

## ***ARTICLE 6 Smoking in Public Places<sup>1</sup>***

### **Sec. 10-6-10. Definitions.**

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

*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 any indoor area that is operated and licensed under Article 3 of Title 44, C.R.S., 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 alcohol beverages.

*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 or ESD:*

- (1) Means any product, other than a product described in this definition of "ESDs", that contains or delivers nicotine or any other substance intended for human consumption and that can be used by a person to enable the inhalation of vapor or aerosol from the product;
- (2) Includes any product described in this definition of "ESDs" and any similar product or device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any other product name or descriptor; and
- (3) Does not include:
  - a. A humidifier or similar device that emits only water vapor; or
  - b. An inhaler, nebulizer, or vaporizer that is approved by the federal food and drug administration for the delivery of medication.

*Employee* means any person who:

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

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<sup>1</sup>Editor's note(s)—Ord. No. 2019-O-32 §5, adopted Dec. 9, 2019, repealed the former Art. 6, §§ 10-6-10—10-6-70, and enacted a new Art. 6 as set out herein. The former Art. 6 pertained to similar subject matter and derived from Ord. 2005-O-27 §1-4.3.201—1-4.3.207; and Ord. 2007-O-14 §1.

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"Employee" includes every person described in Subsection (1) of this definition of "employee", regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.

*Employer* means any person, partnership, association, corporation, or nonprofit entity that employs one (1) 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* means the outside of the front or main doorway leading into a building or facility that is not exempted from this Article under Section 10-6-30. "Entryway" also includes the area of public or private property within a twenty-five-foot radius outside of the doorway.

*Environmental tobacco smoke, ETS, or secondhand smoke* means the complex mixture formed from the escaping smoke of a burning tobacco product, also known as "sidestream smoke", and smoke exhaled by the smoker.

*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.

*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* shall have the same meaning as in Section 16(2)(f) of Article XVIII of the Colorado Constitution.

*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* means any meeting open to the public pursuant to Part 4 of Article 6 of Title 24, C.R.S., or any other law of this state.

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

*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 ESD.

*Tobacco* means 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.

*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

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accessories, including ESDs, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

*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.

**Sec. 10-6-20. Smoking prohibited.**

- (a) Except as provided in Section 10-6-30, smoking is not permitted and a person shall not smoke in any indoor area, including:
- (1) Public meeting places;
  - (2) Elevators;
  - (3) Government-owned or -operated means of mass transportation, including, but not limited to, buses, vans, and trains;
  - (4) Taxicabs and limousines;
  - (5) Grocery stores;
  - (6) Gymnasiums;
  - (7) Jury waiting and deliberation rooms;
  - (8) Courtrooms;
  - (9) Child day care facilities;
  - (10) Health care facilities including hospitals, health care clinics, doctor's offices, and other health care related facilities;
  - (11) a. Any place of employment that is not exempted, whether or not open to the public and regardless of the number of employees.
    - b. In the case of employers who own facilities otherwise exempted from this Article, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe secondhand smoke and emissions from electronic smoking devices.
  - (12) Food service establishments;
  - (13) Bars;
  - (14) Limited gaming facilities and any other facilities in which any gaming or gambling activity is conducted;
  - (15) Indoor sports arenas;
  - (16) Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
  - (17) Bowling alleys;
  - (18) Billiard or pool halls;
  - (19) Facilities in which games of chance are conducted;
  - (20) a. The common areas of retirement facilities, publicly owned housing facilities, and nursing homes, but not including any resident's private residential quarters.

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- b. Nothing in this Article affects the validity or enforceability of a contract, whether entered into before, on, or after July 1, 2006, that specifies that a part or all of a facility or home specified in this Subsection (20) is a smoke-free area;
- (21) Public buildings;
  - (22) Auditoria;
  - (23) Theaters;
  - (24) Museums;
  - (25) Libraries;
  - (26) Public and nonpublic schools;
  - (27) Other educational and vocational institutions;
  - (28) Airports;
  - (29) Hotel and motel rooms;
  - (30) Assisted living facilities, including nursing facilities as defined in Section 25.5-4-103, C.R.S., and assisted living residences as defined in Section 25-27-102, C.R.S.; and
  - (31) The entryways of all buildings and facilities listed in Subsections (a)(1) to (a)(30) of this Section.
- (b) A cigar-tobacco bar:
- (1) Shall not expand its size or change its location from the size and location in which it existed as of December [31], 2005; and
  - (2) Shall prohibit entry by any person under eighteen (18) years of age and 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 may not enter."
- (c) A retail tobacco business:
- (1) Shall prohibit entry by any person under eighteen (18) years of age; and
  - (2) Shall display signage in at least one (1) conspicuous place and at least four (4) inches by six (6) inches in size stating either:
    - a. "Smoking allowed. Children under eighteen (18) years of age may not enter."; or
    - b. In the case of a retail tobacco business that desires to allow the use of ESDs but not other forms of smoking on the premises, "Vaping allowed. Children under eighteen (18) years of age may not enter."

(Ord. 2019-O-32 §5)

### **Sec. 10-6-30. Exceptions to smoking prohibitions.**

This Article does not apply to:

- (1) Private homes, private residences, and private automobiles; except that this Article 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;

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- (3) Any retail tobacco business; except that the requirements in Section 10-6-20(c) and any related penalties apply to a retail tobacco business;
  - (4) A cigar-tobacco bar;
  - (5) The outdoor area of any business (other than the entryway); or
  - (6) 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).

**Sec. 10-6-40. Optional prohibitions.**

The owner or manager of any place otherwise exempted under Section 10-6-30 may post signs prohibiting smoking. Such posting shall have the effect of including such place in the places where smoking is prohibited or restricted pursuant to this Article.

**Sec. 10-6-50. Unlawful acts—Penalty.**

- (a) 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.
- (b) It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to this Article.
- (c) A person who violates this Article shall, upon conviction thereof, 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.
- (d) The penalty assessment procedure provided in Section 16-2-201, C.R.S., may be followed by the County Sheriff's Office, as agents for the City, in enforcing the provisions of this Article.

(Ord. 2019-O-32 §5)