

## Brighton 2014

### ARTICLE 8-44 - Smoking Prohibited

#### Sec. 8-44-10. - Legislative intent.

- (a) The purpose of this Article is to protect the public health, safety and welfare by prohibiting smoking in buildings and indoor areas, except in certain buildings or parts of buildings where the City Council has determined that smoking should not be prohibited.
- (b) This Article is adopted pursuant to Article II, Municipal Powers of the City Charter, and Section 25-14-207, C.R.S.

(Ord. 1886 §1, 2006; Ord. 1897 §1, 2006)

#### Sec. 8-44-20. - Definitions.

The following terms used in this Article have the following meanings unless the context clearly indicates otherwise:

Building means any structure enclosed for protection from the weather, whether or not windows or doors are open. The opening of windows or doors, or the temporary removal of wall panels, does not convert a building into an outdoor area.

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 (\$50,000.00) 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 (\$50,000.00) 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.

Electronic smoking device means an electronic and/or battery operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine, marijuana, or other substances. "Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or description. "Electronic smoking device" does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

Electronic smoking device paraphernalia means cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic smoking device batteries and/or chargers, and any other item specifically designed for the preparation, charging, or use of electronic smoking devices.

Employee includes every person who performs any type of work for the benefit of another in consideration of direct or indirect wages or profit; regardless of whether such person is referred to as an employee, contractor, independent contractor or volunteer or by any other designation or title; or provides uncompensated work or services to a business or nonprofit entity.

Employer means any person, partnership, association, corporation or nonprofit entity that employs one (1) or more persons.

Entryway means the doorway leading into a building or facility that is not exempted from the terms of this Article. Entryway also includes the area of public or private property within a specified radius outside of the doorway.

Environmental tobacco smoke or vapor or secondhand smoke or vapor means the complex mixture formed from the escaping smoke of a burning tobacco, marijuana or other product which is being smoked or a

vapor from an electronic smoking device. Also known as sidestream smoke or vapor and exhaled by the smoker or user of an electronic smoking device.

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.

Place of employment shall mean any area under the control of a public or private employer that employees normally frequent or use during the course of employment, including but not limited to work areas, employee lounges, restrooms, conference and classrooms, employee cafeterias, hallways, stairways, enclosed parking and storage. Place of employment shall not include a private residence unless the residence is used as a child care, adult day care or health care facility.

Private dwelling means any place used primarily for sleeping overnight and conducting activities of daily living, including, without limitation, private residences, hotel or motel rooms or suites; and a hospital, hospice or nursing home room, but not the lobby, common elevator, common hallway or stairway, public restrooms or other common areas of a hotel, motel, hospital, hospice or nursing home.

Public conveyance means any motor vehicle or other means of conveyance licensed by the Public Utilities Commission of the State for the transportation of passengers for hire, and includes without limitation buses, taxicabs, limousine services and airport passenger services.

Public outdoor places means any outdoor facility or area that is open to members of the public who enter such area or place, including but not limited to sports fields, sports venues, restrooms, outdoor seating areas for participants and/or observers, recreational facilities and the designated area surrounding such places and areas.

Service line shall mean any indoor or outdoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money. Service line does not include lines in which one (1) or more persons are enclosed in a private vehicle while waiting in line.

Smoke or smoking means:

- a. The lighting or activation of any cigarette, cigar, pipe, hookah, bong, shabong, electronic smoking device, or other device of whatever nature intended for or being used for smoking or inhaling nicotine, marijuana or other vapor, or the possession of any lighted cigarette, cigar, pipe, hookah, bong, shabong, or other device of whatever nature intended for or being used for smoking, regardless of the composition of the lighted material, or contents within an activated electronic smoking device;
- b. Carrying or placing of a lighted cigarette, cigar, pipe, bong, shabong, chillum or tube from a lighted hookah or any other lighted smoking object, or electronic smoking device in one's mouth for the purpose of inhaling or exhaling smoke or vapors from the electronic smoking device;
- c. Placing of a lighted cigarette, cigar, pipe, bong, shabong, chillum, electronic smoking device or any other similar object or equipment in an ashtray or other receptacle and allowing smoke or vapor to diffuse in the air;
- d. Carrying or placing of a lighted cigarette, cigar, pipe, bong, shabong, chillum, activated electronic smoking device or any other object, material or equipment in one's hands or any appendage or device and allowing smoke or vapor therefrom to diffuse in the air; or
- e. Inhaling or exhaling smoke from a lighted cigarette, cigar, pipe, hookah, bong, shabong or any other device, object or material of whatever nature intended for or being used for smoking or any other lighted smoking material or equipment.
- f. Inhaling or exhaling vapors from an electronic smoking device of whatever nature, intended for or being used for inhaling a vapor from the electronic smoking device.

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

Sports venues means any outdoor parks, facilities and athletic fields designed and improved for use for a specific sport or recreational activity which by illustration includes skate parks, tennis courts, soccer fields, ball fields; swimming and aquatic pools and facilities; and other similar places or venues where members of the general public assemble either to engage in the physical or recreational activity, participate in athletic competition or witness the activities or sports events.

Tobacco includes cigarettes, cigars, cheroots, stogies, any 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 craps, clippings, cuttings and sweeping of tobacco; marijuana and other kinds and forms of tobacco and/or marijuana, prepared in such a manner as to be suitable for chewing or for smoking in a cigarette, pipe, hookah, bong, shabong, chillum or other device of whatever nature intended for or being used for smoking 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 store or sales means a retail business open to the public if more than eighty-five percent (85%) of its gross revenue from that location is from the retail sale of cigarettes, tobacco products, electronic smoking devices or electronic smoking device paraphernalia or products related to the use of cigarettes, tobacco products, electronic smoking devices and electronic smoking device paraphernalia.

Work area means an area in a place of employment where one (1) or more employees are routinely assigned and perform services for or on behalf of their employer.

(Ord. 1886 §1, 2006; Ord. 1897 §§2, 3, 2006; Ord. 2073 §1, 2010; Ord. 2122 §1, 2011; [Ord. 2181](#) §1, 2014)

#### Sec. 8-44-30. - Smoking prohibited within buildings, exemptions.

Smoking shall not be permitted and no person shall smoke in any building or indoor area except as follows:

- (1) In any private dwelling as defined herein, except when used as a child care, adult day care or health care facility. If a hospital, hospice, retirement facility, nursing home or publicly owned housing facility permits smoking in designated rooms used as a resident's private residential quarters, smoking is not allowed in any room shared with a nonsmoker without that person's consent.
- (2) 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. Employers who own places of employment exempted from the terms of this Article 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.
- (3) Up to twenty-five percent (25%) of guest rooms in lodging establishments, including but not limited to hotels, motels, inns and bed and breakfasts, provided that smoking rooms have been previously designated as such.
- (4) The outdoor area of any business (subject to the smoke-free perimeter provisions of Section 8-44-80 hereof).
- (5) 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 (\$500,000.00).
- (6) A tobacco store and/or cigar-tobacco bar which was authorized, open and operating with a City business license on August 1, 2010, and was, at that time, exempt from the smoking ban of this Article. If (i) active and continuous operations are not carried on in an exempt tobacco store or cigar-tobacco bar for a period of sixty (60) days, (ii) the exempt tobacco store or cigar-tobacco bar fails to timely and satisfactorily comply with the requirements for the same as set forth in Section 8-44-20, or (iii) the exempt tobacco store or cigar-tobacco bar fails to timely renew its business license, such use or operation as a tobacco store or cigar-tobacco bar shall not thereafter be continued or reestablished, and the use and operation thereof shall immediately comply with the terms of this Article.

- a. Intent to resume active operations or to renew the business license of an exempt tobacco store or cigar-tobacco bar shall not affect the foregoing.
- b. An exempt tobacco store or cigar-tobacco bar shall not be enlarged, extended, expanded, moved or structurally altered.

(Ord. 1886 §1, 2006; Ord. 1897 §§2, 4, 2006; Ord. 2073 §2, 2010)

Sec. 8-44-40. - Smoking prohibited in public conveyances.

Smoking shall not be permitted and no person shall smoke in any public conveyance.

(Ord. 1886 §1, 2006)

Sec. 8-44-50. - Smoking prohibited in vehicles.

Smoking shall not be permitted and no person shall smoke in any vehicle when the same is being used for public transportation of children for day care or adult day care or health care.

(Ord. 1886 §1, 2006)

Sec. 8-44-60. - Smoking in service lines.

Smoking shall not be permitted and no person shall smoke in any service line.

(Ord. 1886 §1, 2006)

Sec. 8-44-65. - Smoking prohibited in public outdoor places.

- (a) It shall be unlawful for any person to smoke in any public outdoor place or sports venue as defined in this Article and the designated no-smoking area where the same is posted with no-smoking signs.
- (b) The no-smoking prohibition in a public outdoor place or sports venue, and the designated area around the same up to and including one hundred (100) feet, shall be posted with signage using the words "Smoking Prohibited" or the international no-smoking symbol posted conspicuously either at the public entrances or in a position clearly visible to those entering or using the place or venue.
- (c) Areas of the public outdoor place designed and intended for the parking of automobiles are exempt from the prohibition in Subsection (a) above unless specifically posted otherwise at the site.

(Ord. 2122 §2, 2011)

Sec. 8-44-70. - Authority of owner or manager.

- (a) Nothing in this Article shall prevent an owner, lessee, principal manager or person in control of any place, including, without limitation, a place of employment, building, vehicle, outdoor area or dwelling, from declaring the same entirely or partially smoke-free. In a building or otherwise exempt area, in which smoking is declared to be prohibited, a sign using the words "Smoking Prohibited" or the international no-smoking symbol shall be posted conspicuously either on all public entrances or in a position clearly visible on entry into the building or designated no-smoking area. Such a declaration and posting shall have the effect of including such place, or the designated no-smoking portion thereof, in the places where smoking is prohibited or restricted pursuant to this Article.

- (b) If the owner or manager of a place of employment exempted under Section 8-44-30 receives a request from an employee to create a smoke-free work area, the owner or manager shall post a sign or signs in the smoke-free work area as provided in Subsection (a) above.

(Ord. 1886 §1, 2006)

Sec. 8-44-80. - Smoke-free perimeter.

In order to prevent smoke from entering any smoke-free area, no person shall smoke within a distance of fifteen (15) feet from any entryway, passageway, operable window or ventilation system of any smoke-free establishment or area, unless such person is passing through such area, without stopping, en route to another destination.

(Ord. 1886 §1, 2006)

Sec. 8-44-90. - Signs required to be posted.

- (a) In a building or indoor area in which smoking is permitted, a sign using the words "Smoking Permitted" or the international smoking symbol shall be posted conspicuously either on all public entrances or in a position clearly visible on entry into the building or indoor area.
- (b) In a portion of a building or indoor area where smoking is permitted, a sign using the words "Smoking Permitted" or the international smoking symbol shall be posted conspicuously either on all doorways, public entrances or in a position clearly visible on entry into the portion of the building or indoor area in which smoking is permitted.
- (c) The requirements of this Section do not apply to an exempt dwelling or a private, nonresidential building or structure which is exempt as provided in Paragraph 8-44-30(7) of this Article.
- (d) A cigar-tobacco bar shall display signage in at least one (1) conspicuous place and at least four (4) inches by six (6) inches in size stating: "Smoking Allowed. Children under eighteen (18) years of age must be accompanied by a parent or guardian." (Ord. 1886 §1, 2006; Ord. 1897 §5, 2006)

Sec. 8-44-100. - Additional responsibilities of owners/managers.

- (a) No owner, lessee, proprietor, manager or person in charge or control of a building, indoor area, establishment, common area, public place, place of employment or no-smoking area as provided herein shall fail to:
  - (1) Post appropriate signs, as required by this Article.
  - (2) Arrange work areas to provide a smoke-free area, as required by this Article.
  - (3) Inform persons violating this Article of the appropriate provisions hereof and request their compliance.
  - (4) Use any other means which may be appropriate to further the intent of this Article.
- (b) Informing persons violating this Article of the appropriate provisions hereof shall not be a defense to a criminal prosecution for violation of the terms of this Article or prior to any other legal action that may be instituted by the City or of a judicial action to enforce the provisions of this Article. Nor shall the failure to so advise be deemed to be an element of the violation.
- (c) In no event shall the proprietor or person in charge of any nursing home, hospital or health care facility fail to provide rooms for nonsmokers or require a nonsmoker to share a room or other facility with a person who smokes, except with the express consent of the nonsmoker.

(Ord. 1886 §1, 2006)

Sec. 8-44-110. - Inspection of books and records.

The owner of each tobacco store, a cigar-tobacco bar or 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 (\$500,000.00) shall keep a complete set of books of account, invoices, copies of orders, shipping instructions, bills of lading, correspondence and all other records necessary to show fully the business transactions of such tobacco store, cigar-tobacco bar or farm or ranch, all of which records shall be available at all times during business hours for inspection and examination by the City Manager or his or her authorized representatives for use in determining whether the same constitutes a retail tobacco store, cigar-tobacco bar or 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 (\$500,000.00), in order to determine the applicability of the provisions of this Article to such establishment, farm or ranch. The City Manager may require the owner of any such establishment, farm or ranch to furnish such information as he or she considers necessary for such a determination, and may require that the owner of such establishment, farm or ranch cause an audit to be made of such books of account and records on such occasions as he or she may consider necessary.

(Ord. 1886 §1, 2006; Ord. 1897 §6, 2006)

Sec. 8-44-120. - No retaliation.

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

(Ord. 1886 §1, 2006)

Sec. 8-44-130. - Enforcement.

- (a) Any law enforcement officer, including Code Enforcement Officers, of the City shall have authority to enforce the prohibitions of this Article by the issuance of a summons and complaint in the Municipal Court.
- (b) Any citizen may register a complaint of alleged violation of this Article by filing a sworn complaint with a Code Enforcement Officer of the City.

(Ord. 1886 §1, 2006)

Sec. 8-44-140. - Violations and penalties.

- (a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Article to fail to comply with any of its provisions.
- (b) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Article.
- (c) Any person who violates any provision of this Article shall be guilty of a petty offence, punishable by a fine or imprisonment in accordance with Article 1-24, General Penalties, of this Code.
- (d) Each day of continuing violation shall be deemed to be a separate violation.

(Ord. 1886 §1, 2006)

Sec. 8-44-150. - Other applicable laws.

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(Ord. 1886 §1, 2006)