

Article II : Smoking in Public Places (Effective January 1, 2007)**Section 10 : Interpretation With Other Laws.**

Nothing in this Article overrides any existing elimination of smoking that is already covered by fire code restrictions. (Ordinance No. 2006-51)

Section 11 : Definitions.

The following words and phrases whenever used in this Article shall have the following meanings:

"Adult Day Care Home" means a private residence which receives for care one or more aging or disabled adults, not related to the family.

"Business" means any sole proprietorship, partnership, joint venture, corporation, limited liability company or other business entity formed for profit-making purposes, including without limitation 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.

"Child Day Care Home" means a private residence which receives for care one or more children under the age of 12, not related to the family.

"Church" A facility or outdoor place of public assembly used primarily and regularly for religious worship or religious instruction.

"Employee" means any 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 non-profit entity.

"Employer" means any person, business, partnership, association, corporation, including without limitation a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

"Enclosed Area" means all space in any structure or building that is enclosed on all sides by any combination of walls, half walls, windows, or doorways extending from floor to the ceiling, regardless of whether they are open or closed.

"Facility" means any enclosed structure or building intended for human occupancy.

"Health care facility" means any office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including without limitation hospitals, rehabilitation hospitals, clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and other specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semi-private rooms and wards within health care facilities.

"Place of employment" means any enclosed area under the control of a public or private employer that employees frequent during the course of employment, including without limitation work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways and vehicles. A private residence is not a "place of employment" unless it is used as a child day care home, adult day care home, health care facility or home-based business of any kind open to the public.

"Private Club or Lodge" 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 if alcoholic beverages are sold such sale is 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.

"Public place" means any enclosed area to which the public is invited or in which the public is permitted, including

without limitation banks, any business, educational facilities, government buildings, health care facilities, laundromats, museums, public transportation facilities, reception areas, restaurants, bars/taverns, retail food production and marketing establishments, retail service establishments, retail stores, service line, shopping malls, sports arenas, theaters, outdoor place of public assembly, waiting rooms. and common areas in multiple family residences. A private residence is not a "public place" unless it is used as a child day care home, adult day care home, health care facility or home-based business of any kind open to the public.

"Retail tobacco store" means any retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental and where no one under 18 is permitted.

"Service line" means any indoor line at which one (1) or more persons are waiting for or receiving services of any kind, whether or not the service involves the exchange of money.

"Shopping mall" means any enclosed walkway or hall area that serves to connect retail or professional establishments.

"Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, hookah or other lighted tobacco product in any manner or in any form.

"Sports Arena, Enclosed or Semi-Enclosed" means any sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling alley and other similar places where members of the general public assemble to participate in or witness sports, cultural, recreational or other events. (Ordinance No. 2006-51)

Section 12 : City Owned Facilities.

Smoking shall be prohibited in any enclosed City facility and any City vehicle, including without limitation facilities and vehicles owned, leased, or operated by the City of Bloomington. (Ordinance No. 2006-51)

Section 13 : Prohibition of Smoking in Public Places of Employment.

Smoking shall be prohibited in all enclosed public places and places of employment within the City of Bloomington, except as provided in Section 16. (Ordinance No. 2006-51)

Section 14 : Reasonable Distance.

Smoking is prohibited within fifteen feet of any public entrance to an area in which smoking is prohibited. (Ordinance No. 2006-51)

Section 15 : Where Smoking is Not Regulated.

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 11 through 23:

- a. Private residences, except when used as a licensed child day care home, adult care home, health care facility, or a home-based business of any kind open to the public, provided, however, private sleeping rooms in nursing homes and assisted living centers are not subject to Section 13, unless a roommate objects to smoking in the room.
- b. Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms provided, however, that not more than twenty-five per cent (25%) of the rooms rented to guests in a hotel or motel may be so designated.
- c. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of any section of this Article.

- d. Private clubs or lodges.
- e. Outdoor patios, except for that area of an outdoor patio within fifteen feet (15') of a primary public entrance to an area where smoking is prohibited
- f. Public sidewalk, roadway, park and golf course (unless such area becomes an outdoor place of public assembly).
- g. Churches. (Ordinance No. 2006-51)

Section 16 : Declaration of Establishment as Non-Smoking

Notwithstanding any other provisions of this Article, 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 non-smoking place by posting a sign in conformance with the provisions of this Act. Smoking shall be prohibited in any area declared a non-smoking area and any person smoking in such area shall be subject to the penalty provisions of this Act. (Ordinance No. 2006-51)

Section 17 : Non-retaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. (Ordinance No. 2006-51)

Section 18 : Enforcement.

- a. Any citizen who desires to register a complaint under this Article may file a complaint with the City of Bloomington.
- b. The City shall, while an establishment is undergoing otherwise mandated inspection, inspect for compliance with this Article.
- c. An owner, manager, operator or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof. Posting of a no smoking sign conforming with this Article shall be considered adequate notice.
- d. In addition to the remedies provided by this Article, the City Manager or any person aggrieved by the failure of the owner, operator, manager or other person in control of a public place or a place of employment to comply with the provisions of this Section may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction. (Ordinance No. 2006-51)

Section 19 : Posting of Signs.

Every public place, place of employment, place established as non-smoking pursuant to Section 17 and outdoor place of public assembly where smoking is prohibited by this Article, shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. The international "no smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar diagonally across it shall be considered acceptable under this Section. (Ordinance No. 2006-51)

Section 20 : Violations and Penalties.

- a. A person who smokes in an area where smoking is prohibited by this Article shall be guilty of an

infraction, punishable by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00).

b. A person who owns, manages, operates or otherwise controls a place subject to this Article and who fails to prohibit smoking shall be guilty of an infraction, punishable by: a fine of not less than twenty-five dollars (\$25.00) nor more than twenty-five hundred dollars (\$2,500.00).

c. A person who owns, manages, operates or otherwise controls a place subject to this Article and who fails to post a sign in conformance with the provisions of this Article shall be guilty of an infraction punishable by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00).

d. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation. (Ordinance No. 2006-51)

Section 21 : Public Education.

The City of Bloomington shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. (Ordinance No. 2006-51)

Section 22 : Other Applicable Laws.

This Article shall not be interpreted or be construed to permit smoking where it is otherwise restricted by other applicable laws. (Ordinance No. 2006-51)

Section 23 : Severability.

If any provision, clause, sentence or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable. (Ordinance No. 2006-51)