

ARTICLE III. - SMOKING^[3]

Footnotes:

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State Law reference— Smoking in public places, MCL 333.12601 et seq.

Sec. 22-59. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~*Bar* means an area which is devoted to the serving of alcoholic liquor for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. The term "bar," for the purpose of this definition, does not include any establishment where tobacco smoke can filter into any area where smoking is prohibited through a passageway, ventilation system, or any other means. The term "bar," for the purposes of this article, shall not include any area where full meals are served, but may include the service of appetizers and snacks.~~

Business means any sole proprietorship, partnership, 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.

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

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

Enclosed area means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door 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.

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 rooms and classrooms, employee cafeterias and hallways. A private residence is not a place of employment unless it is used as a child care, adult day 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, laundromats, public transportation facilities, sports arenas, 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.

Restaurant means any coffee shop, cafeteria, sandwich stand, private and 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, ~~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 and in which the sale of other products is merely incidental.~~

~~*Service line* means any indoor line at which one 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, plant or other combustible substance in any manner or in any form.~~

~~*Smoking* means the burning of a lighted cigar, cigarette, pipe, or any other matter or substance that contains a tobacco product.~~

Tobacco product means a product that contains tobacco and is intended for human consumption, including, but not limited to, cigarettes, noncigarette smoking tobacco, or smokeless tobacco, as those terms are defined in section 2 of the tobacco products tax act, 1993 PA 327, MCL 205.422, and cigars.

~~*Sports arena* means 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.~~

(Code 1999, § 35.02)

Sec. 22-60. - Prohibited in public places; ~~deemed a nuisance.~~

(1) General prohibition

a. No person shall smoke in a public place, a public park or ~~or~~ in any business or place of employment except as permitted in this article.

(2) Prohibition on city property

a. Smoking shall be prohibited on all of the following City of Marquette-owned properties:

i. City Beaches

1. Clark Lambros Park Beach
2. McCarty's Cove Beach
3. Picnic Rocks Beach
4. South Beach
5. Tourist Park Beach

ii. City Parks ~~A violation of this prohibition is hereby declared to be a public nuisance.~~

1. Clark Lambros Park
2. Father Marquette Park
3. Fit Strip
4. Founders Landing
5. Giants Foot Park
6. Harlow Park
7. Hurley Park
8. Lighthouse Park
9. Marquette Commons
10. Marquette Lions Lakeside Park
11. Mattson Park
12. McCarty's Cove
13. Phil Niemisto Pocket Park
14. Presque Isle
15. Rosewood Walkway
16. Shiras Park
17. Shiras Hills Park
18. South Beach Park
19. Tourist Park, with the exception of rented campsites
20. Williams Park

iii. All additional city parks and beaches designated by resolution of the City Commission.

(3) Prohibition near other facilities.

a. Smoking shall be prohibited in relation to other outdoor properties owned or leased by the City of Marquette as listed:

- i. Within one hundred (100) feet of all City of Marquette ball diamonds (excluding private property)
- ii. Within one hundred (100) feet of all City of Marquette soccer fields (excluding private property)

(Code 1999, § 35.01)

Sec. 22-61. - Violations and penalties.

- (a) Any person who violates any provision of this article by smoking in other than a posted "Smoking Permitted" area or by failing to post or cause to be posted any sign required by this article, or by an owner, operator or manager permitting violation of this article by people under his supervision, is guilty of a municipal civil infraction, and upon being found responsible therefor shall be responsible for a municipal civil infraction ~~subject to a civil fine of not more than \$50.00 for a first offense and not more than \$100.00 for each subsequent offense.~~

- (b) The city police and their duly appointed officers and inspectors shall be authorized to issue and serve appearance tickets with respect to any violations of this article ~~,-pursuant to MCL 764.9(e)(2)-~~.

(Code 1999, § 35.10)

Sec. 22-62. - Enforcement.

- (a) The city manager shall be responsible for compliance with this article in facilities which are owned, operated or leased by the city.
- (b) The owner, operator, or manager of any public place or office workplace shall post or cause to be posted all signs required by this article. Owners, operators, managers or employees of the same shall be required to inform persons violating this article or the provisions thereof when observed, or when such owner, operator, manager, or employee received a request from a client, customer, or employed to inform persons who are in violation of this article.
- (c) It shall be the responsibility of employers to disseminate information concerning the provisions of this article to all employees.

(Code 1999, § 35.09)

Sec. 22-63. - Reasonable distance.

Smoking may occur at a distance of 20 feet outside any enclosed area where smoking is prohibited to ensure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means.

(Code 1999, § 35.03)

Sec. 22-64. - Prohibition in places of employment.

- (a) It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications.
- (b) Each employer having an enclosed place of employment located within the city 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 supply a written copy of the smoking policy upon request to any existing or prospective employee.

(Code 1999, § 35.04)

Sec. 22-65. - Where smoking not regulated.

- (a) Notwithstanding any other provision of this article to the contrary, ~~the following private residences~~ ~~areas~~ shall not be subject to the smoking restrictions of this article:

~~(1) Bars which meet the requirements of section 22-59.~~

~~(2) Restaurants which meet the requirements of section 22-59 may designate a smoking area no greater than 40 percent of its seating capacity. A smoking area shall either be designated in a contiguous area or in a room for smokers. Smoke shall not be permitted to filter into any area where smoking is prohibited through a passageway, ventilation system, or any other means.~~

~~(3) Private residences~~, except when used as a child care, adult day care or health care facility.

~~(4) Retail tobacco stores.~~

~~(5) Public areas where bingo is held, provided that at least 40 percent of the seating area shall be designated and maintained as smoke free.~~

~~(6) Restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while these places are being used for private functions.~~

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

(Code 1999, § 35.05)

Sec. 22-66. - Posting of signs.

Signs shall be posted at the entryway of every public place indicating either that smoking is prohibited or that smoking is prohibited except in designated areas. Signs which designate smoking areas established by this article shall be clearly, sufficiently, and conspicuously posted in every room, building or other place so covered by the article. "No Smoking" signs shall be specifically placed in retail food

production and marketing establishments, restaurants, grocery stores and supermarkets open to the public so that they are clearly visible to persons entering the store, clearly visible to persons in checkout lines, and clearly visible to persons at meat and produce counters. The matter of such posting including the wording, size, color, design, and place of posting, whether on the walls, doors, tables, counters, stands or elsewhere, shall be at the discretion of the owner, operator, manager, or other person having control of such room, building or other place so long as clarity, sufficiency, and conspicuousness are apparent in communicating the intent of this article.

(Code 1999, § 35.06)

Sec. 22-67. - Governmental agency cooperation.

The city manager shall request such governmental and educational agencies located within the city to establish local operating procedures to cooperate and comply with this article. In federal, state, and county offices within the city, the city manager shall urge enforcement of any existing "no smoking" prohibitions and request cooperation with this article.

(Code 1999, § 35.07)

Sec. 22-68. - Nondiscrimination.

No person or employer shall discharge or in any manner discriminate against any employee because such employee exercises any rights afforded by the article. In addition to any other remedy or penalty provided by this article, any person who is aggrieved by any employer with respect to other terms or conditions of employment in the exercise of rights guaranteed hereunder may file a complaint with the city commission, and such complaint shall be adjudicated, adjusted, or remedied in the same manner as violation of a civil right which is declared or protected by this article.

(Code 1999, § 35.08)

Sec. 22-69. - Lakeview Arena.

No person shall use any tobacco product, smoke, or carry a lighted cigar, cigarette, pipe, or match, or use any spark, flame or fire--producing device not specifically authorized for use in such place by the fire chief or other designated fire official in Lakeview Arena except in areas specifically designated and approved by the fire chief and posted to allow smoking.

- (1) The fire chief or other designated fire official shall have authority to order "Smoking Prohibited by Law" signs erected in conspicuous places within Lakeview Arena. No person shall remove any sign erected by or under the authority of this article.
- (2) The prohibitions contained herein shall not be construed to prohibit activities which are part of any theatrical production.
- (3) Penalty. A person who violates this article is responsible for a municipal civil infraction ~~and shall pay a minimum fine and costs of \$25.00.~~

(Code 1999, § 35.12)

Secs. 22-~~69~~70—22-98. - Reserved.