

ORDINANCE NO. 1209

AN ORDINANCE AMENDING CHAPTER 38 OF THE CODE OF PRINEVILLE BY ADDING REGULATIONS REGARDING ELECTRONIC SMOKING DEVICES

WHEREAS, electronic smoking devices, known by a variety of names including e-cigarettes, are products which are capable of delivering nicotine and other harmful substances through inhalation; and

WHEREAS, information regarding the health effects of electronic smoking devices indicate that they are harmful to the health of the user; and

WHEREAS, such products are sold to minors as there is, at present, no Oregon State Statute prohibiting their sale to minor children; and

WHEREAS, preventing and reducing the harmful effects of electronic smoking devices is a matter of City wide concern;

NOW, THEREFORE, the people of the City of Prineville amend Chapter 38 of the Code of Prineville to read as follows:

38.01 PURPOSE.

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers; and health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including broncho-constriction, bronchospasm, and Sudden Infant Death Syndrome. Accordingly, the City Council finds and declares that the purposes of this chapter are:

- (A) To protect the public health and welfare by prohibiting smoking in city places and places of employment; and
- (B) To guarantee the right of nonsmokers to breathe smoke-free air and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

38.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

CITY. The City of Prineville.

ELECTRONIC SMOKING DEVICE. Any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use of inhalation of which simulates smoking. The term includes any such

device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or under any other product name, or descriptor and any cartridge or other component of the device or related product. Notwithstanding the previous sentence, the definition of electronic smoking device shall not include any device approved by the United States Food and Drug Administration to deliver medicines using vapor and inhalation.

EMPLOYEE. Any person who is employed by the city in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for the city.

ENCLOSED AREA, ENCLOSED FACILITY, and ENCLOSED FACILITIES. All space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partition which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.

PLACE OF EMPLOYMENT. Any enclosed area under the control of the city as employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, and hallways.

SMOKING. Inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed, plant, or combustible substance, or the use of an electronic smoking device which creates a vapor, in any manner or in any form.

38.03 APPLICATION OF PROVISIONS.

All enclosed facilities owned by the city and places of employment where city is the employer shall be subject to the provisions of this chapter.

38.04 PROHIBITION OF SMOKING.

(A) *Smoking prohibited generally.* Except as stated in § 38.09, smoking shall be prohibited in all enclosed city-owned and operated facilities within the city including, but not limited to, the following places.

- (1) Elevators.
- (2) Restrooms, lobbies, reception areas, hallways, and any other common-use areas.
- (3) All vehicles and other means of transit under the authority of the city.

(B) *Smoking prohibited in places of employment.*

- (1) It shall be the responsibility of the city to provide a smoke-free place of employment for all employees, but the city is not required to incur any expenses to make structural or other physical modifications.

(2) The smoking policy shall be communicated to all employees within three weeks of its adoption.

(3) The city shall supply a written copy of this chapter upon request to any existing or prospective employee.

38.05 REASONABLE DISTANCE.

Smoking shall occur at a distance of at least 20 feet from any enclosed area or breezeway where smoking is prohibited to insure that tobacco smoke or electronic smoking device vapor do not enter the area through entrances, windows, ventilation systems, or by any other means.

38.06 POSTING OF SIGNS.

(A) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently, and conspicuously posted in every building or other area where smoking is prohibited by this chapter, by the owner, operator, manager, or other person having control of such building or other areas.

(B) Every public place where smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(C) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this chapter by the person having control of such area. However, ashtrays are allowed at entrances so that burning cigarettes, etc. may be disposed of prior to entry.

38.07 ENFORCEMENT.

Enforcement of this chapter shall be implemented by the City Manager, Chief of Police, or designees of either of them.

38.08 NON-RETALIATION.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, or other person because such employee, applicant, or other person exercises any right to a smoke-free environment afforded by this chapter.

38.9 VIOLATIONS.

(A) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.

(B) Any person, after warning by the City Manager, the Chief of Police, or designees of either of them, who violates any provision of this chapter shall be guilty of an infraction, punishable as set forth in § 38.99.

(C) The Police Department shall be responsible for, or assist in, the issuance of citations for violations of this chapter.

(D) Violation of this chapter by a city employee shall be cause for discipline.

**38.10 ELECTRONIC SMOKING DEVICE SALES TO MINORS PROHIBITED;
LOCATING ELECTRONIC SMOKING DEVICES IN RETAIL STORES.**

(A) No person, other than a minor's custodian parent or guardian, will sell or otherwise provide electronic smoking devices to a minor under the age of eighteen (18) years old.

(B) A person having authority over the location of electronic smoking devices in a retail store may not locate such devices in a location in the store where the electronic smoking devices are accessible by store customers without assistance by a store employee.

(C) Subsection (B) of this section does not apply if the location at which the electronic smoking device products are sold is a store or other establishment at which persons under 18 years of age are prohibited.

**38.11 MINORS PROHIBITED FROM POSSESSING OR ACQUIRING ELECTRONIC
SMOKING DEVICES.**

(A) It is unlawful for any person under 18 years of age to possess an electronic smoking device.

(B) Except as provided in subsection (C) of this Section, no person under 18 years of age shall purchase, attempt to purchase, or acquire an electronic smoking device.

(C) A minor acting under the supervision of an adult may purchase, attempt to purchase, or acquire an electronic smoking device for the purpose of testing compliance with the federal law, state statute, local law, or retailer management policy limiting or regulating the delivery of electronic smoking devices to minors.

38.99 PENALTY.

(A) Whoever violates any provision of this chapter, except Section 38.10, shall be guilty of an infraction, punishable by:

(1) A fine not exceeding \$100 for the first violation.

(2) A fine not exceeding \$200 for a second violation of this chapter within a one-year period.

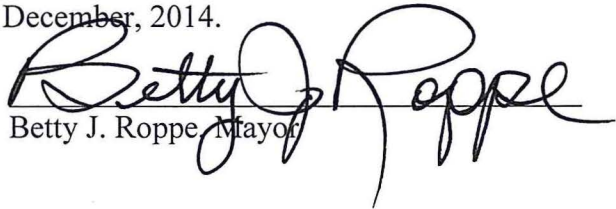
(3) A fine not exceeding \$500 for each additional violation of this ordinance within a one-year period.

(B) Whoever violates Section 38.10 shall be guilty of an infraction, punishable, upon conviction, by a fine not exceeding \$500, for a non-continuing offense; and when a violation is of a continuing nature, a separately punishable violation occurs on each calendar day the violation continues and shall be punishable, upon conviction, by a fine not exceeding \$500 per day.

(C) (1) In lieu of any other penalty established by law, a person who is convicted for the first time of a violation of Section 38.11 may be ordered to participate in a substance abuse education program or tobacco/nicotine use cessation program or to perform community service related to diseases associated with the use of electronic smoking devices. A person may be ordered to participate in such a program only once.

(2) In addition to and not in lieu of any other penalty established by law, a person who is convicted of a second violation of Section 38.11, through misrepresentation of age may be required to participate in a substance abuse education or a tobacco/nicotine use cessation program or perform community service related to diseases associated with the use of electronic smoking devices, and the court shall order that the person driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. If a court has issued an order suspending driving privilege under this subsection, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the Department of Transportation under this subsection may include a recommendation that the person be granting a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.

Passed by the City Council this 17th day of December, 2014.


Betty J. Roppe, Mayor

ATTEST:


Lisa Morgan, City Recorder

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