

Chapter 17 OFFENSES, MISCELLANEOUS PROVISIONS*

*Cross reference(s)--Alarm systems, Ch. 2.5; rules of conduct in
cemeteries, § 7-123 et seq.; police, Ch. 20; traffic and motor vehicles, Ch. 28.

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Edited November 9, 2021

Sec. 17-68. Reserved.

Sec. 17-69. Reserved.

ARTICLE V. REGULATION OF TOBACCO*

***Editor's note**--Ord. No. 241-98, § 1, adopted Apr. 7, 1998, amended this chapter by adding provisions as herein set out; such ordinance was approved at referendum on Nov. 3, 1998, with an effective date of Dec. 5, 1998.

***Editor's note**—Pursuant to Council Order 39-12/13, passed by City Council on 2/4/13 repealed Article V in its entirety and replaced it with a new Article V.

DIVISION 1. GENERALLY

Sec. 17-70. Findings; purposes.

(a) The city council hereby finds as follows:

- (1) There is no risk-free level of contact with secondhand smoke; even brief exposure can be harmful to health;
- (2) Secondhand smoke contains over 4,000 chemicals, more than 60 of which are known to cause cancer;
- (3) The smoking of other substances may also cause serious health problems and risks to those who smoke; and
- (4) The purpose of this regulation is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

(b) The city council hereby finds that it is in the public health, safety and welfare to supplement state regulation of the use of tobacco, tobacco products and other substances that emit smoke that is used and intended customarily for inhalation into the lungs in outdoor locations and the free distribution and self-service displays of tobacco and tobacco products.

(Ord. No. 39-12/13, 2-4-13, Ord. 207-14/15, 4-27-2015)

Sec. 17-71. Definitions.

Words used in this chapter shall have their common meanings, except that definitions set forth in 22 M.R.S.A. Chapter 262-A, or this section shall apply unless the context clearly indicates that a different meaning is intended:

Designated city trail means the traveled portion of all city-owned or controlled trails open to use by the public that have been designated as a nonsmoking trail by order of the city council.

Flavored tobacco products means any tobacco product that imparts a taste or smell, other than the taste or smell of tobacco, either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice. Specifically excluded from this definition are any product(s) containing cannabis, as defined by Chapter [_____], of this Code, unless these products contain, are made of, or are derived from tobacco or nicotine.

Outdoor eating areas shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of its patrons.

Owner means and includes the proprietor, manager, lessee, lessor licensee or any other person exercising control over any facility or location.

Private function is a room or a hall in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements.

Smoking means the lighting, inhaling, exhaling, burning or carrying of any cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, other similar product that relies on vaporization or aerosolization, or other tobacco product, or carrying or having in one's possession any lighted object giving off smoke from tobacco or any other substance that emits smoke that is customarily used and intended for inhalation into the lungs.

~~*Tobacco or tobacco product* means any form of tobacco, including but not limited to cigarettes, cigars, pipe tobacco, chewing tobacco or snuff, and any material or device used in the smoking, chewing or other form of tobacco consumption, including~~

~~but not limited to cigarette papers, pipes, electronic cigarettes, electronic cigars, electronic pipes, and other similar products that rely on vaporization or aerosolization.~~

"Tobacco product" means: (1) any product containing, made of, or derived from tobacco or nicotine, natural or synthetic, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or (3) any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes. "Tobacco product" does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Traveled portion means that area of a trail covered by material such as concrete, pavement, stone dust, or cedar mulch, designed to bear traffic from individuals or vehicles powered by individuals.

(Ord. No.39-12/13, 2-4-13, Ord. 207-14/15, 4-27-2015)

Sec. 17-72. Reserved.

Sec. 17-73. Reserved.

Sec. 17-74. Reserved.

Sec. 17-75. Reserved.

Sec. 17-76. Reserved.

Sec. 17-77. Reserved.

Sec. 17-78. Reserved.

Sec. 17-79. Reserved.

Sec. 17-80. Reserved.

DIVISION 2. MISCELLANEOUS PROVISIONS

Sec. 17-81. Free distribution; sampling.

The free distribution or sampling of tobacco is prohibited in the City of Portland. A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(Ord. No. 241-98, § 1, 4-7-98; Ord. No. 39-12/13, 2-4-13)

Sec. 17-82. Self-service displays.

(a) Self-service displays of tobacco products, from which individual packages, cartons, or items may be selected by the customer, are prohibited in the City of Portland.

(b) The foregoing shall not apply in a retail tobacco store which specializes in the sale of tobacco and tobacco products only.

(c) A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-83. 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 smoke-free environment afforded by this article. A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this code.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-84. Sale of tobacco products to people under 21 prohibited.

(a) Notwithstanding the provisions of 22 M.R.S. §1555-B(2) and in accordance with 22 M.R.S. 1556, in the City of Portland, no individual, corporation, partnership, unincorporated association or other entity may sell, furnish, give away or offer to sell, furnish or give away a tobacco product to any individual under 21 years of age.

(b) No individual, corporation, partnership, unincorporated association or other entity may sell or permit the sale of tobacco products in the City of Portland unless a clearly visible notice is posted at the location where tobacco products are available for purchase. The City of Portland shall provide this notice, which shall state "No person under the age of 21 may purchase tobacco products," legibly printed in letters at least one-half inch high.

(c) The City of Portland's Public Health Division Director or his or her designee(s) shall have the primary responsibility

for enforcement of this section and may conduct random, unannounced inspections at locations where tobacco products are sold to test and ensure compliance with this ordinance.

(d) A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(Ord. No. 303-15/16, 7-20-2016)

Sec. 17-85. Reserved.

DIVISION 3. NONSMOKING ON DESIGNATED CITY TRAILS

Sec. 17-86. Purpose.

This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, and quality of life of the children and other people that use designated city trails.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-87. Smoking prohibited.

It shall be unlawful for any person to smoke on a designated city trail at any time.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-88. Enforcement.

The parks and recreation department shall place signs at the beginning and end point of any city trail as well as in such other locations that, in its sole discretion, the parks and recreation department deems necessary to notify the public of this ordinance. Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer or park ranger shall issue one verbal warning to an individual. If the individual fails to immediately comply after one warning, individual shall be given a citation.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-89. Reserved.

DIVISION 4. SECONDHAND SMOKE ON
PLAYGROUNDS, BEACHES, AND ATHLETIC FACILITIES

Sec. 17-90. Purposes.

The purpose of this regulation is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

(Ord. No. 39-12/13, 2-4-13, Ord. 207-14/15, 4-27-2015)

Sec. 17-91. Smoking prohibited at playgrounds, beaches and outdoor athletic facilities.

(a) Smoking is prohibited both at, or within, twenty (20) feet of the following outdoor areas: playgrounds, beaches and outdoor athletic facilities owned and maintained by the city where members of the general public of any age assemble to engage in physical exercise, participate in athletic competition, play or recreational activity, or to witness sports, or other outdoor recreational events.

(b) The foregoing prohibition shall not apply in an area which has been designated prior to passage of this ordinance as a designated smoking area at Hadlock Field, but such area shall not be expanded.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-92. Enforcement.

(a) The health and human services department shall work with the public works department to place signs notifying the public of this prohibition at or near playgrounds and athletic facilities, as well as in such other locations that, in its sole discretion, the health and human services department deems necessary to notify the public of this ordinance.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer or park ranger shall issue one verbal warning to an individual. If the individual fails to comply after one warning, said individual shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.

(Ord. No. 39-12/13, 2-4-13; Ord. 108-15/16, 11-16-2015)

Sec. 17-93.Reserved.

DIVISION 5. SECONDHAND SMOKE IN
INDOOR AND OUTDOOR EATING AREAS

Sec. 17-94. Smoking Prohibited in Indoor and Outdoor Eating Areas.

(a) Smoking is prohibited within the indoor and outdoor eating areas provided by restaurants and bars while such indoor or outdoor eating areas, or any portion thereof, are open and available for dining and beverage service.

(b) *Indoor eating areas* shall mean indoor areas permitted for dining that are under the control of a restaurant or bar for the use of its patrons.

(c) *Outdoor eating areas* shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of its patrons.
(Ord. 207-14/15, 4-27-2015)

Sec. 17-95. Enforcement.

(a) It shall be the responsibility of restaurants and bars to notify its customers of this prohibition and to request that customers comply with it.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer shall issue one verbal warning to an individual and the restaurant. If the individual or restaurant or bar fails to comply after one warning, said individual or restaurant or bar shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.
(Ord. 207-14/15, 4-27-2015)

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DIVISION 6. SMOKING PROHIBITED IN CITY PARKS AND PUBLIC GROUNDS

Sec. 17-96. Smoking prohibited in all city-owned or maintained parks.

(a) Smoking is prohibited in the City's public parks, squares and grounds and temporary parks requiring a permit.

(b) The Council shall define by order the City-owned or maintained public parks and grounds to which this requirement shall apply and such order shall be kept on file in the Department of Public Works.

(c) Smoking is prohibited in any temporary or "pop-up" park operated or maintained by a private person or entity, into which the public is invited and that requires an event permit under Chapter 18 for the duration of the event so approved. (Ord. No. 39-12/13, 2-4-13; Ord. 80-15/16, 10-19-2015, Ord. 108-15/16, 11-16-2015)

***Editor's Note:** Pursuant to Council Order 38-12/13, passed on 2/4/13, and Order 76-15/16, passed on 10/19/2015, the following is the list of public parks to which 17-96(b) applies:

ORDERED, that smoking shall be prohibited in the following parks and public grounds as described in Section 17-96 of the Portland City Code:

Back Cove Park	Lobsterman Park
Baxter Woods	Longfellow Square
Bayside Park	Marginal Way Field
Bedford Park	Monument Square
Bell Buoy Park	Oatnuts Park
Belmeade Park	Payson Park
Boothby Square	Pleasant Street Park
Capisic Pond Park	Post Office Park
Compass Park/Maine State Pier	Presumpscot Park
Congress Square	Presumpscot River Preserve
Deering Oaks Park	Quarry Run Dog Park
Dougherty Field	Riverton Park
Eastern Promenade	Stroudwater Park
Fessenden Park	Tommy's Park
Fort Allen Park	University Park
Fort Sumner Park	Valley Street Dog Park
Ganley Plaza	Western Promenade
Harbor View Park	
Heseltine Park	
Lincoln Park	

Sec. 17-97. Enforcement.

(a) The health and human services department shall work with the public works department to place signs notifying the public of this prohibition at or near playgrounds and athletic facilities, as well as in such other locations that, in its sole discretion, the health and human services department deems necessary to notify the public of this ordinance.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer or park ranger shall issue one verbal warning to an individual. If the individual fails to comply after one warning, said individual shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning. (Ord No. 39-12/13, 2-4-13; Ord. 108-15/16, 11-16-2015)

DIVISION 7

Sec. 17-98. Sale of Flavored Tobacco Products Prohibited.

(a) No individual, corporation, partnership, unincorporated association or other entity may sell or permit the sale of any flavored tobacco product, or display, market, or advertise for sale in the City of Portland, or display, market, or advertise for sale in the City of Portland, any flavored tobacco product.

(b) There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer of tobacco products, or any employee or agent of a manufacturer of tobacco products, or any individual, corporation, partnership, or other entity that sells tobacco in the City of Portland, has: (1) made a public statement or claim that the tobacco product imparts a taste or smell other than the taste or smell of tobacco; (2) used text or images, or both, on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or smell other than tobacco; or (3) taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a taste or smell other than tobacco.

(c) The City of Portland's Public Health Division Director or his/her/their designee(s) shall have the primary responsibility for enforcement of this section and may conduct random, unannounced inspections at locations where tobacco products are sold to test and ensure compliance with this ordinance.

(d) A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(e) This section shall become effective on [_____].

~~Sec. 17-98. Reserved.~~