

5-11-05. Grounds for Suspension or Revocation of Authority to Sell. The authority to sell tobacco products granted by this Chapter may be revoked or suspended temporarily by the Board of City Commissioners if the person or business violates Section 5-11-04 more than one time at any one location and the illegal sales by the clerks employed by the person or business upon which the violations of Section 5-11-04 are based occurred within a 24 month period.

1. Hearing for Revocation or Suspension. Before the authority to sell tobacco products may be revoked or suspended for cause, the Board shall notify the person or business of the proposed action and the right to a hearing on the action. The notice shall specify the action proposed to be taken, the reason for it, the time and place of the hearing, and the right of the person or business to appear and present evidence or testimony on it's behalf. The notice must be mailed to the person or business by certified return receipt mail not less than five days nor more than fifteen days before the hearing.

2. If after the hearing the Board of City Commissioners finds that the violations did occur, the Board may give a warning, suspend the authority to sell, or revoke the authority to sell as it deems appropriate. The Board shall issue Findings of Fact, Conclusions and Order, which shall be served on the person or business. The decision of the Board is final.

(Ord. 5017, 11-23-99)

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 holding a Class A, C, D or E alcoholic beverage license as defined by Bismarck City Ordinance Section 5-01-04, devoted to the serving of alcoholic beverages for consumption by guests on the premises and where the annual sales of alcohol under such license exceed the annual sales of food.

(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) "Indoor Area" means all spaces within a building or structure and all other enclosed spaces, including temporary spaces, that are enclosed on all sides by permanent or temporary ceilings, walls, windows, doors or screens, and including sun porches and screen porches.

(8) "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.

(9) "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; fraternal orders and private clubs; professional offices; public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots; reception areas; bars and nightclubs; retail food production and marketing establishments; retail service establishments; retail stores including tobacco stores; hookah bars or establishments for smoking tobacco or other plant substances; rooms, chambers, places of meeting or public assembly, including school buildings; service lines; pool halls; video arcades, health clubs, spas, limousines, elevators, restaurants including outdoor service areas, public restrooms, shopping malls, service stations, truckstops; sports arenas, including indoor places in outdoor arenas; theaters; waiting rooms; and screened or windowed porches and gazebos.

(10) "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.

(11) "Restaurant" includes every building, structure or place, whether permanent or temporary, or any part thereof, that are kept, used, maintained, advertised, or held out to the public as a place where food is served, including coffee shops, cafeterias, private and public school cafeterias, kitchens, temporary or portable food service facilities and catering facilities in which food is prepared on the premises for serving elsewhere. 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.

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

(13) "Smoking" means possessing a lighted cigar, cigarette, pipe, weed, plant, or any other lighted tobacco product in any manner or in any form or possessing any activated electronic or e-cigarette or other electronic device used to heat tobacco or other plant substances.

(14) Smoking Shelter: Any shelter located as an accessory structure to a bar and constructed pursuant to this chapter where smoking is permitted by a bar owner and which is not an "indoor area" as defined by this chapter. A smoking shelter does not include bus shelters, park shelters or any other shelter not specifically designated as a smoking shelter as allowed by this chapter.

(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.

(Ord. 5463, 10-11-05; Ord. 5781, 8-24-10 shall take effect at 1:00 a.m. on November 1, 2010; Ord. 5789 relating to smoking shelters shall take effect immediately upon passage. The language in Ord. 5789 that was amended by Ord. 5781 shall take effect at 1:00 a.m. on November 1, 2010)

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

(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. Within ten (10) feet of any entrance or exit to a public place or a place of employment;

and

b. In any area designated as a non-smoking 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 Section 5-12-03(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. Outdoor areas of places of employment, except a sports arena or restaurant.

d. Any indoor 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 and from which smoke does not migrate to any area where smoking is prohibited or to any area not under the control of that business.

e. Smoking shelters constructed and maintained pursuant to this chapter.

(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 of North Dakota or a patient on the grounds of a hospital licensed by the state of North Dakota 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 of North Dakota or a nursing facility licensed by the state of North Dakota in the facility or on the grounds of the facility if approved by the board of the facility is not prohibited.

(7) 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.

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

(9) A smoking shelter shall be designed, constructed, and installed according to the following requirements:

a. The smoking shelter must be detached from any other building and there shall be limit of one smoking shelter per parcel.

b. The smoking shelter must be a single story and may be no larger than three hundred square feet.

c. The smoking shelter must have at least 25% of the vertical wall space as open area. Doors or windows, whether opened or closed, shall not be considered open area. The open area required by this section must be covered by chain link.

d. The smoking shelter may utilize UL-approved outdoor lighting fixtures and approved heating fixtures. Such fixtures shall be hard wired and installed and operated according to manufacturer's specifications. The smoking shelter may not contain any other electrical devices or any other mechanical devices such as televisions, radios, or generators.

e. Benches may be installed in the smoking shelter. While the smoking shelter is in operation, the benches must be permanently attached to the smoking shelter or to the ground. No stools or chairs (freestanding or attached) are permitted inside the smoking shelter. Counters permanently affixed to the shelter are allowed.

f. Tables, signs, or any other type of furnishings are prohibited.

g. The smoking shelter must have at least one, but not more than two, tobacco waste receptacles that are approved by and listed with a recognized fire or life safety agency. The smoking shelter must also have at least one garbage receptacle.

h. The materials used to construct the smoking shelter, seating and all waste receptacles must be non-combustible, as defined in Section 703.4.1 of the International Building Code.

i. The smoking shelter and any approved fixtures, devices, or furnishings must meet all load requirements and be installed in accordance with all requirements of the City's adopted building and fire codes.

j. For purposes of the City's zoning ordinance, a smoking shelter is deemed to be an accessory structure when placed within an industrial or commercial zoning district or the DC zoning district. Accordingly, a smoking shelter may only be located as follows:

1. As an accessory structure to a building housing a bar located in the DC zoning district or on a commercially- or industrially-zoned property.

2. On an approved surface.

3. A smoking shelter located less than 10 feet from a building must be roof vented as approved by the Building Official and may not be less than 10 feet from any public entry or exit or less than 15 feet from any non-fixed window, or ventilation intake that serves a building where smoking is prohibited.

4. The smoking shelter must conform to the zoning setback requirements for the property. For an existing bar, if the smoking shelter cannot meet the setback requirement due to site constraints, then the bar may apply for a variance so that the smoking shelter may be located in a required

side or rear yard, but no closer than ten feet from any lot line.

5. For an existing bar, the placement of a smoking shelter on a parking lot shall be accomplished with a minimum loss of required off-street parking spaces but shall not cause a violation of the bar's parking space requirement. A smoking shelter may not be placed on the public right-of-way.

6. The sales, service, or consumption of drinks and food in the smoking shelter are strictly prohibited except as allowed by this paragraph. Except in an emergency or when off duty, employees shall not enter the smoking shelter when it is occupied for the purpose of providing services on behalf of the bar. For bars using a non-required entry or exit that is dedicated to access the smoking shelter from the licensed premises, a secured walkway between the licensed premises and the smoking shelter must be provided and the smoking shelter or secure walkway must include an emergency exit. A secured walkway is a walkway that prevents people from entering or exiting the smoking shelter except through the licensed premises. A bar with a smoking shelter with a dedicated door and a secure walkway to the smoking shelter may allow patrons to carry drinks to and from the smoking shelter. For bars using a public entry or exit for access to the smoking shelter, no food or drinks shall be sold or consumed in the smoking shelter and no walkway or emergency exit is required.

7. The installation or modification of a smoking shelter requires a building permit.

Any smoking shelter existing at any business prior to August 24, 2010 shall not be subject to the provisions of this chapter. Nothing in this Chapter 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 Chapter.

(Ord. 5463, 10-11-05; Ord. 5781, 8-24-10 shall take effect at 1:00 a.m. on November 1, 2010; Ord. 5789 relating to smoking shelters shall take effect immediately upon passage. The language in Ord. 5789 that was amended by Ord. 5781 shall take effect at 1:00 a.m. on November 1, 2010)

5-12-04. 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 signs of at least 5" by 7" in size stating "no smoking" or the international "no smoking" symbol consisting of a pictorial representation of a burning cigarette in a circle with a bar across it. Any public place or place of employment where smoking is prohibited shall remove all ashtrays.

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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.

(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 ordinance is guilty of an infraction.

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

a. A fine not exceeding \$100 for the first violation;

b. A fine not exceeding \$200 for a second violation within one year of the first violation;

c. A fine not exceeding \$500 for each violation within one year of the second violation.

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