

TITLE 13 - HEALTH AND QUALITY OF ENVIRONMENT
Chapter 13.16. SMOKING IN PUBLIC PLACES

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Sec. 13.16.010. Short title.

This Chapter shall be known as and it may be cited as the "City of Aspen Clean Indoor Air Act."

(Code 1971, § 11-4.1; Ord. No. 35-1985 , § 1)

Sec. 13.16.020. Legislative intent and purposes.

The City Council finds that the smoking of tobacco or any other weed or plant, is a form of air pollution, a positive danger to health and a material annoyance, inconvenience, nuisance, discomfort and a health hazard to those who are present in confined spaces and in order to serve public health, safety and welfare, the declared purpose of this Chapter is to control and limit the smoking of tobacco or any weed or plant, in public places and places of employment as hereinafter set forth. The City Council intends that the restrictions and limitations of this Chapter be viewed as minimum standards and should not be construed as limiting in any way the authority of persons in control of a public place from prohibiting smoking within their establishment altogether.

(Code 1971, § 11-4.2; Ord. No. 35-1985 , § 1)

Sec. 13.16.030. Definitions.

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

Bar area means an area comprising fifteen (15) feet or less from the perimeter of a permanent counter which is primarily devoted to serving alcoholic beverages and within which the service of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term *bar area* shall not include the restaurant/dining area. The City Council (or its designee) may extend the fifteen-foot limitation to encompass a larger area upon a demonstration by the owner of an establishment that such area is primarily devoted to the serving of alcoholic beverages (such as a barroom, cocktail lounge or similar facility) and the service of food is only incidental to the consumption of such beverages.

Dining area means any enclosed area containing a counter or tables upon which meals are served, excluding the bar area.

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

Employer means any person, partnership or corporation, including municipal corporation who employs the services of any person(s).

Enclosed means closed-in by a roof and four (4) walls with appropriate openings for ingress and egress and is not intended to mean areas commonly described as public lobbies.

Independently ventilated means that the ventilation system for any area in which smoking is permitted and the ventilation system for any nonsmoking area do not have a connection which allows for the mixing of air from

the smoking and nonsmoking areas. To be considered independently ventilated, the area shall be sufficiently sealed to prevent the escape of any smoke to adjoining areas by the use of appropriate dry wall, windows, doors, paints and sealants. The ventilation system shall be designed and operated so that there are no discernable tobacco odors detectable outside the building or in adjacent spaces in a multi-use building. The ventilation system shall be an engineered system approved by the Community Development Department. The Community Development Department, prior to the issuance of a building permit, shall verify compliance with the applicable provisions of this Chapter and shall review the submission of architectural, structural, electrical and HVAC plans as may be required.

Place of employment means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work area, employee lounges, conference rooms and employee cafeterias. A private residence is not a place of employment.

Public place means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to: Banks, education facilities, health facilities, public transportation facilities, reception areas, restaurants, retail stores, retail service establishments and waiting rooms. A private residence is not a public place.

Secondary activity area means that portion of an eating establishment which is physically segregated, independently ventilated and primarily devoted to secondary activities within which the service of food and alcoholic beverages is only incidental. Examples of secondary activities include billiard rooms, game rooms, reading rooms and the like. A secondary activity area, if not a free standing building, shall have an independent heating, ventilating and air conditioning ("HVAC") system, completely isolated from all other HVAC systems used in a common building structure. A *common building structure*, for purposes of this Chapter, shall mean the contiguous area of a public or private building that is known as a particular street address and contains common exterior walls, notwithstanding the partition of the interior space to provide for separate business establishments or the existence of multiple levels and shall include common areas, areas of ingress or egress and escalators and/or elevators.

Smoking means the combustion of any cigar, cigarette, pipe or similar article, using any form of tobacco or other combustible substance in any form.

Theater and auditorium means any enclosed area devoted to exhibiting motion pictures or presenting theatrical performances, lectures or like entertainment.

(Code 1971, § 11-4.3; Ord. No. 35-1985, § 1; Ord. No. 1-1996, §§ 1, 2)

Sec. 13.16.040. Smoking prohibited.

- (a) *Elevators*. Smoking is prohibited and is unlawful within elevators in buildings generally used by and open to the public, including elevators in office, hotel and multifamily buildings.
- (b) *Hospitals and health care facilities*. Smoking is prohibited and is unlawful in public areas of health care facilities and hospitals, as defined in C.R.S. § 25-3-101, as it may be amended from time to time, including waiting rooms, public hallways and lobbies, except in specially designated smoking areas that are physically separated and independently ventilated.
- (c) *Public meeting rooms*. Smoking is prohibited and is unlawful in hearing rooms, conference rooms, chambers and places of public assembly in which public business is conducted which require or provide direct participation or observation by the general public.
- (d) *Public restrooms*. Smoking is prohibited and unlawful in public restrooms.

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- (e) *Indoor service lines.* Smoking is prohibited and is unlawful in indoor service lines in which more than one (1) person is giving or receiving services of any kind, whether or not such service involves the exchange of money.
- (f) *Eating establishments.* Smoking is prohibited and is unlawful in every publicly or privately owned coffee shop, cafeteria, short-order cafe, luncheonette, sandwich shop, soda fountain, restaurant or other eating establishment serving food, except under the following circumstances where smoking may be permitted at the option of the owner of the establishment:
- (1) Any area exterior to the building in which the establishment is located.
 - (2) The smoking of cigarettes in any bar area as defined in Subsection 13.16.030. The smoking of pipes and cigars shall not be permitted in such area.
 - (3) Any enclosed rooms which are being used for private functions.
 - (4) In a secondary, physically separated and independent ventilated interior area that is specifically designated and signed as a "Smoking Permitted" dining area, provided that such secondary dining area shall not exceed in square footage an area equal to fifty percent (50%) of the square footage of the primary dining area. The smoking of pipes and cigars shall be prohibited in such area.
 - (5) Smoking, including pipes and cigars, shall be permitted in a secondary activity area as defined in Subsection 13.16.030 located within an eating establishment if:
 - a. Such secondary activity area is specifically designated and signed as a "Cigar and Pipe Smoking Permitted" area;
 - b. Such secondary activity area has an engineered ventilation system approved by the Community Development Department; and
 - c. The owner provides a nonsmoking secondary activity area for identical uses and which is at least twice the floor area square footage of the secondary activity area where the smoking of cigars and pipes is permitted.
- (g) *Retail stores.* Smoking is prohibited and is unlawful in all public areas of retail stores, including grocery stores, retail service establishments, retail food production establishments and drugstores.
- (h) *Outdoor areas of City owned property.* Smoking is prohibited and is unlawful on any area of City owned property which has been designated a non smoking area. Such areas shall be clearly marked with appropriate no smoking signage.

(Code 1971, § 11-4.4; Ord. No. 35-1985 , § 1; Ord. No. 1-1996 , § 3; Ord. No. 32-2010)

Sec. 13.16.050. Structural modifications not required.

- (a) Nothing in this Chapter shall require the owner, operator or manager of any existing theater, auditorium, health care facility or any existing building, facility, structure or business, to incur any expense to make structural or other physical modifications to any area.
- (b) Nothing in this Section shall relieve any person from the duty to post signs or adopt policies as required by this Chapter.

(Code 1971, § 11-4.5; Ord. No. 35-1985 , § 1)

Sec. 13.16.060. Regulation of smoking in places of employment.

The places subject to regulation pursuant to Section 13.16.040 above shall not be deemed places of employment for purposes of this Section. The following regulations apply to places of employment.

- (a) Within ninety (90) days of the effective date of this Chapter, each employer shall adopt, implement and maintain a written smoking policy which shall contain at a minimum the following:
 - (1) Prohibition of smoking in employer conference and meeting rooms, classrooms, auditoriums, restrooms, medical facilities, hallways and elevators.
 - (2) Provision and maintenance of no smoking areas in cafeterias, lunchrooms and employee lounges that effectively provide a smoke-free environment for nonsmoking employees.
 - (3) Any employee in the place of employment shall be given the right to designate his or her immediate area as a nonsmoking area and to post it with appropriate sign or signs. The policy adopted by the employer shall include a definition of the term "immediate work area" which gives preferential consideration to nonsmokers.
 - (4) In any dispute arising in the work place under the smoking policy, the rights of the nonsmoker shall be given precedence.
 - (5) Except where other signs are required, whenever smoking is prohibited, conspicuous signs shall be posted so stating.
- (b) The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.
- (c) Notwithstanding the provisions of Subsection (a) of this Section, every employer shall have the right to designate any place of employment as a nonsmoking area.
- (d) This Section is not intended to regulate smoking in the following places and under the following conditions:
 - (1) A private home which may serve as a place of employment.
 - (2) Any property owned or leased by other governmental agencies.
 - (3) A private enclosed place of employment occupied exclusively by smokers, even though such place of employment may be visited by nonsmokers, excepting places in which smoking is prohibited by fire marshal or by other law, ordinance or regulation.
- (e) An employer shall post "No Smoking" signs in any area designated as a nonsmoking area and "Smoking Allowed" signs in any area designated as a smoking area.

(Code 1971, § 11-4.6; Ord. No. 35-1985 , § 1)

Sec. 13.16.070. Posting of signs.

To advise persons of the existence of "No Smoking" or "Smoking Permitted" areas, signs shall be posted as follows:

- (a) In public places where no smoking is permitted pursuant to this Chapter, a sign using the words "No Smoking" and/or the international no smoking symbol shall be conspicuously posted either on all public entrances or in a position clearly visible on entry into the establishment.
- (b) In public places where certain areas are designated as smoking areas pursuant to this Chapter, the statement "No Smoking Except in Designated Areas" shall be conspicuously posted on all public

entrances or in a position clearly visible on entry into the establishment. In addition, the person having the authority to manage and control any area designated as a nonsmoking area pursuant to this Chapter, shall post or cause to be posted and prominently displayed and shall maintain "No Smoking" signs in conspicuous locations within said areas. All such signs shall clearly and conspicuously recite the phrase "No Smoking" and/or use the international no smoking symbol. The signs shall be posted not less than five (5) feet nor more than eight (8) feet above floor level and shall be of sufficient number and location to cause the message of at least one (1) of the signs to be clearly visible, legible and readable.

(Code 1971, § 11-4.7; Ord. No. 35-1985 , § 1)

Sec. 13.16.080. Exceptions.

- (a) "No Smoking" areas are not required, although they are encouraged, in private areas; hotel, motel and lodge meeting and assembly rooms rented to guests; hotel and motel lobbies; areas and rooms while in use for private social functions, the facilities of a private or members only organizations, private hospital rooms, psychiatric or psychological counseling facilities, jails, bars or stores that deal exclusively in tobacco products and accessories. Notwithstanding anything to the contrary contained herein, the smoking of pipes and cigars shall not be allowed in hotel and motel lobbies.
- (b) Any owner or manager of a business or other establishment subject to this Chapter may apply to the City Council (or such board or commission of the City authorized by the City Council to grant the same) for an exception or modification of the provisions of this Chapter due to unique or unusual circumstances or conditions, provided that it will be the burden of the applicant to show either that the provisions of this Chapter cannot be complied with without incurring expenses for structural or other physical modifications, other than posting signs or that due to unique or unusual circumstances, the failure to comply with the provision for which the exemption is requested will not result in a danger to health or annoyance, inconvenience or discomfort.

(Code 1971, § 11-4.8; Ord. No. 35-1985 , § 1)

Sec. 13.16.090. Enforcement.

- (a) The City Manager or the City Manager's designee shall be responsible for compliance with this Chapter with regard to facilities which are owned, operated or leased by the City.
- (b) The owner, operator or manager of any facility, business or agency shall post or cause to be posted all "No Smoking" signs required by this Chapter. Owners, operators, managers or employees of same shall be required to orally inform persons violating this Chapter of the provisions thereof. The duty to inform such violator shall arise when such owner, operator, manager or employee of same becomes aware of such violation and shall be their sole enforcement obligation hereunder.
- (c) Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the City Manager or City Manager's designee.
- (d) The City Manager or the City Manager's designee may enforce the provisions of this Chapter by either of the following actions:
 - (1) Servicing notice requiring correction of any violation of this Chapter.
 - (2) Requesting the City Attorney to initiate appropriate enforcement proceedings, including, without limitation, the initiation of a complaint in Municipal Court or the institution of injunctive, abatement or other appropriate action to prevent, enjoin, abate or remove such violation.

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- (e) Any person convicted of violating any provision of this Chapter shall, upon conviction, be punished by a fine, up to the maximum amount allowed in Section 1.04.080 of this Code, for each separate offense and may be enjoined from any further or continued violation thereof. Each day any violation of this Chapter shall continue shall constitute a separate offense.
 - (f) Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

(Code 1971, § 11-4.9; Ord. No. 35-1985 , § 1; Ord. No. 12-1996 , § 10)

Sec. 13.16.100. Penalties and relief.

- (a) Any person, upon conviction of a violation of any provision of this Title, shall be subject to a fine, imprisonment or both a fine and imprisonment, as set forth in Section 1.04.080 of this Code, for each separate offense and may be enjoined from any further or continued violation hereof. A violation of Chapter 13.16 shall be punishable by a fine only. Each day any violation of this Title shall continue, shall constitute a separate offense hereunder.
- (b) In addition to the penalties and relief provided for in Subsection (a) above, any person found in violation of any provision of Sections 13.04.010 to 13.04.100 of this Title shall reimburse the City for any expenses incurred in preventing pollution of the municipal water supplies caused by said person, any expenses incurred in restoring municipal water supplies to the standards set forth in Section 13.04.020 or any expenses incurred in improving any intake, treatment facility or other part of the water works, which improvement is necessitated by the violation found hereunder.

(Code 1971, § 11-5.1; Ord. No. 44-1981 , § 1; Ord. No. 12-1983 , § 8; Ord. No. 35-1985 , § 1; Ord. No. 12-1996 , § 9)