

## Breckenridge 2015

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### **5-9-1: LEGISLATIVE DECLARATION; FINDINGS:**

A. The town council hereby finds and determines as follows:

1. It is in the best interest of the people of the town to protect nonsmokers from involuntary exposure to environmental tobacco and marijuana smoke in most indoor areas open to the public, public meetings, food service establishments, and places of employment;
2. A balance should be struck between the health concerns of nonconsumers of tobacco and marijuana products and the need to minimize unwarranted governmental intrusion into, and regulation of, private spheres of conduct and choice with respect to the use or nonuse of tobacco and marijuana products in certain designated public areas and in private places;
3. Smoking should not be prohibited in the entryway of any building or facility, and such determination is expressly authorized to be made by the town pursuant to section 25-14-207(2)(a), Colorado Revised Statutes; and
4. "Cigar-tobacco bars", as defined in section 25-14-203(4), Colorado Revised Statutes, should not be exempted from the town's smoking regulations as set forth in this chapter. (Ord. 40, Series 2013)
5. Current evidence suggests that the use of electronic smoking devices, including, without limitation, electronic cigarettes, increases the exposure of bystanders to potentially harmful exhaled aerosol toxicants, and further reduces the incentive for smokers to quit using tobacco products. In addition, the use of electronic smoking devices in places where smoking is currently prohibited may frustrate the reasonable expectation of bystanders in such places that there will be no risk increase from any product in the air they breathe, even though there may be some degree of diminished risk from the use of electronic smoking devices in comparison to secondhand smoke.

B. The town council hereby declares that the purpose of this chapter is to preserve and improve the health, comfort, and environment of the people of the town by limiting exposure to environmental tobacco and marijuana smoke. (Ord. 4, Series 2015)

C. The town council further finds and determines that the local smoking regulations set forth in this chapter are no less stringent than the provisions of article 14 of title 25, Colorado Revised Statutes, known as the "Colorado clean indoor air act". (Ord. 37, Series 2006)

### **5-9-2: DEFINITIONS:**

As used in this chapter, unless the context otherwise requires:

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

**BAR:** Any area that is operated and licensed under article 47 of title 12, Colorado Revised Statutes, 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. "Bar" includes, without limitation, any outdoor area operated as part of the licensed premises.

**ELECTRONIC SMOKING DEVICE:** An electric or battery operated device, the use of which resembles conventional smoking, which can be used to deliver a vapor of nicotine, vapor of a solution including nicotine, or aerosol of a solution including nicotine, or any other substance or flavor for inhalation. Electronic smoking device shall include, without limitation, an electronic cigarette, cigar, cigarillo, pipe, hookah, or any similar device. The term "electronic smoking device" does not include any device specifically approved by the United States food and drug administration for use as a tobacco use cessation product, when such device is being used solely for such approved purpose.

**EMPLOYEE:** Any person who:

- A. Performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or
- B. Provides uncompensated work or services to a business or nonprofit entity.

"Employee" includes every person described above in this definition regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.

**EMPLOYER:** Any person, partnership, association, corporation, or nonprofit entity that employs one 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.

**ENTRYWAY:** The outside of a public doorway leading into a building or facility that is not exempted from this chapter under section [5-9-4](#) of this chapter. "Entryway" also includes the area of public or private property within a ten foot (10') radius outside of the doorway.

**ENVIRONMENTAL TOBACCO AND MARIJUANA SMOKE:** The complex mixture formed from the escaping smoke of burning tobacco or marijuana, and smoke exhaled by the smoker. "Environmental tobacco and marijuana smoke" also includes the escaping vapor or aerosol of an electronic smoking device, also known as "side stream smoke", and vapor or aerosol exhaled by the smoker.

**FOOD SERVICE ESTABLISHMENT:** Any 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. "Food service establishment" includes, without limitation, any outdoor area operated as part of the business.

**GONDOLA:** An aerial tramway carrier primarily used to convey persons and property to and from a "ski area" as defined in section [6-3B-18](#) of this code.

**INDOOR AREA:** 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:** Has the same meaning as in section 16(2)(f) of article XVIII of the Colorado constitution.

**PLACE OF EMPLOYMENT:** 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:** Any building owned or operated by:

- A. The state, including the legislative, executive, and judicial branches of state government;
- B. 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; or
- C. Any other separate corporate instrumentality or unit of state or local government.

**PUBLIC MEETING:** Any meeting open to the public pursuant to part 4 of article 6 of title 24, Colorado Revised Statutes, or any other law of the state or the town.

**SMOKE FREE WORK AREA:** An indoor area in a place of employment where smoking is prohibited under this chapter.

**SMOKING:** A. The burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco or marijuana, or

- B. The active use of an electronic smoking device.

**TOBACCO:** 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, and tobacco prepared, treated, or modified in such a manner that it may be ingested through the use of an electronic smoking device.

**TOBACCO BUSINESS:** 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:** 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. (Ord. 37, Series 2006; amd. Ord. 20, Series 2010; Ord. 40, Series 2013; Ord. 4, Series 2015)

### **5-9-3: GENERAL SMOKING RESTRICTIONS:**

- A. Except as provided in section [5-9-4](#) of this chapter, and in order to reduce the levels of exposure to environmental tobacco and marijuana 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, trains, indoor public transit facilities and waiting areas, and transit shelters;
  - 4. Taxicabs and limousines;
  - 5. Gondolas;
  - 6. Grocery stores;
  - 7. Gymnasiums;

8. Jury waiting and deliberation rooms;
9. Courtrooms;
10. Child daycare facilities;
11. Healthcare facilities including hospitals, healthcare clinics, doctor's offices, and other healthcare related facilities;
12. Retail stores;
13. Food service establishments;
14. Bars;
15. Indoor sports arenas and facilities;
16. Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
17. 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;
18. Bowling alleys;
19. Billiard or pool halls;
20. Facilities in which games of chance are conducted;
21. The common areas of retirement facilities, publicly owned housing facilities, and nursing homes, not including any resident's private residential quarters;
22. Public buildings;
23. Auditoria;
24. Theaters;
25. Museums;
26. Libraries;
27. To the extent not otherwise provided in section 25-14-103.5, Colorado Revised Statutes, public and nonpublic schools;
28. Other educational and vocational institutions;
29. Town owned motor vehicles; and
30. Any place of employment that is not exempted. 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 and marijuana smoke. Every employee shall have a right to work in an area free of environmental tobacco and marijuana smoke.

B. In order to reduce the levels of exposure to environmental tobacco and marijuana smoke, smoking shall not be permitted and no person shall smoke in any of the following outdoor areas:

1. The entryways of all buildings and facilities listed in subsection A of this section.
2. Town owned parks and open space areas;
3. Town owned outdoor sporting and athletic fields and facilities;
4. The town of Breckenridge public golf course grounds and buildings, excluding the course of play;
5. The paved recreational pathway running generally northerly and southerly within the town commonly known as the "bike path"; and
6. Within a ten foot (10') radius of a public transit facility waiting area. (Ord. 4, Series 2015)

**5-9-4: EXCEPTIONS TO SMOKING RESTRICTIONS:**

Except as otherwise expressly provided in this code, this chapter shall not apply to: (Ord. 40, Series 2013)

- A. Private homes, private residences, and private automobiles; except that this chapter shall apply if any such home, residence, or vehicle is being used for childcare or daycare or if a private vehicle is being used for the public transportation of children or as part of healthcare or daycare transportation;
- B. Limousines under private hire;
- C. A hotel or motel room rented to one 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%); (Ord. 37, Series 2006)
- D. The indoor area of any retail tobacco business; (Ord. 4, Series 2015)
- E. (Rep. by Ord. 4, Series 2015)
- F. The outdoor area of any business, except as provided in subsection [5-9-3B](#) of this chapter; (Ord. 4, Series 2015)
- G. 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; provided, however, that this exemption does not apply to the smoking of marijuana; (Ord. 40, Series 2013)
- H. A private, nonresidential building on a farm or ranch, as defined in section 39-1-102, Colorado Revised Statutes, that has annual gross income of less than five hundred thousand dollars (\$500,000.00); or (Ord. 37, Series 2006)
- I. The open and public consumption of marijuana in an outdoor area as described in [title 6, chapter 3, article I](#) of this code. (Ord. 40, Series 2013)

**5-9-5: OPTIONAL PROHIBITIONS:**

- A. The owner or manager of any place not specifically listed in section [5-9-3](#) of this chapter, including a place otherwise exempted under section [5-9-4](#) of this chapter, 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 [5-9-3](#) of this chapter, including a place otherwise exempted under section [5-9-4](#) of this chapter, is an employer and receives a request from an employee to create a smoke free work area as contemplated by subsection [5-9-3A30](#) of this chapter, the owner or manager shall post a sign or signs in the smoke free work area as provided in subsection A of this section. 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. (Ord. 37, Series 2006)

#### **5-9-6: OTHER APPLICABLE REGULATIONS OF SMOKING:**

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law. (Ord. 37, Series 2006)

#### **5-9-7: UNLAWFUL ACTS; PENALTY:**

- A. It is unlawful for a person who owns, manages, operates, or otherwise controls the use of a premises within the town to violate any provision of this chapter.
- B. It is unlawful for a person to smoke in an area within the town where smoking is prohibited pursuant to this chapter.
- C. A person who violates this chapter is guilty of an infraction. Any person found to be in violation of, or against whom a default judgment has been entered for a violation of this chapter, shall be punished by a fine not to exceed two hundred dollars (\$200.00) for a first violation within a calendar year, a fine not to exceed three hundred dollars (\$300.00) for a second violation within a calendar year, and a fine not to exceed five hundred dollars (\$500.00) for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation. (Ord. 37, Series 2006)

#### **5-9-8: NONRETALIATION:**

No person shall retaliate in any manner against any person because such person exercises any right to a smoke free environment afforded by this chapter. (Ord. 37, Series 2006)