

**QUESTIONS FROM THE SMOKING IN PUBLIC PLACES
COMMUNITY MEETINGS**

Question	Response
<p>1. As per Sec. 10-6-2 (A – D), are we going to or can we issue citations to <u>individuals</u> who are committing an offense by smoking in a public place or smoking within 15’ of an entrance/openable window in lieu of the owner/mgr of the establishment? If we are to “cite” individual patrons (as opposed to owners), wouldn’t that be a matter for APD?</p>	<p>If smoking occurs within 15’ on a outdoor portion of the establishment which is not a public right-of-way, the owner must ask the patron to stop smoking. The owner should follow their standard procedures for violations of house rules.</p>
<p>2. What are the implications of the term “tobacco” not being mentioned in the ordinance?”</p>	<p>No implications. “Tobacco” is referenced in the definition of “Retail Tobacco Store” and the intent of the ordinance is to include “tobacco” when referring to “cigar” and “cigarette.”</p>
<p>3. Is a “hookah” (a.k.a. water pipe) considered a smoking accessory prohibited by the current ordinance?</p>	<p>The hookah is a “device” used for smoking and considered an accessory.</p>
<p>4. Would a “hookah” bar be considered a “retail tobacco store?”</p>	<p>Only if the sale of other products is “incidental” – defined as occurring by chance or isolation...an unpredictable or minor accompaniment.</p>
<p>5. As per Sec. 10-6-2 (E), what specifically does “<u>necessary steps</u>” mean? The <u>owner or operator</u> of a public place commits an offense if the person <u>fails to take necessary steps to prevent or stop another person from smoking in an enclosed area in a public place.</u></p>	<p>Necessary steps include no smoking signs, absence of ash trays, asking the patron to stop smoking, asking the patron to leave the establishment if they refuse to stop smoking and following your standard business practices for enforcing house rules.</p>

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<p>6. What items specifically meet the definition of “ashtray” and “smoking accessory?” 10-6-8 (C) i.e., are matchbooks in the absence of smoking an accessory?</p>	<p>An ashtray is any object used to dispose of ashes resulting from smoking. A matchbook would be considered an accessory only it was being used for smoking.</p>
<p>7. How can establishment owners legally ask an individual to move 15’ away from the entrance when they are on a “public” walkway?</p>	<p>Owners cannot and are not expected to.</p>
<p>8. If 10-6-8 “Signs Required” was not included in the approved petition, is it legal that the signage requirement was adopted in the ordinance?</p>	<p>The approved petition does include the signage language.</p>
<p>9. Is it a violation of the ordinance to burn a candle, with respect to the definition of “Smoking “; 10-6-1 (8) i.e., “burning....combustible substance?”</p>	<p>Burning a candle does not reasonably meet the definition of smoking and HHSD would not enforce the Code against burning candles.</p>
<p>10. Per Sec. 10-6-11 (A), is a Class C misdemeanor legally punishable by up to \$2000? Or is the max penalty \$500? Is a Class C misdemeanor considered a “criminal” offense?</p>	<p>A misdemeanor is considered a criminal offense. The ordinance reads “\$2,000” and it would be a judge’s decision as to what fine amount was imposed.</p>
<p>11. What specific individuals may be held liable for violations of the ordinance in an establishment? Bartenders, mgrs, wait-staff, etc. in the absence of a mgr?</p>	<p>An owner/operator will be issued legal notice when violations are observed. If the owner is not present at the time of the observed violation, the operator would be any person “in charge.”</p>
<p>12. Can we adopt a program for staff to become licensed such that they are responsible for enforcing the smoking ordinance when they observe a violation and the owner is not held directly liable? (similar to bartender liabilities)</p>	<p>We choose not to adopt such a program. Again, if the owner is not present, the staff “in charge” would be issued a notice of violation.</p>

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<p>13. Please provide clarification of Sec. 10-6-10 (A) This section is cumulative of the other laws providing enforcement authority and the meaning of “<u>injunctive relief</u>” in 10-6-10 (D) The Director of the Health and Human Services Department may enforce this chapter and seek injunctive relief.</p>	<p>This Dept. is able to and must enforce the smoking ordinance in the same manner and to the extent of other laws providing enforcement authority.</p> <p>“Injunctive relief” means the Director of HHSD may ask a judge to enforce the ordinance and impose penalties for non-compliance.</p>
<p>14. Under the new ordinance, would a bar owner be permitted to allow smoking if their establishment was strictly “members only” or strictly private...i.e, not open to the general public/not a public establishment, similar to a fraternal organization?</p>	<p>No. If an establishment does not meet the criteria for an exemption set forth by the ordinance, such a “private” bar or club would still contain “workplaces” in which smoking is prohibited.</p>
<p>15. A question was raised about why the City is not refunding permit fees to establishment owners for the time their permits are no longer valid after 9-1-05. The term “takings” was used by one of the attendees in reference to the fees paid to the City prior to a change in the ordinance.</p>	<p>The term “takings” does not refer to permit fees collected by the City. Permit fees will not be refunded once a permit has been issued.</p>
<p>16. Is a fire exit considered an entrance and, thus, required to meet the 15’ setback distance?</p>	<p>Yes. A fire exit could be used as an exit, and thus, an entry; i.e., a patron could partially exit and either return or allow other patrons in the establishment.</p>