

REVISED ORDINANCE 2013-01

**AN ORDINANCE ENACTING CHAPTER 10, ARTICLE 7 OF THE WALHALLA CITY
ORDINANCES RELATING TO SMOKING IN PUBLIC PLACES AND PLACES OF
EMPLOYMENT**

BE IT ORDAINED by the city council of the city of Walhalla, North Dakota:

Enabling Ordinance Chapter 10, Article 7 of the City Ordinances of the city of Walhalla, North Dakota is hereby enacted to read as follows:

ARTICLE 7

Section 1. **PURPOSE.** This article is enacted to regulate smoking in public places and places of employment in order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air.

Section 2. **DEFINITIONS.** The following definitions shall apply in the interpretation and enforcement of this article.

- (1) Premises means a retail alcoholic beverage establishment licensed pursuant to Walhalla Revised Code §8.0601. The term includes all indoor and outdoor areas of the licensed premises including but not limited to outdoor patios, terraces, decks, courtyards, sidewalks and porches.
- (2) Business means a sole proprietorship, partnership, association, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold and professional corporations and other entities where professional services are delivered.
- (3) E-cigarette 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 other substances, and the use or inhalation of which simulates smoking. The term shall include any device, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or under any other product, name or descriptor.
- (4) Employee means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.
- (5) Employer means an individual, business, or private club, including a municipal corporation or trust, or the state and its agencies and political subdivisions that employs the services of one or more individuals.
- (6) Enclosed area means all space between a floor and a ceiling that has 33% or more of the surface area of its parameter bounded by open or closed walls, windows or doorways. A wall includes any physical barrier regardless of whether it is open or closed, temporary or permanent, or contains openings of any kind, and includes retractable dividers and garage doors.
- (7) Health care facility means any office or institution providing health care services or treatment of diseases, whether physical, mental or emotional, or other medical,

physiological or psychological conditions. Including, but not limited to hospitals; clinics; ambulatory surgery centers; outpatient care facilities; weight control clinics; nursing homes, homes for the aged or chronically ill, nursing, basic, long-term or assisted living facilities; and laboratories and offices of any medical professional licensed under Title 43 of the North Dakota Century Code, including all specialties and sub-specialties in those fields. This definition shall include all waiting rooms, hallways, private rooms, semi-private rooms, wards within health care facilities, and any mobile or temporary health care facilities.

- (8) Health care services means services provided by any health care facility including but not limited to: medical, surgical, dental, vision, chiropractic, psychological and pharmaceutical services.
- (9) Place of employment means an area under the control of a public or private employer, including but limited to: work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private rooms, restaurants, temporary offices, vehicles, and stairs. A private residence is not a place of employment unless it is used as a licensed child care, adult day care or health care facility.
- (10) Public place means an area to which the public enters, including but not limited to: publicly owned buildings, vehicles or offices; premises, bingo facilities, gambling and gaming facilities as defined in N.D.C.C. §12.1-28-01; child care and adult day care facilities subject to licensure by the North Dakota Department of Human Services, including those operated in private homes, educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels including all rooms that are rented to guests; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities private and semi-private nursing home rooms; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities, including buses, trains, airplanes and similar aircraft, taxicabs and similar vehicles such as town cars and limousines when used for public transportation, and ticket, boarding, and waiting areas of public transit facilities, including bus and trains stations and airports; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores including tobacco and hooka establishments; rooms, chambers, places of meeting or public assembly, including school buildings; shopping malls; sports arenas, theaters; and waiting rooms.
- (11) Publicly owned building, vehicle, or office means a place or vehicle owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes.
- (12) Restaurant includes every building or other structure, or any part thereof, and all buildings in connection therewith that are kept, used, maintained, advertised, or held out to the public as a place where food is served, whether or not the establishment serves alcoholic or nonalcoholic beverages, including but not limited to coffee shops, cafeterias, sandwich stands, private and public school cafeterias, kitchens, and catering facilities in which food is prepared on the premises for serving elsewhere, and a premises area within a

restaurant. The term also includes outdoor areas of a restaurant where food and/or beverages are served or consumed including but not limited to outdoor patios, terraces, decks, courtyards, sidewalks and porches.

- (13) Shopping mall means an indoor public walkway or hall area that serves to connect retail or professional businesses.
- (14) Smoking means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e-cigarette which creates a vapor, in any manner or any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this article.
- (15) Smoking shelter means a partially enclosed structure designated for smoking with no more than thirty-three (33) percent of the wall space of the structure enclosed. Doors and windows, whether opened or closed, shall be considered walls. The percentage of the wall space shall be calculated based upon the surface area of the vertical planes of the perimeter of the structure below any ceiling. Smoking shelters must be located more than twenty (20) feet from entrances, exits, nonfixed windows, and ventilation intakes of public places, places of employment and any location where smoking is prohibited. Smoking shelters shall comply with all applicable codes and zoning requirements. Smoking shelters may not be constructed on any public right-of-way. Sales, service and consumption of food and alcoholic beverages is prohibited in smoking shelters.
- (16) Sports arena means an indoor or outdoor place, where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including but not limited to sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, race tracks, ball parks, athletic fields, stadiums, grandstands, and bowling centers.

Section 3. SMOKING RESTRICTIONS - EXCEPTIONS.

- (1) Except as otherwise provided herein, smoking is prohibited in all:
 - a. Public places;
 - b. Places of employment;
 - c. Indoor and outdoor areas of restaurants;
 - d. Indoor and outdoor areas of premises;
 - e. Areas within twenty (20) feet of any entrance, exit, operable window, air intake and ventilation systems of enclosed areas in which smoking is prohibited;
 - f. Areas designated as a nonsmoking area by a business, employer, the manager of a business, or a person in control of a public place or a place of employment;
 - g. Smoking shelters if food or alcoholic beverages are sold, served or consumed in the smoking shelter.
- (2) The following areas, locations or uses are exempt from the provisions of subsection (1):
 - a. Private residences, except when used as a child care, adult day care or health care facility subject to licensure by the North Dakota department of human services.
 - b. Outdoor areas of places of employment, except a sports arena, restaurant or as otherwise prohibited herein.
 - c. Any area that is not commonly accessible to the public and which is part of an owner-operated business having no employee other than the owner-operator.

- d. Outdoor areas of a premises holding an on sale license as defined by Walhalla City Code section 8.0601 provided that patrons entering such licensed premises must be at least twenty-one (21) years of age and further provided that no food is sold, served or consumed in such outdoor areas, whether designated as an outdoor patio, terrace, deck, courtyard, sidewalk, porch, or other similar term.
 - e. Smoking shelters provided that no food or alcoholic beverages are sold, served or consumed in the smoking shelter.
 - f. Smoking as part of a traditional American Indian spiritual or cultural ceremony.
- (3) This section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 4. RETALIATION PROHIBITED. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this article or reports or attempts to prosecute a violation of this article.

Section 5. RIGHT TO DESIGNATE NONSMOKING AREAS. Nothing in this article shall prevent any business, employer, manager of a business, or person in control of a public place or a place of employment, or any owner of real property, from prohibiting smoking in any location, or part thereof, where smoking is otherwise allowed under this article.

Section 6. POSTING OF SIGNS OR SYMBOLS AND OTHER RESPONSIBILITIES OF PROPRIETORS. The owner, proprietor, operator, manager or other person in charge or control of a public place or place of employment where smoking is prohibited by this article shall:

- (1) Clearly and conspicuously post "no smoking" signs or the international "no smoking" symbol consisting of a pictorial representation of a burning cigarette in a circle with a bar across it in that place.
- (2) Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
- (3) Clearly and conspicuously post in every vehicle that constitutes a place of employment under this article at least one sign, visible from the vehicle's exterior, stating that smoking is prohibited.
- (4) Remove all ashtrays from any area where smoking is prohibited, except for ashtrays displayed for sale and not for use on the premises.
- (5) Communicate to all existing employees that smoking is prohibited in that place.
- (6) Communicate to all prospective employees, upon application for employment, that smoking is permitted in that place.
- (7) Direct a person who is smoking in violation of this article within the public place or place of employment under the control of such owner, proprietor, manager, or other person to extinguish the product being smoked. If the person does not stop smoking, the owner, proprietor, operator, manager or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises the owner, proprietor, operator, manager or employee shall immediately report the violation to the Walhalla Police Department. The refusal of the person to stop smoking or leave the premises in response to requests made under this section by an owner,

proprietor, operator, manager or employee shall not constitute a violation of this article by the owner, proprietor, operator, manager or employee.


Section 7. PENALTY.

- (1) An individual who smokes in an area in which smoking is prohibited under the provisions of this article is guilty of a noncriminal offense.
- (2) A business, employer, owner of a business, or a person with general supervisory authority over a public place or a place of employment who willfully fails to comply with the provisions of this article is guilty of a noncriminal offense.
- (3) A business or an individual who is found guilty of a violation of the provisions of this article shall be punishable by:
 - a. A fine not exceeding one hundred dollars (\$100.00) for the first violation;
 - b. A fine not exceeding two hundred dollars (\$200.00) for a second violation occurring within one (1) year of the first violation;
 - c. A fine not exceeding five hundred dollars (\$500.00) for each violation occurring within one (1) year of the second violation.
- (4) In addition to the fines established by this section, violation of this article by person who owns, manages, operates or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued for the premises, or regulated activities conducted on the premises, for the premises on which the violation occurred.

Section 8. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage, approval, and publication.

Dated this 5 day of March, 2013.

CITY OF WALHALLA, NORTH DAKOTA

By 
Chris Jackson, Mayor

ATTESTED TO:

By 
Shirley Robillard, Auditor

First reading: 02/04/2013

Second reading: 3/5/2013

Publication Date: _____