

ARTICLE IV. - SMOKING^[3]

Footnotes:

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Editor's note— Ord. No. 2007-4-6, § I, adopted April 9, 2007, effective June 1, 2007, repealed ch. 14, art. IV, in its entirety. Section II of said ord. provided for a new art. IV to read as herein set out. Formerly, said article pertained to similar subject matter as enacted by Ord. No. 94-11-22; as amended. See the Code Comparative Table for a detailed analysis of inclusion.

Sec. 14-66. - Definitions.

In this article:

"Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. A "bar" includes those facilities located within a hotel, motel or other similar transient occupancy establishment.

"Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making or not-for-profit purposes, including 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.

"Director of health" means the director of the health department or the department's designated representative.

"Electronic vaping device" means any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provides, or is manufactured or intended to provide, a vapor of liquid nicotine and/or other substances mixed with propylene glycol and/or other substances delivered or deliverable to the user that he/she can inhale in simulation of smoking. This term shall include every version and type of such devices whether they are manufactured or marketed as electronic cigarettes, e-cigarettes, electronic cigars, e-cigars, electronic pipes, e-pipes, electronic hookahs, e-hookahs or under any other product name or design.

"Electronic vaping liquid" also known as "e-juice" and "e-liquid" shall mean any liquid product composed of propylene glycol or other carrier solvent and may contain nicotine and/or any other substance and manufactured for the use with electronic vaping devices.

"Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

"Employer" means any person, partnership, corporation, including a municipal corporation, or nonprofit entity, which employs the services of one (1) or more individual persons.

"Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by walls, windows, or other barrier (exclusive of door or passage ways) which extend from the floor to the ceiling.

"Food establishment" means food product or food service establishments.

"Minor" means a person younger than eighteen (18) years of age.

"Open display unit" means any device, furniture or furnishing within or upon which electronic vaping devices are displayed to customers, and includes, but is not limited to, any case, rack, shelf, counter, table, desk, kiosk, booth, stand, vending machine and other surface.

"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, including, but not limited to, work areas, employee lounges and restrooms, conference rooms and classrooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility.

"Possession" means actual care, custody, control or management.

"Private place" means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal or private residences; private social clubs or personal automobiles.

"Public place" means 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 facilities; laundromats; public transportation facilities; reception areas; production and marketing establishments; retail service establishments; retail stores; theaters and waiting rooms.

"Retail electronic vaping store" means a retail store utilized primarily for the sale of electronic vaping devices, accessories, and/or electronic vaping liquid or any other article or product that is for use in an electronic vaping device and in which the sale of other products is merely incidental.

"Retail store" means an establishment whose purpose is to offer for sale and sell to consumers, not for resale, goods, wares, merchandise and food, which items are purchased for use and/or consumption off premises, including but not limited to, supermarkets, convenience stores, drug stores, and warehouse stores.

"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.

"Retailer" means a person who engages in the practice of selling electronic vaping devices to consumers in a retail store, retail electronic vaping store, or retail tobacco store.

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

"Smoking" or *"smoke"* means inhaling, exhaling, burning, possessing or carrying any lighted cigar, cigarette, pipe, weed, plant or combustible substance in any manner or in any form and/or vaping or the use of any electronic vaping device.

"Sports arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

"Tobacco product" means a cigarette; a cigar; an electronic vaping device; smoking tobacco, including granulated, plug-cut, crimp-cut, ready rubbed and any form of tobacco suitable for smoking in a pipe or as a cigarette; chewing tobacco, including plug, scrap, and any kind of tobacco suitable for chewing, snuff or other preparations of pulverized tobacco; nicotine product; dissolvable nicotine; electronic vaping liquid; or any other article or product that is for use in an electronic vaping device.

"Vaping" means inhaling or exhaling vapors of electronic vaping liquid from an electronic vaping device.

(Ord. No. 2007-4-6, § II, 4-9-07; Ord. No. 2014-7-4, § I, 7-28-14)

Sec. 14-67. - Places where smoking is prohibited.

- (a) Smoking shall be prohibited in all enclosed public places and enclosed places of employment within the city, including, but not limited to, the following places:
 - (1) Elevators;

- (2) Restrooms, lobbies, reception areas, hallways and any other common-use areas;
- (3) Buses, bus terminals, taxicabs, train stations, airports and other facilities and means of public transit, as well as ticket, boarding, and waiting areas of public transit depots;
- (4) Service lines;
- (5) Retail stores;
- (6) All areas available to and customarily used by the general public in all businesses, including but not limited to, attorneys' offices and other offices, banks, laundromats and country clubs;
- (7) Enclosed facilities within a place of employment;
- (8) Food establishments, nightclubs and bars;
- (9) Galleries, libraries, museums, zoo facilities and their grounds;
- (10) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance except when smoking is a part of a theatrical performance upon a stage or in the course of a film or television production and smoking is part of the performance or production;
- (11) Sports arenas and convention halls, including bowling and billiard facilities;
- (12) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city;
- (13) Waiting rooms, hallways, wards, private and semiprivate rooms of physical and mental health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;
- (14) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (15) Polling places;
- (16) Bingo games/parlors;
- (17) Hotels and motels, including at least ninety (90) percent of rooms rented to guests;
- (18) Within twenty-five (25) feet of any door, operable window/vent or other opening to an indoor enclosed area.

(Ord. No. 2007-4-6, § II, 4-9-07)

Sec. 14-68. - Places where smoking is not prohibited.

- (a) Notwithstanding any other provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:
 - (1) Private residences, except when used as a child day care, adult day care or household care facility;
 - (2) Personal automobiles;
 - (3) Retail tobacco stores and electronic vaping stores in stand-alone physical facilities;
 - (4) Not more than ten (10) percent of hotel and motel rooms rented to guests and designated as smoking rooms. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under provisions of this article;

- (5) Outdoor places of employment except within twenty-five (25) feet of any door, operable window/vent or other opening to an enclosed area;
- (6) Retail electronic vaping stores in existence as of July 28, 2014.

(Ord. No. 2007-4-6, § II, 4-9-07; Ord. No. 2014-7-4, § II, 7-28-14)

Sec. 14-69. - Posting of signs.

- (a) The owner, manager or other person having control of such building or premise where smoking is prohibited by this chapter shall have a conspicuously posted sign clearly stating "no smoking" at each entrance, whether for the public, employees or deliveries, and at restroom entrances.
- (b) Such "No Smoking" signs shall have bold lettering of not less than one (1) inch in height. The international "No Smoking" symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).
- (c) Any owner, manager, or other person having control of any establishment regulated by this chapter shall be responsible for posting appropriate signage.

(Ord. No. 2007-4-6, § II, 4-9-07)

Sec. 14-70. - Enforcement.

- (a) Enforcement of this chapter shall be implemented by the City of Plano Health Department or other official as designated by the city manager by issuance of a municipal court citation.
- (b) Any person may register a complaint under this chapter to initiate enforcement with the City of Plano Health Department.
- (c) It is the duty of the owner, manager, operator or person-in-charge of any establishment regulated by this chapter:
 - (1) To post signs in accordance with section 14-69 of this article and;
 - (2) To not provide ashtrays, matches, lighters or other smoking related paraphernalia in a regulated premise and;
 - (3) To advise a person who violates this article that smoking is not allowed and;
 - (4) To request a person remove themselves from this location after that person has been advised that smoking is not allowed and that person willfully continues to smoke.

(Ord. No. 2007-4-6, § II, 4-9-07)

Sec. 14-71. - Offenses and penalties.

- (a) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.
- (b) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with the following sections and subsections of this article:
 - (1) Subsection 14-69(a), (b) and (c), and;
 - (2) Subsection 14-70(c).
- (c) Any person who violates any provision of this chapter shall be guilty of a misdemeanor infraction, punishable by a fine not to exceed five hundred dollars (\$500.00).

(d) Each day on which a violation of this article occurs shall be a separate and distinct violation.

(Ord. No. 2007-4-6, § II, 4-9-07)

Sec. 14-72. - Sale or distribution of tobacco products to a minor prohibited; proof of age required.

(a) A person commits an offense if the person:

- (1) Sells, gives or causes to be sold or given a tobacco product to a minor; or
- (2) Sells, gives or causes to be sold or given a tobacco product to another person who delivers it to a minor.

(b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which tobacco products are sold at retail, the employee is responsible for the offense and is subject to prosecution.

(c) It is a defense to prosecution under subsection (a)(1) that the person to whom the tobacco product was sold or given presented to the defendant valid proof of identification.

(d) Proof of identification is valid for purposes of subsection (c) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is eighteen (18) years of age or older and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport or an identification card issued by a state or the federal government.

(Ord. No. 2014-7-4, § III, 7-28-14)

Sec. 14-73. - Possession, purchase, consumption, or receipt of tobacco products by a minor prohibited.

(a) A minor commits an offense if the minor possesses a tobacco product, and the minor was not:

- (1) In the course and scope of the minor's employment by a person or entity holding a permit issued by the state, if required by law, authorizing the person to engage in the business of being a distributor, wholesaler, bonded agent or retailer of tobacco products; or
- (2) In the presence of an adult parent, legal guardian, or spouse.

(b) A minor commits an offense if, in order to acquire a tobacco product, the minor states to any person engaged in the business of selling tobacco products that such minor is eighteen (18) years of age or older, or presents to any such person a document or writing that purports to establish that such minor is eighteen (18) years of age or older.

(Ord. No. 97-5-14, § I, 5-19-97; Ord. No. 2014-7-4, § IV, 7-28-14)

Editor's note— Ord. No. 2014-7-4, § IV, adopted July 28, 2014, changed the title of section 14-73 from "Possession or purchase of tobacco products by a minor" to "Possession, purchase, consumption, or receipt of tobacco products by a minor prohibited." The historical notation has been preserved for reference purposes.

Sec. 14-74. - Vendor assisted sales required; self-service merchandising prohibited.

(a) Except as provided by subsection (b), a retailer or other person may not:

- (1) Offer tobacco products for sale in a manner that permits a customer direct access to the tobacco products;

- (2) Offer for sale or display for sale tobacco products by means of self-service merchandising; or
 - (3) Install or maintain an open display unit containing tobacco products.
- (b) It is a defense to prosecution under subsection (a) if:
- (1) A facility or business is not open to persons younger than eighteen (18) years of age at any time;
 - (2) A facility or business is a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code; or
 - (3) An open display unit is located in an area that is inaccessible to customers.

(Ord. No. 97-5-14, § I, 5-19-97; Ord. No. 2014-7-4, § V, 7-28-14)

Editor's note— Ord. No. 2014-7-4, § V, adopted July 28, 2014, changed the title of section 14-74 from "Tobacco product vending machines" to "Vendor assisted sales required; self-service merchandising prohibited." The historical notation has been preserved for reference purposes.

Secs. 14-75—14-84. - Reserved.