

CODIFIED ORDINANCES OF ERIE
PART ELEVEN - PUBLIC HEALTH CODE

TITLE ONE - Administration

- Art. 1101. Board of Health. (Repealed)
- Art. 1103. Bureau of Health.

TITLE THREE - Regulations of Board of Health

- Art. 1111. Preliminary Provisions. (Repealed)
- Art. 1113. Communicable Diseases. (Repealed)
- Art. 1115. Health Nuisances. (Repealed)
- Art. 1117. Milk. (Repealed)
- Art. 1119. Frozen Milk Products. (Repealed)
- Art. 1121. Public Eating and Drinking Establishments. (Repealed)
- Art. 1123. Regulations for Special Businesses. (Repealed)
- Art. 1125. Rodent Control. (Repealed)
- Art. 1127. Smoking Prohibited in Public Places.

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ARTICLE 1101
Board of Health

(EDITOR'S NOTE: Former Article 1101 was
repealed by Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 1103
Bureau of Health

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| <p>1103.01 Bureau dissolved; functions transferred to County.</p> <p>1103.02 Functions transferred to Safety Department.</p> | <p>1103.03 Retention of membership in retirement system.</p> |
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CROSS REFERENCES

Board of Health - see 3rd Class §2301 et seq. (53 P.S. §373.01 et seq.)
Health Officer - see 3rd Class §2305 et seq. (53 P.S. §373.05 et seq.)

1103.01 BUREAU DISSOLVED; FUNCTIONS TRANSFERRED TO COUNTY.

The Bureau of Health of the City is hereby dissolved and the following functions thereof are hereby transferred and subjected to the jurisdiction of the Department of Health of the County of Erie, in accordance with the provisions of Act. No. 315, (Local Health Administration Law) of the Pennsylvania Legislature, as amended and supplemented.

- (a) Administration Division, including the Erie City Health Director, two clinical physicians; a senior clerk; nursing services performed by the Visiting Nurse Association; laboratory services; public health education and dental services provided to the City of Erie parochial schools.
- (b) Division of Communicable Diseases, including sanitarians and the Director of Environmental Sanitation. (Ord. 72-1968 §1. Passed 12-11-68.)

1103.02 FUNCTIONS TRANSFERRED TO SAFETY DEPARTMENT.

The following functions of the Bureau of Health of the City are hereby retained and transferred to the Department of Public Safety, Health-Housing Division, as relating and being essential only to programs of the City's Model Cities Agency, the Redevelopment Authority of the City and the office of City Planning and Zoning:

- (a) Division of Housing Inspection and Rodent Control and Division of Plumbing. (Ord. 72-1968 §2. Passed 12-11-68.)

1103.03 RETENTION OF MEMBERSHIP IN RETIREMENT SYSTEM.

Any employee of the Bureau of Health of the City, whose position and employment with the City, are eliminated by this chapter, who shall hereafter be employed by the Department of Health of the County of Erie and who is a member of the City Retirement System, shall have the right to retain his membership in the Retirement System of the City, in accordance with the provisions of Act. No. 567 of the Pennsylvania Legislature approved May 24, 1956. (Ord. 72-1968 §3. Passed 12-11-68.)

- TITLE THREE - Regulations of Board of Health
- Art. 1111. Preliminary Provisions. (Repealed)
 - Art. 1113. Communicable Diseases. (Repealed)
 - Art. 1115. Health Nuisances. (Repealed)
 - Art. 1117. Milk. (Repealed)
 - Art. 1119. Frozen Milk Products. (Repealed)
 - Art. 1121. Public Eating and Drinking Establishments. (Repealed)
 - Art. 1123. Regulations for Special Businesses. (Repealed)
 - Art. 1125. Rodent Control. (Repealed)
 - Art. 1127. Smoking Prohibited in Public Places.

ARTICLE 1111
Preliminary Provisions

(EDITOR'S NOTE: Former Article 1111 was repealed by Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 1113
Communicable Diseases

(EDITOR'S NOTE: Former Article 1113 was repealed by Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 1115
Health Nuisances

(EDITOR'S NOTE: Former Article 1115 was
repealed by Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 1117
Milk

(EDITOR'S NOTE: Former Article 1117 was
repealed by Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 1119
Frozen Milk Products

(EDITOR'S NOTE: Former Article 1119 was repealed by Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 1121
Public Eating and Drinking Establishments

(EDITOR'S NOTE: Former Article 1121 was
repealed by Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 1123
Regulations for Special Businesses

(EDITOR'S NOTE: Former Article 1123 was repealed by Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 1125
Rodent Control

(EDITOR'S NOTE: Former Article 1125 was repealed by Ordinance 28-2000, passed June 7, 2000.)

(NOTE: The next printed page is page 49.)

ARTICLE 1127
Smoking Prohibited in Public Places

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|---------|--|---------|----------------------------------|
| 1127.01 | Findings and purpose. | 1127.08 | Enforcement. |
| 1127.02 | Definitions. | 1127.09 | Violations and penalties. |
| 1127.03 | Application to City-owned facilities. | 1127.10 | Nonretaliation. |
| 1127.04 | Prohibition of smoking in public places. | 1127.11 | Exemptions. |
| 1127.05 | Regulation of smoking in places of employment. | 1127.12 | Public education. |
| 1127.06 | Where smoking not regulated. | 1127.13 | Governmental agency cooperation. |
| 1127.07 | Posting of signs. | 1127.14 | Other applicable laws. |
| | | 1127.15 | Severability. |

CROSS REFERENCES

No smoking areas in hospitals - see 35 P.S. §361

1127.01 FINDINGS AND PURPOSE.

- (a) Council does hereby find that:
- (1) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution; and
 - (2) Reliable studies have shown that breathing second-hand smoke is a significant health hazard for several population groups, including elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and
 - (3) Health hazards induced by breathing second-hand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction and bronchospasm; and
 - (4) Nonsmokers who suffer allergies, respiratory diseases and other ill-effects of breathing second-hand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of such adverse reactions; and
 - (5) Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restrictions on smoking in public places and places of employment; and
 - (6) Smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause losses to businesses.

- are:
- (b) Accordingly, Council finds and declares that the purposes of this article are:
 - (1) To protect the public health and welfare by prohibiting smoking in public places except in designated smoking areas, and by regulating smoking in places of employment; and
 - (2) To strike a reasonable balance between the needs of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air shall have priority.
(Ord. 8-1988 §1. Passed 5-11-88.)

1127.02 DEFINITIONS.

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

- (a) "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area.
- (b) "Business" means any sole proprietorship, partnership, joint venture, corporate or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
- (c) "Dining area" means any enclosed area containing a counter or tables upon which meals are served.
- (d) "Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.
- (e) "Employer" means any person, partnership, corporation, including a municipal corporation, or nonprofit entity, who employs the services of one or more individual persons.
- (f) "Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.
- (g) "Motion picture theatre" means any theater engaged in the business of exhibiting motion pictures.
- (h) "Nonprofit entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a "nonprofit entity" within the meaning of this section.
- (i) "Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways.

- (1) A private residence is not a "place of employment" unless it is used as a child care or health care facility.
- (2) The dining area of a restaurant is not a "place of employment".
- (j) "Public place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theatres and waiting rooms. A private residence is not a "public place".
- (k) "Restaurant" means any coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria or eating establishment, and any other eating establishment, organization, club, including veterans' club, boardinghouse or guesthouse, which gives or offers for sale, food to the public, guests, patrons or employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term "restaurant" shall not include a cocktail lounge or tavern if such cocktail lounge or tavern is a "bar" as defined in subsection (a) hereof.
- (l) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- (m) "Service line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- (n) "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.
- (o) "Sports arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events.
(Ord. 8-1988 §1. Passed 5-11-88.)

1127.03 APPLICATION TO CITY-OWNED FACILITIES.

All enclosed facilities owned by the City shall be subject to the provisions of this article.
(Ord. 3-1988 §1. Passed 5-11-88.)

1127.04 PROHIBITION OF SMOKING IN PUBLIC PLACES.

- (a) Smoking shall be prohibited in all enclosed public places within the City, including, but not limited to, the following places, and with the following exceptions:
 - (1) Elevators;
 - (2) Buses, taxicabs and other means of public transit under the authority of the City and ticket, boarding and waiting areas of public transit depots; provided, however, that this prohibition does not prevent:
 - A. The establishment of separate waiting areas for smokers and nonsmokers of equal size; or
 - B. The establishment of a maximum of fifty percent (50%) of a given waiting room as a smoking area;

- (3) Restrooms;
- (4) Service lines;
- (5) Retail stores, except areas in such stores not open to the public and all areas within retail tobacco stores;
- (6) All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including but not limited to, attorneys offices and other offices, banks, hotels and motels;
- (7) Restaurants; provided, however, that this prohibition does not prevent:
 - A. The designation of a contiguous area within a restaurant that contains a maximum of eighty percent (80%) of the seating capacity of the restaurant as a smoking area; or
 - B. The providing of separate rooms for smokers and nonsmokers so long as the rooms designated for smoking do not contain more than fifty percent (50%) of the seating capacity of the restaurant;
- (8) Public areas of aquariums, galleries, libraries and museums when open to the public; provided, however, that this prohibition does not prevent the designation of a separate room for smoking in such areas;
- (9) Any building not open to the sky which is primarily used for, or designed for the primary purpose of exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except when smoking is part of a stage production; provided, however, that this prohibition does not prevent the designation of a contiguous area containing a maximum of fifty percent (50%) of any area commonly called a lobby as a smoking area;
- (10) Sports arenas and convention halls, except in designated smoking areas;
- (11) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City;
- (12) Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices. In bed space areas of health facilities used for two or more patients, smoking shall be prohibited unless all patients within the room are smokers and request in writing upon the health care facility's admission forms to be placed in a room where smoking is permitted; and
- (13) Polling places.

(b) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility described in this section may declare that entire establishment or facility as a nonsmoking establishment.
(Ord. 8-1988 §1. Passed 5-11-88.)

1127.05 REGULATION OF SMOKING IN PLACES OF EMPLOYMENT.

(a) It shall be the responsibility of employers to provide smoke-free areas for nonsmoking employees within existing facilities to the maximum extent possible, but employers are not required to incur any expense to make structural or other physical modifications in providing these areas.

(b) Within 180 days of the effective date of this section, each employer having an enclosed place of employment located within the City shall adopt, implement, make known and maintain a smoking policy which shall contain at a minimum the following requirements:

- (1) Any employee in a place of employment shall have the right to designate his or her work area as a nonsmoking area and to post the same with an appropriate sign or signs, to be provided by the employer;
- (2) Prohibition of smoking in auditoriums, classrooms, conference and meeting rooms, elevators, medical facilities and restrooms; and
- (3) Provision and maintenance of separate and contiguous nonsmoking areas of not less than twenty percent (20%) of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges or provision and maintenance of separate cafeterias, lunchrooms and employee lounges.

(c) The smoking policy shall be communicated to all employees within three weeks of its adoption, and shall be made known to any existing employee upon request.

(d) Notwithstanding any other provision of this article, every employer shall have the right to designate any place of employment, or any portion thereof, as a nonsmoking area.

(e) All rights, functions and prerogatives of management normally possessed by employers which are not expressly and specifically restricted or modified by this article are reserved and retained exclusively to the employer. In no event shall any right, function or prerogative of management ever be deemed or construed to have been modified, diminished or impaired by this article other than by a specific provision of this article.

(f) A work area separated from other work areas by floor to ceiling walls which is occupied exclusively by smokers, even though such work area may be visited by nonsmokers, may be designated a smoking area.

(Ord. 8-1988 §1. Passed 5-11-88; Ord. 67-1988 §1. Passed 7-20-88.)

1127.06 WHERE SMOKING NOT REGULATED.

(a) Notwithstanding any other provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

- (1) Bars;
- (2) Private residences, except when used as a child care or health care facility;
- (3) Hotel and motel rooms rented to guests;
- (4) Retail tobacco stores;

- (5) Restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while these places are being used for private functions; and
- (6) A private enclosed office workplace occupied exclusively by smokers, even though such an office workplace may be visited by nonsmokers.

(b) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment. (Ord. 8-1988 §1. Passed 5-11-88.)

1127.07 POSTING OF SIGNS.

(a) "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch in height 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 place where smoking is regulated by this article, by the owner, operator, manager or other person having control of such building or other place.

(b) Every theatre owner, manager or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theatre or auditorium, and in the case of motion picture theaters, such information shall be shown upon the screen for at least five seconds prior to the showing of each feature motion picture.

(c) Every restaurant shall have posted at every entrance a conspicuous sign clearly stating that a nonsmoking section is available, and every patron shall be asked as to his or her preference. (Ord. 8-1988 §1. Passed 5-11-88.)

1127.08 ENFORCEMENT.

(a) Enforcement of this article shall be implemented by the Chief Building Inspector.

(b) The Chief Building Inspector shall require, while an establishment is undergoing otherwise mandated inspections, a "self-certification" from the owner, manager, operator or other person having control of such establishment that all requirements of this article have been complied with.

(c) Any owner, manager, operator or employee of any establishment regulated by this article may inform persons violating this article of the appropriate provisions thereof. (Ord. 8-1988 §1. Passed 5-11-88.)

1127.09 VIOLATIONS AND PENALTIES.

(a) No person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article shall fail to comply with any of its provisions. The owner, manager or operator of a restaurant shall not be deemed in violation of Section 1127.07(c) if the host or hostess of the restaurant fails to ask the seating preference of patrons, but shall be deemed in violation thereof if the restaurant has no stated policy requiring that patrons be asked their preference.

(b) No person shall smoke in any area where smoking is prohibited by the provisions of this article.

(c) Whoever violates any provision of this article shall be guilty of an infraction, punishable by:

- (1) A fine not exceeding twenty-five dollars (\$25.00) for a first violation.
- (2) A fine not exceeding fifty dollars (\$50.00), for a second violation of this article within one year.
- (3) A fine not exceeding one hundred dollars (\$100.00) for each additional violation of this article within one year.

(d) The employer or the owner or manager of the building shall not be deemed in violation of this article should any individual smoke in an area which has been designated a nonsmoking area. All employers, owners or managers of buildings shall make good faith efforts to see that individuals do not smoke in areas designated as nonsmoking areas, but shall not be subject to a fine or imprisonment if individuals do smoke in such areas despite good faith efforts. (Ord. 8-1988 §1. Passed 5-11-88.)

1127.10 NONRETALIATION.

No person or employer shall discharge or in any manner retaliate against any employee because such employee exercises any rights afforded by this article. (Ord. 8-1988 §1. Passed 5-11-88.)

1127.11 EXEMPTIONS.

(a) Any owner, operator or manager of a business or other establishment subject to this article may apply to the City for an exemption or modification to any provision of this article due to unusual circumstances or conditions. Exemptions may be granted on a showing of financial impracticability.

(b) Such exemption shall be granted only if the City Manager finds from the evidence presented by the applicant for exemption at a public hearing that it is financially impracticable for the applicant to comply with this article.

(c) The applicant for an exemption shall be required to pay a reasonable fee to cover the costs of the hearing. (Ord. 5-1988 §1. Passed 5-11-88.)

1127.12 PUBLIC EDUCATION.

The Fire Chief shall engage in a continuing program to explain and clarify the purposes of this article to citizens affected by it, and to guide owners, operators and managers in their compliance with it.

The Fire Chief shall leave the responsibility of conducting a public education campaign regarding the health consequences of smoking to other governmental and health agencies equipped with the need to conduct such campaigns. (Ord. 5-1988 §1. Passed 5-11-88.)

1127.13 GOVERNMENTAL AGENCY COOPERATION.

The Fire Chief shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this article. (Ord. 8-1988 §1. Passed 5-11-88.)

1127.14 OTHER APPLICABLE LAWS.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Ord. 8-1988 §1. Passed 5-11-88.)

1127.15 SEVERABILITY.

If any provision, clause, sentence or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable. (Ord. 8-1988 §1. Passed 5-11-88.)