

CHAPTER 13. CLEAN INDOOR AIR

6-13-1. Legislative Intent.

- (A) It is the finding and declaration of the City of Westminster that it is in the best interest of the people of this City to protect nonsmokers from involuntary exposure to environmental smoke in most indoor areas open to the public, public meetings, food service establishments and places of employment. The City further finds and determines that a balance should be struck between the health concerns of non-consumers of tobacco and marijuana 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 marijuana 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 and marijuana smoke.
- (B) Following adoption of Article XVIII, Section 16, of the Colorado Constitution, legalizing certain recreational use and possession of marijuana, the City finds and determines that there is a need to regulate the open and public consumption of marijuana.

(3289 3666)

6-13-2. Definitions.

Airport smoking concession shall mean a bar or restaurant, or both, in a public airport with regularly scheduled domestic and international commercial passenger flights, in which bar or restaurant smoking is allowed in a fully enclosed and independently ventilated area by the terms of the concession.

Auditorium shall mean the part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.

Bar shall mean any indoor area that is operated and licensed under Article 47 of Title 12, C.R.S., and Title V, Chapter 14, W.M.C., 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.

Cigarette, tobacco, or nicotine product shall mean:

- (1) A product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual; or
- (2) Any device that can be used to deliver tobacco or nicotine to the person inhaling from the device, including an electronic cigarette, cigar, cigarillo, or pipe.
- (3) Cigarette, tobacco, or nicotine products does not mean a product that the food and drug administration of the United States department of health and human services has approved as a tobacco use cessation product.

Cigar-tobacco bar shall mean 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 \$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 any calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total annual gross income or \$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 shall mean any person who:

- (A) Performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or
- (B) Provides uncompensated work or services to a business or nonprofit entity.

Employee shall include 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 shall mean 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.

Entryway shall mean the outside of the front or main doorway leading into a building or facility that is not exempted from this chapter under Section 6-13-4, W.M.C. "Entryway" also includes the area of public or private property within a specified radius outside of the doorway. The specified radius shall be 15 feet.

Environmental smoke or *secondhand smoke* shall mean 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.

Food service establishment shall mean 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 shall mean 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.

Local authority shall mean a county, city and county, city, or town.

Marijuana or *marihuana* means all parts of the plant Cannabis Sativa L., as further defined in Title VI, Chapter 12, of this Code.

Place of employment shall mean 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.

Public building shall mean 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 shall mean any meeting open to the public pursuant to Part 4 of Article 6 of Title 24, C.R.S., or any other law of this state.

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

Smoking shall mean the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco or marijuana.

Tobacco business shall mean 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 shall mean 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.

(3289 3666; Ord. No. 3977 , § 1, 3-25-2019)

6-13-3. General Smoking Restrictions.

- (A) Except as provided in Section 6-13-4, W.M.C., and in order to reduce the levels of exposure to environmental smoke, smoking shall not be permitted and no person shall 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.
 - (b) In the case of employers who own facilities otherwise exempted from this chapter, 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) Limited gaming facilities and any other facilities in which any gaming or gambling activity is conducted;
 - (15) Indoor sports arenas;
 - (16) Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
 - (17) 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;
 - (18) Bowling alleys;
 - (19) Billiard or pool halls;
 - (20) Facilities in which games of chance are conducted;

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- (21) The common areas of retirement facilities, publicly owned housing facilities, and nursing homes, not including any resident's private residential quarters;
 - (22) Public buildings;
 - (23) Auditoria;
 - (24) Theaters;
 - (25) Museums;
 - (26) Libraries;
 - (27) To the extent not otherwise provided in Section 25-14-103.5, C.R.S., public and nonpublic schools;
 - (28) Other educational and vocational institutions; and
 - (29) The entryways of all buildings and facilities listed in paragraphs (1) to (28) of this subsection (A).
- (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 18 years of age must be accompanied by a parent or guardian."
- (3289 3666)

6-13-4. Exceptions to Smoking Restrictions.

- (A) This chapter shall not apply to prohibit marijuana or tobacco smoking in the following places; provided, however, that these exceptions shall not apply to allow marijuana smoking if such use has been prohibited by as permitted by Section 6-3-5(C)(5), W.M.C.:
- (1) Private homes and private residences, except that smoking shall be prohibited if any such home or residence is being used for child care or day care;
 - (2) 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.
- (B) This chapter shall apply to prohibit marijuana smoking in the following locations, but tobacco smoking may be conducted in the following places in compliance with Section 6-13-5, W.M.C., below:
- (1) A private vehicle unless the private vehicle is being used for the public transportation of children or as part of health care or day care transportation;
 - (2) 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;
 - (3) A private, nonresidential building on a farm or ranch, as defined in Section 39-1-102, C.R.S., that has annual gross income of less than \$500,000.00;
 - (4) Limousines under private hire;
 - (5) Any retail tobacco business;
 - (6) A cigar-tobacco bar;
 - (7) An airport smoking concession;
 - (8) The outdoor area of any business; and
 - (9) The retail floor plan, as defined in Section 12-47.1-509, C.R.S., of a licensed casino.

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6-13-5. Optional Prohibitions.

- (A) The owner or manager of any place not specifically listed in Section 6-13-3, W.M.C., including a place otherwise exempted under section 6-13-4, W.M.C., 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 chapter. The owner or manager of any place not specifically listed in Section 6-13-3, W.M.C., may post signs designating permissible tobacco smoking areas but may not allow smoking of marijuana.
- (B) If the owner or manager of a place not specifically listed in Section 6-13-3, W.M.C., including a place otherwise exempted under Section 6-13-4, W.M.C., is an employer and receives a request from an employee to create a smoke-free work area as contemplated by Subsection 6-13-3(A)(11)(b), W.M.C., the owner or manager shall post a sign or signs in the smoke-free work area as provided in subsection (A) of this section.

(3289 3666)

6-13-6. Other Applicable Regulations of Smoking.

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

6-13-7. Unlawful Acts; Penalty.

- (A) It is unlawful for a person who owns, manages, operates, or otherwise controls the use of a premise 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 found guilty of a violation of any provision of this chapter shall be punished by a fine not to exceed \$200.00 for a first violation within a calendar year, a fine not to exceed \$300.00 for a second violation within a calendar year, and a fine not to exceed \$500.00 for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation.

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6-13-8. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

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