

RECORD OF ORDINANCES
CITY OF UPPER ARLINGTON
STATE OF OHIO

ORDINANCE NO. 27-2019

TO AMEND CODIFIED ORDINANCE CHAPTER 543 – PARKS, PLAYGROUNDS AND OPEN SPACE AREAS, BY AMENDING 543.01 – DEFINITIONS AND 543.02 – ADOPTION OF RULES, VIOLATIONS; UNAUTHORIZED AND PROHIBITED ACTS, RELATIVE TO THE GENERAL OFFENSES CODE, AND TO AMEND CHAPTER 1580 – SMOKING PROHIBITIONS, BY AMENDING SECTION 1580.01 – DEFINITIONS, RELATIVE TO THE HEALTH CODE

WHEREAS, the Constitution of the State of Ohio, in Article XVIII, Section 3, grants municipalities the authority to exercise all powers of local self-government and to enforce local police, sanitary, and other similar regulations as are not in conflict with the general laws; and

WHEREAS, pursuant to this constitutional home rule authority, the people of the City of Upper Arlington have adopted a Charter and Codified Ordinances to exercise the powers of local self-government and enforce local police power regulations; and

WHEREAS, a local police power regulation only conflicts with a general law if it prescribes a rule of conduct that permits that which the state law expressly forbids, or vice versa, and does not conflict with general laws if it merely imposes a greater penalty for conduct that is prohibited by the general law, or regulates activity that is not expressly permitted by general law; and

WHEREAS, the Smoke Free Workplace Act encourages municipalities to liberally construe the regulation in order to further its purpose and intent; and

WHEREAS, the City strongly desires to protect the health, wellbeing, and welfare of its residents, especially children, and all employees and visitors of the City against exposure to the harmful, dangerous, carcinogenic, toxic, and health-diminishing effects of tobacco products, by-products, and nicotine, including but not limited to: cardiovascular disease,

chronic obstructive pulmonary disease, lung cancer, stroke, and premature death¹; and

WHEREAS, the City is dedicated to providing healthy environments on the premises of its public government buildings and believes that keeping secondhand smoke and other uses of tobacco products away from members of the public, including children, and serves a public purpose and promotes the health, safety, and welfare of the City; and

WHEREAS, the City has substantial, legitimate interests in preserving and maintaining the purpose and nature of the parks as family-friendly spaces conducive to physical activity and learning for all ages, as well as maintaining a high level of sanitation throughout the parks by reducing litter from tobacco products.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Upper Arlington, Ohio:

SECTION 1. That Council hereby waives the requirement of Section 731.19 of the Ohio Revised Code that this Ordinance contain the entire section of the Code that is being amended.

SECTION 2. That the following definitions be added to Codified Ordinance Section 543.01 as follows:

Smoking: as defined in C.O. § 1580.01.

Smoking materials or devices: as defined in C.O. § 1580.01.

SECTION 3. That subsection (A) of Codified Ordinance Section 543.02 – Adoption of Rules, Violations; Unauthorized and Prohibited Acts be amended to add number (20) as follows:

(20) Smoking and the use of any smoking materials or devices within any areas of any parkette, public park, playground, or open space areas is prohibited.

SECTION 4. That the following definitions in Codified Ordinance Section 1580.01 be amended to read as follows

(T) *Public place:* means an enclosed area to which the public is invited or in which the public is permitted and that is not a private residence and includes service lines. “Public place” includes “public park or playground” as defined by C.O.

¹ U.S. Department of Health and Human Services, *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, available at <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/50-years-of-progress-by-section.html>, (accessed March 26, 2019).

§507.07, regardless of whether the area is enclosed or unenclosed. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

(W) *Smoking*: means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other lighted smoking device for burning tobacco or any other plant in any manner or in any form. "Smoking" includes the inhaling or exhaling of any electronic cigarette or cigar, vaporizer, or other burning substance, vapor, or aerosol. "Smoking" also includes the inhaling, exhaling, using of, or otherwise engaging with, an electronic cigarette or cigar, vaporizer, or other burning substance, vapor, or aerosol in a manner that releases vapors, aerosols, or particles containing tobacco or nicotine in any amount into the surrounding air or area. "Smoking" does not include the burning of incense in a religious ceremony.

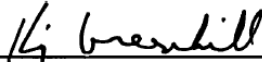
(X) *Smoking materials or devices*: means any lighted cigar, cigarette, pipe, weed, plant or other material or device designed for burning tobacco or any plant for the purpose of inhaling smoke. "Smoking materials or devices" includes any electronic cigarette or cigar, e-cigarette, vaporizer, or any product or device that produces, creates, or facilitates the release of, a vapor or aerosol that delivers nicotine, tobacco, nicotine particles, or any other plant matter, to the person inhaling or otherwise using the device. Smoking materials or devices does not mean devices designed and primarily used for the burning of any plant for cooking, heating, or illumination purposes and specifically excludes wood-fired ovens, smokers, grills, fireplaces, wood-burning stoves and candles.

SECTION 5. That the City Manager, City Attorney, and Finance Director are hereby authorized to take all actions necessary to implement and administer this Ordinance.

SECTION 6. That this Ordinance is enacted pursuant to the home rule powers of the City of Upper Arlington as set forth at Article XVIII, Section 3, of the Ohio Constitution.

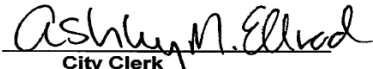
SECTION 7. That this ordinance shall take effect at the earliest date allowed by law.

PASSED: April 22, 2019



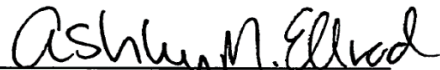
President of Council

ATTEST:



City Clerk

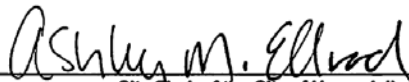
I, Ashley Ellrod, City Clerk of Upper Arlington, Ohio, do hereby certify that the above is a true and correct copy.



City Clerk

CERTIFICATE OF POSTING

I, Ashley Ellrod, City Clerk of the City of Upper Arlington, Ohio, do hereby certify that publication of the foregoing was made by posting a true copy of Ordinance No. 27-2019 at the most public place in said corporation as determined by the Council, the Municipal Building, 3600 Tremont Road, for a period of ten (10) days commencing April 23, 2019.



City Clerk of the City of Upper Arlington

Vote Slip

Sponsor: Ms. Casper
Date Introduced: April 8, 2019

Legal Ad:
Newspaper:

Reading Date(s): April 8, 2019: April 22, 2019

Voting Aye: Unanimous
Voting Nay:
Abstain:
Absent:

Date of Passage: April 22, 2019

City Council Conference Session/Other Review:
April 1, 2019
Other: Thirty Day Clause



To: The Honorable Kip Greenhill, and
Members of Upper Arlington City Council

From: Darlene Pettit, Assistant City Attorney
Jeanine Hummer, City Attorney

Prepared for Meeting Dated: April 1, 2019

Subject: Prohibiting smoking in public parks and playgrounds and adding e-cigarettes and other vaping devices to the codified smoking ban

Action Requested: Approval

Master Plan Objectives: **Community Services and Facilities**
Objective 1. Continue to Maintain a High Standard for the delivery of City Services.
Sustainability
Objection 5: Support public health and wellness

Executive Summary

As recommended by the City's Board of Health, the attached amendments will prohibit smoking in the City's parks and playgrounds, and clarify that e-cigarettes and vaping devices encompassed by the Health Code's prohibition on smoking in public places.

Discussion

Brief History of Smoking Ordinances in the City:

- Ord. 129-2004 enacted Chapter 1580 – Smoking Prohibitions of the Health Code, the Smoke-Free Indoor Air Act of 2004
- Ord. 210-2004 amended in the Smoking Prohibition Chapter to clarify the definitions of “public place”, “place of employment” and “business”
- Ord. 87-2007 amended the City's smoking ban to revise in response to the state-wide smoking ban, R.C. 3974, which took effect 12/7/2006
- Ord. 1-2014 amended the General Offenses Code to prohibit the possession of e-cigarettes by minors and prohibit the sale of e-cigarettes to minors
- Ord. 35-2015 raised the age to 21 to purchase tobacco and nicotine products in the City



As noted by President Greenhill in his January 22, 2019 Council Liaison report, the Board of Health recommends that City Council prohibit nicotine in the parks. Specifically, at the October 17, 2018, at the request of the Board, the City Attorney presented these draft amendments for the Board's consideration. At the January 16, 2019 meeting, the Board voted to recommend to Council that these changes be made to the codified ordinances.

The proposed amendments address this recommendation by 1) adding smoking in parks as a prohibition in Chapter 543's list of prohibited acts in the parks and incorporating the definitions used by the Health Code for smoking and smoking materials, 2) adding parks and playgrounds to the public places to which the "Smoke-Free UA" legislation applies, and 3) clarifying the e-cigarettes, vaping devices, and other inhaled nicotine products are covered by the City's smoking ban. You may hear that other municipalities are reviewing additional licensing requirements or licensing fees for retailers; those are not part of this legislation but are under review.

As to the amendments to Chapter 543, the definitional amendments are necessary to make reference to the "smoking" and "smoking materials and devices" definitions found in the Smoking Prohibitions of Chapter 1580 of the Health Code. This particular chapter has several definitions that refer to the definitions of other chapters, so the proposed phrasing is consistent with the chapter's current text.

Section 543.02 provides the rules and regulations for the conduct in the parkettes, public parks, playgrounds, and open space areas of the City. For example, it prohibits having open fires except in fireplaces or picnic stoves provided for that purpose (A)(2), consuming alcohol within the parks except for as approved in the Amelita Mirolo Barn or as permitted for an event in Northam Park (A)(6), littering (A)(11), and altering of any city equipment or grounds without authorization from the Director of Parks and Recreation (A)(13). The proposed amendment adds a new prohibition to accomplish the Board of Health's recommendation to prohibit smoking on playgrounds, parks, and other open space areas. UACO § 543.02(B) sets the penalty for violating one of these rules as a minor misdemeanor, unless otherwise provided in the City's general offense code or state or federal law. If the individual has a previous conviction for violating parks rules under that section, the penalty jumps to a fourth degree misdemeanor.

As to the amendments to Chapter 1580, adding "public park or playground" to the definition of public purpose will clarify that parks are included in the City's "Smoke-Free UA" ordinance. As part of the Health Code, this is the City's legislation to ensure that employees, residents, and visitors are protected from the dangers of secondhand smoke in public places. Violations of this chapter, such as refusing to immediately discontinue smoking in a public place, or a proprietor permitting smoking in a public place, are minor misdemeanors as outlined in Section 1580.99.

Finally, the amendments to the definition section of Chapter 1580 will make clear that the City's smoking ban includes e-cigarettes, vaping devices, and other inhaled nicotine products. As currently



written, these items are not explicitly included in the City's ban. This amendment codifies the Board of Health's recommendation that nicotine be prohibited in the City's parks and public places.

Accordingly, the City Attorney respectfully requests that Council approve these amendments.

