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MEMORANDUM

To: Mayor and City Council

From: Cecil McLendon & Bill Riley, City Attorneys

Date: December 9, 2019

Subject: **Amendment to Article III - Clean Indoor Air & Chapter 25 – Parks And Recreation**

ITEM DESCRIPTION

Adds the use of e-cigarettes, hookahs and vaping to the definition of smoking and hereafter will prohibit the use of these same items where smoking is not currently allowed in our Clean Indoor Air and Parks And Recreation ordinances.

The changes also expand and updates our Findings And Purpose section and adds a Public Education provision.

ARTICLE III. – CLEAN INDOOR AIR

Sec. 24-66. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Child care facility means any institution, society, agency, or facility, whether incorporated or not, which either primarily or incidentally provides fulltime care for children under 17 years of age outside of their own homes, subject to such exceptions as may be provided in rules and regulations of the state board of human resources, as defined by O.C.G.A. § 49-5-3, as amended.

Dining area means an interior or exterior (such as porch, patio or courtyard) area containing a counter or tables upon which food is served.

Electronic Smoking Device means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor. Devices used pursuant to a physician's written prescription shall be excluded from this definition.

Employee means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

Employer means any person who employs the services of an individual person.

Enclosed means closed in by a roof and at least three sides, with appropriate openings for ingress and egress. It includes areas commonly described as public lobbies or lobbies when they are in an area that is enclosed as defined herein.

Establishment means any business, store, office or other place where goods or services are sold or provided as part of a commercial venture. The term "establishment" includes, but is not limited to, the following:

- (1) Automobile dealerships, furniture showrooms or other showrooms for the display of merchandise offered for sale;
- (2) Grocery, pharmacy, specialty, department and other stores which sell goods or merchandise;
- (3) Service stations, stores or shops for the repair or maintenance of appliances, shoes, motor vehicles or other items or products;
- (4) Barbershops, beauty shops, cleaners, laundromats and other establishments offering services to the general public;
- (5) Video arcade, pool hall and other amusement centers;
- (6) Offices providing professional services such as legal, medical, dental, engineering, and architectural services;
- (7) Banks, savings and loan offices and other financial establishments;
- (8) Hotels and motels and other places that provide accommodations to the public; and
- (9) Restaurants and cafeterias.

Freestanding bar means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of beverages, including, but not limited to, taverns, nightclubs, cocktail lounges and cabarets.

Health care facility means any licensed general or specialized hospital, institutional infirmary, public health center or diagnostic and treatment center, as defined by O.C.G.A. § 31-7-1(2), as amended.

Hookah means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.

Intermediate care (nursing) home means any longterm custodial care facility that provides for the physical and mental welfare of the aged.

Personal care home.

- (1) The term "personal care home" means a residential facility having at least 25 beds and providing, for compensation, protective care and oversight of ambulatory, nonrelated persons who need a monitored environment but who do not have injuries or disabilities which require chronic or convalescent care, including medical, nursing or intermediate care. Personal care homes include those facilities which monitor daily residents' functioning and location, have the capability for crisis intervention and provide supervision in areas of nutrition, medication and provision of transient medical care. Personal care homes shall also mean residential care facilities for the elderly.
- (2) The term "personal care home" does not include old age residences which are devoted to independent living units with kitchen facilities in which residents have the option of preparing and serving some or all of their own meals, or boarding facilities which do not provide personal care.

Place of employment means any enclosed area under the control of a public or private employer which employees frequent during the course of employment, including, but not limited to, work areas, restrooms, hallways, employee lounges, cafeterias and snack bars, conference and meeting rooms, lobbies and reception areas. A private residence is not a place of employment unless it is used as a child care facility, an adult day care facility or a health care facility. The dining area of a restaurant shall be treated as a place of employment under this article.

Public place means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, restaurants, stores, waiting rooms, lobbies, reception areas, hallways, public transit, restrooms, enclosed shopping malls, elevators, service lines, service stations, offices providing professional services, banks and other financial institutions, educational facilities, recreational facilities, health care facilities, child care facilities, auditoriums, theaters, arenas, meeting rooms, repair shops, automobile dealerships, convention halls, bowling facilities, polling places and bingo games. Porches, courtyards or decks with a contiguous connection to a public place shall be considered a public place. A private residence is not a public place unless it is used as a child care facility, an adult day care facility or a health care facility.

Restaurant.

- (1) The term "restaurant" means any establishment or area which is primarily devoted to the serving of food to the public or guests and which contains a dining area. The term shall include any dining area located within a health care, educational or child care facility. Food courts within enclosed shopping malls shall be treated as restaurants under this article.
- (2) The term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a freestanding bar area as defined in this section.

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

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

~~Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.~~ means inhaling, exhaling, burning, or

carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

(Comp. Ords. 2008, ch. 16, art. 6, § 3)

Sec. 24-67. - Violations and penalties.

Any person who violates any provision of this article shall be subject to the following penalties:

- (1) A fine not exceeding \$50.00 for a first violation;
- (2) A fine not exceeding \$75.00 for a second violation within one year; and
- (3) A fine not exceeding \$100.00 for each additional violation within one year.

(Comp. Ords. 2008, ch. 16, art. 6, § 12)

Sec. 24-68. - Findings and purpose.

(a) The Mayor and eCity Ceouncil does hereby ~~adopts the findings of the county that:~~

- ~~(1) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer.~~
- ~~(2) Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.~~

~~(b) Accordingly, the city council finds and declares that the purposes of this article are:~~

- ~~(1) To protect the public health and welfare by prohibiting smoking in public places and public and private places of employment;~~
- ~~(2) To guarantee the right of nonsmokers to breathe smoke-free air; and~~
- ~~(3) To recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.~~

The 2006 U.S. Surgeon General's Report, The Health Consequences of Involuntary Exposure to Tobacco Smoke, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry.¹ According to the 2010 U.S. Surgeon

General's Report, How Tobacco Smoke Causes Disease, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke.² According to the 2014 U.S. Surgeon General's Report, The Health Consequences of Smoking—50 Years of Progress, secondhand smoke exposure causes stroke in nonsmokers. The report also found that since the 1964 Surgeon General's Report on Smoking and Health, 2.5 million nonsmokers have died from diseases caused by tobacco smoke.³

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually.⁴

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen.⁵

Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death.⁶

There is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke.⁷

In reviewing 11 studies concluding that communities see an immediate reduction in heart attack admissions after the implementation of comprehensive smokefree laws, the Institute of Medicine of the National Academies concluded that data consistently demonstrate that secondhand smoke exposure increases the risk of coronary heart disease and heart attacks and that smokefree laws reduce heart attacks.⁸

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.⁹

Studies measuring cotinine (metabolized nicotine) and NNAL (metabolized nitrosamine NNK, a tobacco-specific carcinogen linked to lung cancer) in hospitality workers find dramatic reductions in the levels of these biomarkers after a smokefree law takes effect. Average cotinine levels of New York City restaurant and bar workers decreased by 85% after the city's smokefree law went into effect.¹⁰ After the implementation of Ontario, Canada's Smokefree Indoor Air Law, levels of NNAL were reduced by 52% in nonsmoking casino employees and cotinine levels fell by 98%.¹¹

Smokefree indoor air laws result in a significant reduction in fine particulate matter and improved air quality. A Grand Rapids, Michigan study that monitored six restaurants before and after implementation of the state's smokefree air law found that PM2.5 fine particulate matter was reduced by 92 percent after the law went into effect, indicating that the vast majority of indoor air pollution in all six venues was due to secondhand smoke. The results in Grand Rapids were consistent with results in Wilmington, Delaware; Boston, Massachusetts; and Western New York.¹²

Following a Health Hazard Evaluation of Las Vegas casino employees' secondhand smoke exposure in the workplace, which included indoor air quality tests and biomarker assessments, the National Institute of Occupational Safety & Health (NIOSH) concluded that the casino employees are exposed to dangerous levels of secondhand smoke at work and that their bodies absorb high levels of tobacco-specific chemicals NNK and cotinine during work shifts. NIOSH also concluded that the "best means of eliminating workplace exposure to [secondhand smoke] is to ban all smoking in the casinos."¹³ A subsequent study in Nevada, whose Clean Indoor Air Act permits smoking in designated areas of casinos, bars, and taverns, indicates that strong 100% smokefree laws are the only effective way to protect indoor air quality. The study sampled the air quality in 15 casino gaming areas and corresponding nonsmoking areas, and the results indicated that the Clean Indoor Air Act failed to protect air quality in the nonsmoking areas, including children-friendly areas.¹⁴

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.¹⁵ The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability.¹⁶

The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking.¹⁷

Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smokefree environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entirety. In 2015, ASHRAE amended its ventilation Standard for Acceptable Indoor Air Quality (62.1) to include an environment that is completely free from marijuana smoke and emissions from electronic [smoking devices](#).¹⁸

During periods of active smoking, peak and average outdoor tobacco smoke (OTS) levels measured in outdoor cafes and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations.¹⁹ Nonsmokers who spend six-hour periods in outdoor smoking sections of bars and restaurants

experience a significant increase in levels of cotinine when compared to the cotinine levels in a smokefree outdoor area.²⁰

Residual tobacco contamination, or “thirdhand smoke,” from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This residue can linger in spaces long after smoking has ceased, continuing to expose people to tobacco toxins, which represent an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion.²¹. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings, and gases can be absorbed into carpets, draperies, and other upholsteries, which can then be reemitted (off-gassed) back into the air and form harmful compounds.²² Tobacco residue is noticeably present in dust throughout places where smoking has occurred.²³ The dangers of residual tobacco contamination are present in spaces that are not 100% smokefree, such as in nonsmoking rooms of hotels that allow smoking in some guest rooms. Partial smoking restrictions in hotels do not protect non-smoking guests from exposure to tobacco smoke and tobacco-specific carcinogens.²⁴

Electronic smoking devices, commonly referred to as electronic cigarettes, or “e-cigarettes,” closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid that typically contains nicotine, heated through an electronic ignition system. ESD emissions are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke.²⁵ The January 2018 National Academies of Sciences, Engineering, and Medicine publication states that there is conclusive evidence that in addition to nicotine, most ESDs contain and emit numerous potentially toxic substances and increase airborne concentrations of particulate matter and nicotine in indoor environments. Studies show that people exposed to ESD aerosol absorb nicotine (measured as cotinine) at levels comparable to passive smokers. Many of the elements identified in the aerosol are known to cause respiratory distress and disease. ESD exposure damages lung tissues. Human lung cells that are exposed to ESD aerosol and flavorings — especially cinnamon — show increased oxidative stress and inflammatory responses.²⁶ Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions. The World Health Organization (WHO), the National Institute for Occupational Safety and Health (NIOSH), and the American Industrial Hygiene Association (AIHA) recommend that ESDs not be used in smokefree environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smokefree laws.²⁷

Secondhand smoke from combusted marijuana contains fine particulate matter that can be breathed deeply into the lungs, which can cause lung irritation and asthma attacks, thus making respiratory infections more likely. Exposure to fine particulate matter can exacerbate health problems especially for people with respiratory conditions like asthma, bronchitis, or COPD.^{28, 29} Secondhand smoke from marijuana also has many of the same chemicals as smoke from tobacco, including those linked to lung cancer.^{30, 31} More research is needed, but the current body of science shows that both tobacco and marijuana smoke may have similar harmful cardiovascular effects.^{32, 33} Thus, In the interest of public health, the use of combustible or aerosolized marijuana should be prohibited wherever tobacco smoking is prohibited.

The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion in lost productivity.³⁴

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety.³⁵

There is no legal or constitutional “right to smoke.”³⁶ Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous.³⁷

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses.³⁸

The smoking of tobacco, hookahs, or marijuana and the use of ESDs are forms of air pollution and constitute both a danger to health and a material public nuisance.

Accordingly, the City of Dunwoody Mayor and Council finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

(Comp. Ords. 2008, ch. 16, art. 6, § 2)

Sec. 24-69. - Other applicable laws; disclaimer.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. By regulating smoking, the city is assuming an undertaking only to promote the general health and welfare of its citizens. By this enactment, neither the city, its officers nor its employees are liable in money damages to any person who claims that any breach of this article caused injury.

(Comp. Ords. 2008, ch. 16, art. 6, § 13)

Sec. 24-70. - Prohibited smoking.

Except as otherwise provided in this article, smoking is prohibited in all public places and places of employment within the city.

(Comp. Ords. 2008, ch. 16, art. 6, § 4)

Sec. 24-71. - Prohibition of smoking applicable to city property.

This article shall apply to all enclosed facilities including buildings and vehicles owned or operated by the city.

(Comp. Ords. 2008, ch. 16, art. 6, § 5)

Sec. 24-72. - Reasonable distance.

Smoking may occur outdoors but no less than 20 feet from any entrance to any public place or place of employment where smoking is prohibited.

(Comp. Ords. 2008, ch. 16, art. 6, § 6)

Sec. 24-73. - Exceptions.

- (a) The smoking prohibition shall not apply in the following areas:
 - (1) Freestanding bar areas;
 - (2) Retail tobacco stores;
 - (3) Adult cabarets and adult motion picture theaters, as defined by this Code;
 - (4) Private residences, including private residences which may serve as an office workplace, except if used as a child care, adult day care or health care facility;
 - (5) Any property owned or leased by counties, the state or the federal government;
 - (6) Designated smoking rooms in hotels and motels rented by guests, provided that such designated smoking rooms shall not comprise more than 25 percent of the total number of rooms available for rent; and
 - (7) Outdoor areas of places of employment, except where an owner or employer declares that the outdoor area is a smokefree environment, as provided in this article.
- (b) Notwithstanding any other provision of this article, any owner, operator, manager or other person who controls any establishment described in this article may declare that the entire establishment is a nonsmoking establishment.

(Comp. Ords. 2008, ch. 16, art. 6, § 7)

Sec. 24-74. - Employer's responsibility.

- (a) It is the responsibility of employers to provide a smoke-free workplace for all employees of public places and places of employment, but employers are not required to make expenditures or structural changes to create a smoke-free work area.
- (b) Each employer having an enclosed place of employment located within the city is encouraged to adopt, implement, make known and maintain a written smoking policy that incorporates the smoking prohibitions of this article.
- (c) The written smoking policy should be provided to all employees.

(Comp. Ords. 2008, ch. 16, art. 6, § 8)

Sec. 24-75. - Posting of signs and notification.

- (a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every building where smoking is prohibited by this article by the owner, operator, manager or other person having control of such building or area.

- (b) Every public place where smoking is prohibited by this article shall have posted at every entrance into a public place and place of employment a conspicuous sign clearly stating that smoking is prohibited.
- (c) Notice of the provisions set forth in this article shall be given to all applicants for a business license in the city.

(Comp. Ords. 2008, ch. 16, art. 6, § 9)

Sec. 24-76. - Enforcement.

- (a) Any police officer, as defined by state law, or city code enforcement officer may issue a citation for any violation of this article.
- (b) Any citizen who desires to register a complaint under this article may initiate enforcement with the chief of police or designee or the city code enforcement.
- (c) Any owner, operator or manager of any establishment regulated by this article shall inform persons whom they witness violate this article of the appropriate provisions, and request compliance. In the event persons violating this article refuse to comply with this article after being informed by such owner, operator or manager, the person smoking, and not the owner, operator or manager, shall be subject to an action for violation of this article.

(Comp. Ords. 2008, ch. 16, art. 6, § 10)

Sec. 24-77. - Nonretaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke-free environment as afforded by this article.

(Comp. Ords. 2008, ch. 16, art. 6, § 11)

Sec. 24-78. – Public Education.

The City Manager or his designee shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

References from Sec. 24-68. – Findings and purpose.

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- ¹² Repace, J.L., "Air quality in Grand Rapids restaurant bars: before and after Michigan's Dr. Ron Davis State Smoke-free Law," *Lansing, MI: Michigan Department of Community Health, Tobacco Section*, June 16, 2011.
- ¹³ *Health hazard evaluation report: environmental and biological assessment of environmental tobacco smoke exposure among casino dealers*, Las Vegas, NV. By Achutan C, West C, Mueller C, Boudreau Y, Mead K. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, NIOSH HETA No. 2005-0076 and 2005-0201-3080, May 2009.
- ¹⁴ Cochran, C.; Henriques, D.; York, N.; Lee, K., "Risk of exposure to second hand smoke for adolescents in Las Vegas casinos: an evaluation of the Nevada Clean Indoor Air Act," *Journal of Health and Human Services Administration* 35(2): 231-252, Fall 2012.
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Secs. 24-~~7879~~—24-97. - Reserved.

Sec. **25-30**. - Smoking prohibited.

It shall be unlawful to smoke in any recreational facility, whether indoors or outdoors. For the purposes of this section, smoking shall ~~include cigarettes and other legal and illegal substances, any controlled substances, and smoking in any manner, including any pipes and materials, whether organic or inorganic, utilized for lighting and inhaling thereof~~ be defined as in ARTICLE III. – CLEAN INDOOR AIR.

(Ord. No. 2011-01-03, § 1, 1-24-2011)