

ORDINANCE NO. O-12-16

AN ORDINANCE TO AMEND CHAPTER 18A OF THE CITY CODE, ENTITLED "SMOKING AND TOBACCO PRODUCTS PLACEMENT," SO AS TO AMEND SECTION 18A-1 ENTITLED "DEFINITIONS" SECTION 18A-2 ENTITLED "SMOKING PROHIBITED IN CERTAIN PLACES", SECTION 18A-3 ENTITLED "EXCEPTIONS" AND SECTION 18A-6 ENTITLED "DESIGNATED SMOKING AREAS."

BE IT ORDAINED, by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, that Chapter 18A of the City Code, Section 18A-1, entitled "Definitions," Section 18A-2, entitled "Smoking Prohibited in Certain Areas," and Section 18A-3, entitled "Exceptions," and Section 18A-6, entitled "Designated Smoking Areas," are hereby amended to read as follows:

**Chapter 18A**

**SMOKING AND, VAPING AND TOBACCO PRODUCTS**

**PLACEMENT AND PROHIBITION**

Sec. 18A-1. - Definitions.

In this section, the following words and phrases have the meanings indicated:

*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.

*Employee.* Any person who regularly provides services to a business for compensation. Employee includes a temporary or part-time employee, contractor or consultant.

<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.

*Enclosed.* Separated by walls that extend from floor to ceiling and under a roof.

*Health care facility.* Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions, including, but not limited to, hospitals, clinics, nursing homes for the aging or chronically ill, laboratories, offices of any physician, dentist, psychologist, psychiatrist, physiologist, podiatrist, optometrist or optician.

*Person.* Any individual, firm, partnership, association, corporation, company or organization of any kind.

*Private function.* An event open only to persons specifically invited, not to the general public, and in which the entire public area is under the control of the sponsor of the event.

*Public area.* An enclosed, partially enclosed or outdoor area in which members of the public are normally invited or permitted.

*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 but not including public ways except when under control of the City during a public event.

*Public meeting.* Any meeting open to the public generally with no membership requirement.

*Rail transit station.* An area that:

- (1) Includes the fare-paid and roofed areas;
- (2) Is a regular stopping place for the pickup and discharge of passengers in regular route service, contract service, or special or community type service; and
- (3) Is owned, operated or controlled by the Washington Metropolitan Area Transit Authority or a governmentally regulated common carrier.

*Retail store.* Any establishment whose primary purpose is to sell merchandise or food for consumption off the premises, directly to consumers.

*Shared workplace.* A workplace or part of a workplace that is regularly used by more than one employee.

*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.~~

*Tobacco shop.* Any store that primarily sells tobacco, tobacco products and pipes or other implements used to smoke tobacco. "Tobacco shop" does not include an area of a larger store in which tobacco is sold.

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

*Workplace.* An enclosed area or any part of an enclosed area used in the performance of employment or related activities. Workplace includes a motor vehicle owned or leased by the employer, conference room, auditorium, library, office machine station, lunchroom, vending area, locker room, lounge, hallway or stairwell.

Sec. 18A-2. – Smoking or vaping prohibited in certain areas.

A person must not smoke and/or vape or use tobacco products in any:

- (1) Elevator, regardless of capacity, except elevators in single-family dwellings;
- (2) Health care facility, regardless of capacity, except:
  - a. In the private, enclosed sleeping or living quarters of persons working in a health care facility where patients and members of the public are not normally present; and
  - b. In patient sleeping quarters, if:
    1. All patients assigned to the room have agreed to have the room designated as a smoking area;
    2. The administrator of the facility or designee has designated the room as a smoking area; and
    3. A reasonable effort is made to assign patients to sleeping rooms according to the patient's nonsmoking or smoking preference.
- (3) School or other educational facility operated by the Montgomery County public schools, except when expressly permitted under state law.
- (4) Any land, building, facility, public area or part of a building owned, or leased or controlled by the city government, other than a city government workplace, that is normally used by the public for public purposes, including all areas temporarily controlled by the city government during a public event, including

temporarily controlled by the city government during a public event, including but not limited to public ways, and any private facility during a public meeting called by a governmental body, subject to the exceptions in section 15A-8(b) and 18A-3(7).

- (5) Theatre (other than a dinner theatre) and movie theatre.
- ~~(6) City government workplace, subject to the exceptions provided in sections 18A-3(5) and (6) of this chapter.~~
- (6) Rail transit station.
- (7) Public areas of a retail store, eating and drinking establishment, bank, factory or any other private business, except:
  - a. When the public area is being used exclusively for a private function;
  - b. A public reception area of a professional office operated by a sole practitioner; or
  - c. A retail store in which not more than two (2) persons work at any time.
- (8) Restroom except a restroom in a private residence.
- (9) Enclosed auditorium, concert or lecture hall when it is open to the public.
- (10) Any shared workplace in a retail store, bank, office, factory or any other private business, except:
  - a. A business in which not more than two (2) persons work at any time;
  - b. A shared workplace in a private residence where members of the public are not regularly invited;
  - c. A shared workplace in a public area of an eating or drinking establishment.
- (11) In any place restricted by applicable fire prevention regulation or otherwise restricted or prohibited by law or an owner or person in charge at any business or workplace.

Sec. 18A-3. - Exceptions.

Smoking or vaping is permitted:

- (1) When any public area, other than public property, in which smoking is prohibited under section 18A-2(87) is closed to the public, unless the public area is also a shared workplace.
- (2) In that part of a large, open indoor space (such as a hotel or theatre lobby, shopping mall, bowling alley, office reception area or transportation waiting area) that is designated as a smoking area under section 18A-6. Any smoking area designated within a large, open indoor space must:
  - a. Consist of less than twenty (20) percent (in a bowling alley, less than forty (40) percent) of the open indoor space in which it is located, or a lower percentage specified in county health department regulations;
  - b. Not be located in the center of the open indoor space or in an area that the public must pass through to gain access to an office, store, restroom or other essential part of the building;
  - c. Use barriers and ventilation systems, where practical, to minimize the effects of smoke or vapor in adjacent areas; and
  - d. Conform to county health department regulations that include criteria for size of the open space, size and location of the smoking or vaping area, and adequacy of ventilation.
- (3) In barbershops and beauty salons in which not more than two (2) persons work at any time, and in tobacco shops.
- (4) In private and not public areas or public property, enclosed private offices where members of the public are not normally present, and when the door leading to another workplace is closed, except that if the office is a shared workplace, smoking or vaping is permitted only if all employees regularly sharing the office consent.
- (5) In any areas subject to or granted an exception under Section 15A-8(b), but only to the extent such exception applies or has been granted.
- ~~(6) In private, enclosed offices in city government workplaces. If a private, enclosed office is shared with another regular occupant, smoking is allowed only with the consent of the nonsmoker and appropriate ventilation is provided.~~
- ~~(7) In city government workplaces that the city manager or his designee determines are so large that smoking by one person would not affect another person.~~

~~(8) In those areas in buildings used by city government that the city manager or his designee designates as areas for smoking. The city manager's designation of smoking areas in these buildings shall prevail over any private regulations or rules designating smoking areas.~~

(6) By actors as part of a stage production.

(7) In the bar or dining area of a club as the term "club" is defined in the state alcoholic beverage law and the club has an alcoholic beverage license issued to private clubs under the state alcoholic beverages law which allows consumption of alcoholic beverages on the premises.

Nothing in this section 18A-3 changes or limits applicable fire regulations.

\* \* \* \*

Sec. 18A-6. - Designated smoking or vaping areas.

The person in charge of any area specified in section 18A-2, other than Section 18A-2(4) or any area which is public property, may designate separate areas where smoking or vaping is permitted; provided, that:

- (1) An area must not be designated as a smoking or vaping area if smoking or vaping in that area is prohibited by chapter 15A or this chapter 18A; by any other law, ordinance or regulation or by a fire marshal.
- (2) In order to accommodate persons who desire to avoid contact with smoke or vapor, to the extent possible:
  - a. Those areas which are best served by filters, air changers, other ventilation devices and convection currents should be reserved as nonsmoking or nonvaping areas; and
  - b. Walls, screens or semipartitions should be used to help keep a nonsmoking or nonvaping area smoke and vapor free, but this section does not require construction of walls or other structures.
- (3) With the exception of hotel lobbies, designated smoking or vaping areas must not include shared workplaces or areas normally used by members of the public in their use of the facility, except:
  - a. In a smoking or vaping area designated within a large, open indoor space under section 18A-3(2); or

- b. In an enclosed room within a public area of a private business under section 18A-2(8), which is not a large, open indoor space under section 18A-3(2) and which is used exclusively as a smoking or vaping lounge; or
  - c. An enclosed lunchroom, vending area, locker room or lounge, if at least one similar, conveniently located lunchroom, vending area, locker room or lounge is reserved for nonsmoking and nonvaping employees.
- (4) Restrooms and elevators must not be designated as smoking or vaping areas, except that a restroom which is accessible only from a private office may be so designated.

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