

CHAPTER 5-12 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

5-12-01. Purpose. This ordinance is enacted to regulate smoking in public places and places of employment in order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air.

(Ord. 5463, 10-11-05)

5-12-02. Definitions. The following definitions shall apply in the interpretation and enforcement of this Ordinance.

1. "Bar" means a retail alcoholic beverage establishment licensed under chapter 5-02 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. The term includes a bar located within a hotel, bowling center, restaurant, or other establishment that is not licensed primarily or exclusively to sell alcoholic beverages.

2. "Business" means a sole proprietorship, partnership, association, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold and professional corporations and other entities where professional services are delivered.

3. "E-cigarette" means any electronic oral device, such as one composed of a heating element, battery and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe or under any other product, name or descriptor.

4. "Employee" means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.

5. "Employer" means an individual, business, or private club, including a municipal corporation or trust, or the state and its agencies and political subdivisions that employs the services of one or more individuals.

6. "Enclosed area" means all space between a floor and a ceiling that has thirty-three percent or more of the surface area of its perimeter bounded by opened or closed walls, windows or doorways. A wall includes any physical barrier regardless of whether it is open or closed, temporary or permanent, or contains

openings of any kind, and includes retractable dividers and garage doors.

7. "Health care facility" means any office or institution providing health care services or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions. Some examples of health care facilities include hospitals; clinics; ambulatory surgery centers; outpatient care facilities; weight control clinics, nursing homes; homes for the aging or chronically ill; nursing, basic, long-term or assisted living facilities; laboratories; and offices of any medical professional licensed under title 43 of the North Dakota Century Code, including all specialties and subspecialties in those fields. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, wards within health care facilities, and any mobile or temporary health care facilities.

8. "Health care services" means services provided by any health care facility. Some examples of health care services are medical, surgical, dental, vision, chiropractic, psychological and pharmaceutical services.

9. "Place of employment" means an area under the control of a public or private employer, including work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, temporary offices, vehicles, and stairs. A private residence is not a place of employment unless it is used as a licensed child care, adult day care, or health care facility.

10. "Public place" means an area which the public enters. Some examples of public places are publicly owned buildings, vehicles, or offices; bars; bingo facilities; gambling and gaming facilities as defined in section 12.1-28-01; child care and adult day care facilities subject to licensure by the department of human services, including those operated in private homes; convention facilities; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels including all rooms that are rented to guests; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, private and semi-private nursing home rooms; museums, libraries, galleries, and aquariums; polling places; fraternal orders and private clubs; professional offices; public transportation facilities, including buses, trains, airplanes and similar aircraft, taxicabs and similar vehicles such as towncars and limousines when used for public transportation, and ticket, boarding, and waiting areas of public transit facilities, including bus and train stations and airports; reception areas;

bars and nightclubs; restaurants, retail food production and marketing establishments; retail service establishments; retail stores including tobacco and hookah establishments; rooms, chambers, places of meeting or public assembly, including school buildings; pool halls; video arcades, health clubs, spas, limousines, elevators, restaurants including outdoor service areas, public restrooms, shopping malls, service stations, truckstops; sports arenas; theaters and waiting rooms.

11. "Publicly owned building, vehicle or office" means a place or vehicle owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes.

12. "Restaurant" includes every building, or other structure or any part thereof, and all buildings in connection therewith that are kept, used, maintained, advertised, or held out to the public as a place where food is served. Some examples of restaurants include coffee shops, cafeterias, sandwich stands, private and public school cafeterias, kitchens and catering facilities in which food is prepared on the premises for serving elsewhere, and a bar area within a restaurant.

13. "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional businesses.

14. "Smoking" means inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e- cigarette which creates a vapor, in any manner or any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this chapter.

15. "Sports arena" means an indoor or outdoor place where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events. Some examples of sports arenas include sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling centers.

(Ord. 5463, 10-11-05; Ord. 5781, 8-24-10 shall take effect at 1:00 a.m. on November 1, 2010; Ord. 5789, 09-28-10 was referred 04-19-11; Ord. 5781 referral failed 04-19-11; Ord. 5936, 01-08-13)

5-12-03. Smoking Restrictions - Exceptions - Retaliation Application.

1. In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke free air, smoking is prohibited in all enclosed areas of:

- a. Public places; and
- b. Places of employment.

2. Smoking is prohibited within twenty feet of entrances, exits, operable windows, air intakes, and ventilation systems of enclosed areas in which smoking is prohibited. Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty feet is a reasonable minimum distance by making application to the director of the local health department or district in which the public place or place of employment is located. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance.

3. The following areas are exempt from the provisions of Section 5-12-03(1) and (2):

- a. Private residences, except those residences used as a child care, adult day care or health care facility subject to licensure by the department of human services.
- b. Outdoor areas of places of employment, except those listed in subsection 2.
- c. Any area that is not commonly accessible to the public and which is part of an owner-operated business having no employees other than the owner-operator.

4. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.

5. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section. An employee who works in a setting where an employer allows smoking does not waive or surrender any legal rights the employee may have against

the employer or any other party. Violations of this subsection shall be an offense.

6. This chapter may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

7. 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.

(Ord. 5463, 10-11-05; Ord. 5781, 8-24-10 shall take effect at 1:00 a.m. on November 1, 2010; Ord. 5789, 09-28-10 was referred 04-19-11; Ord. 5781 referral failed 04-19-11; Ord. 5936, 01-08-13)

5-12-04. Responsibility of Proprietors. The owner, operator, manager or other person in control of a public place or place of employment where smoking is prohibited by this chapter shall:

1. Clearly and conspicuously post no smoking signs or the international no smoking symbol in that place.

2. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.

3. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this chapter at least one sign, visible from the vehicle's exterior, stating that smoking is prohibited.

4. Remove all ashtrays from any area where smoking is prohibited, except for ashtrays displayed for sale and not for use on the premises.

5. By the effective date of this section, communicate to all existing employees and to all prospective employees upon their application for employment that smoking is prohibited in that place.

6. For places under his or her control, direct a person who is smoking in violation of this section to extinguish the product being smoked. If the person does not stop smoking, the owner, operator, manager 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, operator, manager, or employee shall immediately report the violation to an enforcement agency identified in this section. The refusal of the person to stop smoking or leave the premises in response to requests made under this section by an owner, operator, manager or employee shall not constitute a violation of the section by the owner, operator, manager, or employee.

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5-12-05. Penalty. Violations of this chapter may be reported to the Bismarck Police Department.

1. An individual who smokes in an area in which smoking is prohibited under the provisions of this ordinance is guilty of an infraction punishable by a fine not exceeding fifty dollars.

2. Except as otherwise provided in section 5-12- 03(5), an owner or a person with general supervisory responsibility over a public place or place of employment who willfully fails to comply with section 5-12-03 is guilty of an infraction, subject to a fine not to exceed one hundred dollars for the first violation, to a fine not to exceed two hundred dollars for a second violation within one year, and a fine not to exceed five hundred dollars for each additional violation within one year of the preceding violation.

3. In addition to the fines established by this section, violation of this chapter 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.

4. Violations of this chapter are declared to be a public nuisance that may be abated by restraining order, preliminary or permanent injunction or other means provided by law.

5. Each day on which a violation of this chapter occurs shall be considered a separate and distinct violation.

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