

## Chapter 11.5 - CLEAN AIR: SMOKING IN PUBLIC PLACES

### Sec. 11.5-1. - Purpose.

The purpose of this chapter is to:

- (1) ~~Improve and protect the public's health by eliminating smoking in public places and workplaces;~~
- (2) ~~Promote the right of nonsmokers to breathe smoke-free air; and~~
- (3) ~~Recognize that the need to breathe smoke-free air shall have priority over the choice of smoke.~~

### Sec. 11.5-2. - Definitions.

*Adult venue* ~~means~~ - a bar that excludes minors and that meets the following requirements:

- (1) The bar does not allow the entrance of minors, including without limitation any guests, patrons or employees that are minors;
- (2) The bar is located in a separate building from any other public place or is independently ventilated- or completely separated from any other public place by impermeable ceilings and impermeable walls; and
- (3) Has a sign conspicuously posted that meets the requirements of subsection 11.5-11(d).

*Bar* ~~means~~ - an area 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 such beverages. A "bar" includes those facilities located within a restaurant, hotel, motel or other similar transient occupancy establishment and those establishments that allow guests to bring their own alcoholic beverages for consumption on premises. For purposes of this chapter, a bar includes any place where alcohol is consumed, whether purchased on or brought to the premises.

*Business* ~~means~~ - any sole proprietorship, partnership, 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 corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

*City Park* - A city owned facility exclusively managed by the city or its utilities, where members of the general public assemble to observe and/ or engage in recreational activity. The term shall include city owned playgrounds often frequented by minors engaged in play or similar activity.

*E-cigarette* - an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device. The term does not include a prescription medical device unrelated to the cessation of smoking. The term includes:

- a device described by this Chapter regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and
- a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

*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 nonprofit entity.

*Employer* ~~means~~ - a person, partnership, corporation, including a municipal corporation, or nonprofit entity, which employs the services of one (1) or more persons.

*Enclosed area* ~~means~~ - a space that is enclosed on all sides by solid walls that extend from the

floor to the ceiling (exclusive of windows, doors or passageways), including all space therein screened by partitions which do not extend to the ceiling or are not solid.

Enclosed Public Area - for purposes of this chapter shall include the following:

- (1) Aquariums, galleries, libraries, and museums.
- (2) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, hotels, and laundromats.
- (3) Areas where prohibited by city fire code.
- (4) Bars, including restaurant bars, lounge bars, and taverns that do not satisfy the adult venue requirements of this chapter.
- (5) Bingo facilities.
- (6) City facilities and vehicles.
- (7) Convention facilities.
- (8) Educational facilities, both public and private.
- (9) Elevators.
- (10) Theaters and other facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- (11) Health care facilities.
- (12) Licensed childcare and adult day care facilities.
- (13) Lobbies or hallways, and other common areas in apartment buildings, condominiums, hotel, motel, and bed and breakfasts, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (14) Polling places.
- (15) Public transportation facilities, including buses, trolleys, taxicabs, ferries, cruise ship terminals and ticket, boarding, covered or enclosed waiting areas of public transit depots.
- (16) Restaurants.
- (17) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- (18) Retail establishments.
- (19) 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 a political subdivision of the state, to the extent the place is subject to the jurisdiction of the city.
- (20) Service lines.
- (21) Shopping malls.
- (22) Sports arenas, including enclosed places in outdoor arenas.

Fraternal organization ~~means~~ - a non-profit organization that:

- (1) Is chartered by a national organization in existence since 1953;
- (2) Is tax exempt under Section 501(c)(8), (10), or (19) of the Internal Revenue Code;
- (3) Operates under a lodge system with a respective form of government; and
- (4) Is organized for the exclusive benefit of the members of the organization and their dependents.

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, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, 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.

*Minor means* \_ an individual under the age of eighteen (18).

~~*Necessary steps*, as used in this chapter, means that the owner/operator shall take the first step listed, and so many of the subsequent steps as are necessary to prevent occupants from smoking:~~

~~(1) — Post signs advising occupants that smoking is prohibited, and remove all ashtrays from the premises;~~

~~(2) — Advise a smoking occupant that smoking is prohibited on the premises;~~

~~(3) — Refuse to serve any occupant who persists in smoking despite the above;~~

~~(4) — Ask any occupant who persists in smoking despite the above, to leave the premises;~~

~~(5) — Follow standard business procedures taken when any occupant violates house rules;~~

~~(6) — If none of the previous steps causes the occupant to leave or stop smoking, notify the police department.~~

*Operator means* \_ the owner or person in charge of a public place or workplace, including an employer.

*Outdoor seating area means* \_ any patio, sidewalk cafe, or similar unenclosed area in which a contiguously situated restaurant or bar provides outdoor service to its patrons.

*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 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, or personal automobiles. A privately-owned business, open to the public, is not a "private place." A private residence used as child care, adult day care, or health care facility is not a private place.

~~*Public place means* \_ an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, cruise ship terminals, educational facilities, health care facilities, laundromats, public transportation 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 child care, adult day care, or health care facility.~~

*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.

*Retail tobacco store means* \_ a retail store used primarily for the sale of tobacco products and smoking accessories and in which the sale of other non-tobacco products is incidental. Sales of incidental products shall not include the sale of alcohol regardless of percentage of total gross sales. A retail tobacco store:

(1) Must not allow the entrance of minors into the establishment, including without

limitation any guest, patrons or employees that are minors;

(2) Must be located in a separate building from any other public place or independently ventilated and completely separated from any other public place by impermeable ceilings and impermeable walls; and

(3) Must have a sign conspicuously posted that meets the requirements of ~~section 11.5-11~~ the required signage herein.

*Service line means* - a 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.

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

*Sports arena means* - sport pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

*Vapor products* - “electronic cigarettes (e-cigarettes) or any other device that uses a mechanical heating element, battery, or electronic circuit to deliver vapor that may include nicotine to the individual inhaling from the device, or any substance used to fill or refill the device.

*Workplace means* - an enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is a "workplace" if it is used as a child care, adult day care or health facility.

### **Sec. 11.5-2. - ~~Prohibition of smoking in Enclosed public places.~~**

(a) Smoking shall be prohibited in all enclosed public places within the city, except as provided in this Chapter or state law. ~~including but not limited to, the following places:~~

~~(1) — Aquariums, galleries, libraries, and museums.~~

~~(2) — Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, hotels, and laundromats.~~

~~(3) — Areas where prohibited by city fire code.~~

~~(4) — Bars, including restaurant bars, lounge bars, and taverns that do not satisfy the adult venue requirements of this chapter.~~

~~(5) — Bingo facilities.~~

~~(6) — Bowling centers.~~

~~(7) — City facilities and vehicles.~~

~~(8) — Convention facilities.~~

~~(9) — Educational facilities, both public and private.~~

~~(10) — Elevators.~~

~~(11) — Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.~~

~~(12) — Government facilities and vehicles.~~

~~(13) — Health care facilities.~~

~~(14) — Licensed childcare and adult day care facilities.~~

~~(15) — Lobbies, hallways, and other common areas in apartment buildings, condominiums,~~

~~hotel, motel, and bed and breakfasts, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.~~

~~(16) — Polling places.~~

~~(17) — Reserved.~~

~~(18) — Public transportation facilities, including buses, trolleys, taxicabs, ferries, cruise ship terminals and ticket, boarding, covered or enclosed waiting areas of public transit depots.~~

~~(19) — Restaurants.~~

~~(20) — Restrooms, lobbies, reception areas, hallways, and other common-use areas.~~

~~(21) — Retail establishments.~~

~~(22) — 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 a political subdivision of the state, to the extent the place is subject to the jurisdiction of the city.~~

~~(23) — Service lines.~~

~~(24) — Shopping malls.~~

~~(25) — Sports arenas, including enclosed places in outdoor arenas.~~

**Sec. 11.5-3. - Enclosed places of employment.**

(b) Smoking shall be prohibited in an enclosed area of a workplace. 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.

~~(c) — Smoking shall be prohibited within five (5) feet from an entrance, operable window, or ventilation system of an enclosed area in which smoking is prohibited.~~

~~(d) — The owner or operator of a public place shall take necessary steps to prevent or stop another person from smoking in an enclosed area in a public place.~~

**Sec. 11.5-4. - Prohibition of Smoking in outdoor areas.**

Smoking shall be prohibited in the following outdoor areas:

(1) The seating area of an outdoor arena, stadium or amphitheater.

(2) In all outdoor service lines.

(3) In all outdoor public transportation stations, platforms, and shelters.

(4) City parks.

**Sec. 11.5-5. - Reasonable distance.**

Smoking is prohibited within a reasonable distance of not less than five (5) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

**Sec. 11.5-6. - City-owned and public transportation facilities. Application of chapter to City-owned facilities and public transportation facilities.**

All facilities owned, leased or operated by the City, including but not limited to parks, playgrounds, transportation facilities including buses, trolleys, ticket, boarding, covered or enclosed waiting areas of public transit depots, buildings, and vehicles owned, leased or operated by the city, shall be subject to the provisions of this chapter.

**Sec. 11.5-7. - Where smoking is not regulated. Exceptions from prohibition.**

Unless otherwise noted, this chapter does not apply to:

(1) Private residential property; a dwelling unit that is used exclusively for a residential use;

(2) Private vehicles, except when being used in the course of employment;

- (3) A hotel or motel room designated as a smoking room and rented to a person, provided, however, that no more than twenty (20) percent of hotel and motel rooms rented to guests may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this chapter. That status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms;
- (4) A private or semi-private room in a nursing home or long-term care facility that is occupied by individuals who smoke and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this chapter;
- (5) A retail tobacco store;
- (6) Outdoor seating areas as defined in this chapter;
- (7) Bars that satisfy all adult venue requirements; or
- (8) Private clubs.

**Sec. 11.5-8. - Outdoor distance exceptions.**

A person may smoke within five (5) feet of an entrance to a restricted smoking facility if:

- (1) The entrance is not a primary public pedestrian entrance to the premises; or
- (2) The distance between the entrance and the adjacent roadway is less than five (5) feet.

**~~Sec. 11.5-9. - Employer responsibilities.~~**

~~(a) — Except as provided in subsection (b), an employer shall provide a smoke-free workplace for employees.~~

~~(b) — If an employer requires employees to work in an area described in section 11.5-7 (exceptions from prohibition), the employer shall make reasonable accommodations for an employee who requests assignment to a smoke-free area. This subsection shall not apply to retail tobacco stores or adult venues.~~

~~(c) — Each employer having any enclosed workplace located within the city shall adopt, implement and maintain a written smoke policy, which shall contain the following requirements:~~

~~(1) — Smoking shall be prohibited in all enclosed facilities within a workplace. 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.~~

~~(2) — Additionally, smoking is prohibited with a reasonable distance of not less than five (5) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.~~

~~(d) — The smoking policy shall be communicated to all employees within four (4) weeks of its adoption and posted conspicuously in all workplaces under the employer's jurisdiction.~~

~~(e) — All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employees.~~

**Sec. 11.5-10. - Voluntary designation of a non-smoking facility.**

Nothing in this chapter implies that the operator of any public or private place is prohibited from designating the entire facility as non-smoking. Notwithstanding any other provision of this Chapter, 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, non-electronic cigarette (e-cigarette) use and vapor products facility. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this Chapter is posted.

**Sec. 11.5-11. - Signs required.**

(a) The ~~operator~~ owner, operator, manager of a public place shall conspicuously post a "No Smoking" or "No Vaping" sign, and/or the international "No Smoking" or "No Vaping" symbol (depiction of a burning cigarette or e-cigarette enclosed in a red circle with a red bar across it), or other sign containing words or pictures that reasonably prohibit smoking and vaping. The signs shall be written in contrasting colors with bold block lettering of not less than one (1) inch in height and must be conspicuously posted:

(1) In each public place and workplace where smoking is prohibited ~~by this chapter~~, and

(2) At each entrance to a public place or workplace.

(b) The ~~operator~~ owner, operator, manager of a public place shall conspicuously post signs in areas where smoking is permitted ~~under section 11.5-7 (exceptions from prohibition)~~.

(c) The ~~operator~~ owner, operator, manager, or employer of a public place and an employer shall remove all ashtrays ~~any ashtray~~ or other smoking accessory from a place where smoking is prohibited.

(d) The ~~operator~~ owner, operator, manager of a retail tobacco store or an adult venue shall conspicuously post a sign stating:

"SMOKING IS PERMITTED IN THIS VENUE. NO PERSON UNDER THE AGE OF 18 MAY ENTER THIS VENUE."

(e) It is not a defense to prosecution under this chapter that an ~~operator~~ owner, operator, manager, or employer failed to post ~~a sign~~ signage as required under this section.

(f) Prevention Steps. The owner or operator of a public place shall take steps to prevent or stop another person from smoking in an enclosed area in a public place. Prevention steps include but are not limited to the following:

1. Posting signs advising occupants that smoking is prohibited, and remove all ashtrays from the premises; and so many of the following to prevent occupants from smoking:

i. Advise a smoking occupant that smoking is prohibited on the premises;

ii. Refuse to serve any occupant who persists in smoking despite the above;

iii. Ask any occupant who persists in smoking despite the above, to leave the premises;

iv. Follow standard business procedures taken when any occupant violates house rules;

v. Notification of the police department.

**Sec. 11.5-12. - Retaliation prohibited.**

~~(a) — A person commits an offense if the person discharges, refuses to hire, or retaliates against a customer, employee, or applicant for employment because the customer, employee or applicant for employment reports a violation of this chapter.~~

~~(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. 11.5-13. - Enforcement.**

~~(a) This section is cumulative of other laws regulating smoking, electronic cigarette or vapor products use providing enforcement authority.~~

- (b) ~~This chapter shall be enforced by the fire department, police department, building inspections division, or code enforcement officers.~~
- (c) ~~Any citizen may report a violation of this chapter to the city manager or his designee.~~
- (d) ~~An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the appropriate provisions thereof.~~
- (e) ~~In addition to the remedies provided by the provisions of this section, the city may apply for injunctive relief to enforce these provisions in any court of competent jurisdiction.~~

**Sec. 11.5-14. - Violation and penalties.**

- A person who ~~smokes~~ commits an offense in violation of any provision of this chapter commits a class C misdemeanor, ~~punishable by a fine not to exceed five hundred dollars (\$500.00). A culpable mental state is not required for a violation of this chapter, and need not be proved. However, if the violation was done intentionally, knowingly or recklessly, the offense is punishable by a fine not to exceed two thousand dollars (\$2,000.00).~~
- Whenever an act is prohibited or is made or declared to be unlawful or an offense or misdemeanor, or whenever in this Chapter the doing of any thing or act is required or the failure to do any thing or act is prohibited, the violation of the provision is a Class C misdemeanor punishable by a fine not to exceed two thousand dollars (\$2,000.00).

~~Sec. 11.5-14. - Violation and penalties.~~

- (a) ~~A person who smokes in violation of any provision of this chapter commits a class C misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500.00). A culpable mental state is not required for a violation of this chapter, and need not be proved. However, if the violation was done intentionally, knowingly or recklessly, the offense is punishable by a fine not to exceed two thousand dollars (\$2,000.00).~~
- (b) ~~An operator or employer who owns, manages, operates, or otherwise controls a public place or workplace and who fails to comply with the provisions of this chapter shall be guilty of a class C misdemeanor, punishable by:~~
- (1) ~~A fine not exceeding two hundred dollars (\$200.00) for a first violation.~~
  - (2) ~~A fine not exceeding four hundred dollars (\$400.00) for a second violation within a period of twelve (12) consecutive months.~~
  - (3) ~~A fine not exceeding five hundred dollars (\$500.00) for each additional violation within a period of twelve (12) consecutive months.~~
- (c) ~~Violation of this chapter is hereby declared to be a public nuisance, which may be abated by restraining order, preliminary and permanent injunction, or other means provided for by law, and the city may recover the costs of the nuisance abatement.~~
- (d) ~~It shall be presumed that a violation of this chapter is intentional if a sign is posted near the main entrance of the premises, indicating that smoking is prohibited.~~
- (e) ~~Other violations.~~
- (1) ~~It shall be a violation of this chapter for the operator of a retail tobacco store or an adult venue to allow a minor to enter and remain in the retail tobacco store or adult venue.~~
  - (2) ~~It shall be a violation of this chapter for any minor to enter or remain in a retail tobacco store or an adult venue.~~

**Sec. 11.5-15. - Public education.**

- (a) ~~The city manager, or designee, shall:~~

~~(1) — Obtain or develop a comprehensive tobacco education program to educate the public about the harmful effect of tobacco and its addictive qualities.~~

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

~~(3) — Coordinate the city's tobacco education program with other civic or volunteer groups organized to promote smoking prevention and tobacco education.~~

~~(b) — To implement this section, the city manager, or designee, may publish and distribute educational materials relating to this chapter to businesses, their employees, and the public.~~

**~~Sec. 11.5-16. — Governmental agency cooperation.~~**

~~The city manager, or designee, shall annually request that each federal, state, county, and school district agency with a facility in the city adopt local operating procedures and update its existing smoking control regulation in compliance with this chapter.~~

**Sec. 11.5-17. - Application of other law.**

This chapter is cumulative of other laws that regulate the use of smoking, electronic cigarette or vapor products (as described in this chapter). This chapter shall not be interpreted or construed to permit smoking, electronic cigarette or vapor products use where it is otherwise restricted by other applicable ordinances, laws or policies.