

Thornton 2015

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ARTICLE XI. - SMOKING IN PUBLIC PLACES[15]

Sec. 38-456. - Legislative findings. Modified It is the finding and declaration of the city that the smoking of tobacco or any other plant or weed, as well as the use of electronic cigarettes is a form of pollution and, as such, threatens the health, safety, comfort, and environment of the general public and should be subject to regulation. (Ord. No. 3243, § 1, 6-25-13; Ord. No. 3342, § 1, 7-28-15)

Sec. 38-457. - Definitions. The following words, terms and phrases, when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: *Bar* means any indoor area that is operated primarily for the sale and service of alcoholic beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages.

Electronic smoking device means any electronic oral device such as one composed of a heating element, battery, and/or electronic circuit which provide a vapor of nicotine or of any substances for inhalation and emits environmental smoke. This term shall include every variation and type of such devices whether they are manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pen, an electronic pipe, or an electronic hookah or any other product name or descriptor. \

Employee means any person who performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or provides uncompensated work or services to a business or nonprofit entity. Employee includes every person described above regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by another designation or title.

Employer means any person, partnership, association, corporation, or nonprofit entity that employs one or more persons. Employer includes, without limitation, the legislative, executive, and judicial branches of state government; any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission, or agency; or any other separate corporate instrumentality or unit of state or local government.

Entryway means the outside of the front or main doorway leading into a building or facility that is not exempted under Section 38-460. Entryway also includes the area of public or private property within a specified radius outside of the doorway. The specified radius shall be 15 feet.

Environmental tobacco smoke, ETS, or secondhand smoke means the complex mixture formed from the escaping smoke of a burning tobacco product, also known as sidestream smoke, and smoke exhaled by the smoker and includes all types of environmental smoke.

Environmental smoke means the escaping vapor or aerosol of an electronic smoking device, and vapor or aerosol exhaled by the smoker.

Food service establishment means any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops,

diners, sandwich shops, and short-order cafes.

Indoor area means any enclosed area or portion thereof having more than three sides. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area. The term side does not include constructing a barrier to enclose an area for security, such as fencing or bars, so long as that barrier is constructed so as to leave the area completely open to the free flow of the outdoor atmosphere.

Outdoor area means any area that is enclosed by no more than three sides and may be attached to a structure or building. The term side has the same meaning as used in the definition of an indoor area. An outdoor area may be enclosed so long as the fourth side is completely open to the free flow of the outdoor atmosphere.

Place of employment means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

Public building means any building owned or operated by the state, including the legislative, executive, and judicial branches of state government; any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, a special district, an authority, a commission, or an agency; or any other separate corporate instrumentality or unit of state or local government.

Public meeting means any meeting open to the public pursuant to state or local law. *Smoke-free work area* means an indoor area in a place of employment where smoking is prohibited under this [Section 38-459](#) and [Section 38-461](#).

Smoke or smoking means the physical possession of, or exercise or control over, or lighting, burning, heating, electrical ignition, inhaling or exhaling, or vaporizing ETS or environmental smoke of a cigarette, cigar, pipe, electronic smoking device, or any other matter or substance that contains tobacco or tobacco product, as defined below, nicotine or marijuana as defined by state law regardless of the consumption of the burning material.

Tobacco means cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fin-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. Tobacco also includes cloves and any other plant matter or any other product that is packaged for smoking.

Tobacco business means a sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories used for tobacco, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental. For purposes of this section, a tobacco business shall not engage in the sale or sampling of any type of marijuana, herbal shisha, or spice.

Tobacco product means any product that contains nicotine or tobacco or is derived from nicotine or tobacco and is intended to be ingested or inhaled; or any electronic device that can be used to deliver nicotine to the person inhaling from the device including but not limited to electronic smoking devices, cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking.

"Tobacco product" also includes cloves and any other plant matter or product that is packaged for smoking.

Work area means any area in a place of employment where one or more employees are routinely assigned and perform services for or on behalf of their employer. (Ord. No. 3243, § 1, 6-25-13; Ord. No. 3342, § 2, 7-28-15)

Sec. 38-458. - Violations and penalties. Any person found guilty of a violation of any provision of this article shall be punished in accordance with Section 1-8(a) of the Code. (Ord. No. 3243, § 1, 6-25-13)

Sec. 38-459. - Smoking restrictions. Except as provided in Section 38-460, smoking, as defined in Section 38-457, is prohibited in all indoor areas, including, but not limited to:

- (1) Public meeting places;
- (2) Elevators;
- (3) Taxicabs and limousines;
- (4) Grocery stores;
- (5) Gymnasiums;
- (6) Jury waiting and deliberation rooms;
- (7) Courtrooms;
- (8) Child day care facilities operated as a business;
- (9) Health care facilities including hospitals, health care clinics, doctor's offices, and other health care related facilities;
- (10) Any place of employment that is not exempt;
- (11) In the case of employers who own facilities otherwise exempted from this section, each employer shall provide a smoke-free work area for each employee requesting not to have to breathe environmental tobacco smoke. Every employee shall have a right to work in an area free of environmental tobacco smoke;
- (12) Food service establishments;
- (13) Bars;
- (14) Limited gaming facilities and any other facilities in which any gaming or gambling activity is conducted;
- (15) Indoor sports arenas;
- (16) Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
- (17) Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least 75 percent of the sleeping quarters within a hotel or motel that are rented to guests;
- (18) Bowling alleys;
- (19) Billiard or pool halls;
- (20) Facilities in which games of chance are conducted;
- (21) Common areas of retirement facilities, publicly-owned housing facilities, and except as specified in Section 38-460, nursing homes, but not including any resident's private residential quarters or areas of assisted living facilities specified in Section 38-460. Nothing in this article affects the validity or enforceability of a contract that specifies that a part of or all of a facility or home specified in this paragraph (21) is a smoke-free area;
- (22) Public buildings;
- (23) Auditoria;
- (24) Theaters;
- (25) Museums;
- (26) Libraries;
- (27) Public and nonpublic schools;
- (28) Other educational and vocational institutions; and
- (29) Entryways of all buildings and facilities listed in paragraphs (1) to (28) of this subsection. (Ord. No. 3243, § 1, 6-25-13)

Sec. 38-460. - Exceptions to smoking restrictions.

Section 38-459 shall not apply to:

- (1) Private homes, private residences, and private automobiles; except that Section 38-459 shall apply if any such home, residence, or vehicle is being used for child care or day care operated as a business; or if a private vehicle is being used for the public transportation of children; or as part of health care or day care transportation;
- (2) Limousines under private hire;
- (3) A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 25 percent;
- (4) Any retail tobacco business;

- (5) The outdoor area of any business;
- (6) A place of employment that is not open to the public and that is under the control of an employer that employs three or fewer employees;
- (7) A private, nonresidential building on land allowed for agricultural use, as defined in Chapter 18 of the City Code, that has annual gross income of less than \$500,000.00; or
- (8) The areas of assisted living facilities that are designated for smoking for residents, that are fully enclosed and ventilated, and to which access is restricted to the residents or their guests. As used in this paragraph (8) "assisted living facility" means a nursing facility, as that term is defined by state law and the term includes land used as "a nursing convalescent home, or hospice," as such use category is set forth in Chapter 18 of the City Code. (Ord. No. 3243, § 1, 6-25-13)

Sec. 38-461. - Optional prohibitions and signage requirements.

(a) The owner or manager of any place not specifically listed in Section 38-459, including a place otherwise exempted under Section 38-460, may post signs prohibiting smoking or providing smoking and nonsmoking areas. Such posting shall have the effect of including such place, or the designated nonsmoking portion thereof, in the places where smoking is prohibited or restricted pursuant to this article.

(b) If the owner or manager of a place not specifically listed in Section 38-459, including a place otherwise exempted under Section 38-460, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by Section 38-459(11), the owner or manager shall post a sign or signs in the smoke-free work area as provided by this section. (Ord. No. 3243, § 1, 6-25-13)

Sec. 38-462. - Unlawful acts. It shall be unlawful:

(a) For a person who owns, manages, operates, or otherwise controls the use of premises subject to any provision of this article to commit or permit or allow any violation of any provision of this article.

(b) For a person or retail establishment to sell or otherwise distribute any device used for smoking, including an electronic smoking device, to a minor under the age of 18.

(c) It is an affirmative defense to a charge of violating subsection (b) hereof that the person furnishing the device or product was presented with and reasonably relied upon a document which identified the person receiving the prohibited items as being 18 years of age.

d) For a person under the age of 18 to purchase, possess or smoke any device used for smoking, including an electronic smoking device.

(e) For a person to smoke in an area where smoking is prohibited pursuant to this article.

(f) For an employer, proprietor or person in charge of premises to fail to post or maintain the signs required pursuant to Section 38-461 herein.