

**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) "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.

(2) "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.

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

(4) "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.

(5) "Health care services" include medical, surgical, dental, vision, chiropractic and pharmaceutical services.

(6) "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.

(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; 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.

(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, 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.

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

(12) "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 ecigarette or other electronic device used to heat tobacco or other plant substances.

(13) "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, 09-28-10 was referred 04-19-11; Ord. 5781 referral failed 04-19-11)*

**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:

- 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.

(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.

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.

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**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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