

Cherokee Nation Code Annotated
Title 21: Crimes and Punishments
Part V. Crimes Against Public Health and Safety
Chapter 50: Tobacco
§ 1247. Smoking in certain public areas prohibited—Punishment

Cite as: 21 CNCA § 1247

A. The possession of lighted tobacco in any form is a public nuisance and dangerous to public health and is hereby prohibited when such possession is in any indoor place used by or open to the public, whether indoors or outdoors, public transportation, or any indoor workplace, except where specifically allowed by law. Commercial airport operators may prohibit the use of lighted tobacco or lighted marijuana or the vaping of marijuana in any area that is open to or used by the public whether located indoors or outdoors, provided that the outdoor area is within one hundred seventy-five (175) feet from an entrance.

As used in this section, "indoor workplace" means any indoor place of employment or employment-type service for or at the request of another individual or individuals, or any public or private entity, whether part-time or full-time and whether for compensation or not. Such services shall include, without limitation, any service performed by an owner, employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant or volunteer. An indoor workplace includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees, and all space between a floor and ceiling that is predominantly or totally enclosed by walls or windows, regardless of doors, doorways, open or closed windows, stairways, or the like. The provisions of this section shall apply to such indoor workplace at any given time, whether or not work is being performed.

B. All buildings and other properties, or portions thereof, owned or operated by this Nation shall be designated as nonsmoking. Smoking tobacco shall only be allowed in designated outdoor smoking areas.

C. No tobacco or marijuana smoking or marijuana vaping shall be allowed within twenty-five (25) feet of the entrance or exit of any building specified in subsection B of this section.

The restrictions on tobacco smoking provided in this section shall not apply to the following:

1. The room or rooms where licensed charitable bingo games are being operated, but only during the hours of operation of such games;

2. The room or rooms where bingo, gambling, or other activities licensed, regulated, or operated by the Cherokee Nation under Title 4 of this Code.
3. Up to twenty-five percent (25%) of the guest rooms at a hotel or other lodging establishment;
4. Retail tobacco stores predominantly engaged in the sale of tobacco products and accessories and in which the sale of other products is merely incidental and in which no food or beverage is sold or served for consumption on the premises;
5. Workplaces where only the owner or operator of the workplace, or the immediate family of the owner or operator, performs any work in the workplace, and the workplace has only incidental public access. "Incidental public access" means that a place of business has only an occasional person, who is not an employee, present at the business to transact business or make a delivery. It does not include businesses that depend on walk-in customers for any part of their business;
6. Workplaces occupied exclusively by one or more tobacco smokers, if the workplace has only incidental public access;
7. Private offices occupied exclusively by one or more smokers;
8. Workplaces within private residences, except that smoking tobacco or marijuana or vaping marijuana shall not be allowed inside any private residence that is used as a licensed child care facility during hours of operation;
9. Medical research or treatment centers, if tobacco smoking is integral to the research or treatment. Furthermore, the restrictions on smoking or vaping of marijuana provided in this section shall not apply to medical research or treatment centers, if marijuana smoking or vaping is integral to the research or treatment;
10. A facility operated by a post or organization of past or present members of the Armed Forces of the United States which is exempt from taxation pursuant to Section 501(c)(8), 501(c)(10) or 501(c)(19) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(8), 501(c)(10) or 501(c)(19), when such facility is utilized exclusively by its members and their families and for the conduct of post or organization nonprofit operations except during an event or activity which is open to the public; and
11. Any outdoor seating area of a restaurant; provided, smoking tobacco or smoking or vaping marijuana shall not be allowed within fifteen (15) feet of any exterior public doorway or any air intake of a restaurant.

E. An employer not otherwise restricted from doing so may elect to provide tobacco smoking rooms where no work is performed except for cleaning and maintenance during the time the room is not in use for tobacco smoking, provided each tobacco smoking room is fully enclosed and exhausted directly to the outside in such a manner that no tobacco smoke can drift or circulate into a nonsmoking area. No exhaust from a tobacco smoking room shall be located within fifteen (15) feet of any entrance, exit or air intake.

F. If tobacco smoking is to be permitted in any space exempted in this section of this section or in a tobacco smoking room pursuant to subsection H of this section, such tobacco smoking space must either occupy the entire enclosed indoor space or, if it shares the enclosed space with any nonsmoking areas, the tobacco smoking space shall be fully enclosed, exhausted directly to the outside with no air from the tobacco smoking space circulated to any nonsmoking area, and under negative air pressure so that no tobacco smoke can drift or circulate into a nonsmoking area when a door to an adjacent nonsmoking area is opened. Air from a tobacco smoking room shall not be exhausted within fifteen (15) feet of any entrance, exit or air intake. Any employer may choose a more restrictive tobacco smoking policy, including being totally tobacco smoke free.

G. Notwithstanding any other provision of this section, until March 1, 2006, restaurants may have designated tobacco smoking and nonsmoking areas or may be designated as being a totally nonsmoking area. Beginning March 1, 2006, restaurants shall be totally nonsmoking or may provide nonsmoking areas and designated tobacco smoking rooms. Food and beverage may be served in such designated tobacco smoking rooms which shall be in a location which is fully enclosed, directly exhausted to the outside, under negative air pressure so tobacco smoke cannot escape when a door is opened, and no air is recirculated to nonsmoking areas of the building. No exhaust from such room shall be located within twenty-five (25) feet of any entrance, exit or air intake. Such room shall be subject to verification for compliance with the provisions of this subsection by the State Department of Health.

H. The person who owns or operates a place where tobacco smoking or use is prohibited by law shall be responsible for posting a sign or decal, at least four (4) inches by two (2) inches in size, at each entrance to the building indicating that the place is smoke-free or tobacco-free.

I. Responsibility for posting signs or decals shall be as follows:

1. In privately owned facilities, the owner or lessee, if a lessee is in possession of the facilities, shall be responsible;

2. In corporately owned facilities, the manager and/or supervisor of the facility involved shall be responsible; and

3. In publicly owned facilities, the manager and/or supervisor of the facility shall be responsible.

J. Any person who knowingly violates the provisions of this section shall be punished by a citation and fine of not more than One Hundred Dollars (\$100.00).

Historical Data

LA 10-90, eff. November 13, 1990. Amended LA 07-21, eff. February 22, 2021.