

Chapter 5.11 SMOKING IN PUBLIC PLACES AND OTHER AREAS

5.11.010 Legislative intent.

City council hereby finds and determines that it is in the best interest of the people of the city to protect nonsmokers from involuntary exposure to environmental tobacco smoke in most indoor areas open to the public, public meetings, food service establishments, and places of employment. City council further finds and determines that a balance should be struck between the health concerns of nonconsumers of tobacco 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 products in certain designated public areas and in private places. Therefore, city council 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.

(Ord. 1745, 2006; Ord. 1143, 1992; Ord. 1011, § 1, 1986)

5.11.020 Definitions.

As used in this chapter, 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., as amended, 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.

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.

Employee includes every person described above, 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 or more persons. "Employer" includes, without limitation, the 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 25-foot radius outside of the front or main doorway leading into a building or facility that is not exempted under section 5.11.040.

Environmental tobacco smoke, ETS, or secondhand smoke means the complex mixture formed from the escaping smoke of a burning tobacco product or the escaping vapor or aerosol of an electronic smoking device, also known as "side stream smoke", and smoke, vapor, or aerosol 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.

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.

Playground means that area within a park owned or operated by the City of Golden containing equipment or facilities designed for children's play.

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 state or local government.

Public meeting means any meeting open to the public pursuant to chapter 1.03 of the Code and Part 4 of Article 6 of Title 24, C.R.S.

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

Smoking means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco, marijuana, or the active use of an electronic smoking device.

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" includes tobacco prepared, treated, or modified in such a manner that it may be ingested through the use of an electronic smoking device.

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.

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.

Electronic smoking device means any electronic oral device such as one composed of a heating element, battery, and/or electronic circuit which provides a vapor of nicotine, vapor of a solution including nicotine, or aerosol of a solution including nicotine, or any other substance for inhalation. This term shall include every variation and type of such devices whether they are manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pen, an electronic pipe, or an electronic hookah or any other product name or descriptor. The term "electronic smoking device" does not include any device specifically approved by the United States Food and Drug Administration for use in reducing, treating or eliminating nicotine or tobacco dependence, or for any other medical purposes, when such a device is being marketed and sold solely for such approved purpose.

(Ord. No. 2085, § 4, 8-23-2018 ; Ord. 1985, § 1, 2014; Ord. 1886, § 1, 2010; Ord. 1823, § 1, 2008; Ord. 1745, 2006; Ord. 1143, 1992; Ord. 1011, § 1, 1986)

5.11.030 General smoking restrictions.

- (1) Except as provided in section 5.11.040 and in order to reduce the levels of exposure to environmental tobacco and marijuana smoke, smoking shall not be permitted and no person shall smoke in any indoor area, including, but not limited to:
- (a) Public meeting places;
 - (b) Elevators;
 - (c) Government-owned 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) 1. Any place of employment that is not exempted.
 - 2. In the case of employers who own facilities otherwise exempted from this subsection, each 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) Indoor sports arenas;
 - (o) Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
 - (p) Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least 75 percent of the sleeping quarters within a hotel or motel that are rented to guests;
 - (q) Bowling alleys;
 - (r) Billiard or pool halls;
 - (s) The common areas of retirement facilities, publicly owned housing facilities, and nursing homes, not including any resident's private residential quarters;
 - (t) Public buildings;
 - (u) Auditoria;
 - (v) Theaters;

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- (w) Museums;
 - (x) Libraries;
 - (y) Public and nonpublic schools;
 - (z) Other educational and vocational institutions;
 - (aa) Any retail tobacco business.
- (2) Except as provided in section 5.11.040, and in order to reduce the levels of exposure to environmental tobacco and marijuana smoke, smoking shall not be permitted and no one shall smoke in any of the following areas:
- (a) All City of Golden owned or controlled parks, open space, indoor or outdoor pools and associated spectator areas, indoor or outdoor sport or athletic fields and associated spectator areas, indoor or outdoor water parks and associated spectator areas, not including smoking areas designated and posted by the city manager or his/her designee, pursuant to subsection (ii) below;
 - (b) On City of Golden owned or controlled property that is within 25 feet of any City of Golden owned or controlled portion of the Kinney Run Trail, Cressman Gulch Trail, Tucker Gulch Trail, Clear Creek Trail, US 6/SH-93 Trail, or any other City of Golden owned or controlled trail, biking path, or walking path;
 - (c) Within 25 feet of, any playground located within a City of Golden Park;
 - (d) The Fossil Trace Golf Course and associated grounds and facilities, including the club house, driving ranges and practice facilities, but not to include the actual course of play, or outdoor smoking areas near the clubhouse as designated and posted by the city manager or his/her designee, in their discretion;
 - (e) All outdoor areas in the Clear Creek RV Park, not including smoking areas designated and posted by the city manager or his/her designee, in their discretion;
 - (f) On any public right-of-way within 25 feet of the outdoor seating areas of any business that are located on any public right-of-way;
 - (g) All public transit waiting areas;
 - (h) Any parking structures;
 - (i) Any event for which any city street, right-of-way, park, or parking lot, in nonresidential zone districts that are closed by the city in order to accommodate special events, not including smoking areas designated and posted by the city manager or his/her designee, in their discretion;
 - (j) All public sidewalks and rights-of-way in the Washington Street Downtown Area, defined as the area along both sides of Washington Avenue between 10th Street and 14th Street, the area on along both sides of 12th Street between Arapahoe Street and Ford Street, and the area on along both sides of 13th Street between Arapahoe Street and Ford Street; and
 - (k) The entryways of all buildings and facilities to which this section applies.
- (3) Violations of this section shall be an administrative violation subject to the provisions of section 8.25 of the Golden Municipal Code.

(Ord. No. 2083, § 1, 8-23-2018 ; Ord. 1985, § 2, 2014; Ord. 1886, §§ 2—4, 2010; Ord. 1745, 2006; Ord. 1143, 1992; Ord. 1011, § 1, 1986)

5.11.035 Reserved.

Editor's note(s)—Sec. 2 of Ord. No. 2083 , adopted Aug. 23, 2018, repealed § 5.11.035, optional prohibitions, having derived from Ord. 1985, 2014, as being duplicated provisions found in § 5.11.050.

5.11.040 Exceptions to smoking restrictions.

The restrictions set forth in section 5.11.030 shall not apply to:

- (a) Private homes, private residences, and private automobiles; except 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;
- (b) Limousines under private hire;
- (c) 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 25 percent;
- (d) The outdoor area of any business, not including seating areas in any public right-of-way, and not including outdoor areas within 25 feet of any entryway as defined in subsection 5.11.020(5);
- (e) 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.

(Ord. 1985, § 4, 2014; Ord. 1886, § 5, 2010; Ord. 1745, 2006; Ord. 1143, 1992; Ord. 1011, § 1, 1986)

5.11.050 Optional prohibitions.

- (1) The owner or manager of any place not specifically listed in section 5.11.030, including a place otherwise exempted under section 5.11.040, may post signs prohibiting smoking or providing smoking and nonsmoking areas. Such posting shall have the effect of including such place, or the designated nonsmoking portion thereof, in the places where smoking is prohibited or restricted pursuant to this chapter.
- (2) If the owner or manager of a place not specifically listed in section 5.11.030, including a place otherwise exempted under this subsection, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by subsection 5.11.030(1)(k)2., 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. 1745, 2006)

5.11.060 Other applicable regulations of smoking—Local counterpart regulations authorized.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law.

(Ord. 1745, 2006)

5.11.070 Reserved.

Editor's note(s)—Sec. 1 of Ord. No. 2039, adopted Nov. 10, 2016 , repealed § 5.11.070, which pertained to unlawful acts and derived from Ord. 1143, 1992; Ord. 1745, 2006; and Ord. 1823, 2008.