

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
CHERYL A. LEEMAN (4)

JOHN R. COYNE (5)  
JOHN M. ANTON (A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)

Order 39-12/13  
Given first reading on 1/23/12  
Referred to PHHSC on 8/6/12  
Passage: 7-0 (Coyne and Anton Absent) 2-4-13

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

**AMENDMENT TO PORTLAND CITY CODE**  
**CHAPTER 17 (OFFENSES, MISCELLANEOUS PROVISIONS)**  
**ARTICLE V (REGULATION OF TOBACCO)**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,  
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

*1. That Chapter 17, of the Portland City Code is hereby  
repealed in its entirety and replaced to read as follows:*

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 second hand 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. In children, secondhand smoke causes ear infections, more frequent and severe asthma attacks, respiratory symptoms (e.g., coughing, sneezing, shortness of breath), respiratory infections (i.e., bronchitis, pneumonia) and a greater risk for sudden infant death syndrome (SIDS). In adults who have never smoked, a

secondhand smoke can cause heart disease and/or lung cancer. Even brief exposure can be harmful; breathing secondhand smoke has immediate harmful effects on the cardiovascular system that can increase the risk of heart attack. People who already have heart disease are at especially high risk.

Recent outdoor research from Stanford University and Repace Associates demonstrates that, when measured up to 20 feet from a person actively smoking, toxicity levels can reach those similar to indoor smoking levels.

(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.

**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.

*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 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 and pipes.

*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.

**Sec. 17-72. through 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.

**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.

**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.  
**Sec. 17-84 through 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.

#### **Sec. 17-87. Smoking prohibited.**

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

#### **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 on warning, individual shall be given a citation.

#### **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. Exposure to secondhand smoke is the third leading cause of preventable death in America, killing 6,000 children every year. Recent outdoor research from Stanford University and Repace Associates demonstrates that, when measured up to 20 feet from a person actively smoking, toxicity levels can reach those similar to indoor smoking levels. Secondhand smoke disproportionately affects vulnerable populations such as children and the elderly, causing asthma, chronic lung disease, ear infections heart disease and Sudden Infant Death Syndrome (SIDS). In fact, secondhand smoke can triple an infant's risk of dying from SIDS. The U.S. Surgeon General's 2006 report declared that "the debate is over. The science is clear; secondhand smoke is not a mere annoyance, but a serious health hazard...for which there is no safe level of exposure."

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

(a) Smoking is prohibited bot 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.

**Sec. 17-92. Enforcement.**

(a) The health and human services department shall work with the public services 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.

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.

DIVISION 5. 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 and grounds.