

Title 4 PUBLIC WELFARE, MORALS, AND CONDUCT

Chapter 15 SMOKING REGULATIONS*

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***Note to Chapter 15**

* Chapter 15 entitled "Smoking in Public Buildings and Places of Public Assembly", consisting of Sections 4-15.01 through 4-15.04, added by Ordinance Nos. 669, effective April 25, 1974, and 691, effective April 24, 1975, repealed by Ordinance No. 715, effective October 28, 1976, repealed and replaced by Ordinance No. 953, effective November 26, 1993.

4-15.01 Title.

This chapter shall be known as the San Anselmo Clean Indoor Air and Health Protection Ordinance. (§ 3, Ord. 953, effective January 1, 1994)

4-15.02 Definitions.

The following words and phrases, whenever used in this chapter, shall have the following meanings:

"Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises, and in which the serving 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. A "bar" for the purpose of this definition does not include any bar where smoke can filter into a restaurant through a passageway, ventilation system, or any other means.

"Business" means any sole proprietorship, joint venture, corporation or other business entity formed for profit-making 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.

"Cocktail lounge" means a bar, within a restaurant, which is not the sole means of public access to the dining areas, is not the sole waiting area for dining patrons, prohibits minors unless passing through, in which the service of food is only incidental to the consumption of beverages, has a separate ventilation system, and is enclosed.

"Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

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

"Enclosed" means surrounded by a ceiling, floor, and solid walls which, except for doors, passageways and/or windows, extend from floor to ceiling on all sides. If an enclosed area is divided by internal partial walls or other "office landscaping," it is still, in its entirety, enclosed. A retractable roof, whether open or closed, shall be considered a ceiling for the purpose of this definition.

"Minor" shall mean any individual who is less than eighteen (18) years old.

"Nonprofit entity" means any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a "nonprofit entity" within the meaning of this section.

"Person" shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

"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 and class rooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care or health care facility.

"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, shopping malls, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, hotels and motels, theaters and waiting rooms. A private residence is not a "public place."

"Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, including any associated outdoor eating area, 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, 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 tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories.

"Self-service merchandising" means open display of tobacco products and point-of-sale tobacco promotional products to which the public has access without the intervention of an employee.

"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, weed or plant or other combustible substance whose smoke is intended to be inhaled.

"Sports arena" means enclosed or unenclosed 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 any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.

"Tobacco vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a tobacco product.

"Town" shall mean the Town of San Anselmo.

"Vendor-assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased. (§ 3, Ord. 953, effective January 1, 1994)

4-15.03 Application of chapter to Town-owned vehicles and facilities.

All Town-owned vehicles, including jitneys and buses and other means of public transit under the authority of the Town, and all enclosed facilities owned and controlled by the Town, including jails, and any board, council, commission and agency of the Town shall be subject to the provisions of this chapter. (§ 3, Ord. 953, effective January 1, 1994)

4-15.04 Prohibition of smoking in public places.

(a) Except as otherwise provided, smoking shall be prohibited in all enclosed public places within the Town of San Anselmo, including, but not limited to, the following

places:

- (1) Elevators;
 - (2) Buses, taxicabs, and other means of public transit under the authority of the Town of San Anselmo, and ticket, boarding, and waiting areas of public transit depots;
 - (3) Restrooms;
 - (4) Service lines;
 - (5) Retail stores;
 - (6) All areas available to and customarily used by the general public in all business and nonprofit entities patronized by the public, including but not limited to, offices, banks, laundromats, malls, hotels, and motels;
 - (7) Public areas of aquariums, galleries, libraries, museums when open to the public;
 - (8) Any facility which is primarily used for exhibiting motion pictures, stage products, lectures, musical recitals or other similar performances, except for smoking which is part of such production;
 - (9) Sports arenas and convention halls;
 - (10) 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 Town 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 Town;
 - (11) Waiting rooms, hallways, wards and rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy, mental health, and drug and alcohol treatment facilities, doctors' and dentists' offices;
 - (12) A minimum of fifty (50%) percent of guest rooms in every hotel, motel, and bed-and-breakfast facility must be permanently designated nonsmoking;
 - (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, senior citizen residences, nursing homes, and other multiple-unit residential facilities;
 - (14) Lobbies, hallways, and other common areas in multiple-unit commercial facilities;
 - (15) Polling places;
 - (16) All structures or areas designated by written findings of the Chief of the Fire Department as potential fire hazards if smoking were allowed.
- (b) Smoking shall be prohibited within twenty (20) feet of any entrance or exit of any building in which smoking is prohibited. For purposes of this section, "entrance or exit" shall mean an opening into a building from a contiguous street, sidewalk, walkway, parking area or patio.
- (c) Smoking shall be prohibited in any Town park, playground and in the Town Hall Plaza.
- (d) No person shall dispose of smoking waste or tobacco product waste within the boundaries of an area in which smoking is prohibited, including within the twenty (20) foot perimeter established in subsection (b) of this section.
- (e) Smoking shall be prohibited in any area where food and/or drink is offered for sale including outdoor dining areas of restaurants.
- (f) Smoking shall be prohibited in outdoor common areas, including courtyards and other places where air circulation may be impeded by architectural landscaping or other barriers. (§ 3, Ord. 953, effective January 1, 1994, as amended by § 2, Ord. 970, eff.

November 23, 1995, § 2, Ord. 979, eff. April 10, 1997, and Ord. 1056, eff. August 10, 2007)

4-15.05 Regulation of smoking in places of employment.

- (a) No person shall smoke in an enclosed place of employment.
- (b) Within sixty (60) days of the effective date of this chapter, each employer having an enclosed place of employment located within the Town 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, vehicles and all other enclosed facilities.
- (c) All employers shall comply with these nonsmoking provisions and shall be responsible for their implementation in their places of employment.
- (d) “No Smoking” signs shall be conspicuously posted at building entrances and in employee lounges, cafeterias and lunchrooms.
- (e) All employers shall supply a written copy of the smoking policy to any existing or prospective employee. (§ 3, Ord. 953, effective January 1, 1994)

4-15.06 Smoking optional areas.

- (a) Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:
 - (1) Private residences, except when used as a child care or health care facility;
 - (2) Retail tobacco stores;
 - (3) Enclosed restaurant, hotel and motel conference or meeting rooms and public and private assembly rooms, which are equipped with a ventilation system which conducts air to the outside, while these places are being used for private functions, such as weddings, receptions, etc., to which functions the public is not invited, provided that fifty (50%) percent of these areas are designated nonsmoking;
 - (4) An enclosed place of employment which employs only the owner and no other employee, provided that:
 - (i) The place of employment is not a public place, and
 - (ii) The place of employment does not share a ventilation system with any other enclosed place of employment or public place;
 - (5) Bars and cocktail lounges as defined herein.
- (b) Nothing in this chapter shall be construed to prevent any owner, operator, manager, or other person who controls any establishment or facility from declaring and enforcing a nonsmoking policy in the entire establishment or facility. (§ 3, Ord. 953, effective January 1, 1994)

4-15.07 Posting of signs.

- (a) “No Smoking” signs 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) shall be clearly, sufficiently and conspicuously posted in every building, as well as on entrances at eye level, or other place where smoking is regulated by this article, by the owner, operator, manager or other person having control of such building or other place.

(b) Every restaurant and mall shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. (§ 3, Ord. 953, effective January 1, 1994)

4-15.08 Regulating the sale of tobacco products.

(a) Any person, business, tobacco retailer or other establishment subject to this chapter shall post plainly visible signs at the point of purchase of tobacco products which state “THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW. PHOTO ID REQUIRED.” The letters of said signs should be at least one-quarter (¼) inch high.

(b) No person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this chapter shall sell, offer to sell or permit to be sold any tobacco product to an individual without requesting and examining identification establishing the purchaser’s age as eighteen (18) years or greater unless the seller has some reasonable basis for determining the buyer’s age.

(c) It shall be unlawful for any person, business, or tobacco retailer to sell, permit to be sold, or offer for sale any tobacco product by means of self-service merchandising, or by any means other than vendor-assisted sales.

(d) No person, business, or tobacco retailer shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises any vending machine for the purpose of selling or distributing any tobacco product. Any tobacco vending machine in use on the effective date of this chapter shall be removed within thirty (30) days after the effective date of this chapter. (§ 3, Ord. 953, effective January 1, 1994)

4-15.09 Enforcement.

(a) Notice of these regulations shall be given to all applicants for a business license.

(b) Enforcement of this chapter shall be implemented by the Town Administrator or his/her designee.

(c) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Town Administrator or his/her designee.

(d) The Fire Department or the Health Department shall require, while an establishment is undergoing otherwise mandated inspections, certification from the owner, manager, operator or other person having control of such establishment that all requirements of this chapter have been complied with. (§ 3, Ord. 953, effective January 1, 1994)

4-15.10 Violations and penalties.

(a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under Sections 4-15.04, 4-15.05 and 4-15.08 of this chapter to refuse or fail to comply with any of its provisions.

(b) It shall be unlawful for any person to smoke in any area where smoking is prohibited

under Sections 4-15.04, 4-15.05 and 4-15.06(b) of this chapter.

(c) Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this chapter who violates any provision of this chapter shall be deemed guilty of an infraction, punishable as provided by law. (§ 3, Ord. 953, effective January 1, 1994)

4-15.11 Nonretaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to a smoke-free environment afforded by this chapter. (§ 3, Ord. 953, effective January 1, 1994)

4-15.12 Public education.

The Town Administrator shall engage in a continuing program to explain and clarify the purposes and requirements of this chapter to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such program may include publication of a brochure for affected business and individuals explaining the provisions of this chapter. (§ 3, Ord. 953, effective January 1, 1994)

4-15.13 Governmental agency cooperation.

The Town Administrator shall annually request other governmental and educational agencies having facilities within the Town to establish local operating procedures in cooperation and compliance with this chapter. This includes urging all federal, state, county and school district agencies to update their existing smoking control regulations to be consistent with current health findings regarding environmental tobacco smoke. (§ 3, Ord. 953, effective January 1, 1994)

4-15.14 Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (§ 3, Ord. 953, effective January 1, 1994)

4-15.15 Severability.

If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. (§ 3, Ord. 953, effective January 1, 1994)