

CITY OF DOVER ORDINANCE #2016-22

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

That Chapter 54 - Health and Sanitation, Article I - In General, Section 54-4 - Smoking Regulations of the Dover Code be amended to read as follows:

Sec. 54-4. - Smoking regulations.

(a) *Generally.* The Surgeon General of the United States, the National Academy of Sciences, and other health organizations have linked passive exposure to tobacco smoke (secondhand smoke) to a variety of negative health conditions in nonsmokers, which has prompted the council to enact smoking regulations for the health, welfare and safety of residents of the city and to strike a reasonable balance between the rights of smokers and nonsmokers by regulating smoking in certain public places and places of employment.

(b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Bar or cocktail lounge area means that part of any restaurant or other establishment, to a depth of 20 feet from such bar, primarily engaged in the business of selling or dispensing alcoholic beverages or other beverages and duly licensed by the state for the same, but secondary to the restaurant or other primary use of the establishment.

Employee means any person who renders or has rendered any service to another for a consideration or its equivalent, under an expressed or implied contract, and who is or was under the control and direction of the latter when rendering the services, including temporary, provisional, casual or part-time employment.

Employer means an individual, partnership, association, corporation, governmental body or agency, or any other entity, for whom or for which one or more persons renders or have rendered any service on a salary, commission or other compensation basis.

Health care facility means any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions.

Place of employment means any enclosed area under the control of a public or private employer, which employees normally frequent during the course of employment. A private residence is not considered to be a place of employment for the purpose of this section, nor is a motor vehicle of the employer used by employees in the course of employment.

Public conveyance means any taxicab, mass transit vehicle or school bus, or any vehicle offered to passengers for a fee.

Public meeting includes any meeting or assembly held in any room, auditorium or chamber wherein public, civic or governmental business is conducted and which is open to the public either as participants or spectators.

Public place includes any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks; educational facilities; health care facilities; day care centers, retirement homes, rest or nursing centers; property owned, occupied or operated by the city or any agency thereof; public transportation facilities; lobbies and reception areas, but not including the offices or work areas not entered by the public in the normal course of business or use of the premises. A private residence is not a public place, but the lobby or common area of a multifamily dwelling is a public place.

Restaurant means any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for a consideration and which has seating at tables for 35 or more persons, and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook. The service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of meals. Any such establishment shall be duly licensed as a restaurant by the city and state.

Retail store means any establishment, the primary purpose of which is to sell or offer for sale to consumers, not for resale, any goods, wares, merchandise, articles or food for consumption off the premises.

Secondhand smoke means the smoke to which a person may be involuntarily exposed, either through a smoker exhaling the smoke of or from a tobacco product, or through the lighting or burning of any tobacco product.

Smoking includes the lighting, burning, holding or carrying of, or emitting, or inhaling, or exhaling the smoke of, a pipe, cigar or cigarette of any kind or any form of lighted object or device which contains tobacco.

Sports arena means any indoor facility primarily used for sports, cultural or similar events.

Taproom means any establishment which is regulated and licensed as such by the state pursuant to the Delaware Alcoholic Beverage Control Act (4 Del. C. § 101 et seq.), and which is provided with special space and accommodations and operated primarily for the sale by the glass for consumption on the premises of alcoholic beverages with the sale of food as a secondary object, as distinguished from a restaurant where the sale of food is the primary object.

Tavern means any business selling spirits, wine or beer by the glass at retail for consumption on the premises, and which is duly licensed and regulated as such pursuant to the Delaware Alcoholic Beverage Control Act, and in which the sale of food is a secondary object, as distinguished from a restaurant where the sale of food is the primary object.

Theater means any indoor facility primarily used for the exhibition of any motion picture, stage drama, musical recital, dance, lecture or other similar performance.

- (c) *Prohibitions.* Smoking is unlawful on all city-owned property and in "public places" as such term is defined in subsection (b) of this section, and in the following public places during the hours in which they are open to the public:
- (1) Art galleries, libraries, museums and similar cultural facilities;

- (2) Classrooms and lecture halls;
 - (3) Restaurants;
 - (4) Elevators;
 - (5) Health care facilities;
 - (6) Public conveyances;
 - (7) Public meetings;
 - (8) Retail stores, other than retail tobacco stores, the primary activity of which is the sale or promotion of tobacco and tobacco products and accessories; provided, however, that smoking may be permitted in those areas of enclosed shopping centers or malls that are external to the retail stores and are used by customers as a route of travel from one store to another and consist primarily of walkways and seating arrangements; and further provided that where smoking is permitted, the proprietor shall post a sign to that effect;
 - (9) Theaters and indoor sports arenas;
 - (10) Restrooms located in "public places" as such term is defined in subsection (b) of this section, and in the facilities listed in subsections (c)(1), (c)(2), (c)(5), (c)(6), (c)(8), and (c)(9) of this section; and
 - (11) Places of employment not exempted in 16 Del. C. § 2904.
- (d) Violations; penalties; appeals.
- (1) *Violations.* The following acts constitute violations of this section:
 - a. Smoking on city-owned property or in a posted nonsmoking area;
 - b. Failure to post a "No Smoking" sign as required by this section;
 - c. Failure to inform any person who violates this section, when such duty to inform arises as set forth in subsection (f) of this section;
 - d. Willful destruction or defacement of a sign posted as required by this section;
 - e. Failure to adopt a smoking policy as set forth in subsection (f) of this section.
 - (2) *Penalties.* Anyone who violates any provision of this section shall be liable for a fine as provided for in Appendix F-Fees and Fines. Each day such violation continues, shall constitute a separate offense. Fines not paid within 14 days of the day the fine was issued, including the day the fine was issued, shall be automatically doubled in amount.
 - (3) *Appeals.* In the event that the enforcement of this section causes undue and extraordinary financial hardship peculiar to any person, then that person shall have the right to appeal this hardship to the council by written request directed to the city clerk. In considering the appeal, the council shall have the power to alter the terms and conditions of this section to meet any peculiar and extraordinary hardship proven by the person as long as such alteration or relief does not detract from the purpose and intent of this section.
- (e) *Signs.* The owner or other person having the authority to manage and control any area designated as a no-smoking area pursuant to this section shall post, or cause to be posted, and prominently display, and shall maintain, no-smoking signs in conspicuous locations within such areas. Such signs shall clearly and conspicuously recite the phrase "No Smoking" and/or use the international no-smoking symbol and shall cite "Section 54-4 of the city Code." Signs shall be of sufficient number and prominent location to convey the message clearly and legibly to a person of reasonable sensibilities.

Signs shall be at least one square foot in size, shall be affixed to the structure of the building and/or shall be so distributed that from any point in the no-smoking area at least one such sign is visible. A combination of fixed or pedestal type signs may be used.

(f) Enforcement.

(1) *Authority to restrict in employment and public areas.* The owner, proprietor, manager, or other person having the authority to manage and control any public place or place of employment, or a designated agent of such owner or manager, shall inform persons smoking in restricted areas of such places in order to warn them that they are in violation of the law. Any person may file a complaint with the licensing division of the department of planning and inspections or with the police department, alleging a violation of any provision of this section.

(2) *Procedures.* Upon complaint to the licensing division of the department of planning and inspections or the police department, each department shall have concurrent jurisdiction to enforce the provisions of this section by any of the following actions:

- a. Notice. Serving notice requiring the prompt correction by the owner, proprietor, manager or other person having the authority to manage and control any public place or place of employment of any violation of this section;
- b. Legal action. Advising the city solicitor of violations of this section in order to maintain an action at law or in equity to enforce the provisions of this section, recover the fines and costs of prosecution, or prevent, enjoin, abate or remove or otherwise cause the correction of any such violation of the provisions of this section;
- c. Summons. Issue to any person a citation or summons to appear in the justices of the peace court to answer to a charge of any violation of this section.

(h) Miscellaneous provisions.

(1) *Other prohibitions.* Nothing in this section shall be construed to permit smoking where it is otherwise prohibited by law or regulation.

(2) *Authority of owner.* Nothing in this section shall be construed to preclude any owner or other person having the authority to manage and control any public place or place of employment from prohibiting smoking to a greater extent than is provided by this section.

(3) *Fire safety.* Nothing in this section shall be construed to permit or authorize, or be permitted to result in a fire safety hazard or violation, as may be determined by the fire marshal, by anyone in attempting to comply with the provisions of this section.

(Code 1981, § 14-15; Ord. of 4-8-1991; Ord. of 4-12-1993; Ord. of 9-22-2003; Ord. No. 2009-09, 6-22-2009)

State Law reference- Clean Indoor Air Act, 16 Del. C. § 2901 et seq.

BE IT FURTHER ORDAINED:

That Appendix F - Fees and Fines, Chapter 54 - Health and Sanitation, Article I - In General, Section 54-4 - Smoking Regulations, Subsection (d) - Violations; Penalties; Appeals, Subsection (2) - Penalties of the Dover Code be amended to read as follows:

Chapter 54. - Health and Sanitation

Chapter 54. Health and Sanitation	Fees and Fines
<i>Article I. In General</i>	
Fines not paid within 14 days of the day the fine was issued, including the day the fine was issued, shall be automatically doubled in amount.	
Sec. 54-4. Smoking regulations	
Subsec. (d) Violations; penalties; appeals	
Subsec. (2) Penalties	Not to exceed \$50.00; each day such violation continues shall constitute a separate offense

ADOPTED: NOVEMBER 28, 2016

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SYNOPSIS

The ordinance implements a smoke-free policy on all City-owned property.

Actions History

- 11/28/2016 - Final Reading - City Council
- 11/14/2016 - First Reading - City Council
- 10/25/2016 - Introduced at Council Committee of the Whole/Legislative, Finance, and Administration Committee
- 10/11/2016 - Deferred by Council Committee of the Whole/Legislative, Finance, and Administration Committee