

## **ARTICLE III. SMOKING IN PUBLIC PLACES**

### **Sec. 43-30. 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 beverages.

*Electronic smoking device* means any product or device that contains or delivers nicotine or any other substance, even if marketed as nicotine-free, and that can be used by a person to enable the inhalation of vapor or aerosol from the product, and includes every variation and type of such product or device whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pen, vape pen, electronic pipe, or electronic hookah or under any other product name or descriptor. "Electronic smoking device" does not include:

- (1) A humidifier or similar device that emits only water vapor; or
- (2) An inhaler, nebulizer, or vaporizer that is approved by the federal food and drug administration for the delivery of medication.

*Cigar-tobacco bar* means a bar that generates at least five (5) percent 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 each and every calendar year. A bar that fails to generate, in any calendar year, at least five (5) percent 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.

*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 in this subsection, 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.

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*Entryway* means the outside of any doorway leading into a building or facility that is not exempted from this article under section 43-32. "Entryway" also includes the area of public or private property within a twenty-five (25) foot radius outside of the doorway.

*Environmental smoke, ES or secondhand smoke* means the complex mixture formed from the escaping smoke of a burning tobacco or marijuana 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.

*Marijuana* shall have the same meaning as in section 16(2)(f) of article XVIII of the Colorado State Constitution.

*Patio* means an outdoor seating or recreation area adjoining or otherwise appurtenant to an indoor area for which smoke is prohibited by this article.

*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 Lafayette containing equipment or facilities designed for children's play.

*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 any city ordinance or state law.

*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 electronic smoking device.

*Tobacco* means cigarettes, cigars, cheroots, stogies, and periques; little cigars, small cigars, and cigarillos; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; snus; 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 intended for human consumption, whether heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, ingested, or applied to the skin of an individual. "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 inhaled or otherwise 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, including electronic smoking devices, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

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*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.

(Ord. No. 2015-04, § 1, 1-20-15; Ord. No. 2018-25, § 8, 8-21-18; Ord. No. 2019-32, § 1, 11-4-19)

**Sec. 43-31. General smoking restrictions.**

- (a) Except as provided in section 43-32, smoking is not permitted and a person shall not smoke in any indoor area, including, but not limited to:
- (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 environmental smoke. Every employee shall have a right to work in an area free of environmental 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) Hotel and motel rooms;
  - (17) Bowling alleys;
  - (18) Billiard or pool halls;
  - (19) a. The common areas of retirement facilities, publicly owned housing facilities, and nursing homes, but not including any resident's private residential quarters.
    - b. Nothing in this article affects the validity or enforceability of a contract that specifies that a part or all of a facility or home specified in this paragraph is a smoke-free area.
  - (20) Public buildings;

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- (21) Auditoria;
  - (22) Theaters;
  - (23) Museums;
  - (24) Libraries;
  - (25) Public and nonpublic schools;
  - (26) Other educational and vocational institutions;
  - (27) Assisted living facilities, including nursing facilities as defined in C.R.S. § 25.5-4-103 and assisted living residences as defined in C.R.S. § 25-27-102; and
  - (28) The entryways of all buildings and facilities listed in paragraphs (1) to (27) of this subsection.
- (b) Smoking is not permitted and a person shall not smoke in any of the following areas:
- (1) The City of Lafayette Skate Park;
  - (2) The City of Lafayette Great Outdoor Water Park;
  - (3) Any City of Lafayette park that includes a playground;
  - (4) Patios of any area for which smoking is prohibited pursuant to subsection (a) of this section.
- (c) A cigar-tobacco bar shall prohibit entry by any person under twenty-one (21) 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. Persons under twenty-one (21) years of age may not enter."
- (d) A retail tobacco business shall prohibit entry by any person under twenty-one (21) 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 either:
- (1) "Smoking allowed. Persons under twenty-one (21) years of age may not enter."; or
  - (2) In the case of a retail tobacco business that desires to allow the use of electronic smoking devices but no other forms of smoking on the premises, "Vaping allowed. Persons under twenty-one (21) years of age may not enter."
- (Ord. No. 2015-04, § 1, 1-20-15; Ord. No. 2019-32, § 2, 11-4-19)

### **Sec. 43-32. Exceptions to smoking restrictions.**

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) Any retail tobacco business, except that the requirements of section 43-31(d) apply to a retail tobacco business;
- (3) A cigar-tobacco bar, except that the requirements of section 43-31(c) apply to a cigar-tobacco bar;
- (4) A private, nonresidential building on a farm or ranch, as defined in C.R.S. § 39-1-102 that has annual gross income of less than five hundred thousand dollars (\$500,000.00).

(Ord. No. 2015-04, § 1, 1-20-15; Ord. No. 2019-32, § 3, 11-4-19)

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**Sec. 43-33. Optional prohibitions.**

The owner or manager of any place otherwise exempted under section 43-32 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.

(Ord. No. 2015-04, § 1, 1-20-15; Ord. No. 2019-32, §§ 3, 4, 11-4-19)

**Sec. 43-34. Scope.**

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

(Ord. No. 2015-04, § 1, 1-20-15)

**Sec. 43-35. Unlawful acts.**

- (1) 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.
- (2) It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to this article.

(Ord. No. 2015-04, § 1, 1-20-15)

**Secs. 43-36—43-50. Reserved.**