

CHAPTER 18

SMOKING IN WORKPLACES AND ENCLOSED PUBLIC PLACES

ADMINISTRATION

18.005 Definitions. As used in BCC Chapter 18:

- (1) “**Accessibility Ramp**” means a ramp intended to provide access for people with disabilities to and from an entrance or exit.
- (2) “**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.
- (3) “**Business**” means any sole proprietorship, partnership, joint venture, corporation, municipal corporation, or other business entity, including for-profit and non-profit entities, private clubs, and retail establishments where goods or services are sold as well as professional corporations and other entities where professional services are delivered.
- (4) “**Electronic smoking device**” means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use of 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, e-hookah, or under any other product name or descriptor and any cartridge or other component of the device or related product.
- (5) “**Employee**” means any person who is employed by any employer for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
- (6) “**Employer**” means any person, business, or municipal corporation which employs the services of one or more employees.
- (7) “**Enclosed Area**” means any covered space having more than 50 percent of its perimeter area walled in or otherwise closed to the outside, such as, for example, a covered porch with more than two walls; or any space open to the sky having more than 75 percent of its perimeter area walled in or otherwise closed to the outside, such as, for example, a courtyard.
- (8) “**Place of Employment**” means any enclosed area under the control of an employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, cafeterias and hallways, and vehicles that are operated in the course of an employer’s business that are not operated exclusively by one employee. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
- (9) “**Private club**” means an organization, whether incorporated or not, which is the owner,

lessee, or occupant of a building or portion thereof used for club purposes, which is operated for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain.

(10) “**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, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a "public place."

(11) “**Restaurant**” means any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

(12) “**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.

(13) “**Service Line**” means any indoor line, or any portion of an indoor line that extends out of doors, 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.

(14) “**Smoking**” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, weed, plant, or other tobacco like product or substance in any manner or in any form. “Smoking” also includes the use of an electronic smoking device which creates a vapor, in any manner or in any form.

(15) “**Sports Arena**” means sports pavilions, gymnasiums, health spas, swimming pools, roller rinks, bowling alleys and other places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

(16) “**Tobacco Product**” means any product that contains tobacco or is derived from tobacco and is intended to be introduced into the human body. “Tobacco Product” includes any electronic smoking device. “Tobacco Product” does not mean any product that the United States Food and Drug Administration has approved as a tobacco use cessation product. [Ord. 97-0130; Ord. 2014-0259]

PROHIBITIONS

18.010 Prohibition of Smoking in Public Places. Smoking shall be prohibited in all public places which are enclosed areas within the County, including, but not limited to, the following places:

- (a) Elevators
- (b) Restrooms, lobbies, reception areas, hallways, and any other common-use areas.

- (c) Buses, taxicabs, and other means of public transit under the authority of the County.
- (d) Service lines.
- (e) Retail stores.
- (f) All areas available to and customarily used by the general public in all businesses patronized by the public, including but not limited to, professionals' offices and other offices, banks, laundromats, hotels and motels.
- (g) Restaurants
- (h) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, music recital or other similar performance, except performers when smoking or carrying a lighted smoking instrument that does not contain tobacco is part of a stage production.
- (i) Sports arenas and convention halls.
- (j) 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 County during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the County.
- (k) Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
- (l) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (m) Polling places.
- (n) Bars.
- (o) Retail tobacco stores. [Ord. 97-0130; Ord. 2014-0259]

18.015 Prohibition of Smoking in Places of Employment. All employers shall provide a smoke-free workplace for all employees. Employers shall not be required to incur any expense to make structural or other physical modifications to existing facilities. [Ord. 97-0130]

18.020 Smoking Outside of Enclosed Areas. No smoking shall be allowed within a reasonable distance (no less than 10 feet) of the following parts of public places or places of employment: entrances, exits, windows that open, ventilation systems, service lines, accessibility ramps, or any other means. [Ord. 97-0130; Ord. 2014-0259]

PERMITTED SMOKING AREAS

18.025 Smoking Permitted.

- (1) The following areas shall not be subject to the smoking restrictions of BCC Chapter 18:
 - (a) Private residences, except when used as a child care, adult day care or health care facility. [Ord. 97-0130; Ord. 2014-0259]

SIGNAGE

18.030 Posting of Signs.

- (1) Signs that display the words "No Smoking within 10 feet" or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) and the words "within 10 feet," or both shall be clearly, sufficiently, and conspicuously posted at every entrance and exit of every building or other area where smoking is prohibited by BCC Chapter 18, by the owner, manager, or other person having control of such building or other area. [Ord. 97-0130; Ord. 2014-0259]

ASHTRAYS

18.032 Ashtrays. Ashtrays or any receptacles to be used for smoking or depositing cigarette debris are prohibited inside a public place, a place of employment, and within 10 feet of entrances, exits, windows that open, ventilation systems, or accessibility ramps. [Ord. 2014-0259]

TOBACCO SALES TO MINORS PROHIBITED

18.034 Tobacco Sales to Minors Prohibited.

- (1) No person, other than a minor's custodial parent or guardian, shall sell or otherwise provide tobacco products to a minor under the age of eighteen (18) years old.
- (2) A violation of this section is a Class A infraction. [Ord. 2014-0259]

NONRETALIATION

18.035 Nonretaliation. No employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer reports or attempts to prosecute any violation of BCC Chapter 18. [Ord. 97.0130]

VIOLATIONS AND PENALTIES

18.40 Violations and Penalties.

- (1) It shall be a violation of BCC Chapter 18 for any person who owns, manages, operates or otherwise controls the use of any place subject to regulation under BCC Chapter 18 to fail to comply with any part, parts, or the whole of BCC Chapter 18.

(2) Any person who owns, manages, and operates or otherwise controls the use of any place subject to regulation under BCC Chapter 18, and violates BCC Chapter 18 shall be guilty of an infraction, punishable by a fine:

(a) Up to \$500 per day for each violation, not to exceed \$4,000 in a 30-day period.

(3) It shall be a violation of BCC Chapter 18 for any person to smoke in any area where smoking is prohibited by BCC Chapter 18.

(4) Any person who violates BCC Chapter 18 shall be assessed penalties as follows:

(a) For the first violation, and a violation within a one year period of any previous violation, a fine of not less than fifty dollars (\$50.00) and not more than one hundred (\$100.00).

(b) For the second violation within a one year period of a violation under subsection (a), a fine of not less than one hundred dollars (\$100.00) and not more than two hundred dollars (\$200.00).

(c) For each additional violation within a one year period of a violation under subsection (b), a fine of not less than two hundred fifty dollars (\$250.00) and not more than five hundred dollars (\$500.00).

(5) Notwithstanding any other provisions of this article, an employee or private citizen may institute legal action to enforce BCC Chapter 18. [Ord. 97-0130; Ord. 2014-0259]

APPEAL

18.045 Appeal.

(1) Any person aggrieved by any penalty imposed upon that person pursuant to Section 18.040 may request a hearing. Any request shall be in writing, shall be directed to the Benton County Health Administrator, shall be received by the Benton County Health Administrator within ten (10) days of the imposition of the penalty, and shall be accompanied by a non-refundable hearing fee, the amount of which fee shall be established by an order of the Board.

(2) If a hearing is properly requested pursuant to Section 18.045 (1), a hearing shall be conducted before a hearings officer designated by the Board. The hearings officer shall have full authority to set hearing dates and hearing procedures. All actions of the hearings officer are final and any penalties imposed by the hearings officer shall take effect immediately. [Ord. 97-0130]