

SMOKING ENFORCEMENT – NEBRASKA CLEAN INDOOR AIR ACT

POLICY:

It is the policy of the Omaha Police Department (OPD) to enforce the laws that prohibit smoking per the Nebraska Clean Indoor Air Act. OPD employees are reminded that the OPD adheres to the provisions of this Act and shall comply as a "Place of Employment" accordingly.

DEFINITIONS:

Electronic Nicotine Delivery System: Any product or device containing nicotine, tobacco, or tobacco derivatives that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to simulate smoking by delivering the nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form to a person inhaling from the product or device.

Electronic Smoking Device: An electronic nicotine delivery system as defined above. The term includes any such device regardless of whether it is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any other product name or descriptor. The term also includes any substance that is used in an electronic smoking device. The term does not include a diffuser, humidifier, prescription inhaler, or similar device.

Electronic Smoking Device Retail Outlet: A licensed store that sells electronic smoking devices and products directly related to electronic smoking devices, does not sell alcohol or gasoline, derives no more than twenty percent of its revenue from the sale of food and food ingredients, and prohibits persons under twenty-one years of age from entering the store in accordance with the Act. On and after January 1, 2022, the store shall not allow an employee who is under twenty-one (21) years of age to work in the store.

Enclosed Area: All space enclosed by a floor, a ceiling, and walls on all sides that are continuous and solid except for closeable entry and exit doors and windows and in which less than twenty (20) percent of the total wall area is permanently open to the outdoors. For walls in excess of eight (8) feet in height, only the first eight (8) feet shall be used in determining such percentage.

Place of Employment: An indoor area under the control of a proprietor that an employee accesses as part of their employment, including, but not limited to, any work areas, employee breakrooms, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways.

NOTE: Vehicles owned by the City of Omaha and driven by OPD employees are considered part of the workplace per [Mayoral Executive Order](#).

Public Gathering Place: An enclosed area used by the general public, or serving as a place of employment to which the public is permitted, including but not limited to, banks, bars, educational facilities, health care Facilities, laundromats, public conveyances and public transportation facilities, reception areas, restaurants, retail service establishments, retail stores, shopping malls, sports arenas, theaters, private clubs, and waiting rooms whether or not the public is always invited or permitted.

Smoke / Smoking: Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. The term includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.

Tobacco (only) Retail Outlet: A store that sells only tobacco and products directly related to tobacco. Products that are not allowed to be sold include, but are not limited to, alcohol by the drink, off-sale package alcohol, coffee, candy, soft drinks, groceries, and gasoline.

PROCEDURE:

I. Enforcement

- A. Smoking is prohibited in workplaces and public gathering places.

NOTE: There is no distance requirement away from doors for smokers. Businesses have the authority to set a distance limit for smokers from their doorways.

- B. Officers will enforce the prohibitions set forth by the Nebraska Revised Statutes establishing a smoke free environment.
- C. Individuals smoking in an area where smoking is prohibited will be given a criminal citation. This includes the individual smoking AND the owner/manager/operator, or any such person in control of a public gathering place or place of employment who allowed the violation to occur.
1. When a violation of the Act is alleged, officers shall establish that probable cause exists for an arrest.
 2. Officers shall follow the provisions of the Act when determining the appropriate response.

NOTE: Often, advising the smoker of the following is sufficient to solve the situation.

- a. That the individual is in violation of the Nebraska Clean Indoor Air Act.
– AND –
 - b. They are in a Non-Smoking Area and must either stop smoking or move to a Designated Smoking Area.
3. Violation of the Nebraska Clean Indoor Air Act is a Class V Misdemeanor for the first offense, and a Class IV Misdemeanor for the second offense.

NOTE: The Nebraska Department of Health and Human Services is the Program Manager for the Nebraska Clean Indoor Air Act and is the only agency that can grant waiver for any of these regulations. Reference [Nebraska Clean Indoor Air Act](#) for more information.

II. Exemptions

- A. The following areas are exempt from the provisions of the prohibition on smoking in workplaces and public gathering places.
1. Private residences, except when used as a licensed childcare, an adult day care, or health care facility.
 - a. A private residence is a place of employment when such residence is being used as a licensed child care program and one or more children who are not occupants of such residence are present ([NRS §71-5724](#)).

NOTE: Officers will forward an Information Report (OPD Form 42) to the Special Victims Unit when they suspect a childcare, adult day care, or health care facility is in violation of the Nebraska Clean Indoor Air Act.

2. A research study area conducting research into the health effects of smoking in a scientific or analytical laboratory either governed by state or federal law or at a college or

university approved by the Nebraska Coordinating Commission for Post-Secondary Education.

NOTE: Officers will forward an Information Report (OPD Form 42) to the Special Victims Unit when they suspect a childcare, adult day care, or health care facility is in violation of the Nebraska Clean Indoor Air Act.

3. Guestrooms and suites that are rented to guests and are designated as smoking rooms; provided, however, that not more than (20) twenty percent of rooms rented to guests in an establishment may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited.
4. Tobacco (only) retail outlets that are separately housed from any entity required to be smoke free. This exemption will terminate if smoke infiltrates a nonexempt entity. Signs notifying the public that smoking is permitted in the establishment must be posted conspicuously on all entrances normally used by the public. The signs will say, "Smoking of cigars and pipes is allowed inside this business. Smoking of cigarettes and electronic smoking devices is not allowed."
5. Cigar shops that hold a Class "C" liquor license, do not sell food, have a walk-in humidor on premises, and do not permit the smoking of cigarettes or the use of an electronic smoking device.

REFERENCES:

I. Laws

- A. Nebraska Revised Statutes (NRS) §[71-5716](#) to [71-5735](#), and [28-1418.01](#)

II. Mayoral Executive Orders

- A. Mayoral Executive Order [E-12-25](#).

III. Previous OPD Orders

- A. Previous General Orders: #43-06, 17-08, 124-16, 59-20, and 37-25.

IV. Accreditation Standards

- A. CALEA Accreditation Standards: 72.13, 82.1.1, 82.1.2, 82.1.4, 82.1.5, 82.1.6, 82.2.3, 82.2.5, 82.3.4, 82.3.5, and 82.3.6.