

Chapter 11.52
CIGARETTES (TOBACCO)

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- 11.52.010 Unlawful Purchase of Cigarettes. (Repealed)
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11.52.010 Unlawful Purchase of Cigarettes.

Repealed.

(History: Ord. POC-1285 §4, 84; POC-625 §78, 72)

11.52.020 Unlawful Sale of Cigarettes.

Repealed.

(History: Ord. POC-1285 §4, 84; POC-625 §77, 72)

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11.52.030 Smoking in Stores.

Repealed.

(History: Ord. POC-1285 §4, 84; NS-468 §1, 67)

11.52.040 "No Smoking" Signs.

Repealed.

(History: Ord. POC-1285 §4, 84; NS-468 §2, 67)

11.52.050 Violations of Sections 11.52.030 or 11.52.040-Penalty.

Repealed.

(History: Ord. POC-1285 §4, 84; NS-468 §3, 67)

11.52.055 Definitions of Ordinance, Cigarette or Tobacco Infraction.

The term "ordinance, cigarette or tobacco infraction" shall mean a violation of an ordinance that proscribes the same behavior as proscribed by subsection (m) or (n) of K.S.A. 79-3321 and amendments thereto, to include, but not limited to, O.P.M.C. 11.52.060 and O.P.M.C. 11.52.065.

(History: Ord. POC-1986 §6, 96)

11.52.060 Purchase of Tobacco Products, Persons under 18.

It shall be unlawful for any person under the age of 18 to purchase or attempt to purchase cigarettes or tobacco products in any form.

(History: Ord. POC-1986 §7, 96; POC- 1285 §1, 84)

11.52.065 Possession of Tobacco Products, Persons under 18.

It shall be unlawful for any person under the age of 18 to possess or attempt to possess cigarettes or tobacco products.

(History: Ord. POC-1986 §8, 96)

11.52.070 Selling, Giving or Furnishing Cigarettes or Tobacco Products to Persons under the Age of 18.

A. It shall be unlawful for any person, directly or indirectly, to:

1. Sell, give or furnish any cigarettes or tobacco products to any person under 18 years of age; or
2. Buy any cigarettes or tobacco products for any person under 18 years of age. In determining the penalty to be imposed for a violation of this subsection by a licensed retail dealer whose employee sold, furnished or distributed the cigarettes or tobacco products, the court shall consider it to be a mitigating circumstance if the employee had completed a training program, approved by the secretary of revenue or the secretary's designee, in avoiding sale, furnishing or distributing of cigarettes and tobacco products to persons under 18 years of age.

B. It shall be a defense to a prosecution under this subsection if:

1. The defendant is a licensed retail dealer or a person authorized by law to distribute samples; and

2. The defendant sold, furnished or distributed the cigarettes or tobacco products to the person under 18 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes or tobacco products; and
 3. To purchase or receive the cigarettes or tobacco products, the person under 18 years of age exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes or tobacco products.
- C. It shall be a defense to a prosecution under this subsection if:
1. The defendant engages in the lawful sale, furnishing or distribution of cigarettes or tobacco products by mail; and
 2. The defendant sold, furnished or distributed the cigarettes or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601 and amendments thereto, that the person was 18 or more years of age. (K.S.A. 79-3322 as amended).

Violations of this Section shall constitute a Class B violation punishable by a minimum fine of \$200.00.

(History: Ord. POC-1986 §9, 96; POC- 1285 §2, 84)

11.52.080 Violations of Sections 11.52.060 and 11.52.065; Penalties.

Any person who violates any of the provisions of Sections 11.52.060 and 11.52.065 shall be guilty of an ordinance cigarette or tobacco infraction for which the fine shall be \$25.00.

(History: Ord. POC-1986 §10, 96; POC-1285 §3, 84)

11.52.090 Purpose.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-1283 §1, 84)

11.52.095 Definitions.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-2182 §1, 2000; NS-1914 §1, 95; NS-1836 §1, 94; POC-1462 §1, 87)

11.52.100 Prohibited smoking areas.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-2182 §2, 2000; NS-1914 §2, 95; NS-1836 §2, 94; POC-1462 §2, 87; NS-1283 §2, 84)

11.52.101 Construction, Reconstruction or Alteration of Food Service Establishments.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-2182 §3, 2000)

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11.52.105 Prohibited Smoking - Places of Employment.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-1914 §3, 95; NS-1836 §3, 94; POC- 1462 §3, 87)

11.52.106 Required Signage - Office and Multi-Use Buildings.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-1914 §4, 95)

11.52.110 No Smoking signs.

Repealed.

(History: Ord. NS-1914 §5, 95; NS-1836 §4, 94; NS-1283 §3, 84)

11.52.120 Violations of Sections 11.52.100 through 11.52.110; Penalties; Civil Actions.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-1283 §4, 84)

11.52.130 Severability.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-1283 §5, 84)

11.52.140 Purpose.

It is the purpose of this Ordinance that the City promotes public health by decreasing citizen's exposure to secondhand smoke and creates smoke free environments for workers and citizens through regulation in the work place and all public places.

(History: Ord. POC-2632 §1, 2008)

11.52.150 Definitions.

For the purposes of this Ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Employee

Any person who performs services for an employer, with or without compensation.

Employer

A person, partnership, association, corporation, trust, or other organized group of individuals, including the City or any agency thereof, which utilizes the services of one (1) or more employees.

Enclosed

A space bound by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, offices, rooms, all space therein screened by partitions, which do not extend to the ceiling or are not solid, "office landscaping" or similar structures and halls.

Open Office Landscaping

Indoor areas without permanent walls, or walls that are not floor to ceiling; open space such as waiting areas and atriums; cubicles and/or open desk seating areas.

Place of Employment

Any enclosed area under the control of 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 and classrooms, employee cafeterias, hotel or motel sleeping rooms, private rooms in nursing homes, private meeting/conference rooms and halls not open to the general public while being used for private functions or located within private clubs and hallways. A private residence is not a “place of employment” unless it is used as a childcare, adult day care or health care facility.

Public Place

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. A private residence is not a “public place.”

Service Line

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

Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other tobacco product.

Sports Arena

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.

(History: Ord. POC-2632 §2, 2008)

11.52.160 Prohibition of Smoking in Enclosed Places of Employment and all Enclosed Public Places.

- A. Smoking shall be prohibited in all enclosed places of employment within the City.
- B. It shall be the responsibility of employers to provide a smoke-free workplace for all employees.

Each employer having any enclosed place of employment located within the City shall adopt, implement, make known and maintain, a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms and all other enclosed facilities.

- C. The smoking policy shall be communicated to all employees within four (4) weeks of the adoption of this Ordinance.
- D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.
- E. Smoking shall be prohibited in all enclosed public places within the City, including, but not limited to, the following places:
 - 1. Any vehicle of public transportation, including but not limited to buses, limousines for hire and taxicabs.
 - 2. Elevators.
 - 3. Restrooms.
 - 4. Libraries, educational facilities, childcare and adult day care facilities, museums, auditoriums, aquariums and art galleries.
 - 5. Any health care facility, health clinics or ambulatory care facilities, including but not limited to laboratories associated with the rendition of health care treatment, hospitals, nursing homes, doctors' offices and dentists' offices.
 - 6. Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, betting establishments, bowling alleys, arenas and swimming pools.
 - 7. Service lines.
 - 8. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; provided, however, that smoking may take place on stage during live theatrical performances, where smoking is integral to the plot or storyline and prior notice is given to the audience.
 - 9. Shopping malls.
 - 10. Sports arenas, including enclosed places in outdoor arenas.
 - 11. Bars.
 - 12. Restaurants.
 - 13. Convention facilities.
 - 14. All public areas and waiting rooms of public transportation facilities, including but not limited to bus and airport facilities.
 - 15. Any other area used by the public or serving as a place of work, including open office landscaping.
 - 16. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including, but not limited to 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.
 - 17. All enclosed facilities owned by the City.

18. Rooms in which meetings or hearings open to the public are held, except where such rooms are in a private residence.
19. Within 10 feet of any public entrance to a public place; provided, however, that this prohibition shall not apply to the following: any portion of the public right of way that may be within 10 feet of said entrance, and the outdoor seating area of a restaurant or drinking establishment where smoking is allowed. With respect to said outdoor seating area, smoking may be allowed only if reasonable efforts are made to minimize the chance of smoke affecting the inside occupants of the establishment.

(History: Ord. POC-2632 §3, 2008)

11.52.170 Where Smoking is Not Regulated.

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall not be subject to the smoking restrictions of this Ordinance:

- A. Private residences, not serving as enclosed places of employment or an enclosed public place.
- B. An existing retail establishment whose primary business is the sale of tobacco products and new retail establishments whose primary business is the sale of tobacco products which are located in a stand-alone building not attached to or the part of any building devoted to other uses.

(History: Ord. POC-2632 §4, 2008)

11.52.180 Responsibilities of Proprietors, Owners and Managers.

The person having control of a place, business, office or other establishment or activity subject to this Ordinance shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this Ordinance in that place and shall take all necessary steps to prevent or stop another person from smoking in violation of this Ordinance. “Necessary steps” means to take all reasonable actions to prevent smoking in violation of this Ordinance by employees, patrons and visitors in the place, business, office or establishment, including: posting no-smoking signs and removing all ashtrays; verbally asking a person who is smoking to extinguish the smoking materials; refusing service to a person who is illegally smoking; verbally asking anyone illegally smoking to leave the premises; and applying standard business procedures in the same manner for violations of house rules or other local ordinances or state laws. If the employee, patron or visitor smoking in violation of this Ordinance is hard of hearing, the communications with that person may be written, in sign language or other effective means of communication.

(History: Ord. POC-2632 §5, 2008)

11.52.190 Penalty for Violation of Ordinance.

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of a public offense, punishable by a fine not exceeding fifty dollars (\$50).

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- B. A person having control of a public place or place of employment and who fails to comply with the provisions of this Ordinance shall be guilty of a public offense, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.
 - 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
 - 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.
- D. In addition to the fines established by this Section, violation of this Ordinance by a person having control of a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(History: Ord. POC-2632 §6, 2008)

11.52.210 Severability.

If any section, subsection, paragraph, sentence, clause or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof.

(History: Ord. POC-2632 §7, 2008)

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