

ORDINANCE NO. 31-2018

AN ORDINANCE AMENDING CHAPTERS 11 AND 21 OF THE CODE OF ORDINANCES OF THE CITY OF ALAMOSA TO CLARIFY PROVISIONS RELATED TO SMOKING IN PUBLIC BUILDINGS TO COMPLY WITH THE COLORADO CLEAN INDOOR AIR ACT AND TO MAKE PROVISION FOR SMOKING LOUNGES

WHEREAS, Alamosa adopted Ordinance No. 10-2001 governing smoking in public places prior to the State of Colorado’s adoption of the state-wide Colorado Clean Indoor Air Act (C.R.S. § 25-14-201 through § 25-14-209), and certain provisions of Alamosa’s Ordinance are inconsistent with provisions of state law, in particular Alamosa’s exception allowing smoking in designated areas in taverns; and

WHEREAS, the City of Alamosa recently adopted its Uniform Development Code (“UDC”), and in doing so defined a “smoking lounge,” but failed to make provision for smoking lounges in the land use provisions of the Code; and

WHEREAS, Alamosa’s *Code of Ordinances* currently prohibits smoking in all public places (other than designated areas of taverns, where smoking is not allowed under State law), but Council considers it appropriate to make provision for smoking in what the Colorado Clean Indoor Air Act terms a retail tobacco business (see C.R.S. § 25-14-205(1)(d)), and Alamosa has defined in the UDC as a smoking lounge; and

WHEREAS, Council considers it appropriate to amend the UDC to provide for the location of smoking lounges in land use zones where bars, taverns and nightclubs are also considered appropriate or conditionally appropriate;

NOW THEREFORE BE IT ORDAINED by the City Council of Alamosa as follows:

Section 1. Amendment of Chapter 11, Article IV, Division 2, being Sections 11-68 to 11-73: Chapter 11, Article IV, Division 2 (“Smoking in Public Places), being Section 11-68 to 11-73 of the *Code of Ordinances of the City of Alamosa*, is repealed and replaced, to read in its entirety as follows (Sections 11-72 and 11-73 are reserved):

DIVISION 2. - SMOKING IN PUBLIC PLACES

Sec. 11-68. - Definitions.

The following words, when used in this chapter, shall have the meanings ascribed to them:

Building means any structure enclosed for protection from the weather, whether or not windows or doors are open. If a person leases or possesses only a portion of a building, the term building applies to the leasehold or possessory interest as well as to an ownership interest.

Dwelling means any place used primarily for sleeping overnight and conducting activities

of daily living, including, without limitation, a hotel or motel room or suite or a hospital, hospice or nursing home room, but not the lobby, common elevator, common hallway, or other common area of a hotel, motel, hospital, hospice or nursing home lobby.

Entryway means the outside of any doorway used by the public leading into any public building, plus a 25 foot radius outside the doorway.

Public, when used to describe or identify a building, means a building which is wholly or partially accessible for use by the public at will during hours of patronage, whether or not the use by the public is for commercial or non-commercial purposes.

Smoke or smoking shall mean the combustion of any cigar, cigarette, pipe or similar article, using any form of tobacco or other combustible substance in any form, or the possession of any lighted cigar, cigarette, pipe or similar article, using any form of tobacco or other combustible substance in any form.

Smoking lounge means a retail tobacco businesses in which on-premises smoking is allowed, or a private club in which tobacco is smoked on the premises.

Tobacco business means an 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.

Sec. 11-69. - Smoking prohibited within public buildings.

(a) No person shall smoke within or within the entryway to any public building, except:

(1) Within any dwelling this prohibition applies only to an entryway, lobby, common elevator, common hallway, or any other common area of a dwelling; this prohibition does not apply to portions that are not public.

(2) In a properly licensed and permitted smoking lounge.

(3) In a building or on property which is owned or operated by the United States Government and not subject to regulation by the city, and which has not been designated as a no-smoking area by the manager of such area.

(b) Nothing in this chapter shall prevent an owner, lessee, primary manager or person in control of any place, including, without limitation, any motor vehicle, outdoor area, or dwelling, from prohibiting smoking completely in such place. Within a place so restricted, it shall be unlawful to fail, neglect, or refuse to abide by such a private prohibition.

Sec. 11-70. - Additional responsibilities of proprietors. No owner, lessee, principal manager, or person in control of a public building or establishment shall fail to ask smokers to refrain from smoking in any smoking-prohibited area.

Sec. 11-71- Violations declared. It shall be unlawful to violate any of the provisions of this

division.

Section 2. Amendment of Table 21-2-205(a) Table 21-2-205(a) of the *Code of Ordinances of the City of Alamosa* is hereby amended to add “smoking lounge” to the *Hospitality* portion of the table, such that it reads as follows:

Table 21-2-205(a) HOSPITALITY, RECREATION, AND ENTERTAINMENT LAND USES													
Land Use	Zones												Ref.
	EN	RE	RL	RM	RH	MU	CB	I	CBD	CA	A		
<i>Hospitality</i>													
Bar, Tavern, or Nightclub	-	-	-	-	-	L	P	-	P	L	-	(b)(1)	
Bed and Breakfast	L	L	L	L	P	P	P	-	L	P	P	(b)(2)	
Campground or RV Park	-	-	-	-	-	-	L	-	-	L	P	(b)(3)	
Hotel or Motel	-	-	-	-	-	P	P	-	P	P	-	-	
Restaurant, Drive-In or Drive-Through	-	-	-	-	-	-	P	-	-	-	-	-	
Restaurant, Indoor	-	-	-	L	L	P	P	L	P	P	-	(b)(4)	
Restaurant, Outdoor	-	-	-	L	L	L	P	-	P	L	-	(b)(5)	
Smoking Lounge	-	-	-	-	-	L	P	-	P	L	-	(b)(5.5)	

Section 3. Addition of new Section 21-2-205(b)(5.5). A new Section 21-2-205(b)(5.5) is added to the *Code of Ordinances of the City of Alamosa* to provide specific standards for smoking lounges as follows:

(5.5) *Smoking lounge* is allowed if:

- a. In the MU Zone, noise generated by the use will not exceed forty-five (45) dBA at any residential building wall (within or outside the zone) between the hours of 9:00 p.m. and 7:00 a.m., and must otherwise comply with the city's noise ordinance.

b. In the CA Zone, the use is targeted towards the students, employees, or contractors of the other uses on the campus, and is incidental to the overall function of the campus.

c. The ventilation system shall assure that smoke from the smoking lounge is incapable of migrating into any other portion of the building hosting the smoking lounge or into any other building in the vicinity of the smoking lounge. If the smoking lounge is in a multi-unit building, the building must minimize uncontrolled pathways for the transfer of smoke and other indoor air pollutants between units by sealing penetrations in the walls, ceilings, and floors and by sealing vertical chases (including utility chases, garbage chutes, mail drops, and elevator shafts) adjacent to the units.

d. All business-related activities shall be conducted wholly within a building. Operation of outdoor appurtenances, such as barbecues, fire-pits, braziers or lit coals, shall not be permitted.

e. A smoking lounge is not permitted to be located any closer than the following distances from the listed uses:

(1) Residential zoning districts: five hundred (500) feet;

(2) Public or private pre-school, elementary school, middle school, junior high school or high school: five hundred (500) feet;

(3) Park or recreation facility operated by the City: five hundred (500) feet;

(4) Another smoking lounge: five hundred (500) feet.

f. No persons under eighteen (18) years of age shall be permitted within the business.

Section 4. General Repealer. All other acts, orders, ordinances, resolutions, or portions thereof in conflict with the sections adopted in this Ordinance, are hereby repealed to the extent of such conflict.

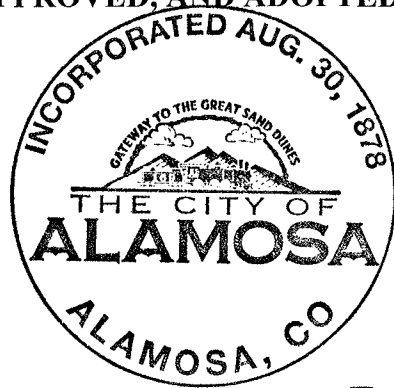
Section 5. Recording and Authentication. This ordinance, immediately upon its passage, shall be authenticated by the signatures of the Mayor and City Clerk, recorded in the City book of Ordinances kept for that purposes, and published according to law.

Section 6. Publication and Effective Date. This ordinance shall take effect ten days after publication following final passage. Publication both before and after final passage shall be by the title of this ordinance, which Council determines constitutes a sufficient summary of the ordinance, together with the statement that the full text of the ordinance is available for public inspection and acquisition on the City's website and in the office of the City Clerk.

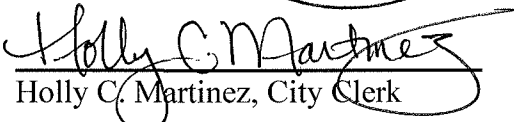
Section 7. Declaration of Public Interest. This ordinance is necessary to preserve the peace, health, safety, welfare, and to serve the best interest of the citizens of the City of Alamosa, Colorado.

INTRODUCED, READ AND APPROVED on first reading the 7th day of November, 2018, and ordered published by title and reference as provided by law with notice of a public hearing to be held for consideration of the adoption of said ordinance on the 5th day of December, 2018, at 7:00 p.m., or as soon thereafter as the matter may be heard, or on such subsequent date to which the public hearing or Council consideration may be continued.

APPROVED, AND ADOPTED after public hearing the 5th day of December, 2018.



ATTEST:


Holly C. Martinez, City Clerk

CITY OF ALAMOSA

By 
Ty Coleman, Mayor