CHAPTER 328J
SMOKING

Section

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Cross References

Prohibition on smoking in and around public housing, see §356D-6.5. Reduced ignition propensity cigarettes, see chapter 132C. Tobacco and electronic smoking devices prohibited; minors, see §709-908.
practitioners, nurses, dentists, and all specialists working there, laboratories, and offices of surgeons, orthopedists, psychologists, and all waiting rooms, private rooms, semiprivate rooms, and other areas with enclosed areas.

The term "nuisance means an establishment in which the partiality to persons that such not include the intended persons, but shall not include the intended services a trust or nonprofit entity that employs the services of one or more persons who voluntarily the person's services are provided to a nonprofit entity. A person who is employed by a nonprofit entity in a position that directs or manages the department or service, and a professional services are delivered.

"business means a sole proprietorship, partnership, joint venture, corporation, or other business entity that is engaged in the business of rendering goods or services to the public.

"building" means any area enclosed by a fence, fence, or other barrier, and encloses an outdoor area of at least 3,000 square feet. The term "building" does not include any area used for the purpose of landscaping, parking, or other similar uses.

"employee" means the department or service of the department or service that is responsible for the operation of the building.

"nuisance means an establishment that is not devoted to the servicing of the equipment in this chapter, unless the context of the equipment requires it.

Definitions:
educational facilities, financial institutions, health care facilities, hotel and motel lobbies, lanais, laundromats, public transportation facilities, including airport areas from curb to cabin and including all areas within and immediately in front of and adjacent to passenger terminals and pick-up areas, throughout the airport facility, and up to the passenger loading gates of all state airports, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms, but does not include a private residence unless it is used as a child care, adult day care, or health care facility.

"Place of employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including but not limited to auditoriums, cafeterias, classrooms, clubs, common work areas, conference rooms, elevators, employee lounges, hallways, medical facilities, meeting rooms, private offices, restrooms, and stairs. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

"Restaurant" means an eating establishment, including but not limited to coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" includes a bar area within the restaurant and outdoor areas of restaurants.

"Retail tobacco store" means a retail store used primarily for the sale of tobacco products and accessories.

"Service line" means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

"Shopping mall" means an enclosed or partially enclosed public walkway or hall area that serves to connect retail or professional establishments.

"Smoke" or "smoking" means inhaling or exhaling the fumes of tobacco or any other plant material, or burning or carrying any lighted smoking equipment for tobacco or any other plant material.

"Sports arena" means any sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller or ice rink, bowling alley, and any other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events. [L 2006, c 295, pt of S2]
[§328J-3] Prohibition in enclosed or partially enclosed places open to the public. Smoking shall be prohibited in all enclosed or partially enclosed areas open to the public, including but not limited to the following places:

(1) Airports and public transportation facilities and vehicles, including buses and taxicabs, under the authority of the State or county, and ticket, boarding, and waiting areas of public transit depots, including airports from curb to cabin and including all areas within and immediately in front of and adjacent to passenger terminals and pick-up areas, throughout the airport facility, and up to the passenger loading gates of all state airports;

(2) Aquariums, galleries, libraries, and museums;

(3) Areas available to and customarily used by the general public, including but not limited to restrooms, lobbies, reception areas, hallways, and other common areas, in businesses and nonprofit entities patronized by the public, including but not limited to professional offices, banks, laundromats, hotels, and motels;

(4) Bars;

(5) Bowling alleys;

(6) Convention facilities;

(7) Educational facilities, both public and private;

(8) Elevators;

(9) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance, except when part of the performance;

(10) Health care facilities;

(11) Hotel and motel lobbies, meeting rooms, and banquet facilities;

(12) Licensed child care and adult day care facilities;

(13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, multifamily dwellings, and other multiple-unit residential facilities;

(14) Nightclubs;

(15) Polling places;

(16) Restaurants;

(17) Retail stores;

(18) Rooms, chambers, places of meeting or public assembly under the control of an agency, board,
Prohibition in enclosed or partially enclosed places of employment. Smoking shall be prohibited in all enclosed or partially enclosed areas of places of employment. [L 2006, c 295, pt of §2]
Prohibition in sports arenas, outdoor arenas, stadiums, and amphitheaters. Smoking shall be prohibited in the enclosed or partially enclosed areas and in seating areas of sports arenas, outdoor arenas, stadiums, and amphitheaters. [L 2006, c 295, pt of §2]
[§328J-6] Presumptively reasonable distance. Smoking is prohibited within a presumptively reasonable minimum distance of twenty feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited. Owners, operators, managers, employers, or other persons who own or control a place open to the public or place of employment may seek to rebut the presumption that twenty feet is a reasonable distance by submitting an application to the department. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate into the place open to the public or place of employment. [L 2006, c 295, pt of §2]
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Facility. [L. 2006, c. 295, p. 82; am. 1 L. 2009, c. 99, §1]

restricted from access by inmates or detainees that has been designated by the warden of a correctional
facilities of a correctional facility in an area outside the secure confines of a correctional
facility, provided that smoking shall only be authorized for employees and
volunteers of correctional facilities; provided that smoking shall only be authorized for employees and

volunteers of correctional facilities.

(7) Smoke areas covered by this chapter. Provided that smoking is part of a production being filmed and
and 328-3:

(5) Outdoor areas of places of employment except those covered by the provisions of sections 328-3:

smoking is prohibited under this chapter;

where smoking is permitted; provided that smoke from those places shall not infiltrate into areas where
one or more persons, all of whom are smokers and have requested in writing to be placed in a room

and 328-3:

(4) Places and semi-private rooms in nursing homes and long-term care facilities that are occupied by

Smoking is prohibited under this chapter.

(3) Retail tobacco stores: provided that smoke from those places shall not infiltrate into areas where

Smoking is prohibited under this chapter.

(2) Non smoking may not be changed, except to add additional non-smoking rooms.

into areas where smoking is prohibited under this chapter. The signs of rooms as smoking or

All smoking rooms on the same floor shall be adjacent and smoke from those rooms shall not infiltrate

that not more than twenty per cent of rooms rented to guests in a hotel or motel may be so designated.

(1) Private residences, except when used as a licensed child care, adult day care, or health care

provisions of sections 328-3, 328-4, and 328-5:

§328-7 Exceptions. Notwithstanding any other provision of this
chapter to the contrary, the following areas shall be exempt from the

Seat with www.capitolweb.gov/Impersonate/role_cms21-49494935
§328J-8 Declaration of establishment as nonsmoking. (a)
Notwithstanding any other provision of this chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that an entire establishment, facility, or outdoor area or any part thereof as a place where smoking is prohibited.

(b) Smoking shall be prohibited in any place in which a sign conforming to the requirements of section 328J-9 is posted. [L 2006, c 295, pt of §2]
owner, operator, manager, or other person in control of that place, [placed in a manner to prevent smoking is prohibited by this chapter by the entrance to the public and posted in and at the entrance to every place open to the public]

 circled with a red bar across it, shall be clearly and conspicuously posted.

protector in representation of a burning cigarette enclosed in a red bar.

he school or the jurisdiction. A sign "No smoking" symbol, consisting of a

"smoking prohibited by law" with letters of not less than one inch in

clearly legible signs that include the words
[§328J-10] Nonretaliation and nonwaiver of rights. (a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this chapter or reports or attempts to prosecute a violation of this chapter.

(b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party. [L 2006, c 295, pt of §2]
To enforce this chapter in any court of competent jurisdiction, [L to R]

employees or employees of the department, may bring legal action to enforce this chapter in any court of competent jurisdiction, [L to R]

employees or employees of the department, may bring legal action to enforce this chapter in any court of competent jurisdiction, [L to R]
[§328J-12] Penalties. (a) A person who smokes in an area where smoking is prohibited by this chapter shall be guilty of a violation and fined not more than $50 to be deposited into the general fund. The district courts may assess costs not to exceed $25 for issuing a penal summons upon any person who fails to appear at the place within the time specified in the citation issued to the person.

(b) Any authorized police officer, upon making an arrest, shall take the name and address of the alleged violator and shall issue the violator a summons or citation in writing.

(c) There shall be provided for use by an officer or employee of the respective government jurisdictions, duly authorized to issue a summons or citation, or any police officer, a form of summons or citation for use in citing a violator of this chapter that shall not provide for the physical arrest of the violator. The form and content of this summons or citation shall be as adopted or prescribed by the administrative judge of the district court. When a citation is issued, the original of the citation shall be given to the violator; provided that the administrative judge of the district court may prescribe that the violator be given a copy of the citation and provide for the disposition of the original and any other copies. Every citation shall be consecutively numbered and each copy shall bear the same number as its respective original.

(d) If any person fails to comply with a penal summons given to the person, the court shall issue a warrant for the person's arrest.

(e) Any police officer or other officer or employee of the respective government jurisdictions may eject from the premises any person to whom a citation has been issued and who continues to smoke after the person has been so cited.

(f) A person who owns, manages, operates, or otherwise controls any place or facility designated by this chapter and fails to comply with this chapter shall be guilty of a violation and fined:

(1) Not more than $100 for a first violation;

(2) Not more than $200 for a second violation within one year of the date of the first violation; and

(3) Not more than $500 for each additional violation within one year of the date of the preceding violation.

(g) In addition to the fines established by this section, violation of this chapter by a person who owns, manages, operates, or otherwise controls any place or facility designated by this chapter may result in the suspension or revocation of any permit or license issued to the person or the place for the premises on which the violation occurred.

(h) Each day on which a violation of this chapter occurs shall be considered a separate and distinct violation. [L 2006, c 295, pt of §2]
[§328J-13] Public education. The department shall engage in a public education program to explain and clarify the purposes and requirements of this chapter to the public, and to guide owners, operators, and managers in their compliance with it. The program may include but is not limited to publication of a brochure for affected businesses and individuals explaining this chapter. [L 2006, c 295, pt of §2]
[§328J-15] County ordinances. (a) Nothing in this chapter shall be construed to supersede or in any manner affect a county smoking ordinance; provided that the ordinance is at least as protective of the rights of non-smokers as this chapter.

(b) Nothing in this chapter shall prohibit a county from enacting ordinances more stringent than this chapter. [L 2006, c 295, pt of §2]
(c) As used in this section, "characteristic vending machine" means a self-service device that dispenses cigarettes, cigars, tobacco, or any other product containing tobacco.

(1) From a lunch wagon except in parks.
[§328J-17] Distribution of sample cigarette or tobacco products, cigarette or tobacco promotional materials, and coupons redeemable for cigarette or tobacco products or promotional materials. (a) It is unlawful for any person to distribute samples of cigarette or tobacco products, or coupons redeemable for cigarette or tobacco products, in or on any public street, sidewalk, or park, or within one thousand feet of any elementary, middle or intermediate, or high school.

(b) It is unlawful for any person to distribute cigarette or tobacco promotional materials, or coupons redeemable for cigarette or tobacco promotional materials, within one thousand feet of any elementary, middle or intermediate, or high school.

(c) This section shall not apply:

(1) Within private commercial establishments, such as stores and restaurants, where tobacco products are sold, as long as distribution is not visible to the public from outside the establishment; or

(2) To commercial establishments where access to the premises by persons under eighteen years of age is prohibited by law.

(d) Any person convicted of violating this section shall be fined not more than $1,000.

(e) As used in this section:
   "Distribute" means to pass out to members of the general public free of charge for the exclusive purpose of promoting a product. [L 2006, c 295, pt of §2]
which the minimum age for admission is eighteen. In 2013, the Code section 1555(16) and any implementing regulations; and in accordance with the provisions of title 19 United States

A duty-free sales enterprise selling duty-free merchandise

This section shall not apply to:

(a) Vending machines and self-service displays.

(b) Direct, face-to-face exchange between the retailer and the consumer.

c) Except as otherwise provided under this section, a retailer may sell cigarettes, snuff, and tobacco products only in categories of cigarettes and tobacco products.
CHAPTER 328K
SMOKING

REPEALED. L 2006, c 295, §3.

Cross References

For present provisions, see chapter 328J.

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