

ARTICLE XI. ENVIRONMENTAL CONTROL*

***Editor's note:** Ord. No. 25-05, July 20, 2005, amended former Art. XI, §§ 24-11-1--24-11-7, in its entirety which pertained to similar subject matter and derived from Ord. No. 6-92, § 1, adopted March 18, 1992.

Sec. 24-11-1. Ordinance title.

This article shall be known as the "Detroit Clean Indoor Air Ordinance."

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-2. Authority.

This article is adopted pursuant to authority conferred upon the City of Detroit by the Michigan Public Health Code, 1978 P.A. 368, as amended.

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-3. Jurisdiction and administration.

(a) The Director of the City of Detroit Department of Health and Wellness Promotion ("health department"), hereafter referred to as the health officer, shall have responsibility for administering and enforcing this ordinance, including all amendments hereafter adopted unless otherwise specifically stated.

(b) This article shall have effect throughout the City of Detroit, which has established its own local health department pursuant to MCL 333.2422.

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-4. Purpose.

(a) The City of Detroit hereby finds and declares that:

(1) The U.S. Surgeon General, National Research Council, and National Academy of Sciences, report that secondhand smoke causes lung cancer in healthy adult nonsmokers, and can cause lung function and structure alteration to the fetus of pregnant nonsmoking women, and further, in utero exposure is known to predispose children to long term pulmonary risks. Separating smokers and nonsmokers within the same air space may reduce, but does not eliminate, a nonsmoker's exposure to secondhand smoke.

(2) The U.S. Environmental Protection Agency (EPA) classifies secondhand smoke as a Group A carcinogen--a category reserved for known cancer-causing agents in humans.

(3) The National Institute for Occupational Safety and Health (NIOSH).

a. Finds that secondhand smoke poses an increased risk of lung cancer and possibly heart disease to people exposed in the worksite;

b. Recommends that nonsmokers should not be exposed to secondhand smoke; and

c. Indicates that simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to secondhand tobacco smoke.

(b) These studies find that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke is a cause of disease, including cancer, heart

disease and stroke in nonsmokers. At special risk are infants, children, teens, pregnant women, elderly people, nonsmokers with long term exposure to secondhand smoke and individuals with impaired respiratory function. Also harmed are those with health conditions induced by breathing secondhand smoke, including asthma, lung cancer, respiratory infection, and decreased respiratory function, including broncho-constriction and broncho-spasm.

(c) Accordingly, the City of Detroit declares that the purpose of this ordinance is to protect the public health and welfare by regulating smoking in public places and places of employment and recreation.

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-5. Definitions.

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

(1) Business means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for non-profit or 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.

(2) Business *vehicle* means a car, bus, van or other motorized unit that is owned or leased by an employer for the use of employees.

(3) Convention *hall* means any enclosed area where public or private groups assemble to engage in business or social functions.

(4) 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 or business entity.

(5) Employer means any person, business, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.

(6) Enclosed *area* means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, office landscaping or similar structures.

(7) Food *concession* means a food storage, preparation, or dispensing operation at a state or county fair.

(8) *Food service establishment* means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public. Food services establishment does not include:

- a. A motel that serves continental breakfasts only;
- b. A food concession;

- c. A bed and breakfast that has ten (10) or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper;
 - d. A bed and breakfast that has at least eleven (11) but fewer than fifteen (15) rooms for rent, if the bed and breakfast serves continental breakfasts only; or
 - (e) A childcare organization regulated by Michigan law unless the establishment is carrying out an operation considered by the State of Michigan to be a food service establishment.
- (9) Gaming *venue* means a casino licensed and regulated by the Michigan Gaming Control Board, a casino operating pursuant to a gaming compact with the State of Michigan, and a racetrack licensed and regulated by the Office of the Michigan Racing Commissioner.
- (10) Health *officer* means the local health officer as defined by MCL 333.1105(3).
- (11) 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, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place."
- (12) Secondhand *smoke*, sometimes referred to as "environmental tobacco smoke", means that it is a mixture of the smoke given off by the burning ends of a cigarette, pipe, cigar, bidis, and kreteks (side stream smoke) and the smoke emitted at the mouthpiece and exhaled from the lungs of smokers (mainstream smoke).
- (13) 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.
- (14) Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or related substance or product.
- (15) Sports *arena* means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar enclosed areas where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events, excluding such portions of said facilities which are licensed as a food service establishment.
- (16) Tobacco *specialty 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.
- (17) Worksite means an 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 classrooms, employee cafeterias and hallways. A private residence is not a "worksite" unless it is used as a childcare, adult day care or health care facility.
- (Ord. No. 25-05, 7-20-05)

Sec. 24-11-6. Prohibition of smoking in public and private worksites and public places.

- (a) Smoking is prohibited in all enclosed areas of public and private worksites and public places within the City of Detroit, including but not limited to the following places:
 - (1) All enclosed areas of worksites, public places and business vehicles, including those owned, leased or otherwise under the control of the City of Detroit.
 - (2) Restrooms, lobbies, reception areas, hallways and any other common-use areas.

- (3) Buses, taxicabs, and other means of public transit, and ticket, boarding, and waiting areas of public transit depots, including airports.
 - (4) Service lines.
 - (5) Retail stores.
 - (6) All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including but not limited to, attorneys offices and other offices, banks, Laundromats, hotels and motels.
 - (7) All areas of galleries, libraries and museums.
 - (8) Any facility which is primarily used for exhibiting any motion picture, stage production, drama, lecture, musical recital or other similar performance except performers when smoking is part of a stage production.
 - (9) Sports arenas.
 - (10) Convention halls.
 - (11) Public and private meeting facilities.
 - (12) 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 City of Detroit or any political subdivision of the State of Michigan, to the extent such location is in the City of Detroit.
 - (13) Waiting rooms, hallways, wards and semi-private rooms of health facilities, including, but not limited to hospitals, clinics, physical therapy facilities, doctors offices, and dentists' offices.
 - (14) Lobbies, hallways, and other common areas in hotels, motels, multiple-tenant office buildings and malls, apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
 - (15) At least seventy (70) percent of hotel and motel rooms rented to guests with a goal of at least eighty (80) percent.
- (b) Notwithstanding any other provision of this article, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.
- (Ord. No. 25-05, 7-20-05)

Sec. 24-11-7. Prohibition of smoking in places of employment.

- (a) It shall be the responsibility of employers to provide a smoke-free worksite as set forth in this article.
- (b) Upon the effective date of this article, each employer having an enclosed place of employment located within the City of Detroit shall adopt, implement, make known and maintain a written and posted policy regarding smoking. The policy shall contain, at a minimum, the following wording or requirements:
Smoking is prohibited in all enclosed areas within this worksite without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, employer owned or leased vehicles, and all other enclosed facilities.
- (c) The smoking policy shall be communicated to all current employees at least two (2) weeks prior to its effective date, and at the time of the employment of all other employees.

(d) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-8. Prohibition of smoking near entrances, windows and ventilation systems. Smoking is prohibited near entrances, windows and ventilation systems of all worksites and public places where smoking is prohibited by this ordinance. Any individual who owns, manages, operates or otherwise controls the use of any premises subject to jurisdiction under this ordinance shall establish a non-smoking area which extends a reasonable distance--at least fifteen (15) feet--from any entrances, windows and ventilation systems to any enclosed areas where smoking is prohibited. A reasonable distance shall be a distance sufficient to insure that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and to insure that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means. All smoking trash receptacles shall be placed outside the nonsmoking area in order to discourage smoking in these areas.

(a) It shall be the responsibility of the owner of a regulated building to prescribe appropriate non-smoking areas surrounding entrances, windows and ventilation systems.

(b) If the public health officer receives a complaint regarding a violation of this section, the officer shall conduct an investigation and review the designated non-smoking area with the business owner to ensure that an appropriate non-smoking perimeter has been established. If the business owner and health officer are unable to agree upon a reasonable distance, the health officer shall prescribe an appropriate distance or area.

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-9. Where smoking is not regulated.

(a) Notwithstanding any other provision of this ordinance to the contrary, the following areas are not subject to the smoking restrictions of this ordinance:

(1) Food service establishments.

(2) Private residences, except when used as a childcare, health care facility or adult day care facility.

(3) Tobacco specialty stores.

(4) Licensed premises as defined by section 12601 of the Public Health Code, which are defined as any portion of a building, structure, room or enclosure in which alcoholic liquor may be sold for consumption on the premises pursuant to a license issued by the Michigan liquor control commission.

(5) Gaming venues.

(b) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility described in this section may declare that entire establishment or facility as a non-smoking establishment.

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-10. 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 or other

area where smoking is prohibited by this ordinance. The signage shall be posted by the owner, operator, manager or other person having control of such building or other area.

(b) Every public place where smoking is prohibited by this article shall have signs conspicuously posted at every entrance clearly stating that smoking is prohibited.

(c) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this ordinance by the owner, operator, manager or other person having control of such area.

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-11. Enforcement.

(a) Enforcement of this article shall be under the jurisdiction of the health officer or his or her designee pursuant to 1978 P.A. 368, Sec. 2435.

(b) Any citizen who desires to register a complaint under this chapter may initiate enforcement through the health officer, or his or her designated staff.

(c) The health department or the fire department shall require, while an establishment is undergoing otherwise mandated inspections, a "self-certification" from the owner, manager, operator or other person having control of such establishment that all requirements of this ordinance have been complied with.

(d) Any owner, manager, operator or employee of any establishment regulated by this ordinance shall inform persons who are violating this ordinance of the appropriate provisions thereof.

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-12. Non-retaliation.

A person or employer shall not discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant or customer exercises any right to a smoke-free environment afforded by this article.

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-13. Authority of health officer to establish rules and regulations.

In the manner prescribed by MCL 333.2441 and 333.2442, the health officer shall promulgate rules and regulations for carrying out the purpose and intent of this article within ninety (90) days of the effective date of this article. The regulations shall be approved or disapproved by the city council and shall be at least as stringent as the standard established by state law. The health officer shall enforce the rules and regulations to effectuate the purpose of this article.

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-14. Violations and penalties.

(a) Any individual who owns, manages, operates or otherwise controls the use of any premises subject to jurisdiction under this article who fails to comply with any of its provisions shall be subject to a civil penalty, pursuant to MCL 333.2461.

(b) Any individual who smokes in any area where smoking is prohibited by the provisions of this ordinance shall be subject to a civil penalty. Any individual violating this section shall be subject to a warning and shall be required to leave the premises if he or she refuses to extinguish smoking materials.

(c) Any individual violating subsection (a) or (b) above or otherwise found in noncompliance with the requirements found within this article shall be subject to civil penalties as follows:

(1) A warning for a first violation;

(2) A fine not exceeding one hundred dollars (\$100.00) for a second violation within one (1) year; and

(3) A fine not exceeding five hundred dollars (\$500.00) for a subsequent violation within one (1) year.

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-15. Appeal.

(a) Pursuant to MCL 333.2462, not later than twenty (20) days after receipt of the citation, the alleged violator may petition the health department for an administrative hearing, which shall be held within thirty (30) days after the receipt of the petition. After the administrative hearing, the health officer may affirm, dismiss, or modify the citation. The decision of the health officer shall be final.

(b) A person aggrieved by a decision of the health officer may petition the circuit court for review. The petition shall be filed not later than sixty (60) days following receipt of the final decision.

(c) A civil penalty becomes final if a petition for an administrative hearing is not received within the time specified in this section. A civil penalty imposed under this part is payable to the health department for deposit with the general funds of the City of Detroit.

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-16. Public education.

The health department shall engage in a continuing program to explain and clarify the purposes and requirements of this ordinance 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 businesses and individuals explaining the provisions of this article.

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-17. Other applicable law.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-18. Severability.

If any provision, clause, sentence or paragraph of this article or the application thereof to any person or circumstances shall be held invalid such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

(Ord. No. 25-05, 7-20-05)

Sec. 24-11-19. Effective date.

(a) This article is hereby declared necessary to preserve the public peace, health, safety, and welfare of the people of the City of Detroit.

(b) All ordinances, or parts of ordinances, that conflict with this article are repealed.

(c) In the event that this ordinance is passed by a two-thirds (2/3) majority of the city council members serving, it shall be given immediate effect and become effective upon publication in accordance with Section 4-116 of the 1997 Detroit City Charter. If this ordinance is passed by less than two-thirds (2/3) majority of the city council members serving, it shall become effective no later than thirty (30) days after enactment in accordance with Section 4-115 of the 1997 Detroit City Charter.

(Ord. No. 25-05, 7-20-05)