

Title 8 HEALTH AND SAFETY

Chapter 8.12 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

As used in this Chapter 8.12, unless the context otherwise requires:

- A. "Airport smoking concession" means 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.
- B. "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.
- C. "Bar" means any indoor area that is operated and licensed under Article 47 of Title 12, 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.
- D. "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) in annual sales from the on-site sale of tobacco and/or nicotine 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 (5%) of its total annual gross income or fifty thousand dollars (\$50,000) in annual sales from the on-site sale of tobacco and/or nicotine 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.
- E. "Electronic smoking device" means 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.
- F. "Employee" means any person who:
1. Performs any type of work for the 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.
- G. "Employee" includes every person described in paragraph E, regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.
- H. "Employer" means 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.
- I. "Entryway" means the outside of the front or main doorway leading into a building or facility that is not exempted from this chapter under Section 8.12.030. "Entryway" also includes the area of public or private property within a fifteen (15) foot radius outside of such front or main doorway.
- J. "Environmental tobacco smoke," "ETS," or "secondhand smoke" means the complex mixture formed from the escaping smoke of a burning tobacco product, also known as "sidestream smoke," and smoke exhaled by the smoker.
- K. "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 cafés.
- L. "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.
- M. "Local authority" means the City of Cañon City.

N. "Marijuana" shall have the same meaning as in Section 16(2)(f) of Article XVIII of the State Constitution.

O. "Nicotine product" means an electronic smoking 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.

P. "Park" means an area of land set aside for public use that is owned, controlled or used by the City, with or without facilities, for rest or recreational purposes, regardless of any age or fee requirement. The term "park" does not include city-owned open space or natural lands, including soft surface trails.

Q. "Picnic area" means any covered area within a park owned or operated by the city for dining, seating or other forms of entertainment pursuant to park rules and regulations, including but not limited to, pavilions and shelters.

R. "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.

S. "Playground" means the area within a park owned or operated by the City containing equipment or facilities designed for children's play.

T. "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.

U. "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 this state.

V. "Recreational facility" means any area that is owned, controlled or used by the City that is open to the general public for recreational purposes, regardless of any age or fee requirement, including, but not limited to, athletic fields, basketball courts, batting cages, BMX tracks, community gardens, community pools, dog parks, ice skating rinks, restrooms, skateboard parks, ski and sledding hills, and spectator and concession areas.

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

X. "Smoking" means 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. Smoking shall include the lighting of any cigarette, cigar, pipe, or the activation of an electronic smoking device containing marijuana.

Y. "Tobacco" means cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; Cavendish; plus 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 that is packaged for smoking.

Z. "Tobacco business" means a sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, nicotine 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.

AA. "Work area" means 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. 3-2017 §§ 1—4; Ord. 5-2015 § 1)

8.12.020 General smoking restrictions.

A. Except as provided in Section 8.12.030 of this chapter, and in order to reduce the levels of exposure to environmental tobacco, vapors and marijuana 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 tobacco smoke or vapors expelled from electronic smoking devices. Every employee shall have a right to work in an area free of environmental tobacco smoke and vapors.

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 seventy-five percent (75%) 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;
21. The common areas of retirement facilities, publicly owned housing facilities, and, except as specified in Subsection 8.12.030(A)(10) of this chapter, nursing homes, but not including any resident's private residential quarters or areas of assisted living facilities specified in Subsection 8.12.030(A)(10) of this chapter. Nothing in this chapter affects the validity or enforceability of a contract, whether entered into before, on, or after July 1, 2006, that specifies that a part or all of a facility or home specified in this paragraph 21 is a smoke-free area.
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 (4) inches by six (6) inches in size stating: "Smoking allowed. Children under eighteen (18) years of age must be accompanied by a parent or guardian."

C. Smoking is not permitted in public parks within one hundred (100) feet of any playground or recreational facilities. Signs designating these smoking restrictions shall be posted adjacent to playgrounds and recreational facilities. (Ord. 3-2017 §§ 5—7; Ord. 5-2015 § 1)

8.12.030 Exceptions to smoking restrictions.

A. The restrictions set forth in this chapter shall not apply to:

1. Private homes, private residences, and private automobiles; except that this chapter 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 or more guests 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. An airport smoking concession;
7. The outdoor area of any business other than the entryway area of such business and the entryways of adjoining nonexempt properties on either side of such businesses;
8. 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;
9. 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 five hundred thousand dollars (\$500,000); or
10. The areas of assisted living facilities: a) that are designated for smoking for residents; b) that are fully enclosed and ventilated; and c) to which access is restricted to the residents or their guests. As used in this paragraph, "assisted living facility" means a nursing facility, as that term is defined in Section 25.5-4-103, C.R.S., and an assisted living residence, as that term is defined in Section 25-27-102, C.R.S. (Ord. 5-2015 § 1)

8.12.040 Optional prohibitions.

A. The owner or manager of any place not specifically listed in Section 8.12.020 of this chapter, including a place otherwise exempted under Section 8.12.030 of this chapter, 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 this chapter.

B. If the owner or manager of a place not specifically listed in Section 8.12.020 of this chapter, including a place otherwise exempted under Section 8.12.030 of this chapter, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by Subsection 8.12.020(11)(b), 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. 5-2015 § 1)

8.12.050 Other applicable regulations—Counterpart regulations authorized—Municipal Court jurisdiction.

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

B. Statutory authorization for the enactment, adoption and local enforcement of this chapter is set forth in Subsection 24-14-207(2), C.R.S. The regulations set forth in this chapter also are authorized by the inhabitants of the City through Sections 3 and 5 of Article I of the Charter of Cañon City.

C. The Cañon City Municipal Court shall have jurisdiction over violations of smoking regulations set forth in this chapter. (Ord. 5-2015 § 1)

8.12.060 Unlawful acts—penalties.

A. It is unlawful for a person who owns, manages, operates, or otherwise controls the use of a premises 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. A person who violates this chapter is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars (\$200) for a first violation within a calendar year, a fine not to exceed three hundred dollars (\$300) for a second violation within a calendar year, and a fine not to exceed five hundred dollars (\$500) for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation. (Ord. 5-2015 § 1)