

ARTICLE 14 Smoking and E-cigarettes

Sec. 9-14-10. Intent.

It is the intent of this Article to protect the public health, safety and welfare by prohibiting smoking and the use of e-cigarettes and personal vaporizers in most indoor and outdoor areas open to the public, public meetings, food service establishments and places of employment within the City.

It is also the intent of this Article to protect the health, safety and welfare of persons under the age of twenty-one (21) years by prohibiting the sale of tobacco and e-cigarettes to persons under the age of twenty-one (21).

Sec. 9-14-20. Definitions.

For purposes of this Article, the following terms shall have the following meanings:

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 Title 44, Article 3, 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.

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.

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, including marijuana, 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, electronic hookah, vape pen, vape mod or any other product name or descriptor for such devices and includes any product intended for use with an electronic smoking device, including refills, cartridges and component parts of a product whether or not marketed or sold separately. The term "electronic smoking device" does not include any device specifically approved by the United States Food and Drug Administration for any medical purpose, when such a device is being marketed and sold solely for such approved purpose.

Employee means any person who performs any type of work for benefit of another in consideration of direct or indirect wages or profit or provides uncompensated work or services to a business or nonprofit entity, and includes every person described in this definition, regardless of whether such person is referred to as an employee, contractor, independent contractor, 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, and includes without limitation the legislative, executive and judicial branches of state government; any county, City and county, City, 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 under Section 9-14-40, including the area of public or private property within a fifteen-foot radius outside of the doorway.

Environmental smoke or secondhand smoke means the complex mixture formed from the escaping smoke of a burning tobacco or marijuana product, also known as side stream smoke, and smoke exhaled by the smoker and includes ultrafine particles and potentially carcinogenic hydrocarbons released into the air from electronic smoking devices.

Food service establishment means any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption, including without limitation restaurants, cafeterias, coffee shops, diners, sandwich shops and short-order cafes.

Indoor area means any enclosed area or portion thereof, provided that the opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area.

Local authority means the City or any instrumentality thereof.

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.

Proprietor means the owner, operator or person in charge of any place regulated by this Article.

Public building means any building owned or operated by the State, the City or any instrumentality thereof or any other separate corporate instrumentality or unit of state or local government.

Public meeting means any meeting open to the public, pursuant to Section 24-6-401, et seq., 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.

Smoking means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco, nicotine or marijuana and includes the use of electronic smoking devices or electronic nicotine delivery systems.

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; 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; and 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 tobacco 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 (1) or more employees are routinely assigned and perform services for or on behalf of their employer.

Sec. 9-14-30. General smoking restrictions.

- (a) Except as provided in Section 9-14-40, to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted, and no person shall smoke in any indoor or outdoor area, including but not limited to:

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- (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, and vehicles when used for public transportation of children or adults for day care or health care.
 - (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) Any place of employment that is not exempted, provided that in the case of employers who own facilities otherwise exempted, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe environmental tobacco smoke, and every employee shall have a right to work in an area free of environmental tobacco smoke.
 - (12) Food service establishments.
 - (13) Bars.
 - (14) Indoor sports arenas.
 - (15) Restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-unit residential facilities.
 - (16) Restrooms, lobbies, hallways and other common areas in hotels and motels and in at least seventy-five percent (75%) of the sleeping quarters within a hotel or motel that are rented to guests.
 - (17) Bowling alleys.
 - (18) Billiard or pool halls.
 - (19) Facilities in which games of chance are conducted.
 - (20) The common areas of retirement facilities, publicly owned housing facilities and nursing homes, not including any resident's private residential quarters.
 - (21) Public buildings, public outdoor plazas, public transit waiting areas, public parks and public trails.
 - (22) Auditoria, including outdoor entertainment venues and amphitheatres.
 - (23) Theaters.
 - (24) Museums.
 - (25) Libraries.
 - (26) To the extent not otherwise provided in Section 25-14-103.5, C.R.S., public and nonpublic schools.
 - (27) Other educational and vocational institutions.

(28) Within fifteen (15) feet of the entryways of all buildings and facilities listed in Subsections (1) through (27) hereof.

- (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 the effective date of the ordinance codified herein. A cigar-tobacco bar shall display signage in at least one (1) conspicuous place and at least four (4) inches by six (6) inches in size stating:

SMOKING AND VAPING ALLOWED.
CHILDREN UNDER EIGHTEEN (18) YEARS OF AGE MUST BE ACCOMPANIED BY A
PARENT OR GUARDIAN.

(Prior code 8.28.030; Ord. 32 §1, 2011; Ord. 01 §3 , 2016)

Sec. 9-14-40. Exemptions.

The following shall be exempt from Section 9-14-30:

- (1) Private homes, private residences and private automobiles, except that this exception shall not 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) A hotel or motel room, if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent (25%).
- (4) Any retail tobacco business.
- (5) A cigar-tobacco bar.
- (6) The outdoor area of any business unless otherwise prohibited.
- (7) A place of employment that is not open to the public and is under the control of an employer that employs three (3) or fewer employees.
- (8) A private, nonresidential building on a farm or ranch, as defined in Section 39-1-102, C.R.S., that has an annual gross income of less than five hundred thousand dollars (\$500,000.00).

Sec. 9-14-50. Signage.

- (a) The owner or manager of any place not specifically listed in Section 9-14-30, including a place otherwise exempted under Section 9-14-40, 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 Section 9-14-30.
- (b) If the owner or manager of a place not specifically listed in Section 9-14-30, including a place otherwise exempted under Section 9-14-40, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by Section 9-14-30, the owner or manager shall post a sign or signs in the smoke-free work area as provided in Subsection (a) hereof.

(Prior code 8.28.050; Ord. 32 §1, 2011)

Sec. 9-14-60. Complaints.

Any person may register a complaint with the Police Department regarding smoking in areas in which smoking is prohibited under this Article.

Sec. 9-14-70. Possession and sale of tobacco products and electronic smoking devices.

- (a) It is unlawful for anyone under the age of twenty-one (21) years to possess any tobacco product or electronic smoking device at any place, public or private, within the City.
- (b) This Section shall not apply to any underage person who is expressly authorized by the Police Department to attempt to purchase or otherwise obtain tobacco products or electronic smoking devices as part of a police investigation or other police operation. THIS SECTION SHALL ALSO NOT APPLY INSIDE PRIVATE HOMES AND PRIVATE RESIDENCES UNLESS SUCH HOME OR RESIDENCE IS BEING USED FOR CHILD CARE OR DAY CARE.
- (c) It is unlawful for any person to sell, exchange, give, deliver, loan or otherwise furnish or cause or permit to be sold, exchanged, delivered, loaned or otherwise furnished any tobacco products or electronic smoking devices to anyone under the age of twenty-one (21) years.
- (d) Any person who sells, offers to sell, or possesses with intent to sell to offer for sale any tobacco product or electronic smoke devices shall display a warning sign having a minimum height of three (3) inches and width of six (6) inches in a prominent place within the establishment, reading as follows:

WARNING
IT IS ILLEGAL FOR ANY PERSON UNDER TWENTY-ONE YEARS OF AGE TO PURCHASE TOBACCO OR E-CIGARETTE
PRODUCTS

(Ord. 01 § 5 , 2016; Ord. 19 , §4, 2019)

Editor's note(s)—Ord. 01, § 5 , adopted in 2016, amended § 9-14-70 in its entirety to read as herein set out.

Former § 9-14-70 pertained to possession of tobacco products, and derived from prior code 8.28.070 and Ord. 32 § 1, adopted in 2011.

Sec. 9-14-80. Unlawful acts; penalty.

- (a) It is unlawful for any person to violate any provision of this Article.
- (b) Other than as provided in subsection (c) below, violations of this Article shall be punished by a fine of not more than four hundred ninety-nine dollars (\$499.00). In determining the sentence to be imposed, the Municipal Judge shall consider the frequency and duration of the violation, the size of the establishment, whether the violation was knowingly made and any other relevant factor. Each day of continuing violation shall be deemed a separate offense.
- (c) Violations of Section 9-14-70(c), sale of tobacco or electronic smoke device to a minor, shall be punishable upon conviction by a fine of not more than two thousand six hundred fifty dollars (\$2,650.00) or by imprisonment for a period of time not to exceed one hundred eighty (180) days, or by both such fine and imprisonment.

(Prior code 8.28.080; Ord. 32 §1, 2011; Ord. 19 , §5, 2019)