

Chapter 22 NUISANCES

ARTICLE II. - SMOKING AND POLLUTION CONTROL

Sec. 22.30. - Purpose.

To protect the public health, safety and welfare of its citizens the city council hereby adopts the following ordinance to regulate smoking in public places. (Ord. No. 93-5, § 1, 3-2-93)

Sec. 22.31. - Definitions.

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

Bar means an area comprising fifteen (15) feet or less from the perimeter of a permanent counter which is primarily devoted to serving alcoholic beverages and within which the service of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant/dining area.

Burlington Parks System/ City Parks System – Land and facilities owned, managed, leased, or occupied by Burlington Recreation and Parks. This includes grounds, parking lots and sidewalks bordering the park system and bus stop shelters on the City of Burlington Parks System grounds.

Business means any sole proprietorship, partnership, joint venture, corporation, or other business formed for profit- or nonprofit-making purposes, as well as professional corporations and other entities where professional services are delivered.

E-cigarette - Any electric oral device that employs a mechanical heating element, battery or electronic circuit regardless of shape or size and that can be used to heat a liquid nicotine solution or any other substance, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or description.

Greenways – A strip of undeveloped land near an urban area, set aside for recreational use or environmental protection.

Grounds - An unenclosed area owned, managed, leased, or occupied by the City of Burlington.

Nonsmoking area means an area in which smoking is prohibited.

Parks System - Any tract of land or body of water comprising part of Burlington Parks System including city parks, playgrounds, natural areas, golf course, trails and greenways, streams, municipal lakes or other bodies of water.

Public area/place means any enclosed area to which the public is invited or in which the public is permitted. A private residence is not a public place.

Restaurant means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers food for sale to the public, guests, or employees, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in this section.

Retail store means any sole proprietorship, partnership, joint venture, corporation or other business entity where goods or services are sold. Grocery stores are considered to be retail stores.

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 means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or other lighted combustible tobacco product in any manner or in any form.

Tobacco - Manufactured products of tobacco (such as cigars or cigarettes); also: smoking as a practice.

Tobacco product - Any product containing or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, or ingested by any other means, including but not limited to cigarettes; e-cigarettes; cigars; hookah; little cigars; snuff; and chewing tobacco. A tobacco product excludes any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, and a tobacco dependent product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

Sec. 22.32. - Smoking prohibited in specified public places.

Smoking shall be prohibited in the following places:

- (1) Service lines;
- (2) Elevators;
- (3) Public restrooms and hallways;
- (4) Polling places;
- (5) Buses and taxicabs;
- (6) Public areas or galleries, libraries and museums when open to the public;
- (7) Seating areas of any building not open to the sky which is primarily used for exhibiting any motion picture, stage drama, lecture, musical recital or other similar performance, except when smoking is part of a stage production;
- (8) Seating areas and public areas of indoor sports arenas, convention halls, recreational

establishments, and service establishments, which have seating and/or waiting areas;
(9) Every room, chamber, place of meeting or public assembly, public areas or waiting areas under the control of the city or any other political subdivision of the state, to the extent such place is subject to the jurisdiction of the city. (Ord. No. 93-5, § 1, 3-2-93)

(10) Except as limited pursuant to North Carolina General Statutes Section 130A-498(b1), smoking shall be prohibited in enclosed areas to which the public is invited or allowed when such enclosed areas are located within a building or structure under one ownership which houses multiple tenants or occupancies, and such enclosed area or business is located immediately adjacent to a restaurant located within the same structure. (Ord. No 2012-25 of November 20, 2012)

Sec. 22.33 Smoking and use of tobacco products, including e-cigarettes, prohibited in facilities and grounds of the Burlington Parks System

Smoking and the use of tobacco products, including e-cigarettes, shall be prohibited in the following facilities and grounds: playgrounds; youth athletic fields including spectator areas; swimming pools including dressing or restroom facilities; tennis courts including spectator areas; City Park amusement ride area; Fairchild Park BMX track including spectator areas; concert areas in City Park, North Park, Willowbrook Park, and the Depot area; greenways and trails; special facilities as the golf course and municipal lakes; parking lots; sidewalks bordering park grounds; and ballfields.

Sec. 22.34. - Same—In bars and small restaurants.

All bars and restaurants with bars and restaurants without bars which have a seating capacity of less than fifty (50) shall post one of the following signs at every entrance notifying patrons of their smoking policy. Signs shall read: "No Smoking," and/or be a No Smoking Symbol, and/or "Non-Smoking Section Available," or "We Do Not Provide A Non-Smoking Section." (Ord. No. 93-5, § 1, 3-2-93)

Sec. 22.35. - Same—In retail stores.

Smoking shall be prohibited in the public areas (including service lines) of retail stores designed and arranged to accommodate more than two hundred (200) persons, or in which twenty-five (25) persons are regularly employed. (Ord. No. 93-5, § 1, 3-2-93)

Sec. 22.36. - Posting of signs required.

"No Smoking", or other signs relating to an establishment's smoking policy, whichever are appropriate, with letters of not less than one (1) inch in height, and/or the international "No Smoking" symbol shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is regulated by this article. The international "No Smoking" symbol consist of a pictorial representation of a burning cigarette enclosed in a red or white or other conspicuous color circle with a same color bar across it.

Signs shall be posted in the facilities and grounds of the Burlington Parks System identified in Section 22.33 above that state that smoking including e-cigarettes is prohibited. Such signs shall include the “No Smoking” and “E-cigarette” symbol, and lettering shall be of size and legibility as described above.

Signs shall be posted by the owner, operator, manager or other person having control of such building or other place. Said signs shall indicate where smoking is prohibited and permitted.

Facilities which provide areas where smoking is permitted in designated areas shall post signs with that information at every public entrance to the facility.

Except as to the requirements of size, posting and content the signs shall not be regulated by this article. No person shall remove or deface any sign required to be posted by or under the authority of this article. (Ord. No. 93-5, § 1, 3-2-93)

Sec. 22.37. - Administration.

The police department under the direction of the city manager is responsible for administering this article and is authorized and directed to establish regulations for the administration of this article. (Ord. No. 93-5, § 1, 3-2-93)

Sec. 22.38. - Enforcement and penalties, smoking.

Any person who shall violate this article shall be subject to payment of a civil penalty of fifty dollars (\$50.00). Any person, or his agent, having control or the owner of any premises or place who knowingly permits a violation of this article without requesting the violator to comply shall be subject to payment of the civil penalty provided for herein. Any person, after having been asked to comply with this article but fails or refuses to comply shall be subject to the civil penalty provided for herein. Any duly authorized local government official is authorized to issue this civil citation and the violator shall pay the penalty to the city tax collector's office within ten (10) days of receipt. The failure of such violator to pay the civil penalty within the specified time shall subject such violator to a civil action to collect all penalties and costs for such violation and any civil penalty that has not been paid which delinquent notice was sent shall carry an additional late payment penalty of twenty-five dollars (\$25.00). (Ord. No. 93-5, § 1, 3-2-93; Ord. No. 95-21, § 1, 5-16-95. Ord.19-02)

Sec. 22.39. - Conflict of law.

If any portion of this article or the enforcement thereof shall be preempted by any state or federal authority, such preemptions shall not operate to invalidate the rest of this article; and the same shall remain in full force and effect. (Ord. No. 93-5, § 1, 3-2-93) Ord. No. 19-02)