



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: BL2022-1383, **Version:** 1

An Ordinance to amend Title 10 of the Metropolitan Code of Laws to prohibit smoking and the use of vapor products in certain age-restricted venues.

WHEREAS, on July 1, 2022, Public Chapter No. 1110 went into effect, authorizing municipalities, counties, and counties having a metropolitan form of government to regulate, including prohibiting, by passing a resolution or ordinance, smoking and the use of vapor products in certain age-restricted venues; and,

WHEREAS, in the interest of protecting public health, safety, and welfare, the Metropolitan Council deems it appropriate to prohibit smoking and the use of vapor products in age-restricted venues described herein.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Title 10 of the Metropolitan Code is hereby amended by adding the following new Chapter 10.19:

Chapter 10.19 - Prohibition of Smoking in Certain Age-Restricted Venues.

10.19.010 - Definitions.

For the purposes of this chapter, the words and phrases herein shall have the following meanings:

“Age-restricted venue” means a legal establishment that affirmatively restricts access to its buildings or facilities at all times to persons who are twenty-one (21) years of age or older by requiring each person who attempts to gain entry to those buildings or facilities to submit for inspection an acceptable form of identification for the express purpose of determining if the person is twenty-one (21) years of age or older.

“Cigar bar” means a legal establishment that:

1. Holds a valid license or permit for the on-premise consumption of alcoholic beverages;
2. Generates a portion of its total annual gross income from the on-site sale of cigars and the rental of humidors;
3. Does not knowingly sell products or services, or permit entrance to the premises, to a person who is less than twenty-one (21) years of age; and
4. Does not permit vaping or the smoking of products other than cigars on the premises.

“Retail tobacco store” means a retail store that derives its largest category of sales from tobacco products and accessories.

“Retail vapor product store” means a retail store that derives its largest category of sales from vapor products and accessories.

“Smoking” means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form. “Smoking” also means using a vapor product that delivers aerosolized or vaporized nicotine, or any other substance, to the person inhaling from the device.

“Vapor product”:

1. Means any noncombustible product containing nicotine or any other substance that employs a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce or emit a visible or non-visible vapor;

2. Includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product, and any vapor cartridge, any substance used to refill a vapor cartridge, or other container of a solution containing nicotine or any other substance that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product; and

3. Does not include any product regulated under Chapter V of the Food, Drug, and Cosmetic Act (21 U.S.C. § 351 et seq.), as may be amended from time to time.

10.19.020 - Smoking and use of vapor products in age-restricted venues prohibited.

A. Smoking and the use of vapor products is prohibited in all age-restricted venues.

B. Notwithstanding subsection A of this section, the prohibition on smoking and the use of vapor products in age-restricted venues shall not apply to:

1. retail tobacco stores;
2. retail vapor product stores; or
3. cigar bars.

10.19.030 - Enforcement.

A. No person shall engage in smoking or the use of vapor products in an age-restricted venue where smoking and the use of vapor products is prohibited by this chapter.

B. No person who owns, manages, operates, or otherwise controls an age-restricted venue shall knowingly allow any person to engage in smoking or the use of vapor products in an age-restricted venue where smoking and the use of vapor products is prohibited by this chapter. For purposes of this subsection, "knowingly allow" means the person has actual notice of or, through reasonable due diligence, should know that a person is engaging in smoking or the use of vapor products.

C. “No Smoking” signs or the international “No Smoking” symbol, and “No Vapor” signs or the “No Vaping/”No E-Cigarette” symbol shall be clearly and conspicuously posted at every entrance to any age-restricted venue where smoking and the use of vapor products is prohibited by this chapter by the owner, operator, manager, or other person in control of the age-restricted venue.

D. The presence or absence of signs shall not be a defense to a charge of smoking or the use of vapor products pursuant to this chapter.

E. No person shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this chapter.

10.19.040 - Violations and Penalties.

A. Any person found in violation of the provisions of this chapter shall be punished by a fine not to exceed fifty dollars.

B. Each instance of smoking or the use of vapor products in violation of this chapter shall constitute a separate violation.

C. Each refusal to comply with a request to conform to the requirements of this chapter shall constitute a separate violation.

Section 2. This Ordinance shall take effect from and after its enactment, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This ordinance, as amended, prohibits smoking and the use of vapor products in certain age-restricted venues in Nashville and Davidson County. On July 1, 2022, Public Chapter No. 1110 went into effect. This state law authorizes municipalities, counties, and counties having a metropolitan form of government to regulate, including prohibiting, by passing a resolution or ordinance, smoking and the use of vapor products in certain age-restricted venues.

The ordinance under consideration provides that smoking and the use of vapor products is prohibited in age-restricted venues. This prohibition does not apply to retail tobacco stores, retail vapor stores, and cigar bars. As amended, this ordinance also exempts hookah bars and vapor bars from this prohibition. An “age-restricted venue” is defined as establishments that restrict access to persons 21 years of age or older. A person found in violation of this prohibition would be subject to a fine not to exceed \$50.

Tennessee Code Annotated § 39-17-1551 preempts the field of regulation of tobacco products, smokeless nicotine products, and vapor products. However, this state law explicitly provides the Metropolitan Government with the authority to prohibit smoking and the use of vapor products in certain areas, including within buildings owned or leased by the local government, within 50 feet of the entrance to a hospital, an outdoor amphitheater with a seating capacity of at least six thousand owned or operated by such local government, and on the grounds of a public playground. The Metropolitan Government prohibits smoking in these locations pursuant to Chapter 10.18 of the Metropolitan Code.

This ordinance would take effect on March 1, 2023.