

Order 207-14/15

Passage: 7-1 (Hinck opposed, Donoghue absent) on 4/27/2015

Effective 5/27/2015

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
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CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 17 (OFFENSES, MISCELLANEOUS PROVISIONS)
ARTICLE V (REGULATION OF TOBACCO)

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Chapter 17, Article V of the Portland City Code is hereby amended to read as follows:*

ARTICLE V. REGULATION OF TOBACCO*

DIVISION 1. GENERALLY

Sec. 17-70. Findings; purposes.

- (a) The city council hereby finds as follows:
 - (1) There is no risk-free level of contact with secondhand smoke; even brief exposure can be harmful to health;
 - (2) Secondhand smoke contains over 4,000 chemicals, more than 60 of which are known to cause cancer;
 - (3) The smoking of other substances may also cause serious health problems and risks to those who smoke; and
 - (4) The purpose of this regulation is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

~~In children, secondhand smoke causes ear infections, more frequent and severe asthma attacks, respiratory symptoms (e.g., coughing, sneezing, shortness of breath), respiratory infections (i.e., bronchitis, pneumonia) and a greater risk for sudden infant death syndrome (SIDS). In adults who have never smoked, a secondhand smoke can cause heart disease and/or lung cancer. Even brief exposure can be harmful; breathing~~

~~secondhand smoke has immediate harmful effects on the cardiovascular system that can increase the risk of heart attack. People who already have heart disease are at especially high risk.~~

~~Recent outdoor research from Stanford University and Repace Associates demonstrates that, when measured up to 20 feet from a person actively smoking, toxicity levels can reach those similar to indoor smoking levels.~~

(b) The city council hereby finds that it is in the public health, safety and welfare to supplement state regulation of the use of tobacco, tobacco products and other substances that emit smoke that is used and intended customarily for inhalation into the lungs in outdoor locations and the free distribution and self-service displays of tobacco and tobacco products.

Sec. 17-71. Definitions.

Words used in this chapter shall have their common meanings, except that definitions set forth in 22 M.R.S.A. Chapter 262-A, or this section shall apply unless the context clearly indicates that a different meaning is intended:

Designated city trail means the traveled portion of all city-owned or controlled trails open to use by the public that have been designated as a nonsmoking trail by order of the city council.

Outdoor eating areas shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of its patrons.

Owner means and includes the proprietor, manager, lessee, lessor licensee or any other person exercising control over any facility or location.

Private function is a room or a hall in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements.

Smoking means the lighting, inhaling, exhaling, burning or carrying of any cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, other similar product that relies on vaporization or aerosolization, or other tobacco product, or carrying or having in one's possession any lighted object giving off smoke from tobacco or any other substance that

emits smoke that is customarily used and intended for inhalation into the lungs.

Tobacco or tobacco product means any form of tobacco, including but not limited to cigarettes, cigars, pipe tobacco, chewing tobacco or snuff, and any material or device used in the smoking, chewing or other form of tobacco consumption, including but not limited to cigarette papers, ~~—and pipes, electronic cigarette, electronic cigar, electronic pipe, other similar product that relies on vaporization or aerosolization.~~

Traveled portion means that area of a trail covered by material such as concrete, pavement, stone dust, or cedar mulch, designed to bear traffic from individuals or vehicles powered by individuals.

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DIVISION 4. SECONDHAND SMOKE ON
PLAYGROUNDS, BEACHES, AND ATHLETIC FACILITIES

Sec. 17-90. Purposes.

The purpose of this regulation is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment. ~~Exposure to secondhand smoke is the third leading cause of preventable death in America, killing 6,000 children every year. Recent outdoor research from Stanford University and Repace Associates demonstrates that, when measured up to 20 feet from a person actively smoking, toxicity levels can reach those similar to indoor smoking levels. Secondhand smoke disproportionately affects vulnerable populations such as children and the elderly, causing asthma, chronic lung disease, ear infections heart disease and Sudden Infant Death Syndrome (SIDS). In fact, secondhand smoke can triple an infant's risk of dying from SIDS. The U.S. Surgeon General's 2006 report declared that "The debate is over. The science is clear; secondhand smoke is not a mere annoyance, but a serious health hazard...for which there is no safe level of exposure."~~

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DIVISION 5. SECONDHAND SMOKE
INDOOR AND OUTDOOR EATING AREAS

Sec. 17-94. Smoking Prohibited in Indoor and Outdoor Eating Areas.

(a) Notwithstanding anything in division 2 of this chapter

~~to the contrary, smoking~~ Smoking is prohibited until 10:00 p.m. within the indoor and outdoor eating areas provided by restaurants and bars while such indoor or outdoor eating areas, or any portion thereof, are open and available for dining and beverage service.

(b) "Indoor eating areas" shall mean indoor areas permitted for dining that are under the control of a restaurant or bar for the use of its patrons.

(c) "Outdoor eating areas" shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of its patrons.

~~(c) "Smoking" as used herein shall mean inhaling, exhaling, burning, carrying or having in one's possession any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.~~

Sec. 17-95. Enforcement.

(a) It shall be the responsibility of restaurants and bars to notify its customers of this prohibition and to request that customers comply with it.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer shall issue one verbal warning to an individual and the restaurant. If the individual or restaurant or bar fails to comply after one warning, said individual or restaurant or bar shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.

~~Sec. 17-94. Reserved.~~

~~Sec. 17-95. Reserved.~~

DIVISION 56. SMOKING PROHIBITED IN CITY PARKS AND PUBLIC GROUNDS

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