**Vail CO 2016**

**Chapter 4**

**SMOKING**

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**5-4-1: DEFINITIONS:**

ELECTRONIC SMOKING DEVICE: An electric or battery operated device, the use of which resembles conventional smoking, which can be used to deliver substances, including, without limitation, nicotine, tobacco, or marijuana, to the person using such device. Electronic smoking device includes, without limitation, an electronic cigarette, cigar, cigarillo, pipe, or hookah, but does not include any product approved by the U.S. food and drug administration as a drug or medical device that is used in accordance with its purpose.

EMPLOYEE: Any person who is employed by any employer.

EMPLOYER: Any person, partnership or corporation, including a municipal corporation, who employs the services of any person.

ENCLOSED AREA: All space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passageways) which extend from floor to ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid or similar structures.

ENTRYWAY: The front or main doorway leading into a building.

MINOR: A person under eighteen (18) years of age.

NICOTINE PRODUCT: An electronic device or any component thereof that can be used to deliver nicotine to the person inhaling from the device, including, without limitation, an electronic cigarette, cigar, cigarillo, hookah, pipe or nicotine vaporizer; and nicotine or other chemical liquids, extracts, and oils intended to be used therein.

PLACE OF EMPLOYMENT: Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment.

PUBLIC PLACE: Any enclosed area in which the general public is permitted, including, without limitation: convention halls, covered parking structures, public or private educational facilities, childcare facilities, adult daycare or medical or healthcare facilities, hospitals, gymnasiums, post offices, guestrooms in commercial lodging establishments, laundromats, performance halls, polling places, professional offices, public transportation facilities, taxis, reception areas, restaurants, bars, retail food production and marketing/grocery establishments, retail service establishments, retail stores, indoor sports arenas, bowling alleys, billiard or pool halls, and theaters; every room, chamber or place of meeting or public assembly; all areas of an establishment that are open to, or customarily used by, the general public, including, without limitation, elevators, restrooms, lobbies, reception areas, hallways, waiting rooms and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple-unit residential or commercial lodging establishments; and any private residence when in use as a childcare, adult daycare, or healthcare facility.

RETAIL TOBACCO STORE: A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

SMOKING: The lighting of any cigarette, cigar, pipe, or the activation of an electronic smoking device, or the possession of any lighted cigarette, cigar, pipe or activated electronic smoking device, regardless of its composition.

TOBACCO PRODUCT: A product that contains tobacco or is derived from tobacco and is intended to be ingested, inhaled, smoked, placed in oral or nasal cavities, or applied to the skin of an individual, including, without limitation, cigarettes, cigars, cigarillos, kreteks, bidis, hookah, and pipes; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour, snus, plug and twist, fine cut, and other chewing or dipping tobacco; shorts, refuse scraps, clippings, cuttings, and seepings of tobacco; and any other kinds and forms of tobacco, prepared in such manner as to be suitable for both chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking.

WORK AREA: 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. (Ord. 22(2016) § 1)

**5-4-2: SMOKING PROHIBITED:**

A. Public Places: Smoking is prohibited in any public place.

B. Entryways: Smoking is prohibited within fifteen feet (15') of any entryway.

C. Outdoor Eating Areas: Smoking is prohibited within fifteen feet (15') of any outdoor eating area.

D. Outdoor Recreation Areas And Bus Stops: Smoking is prohibited at all town of Vail parks, open spaces, recreation areas, skate parks, soccer fields, ball fields, and within fifteen feet (15') of all multiuse recreation paths, bus stops and platforms.

E. Posted Areas: Smoking is prohibited in designated "no smoking" areas.

F. Other Areas: Smoking is prohibited in those areas where smoking is prohibited by state law, fire code regulations, or other regulations of the town. (Ord. 22(2016) § 1)

**5-4-3: SMOKING PERMITTED:**

A. Smoking is permitted in the following places:

1. Private homes except if any such home or vehicle is being used for childcare or daycare or if a private vehicle is being used for the public transportation of children;

2. Private automobiles;

3. Limousines under private hire;

4. Commercial lodging including, without limitation, hotel or motel rooms rented to one or more guests and designated as smoking rooms; provided, however, that not more than twenty five percent (25%) of the rooms rented in a hotel or motel may be so designated;

5. Retail tobacco stores;

6. 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;

7. Smoking by performers as part of a stage production at a theater; and

8. Areas of assisted living facilities that are designated for smoking for residents; that are fully enclosed and ventilated and to which access is restricted to the residents and their guests.

B. Notwithstanding any other provision of this section, an owner, operator, manager or other person who controls an establishment, facility or grounds described in this section may declare the entire establishment, facility or grounds smoke free.

C. In the case of employers who own facilities otherwise exempted under this section, 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. (Ord. 22(2016) § 1)

**5-4-4: DISCRIMINATION OR RETALIATION UNLAWFUL:**

It is unlawful for an employer, proprietor or person in charge of a public place or place of employment regulated under this chapter to discharge, discriminate against or in any manner retaliate against any person who requests the designation of "no smoking" areas or enforcement of "no smoking" areas. (Ord. 22(2016) § 1)

**5-4-5: MINORS:**

A. It is unlawful for a minor to possess, consume, or use a tobacco product or nicotine product in the town.

B. It is unlawful for a minor to purchase, obtain or attempt to purchase or obtain a tobacco product or nicotine product in the town by misrepresentation of age or by any other method.

C. It is unlawful for a person to knowingly furnish to a minor in the town, by gift, sale or any other means, a tobacco product or nicotine product.

D. It is a rebuttable presumption that the substance within a package or container is a tobacco product or nicotine product if the package or container has affixed to it a label which identifies the package or container as containing a tobacco or nicotine product.

E. It is an affirmative defense to a prosecution under this section that the person furnishing the tobacco product or nicotine product was presented with and reasonably relied upon a document which identified the minor receiving the tobacco product or nicotine product as being eighteen (18) years of age or older. (Ord. 22(2016) § 1)

**5-4-6: VIOLATION AND PENALTY:**

A. It is unlawful to violate any provision of this chapter.

B. The penalty for a violation of this chapter shall be as provided in section [1-4-1](http://www.sterlingcodifiers.com/codebook/getBookData.php?ft=3&find=1-4-1) of this code. (Ord. 22(2016) § 1)