

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 5380

AN ORDINANCE ENACTING ARTICLE 10-13 OF CHAPTER 10
OF THE FARGO MUNICIPAL CODE
RELATING TO CIGAR SMOKING IN PUBLIC PLACES AND
PLACES OF EMPLOYMENT PROHIBITED

WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in accordance with Chapter 40-05.1 of the North Dakota Code; and,

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City shall have the right to implement home rule powers by ordinance; and,

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purposes; and,

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Enactment.

ARTICLE 10-13 – CIGAR SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT PROHIBITED

10-1301 – DEFINITIONS

1. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e-cigarette which creates a vapor, in any manner or any form, or the use of any oral smoking device.

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2. "Cigar" means an individual roll of tobacco which has a wrapper or cover of whole leaf tobacco; does not contain filler other than tobacco filler; does not contain binder other than tobacco binder; does not contain additives other than water; does not contain a filter, tip, or nontobacco mouthpiece; weighs at least six pounds per thousand count; and is made by hand, except to allow for the use of a manually operated machine to assist in bunching, rolling, and binding.
3. "E-cigarette" means any electronic oral device, such as one composed of a heating element and battery or electronic circuit, or both, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe or under any other product, name, or descriptor.
4. "Public place" means an area which the public enters. Some examples of public places are publicly owned buildings, vehicles, or offices; bars; bingo facilities; gambling and gaming facilities as defined in section 12.1-28-01; child care and adult day care facilities subject to licensure by the department of health and human services, including those operated in private homes; convention facilities; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels, including all rooms that are rented to guests; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; private and semi-private nursing home rooms; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities, including buses, trains, airplanes and similar aircraft, taxicabs and similar vehicles such as towncars and limousines when used for public transportation, and ticket, boarding, and waiting areas of public transit facilities, including bus and train stations and airports; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores, including tobacco and hookah establishments; rooms, chambers, places of meeting or public assembly, including school buildings; shopping malls; sports arenas; theaters; and waiting rooms.
5. "Place of employment" means an area under the control of a public or private employer, including work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, temporary offices, vehicles, and stairs. A private residence is not a place of employment unless it is used as a licensed child care, adult day care, or health care facility.

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10-1302 – CIGAR SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT
PROHIBITED

Cigar smoking is prohibited in public places and places of employment.

10-1303 – Penalty

An individual who smokes in an area in which smoking is prohibited under this ordinance is guilty of an infraction. An owner or other person with general supervisory responsibility who willfully allows a person to smoke in a place where smoking is prohibited is guilty of an infraction.

Section 2. Penalty.

A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 3. Effective Date.

This ordinance shall be in full force and effect from and after its publication.

/s/ _____
Dr. Timothy J. Mahoney, Mayor

Attest:

/s/ _____
Steven Sprague, City Auditor

First Reading: 2-6-23
Second Reading: 2-21-23
Final Passage: 2-21-23
Publication: 3-1-23