**Frisco 2015**

**§ 127-41. Legislative Intent. [§127-41 - §127-29 repealed and replaced in their entirety 08-08-06, Ord. 06-25; Amended 01-14-14, Ord. 13-11]**

The Town Council finds, determines and declares that it is in the best interest of the people of this Town to protect nonsmokers from involuntary exposure to environmental smoke in most indoor areas open to the public, public meetings, food service establishments, and places of employment. Therefore, the Town council hereby declares that the purpose of Sections 127-42 through 127-47 is to preserve and improve the health, comfort, and environment of the people of this Town by limiting exposure to environmental smoke.

**§ 127-42. Definitions. [Amended 01-14-14, Ord. 13-11; 02-10-15, Ord. 15-01]**

The following words, terms and phrases, when used in Sections 127-41 through 127- 47 of this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Auditorium* means the part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.

*Bar* means any indoor area that is operated and licensed under Article 47 of Title 12, C.R.S., primarily for the sale and service of alcohol beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages.

*Cigar-tobacco bar* means a bar that, in the calendar year ending December 31, 2005, generated at least five percent (5%) or more of its total annual gross income or fifty thousand dollars ($50,000) in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent (5%) of its total annual gross income or fifty thousand dollars ($50,000) in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a “cigar-tobacco bar” and shall not thereafter be included in the definition regardless of sales figures.

*Employee* means any person who:
1. Performs any type of work for benefit of another in consideration of direct or

indirect wages or profit; or
2. Provides uncompensated work or services to a business or nonprofit entity.

*Employee* includes every person described in paragraph (a) of this subsection (5), regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.

*Employer* means any person, partnership, association, corporation, or nonprofit entity that employs one (1) or more persons. *Employer* includes, without limitation, the legislative, executive, and judicial branches of state government; any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission or agency; or any other separate corporate instrumentality or unit of state or local government.

*Environmental smoke or secondhand smoke* means gases, particles and vapors released into the air as a result of the combustion, electrical ignition, vaporization or heating of any substance, including but not limited to tobacco, nicotine or a marijuana product, also known as “sidestream smoke,” and such gases, particles and vapors that are exhaled by the smoker.

*Food service establishment* means any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.

*Indoor area* means any enclosed area or portion thereof. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area.

*Marijuana* means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate.

*Place of employment* means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

*Public building* means any building owned or operated by:

1. The state, including the legislative, executive, and judicial branches of state government;
2. Any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, a special district, an authority, a commission, or an agency of any of the same; or
3. Any other separate corporate instrumentality or unit of state or local government.

*Public meeting* means any meeting open to the public pursuant to Part 4 of Article 6 of Title 24, C.R.S., or any other law of this state.

*Smoke-free work area* means an indoor area in a place of employment where smoking is prohibited under this Chapter.

*Smoking* means the burning, heating, electrical ignition or vaporization of a lighted cigarette, cigar, pipe, or any other similar product, device, matter or substance that contains tobacco, nicotine, or marijuana, or any other substance or combination thereof, and the inhaling and exhaling of environmental smoke created thereby.

*Tobacco* means cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. *Tobacco* also includes cloves and any other plant matter or product that is packaged for smoking.

*Tobacco Business* means a sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

*Work area* means an area in a place of employment where one or more employees are routinely assigned and perform services for or on behalf of their employer.

**§ 127-43. General Smoking Restrictions. [Amended 01-14-14, Ord. 13-11]**

A. Except as provided in Section127-44, and in order to reduce the levels of exposure to environmental smoke, smoking shall not be permitted and no person shall smoke in any indoor area, including, but not limited to:

1. Public meeting places;
2. Elevators;
3. Government-owned or operated means of mass transportation, including, but not limited to, buses, vans, and trains;
4. Taxicabs and limousines;
5. Grocery stores;
6. Gymnasiums;
7. Jury waiting and deliberation rooms;
8. Courtrooms;
9. Child day care facilities;
10. Health care facilities including hospitals, health care clinics, doctor’s offices, and other health care related facilities;
11. (I) Any place of employment that is not exempted.

(II) In the case of employers who own facilities otherwise exempted from this Chapter, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe environmental tobacco smoke. Every employee shall have a right to work in an area free of environmental tobacco smoke.

1. Food service establishments;
2. Bars;

14.Limited gaming facilities and any other facilities in which any gaming or gambling activity is conducted;

1. Indoor sports arenas;
2. Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
3. Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent (75%) of the sleeping quarters within a hotel or motel that are rented to guests;
4. Bowling alleys;
5. Billiard or pool halls;
6. Facilities in which games of chance are conducted;
7. The common areas of retirements facilities, publicly owned housing facilities, and nursing homes, not including any resident’s private residential quarters;
8. Public buildings;
9. Auditoria;
10. Theatres;
11. Museums;
12. Libraries;

27. To the extent not otherwise provided in Section 25-14-103.5, C.R.S., public and nonpublic schools; and

28. Other educational and vocational institutions

B. A cigar-tobacco bar shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005. A cigar-tobacco bar shall display signage in at least one (1) conspicuous place and at least four inches (4”) by six inches (6”) in size stating: “Smoking Allowed. Children under eighteen (18) years of age must be accompanied by a parent or guardian.”

**§ 127-44. Exceptions to Smoking Restrictions.**

Section 127-43 of this Chapter shall not apply to:

1. Private homes, private residences, and private automobiles; except that Section 127-43 of this Chapter shall apply if any such home, residence, or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation.
2. Limousinesunderprivatehire;
3. A hotel or motel room rented to one (1) or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent (25%);
4. Anyretailtobaccobusiness;
5. Acigar-tobaccobar;
6. The outdoor area of any business;
7. A place of employment that is not open to the public and that is under the control of an employer that employs three (3) or fewer employees;
8. A private nonresidential building on a farm or ranch, as defined in Section 39-1- 102, C.R.S., that has annual gross income of less than five hundred thousand dollars ($500,000); or
9. The retail floor plan, as defined in Section 12-47.1-509, C.R.S., of a licensed casino.

**§ 127-45. Optional Prohibitions.**

A. The owner or manager of any place not specifically listed in Section 127-43, including a place otherwise exempted under Section 127-44, may post signs prohibiting smoking or providing smoking and nonsmoking areas. Such posting shall have the effect of including such place or the designated nonsmoking portion thereof, in the places where smoking is prohibited or restricted pursuant to this Chapter.

B. If the owner or manager of a place not specifically listed in Section 127-43, including a place otherwise exempted under Section 127-44, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by Section 127-43(A) (11) (II), the owner or manager shall post a sign or signs in the smoke-free work area as provided in subsection A of this Section.

**§ 127-46. Other Applicable Regulations of Smoking.**

This Chapter shall not be construed to permit smoking where it is otherwise restricted by any other applicable law.

**§ 127-47. Unlawful Acts – Penalty – Disposition of Fines and Surcharges.**

1. It is unlawful for a person who owns, manages, operates, or otherwise controls the use of a premise subject to Sections 127-41 through 127-47 of this Chapter to violate any provision of said sections of this Chapter.
2. It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to this Chapter.
3. A person who violates any provision of Section 127-41 through 127-47 of this Chapter is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars ($200) for a first violation within a calendar year, a fine not to exceed three hundred dollars ($300) for a second violation within a calendar year, and a fine not to exceed five hundred dollars ($500) for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation.
4. All judges, clerks of a court of record, or other officers imposing or receiving fines collected pursuant to or as a result of a conviction of any persons for a violation of any provision of Section 127-41 through 127-47 of this Chapter shall transmit all such moneys so collected in the following manner: Seventy-five percent (75%) of any such fine for a violation occurring with the corporate limits of the Town shall be transmitted to the treasurer of the Town and the remaining twenty-five percent (25%) shall be transmitted to the state treasurer, who shall credit the same to the general fund.