

ARTICLE II. - SMOKING IN PUBLIC PLACES^[2]

Footnotes:

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Editor's note— Ord. No. [1584](#), § 1, adopted Oct. 12, 2015, repealed the former Art. II., §§ 9-21—9-27, and enacted a new Art. II as set out herein. The former Art. II pertained to similar subject matter and derived from Code 1977, § 19-2—19-8; Ord. No. 1998-1120, § 3, 6-8-98.

Sec. 9-21. - Legislative intent.

The city council finds, determines and declares that it is in the best interest of the people of this city to protect the public from involuntary exposure to emissions from secondhand smoke and electronic smoking devices (ESD) in most areas open to the public, in public meetings, in food service establishments, and in places of employment. ESD emissions consist of ultrafine particles that are significantly more highly concentrated than particles within conventional tobacco smoke. There is conclusive evidence that most ESDs contain and emit not only nicotine but also many other potentially toxic substances and that ESDs increase airborne concentrations of particulate matter and nicotine in indoor environments. In addition, studies show that people exposed to ESD emissions absorb nicotine at levels comparable to the levels experienced by passive smokers. Many of the elements identified in ESD emissions are known to cause respiratory distress and disease, and ESD exposure damages lung tissues. For example, human lung cells that are exposed to ESD aerosol and flavorings show increased oxidative stress and inflammatory responses. Therefore, the city council hereby declares that the purpose of this article is to preserve and improve the health, comfort, and environment of the people of this city by protecting the right of the people to breathe clean smoke-free air. Nothing in this article is intended to inhibit a person's ability to take medicine using an inhaler or similar device, nor to prevent an employer or business owner from making a reasonable accommodation for the medical needs of an employee, customer, or other person in accordance with the federal "Americans With Disabilities Act of 1990," as amended, 42 U.S.C. § 12101 et seq.

(Ord. No. [1584](#), § 1, 10-12-15, amended and readopted 12-14-15; [Ord. No. 1688](#), § 1, 5-11-20)

Sec. 9-22. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Assisted living residence or *residence* means a residential facility that makes available to three (3) or more adults not related to the owner of such facility, either directly or indirectly through an agreement with the resident, room and board and at least the following services: personal services; protective oversight; social care due to impaired capacity to live independently; and regular supervision that shall be available on a twenty-four-hour basis, but not to the extent that regular twenty-four-hour medical or nursing care is required. The term "assisted living residence" does not include any facility licensed in the state as a residential care facility for individuals with developmental disabilities, or any individual residential support services that are excluded from licensure requirements pursuant to rules adopted by the department of public health and environment.

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 area that is operated and licensed under C.R.S. title 44, articles 3 and 4, 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 (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 any calendar year after December 31, 2005, a bar that fails to generate 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.

Electronic smoking device or ESD:

- (1) Means any product, other than a product described in subsection (3) of this section, that contains or delivers nicotine or any other substance intended for human consumption and that can be used by a person to enable the inhalation of vapor or aerosol from the product;
- (2) Includes any product described in subsection (1) of this section and any similar product or device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any other product name or descriptor; and
- (3) Does not include:
 - a. A humidifier or similar device that emits only water vapor; or
 - b. An inhaler, nebulizer, or vaporizer that is approved by the federal food and drug administration for the delivery of medication.

Employee means any person who, regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title, either: (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.

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.

Entryway means the outside of any doorway leading into the indoor area of any building or facility that is not exempted from this article under section 9-24. Entryway also includes the area of public or private property within twenty-five (25) feet of the doorway.

Environmental smoke or secondhand smoke means gases, particles and vapors released into the air as a result of the combustion, electrical ignition, vaporization or heating of any substance, including but not limited to tobacco, nicotine or a marijuana product, also known as "sidestream smoke," and such gases, particles and vapors that are exhaled by the smoker.

Food service establishment means any indoor or outdoor 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.

Hookah bar is an establishment where patrons by themselves or by sharing with others smoke tobacco, marijuana or similar products from a communal hookah or nargile or similar device.

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 means all parts of the plant of the genus *cannabis*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin, including marijuana concentrate. It does not include industrial hemp, fiber produced from the stalks, oil or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product, if these items exist apart from any other item defined as marijuana.

Marijuana products means products that are comprised of marijuana and other ingredients and are intended to be consumed by smoking or inhalation.

Nursing facility means a facility, or a distinct part of a facility, that meets the state nursing home licensing standards in C.R.S. § 25-1.5-103(1)(a)(i), is maintained primarily for the care and treatment of

inpatients under the direction of a physician, and meets the requirements in 42 U.S.C. §1396R for certification as a qualified provider of nursing facility services. The patients in such a facility require supportive, therapeutic, or compensating services and the availability of a licensed nurse for observation or treatment on a twenty-four-hour basis. Nursing care may include terminal care; extensive assistance or therapy in the activities of daily living; continual direction, supervision, or therapy; extensive assistance or therapy for loss of mobility; nursing assessment and services that involve assessment of the total needs of the patient, planning of patient care, and observing, monitoring, and recording the patient's response to treatment; and monitoring, observing, and evaluating the drug regimen. "Nursing facility" includes private, nonprofit, or proprietary intermediate nursing facilities for persons with intellectual and developmental disabilities.

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.

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 of any of the same; 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 Part 4 of Article 6 of Title 24, C.R.S., or any other law of the state.

Retail smoking accessory business means a sole proprietorship, corporation, partnership or other enterprise engaged primarily in the sale or promotion of smoking devices, accessories or paraphernalia, such as but not limited to pipes, chillums, bong, hookahs and products intended for use in connection with such devices, and in which the sale, manufacture or promotion of other products is merely incidental.

Retail tobacco business means a sole proprietorship, corporation, partnership or other enterprise engaged primarily in the sale or promotion of tobacco or tobacco products at retail, and in which the sale, manufacture or promotion of other products is merely incidental.

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

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 ESD, heating, electrical ignition or vaporization of a similar product, nicotine, any other substance, or any combination thereof, and the inhaling and exhaling of environmental smoke created thereby.

Specialty vaping store means a sole proprietorship, corporation, partnership or other enterprise operating as a retail outlet deriving the majority of its revenue from the sale at retail of electronic smoking devices or other electronic smoking products and accessories.

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, excluding marijuana and marijuana products, 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 smoking devices or accessories, including ESDs, 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.

(Ord. No. [1584](#), § 1, 10-12-15, amended and readopted 12-14-15; Ord. No. [1665](#), § 8(Exh. A), 4-22-19; [Ord. No. 1688](#), § 1, 5-11-20)

Sec. 9-23. - General smoking restrictions.

- (a) Except as provided in section 9-24, smoking is not permitted and a person shall not smoke in any indoor area, including:
- (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 article, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe secondhand smoke and emissions from electronic smoking devices. Every employee shall have a right to work in an area free from secondhand 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) Bowling alleys;
 - (18) Billiard or pool halls;
 - (19) Facilities in which games of chance are conducted;
 - (20) The common areas of retirements facilities, publicly owned housing facilities, and nursing homes, not including any resident's private residential quarters;
 - (21) Public buildings;
 - (22) Auditoria;
 - (23) Theatres;
 - (24) Museums;
 - (25) Libraries;

- (26) To the extent not otherwise provided in C.R.S. § 25-14-103.5, public and nonpublic schools;
 - (27) Other educational and vocational institutions;
 - (28) Retail smoking accessory businesses;
 - (29) A cigar-tobacco bar:
 - a. Shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005; and
 - b. Shall prohibit entry by any person under eighteen (18) 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. Children under eighteen years of age may not enter."
 - (30) Hotel and motel rooms;
 - (31) Assisted living facilities, including nursing facilities, as defined in section 9-22;
 - (32) The entryways of all buildings and facilities listed in section 9-24.
 - (33) A retail tobacco business:
 - a. Shall prohibit entry by any person under eighteen (18) years of age; and
 - b. 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. Children under eighteen years of age may not enter."; or
 - 2. In the case of a retail tobacco business that desires to allow the use of ESDs but not other forms of smoking on the premises, "Vaping allowed. Children under eighteen years of age may not enter."
 - (34) The entryways of all buildings and facilities listed in subsections (a)(1) through (a)(33) of this section;
- (b) Except as provided in section 9-24, and in order to reduce the levels of exposure to environmental smoke, smoking shall not be permitted and no person shall smoke in the following outdoor areas:
- (1) The following facilities and areas of any public property within the city:
 - a. Parks, playgrounds, swimming pools, recreation facilities, skate parks, athletic fields, picnic shelters, tennis courts, greenbelts, trails and open space and similar locations; and
 - b. Outdoor locations to which the general public has access to participate in city events, such as the Carnation Festival and other city events.
 - (2) Transit stops, including light-rail platforms and bus stops, with or without benches and/or shelters.
- (c) Nothing herein shall be deemed to permit the consumption of marijuana that is conducted openly and publicly, in a manner that endangers others or otherwise violates state law.

(Ord. No. [1584](#), § 1, 10-12-15, amended and readopted 12-14-15; [Ord. No. 1688](#), § 1, 5-11-20)

Sec. 9-24. - Exceptions to smoking restrictions.

- (a) This article shall not apply to:
 - (1) Private homes, private residences, and private automobiles; except that section 9-23 of 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) Limousines under private hire;

- (3) A hotel or motel room rented to one (1) or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five (25) percent;
- (4) The smoking of tobacco within outdoor seating and patio areas provided by food service establishments and bars;
- (5) The smoking of tobacco within the outdoor area of any business not specified under subsection (4) above, except to the extent that the outdoor area of such business is within twenty-five (25) feet of an entryway;
- (6) 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);
- (7) A place of employment that is not open to the public and that 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 C.R.S. § 39-1-102, that has annual gross income of less than five hundred thousand dollars (\$500,000.00);
 - (i) That are designated for smoking for residents;
 - (ii) That are fully enclosed and ventilated; and
 - (iii) To which access is restricted to the residents or their guests; or
- b. As used in this subparagraph (a)(9), "assisted living facility" means a nursing facility, as that term is defined in C.R.S. § 25.5-4-103, and an assisted living residence, as that term is defined in C.R.S. § 25-27-102.
- (10) The smoking of tobacco in a retail tobacco business;
- (11) Smoking in specialty vaping stores.

(Ord. No. [1584](#), § 1, 10-12-15, amended and readopted 12-14-15; [Ord. No. 1688](#), § 1, 5-11-20)

Sec. 9-25. - Optional prohibitions.

- (a) The owner or manager of any place not specifically listed in section 9-23, including a place exempted under section 9-24, may choose to prohibit smoking in such place or restrict smoking to certain designated areas only by posting signs that provide notice of the same. Where signs are posted that prohibit smoking, whether in all areas or only in certain designated 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 article.
- (b) If the owner or manager of a place not specifically listed in section 9-23, including a place otherwise exempted under section 9-24, is an employer and receives a request from an employee to create a smoke-free work area, the owner or manager shall post a sign or signs in the smoke-free work area as provided in subsection (a) of this section.

(Ord. No. [1584](#), § 1, 10-12-15, amended and readopted 12-14-15; [Ord. No. 1688](#), § 1, 5-11-20)

Sec. 9-26. - Other applicable regulations of smoking.

This article shall not be construed to permit smoking where it is otherwise restricted by any other applicable law, including, but not limited to section 11-404(e) of this Code, prohibiting marijuana clubs, and section 16-131(c) of this Code, prohibiting the open and public consumption of marijuana products, marijuana, cannabis, or cannabis concentrate.

(Ord. No. [1584](#), § 1, 10-12-15, amended and readopted 12-14-15)

Sec. 9-27. - Hookah bars prohibited.

Hookah bars are prohibited within the city.

(Ord. No. [1584](#), § 1, 10-12-15, amended and readopted 12-14-15)

Sec. 9-28. - Unlawful acts.

(a) It is unlawful for a person who owns, manages, operates, or otherwise controls the use of property subject to the provisions in this article to violate or to knowingly permit the violation of any provision of this article.

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

(Ord. No. [1584](#), § 1, 10-12-15, amended and readopted 12-14-15)

Sec. 9-29. - Reserved.