

Evans 2015

CITY OF EVANS, COLORADO

ORDINANCE NO. 622-15

AN ORDINANCE AMENDING CHAPTER 8.18 OF THE EVANS CITY CODE
REGARDING CONTROL OF SMOKING TO ADDRESS ALL FORMS OF ELECTRONIC
SMOKING DEVICES IN ADDITION TO TRADITIONAL TOBACCO SMOKING DEVICES

WHEREAS, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado; and

WHEREAS, the City Council finds it is in the best interest of the citizens of the City to protect nonsmokers from the exposure to tobacco and marijuana smoke and other forms of electronic smoking devices; and

WHEREAS, the City Council has previously adopted regulations regarding smoking, but with the legalization of marijuana and popularization of electronic cigarettes (e-cigarettes), the Council finds it necessary to amend its existing ordinance regarding control of smoking.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO AS FOLLOWS:

1. Chapter 8.18 is amended to read as follows:

CONTROL OF SMOKING - Chapter 8.18

8.18.010 Legislative Declaration. The City of Evans hereby finds and determines that it is in the best interest of the people of this City to protect nonsmokers from involuntary exposure to environmental tobacco smoke and electronic smoking devices in most indoor areas open to the public, public meetings, food service establishments, places of employment, and certain outdoor recreation areas. The City further finds and determines that a balance should be struck between the health concerns of nonconsumers of tobacco and nicotine 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 nicotine products in certain designated public areas and in private places. Therefore, the City hereby declares that the purpose of this Chapter is to preserve and improve the health, comfort, and environment of the people of this City by limiting exposure to tobacco smoke and vapor created from the use of electronic smoking devices. (Ord. 427-08: Ord. 374-06: Ord. 1075-97)

8.18.020 Definitions. As used in this Chapter, unless the context otherwise requires:

- (1) "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.

(2) “Bar” means any indoor area that is operated and licensed under Article 47 of Title 12, 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 beverages.

(3) “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 fifty thousand dollars 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 fifty thousand dollars in annual sales from the one-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.

(3.5) “Electronic smoking device” means any electronically actuated device which in operation causes the user to exhale any smoke, vapor, or other substance resulting in chemically altered human exhalation. "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, a vaporizer, a vape pen, or under any similar product name or descriptor. The term "electronic smoking device" does not include any asthma inhaler or other device that has been specifically approved by the United States Food and Drug Administration.

(4) (a) “Employee” means any person who:

(I) Performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or

(II) Provides uncompensated work or services to a business or nonprofit entity.

(5) “Employee” includes every person described in paragraph (a) of this subsection (5), regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.

(6) “Employer means 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.

(7) “Entryway” means the outside of the front or main doorway leading into a building or facility that is not exempted from this Section 8.18.040. “Entryway” also includes the area of public or private property within a specified radius outside of the doorway. The specified radius shall be fifteen feet.

(8) “Environmental tobacco smoke,” “ETS,” or “secondhand smoke” means the complex mixture formed from the escaping smoke or a burning tobacco product, also known as “sidestream smoke,” and smoke exhaled by the smoker.

(9) “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 terms includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.

(10) “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.

(11) “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.

(12) “Public building” means 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 states or local government.

(13) “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.

(14) “Smoke-free working area” means an indoor area in a place of employment where smoking is prohibited under this Chapter.

(15) “Smoking” means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.

(16) “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.

(17) “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, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

(18) "Work area" means 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. 427-08; Ord. 374-06; Ord. 1075-97)

8.18.030 General Smoking Restrictions.

A. Except as provided in Section 8.18.040, and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any indoor area or specified outdoor recreation areas, including, but not limited to:

(a) Public meeting places;

(b) Elevators;

(c) Government-owned and or operated means of mass transportation, including, but not limited to, buses, vans, and trains;

(d) Taxicabs and limousines;

(e) Grocery stores;

(f) Gymnasiums;

(g) Jury waiting and deliberation rooms;

(h) Courtrooms;

(i) Child day care facilities;

(j) Health care facilities including hospitals, health care clinics, doctor's offices, and other health care related facilities;

(k) (I) Any place of employment that is not exempted.

(II) In the case of employers who own facilities otherwise exempted from this Chapter, such employer 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.

(l) Food service establishments;

(m) Bars;

(n) Limited gaming facilities and any other facilities in which any gaming or gambling activity is conducted;

- (o) Indoor sports arenas;
- (p) Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
- (q) Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests;
- (r) Bowling alleys;
- (s) Billiard or pool halls;
- (t) Facilities in which games of chance are conducted;
- (u) The common areas of retirement facilities, publicly owned housing facilities, and nursing homes, not including any resident's private residential quarters;
- (v) Public buildings;
- (w) Auditoria;
- (x) Theaters;
- (y) Museums;
- (z) Libraries;
- (aa) To the extent not otherwise provided in Section 25-14-103.5, C.R.S., public and non-public schools;
- (bb) Other educational and vocational institutions;
- (cc) The entryways of all buildings and facilities listed in paragraphs (a) to (bb) of this subsection (1); and
- (dd) Within the entire fenced area of the Riverside Park Ball Fields.

B. A cigar-tobacco bar shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005. A cigar-tobacco bar shall display signage in at least one conspicuous place and at least four inches by six inches in size stating: "Smoking allowed. Children under eighteen years of age must be accompanied by a parent or guardian." (Ord. 374-06)

8.18.040 Exceptions to Smoking Restrictions. This Chapter 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 any

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) 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;

(4) Any retail tobacco business;

(5) A cigar-tobacco bar;

(6) An airport smoking concession;

(7) The outdoor area of any business;

(8) A place of employment that is not open to the public and that is under the control of an employer that employs three or fewer employees;

(9) A private, non-residential 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. (Ord. 374-06)

8.18.045 Restrictions on Use of Electronic Smoking Devices.

The use of an electronic smoking device shall not be permitted and no person shall use an electronic smoking device at any location where smoking is prohibited in Section 8.18.030, subject to the exempted locations provided at Section 8.18.040.

8.18.050 Optional Prohibitions.

A. The owner or manager of any place not specifically listed in Section 8.18.030, including a place otherwise exempted under Section 8.18.040, may post signs prohibiting smoking and the use of electronic smoking devices. Such owner or manager may post signs providing smoking and non-smoking areas as well as areas where use of electronic smoking devices are permitted and areas where the use of electronic smoking devices are not permitted. Such posting shall have the effect of including such place, or the designated non-smoking 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 8.18.030, including a place otherwise exempted under Section 8.18.040, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by Section 8.18.030(1)(k)(I), the owner or manager shall post a sign or signs in the smoke-free work area as provided in subsection (1) of this section. (Ord. 374-06)

8.18.060 Unlawful Acts – Penalty – Disposition of Fines and Surcharges.

A. It is unlawful for a person who owns, manages, operates, or otherwise controls the use of a premises subject to this Chapter to violate any provision of this Chapter.

B. It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to this Chapter.

C. Any person who violates any of the provisions of this Chapter is guilty of a violation of this Chapter and shall be punished as provided in Chapter 1.16 of this Code. (Ord. 374-06: Ord. 1075-97: Ord. 622-15)

2. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

3. Repeal. Existing ordinances or parts of ordinances covering the same matters embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

INTRODUCED AND PASSED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS 5th DAY OF MAY, 2015.

ATTEST:

CITY OF EVANS, COLORADO

Raegan Robb, City Clerk

BY: _____
John L. Morris, Mayor

PASSED AND ADOPTED ON A SECOND READING THIS 15th DAY OF JUNE, 2015.

ATTEST:

CITY OF EVANS, COLORADO

Raegan Robb, City Clerk

BY: _____
John L. Morris, Mayor