

1 C. The separation of people and tobacco smoke within the same air space may reduce
2 but does not eliminate exposure to environmental tobacco smoke.

3 D. The increasing popularity and use in public buildings of electronic smoking devices
4 has led the United States Food and Drug Administration (“FDA”) to propose regulating electronic
5 smoking devices as tobacco products, a move supported by forty state attorneys general, including the
6 New Mexico attorney general. The FDA and healthcare providers question the safety of electronic
7 smoking devices to both users and those in close proximity to users, despite the claims of
8 harmlessness by manufacturers, similar to claims made by the tobacco industry in years past. The
9 governing body believes it should be proactive in protecting the health of all residents of Santa Fe.

10 E. The use of electronic smoking devices, with or without nicotine as an ingredient,
11 models smoking behavior to our youth in a way that suggests smoking any substance is acceptable,
12 regardless of potential or unknown health threats to the user and others.

13 F. It is necessary to restrict smoking in areas not covered by the 1995 New Mexico State
14 Clean Indoor Air Act, which calls for no smoking in state, county and city-owned buildings except in
15 certain designated areas.

16 G. Accordingly, the city council finds and declares that the purposes of this section are
17 (1) to protect the public health and welfare by prohibiting smoking in public places of employment;
18 (2) to guarantee the right of nonsmokers to breathe smoke-free air; and (3) to recognize that the need
19 to breathe smoke-free air shall have priority over the desire to smoke.

20 **Section 2. Subsection 10-6.3 SFCC 1987 (being Ord. #1999-47, §3, as amended) is**
21 **amended to read:**

22 **10-6.3 Definitions.**

23 As used in this section:

24 *Bar* means an establishment that is devoted to the serving of alcoholic beverages for
25 consumption by guests on the premises and in which the serving of food generates fifteen percent

1 (15%) or less of the total gross annual income of the bar in any calendar year. Bars include, but are
2 not limited to, taverns, nightclubs, cocktail lounges, and cabarets. "Bar" does not include the dining
3 areas of a restaurant, regardless of whether alcoholic beverages are served therein.

4 *Business* means any sole proprietorship, partnership, joint venture, corporation or other
5 business entity, either for-profit or not-for-profit, including retail establishments where goods or
6 services are sold; professional corporations or other entities where legal, medical, dental, engineering,
7 architectural, or other professional services are delivered; and private clubs.

8 *Cigar bar* means an establishment that:

9 A. Is a bar, as defined in this section, except that it serves only complementary snacks;
10 and

11 B. Is engaged in the business of selling cigars for consumption by patrons on the
12 premises and generates ten percent (10%) or more of its total annual gross revenue or at least ten
13 thousand dollars (\$10,000.) in annual sales from the sale of cigars, not including any sales from
14 vending machines. A cigar bar that fails to generate at least ten percent (10%) of its total annual sales
15 from the sale of cigars in the calendar year after December 31, 2006, not including sales from vending
16 machines, shall not be defined as a cigar bar and shall not thereafter be known as such regardless of
17 sales figures. A cigar bar shall agree to provide adequate information to demonstrate to the city's
18 satisfaction compliance with this definition.

19 *Cigarette vending machine* means any self-service device, which, upon insertion of money or
20 tokens, dispenses cigarettes without the necessity of replenishing the device between each vending
21 operation.

22 *Electronic smoking device* means any product containing or delivering nicotine or any
23 substance intended for human consumption that can be used by a person to simulate smoking through
24 inhalation of vapor or aerosol from the product. *Electronic smoking device* includes any component
25 part of such product whether or not sold separately.

1 *Employee* means any person who is employed by any employer in the consideration for direct
2 or indirect monetary wages or profit, and any person who volunteers his or her services for a
3 nonprofit entity.

4 *Employer* means any person, partnership, corporation, including a municipal corporation or
5 nonprofit entity, who employs the services of one (1) or more individual persons.

6 *Enclosed area* means all space between a floor and ceiling which is enclosed on all sides by
7 walls, partitions or windows (exclusive of doors or passage ways), whether partially or fully
8 extending from the floor towards to ceiling, and whether the walls or partitions are solid or not and
9 compose a room, vestibule or cubicle.

10 *Group home* means a dwelling unit where full-time shelter, habilitation, care and supervision
11 is given on a non-institutional basis to neglected, abandoned, physically handicapped, retarded,
12 mentally disabled and substance or alcohol dependent children or adults on a private, nonprofit basis
13 licensed by the appropriate governing body.

14 *Health care facility* means an office or institution providing care or treatment of diseases,
15 whether physical, mental, or emotional, or other medical, physiological, or psychological conditions,
16 including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight
17 control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of
18 surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these
19 professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate
20 rooms, and wards within health care facilities.

21 *Health spa or health club* means any place where therapeutic, rehabilitative or health
22 maintenance services or equipment, with or without swimming facilities, saunas, steam rooms, and
23 similar facilities, are available for use by patrons whether membership is required or not.

24 *Hotel or motel* means any building, or portion thereof, containing six (6) or more guest rooms
25 designed, used or intended to be used by six (6) or more guests.

1 *Nursing care facilities* means any establishment devoted and maintained for the long term or
2 hospice care of the aged, infirm, chronic or terminally ill.

3 *Place of employment* means any enclosed area under the control of a public or private
4 employer which employees normally frequent during the course of employment. The area shall
5 include but not be limited to work areas, lounges and restrooms, conference and classrooms,
6 employee or public cafeterias, snack stands and coffee shops, and hallways. A private residence is not
7 a "place of employment" unless it is used as a child care, adult day care or health care facility.

8 *Private club* means an organization, whether incorporated or not, which is the owner, lessee,
9 or occupant of a building or portion thereof used exclusively for club purposes at all times, which is
10 operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose,
11 but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The
12 affairs and management of the organization are conducted by a board of directors, executive
13 committee, or similar body chosen by the members at an annual meeting. The organization has
14 established bylaws and/or a constitution to govern its activities. The organization has been granted an
15 exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

16 *Public places or public spaces* means any enclosed area to which the public is invited or in
17 which the public is permitted, including but not limited to banks and credit unions, bars, taverns and
18 pubs, educational facilities, health facilities, commercial laundries, self-serve laundries, and dry
19 cleaning establishments, public transportation facilities including airports, bus stations, buses, taxi
20 cabs and paratransit vehicles, reception areas, restaurants, retail food production and marketing
21 establishments, retail service establishments, retail stores, theaters, museums and galleries, hospital,
22 medical clinic and laboratory waiting rooms. A private residence is not a "public place" unless it is
23 used as a child care, adult day care or health care facility.

24 *Restaurant or eating establishment* means any coffee shop, cafeteria, sandwich stand,
25 luncheonette, short-order cafe, soda fountain, private or public school cafeteria and any other indoor

1 eating establishment which gives or offers for sale food to the public, guests or employees, as well as
2 kitchens in which food is prepared on the premises for service elsewhere, including catering facilities.

3 The term "restaurant" shall include a bar area within the restaurant as well as all outdoor eating areas.

4 *Retail store* means a store which carries, as its principal business, the selling of tangible
5 commodities in small quantities directly to consumers.

6 *Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products
7 and accessories in which the sale of other product is merely incidental.

8 *Service line* means any indoor line at which one (1) or more people are waiting for or
9 receiving service of any kind, whether or not such service involves the exchange of money.

10 *Smoke or smoking* means inhaling, exhaling, burning, holding or carrying any lighted or
11 activated cigarette, cigar, cigarillo, pipe, or other lighted or activated tobacco product in any manner
12 or in any form. "Smoke" also means the gaseous products, vapor or particles created by the use of a
13 lighted cigarette, cigar, cigarillo, pipe or any other kind of smoking equipment.

14 *Sports arena* means enclosed sports pavilions, stadiums, coliseums, gymnasiums, health spas,
15 boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys or similar places where
16 members of the general public assemble either to engage in physical exercise, participate in athletic
17 competition or witness sports events.

18 *Tobacco product* means any product that is made from or derived from tobacco or contains
19 nicotine or any substance intended to be inhaled or ingested in a way that simulates smoking, and is
20 intended for human consumption or is likely to be consumed, whether smoked, heated, chewed,
21 absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette,
22 a cigar, pipe tobacco, chewing tobacco, snuff, snus or an electronic smoking device.

23 *Transitional living facility, halfway house or shelter* means a dwelling unit providing
24 temporary shelter to the homeless, mentally disabled, substance or alcohol dependent individuals
25 undergoing treatment, or abused or neglected adults. In addition, the facility shall provide referrals to

1 appropriate agencies for assistance, treatment and follow-up care as required by the individual.

2 *Truck stop* means any facility located within the city primarily catering to and frequented by
3 interstate cargo haulers for the purpose of obtaining rest or food, with or without showering facilities
4 and having sufficient open space for parking large vehicles.

5 *Vaping bar* means an establishment that:

6 A. Is a bar, as defined in this section, except that it serves only complementary snacks;

7 and

8 B. Is engaged in the business of selling electronic smoking devices for consumption by
9 patrons on the premises and generates ten percent (10%) or more of its total annual gross revenue or
10 at least ten thousand dollars (\$10,000) in annual sales from the sale of electronic smoking devices, not
11 including any sales from vending machines. A vaping bar that fails to generate at least ten percent
12 (10%) of its total annual sales from the sale of vaping devices in the calendar year after December 31,
13 2014, not including sales from vending machines, shall not be defined as a vaping bar and shall not
14 thereafter be known as such regardless of sales figures. A vaping bar shall agree to provide adequate
15 information to demonstrate to the city's satisfaction compliance with this definition.

16 **Section 3. Subsection 10-6.3 SFCC 1987 (being Ord. #1999-47, §8, as amended) is**
17 **amended to read:**

18 **10-6.8 Where Smoking Not Regulated.**

19 A. Notwithstanding any other provision of this section to the contrary, the following
20 areas shall not be subject to smoking restrictions of this section:

21 (1) Private residences, except when used as a child care, adult day care or health
22 care facility.

23 (2) Hotel and motel rooms rented to guests that are designated as smoking
24 rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests
25 in a hotel or motel may be so designated. All smoking rooms on the same floor shall be

1 contiguous and smoke from these rooms shall not infiltrate into areas where smoking is
2 prohibited under the provisions of this section. The status of rooms as smoking or
3 nonsmoking may not be changed, except to add additional nonsmoking rooms.

4 (3) Retail tobacco stores, provided that smoke from these stores does not
5 infiltrate into areas where smoking is prohibited under the provisions of this section.

6 (4) Enclosed areas in restaurants, hotel and motel conference or meeting rooms
7 and public and private assembly rooms while these places are being used for private
8 functions, provided that smoke from these areas does not infiltrate into areas where smoking
9 is prohibited under the provisions of this section.

10 (5) Above-ground open air parking lots and parking structures, truck stops and
11 rest stops.

12 (6) Private clubs that have no employees, except when being used for a function
13 to which the general public is invited.

14 (7) Private clubs organized by December 31, 2005, for the sole purpose of
15 providing a venue for smoking cigars.

16 (8) Outdoor areas of places of employment except those covered by the
17 provisions of subsections 10-6.5 and 10-6.7 SFCC 1987.

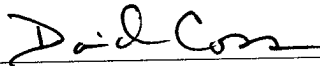
18 (9) Cigar bars, provided that smoke from these places does not infiltrate into
19 areas where smoking is prohibited under the provisions of this section, and provided that no
20 one under the age of eighteen (18) is permitted entry at any time. A cigar bar shall display a
21 sign, at least four inches by six inches (4" x 6") in size in at least one (1) conspicuous place,
22 stating: "Smoking allowed. No one under the age of 18 is permitted."

23 (10) Vaping bars, provided that no one under the age of eighteen (18) is permitted
24 entry at any time. A vaping bar shall display a sign, at least four inches by six inches (4" x
25 6") in size in at least one (1) conspicuous place, stating: "No one under the age of 18 is

1 permitted."

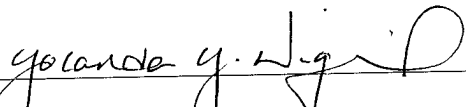
2 B. Notwithstanding any other provision of this section, any owner, operator, manager or
3 other person who controls any establishment described in this section may declare that entire
4 establishment as a nonsmoking establishment.

5 PASSED, APPROVED and ADOPTED this 12th day of February, 2014.


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7 _____

8 DAVID COSS, MAYOR

9 ATTEST:

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11 
12 _____
13 YOLANDA Y. VIGIL, CITY CLERK

14 APPROVED AS TO FORM:

15 
16 _____
17 KELLEY A. BRENNAN, INTERIM CITY ATTORNEY