

AN ORDINANCE RELATING TO SMOKING AND TOBACCO PRODUCTS, AMENDING MUNICIPAL CODE CHAPTER 5.03.080.160, "TOBACCO PRODUCTS AND SMOKING," AND REPEALING CORVALLIS MUNICIPAL CODE SECTION 5.03.080.160.13, "HIATUS"

THE CITY OF CORVALLIS ORDAINS AS FOLLOWS:

Section 1. Municipal Code Section 5.03.080.160 is hereby amended as follows:

Section 5.03.080.160 Tobacco products and smoking.

5.03.080.160.01 Definitions.

- 1) Accessibility ramp - A ramp intended to provide access for people with disabilities to and from an entrance or exit.
- 2) Bar - An area which is devoted to the serving of alcoholic beverages for consumption by guests on premises and in which the serving of food is only incidental to the consumption of such beverages.
- 3) Business - Any sole proprietorship, partnership, joint venture, corporation, or other business entity, including for-profit and non-profit entities, private clubs, and retail establishments where goods or services are sold as well as professional corporations and other entities where professional services are delivered.
- 4) Electronic smoking device - 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 of inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or under any other product name or descriptor and any cartridge or other component of the device or related product.
- 5) Employee - Any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services to a non-profit entity.
- 6) Employer - Any person or entity who employs the services of one or more individuals.
- 7) Enclosed area - Any covered space having more than 50 percent of its perimeter area walled in or otherwise closed to the outside, such as, for example, a covered porch with more than two walls; or any space open to the sky having more than 75 percent of its perimeter area walled in or otherwise closed to the outside, such as, for example, a courtyard.
- 8) Place of employment - Any 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 rest rooms, conference and class rooms, cafeterias and hallways, and vehicles that are operated in the course of an employer's business that are not operated exclusively by one employee. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
- 9) Private club - An organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used for club purposes, which is operated for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain.

10) Public place -Any City-owned or managed park and recreational facilities, including parks, trails, open space, and special use areas, City-owned bicycle parking structures, and City-owned transit shelters, and any enclosed area to which the public is invited or in which the public is permitted including but not limited to banks, education facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, 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.

11) Restaurant - Any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

12) Retail tobacco store - A retail store utilized primarily for the sale of tobacco products and accessories and in which sale of other products is merely incidental.

13) Service line - Any indoor line or any portion of an indoor line that extends out of doors, at which one or more persons are waiting for or receiving services of any kind, whether or not such services involves the exchange of money.

14) Smoking - Any inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, weed, plant, or other tobacco like product or substance in any manner or in any form. Smoking also includes the use of an electronic smoking device which creates a vapor, in any manner or in any form.

15) Sports arena - Any sports pavilion, gymnasium, health spa, swimming pool, roller rink, bowling alley, and other places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

16) Tobacco product - Any product that contains tobacco or is derived from tobacco and is intended to be introduced into the human body. "Tobacco Product" includes any electronic smoking device. "Tobacco Product" does not mean any product that the United States Food and Drug Administration has approved as a tobacco use cessation product.

(Ord. 2013 §1, Ord. 2006-01 §1, 01/03/2006)

5.03.080.160.02 Smoking prohibited in public places.

1) Smoking shall be prohibited in all public places within the City or located on City owned property, including, but not limited to the following places:

- a) Elevators;
- b) Rest rooms, lobbies, reception areas, hallways, and any other common-use areas;
- c) Buses, taxicabs, and any other means of public transportation under the authority of the City;
- d) Service lines, or within 10 feet of a service line that extends out of doors;
- e) Retail stores;
- f) All areas available and customarily used by the general public located in all businesses patronized by the public, including non-profit and public businesses. Affected businesses include, but are not limited to, professional offices, banks, laundromats, hotels and motels;
- g) Restaurants;
- h) Any facility which is primarily used for exhibiting any motion picture, stage or drama production, lecture, music recital or other similar performances, except performers when smoking or carrying a lighted smoking instrument that does not contain tobacco is part of a stage or drama production;
- i) Sports arena, including bowling facilities and convention halls;

j) 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 City during such time as a public meeting is in progress, to the extent such a place is subject to the jurisdiction of the City;

k) Waiting rooms, hallways, wards, and semiprivate rooms of health care facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctor's and dentist's office;

l) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; and

m) Polling places.

n) Retail tobacco stores.

2) Smoking shall be prohibited in all City-owned or managed parks and recreational facilities, including all parks, trails, open space, and special use areas. This does not include designated parking areas.

3) Smoking shall be prohibited on all of the City-owned grounds, patios, plazas, steps, ramps, and facilities for the Corvallis-Benton County Public Library. This prohibition includes the library parking garage and library parking lot. This prohibition includes any sidewalk, pedestrian way, driveway, planting area, public right-of-way, street, curb, or gutter within 50 feet of the exterior of the City-owned Corvallis Benton County Public Library building. This prohibition does not include any property that is within 50 feet of the exterior of the City-owned Corvallis Benton County Public Library building that is not owned by the City or part of a public right-of-way. This prohibition does not include smoking within a private automobile with the doors and windows closed, except within the library parking garage or library parking lot, or the associated driveways.

4) Smoking shall be prohibited in the interior of and within 10 feet of the exterior of any City-owned covered bicycle parking structure and transit shelter.

5) Smoking shall be prohibited on all City-owned grounds, steps, ramps, sidewalks, planting areas, transit shelters, curbs, driveways, vehicle parking areas, and bicycle parking facilities for the entire City Hall block. The parcels within this block are identified as Block 8 Lots 1-12, County Addition. This prohibition does not include smoking within a private automobile with doors and windows closed.

6) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a non-smoking establishment.

7) Any person who violates the provisions of this Code section shall be subject to the penalties as set forth in Section 5.03.080.160.10 of Chapter 5.03 of the Corvallis Municipal Code.

(Ord. 2013 §2, Ord. 2011-09 §1, 05/16/2011; Ord. 2009-04 §1, 03/02/2009; Ord. 2006-01 §2, 01/03/2006)

5.03.080.160.03 Smoking prohibited in places of employment.

It shall be the responsibility of employers to provide a smoke-free work place for all employees, but employers are not required to incur any expense to make structural or other physical modifications.

5.03.080.160.04 Smoking prohibited outside of enclosed areas.

Smoking shall not occur within a reasonable distance, not to be less than ten (10) feet, of any entrance, exit, window that opens, ventilation system of any enclosed area where smoking is prohibited or of any accessibility ramp or service line that extends out of doors.

5.03.080.160.05 Places where smoking is not regulated.

1) Notwithstanding any other provision of this section to the contrary, the following areas shall not be subject to any smoking restrictions contained within this section:

- a) Private residences, unless the private residence is used as a child care, adult day care, or health care facility;
- b) Up to 25 percent of rented motel/hotel rooms may be designated in some manner as smoking allowed rooms by the owners of the establishment renting the rooms as allowed by ORS 433.850(2)(a);
- c) Private rooms rented for an occupancy that exceeds one month and that are not located in a private residence used as a child care, adult day care or health care facility.

5.03.080.160.06 Posting "no smoking" signs.

1) "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 the cigarette) shall be clearly, sufficiently, and conspicuously posted in every building or other area where smoking is prohibited by this article, by the owner, manager, or other person having control of such building or other area, including private residences used as a child care, adult day care or health care facility.

2) Every public place where smoking is prohibited by this section shall have posted at every entrance a conspicuous sign stating that smoking is prohibited.

5.03.080.160. Ashtrays.

Ashtrays are prohibited inside a public place, a place of employment, and within 10 feet of entrances, exits, windows that open, ventilation systems, or accessibility ramps.

5.03.080.160.07 Non-retaliation.

It shall be a violation of this section for any person or employer to discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer reports or attempts to prosecute any violation of this ordinance.

5.03.080.160.08 Smoking in or near entrances to publicly owned buildings.

- 1) No person shall smoke anywhere within any publicly owned building.
- 2) No person shall smoke within 10 feet of any entrance to a publicly owned building.
- 3) A violation of this section is a Class B infraction.

5.03.080.160.09 Tobacco sales to minors prohibited.

1) No person, other than a minor's custodial parent or guardian, shall sell or otherwise provide tobacco products to a minor under the age of eighteen (18) years old.

- 2) A violation of this section is a Class A infraction.

5.03.080.160.10 Other violations and penalties.

1) It shall be a violation of this section for any person who owns, manages, operates or otherwise controls the use of any premises, subject to regulation under this section, fails to comply with any provisions herein.

2) It shall be a violation of this section for any person to smoke in any area where smoking is prohibited by the provisions of this section.

- 3) Any person who violates this section shall be guilty of an infraction, punishable by a fine:

a) Not less than fifty dollars (\$50.00), nor more than one hundred dollars (\$100.00) for a first violation within any 12 (twelve) months of any previous violation ;

b) Not less than one hundred dollar (\$100.00), nor more than two hundred dollars (\$200.00) for a second violation within 12 (twelve) months of a violation under subsection (a) ;

c) Not less than two hundred and fifty dollar (\$250.00), nor more than five hundred dollars (\$500.00) for each additional violation of this section within 12 (twelve) months of a violation under subsection (b) .

4) Any person who owns, manages, and operates or otherwise controls the use of any premises, subject to regulation under this section, and violates this section shall be guilty of an infraction, punishable by a fine:

a) Up to \$500 per day for each violation, not to exceed \$4,000 in a 30-day period.

5) Notwithstanding any other provision of this section, an employer or private citizen may file a citizen complaint to enforce this section under Chapter 5.03.010.080.

5.03.080.160.11 Severability.

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

5.03.080.160.12 Other laws.

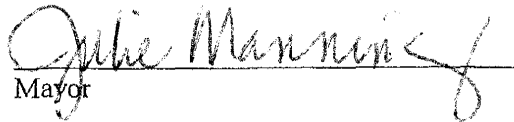
This section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(Ord. 98-04 §1, 03/02/1998)

PASSED by the City Council this 16th day of December, 2013.

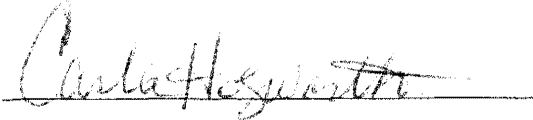
APPROVED by the Mayor this 16th day of December, 2013.

EFFECTIVE this 26th day of December, 2013.



Mayor

ATTEST:



City Recorder

City Recorder