

# PART 1 NO SMOKING IN PUBLIC PLACES OR WORKPLACES EXCEPT IN THOSE AREAS DESIGNATED FOR SMOKING

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SECTION:

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**6.6.101: LEGISLATIVE INTENT:**

Because the smoking of tobacco or any other weed or plant is a danger to health and is a cause of material annoyance and discomfort to those who are present in confined areas, City Council hereby finds, determines, and declares it is necessary and conducive to the protection of the public health, safety, welfare, and economic well being to prohibit smoking in all public places and workplaces unless the areas are designated as smoking areas pursuant to this part. (Ord. 85-119; Ord. 87-42; Ord. 01-42)

**6.6.102: DEFINITIONS:**

**PUBLIC PLACE:** Any enclosed, indoor areas used by the general public including, but not limited to, restaurants, retail stores, other commercial establishments, governmental offices, waiting rooms of healthcare professionals, public conveyances, airports, bus stations, educational facilities, hospitals, nursing homes, childcare centers, auditoriums, arenas, assembly and meeting rooms, and restrooms; but the term does not include enclosed offices occupied exclusively by smokers, even though the offices may be visited by nonsmokers.

**SMOKING:** The carrying of a lighted pipe, lighted cigar, or lighted cigarette of any kind and includes the lighting of a pipe, cigar, or cigarette of any kind.

**TOBACCO PRODUCT:** As used in this section, "TOBACCO PRODUCT" means:

A. Any product which contains, is made or derived from tobacco or used to deliver nicotine, synthetic nicotine or other substances intended for human consumption, whether heated, chewed, applied to the skin, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including, but not limited to Cigarettes, Cigars, Little Cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, nicotine product, mints, hand gels;

B. Any device that can be used to deliver tobacco or nicotine to the person inhaling from the device, including an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, or other electronic smoking device;

C. The term "Tobacco Product" does not include:

1. Any product that contains marijuana; and
2. Any product made from or derived from tobacco and approved by the Food and Drug Administration (FDA) for use in connection with cessation of smoking.

**TOBACCO STORE:** A retail business in which at least fifty percent (50%) of its gross receipts are from the sale of tobacco, tobacco products, or products related to the use of tobacco or tobacco products.

**WORKPLACE:** An enclosed area in which three (3) or more persons are employed. (Ord. 85-119; Ord. 87-42; Ord. 01-42; Ord. 20-74)

**6.6.103: SMOKING PROHIBITED:**

No person shall smoke, light, or carry any lighted smoking instrument in a public place or workplace except in permitted smoking areas. (Ord. 85-119; Ord. 87-42; Ord. 01-42)

**6.6.104: SMOKING PROHIBITED IN CERTAIN PUBLIC PLACES AND WORKPLACES:**

A. Except as otherwise provided in this part, smoking is prohibited in the following indoor public places and workplaces:

1. Elevators, museums, galleries, libraries, common areas, hallways, meeting rooms and restrooms.
2. All hospitals except in areas designated for smoking.
3. All buildings owned or operated by the City of Colorado Springs except in areas designated for smoking.
4. All buildings in the City of Colorado Springs which are open to the public including, but not limited to, retail stores, grocery

stores and mercantile stores, except in areas designated for smoking. (Ord. 85-119; Ord. 87-42; Ord. 01-42)

#### **6.6.105: PROHIBITION OF SALE OF CIGARETTES OR TOBACCO PRODUCTS IN VENDING MACHINES:**

##### A. Definitions:

**EMPLOYEE:** Any operator or any person employed by him who handles any cigarettes or tobacco products dispensed through a vending machine.

**OPERATOR:** Any person, who by contract, agreement, or ownership takes responsibility for furnishing, installing, servicing, operating or maintaining one or more vending machines.

**PERSON:** Any individual, partnership, corporation, company, firm, institution, trustee, association or any public or private entity.

**VENDING MACHINE:** Any self-service device offered for public use which, upon insertion of money or token, or by other means, dispenses cigarettes or tobacco products.

B. Prohibition: No person shall install, keep, maintain, or permit the location, installation, keeping, maintenance or use on premises over which they have control, any vending machine for the purpose of selling or distributing cigarettes or tobacco products.

##### C. Impoundment:

1. The City Council hereby finds and determines that vending machines which sell or distribute cigarettes or tobacco products, are public nuisances, and any vending machine found which sells or distributes cigarettes or tobacco products shall be removed and impounded at the expense of the operator by the Police Department. Any vending machine removed under the provisions of this section shall be taken to a place designated by the Police Department for storage and maintenance. No action for the recovery of or compensation for damages to or loss from a vending machine impounded under the provisions of this Code shall be maintained against the City when the machine was found to be selling or distributing cigarettes or tobacco products.

2. Vending machines shall be removed and impounded in the place designated by the Police Department and shall not be released therefrom until the charge for removal and storage of the vending machine shall have been paid. The charge for removal and impoundment of the vending machine shall be based upon a computation of actual expenses by the City incurred in accomplishing the removal and impoundment. Schedule of the charges shall be posted for public inspection in the Office of the Police Department.

3. Whenever a vending machine is removed and impounded by the Police Department, pursuant to the provisions of this section, the Police Department shall notify the operator of the machine, as such can be ascertained, of the impoundment of the vending machine and of the operator's opportunity to request the hearing to determine the validity of the impoundment. The notice shall be sent by regular mail or shall be personally served within seventy two (72) hours of an impoundment including weekends and holidays and shall contain the following information:

- a. Location of storage of the vending machine;
- b. The location from which the vending machine was removed;
- c. The manner in which the vending machine may be reclaimed;
- d. The reason for which the vending machine was impounded;
- e. A description of the vending machine which shall include when available the make, model and vending machine number, if any;
- f. A statement that unless claimed within thirty (30) calendar days from the date appearing on the notice that the vending machine is subject to sale; and
- g. The operator has a right to a hearing concerning the validity of the impoundment and that the operator must request a hearing in writing at the Colorado Springs Municipal Court within ten (10) days of the postmark of the notice.

4. Upon receipt of a timely written request, a hearing shall be conducted within seventy two (72) hours of the request, excluding weekends and holidays. The hearing shall be conducted by a hearing officer, which hearing officer shall be a Judge of the Municipal Court in Colorado Springs or should the Presiding Judge so designate, a Municipal Court Referee.

5. The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The hearing shall be to the legality of the removal and impoundment of the vending machine. The burden of proof shall be on the Police Department to establish by a preponderance of the evidence probable cause for the impoundment. For the purposes of this section "probable cause" shall mean a state of fact as would lead a reasonable person to believe that there was sufficient compliance with the provisions of this section with other lawful authority as to grant authority to impound the vending machine.

6. If the hearing officer determines there was cause to remove and impound the vending machine, the owner or operator may apply for return of the vending machine by paying the applicable charges. If the charge is not paid, the vending machine shall be sold or otherwise disposed of.

7. If the hearing officer determines there was no probable cause to remove and impound the vending machine, the Police Department shall release the vending machine to the owner and shall be responsible for the costs incurred in the removal and storage of the vending machine. Failure of the owner to take possession of his vending machine within forty eight (48) hours of the hearing, excluding weekends and holidays, shall render the owner liable for all subsequent storage charges.

8. The decision of the hearing officer shall be final. (Ord. 95-84; Ord. 01-42; Ord. 20-74)

#### **6.6.106: TOBACCO PRODUCT PLACEMENT:**

It shall be unlawful for any person to sell or display, offer to sell or display or permit to be sold or displayed any tobacco product in a

manner that it can be reached or purchased by customers under the age of twenty-one (21) without the product being requested from and provided by an employee of the establishment, except as provided in subsections 6.6.105B1 through B3 of this part. This section shall not apply to any retail establishment having seventy five percent (75%) of its gross income derived from the sale of tobacco, tobacco products or products related to the use of tobacco or tobacco products. (Ord. 03-61; Ord. 20-74)

**6.6.107: DESIGNATION OF SMOKING AREAS:**

All public places and workplaces, except tobacco stores, are hereby declared to be nonsmoking areas unless the owner, proprietor, or person in charge designates a smoking area.

A. In restaurants with a seating capacity for over fifty (50) persons, the owner, proprietor, or person in charge may provide a smoking area of sufficient size to accommodate without unreasonable delay patrons who request to be seated in such an area. The delay shall be deemed reasonable if it is equal for smokers and nonsmokers. If a waiting area is provided the area may not be designated a smoking area. Patrons shall be advised orally or by signs that smoking areas are available. In restaurants with a seating capacity for fifty (50) or less, the owner, proprietor, or person in charge may designate smoking areas as desired.

B. In no event shall lobbies, hallways or other common areas typically shared by smokers and nonsmokers be designated as smoking areas, except lobbies, hallways or other common areas which exceed five thousand (5,000) square feet in area may have within them designated smoking areas provided that no more than twenty five percent (25%) of the total area of the lobby, hallway or common area is so designated and further provide that the designated smoking areas are located such that it is not necessary for nonsmokers to pass through the areas to reach other nonsmoking areas.

C. In places of work in which smokers and nonsmokers work in the same office or room, employers shall designate smoke free areas to accommodate employees who request the same.

D. Employers may designate not more than fifty percent (50%) of the available floor space in employee lounges, cafeterias and break areas as smoking areas. (Ord. 85-119; Ord. 87-42; Ord. 01-42; Ord. 03-61)

**6.6.108: SIGNS:**

To advise persons of the existence of no smoking in public places and workplaces, and the availability of smoking designated areas, if any, signs shall be posted as follows:

A. In places where the owner, proprietor or person in charge prohibits smoking in the entire place, a sign using the words "No Smoking" or the international no smoking symbol, or both, shall be conspicuously posted either on all entrances or in a position clearly visible on entry into the public place or workplace.

B. In public places or workplaces where certain areas are designated as smoking areas pursuant to this chapter, the statement "No Smoking Except In Designated Areas", shall be conspicuously posted on all entrances or in a position clearly visible on entering into the public place or workplace. (Ord. 85-119; Ord. 87-42; Ord. 01-42; Ord. 03-61)

**6.6.109: PROHIBITED SMOKING AREA:**

Smoking shall not be permitted and smoking areas shall not be designated in those areas where smoking is prohibited by the Fire Chief, State statute, ordinances, Fire Code regulations, or other regulations of the City of Colorado Springs. (Ord. 85-119; Ord. 87-42; Ord. 01-42; Ord. 03-61)

**6.6.110: ENFORCEMENT:**

In accord with the City's contract for health services as set out in section 6.1.103 of this chapter, the Medical Director or designee of the El Paso County Department of Health and Environment shall work with owners, proprietors, and persons in charge of public places, employers and employees in workplaces, and all citizens of the City of Colorado Springs to achieve compliance with this part. The Medical Director shall have the authority to call upon the City Attorney or his designated representative to maintain an action to enforce the provisions of this part.

In any event, it shall be unlawful for any person to knowingly smoke in a public place or workplace except in a designated smoking area. (Ord. 85-119; Ord. 87-42; Ord. 01-42; Ord. 03-61)

**6.6.111: NONDISCRIMINATION:**

No person or employer shall discharge, refuse to hire or in any manner discriminate against any employee or applicant for employment because the employee or applicant exercises any rights afforded by this part. (Ord. 87-42; Ord. 01-42; Ord. 03-61)