common areas, at city-sponsored events, city-owned facilities, places of employment and will not allow smoking in restaurants and certain outdoor areas. The intent of the ordinance is to reduce general public exposure to secondhand smoke and establish smoke free zones around city buildings and places of employment.

City Council postponed this item in order to get additional information related to cigar bars attached to restaurants, a copy of the City of Dallas ordinance, and allow the City Council to further discuss concerns they may have related to the formal adoption of this ordinance. Representatives from Smoke-Free Texas along with staff will be available to address questions.

**Legal Considerations:**

The City Attorney has reviewed the ordinance and approved it as to form.

**Public Information Considerations:**

There are no public information requirements other than the requisite 72 hour notice as required by the Texas Open Meetings Act.

**Fiscal Impact:**

There are no fiscal requirements for the enactment of this ordinance.

**Options/Alternatives:**

1. Approve the ordinance, as presented.
2. Deny the ordinance.

**Recommendation:**

Staff is recommending approval of the ordinance, as presented.

**Attachments**

Ordinance

City of Lancaster (current ordinance)

Model Ordinance

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## ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 14 TITLED " OFFENSES AND ADDITIONAL PROVISIONS", ARTICLE 14.05 TITLED "SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT" SETTING FORTH REGULATIONS PROHIBITING SMOKING IN ALL WORKPLACES AND PUBLIC PLACES LOCATED WITHIN THE CITY; PROVIDING REGULATIONS FOR ELECTRONIC CIGARETTES AND LIQUID NICOTINE; PROVIDING FOR PROHIBITION OF SMOKING IN CERTAIN OUTDOOR AREAS; PROVIDING FOR POSTING OF SIGNS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES FOR BUSINESS OR ESTABLISHMENTS NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00); PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Lancaster does hereby find that secondhand smoke exposure causes disease and premature death in children and adults who do not smoke, and children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents cause respiratory symptoms and slows lung growth in their children; and

**WHEREAS**, exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; and

**WHEREAS**, there is no risk-free level of exposure to secondhand smoke; and

**WHEREAS**, establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry. (U. S. Department of Health and Human Services; and

**WHEREAS**, Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer.; and

**WHEREAS**, the Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen; and

**WHEREAS**, there is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke; and

**WHEREAS**, a significant amount of secondhand smoke exposure occurs in the workplace; and

**WHEREAS**, residual tobacco contamination, or "third hand smoke," from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This residue can linger in spaces long after smoking has ceased and continue to expose people to tobacco toxins. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings; and

**WHEREAS**, unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e- cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of electronic cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic

chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent; and

**WHEREAS**, it has been determined that the effects of these substances are a health concern to the citizens of the City of Lancaster; and

**WHEREAS**, the City Council of the City of Lancaster, Texas, finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, DALLAS COUNTY, TEXAS, THAT:**

**SECTION 1.** The Code of Ordinances of the City of Lancaster, Texas, be and the same is hereby amended by amending Chapter 14, Offenses and Additional Provisions, Article 14.05, Smoking in Public Places and Places of Employment to read as follows:

**“CHAPTER 14  
OFFENSES AND ADDITIONAL PROVISIONS**

.....

**ARTICLE 14.05  
SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT**

**Sec. 14.05.001 Definitions.**

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

“Administrative” means the area of an establishment not generally accessible to the public, including but not limited to individual offices, stockrooms, employee lounges, or meeting rooms.

"Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

"Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

“City” means the City of Lancaster, Texas.

"Electronic or Digital Smoking Device" means any electronic or battery operated device delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e- cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

"Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

"Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

"Enclosed Area" means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

"Food Establishment" means an operation that stores, prepares, manufactures, packages, serves, vends, or otherwise provides food for human consumption such as restaurants, mobile vendors, and concession stands.

"Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

"Hookah lounge" means an establishment that derives more than ninety-five (95) percent of its quarterly gross revenue from the sale of shisha for consumption on the premises by customers and the sale of accessories used for smoking shisha. A hookah lounge does not allow individuals under the age of eighteen (18) to enter the premises, and does not have a permit or license to sell alcoholic beverages, but may serve food and nonalcoholic beverages for consumption on the premises by customers.

"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 ten feet from the designated smoking area.

"Physical Barrier" means a barrier that will form an effective membrane continuous from outside wall to outside wall, from a smoke barrier to a smoke barrier, from floor to floor, or roof above, or combination thereof, including continuity through all concealed spaces, such as above suspended ceiling, interstitial structural and mechanical spaces. Transfer grilles, louvers and similar openings shall not be used in these partitions. Self-closing, tight fitting doors are permitted in such barriers.

"Place of Employment" means an area under the control of a public or private

employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and temporary offices. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

"Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City grounds.

"Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

"Private Function" means the rental of a ballroom, private club, or other facility for the sole purpose of entertaining, private parties, events or other social functions other than a city facility that the general public is not able to attend.

"Public Event" means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

"Public Place or common area" means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

"Recreational Area" means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to amusement parks, athletic fields, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.

"Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

"Retail and Service establishment" means any establishment that sells goods or services to the general public.

“Retail Electronic Smoking Device Store” means a store used primarily for the sale of electronic or digital cigarettes or substances used in those or similar devices to produce inhalable vapors and in which the sale of other products is incidental and where 80% of quarterly sales are from the sale of these devices and/or substances.

“Retail tobacco store or tobacco store” means a retail store where 75% of quarterly sales are from the sale of tobacco products and accessories, to include electronic or digital cigarettes, and in which the sale of other products is merely incidental.

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

"Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

"Shopping Mall" means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.

"Smoke or Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

“Smoking Lounge” means a business establishment that is dedicated, in whole or in part to the selling or smoking of tobacco products, electronic cigarettes, or other substances, including but not limited to establishments known variously as cigar lounge, hookah lounge, or tobacco bars.

"Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

“Tobacco Product” means any tobacco, cigarette, cigar, pipe tobacco, water pipe, flavored tobacco, smokeless tobacco, snuff or any other form of tobacco, or any substance containing a detectable amount of nicotine which may be utilized for smoking, chewing, inhalation or other manner of ingestion or absorption.

#### **Sec. 14.05.002            Application of Article to the City**

All enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Lancaster, as well as all outdoor property adjacent to such buildings and under the control of the City, shall be subject to the provisions of this Article.

#### **Sec. 14.05.003            Prohibition of smoking in enclosed public places**

Smoking shall be prohibited in all enclosed areas of places of employment without

exception. This includes, without limitation, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Smoking shall be prohibited in all public places within the City of Lancaster, including but not limited to, the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gaming facilities.
- J. Health care facilities.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Parking structures.
- N. Polling places.
- O. Restaurants.
- P. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- Q. Retail store.
- R. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City.
- S. Service lines.
- T. Shopping malls.
- U. Sports arenas, including enclosed places in outdoor arenas.
- V. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

**Sec. 14.05.004 Prohibition of smoking in enclosed places of employment**

- A. Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this article and to all prospective employees upon their application for employment.

**Sec. 14.05.005 Prohibition of smoking in private clubs**

Smoking shall be prohibited in all private clubs.

**Sec. 14.05.006 Prohibition of smoking in enclosed public access institutional residential facilities.**

Smoking shall be prohibited in the following enclosed residential facilities:

- A. All private and semi-private rooms in nursing homes.
- B. At least ninety (90) percent of hotel and motel guest rooms rented.

**Sec. 14.05.007 Prohibition of smoking in outdoor areas**

Smoking shall be prohibited in the following outdoor places:

- A. Within a reasonable distance of fifteen (15) feet outside the primary entrance, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- B. In, and within fifteen (15) feet of, all outdoor seating or serving areas of restaurants and bars.
- C. In all outdoor areas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within fifteen (15) feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- D. In all outdoor service lines, whether or not within the fifteen (15) feet from any outside entrances, operable windows or ventilations systems.
- E. In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five (25) percent of the total outdoor common areas, which must be located at least fifteen (15) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.
- F. In and within twenty-five (25) feet of, outdoor playgrounds.

**Sec. 14.05.008 Exemptions**

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Section 14.05.007.:

- A. Private residences, unless used as a childcare, adult day care, or health care facility licensed by the State of Texas, and except as provided in Section 14.05.007.
- B. Not more than ten (10) percent of hotel and motel rooms rented to guests and designated as smoking rooms. All smoking rooms on the same floor must be contiguous. Smoke from these rooms must not infiltrate into areas where smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- C. Outdoor areas of places of employment except those covered by the provisions of Section 14.05.007.
- D. Retail tobacco stores in freestanding physical facilities or isolated venting and air controls.
- E. Personal automobiles or motor vehicles.
- F. A hookah, cigar bar or e-cigarettes lounge that was in existence prior to the effective date of this Ordinance.

**Sec. 14.05.009 Declaration of Establishment or Outdoor Area as Non-smoking**

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 14.05.010 is posted.

**Sec. 14.05.010 Posting of signs and removal of ashtrays**

The owner, operator, manager, or other person in control of a place of employment, public place, private club, or residential facility where smoking is prohibited by this Article shall:

- A. Clearly and conspicuously post “No Smoking signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in that place
- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
- C. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Article at least one (1) sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- D. Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

**Sec. 14.05.011 Nonretaliation; nonwaiver of rights**

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 14.05.016, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed \$2,000 for each violation.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

**Sec. 14.05.012 Possession, purchase, consumption or receipt of electronic cigarettes or e-cigarettes and/or liquid nicotine by minors prohibited.**

- A. A person who is younger than eighteen (18) years of age commits an offense if the individual:
  - 1) Possesses, purchases, consumes or accepts an electronic cigarette, e-cigarette or liquid nicotine; or
  - 2) Falsely represents himself or herself to be eighteen (18) years of age or older by displaying proof of age that is false, fraudulent or not actually proof of the individual’s own age in order to obtain possession of, purchase or receive an electronic cigarette, e-cigarette or liquid nicotine.
- B. It shall be a defense to prosecution for a violation of this section if the individual younger than eighteen (18) years of age possessed the electronic cigarette, e-cigarette or liquid nicotine in the presence of:
  - 1) An adult parent, a guardian or a spouse of the individual; or
  - 2) An employer of the individual, if possession or receipt of the electronic cigarette, e-cigarette or liquid nicotine is required in the performance of the employee’s duties as an employee.
- C. It shall also be a defense to prosecution for a violation of this section that the individual younger than eighteen (18) years of age is participating in an inspection or test of compliance in accordance with Section 161.088, Health and Safety Code.

**Sec. 14.05.013 Sale of electronic cigarette or e-cigarette or liquid nicotine to persons younger than eighteen (18) years of age prohibited; proof of age required.**

- A. A person or retailer commits an offense if the person or retailer with criminal negligence:
  - 1) Sells, gives or causes to be sold or given an electronic cigarette, e-cigarette or liquid nicotine to someone who is younger than eighteen (18) years of age; or

- 2) Sells, gives or causes to be sold or given an electronic cigarette or e-cigarette or liquid nicotine to another person who intends to deliver it to someone who is younger than eighteen (18) years of age.
- B. If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which electronic cigarettes, e-cigarettes and/or liquid nicotine is/are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.
- C. It is a defense to prosecution under subsection (a) (1) that the person to whom the electronic cigarette, e-cigarette or liquid nicotine was sold, given or presented to the defendant apparently valid proof of identification.
- D. A proof of identification satisfies the requirements of subsection if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is eighteen (18) years of age or older and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport or an identification card issued by a state or the federal government.

**Sec. 14.05.014 Vendor assisted sales required; self-service merchandising prohibited**

- A. Except as provided by subsection (B), a retailer or other person may not:
  - 1) Offer electronic cigarettes, e-cigarettes or liquid nicotine for sale in a manner that permits a customer direct access to the electronic cigarettes, e-cigarettes or liquid nicotine;
  - 2) Offer for sale or display for sale electronic cigarettes, e-cigarettes or liquid nicotine by means of self-service merchandising; or
  - 3) Install or maintain an open display unit containing electronic cigarettes, e-cigarettes or liquid nicotine.
- B. It is a defense to prosecution under subsection (A), if:
  - 1) A facility or business is not open to persons younger than eighteen (18) years of age at any time;
  - 2) A facility or business is a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code; or
  - 3) An open display is located in an area that is inaccessible to customers.

**Sec. 14.05.015 Enforcement**

- A. This Article shall be enforced by the City's Police Department
- B. Notice of the provisions of this Article shall be given to all applicants for a Certificate of Occupancy in the City of Lancaster.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the Fire Department, Fire Marshall's office.
- D. The Health Department (Dallas County Health and Human Services), Fire department, or their designee shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. An owner, manager, operator, or employee of an establishment regulated by this article shall direct a person who is smoking in violation of this article to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, iperator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
- F. Notwithstanding any other provision of this article, an employee or private citizen may bring legal action to enforce this article.
- G. In addition to the remedies provided by the provision of this section, the Lancaster Police Department, a certified code official or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this article may apply for injunctive relief to enforce those provision in any court of competent jurisdiction.

**Sec. 14.05.016            Violations and Penalties**

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of a Class C misdemeanor, punishable by a fine not exceeding two thousand dollars (\$2,000).
- B. Except as otherwise provided in Section 14.05.14(A), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding two thousand dollars (\$2,000).
- C. In addition to the fines established by this, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- D. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

**Sec. 14.05.017            Other Applicable Laws**

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**Sec. 14.05.018            Liberal Construction**

This Article shall be liberally construed so as to further its purposes.

**SECTION 2.** All ordinances of the City of Lancaster in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect. Nothing contained herein shall be construed to conflict with the *Texas Controlled Substance Act*, or any other state and/or federal law governing the same.

**SECTION 3.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

**SECTION 4.** 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 5.** Any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Lancaster, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

**SECTION 6.** This ordinance shall take effect immediately from and after its passage and publication of the caption as required by law.

**DULY PASSED** by the City Council of the City of Lancaster, Texas, on the 12th day of June 2017.

**ATTEST:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert E. Hager, City Attorney

**APPROVED:**

\_\_\_\_\_  
Marcus E. Knight, Mayor

CHAPTER 14 OFFENSES AND ADDITIONAL PROVISIONS

ARTICLE 14.05 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT\*

ARTICLE 14.05 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT\*

**Sec. 14.05.001 Definitions**

In this article:

Administrative area. The area of an establishment not generally accessible to the public, including but not limited to individual offices, stockrooms, employee lounges or meeting rooms.

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

Food products establishment. Any operation defined as such in this code, except private clubs whose facilities are not open to the general public. Private club shall have the definition ascribed to the term by the development code, as amended, except that the smoking prohibition provided in this article shall apply to a public food products establishment which also operates under a private club registration permit issued by the state alcoholic beverage commission under the provisions of chapter 32 of the Texas Alcoholic Beverage Code.

Hospital. Any institution that provides medical, surgical and overnight facilities for patients.

Public service area. Any area to which the general public routinely has access for municipal services or which is designated a public service area in a written policy prepared in compliance with this article.

Retail and service establishments. Any establishment which sells goods or services to the general public.

(2002 Code, sec. 8.501)

ARTICLE 14.05 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT\*

**Sec. 14.05.002 Penalty**

Any person, firm or corporation who violates any provision of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof in the municipal court shall be subject to a fine in accordance with the general penalty provision found in section 1.01.009 of this code. (2002 Code, sec. 8.506)

ARTICLE 14.05 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT\*

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**Sec. 14.05.003 Smoking prohibited in certain public areas**

(a) A person commits an offense if he smokes or possesses a burning tobacco, weed or other plant product in any of the following indoor or enclosed areas:

- (1) A public primary or secondary school, other than in a lounge or restroom designated expressly for the use of teachers and/or school administrators;
- (2) A public library or museum;
- (3) Hearing rooms, conference rooms, meeting rooms or any public service area of any facility owned, operated or managed by the city in which public business is conducted, when the public business requires or provides an opportunity for direct participation or observation by the general public;
- (4) Every publicly or privately owned theater, auditorium or other enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event or any other performance or event, in all areas except either in that area commonly known as the lobby, or in areas not open to the public;
- (5) An elevator used by the public; or
- (6) Any retail or service establishment serving the general public, including but not limited to any department store, grocery store or drugstore.

(b) The owner or person in control of an establishment or area designated in subsection (a) of this section shall post a conspicuous sign at the main entrance to the establishment which shall contain the words "No Smoking, City of Lancaster Ordinance No. 15-88."

(c) It shall be a defense to prosecution under this section that the conveyance or public place in which the offense takes place does not have prominently displayed a reasonably sized notice that smoking is prohibited and that an offense is punishable by a fine in accordance with the general penalty provision found in section 1.01.009 of this code.

(d) It shall also be a defense to prosecution under this section that the facilities for the extinguishment of smoking materials were not located within the conveyance or public place, or within twenty (20) feet of the entrance to the public place within which the offense takes place.

(2002 Code, sec. 8.502)

<b>ARTICLE 14.05 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT*</b>
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**Sec. 14.05.004 Food products establishments**

(a) A food products establishment which has indoor or enclosed dining areas shall provide separate indoor or enclosed dining areas for smoking and nonsmoking patrons.

(b) A nonsmoking area must:

- (1) Be separated, where feasible, from smoking areas by a minimum of four (4) feet of contiguous floor space;
- (2) Be ventilated, where feasible, and situated so that air from the smoking area is not drawn into or across the nonsmoking area;
- (3) Be clearly designated by appropriate signs visible to patrons within the dining area indicating that the area is designated nonsmoking;
- (4) Have ashtrays or other suitable containers for extinguishing smoking materials at the perimeter of the nonsmoking area; and
- (5) Consist of not less than two (2) contiguous tables for the serving of customers.

(c) Each food products establishment which has a dining area shall have signs at the establishment's entrance indicating that nonsmoking seating is available.

(d) Non-dining areas of any food products establishment affected by this section to which patrons have general access; excluding restrooms but including food order areas, food service areas and cashier areas, shall be designated as nonsmoking areas.

(e) It is a defense to prosecution under this section that the food products establishment is:

- (1) An establishment which has indoor seating arrangements for less than fifty (50) patrons;
- (2) A physically separated bar area of a food products establishment otherwise regulated.

(f) A person commits an offense if he smokes or possesses a burning tobacco, weed or other plant product in an area of a food products establishment designated as nonsmoking in accordance with the provisions of this section.

(2002 Code, sec. 8.503)

## ARTICLE 14.05 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT\*

### **Sec. 14.05.005 Smoking in the workplace**

Notwithstanding the provisions of this article, any employer may designate any workplace or portion thereof as a nonsmoking area. Any employer who chooses to designate any workplace or portion thereof as a nonsmoking area shall:

- (1) Adopt, implement and maintain a written smoking policy, which shall be communicated to all employees at least three (3) weeks prior to its adoption;
- (2) Prominently display reasonably sized notices that smoking is prohibited; and

- (3) Provide facilities in sufficient numbers and at such locations to be readily accessible for the extinguishment of smoking materials.

(2002 Code, sec. 8.504)

ARTICLE 14.05 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT*
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**Sec. 14.05.006 Hospitals and health care facilities**

(a) A person commits an offense if he smokes or possesses a burning tobacco, weed or other plant product in any public area of a health care facility or hospital.

(b) Every hospital shall:

- (1) Allow all patients, prior to elective admission, to choose to be in a nonsmoking patient room; and
- (2) Require that employees or visitors obtain express approval from all patients in a patient room prior to smoking.

(2002 Code, sec. 8.505)

# SMOKE★FREE TEXAS

[www.smokefreetexas.org](http://www.smokefreetexas.org)

## Model Ordinance Prohibiting Smoking in All Indoor Workplaces and Public Places (100% Smokefree)

### Sec. 1000. Title

This Article shall be known as the \_\_\_\_\_ [name of City or County] Smoke-Free Air Ordinance of \_\_\_\_\_ [year].

### Sec. 1001. Findings and Intent

The \_\_\_\_\_ [City or County Governing Body] does hereby find that:

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry.<sup>1</sup> According to the 2010 U.S. Surgeon General's Report, *How Tobacco Smoke Causes Disease*, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke.<sup>2</sup> According to the 2014 U.S. Surgeon General's Report, *The Health Consequences of Smoking—50 Years of Progress*, secondhand smoke exposure causes stroke in nonsmokers. The report also found that since the 1964 Surgeon General's Report on Smoking and Health, 2.5 million nonsmokers have died from diseases caused by tobacco smoke.<sup>3</sup>

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually.<sup>4</sup>

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen.<sup>5</sup>

Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death.<sup>6</sup>

There is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke.<sup>7</sup>

In reviewing 11 studies concluding that communities see an immediate reduction in heart attack admissions after the implementation of comprehensive smokefree laws, the Institute of Medicine of the National Academies concluded that data consistently demonstrate that secondhand smoke exposure increases the risk of coronary heart disease and heart attacks and that smokefree laws reduce heart attacks.<sup>8</sup>

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.<sup>9</sup>

Studies measuring cotinine (metabolized nicotine) and NNAL (metabolized nitrosamine NNK, a tobacco-specific carcinogen linked to lung cancer) in hospitality workers find dramatic reductions in the levels of these biomarkers after a smokefree law takes effect. Average cotinine levels of New York City restaurant and bar workers decreased by 85% after the city's smokefree law went into effect.<sup>10</sup> After the implementation of Ontario, Canada's Smokefree Indoor Air Law, levels of NNAL were reduced by 52% in nonsmoking casino employees and cotinine levels fell by 98%.<sup>11</sup>

Smokefree indoor air laws result in a significant reduction in fine particulate matter and improved air quality. A Grand Rapids, Michigan study that monitored six restaurants before and after implementation of the state's smokefree air law found that PM<sub>2.5</sub> fine particulate matter was reduced by 92 percent after the law went into effect, indicating that the vast majority of indoor air pollution in all six venues was due to secondhand smoke. The results in Grand Rapids were consistent with results in Wilmington, Delaware; Boston, Massachusetts; and Western New York.<sup>12</sup>

Following a Health Hazard Evaluation of Las Vegas casino employees' secondhand smoke exposure in the workplace, which included indoor air quality tests and biomarker assessments, the National Institute of Occupational Safety & Health (NIOSH) concluded that the casino employees are exposed to dangerous levels of secondhand smoke at work and that their bodies absorb high levels of tobacco-specific chemicals NNK and cotinine during work shifts. NIOSH also concluded that the "best means of eliminating workplace exposure to [secondhand smoke] is to ban all smoking in the casinos."<sup>13</sup> A subsequent study in Nevada, whose Clean Indoor Air Act permits smoking in designated areas of casinos, bars, and taverns, indicates that strong 100% smokefree laws are the only effective way to protect indoor air quality. The study sampled the air quality in 15 casino gaming areas and corresponding nonsmoking areas, and the results indicated that the Clean Indoor Air Act failed to protect air quality in the nonsmoking areas, including children-friendly areas.<sup>14</sup>

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.<sup>15</sup> The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability.<sup>16</sup>

The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking.<sup>17</sup>

Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smokefree environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entirety.<sup>18</sup>

Residual tobacco contamination, or "thirdhand smoke," from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This residue can linger in spaces long after smoking has ceased and continue to expose people to tobacco toxins. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings. Gases can be absorbed into carpets, draperies, and other upholsteries, and then be reemitted (off-gassed) back into the air and recombine to form harmful compounds.<sup>19</sup> Tobacco residue is noticeably present in dust throughout places where smoking has occurred.<sup>20</sup> Given the rapid sorption and persistence of high levels of residual nicotine from tobacco smoke on indoor surfaces, including clothing and human skin, this recently identified process represents an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion.<sup>21</sup> The dangers of residual tobacco contamination are present in hotels, even in nonsmoking rooms. Compared with hotels that are completely smokefree, surface nicotine and air 3EP are elevated in nonsmoking and smoking rooms of hotels that allow smoking. Air nicotine levels in smoking rooms are significantly higher than those in nonsmoking rooms of hotels that do and do not completely prohibit smoking. Hallway surfaces outside of smoking rooms also show higher levels of nicotine than those outside of nonsmoking rooms. Partial smoking restrictions in hotels do not protect non-smoking guests from exposure to tobacco smoke and tobacco-specific carcinogens.<sup>22</sup>

Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of electronic cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent."<sup>23</sup> According to a more recent study, electronic cigarette emissions are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke.<sup>24</sup> Electronic cigarettes produce an aerosol or vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where

smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.

The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion in lost productivity.<sup>25</sup>

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety.<sup>26</sup>

There is no legal or constitutional "right to smoke."<sup>27</sup> Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous.<sup>28</sup>

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses.<sup>29</sup>

The smoking of tobacco, hookahs, or marijuana and the use of electronic cigarettes are forms of air pollution and constitute both a danger to health and a material public nuisance.

Accordingly, the \_\_\_\_\_ [City or County Governing Body] finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

## **Sec. 1002. Definitions**

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

- A. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- B. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- C. "Electronic Smoking Device" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

- D. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- E. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- F. "Enclosed Area" means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.
- G. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- H. "Place of Employment" means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and temporary offices. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
- I. "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on [City or County] grounds.
- J. "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
- K. "Public Place" means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

- L. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.
- M. "Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- N. "Shopping Mall" means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.
- O. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.
- P. "Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

**Sec. 1003. Application of Article to [City-Owned or County-Owned] Facilities and Property**

All enclosed areas, including buildings and vehicles owned, leased, or operated by the \_\_\_\_\_ [City or County] of \_\_\_\_\_, as well as all outdoor property adjacent to such buildings and under the control of the \_\_\_\_\_ [City or County], shall be subject to the provisions of this Article.

**Sec. 1004. Prohibition of Smoking in Enclosed Places of Employment**

Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, without limitation, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

**Sec. 1005. Prohibition of Smoking in Public Places**

Smoking shall be prohibited in all public places within the \_\_\_\_\_ [City or County] of \_\_\_\_\_, including but not limited to, the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gambling facilities.
- J. Health care facilities.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Parking structures.
- N. Polling places.
- O. Public transportation vehicles, including buses and taxicabs, under the authority of the \_\_\_\_\_ [City or County], and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
- P. Restaurants.
- Q. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- R. Retail stores.
- S. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the \_\_\_\_\_ [City or County] or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the \_\_\_\_\_ [City or County].

- T. Service lines.
- U. Shopping malls.
- V. Sports arenas, including enclosed places in outdoor arenas.
- W. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

**Sec. 1006. Prohibition of Smoking in Private Clubs**

Smoking shall be prohibited in all private clubs.

**Sec. 1007. Prohibition of Smoking in Enclosed Residential Facilities**

Smoking shall be prohibited in the following enclosed residential facilities:

- A. All private and semi-private rooms in nursing homes.
- B. All hotel and motel guest rooms.

**Sec. 1008. Prohibition of Smoking in Outdoor Public Places**

Smoking shall be prohibited in the following outdoor places:

- A. Within a reasonable distance of \_\_\_\_\_ [*recommended 15-25*] feet outside the primary entrance, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- B. In, and within \_\_\_\_\_ [*recommended 15-25*] feet of, all outdoor playgrounds.

**Sec. 1009. Where Smoking Not Regulated**

Notwithstanding any other provision of this Article to the contrary, smoking shall not be prohibited in private residences, unless used as a childcare, adult day care, or health care facility.

**Sec. 1010. Declaration of Establishment or Outdoor Area as Nonsmoking**

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 1012(A) is posted.

### **Sec. 1011. Posting of Signs and Removal of Ashtrays**

The owner, operator, manager, or other person in control of a place of employment, public place, private club, or residential facility where smoking is prohibited by this Article shall:

- A. Clearly and conspicuously post "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in that place.
- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited or, in the case of outdoor places, clearly and conspicuously post "No Smoking" signs in appropriate locations as determined by the \_\_\_\_\_ [Department of Health or City Manager or County Administrator] or an authorized designee.
- C. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Article at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- D. Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

### **Sec. 1012. Nonretaliation; Nonwaiver of Rights**

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 1015, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed \$1000 for each violation.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

### **Sec. 1013. Enforcement**

- A. This Article shall be enforced by the \_\_\_\_\_ [Department of Health or City Manager or County Administrator] or an authorized designee.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the \_\_\_\_\_ [City or County] of \_\_\_\_\_.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the \_\_\_\_\_ [Department of Health or City Manager or County Administrator].
- D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

- E. An owner, manager, operator, or employee of an area regulated by this Article shall direct a person who is smoking in violation of this Article to extinguish or turn off the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
- F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- G. In addition to the remedies provided by the provisions of this Section, the \_\_\_\_\_ [Department of Health or City Manager or County Administrator] or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

#### **Sec. 1014. Violations and Penalties**

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. Except as otherwise provided in Section 1013(A), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:
  - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.
  - 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
  - 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- D. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the \_\_\_\_\_ [Department of Health or City Manager or County Administrator] by restraining order, preliminary and permanent injunction, or other means provided for by law, and the \_\_\_\_\_ [City or County] may take action to recover the costs of the nuisance abatement.
- E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

**Sec. 1015. Public Education**

The \_\_\_\_\_ [Department of Health *or* City Manager *or* County Administrator] shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

**Sec. 1016. Governmental Agency Cooperation**

The \_\_\_\_\_ [City Manager *or* County Administrator] shall annually request other governmental and educational agencies having facilities within the \_\_\_\_\_ [City *or* County] to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, \_\_\_\_\_ [County *or* City], and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

**Sec. 1017. Other Applicable Laws**

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**Sec. 1018. Liberal Construction**

This Article shall be liberally construed so as to further its purposes.

**Sec. 1019. Severability**

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

**Sec. 1020. Effective Date**

This Article shall be effective thirty (30) days from and after the date of its adoption.

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## LANCASTER CITY COUNCIL

### City Council Work Session

6.

**Meeting Date:** 06/19/2017

**Policy Statement:** This request supports the City Council 2015-2016 Policy Agenda

**Goal(s):** Professional & Committed City Workforce

**Submitted by:** Dori Lee, Director of Human Resources

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#### **Agenda Caption:**

Discuss City Council Strategic Goal "Update our Compensation Survey" and provide data to the Council on where our pay is relative to the established policy.

#### **Background:**

We have worked collaboratively and strategically with the City Council regarding employee compensation and retention. Compensation has been an objective of the Council for the past four years. It remains a City Council objective. While we still have progress to make, we have accomplished milestones with compensation, equipment replacement, comparable benefits and creating opportunities for career progression.

In 2013/2014 City Council approved a 3% increase to the pay plan. In 2014/2015 City Council approved a 5% increase to the pay plan. In 2015/2016 City Council approved a 2% increase to the pay plan. In 2016/2017 City Council approved a 5% increase to the pay plan; totaling a 15% increase overall to the pay plan for the past four years.

City Council will receive a presentation regarding our pay plan in comparison to the market.