

ARTICLE 11 Smoking in Public Places

Sec. 10-11-10. Intent.

The Board of Trustees intends that the restrictions and limitations set forth in this Article be viewed as minimum standards and would not be construed as limiting, in any way, the authority of persons or entities in control of public places from prohibiting smoking within their establishments altogether. This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law.

(Ord. No. 4, 1987 §1; prior code 7.08.010; Ord. No. 8, 2015 §1, 8-11-2015; Ord. No. 11, 2019, §2, 8-13-2019)

Sec. 10-11-20. Definitions.

For purposes of this Article, the following words and phrases set out in this Section shall have the definitions ascribed to them, unless otherwise provided:

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 an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term *bar* shall not include the restaurant dining area.

Business means any sole proprietorship, partnership, joint venture, corporation or other business entity, including, for example, retail establishments where goods are sold, as well as professional corporations and other entities under which legal, medical, dental, engineering, architectural or other professional services are delivered.

Child care establishment means any facility or business, including home-based, which is maintained for the whole or part of a day for the care of children under the age of 16 not related to the owner, operator or manager thereof, whether such facility is operated with or without compensation for such care and with or without stated educational purposes.

Cigar-tobacco bar means a bar that, in the calendar year ending December 31, 2005, generated at least five percent or more of its total annual gross income or \$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 of its total annual gross income or \$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.

Cigarette, tobacco product or nicotine product means a product that contains tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual; or any device that can be used to deliver tobacco or nicotine to the person inhaling from the device, including an electronic cigarette, cigar, cigarillo or pipe.

Employee means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit.

Employer means any person who employs the services of an individual person.

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

Entryway means the outside of the front or main doorway leading into a building or facility that is not exempted from this Article under Section 10-11-40. *Entryway* also includes the area of public or private property within a specified radius outside of the front or main doorway, which minimum radius is specified in C.R.S. § 25-14-203, as it may be amended from time to time.

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.

Grocery store means a business in which the majority of the indoor area open to the public is devoted to the sale of food and beverages to be consumed outside the building, rather than in seating facilities inside the building.

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 has the same meaning as in Section 16(2)(f) of Article XVIII of the State Constitution.

Motion picture theater and auditorium means any theater or auditorium engaged in the business of exhibiting motion pictures or presenting theatrical performances, lectures or similar entertainment.

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; or (3) any other separate corporate instrumentality or unit of state or local government.

Public meeting includes all meetings open to the public.

Public place means any enclosed area to which the public is invited in any business, including any enclosed area owned or leased by any governmental entity.

Secondhand smoke means the complex mixture formed from the escaping smoke of a burning tobacco, marijuana, or electronic smoking device product, also known as "environmental smoke" and "sidestream smoke," and smoke exhaled by the smoker.

Service line means any indoor line in which one or more persons is waiting for, purchasing or receiving goods or services.

Smoke-free work area means an area free of secondhand smoke.

Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. *Smoking* also includes the use of an electronic smoking device, as that term is defined in Section 10-6-60 of this Code, but which excludes a humidifier or similar device that emits only water vapor or an inhaler, nebulizer, or vaporizer that is approved by the federal Food and Drug Administration for the delivery of medication.

Retail 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, including electronic smoking devices, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

Tobacco store means a business devoted primarily to the sale of tobacco and tobacco-related products and accessories and in which the sale of other products is only incidental.

(Ord. No. 4, 1987 §2; Ord. No. 4, 1991 §1; prior code 7.08.020; Ord. No. 8, 2015 §1, 8-11-2015; Ord. No. 11, 2019, §2, 8-13-2019)

Sec. 10-11-30. General smoking restrictions.

Except as provided in Section 10-11-40, smoking shall not be permitted, and no person shall smoke in any indoor area, including, but not limited to:

- (1) Public meeting places;
- (2) Any theaters;
- (3) Any place where smoking is prohibited by the Fire Chief;
- (4) Grocery stores;
- (5) Any health care facility, including, but not limited to, hospitals, clinics, physical therapy facilities and medical and dental offices;
- (6) Public buildings;
- (7) Auditoria, galleries, libraries, and museums;
- (8) Elevators, elevator lobbies, stairwells, and escalators;
- (9) Restrooms, indoor public walkways, hallways, and lobbies, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
- (10) Any child care establishment (including home-based);
- (11) Any public polling place;
- (12) Gymnasiums;
- (13) Taxicabs and limousines;
- (14) Any place of employment that is not exempted whether or not open to the public and regardless of the number of employees. 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 secondhand smoke. Every employee shall have a right to work in an area free of secondhand smoke;
- (15) Common areas of retirement facilities, assisted living facilities, publicly owned housing facilities, and nursing homes, but not including any resident's private residential quarters;
- (16) Hotel and motel rooms;
- (17) Food service establishments;
- (18) Bars;
- (19) To the extent not otherwise provided in C.R.S. § 25-14-103.5, public and nonpublic schools;
- (20) Other educational and vocational institutions;
- (21) Government-owned or -operated means of mass transportation, including, but not limited to, buses and vans;
- (22) Retail stores and shops; and
- (23) Entryways of all buildings and facilities listed in subsections (1) to (22) of this Section.

(Ord. No. 4, 1987 §3; Ord. No. 4, 1991 §2; prior code 7.08.030; Ord. No. 14, 2013 §2, 10-22-2013; Ord. No. 8, 2015 §1, 8-11-2015; Ord. No. 11, 2019, §2, 8-13-2019)

Sec. 10-11-40. Exceptions to smoking restrictions.

This Article shall not apply to:

- (1) Private homes, private residences, and private automobiles; except that 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) Limousines under private hire;
- (3) Retail tobacco businesses or cigar-tobacco bars;
- (4) Licensed marijuana tasting rooms;
- (5) The outdoor area of any business, not including seating areas in any public right-of-way, and not including outdoor areas within the smoke-free entryway radius as defined in C.R.S. § 25-14-203, as it may be amended from time to time;
- (6) A private, nonresidential building on a farm or ranch, as defined in C.R.S. § 39-1-102, that has annual gross income of less than five hundred thousand dollars; or
- (7) Facilities of a private or members-only organization.

(Ord. No. 4, 1987 §4; Ord. No. 4, 1991 §3; prior code 7.08.040; Ord. No. 8, 2015 §1, 8-11-2015; Ord. No. 11, 2019, §2, 8-13-2019)

Sec. 10-11-50. Optional prohibitions.

Because smoking is prohibited in all indoor areas, unless exempted, there is no requirement for the person who owns, manages, operates or otherwise controls the use of a premises to post "No Smoking" signs. However, the owner or manager of any place not specifically listed in Section 10-11-30, including a place otherwise exempted under Section 10-11-40, may post signs prohibiting smoking. Such posting by an individual authorized to control said premises shall have the effect of including such place in the places smoking is prohibited or restricted pursuant to this Article.

(Ord. No. 4, 1987 §5; Ord. No. 6, 1987 §1; prior code 7.08.050; Ord. No. 8, 2015 §1, 8-11-2015; Ord. No. 11, 2019, §2, 8-13-2019)

Sec. 10-11-60. Responsibilities of proprietors.

The proprietor or person in charge of any place where smoking is prohibited shall make reasonable efforts to obtain compliance with this Article by:

- (1) Asking smokers to refrain from smoking if they are doing so in violation of any provision of this Article.
- (2) Affirmatively directing smokers to outdoor areas of the business if there are any.
- (3) Any other means which may be appropriate.

(Ord. No. 4, 1987 §6; prior code 7.08.060; Ord. No. 8, 2015 §1, 8-11-2015; Ord. No. 11, 2019, §2, 8-13-2019)

Sec. 10-11-70. Structural modification not required.

Nothing in this Article shall require the owner, operator or manager of any existing business to incur any expense to make structural or other physical modifications, except the posting of signs required by this Article.

(Ord. No. 4, 1987 §7; prior code 7.08.070; Ord. No. 8, 2015 §1, 8-11-2015)

Sec. 10-11-80. Enforcement; violation.

- (a) It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to Section 10-11-30 of this Article.
- (b) It is unlawful for a person who owns, manages, operates, or otherwise controls the use of a premises subject to this Article to violate any provision of this Article.
- (c) The Town Manager shall be responsible for compliance with this Article when facilities owned by the Town are involved.
- (d) Owners, operators, managers or employees of any premises subject to this Article shall be required to orally inform persons violating this Article of the provisions of this Article. The duty to inform such violator shall arise when such owner, operator, manager or employee becomes aware of such violation.
- (e) Any violation of this Article may be punished as set forth in Section 1-4-20 of this Code.

(Ord. No. 11, 2019, §2, 8-13-2019)

Editor's note(s)—Ord. No. 11, 2019 Editor's note(s)—, §2, adopted Aug. 13, 2019, repealed former § 10-11-80Editor's note(s)—, which pertained to exceptions, and derived from Ord. No. 4, 1987 §8; prior code 7.08.080; Ord. No. 8, §1, 8-11-2015. Former § 10-11-90Editor's note(s)— was renumbered as 10-11-80Editor's note(s)—.

Sec. 10-11-90. Nonretaliation.

It is unlawful for an employer to retaliate against or discharge any employee for requesting a nonsmoking work area, filing a complaint or otherwise reporting a violation of this Article.

(Ord. No. 11, 2019, §2, 8-13-2019)

Editor's note(s)—Ord. No. 11, 2019 Editor's note(s)—, §2, adopted Aug. 13, 2019, renumbered § 10-11-100 as 10-11-90Editor's note(s)—.