

## ARTICLE VI. NO SMOKING IN PUBLIC PLACES\*

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**\*Editor's note:** Ord. No. 2006-O-073, § 1, adopted April 3, 2006, amended art. VI in its entirety and enacted the provisions set out herein. The former art. VI, titled "Indoor Clean Air," derived from Ord. No. 92-18, § 1, adopted Jan. 20, 1992; and Ord. No. 2004-O-332, § 1, adopted Dec. 20, 2004.

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### Sec. 15-78. Definitions.

For the purpose of this article the following definitions shall apply:

- (1) *Bar* means any area devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the serving of alcoholic beverages. Although a restaurant may contain a bar, the term "bar" shall not include the dining area.
- (2) *Business* means any sole proprietorship, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional offices where legal, medical, dental, engineering, architectural, or other professional services are delivered.
- (3) *Child care facility* means any licensed nursery, day care center, preschool, or other facility engaged in the practice of providing care for children. A private residence is not a child care facility, except during those hours and in those portions of the residence when it is being used as a business for the purpose of providing care for children.
- (4) *Dining area* means any area containing a counter, booths or tables upon which food is served.
- (5) *Educational facility* means any day care center, nursery school, elementary school, middle school, junior high school, senior high school, vocational school, special education center, college or university.
- (6) *Employee* means any person who is employed in consideration for monetary compensation or profit.
- (7) *Employer* means any person, partnership, corporation, association or other entity that employs one or more persons.
- (8) *Enclosed area* means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways) that extend from floor to ceiling where smoking is not permitted.
- (9) *Health care facility* means any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions.
- (10) *Food establishment* means any area which prepares meals or serves food or beverages, regardless of whether or not the establishment provides seating or facilities for on-premises consumption. The term includes, but is not limited to: restaurants, coffee shops, cafeterias, short-order cafes, fast-food establishments, luncheonettes, lunchrooms, soda fountains, food carts, food-vending vehicles, and catering establishments but shall not include any portion of that establishment that constitutes a "bar".
- (11) *Place of employment* means any enclosed indoor area under the control of the employer to which employees have access during the course of employment, including but not limited to

work areas, employee lounges, employee restrooms, conference rooms, and employee cafeterias; as well as, a minimum of ten (10) feet from the entrance to the establishment. A private residence is not a "place of employment" unless it is used as a child care or health care facility as defined herein.

(12) *Private place* means any enclosed area to which the public is not invited or in which the public is not permitted, including, but not limited to, personal residences, private social clubs or personal automobiles. A privately-owned business, open to the public, is not a "private place."

(13) *Public place* means any enclosed indoor area in which the public is permitted or that may be used by the general public and includes, but is not limited to, banks, stores, offices and other commercial establishments, restaurants, public and private institutions of higher education, and child care and health care facilities. A private residence is not a "public place".

(14) *Restaurant* means any coffee shop, cafeteria, food stand, private- and public-school cafeteria, and any other eating establishment that gives or offers for sale food to the public, guests or employees, except that the term "restaurant" shall not include a "bar" as defined herein.

(15) *Service line* means any indoor or outdoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

(16) *Smoking* means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or any form.

(17) *Sports arena* means any enclosed or unenclosed sports pavilion, gymnasium, health spa, swimming pool, roller or ice rink, bowling alley, boxing arena, tennis courts, and any other similar public place where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events, including, but not limited to, the following activities: baseball, football, basketball, hockey, soccer, tennis, boxing, swimming, wrestling, volleyball, gymnastics, handball, weightlifting, martial-arts-related sports, rodeo or track and field games.

(18) *Tobacco specialty retail shop* means any freestanding retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(Ord. No. 2006-O-073, § 1, 4-3-06)

Sec. 15-79. Smoking in public places.

(a) *Smoking prohibited.* Except as otherwise provided in subsection (b) and section 15-80, regarding areas specifically designated for smoking, there shall be no smoking in public places, including but not limited to the following:

(1) All city facilities, enclosed or unenclosed including, but not limited to, buildings, parks and sports facilities, airport, bridges, police stations and substations, fire stations, civic center facilities, libraries, clinics, and municipal court; (As stated in Ord. 2004-O-332, 2004)

(2) Public forms of transportation, including, but not limited to, buses, vans and taxicabs;

(3) Retail stores or service establishments;

(4) Public restrooms;

(5) Service lines;

(6) Public areas of malls, galleries, libraries and museums when open to the public;

(7) Theaters;

(8) Sports arenas and convention halls;

- (9) Polling places;
- (10) Child care facilities;
- (11) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city;
- (12) Waiting rooms, hallways, wards and rooms of health care facilities, including, but not limited to, hospitals, clinics, physical therapy, mental health, and drug and alcohol treatment facilities, and doctors' and dentists' offices;
- (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, senior citizen residences, nursing homes, and other multiple-unit residential facilities;
- (14) Lobbies, hallways, and other common areas in multiple-unit commercial buildings or facilities;
- (15) Any school or educational institution operated by a business or nonprofit entity for the purpose of providing academic classroom instruction, trade, craft, computer or other technical training, or instruction in dancing, artistic, musical or other cultural activities;
- (16) Elevators;
- (17) Restaurants;
- (18) Places of employment;
- (19) Bars.

(b) *Smoking allowed.* Notwithstanding any other provisions of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

- (1) Private residences, except when used as child care or health care facilities;
- (2) Outdoor places of employment except for an area that is no less than ten (10) feet from the entry to the enclosed establishment of employment and no less than five (5) feet from the door of the establishment to a patio;
- (3) Tobacco specialty retail stores that are freestanding;
- (4) Public streets, sidewalks, and parking lots, whether public or private;
- (5) Private places, as the term is defined herein, which includes private clubs and private recreational facilities;
- (6) Hotels, motels and all other public and private conference and meeting rooms while these places are being used exclusively for private functions; and
- (7) A maximum of twenty-five (25) percent of hotel and motel rooms. Provided, however, that each hotel and motel shall designate not less than seventy-five (75) percent of their hotel or motel rooms as nonsmoking rooms. The hotel or motel rooms designated as nonsmoking rooms must have signs posted indicating that smoking is prohibited in such rooms and ashtrays removed.

(Ord. No. 2006-O-073, § 1, 4-3-06)

Sec. 15-80. Designation of smoking area.

(a) *General criteria for designated smoking area.* The owner, manager or any person who operates or otherwise controls the use of any premises subject to this article shall have appropriate conspicuously posted signs clearly stating smoking is prohibited and will use international symbols which are clearly visible to patrons in or entering the premises constituting a public place as defined in this article. Any such designated smoking area shall comply with

Definitions, section 15-78; and Smoking in public places, section 15-79; and meet the following criteria:

- (1) All ashtrays and other smoking paraphernalia shall be limited in facilities to that required for the enforcement of extinguishing of smoking materials in public places.
- (2) If outside, the smoking area must be no less than ten (10) feet from the entrance to facilities and establishments, and no less than five (5) feet from the door of the establishment that leads to a patio.

(b) *Required signs.*

- (1) Conspicuous "Smoking is Prohibited" signs shall have bold lettering of not less than one (1) inch in height. The international "no-smoking" symbol should also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).
  - (2) Failure to maintain appropriate signs as required herein shall result in an offense punishable by a fine of not less than fifty dollars (\$50.00) and no more than two hundred dollars (\$200.00). Each day that a violation continues shall constitute a separate offense.
- (Ord. No. 2006-O-073, § 1, 4-3-06)

Sec. 15-81. Violations, enforcement and penalties.

- (a) Notice of the provisions of this article shall be given to all applicants for a business license in the city.
- (b) Any citizen who desires to register a complaint under this article may do so by filing a complaint with the city manager, the health department director of the city, or their designee.
- (c) Any owner, manager, operator or employer of any establishment affected by this article shall, upon either observing or being advised of a violation of this article, have the obligation to inform the violator of the appropriate requirements of this law and then request immediate compliance.
- (d) Enforcement of this article shall be implemented by the city manager and the health director of the city or their designee such as: fire department, code enforcement department, planning and zoning/building department and law enforcement.
- (e) City health department, fire department, code enforcement department, planning and zoning/building department and law enforcement shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this article.
- (f) It shall be unlawful for any proprietor or person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to knowingly fail to comply with any of its provisions. Any proprietor or other person in control of a public place or workplace who fails to comply with this article shall be subject to:
  - (1) A fine of up to two hundred dollars (\$200.00) for each day a violation continues; and
  - (2) Suspension or revocation of any license or permit issued by the city, including any license or permit issued by the city's health department for that public place for a period of up to thirty (30) days for each day of noncompliance; but only after a citation has been issued.
- (g) It shall be unlawful for any person to smoke in any area where smoking is prohibited under this article. Any person who knowingly or intentionally smokes in an area in which smoking is prohibited shall be subject to:
  - (1) A fine of not less than fifty dollars (\$50.00), but not more than two hundred dollars (\$200.00); and

(2) In the event that a person has been previously convicted under this section, that person shall be fined not less than two hundred dollars (\$200.00), but not more than five hundred dollars (\$500.00) on a second conviction; and

(3) The fine shall be not less than five hundred dollars (\$500.00) but not more than one thousand dollars (\$1,000.00) for each conviction thereafter.

(Ord. No. 2006-O-073, § 1, 4-3-06)

Sec. 15-82. Public education.

(a) The city manager or his designee shall:

(1) Further develop a comprehensive tobacco education program to educate the public about the effect of tobacco and its addictive qualities and coordinate smoking prevention and tobacco education with other civic or volunteer groups.

(2) Conduct informational activities to notify and educate businesses and the public about this chapter.

(b) To implement this section, the city manager or his designee, department of health director may publish and distribute educational materials relating to this chapter to businesses, their employees, and the public.

(Ord. No. 2006-O-073, § 1, 4-3-06)