

CITY CODE
City of
GRAND FORKS, NORTH DAKOTA

CHAPTER XIII : HEALTH AND SANITATION

ARTICLE 11. SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

13-1101. Purpose.

This article 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. No. 4067, § I, 6-20-05)

13-1102. Definitions.

The following definitions shall apply in the interpretation and enforcement of this article.

(1) *Bar* means a retail alcoholic beverage establishment holding a class 1, 5 or 9 alcoholic beverage license as defined by Grand Forks City Code section 21-0205 provided that a "bar" located within a hotel, motel or bowling center must be in a separately enclosed area and patrons entering must be at least twenty-one (21) years of age. The term "bar" also means a retail alcoholic beverage establishment holding a class 3 alcoholic beverage license as defined by Grand Forks City Code section 21-0205 provided that patrons entering the establishment must be at least twenty-one (21) years of age. A "bar" under this article must be devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the sale or service of food, activities or other services are only incidental to the consumption of 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) *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.

(4) *Employer* means an individual, business, or the state and its agencies and political subdivisions that employs the services of one or more individuals.

(5) *Health care facility* means any office or institution providing health care services, including a hospital; clinic; ambulatory surgery center; outpatient care facility; nursing, basic, or assisted living facility; and laboratory.

(6) *Health care services* include medical, surgical, dental, vision, chiropractic, and pharmaceutical services.

(7) *Place of employment* means an indoor area under the control of a public or private employer that employees normally frequent during the course of employment, including work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, and stairs.

(8) *Public place* means an indoor area to which the public has access or in which the public is permitted, including a publicly owned building or office, and indoor areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including bars; bingo facilities; child care facilities subject to licensure by the department of human services, including those operated in private homes when any child cared for under that license is present; 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; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores; rooms, chambers, places of meeting or public assembly, including school buildings; service lines; pool halls; video arcades, health clubs, spas, limousines, elevators, restaurants, public restrooms, shopping malls; sports arenas, including indoor places in outdoor arenas; theaters; and waiting rooms.

(9) *Publicly owned building or office* means a place 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.

(10) *Restaurant* includes every building or other structure, or any part thereof, and all buildings in connection therewith, excluding a "bar", that are kept, used, maintained, advertised, or held out to the public as a place where food is served, whether or not the establishment serves alcoholic or non-alcoholic beverages, including coffee shops, cafeterias, 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. The term also includes outdoor areas of a restaurant where food and/or beverages are served or consumed including but not limited to outdoor patios, terraces, decks, courtyards, sidewalks and porches.

(11) *Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(12) *Separately enclosed area* means an area in which all space between a floor and a ceiling is enclosed on all sides by solid walls, closed windows or doors to ensure that tobacco smoke does not infiltrate in to areas where smoking is prohibited under the provisions of this article.

(13) *Shopping mall* means an indoor public walkway or hall area that serves to connect retail or professional businesses.

(14) *Smoking* means possessing a lighted cigar, cigarette, pipe, weed, plant, or any other lighted tobacco product in any manner or in any form.

(15) *Sports arena* means any facility or area, whether indoor or outdoor, where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling centers.

(16) *Truck stop* means a roadside service station and restaurant that caters to truck drivers. (Ord. No. 4067, § I, 6-20-05; Ord. No. 4111, § I, 1-3-06)

13-1103. Smoking restrictions--Exceptions.

- (1) Except as otherwise provided herein, smoking is prohibited in all:
 - a. Public places;
 - b. Places of employment.
- (2) Smoking is also prohibited in:
 - a. All indoor and outdoor areas of restaurants;
 - b. Within five (5) feet of any entrance or exit to a public place or a place of employment; and
 - c. In any area designated as a nonsmoking area by a business, employer, the manager of a business, or a person in control of a public place or a place of employment.
- (3) The following areas are exempt from the provisions of subsection (1):
 - a. Private residences, except when operating as a child care facility subject to licensure by the department of human services and when any child cared for under that license is present in that facility.
 - b. Hotel and motel rooms, and other places of lodging, that are rented to guests and are designated as smoking rooms.
 - c. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under this section.
 - d. Outdoor areas of places of employment, except a sports arena or restaurant.
 - e. Any area that is not commonly accessible to the public and which is part of an owner-operated business having no employee other than the owner-operator.
 - f. Bars.
 - g. Any place of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the function sponsor.
 - h. Separately enclosed areas in truck stops which are accessible only to adults.

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

(5) Smoking by a patient in a hospital licensed by the state or a patient on the grounds of a hospital licensed by the state if the patient's attending physician authorizes the smoking based on medical policies adopted by the hospital's organized medical staff is not prohibited.

(6) Smoking by a resident of a basic care facility licensed by the state or a nursing facility licensed by the state in the facility or on the grounds of the facility if approved by the board of the facility is not prohibited.

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

(Ord. No. 4067, § I, 6-20-05; Ord. No. 4274, § IV, 8-17-09)

13-1103.1. Retaliation prohibited.

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 article or reports or attempts to prosecute a violation of this article.

(Ord. No. 4274, § V, 8-17-09)

13-1104. Right to designate nonsmoking areas.

Nothing in this article shall prevent any business, employer, manager of a business, or person in control of a public place or a place of employment, or any owner of real property, from prohibiting smoking in any location, or part thereof, where smoking is otherwise allowed under this article.

(Ord. No. 4067, § I, 6-20-05)

13-1105. Posting of signs or symbols required.

The owner, proprietor or other person in charge of a public place or place of employment where smoking is prohibited shall clearly and conspicuously post "no smoking" signs or the international "no smoking" symbol consisting of a pictorial representation of a burning cigarette in a circle with a bar across it.

(Ord. No. 4067, § I, 6-20-05)

13-1106. Penalty.

(1) An individual who smokes in an area in which smoking is prohibited under the provisions of this article is guilty of a noncriminal offense.

(2) A business, employer, owner of a business, or a person with general supervisory authority over a public place or a place of employment who willfully fails to comply with the provisions of this article is guilty of a noncriminal offense.

(3) A business or an individual who is found guilty of a violation of the provisions of this article shall be punishable by:

- a. A fine not exceeding one hundred dollars (\$100.00) for the first violation;
- b. A fine not exceeding two hundred dollars (\$200.00) for a second violation occurring within one (1) year of the first violation;
- c. A fine not exceeding five hundred dollars (\$500.00) for each violation occurring within one (1) year of the second violation.

(Ord. No. 4067, § I, 6-20-05; Ord. No. 4125, § XLIII, 3-20-06)