

ORDINANCE NO. O-11-16

AN ORDINANCE TO AMEND CHAPTER 15A OF THE CITY CODE, ENTITLED "PARKS AND OTHER PROPERITES," SO AS TO AMEND SECTION 15A-1 ENTITLED "DEFINITIONS" AND SECTION 15A-8 ENTITLED "TOBACCO PRODUCTS."

BE IT ORDAINED, by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, that Chapter 15A of the City Code, Section 15A-1, entitled, "Definitions," and Section 15A-8, entitled "Tobacco Products;" are hereby amended to read as follows:

**Sec. 15A-1 – Definitions**

For the purposes of this chapter, the following words, terms and phrases shall have the meaning given herein:

*Active area.* A public, open space within a city park which has been designed, designated and developed primarily for specific athletic activity, such as but not limited to ball fields, ball courts, playgrounds, nature trails, walking trails and bicycle paths. Activity in an active area may be allowed, under a permit by the city, programmed by the city, or a designated area for unscheduled group athletic activity, but is not an appropriate area for passive recreational purposes which would conflict with the athletic activity.

*City manager.* The city manager of Gaithersburg or designee.

*Department.* The city of Gaithersburg Department of Parks, Recreation and Culture.

*Designated areas.* Areas marked, separated, or identified by name for a particular purpose.

*Director.* The director of the Gaithersburg Department of Parks, Recreation and Culture.

<b>Boldface</b>	Heading or defined term.
<u>Underlining</u>	Added to existing law by original bill.
<del>Single strikethrough</del>	Deleted from existing law by original bill.
<u>Double underlining</u>	Added by Amendment.
<del>Double strikethrough</del>	Deleted from existing law or the bill by amendment.
* * *	Existing law unaffected by bill.

Electronic or "e" cigarette. Any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether 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.

*Park.* Land or water in the city of Gaithersburg the city owns or holds a leasehold or easement interest and which is managed by the city for the use and benefit of the public for recreational purposes and/or the protection or maintenance of wildlife habitats or natural/scenic properties.

*Passive area.* A public, open space within a city park which is dedicated for the use and benefit of the public primarily for passive recreational purposes, such as but not limited to persons sitting on blankets, family and group picnics, and casual gatherings. A passive area does not provide or afford facilities or equipment for exercise, sports, games or play and has not been designated and developed for athletic activities.

*Playground area.* A city-designated outdoor area within a city park that includes playground equipment intended for use by minors as well as the safety fall zone around each item of equipment. Such a safety fall zone may include poured in place surfacing, wood fibers, or another material. Playground areas are delineated by a border or by safety surfacing outlining the perimeter of the area on the ground.

Public Building. Any building owned, leased or controlled by the City which is open to the public or to which the public could be invited.

Public Property. All vehicles and equipment owned by the City, and all land, buildings and facilities in the City of which (i) the City is owner or lessee, as defined by Section 15A-2, or (ii) which is otherwise under control of the City, including but not limited to parks and public buildings and facilities but not including public ways except when under control of the City during a public event.

Smoking or smoke. The act of lighting, smoking, or carrying a lighted or smoldering cigar, cigarette, or pipe, of any kind.

~~Tobacco product.~~ Any tobacco-based product, including cigars, cigarettes, chewing tobacco, pipe tobacco (including hookah), roll-your-own tobacco, smokeless tobacco, and electronic or "e" cigarettes.

Vaping or vape. The act of using an electronic or "e" cigarette.

\* \* \* \*

Sec. 15A-8. Prohibition on Use of Tobacco Products Smoking and Vaping on Public Property.

Smoking and/or, vaping, and the use of tobacco products is prohibited in or on public property except as specified below, within twenty-five (25) feet of playground areas.

- (a) The city manager may reduce the prohibition area in parks having a substantial portion of the park within twenty-five (25) feet of a playground area, but such designated prohibition area must at least cover the safety fall zones.
- (a) Signage shall for all parks and public buildings and facilities with playground areas shall be posted conspicuously at each entrance specifying pertaining to this prohibition and specify the area in which the use of tobacco products is prohibited, except as specified in subsection (b)(1) below. The that the City Manager may waive the requirement of this subsection on public property or require a sign to be posted in another location, if the City Manager finds that posting a sign at an entrance is not feasible.
- (b) Exceptions. Smoking, vaping and the use of tobacco products is not prohibited by this Section:
  - (1) In the Wells-Robertson and DeSillum House, located at One Wells Avenue in the City; or
  - (2) At the Kentlands Mansion, located at 320 Kent Square Road in the City, if the Director finds that a complete prohibition would impede a social or cultural event at that site or otherwise discourage and interfere with use of that site for such social or cultural events; or
  - (3) In an outside area during a specific time period or ongoing time periods designed by the City Manager if the City Manager finds that a complete prohibition on that property would impede a City program's mission or fail to ensure effective delivery of City services; or
  - (4) In an outside area in which city employees work or which is adjacent to an indoor City employee workplace, which has been designated b the City Manager based on the City Manager's finding that such a designated area is necessary to ensure effective delivery of City services.
- (c) This Section adds to, and does not replace or restrict, any other applicable federal, state, or City law or regulation, and does not allow smoking or vaping where restricted by any applicable fire prevention rule or regulation.

ADOPTED by the City Council this 17th day of October, 2016.



---

JUD ASHMAN, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg this 17th day of October, 2016. APPROVED by the Mayor of the City of Gaithersburg this 17th day of October, 2016.



---

JUD ASHMAN, MAYOR

THIS IS TO CERTIFY, that the foregoing Ordinance was adopted by the City Council of the City of Gaithersburg, in public meeting assembled on the 17th day of October, 2016; and that the same was APPROVED by the Mayor of the City of Gaithersburg on the 17th day of October, 2016. This Ordinance will become effective on the 1st day of January, 2017.

---

Tony Tomasello, City Manager