



Legislation Text

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CITY of ALBUQUERQUE
TWENTY FOURTH COUNCIL

COUNCIL BILL NO. O-21-83 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton

ORDINANCE

Amending Chapter 9, Article 5, Part 5 Of The Revised Ordinances Of Albuquerque (The “Albuquerque Clean Indoor Air Ordinance”) Regarding Public Consumption Of Cannabis Following The Enactment Of The New Mexico Cannabis Regulation Act, NMSA 1978, Section 26-2C-1 Et Seq (Benton)

WHEREAS, The Cannabis Regulation Act, NMSA 1978, § 26-2C-1 et seq., (“CRA”) was signed into law by the New Mexico Legislature on April 12, 2021; and

WHEREAS, The CRA contains provisions authorizing the possession, consumption, purchase, processing, manufacturing, and transport of cannabis and cannabis-related products by an individual who is at least twenty-one (21) years of age; and

WHEREAS, The CRA provides the regulatory framework for the licensing and operation of cannabis establishments which are authorized to engage in the retail sale, cultivation, processing, manufacture, and transport of cannabis and cannabis-related products; and

WHEREAS, The New Mexico Legislature subsequently amended the Dee Johnson Clean Indoor Air Act, NMSA 1978, § 24-16-1 et seq. to include cannabis smoke regulations; and

WHEREAS, The Albuquerque Clean Indoor Air Act is intended to model and expand the provisions of the Dee Johnson Clean Indoor Air Act; and

WHEREAS, The Albuquerque Clean Indoor Air Act, Section 9-5-5-1 et seq. currently regulates only tobacco smoke; and

WHEREAS, The City Council also aims to protect the health and safety of persons in the City

of Albuquerque and limit exposure to the harmful effects of secondhand cannabis smoke; and

WHEREAS, The City Council finds that in order to integrate changes to State law, conforming changes must be made to the Albuquerque Clean Indoor Air Act, to regulate exposure to cannabis smoke and define the limited areas in which public consumption of cannabis is permitted.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. SECTIONS 9-5-5-1 THROUGH 9-5-5-99 ARE HEREBY AMENDED AS FOLLOWS:

PART 5: CLEAN INDOOR AIR REGULATIONS

§ 9-5-5-1 SHORT TITLE.

Sections 9-5-5-1 et seq. may be cited as the "Albuquerque Clean Indoor Air Ordinance."

§ 9-5-5-2 LEGISLATIVE FINDINGS AND INTENT.

(A) The Council finds the 1986 Surgeon General's Report concludes that tobacco smoke is a major contributor to indoor air pollution; that breathing secondhand smoke is a cause of disease, including lung cancer in healthy non-smokers; and that separation of people and tobacco smoke within the same air space may reduce but does not eliminate exposure to environmental tobacco smoke.

(B) The Council further finds the 2006 Surgeon General's Report, The Health Consequences of Involuntary Exposure to Tobacco Smoke, unequivocally concludes that secondhand smoke exposure can cause serious disease, including coronary heart disease and lung cancer, and premature death in children and adults who do not smoke, and that scientific evidence indicates that there is no safe level of exposure to secondhand smoke, and therefore, a reduction of smoke in City of Albuquerque facilities, and in public places and places of employment within the City of Albuquerque, constitutes a public health priority.

(C) Sections 9-5-5-1 et seq. adopt the provisions of the Dee Johnson Clean Indoor Air Act and expand the provisions of that Act to maintain existing city prohibitions on smoking in the following situations:

(1) Where a business is operating as a sole proprietor or with fewer than two employees;

(2) Smoking in a private home where child care, adult care or health care or any combination of those activities is provided and not just during the hours of business operation of such private homes; and

(3) The Albuquerque Biological Park.

[(D) The Council finds that the enactment of the New Mexico Cannabis Regulation Act, NMSA 1978, § 26-2C-1 et seq. and corresponding updates to the Dee Johnson Clean Indoor Air Act, NMSA 1978, § 24-16-1 et seq. require amendment of the Albuquerque Clean Indoor Air Act to include regulation of cannabis smoke, and to clearly define the areas in which cannabis consumption is permitted.]

§ 9-5-5-3. DEFINITIONS.

For the purpose of §§ 9-5-5-1 et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BAR. An establishment that is devoted to the selling or serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of those beverages, including taverns, nightclubs, cocktail lounges and cabarets.

[CANNABIS CONSUMPTION AREA. A licensed area where cannabis products may be served and consumed.]

CIGAR BAR. An establishment that:

- (1) Is a bar as defined in this section; and
- (2) Is engaged in the business of selling cigars for consumption by patrons on the premises and generates 10% or more of its total annual gross revenue or at least \$10,000 in annual sales from the sale of cigars, not including any sales from vending machines. A cigar bar that fails to generate at least 10% of its total annual sales from the sale of cigars in the calendar year after December 31, 2006, not including sales from vending machines, shall not be defined as a CIGAR BAR and shall not thereafter be known as such regardless of sales figures. A cigar bar shall agree to provide adequate information to demonstrate to the city's satisfaction compliance with this definition. Determination by the State of New Mexico that a business is a CIGAR BAR shall be conclusive evidence that such establishment is a CIGAR BAR under §§ 9-5-5-1 et seq.

DESIGNATED OUTDOOR SMOKING AREA. An area where smoking may be permitted, designated by an employer or manager, outside an indoor workplace or indoor public place; provided that the following conditions are maintained:

- (1) Smoking shall not be permitted near any building entrance, including a door, window or ventilation system of any facility where smoking is prohibited under the provisions of the Albuquerque Clean Indoor Air Ordinance, so as to prevent secondhand smoke from entering the indoor workplace or indoor public place; and

(2) Employees or members of the general public are not required to walk through the smoking area to gain entrance to the indoor workplace or indoor public place.

EMPLOYER. An individual, a partnership, a corporation, the City of Albuquerque or any governmental body over which the city has jurisdiction that employs the services of one or more individuals.

ENCLOSED. Any interior space predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include uncovered openings, screened or otherwise partially covered openings or open or closed windows.

INDOOR PUBLIC PLACE. The enclosed area within any governmental or nongovernmental place to which the public is invited or in which the public is permitted regardless of whether work or public business, meetings or hearings occur at any given time.

INDOOR WORKPLACE. Any enclosed place where one or more persons engage in work, including lobbies, reception areas, offices, conference and meeting rooms, employee cafeterias and lunchrooms, break rooms and employee lounges, classrooms, auditoriums, hallways, stairways, waiting areas, elevators and restrooms and includes all indoor workplaces and enclosed parts regardless of whether work occurs at any given time.

PRIVATE CLUB. An organization, whether incorporated or not, that is the owner, lessee or occupant of a building or portion thereof used exclusively for the organization's purposes at all times, that is operated solely for recreational, fraternal, social, patriotic, political, benevolent or athletic purposes, but not for pecuniary gain, and that only sells alcoholic beverages incidental to its operation. The organization shall have bylaws or a constitution to govern its activities and shall have been granted an exemption as a club under the provisions of Section 501 of the Internal Revenue Code of 1986, as amended.

[PUBLIC PLACE. A place to which the general public has access and includes hallways, lobbies, and other parts of apartment buildings and hotels that do not constitute rooms or apartments designated for actual residence; highways; streets; sidewalks; schools; places of amusement; parks; playgrounds; and places used in connection with public passenger transportation.]

RESTAURANT. A coffee shop, cafeteria, private or public school cafeteria or eating establishment and any other eating establishment that gives or offers for sale food to the public, patrons or employees, including kitchens and catering facilities in which food is prepared on the premises for serving elsewhere or a bar area within or attached to the premises.

RETAIL TOBACCO STORE. A retail store used primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental, including smoke shops, cigar shops or hookah lounges, and does not include establishments that offer for sale alcoholic beverages for consumption by patrons on the premises.

SECONDHAND SMOKE. Smoke emitted from lighted, smoldering or burning tobacco [or cannabis] when the smoker is not inhaling, smoke emitted at the mouthpiece during puff drawing and smoke exhaled by the smoker.

SMOKEFREE AREA. Any building or other enclosed space where smoking is prohibited.

SMOKING. Inhaling, exhaling, burning, carrying or holding any lighted tobacco [or cannabis] product, including all types of cigarettes, cigars and pipes and any other lighted tobacco [or cannabis] product.

SMOKING PERMITTED AREA. Any building or other enclosed space where smoking may be permitted; provided that secondhand smoke does not infiltrate any area where smoking is prohibited pursuant to the Albuquerque Clean Indoor Air Ordinance.

§ 9-5-5-4. SMOKING PROHIBITED.

(A) It is unlawful for a person to smoke in any indoor workplace or indoor public place or in buses, taxicabs or other means of public transit not specifically exempted pursuant to the Albuquerque Clean Indoor Air Ordinance.

(B) It is unlawful to smoke on the grounds and in all buildings within the Albuquerque Biological Park including the Rio Grande Zoo, Aquarium and Botanical Gardens.

(C) It is unlawful for a person to smoke within any public transit boarding area located within a street median and any other outdoor or partially-sheltered public transit boarding or designated waiting area where smoking is prohibited, in addition to the unlawfulness of smoking in any indoor public transit facilities or city owned or operated vehicles. § 9-5-5-5. Smoking-permitted areas.

§ 9-5-5-5. SMOKING-PERMITTED AREAS.

[(A) CANNABIS. Consumption of cannabis pursuant to the Cannabis Regulation Act is permitted in private spaces and licensed “cannabis consumption areas.” Smoking in a cannabis consumption area on a licensed premises shall be allowed only if the cannabis consumption area is in a designated smoking area or in a standalone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to state and/or local law.]

[(B) TOBACCO.] Notwithstanding any other provision of the Albuquerque Clean Indoor Air

Ordinance, tobacco smoking- permitted areas include the following:

~~[(A)]~~ [(1)] A private residence unless it is used commercially to provide child care, adult day care, or serves as a health care facility;

~~[(B)]~~ [(2)] A retail tobacco store;

~~[(C)]~~ [(3)] A cigar bar;

~~[(D)]~~ [(4)] The facilities of a tobacco manufacturing company licensed by the United States to manufacture tobacco products that are operated by the company in its own name and that are used exclusively by the company in its business of manufacturing, marketing or distributing its tobacco products; provided that smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited under the Albuquerque Clean Indoor Air Ordinance;

~~[(E)]~~ [(5)] A state-licensed gaming facility, casino or bingo parlor;

~~[(F)]~~ [(6)] An indoor workplace to the extent that tobacco smoking is an integral part of a smoking cessation program that is approved by the department or of medical or scientific research that is conducted in the indoor workplace and in which each room of the indoor workplace in which tobacco smoking is permitted complies with signage requirements;

~~[(G)]~~ [(7)] Designated outdoor smoking areas;

~~[(H)]~~ [(8)] Private clubs;

~~[(I)]~~ [(9)] A limousine under private hire;

~~[(J)]~~ [(10)] Hotel and motel rooms that are rented to guests and are designated as smoking-permitted rooms; provided that not more than 25% of rooms rented to guests in a hotel or motel may be so designated;

~~[(K)]~~ [(11)] Enclosed areas within restaurants, bars, hotel and motel conference or meeting rooms while these places are being used for private functions; provided that none of these areas are open to the general public while the private functions are occurring and provided that smoke does not infiltrate other indoor workplaces or indoor public places where smoking is otherwise prohibited under the Albuquerque Clean Indoor Air Ordinance;

~~[(L)]~~ [(12)] A site that is being used in connection with the practice of cultural or ceremonial activities by Native Americans and that is in accordance with the federal American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a; and

~~[(M)]~~ [(13)] A theatrical stage or a motion picture or television production set when it is necessary for performers to smoke as part of the production.

§ 9-5-5-6. PROHIBITION OF SMOKING NEAR ENTRANCES, WINDOWS AND VENTILATION SYSTEMS.

Smoking is prohibited near entrances, windows and ventilation systems of all workplaces and public places where smoking is prohibited by the Albuquerque Clean Indoor Air Ordinance. An individual who owns, manages, operates or otherwise controls the use of any premises subject to the provisions of the Albuquerque Clean Indoor Air Ordinance shall establish a smokefree area that extends a reasonable distance from any entrances, windows and ventilation systems to any enclosed areas where smoking is prohibited. The reasonable distance shall be a distance sufficient to ensure that persons entering or leaving the building or facility shall not be subjected to breathing tobacco [or cannabis] smoke and to ensure that tobacco [or cannabis] smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means.

§ 9-5-5-7. RESPONSIBILITIES OF EMPLOYERS.

(A) Employers shall provide that their places of employment meet the requirements of the Albuquerque Clean Indoor Air Ordinance.

(B) An employer shall adopt, implement, post and maintain a written smoking policy pursuant to the Albuquerque Clean Indoor Air Ordinance.

§ 9-5-5-8. POSTED SMOKEFREE AND SMOKING-PERMITTED AREAS.

(A) To advise persons of the existence of smokefree areas or smoking-permitted areas, signs shall be posted as follows:

(1) For each indoor workplace or indoor public place where smoking is prohibited pursuant to the Albuquerque Clean Indoor Air Ordinance, a "NO SMOKING" sign shall be posted where it is clear, conspicuous and easily legible at each public entrance. Posting of "NO SMOKING" signs is the responsibility of the owner, operator, manager or other person having control of the indoor workplace or indoor public place; and

(2) For each indoor workplace or indoor public place where smoking is permitted pursuant to the Albuquerque Clean Indoor Air Ordinance, a "SMOKING PERMITTED" sign shall be posted where it is clear, conspicuous and easily legible at each public entrance, unless an owner, operator or manager chooses to prohibit smoking in all or part of an indoor workplace or indoor public place where smoking is otherwise permitted.

(B) Nothing in the Albuquerque Clean Indoor Air Ordinance shall be construed so as to require the posting of signs at a residence unless it is used commercially to provide child care,

adult day care, or serves as a health care facility.

§ 9-5-5-9. ENFORCEMENT.

(A) The Albuquerque Fire or Police Departments, the Mayor or his designated agents, or the Bernalillo County Sheriff's Department shall enforce the Albuquerque Clean Indoor Air Ordinance by issuance of a citation.

(B) A person may register a complaint regarding an alleged violation pursuant to the Albuquerque Clean Indoor Air Ordinance to initiate enforcement of that ordinance with the Mayor or the Albuquerque Fire or Police Departments.

(C) The designated enforcement agencies may inspect an establishment for compliance with the Albuquerque Clean Indoor Air Ordinance.

§9-5-5-10. NONRETALIATION; NONWAIVER.

(A) A person or employer shall not discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or patron because that employee, applicant or patron exercises any rights afforded by the Albuquerque Clean Indoor Air Ordinance or reports or attempts to prosecute a violation of that ordinance.

(B) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

§ 9-5-5-98. VIOLATIONS.

It is unlawful for a person who owns, manages, operates or otherwise controls the use of premises subject to regulation under the Albuquerque Clean Indoor Air Ordinance to violate its provisions. The owner, manager or operator of premises subject to regulation under the Albuquerque Clean Indoor Air Ordinance shall not be subject to a penalty if a person on the premises is in violation of the Albuquerque Clean Indoor Air Ordinance as long as the owner, manager or operator has posted signs, implemented the appropriate policy and informed the person that the person is in violation of the Albuquerque Clean Indoor Air Ordinance.

§ 9-5-5-99. PENALTY.

A person 18 years of age or older who violates any provision of the Albuquerque Clean Indoor Air Ordinance shall be guilty of a petty misdemeanor and is subject to:

(A) A fine not to exceed \$100 for the first violation of that ordinance;

(B) A fine not to exceed \$200 for the second violation of that ordinance within any

consecutive 12- month period of the first violation; and

(C) A fine not to exceed \$500 for the third and each subsequent violation of that ordinance within any consecutive 12-month period of a previous violation.

SECTION 2. SEVERABILITY.

If any section, paragraph, sentence, clause, word, or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance and each section, paragraph, sentence, clause, word, or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 3. COMPILATION.

The ordinance amendment prescribed by SECTION 1 shall amend, be incorporated in, and be made part of the Revised Ordinances of Albuquerque, New Mexico 1994.

SECTION 4. EFFECTIVE DATE.

This Ordinance shall take effect immediately after publication by title and general summary.