

ARTICLE VII. - SMOKING IN PUBLIC PLACES

Sec. 21-110. - Intent and purpose.

The intent and purpose of this article is to promote the public health, safety and general welfare of the citizens of Durango by limiting exposure to involuntary environmental tobacco smoke or secondhand tobacco smoke and the associated health risks in designated areas open to the public. The city council finds and declares that by prohibiting smoking in such designated areas that the need to breathe smoke-free air shall have priority over the desire to smoke, for purposes of preserving and improving the health, comfort and environment of the citizens of Durango.

(Ord. No. O-2012-15, § 1, 11-20-12)

Sec. 21-111. - Definitions.

The following words, terms and phrases, when used in this article shall have the meaning respectively ascribed to them unless the context otherwise clearly indicates:

City shall mean and refer to the City of Durango.

Environmental tobacco smoke or *secondhand tobacco smoke* means the complex mixture formed from escaping gases, particles, or vapors released into the air as a result of combustion, electrical ignition, vaporization or heating of tobacco products, when the apparent or usual purpose of the combustion, electrical ignition, vaporization or heating is human inhalation of the by products.

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.

Picnic pavilions and *fixed covered seating areas* means open air or covered areas within a park owned or operated by the city for dining, seating or other forms of entertainment pursuant to park rules and regulations.

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

Recreational facility or *field* means an 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.

Smoke means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, vaporization or heating, when the apparent or usual purpose of the combustion, electrical ignition, vaporization or heating is human inhalation of the byproducts, except when the combusting material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "smoke" includes, but is not limited to, tobacco smoke, hookah smoke, or electronic cigarette vapors. *Smoke* does not include smoke that is associated with a native recognized religious ceremony, ritual, or activity by American Indians that is in accordance with the federal American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a.

Smoking means engaging in an act that generates smoke such as inhaling, exhaling, burning, heating or carrying any lighted cigar, cigarette, water pipe, or pipe containing tobacco or other organic burning material, weed, plant or other combustible substance regardless of its composition. Smoking does not include smoke that is associated with a native recognized religious ceremony, ritual, or activity by American Indians that is in accordance with the federal American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a.

Tobacco product means any product that contains nicotine or tobacco or is derived from nicotine or tobacco and is intended to be ingested or inhaled by, or applied to the skin of an individual; or any electronic device that can be used to deliver nicotine to the person inhaling from the device including but not limited to an electronic cigarette, cigar, cigarillo, pipe or hookah.

(Ord. No. O-2012-15, § 1, 11-20-12)

Sec. 21-112. - General smoking restrictions.

- (a) In order to reduce the risks of fire danger and the levels of exposure to environmental tobacco smoke and secondhand tobacco smoke, smoking shall not be permitted and no person shall smoke in any outdoor public area described below, including, but not limited to:
 - (1) Bus stops or waiting areas to board public transportation;
 - (2) All seating areas in city-owned parks, playgrounds and picnic areas, including, but not limited to, picnic pavilions or fixed covered seating areas located in a city-owned park;
 - (3) City-owned recreational facilities and ball fields, excluding Hillcrest Golf Course;
 - (4) The Animas River Trail and adjacent Greenway along the Animas River Trail, including all Animas River access points;
 - (5) All open space, parking areas and trails within the city-owned space or natural lands;
 - (6) All reservoirs including the area within Lake Nighthorse recreation area;
 - (7) All city-owned buildings and all parking lots, grounds and landscaped areas adjacent to or around those buildings, including sidewalks that are outside of public street rights-of-ways;
 - (8) All city-owned parking lots, including the transit center.
- (b) Nothing herein shall be deemed to limit the city manager's authority to impose further smoking restrictions within any portion of any city-owned park or other city property or facility.
- (c) Pursuant to section 17-25 of this Code, and notwithstanding any other provisions of this article VII, any owner, operator, manager or other person who controls any private property may declare that entire property as smoke-free.

(Ord. No. O-2012-15, § 1, 11-20-12; Ord. No. [O-2018-21](#), § 1, 9-18-18)

Sec. 21-113. - Reserved.

Editor's note— Ord. No. [O-2018-21](#), § 2, adopted September 18, 2018, repealed § 21-113. Former § 21-113 pertained to exceptions to smoking restrictions and derived from Ord. No. O-2012-15, adopted November 20, 2012.

Sec. 21-114. - Posting of signs.

"No Smoking" or "Smoke-Free" signs and/or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) shall be clearly and conspicuously posted in and at the locations where smoking is prohibited by this article by city. All signs shall be consistent with the city sign standards.

(Ord. No. O-2012-15, § 1, 11-20-12)

Sec. 21-115. - Unlawful acts, enforcement and penalties.

- (a) It is unlawful for a person who owns, manages, operates or otherwise controls the use of property subject to the provisions in the article to violate or allow 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.

- (c) Enforcement of this article shall be complaint-based enforcement implemented by the Durango Police Department.
- (d) Any person who desires to register a complaint under this article may initiate a complaint with the San Juan Basin Health Department or the Durango Police Department.
- (e) Any person who violates any provision of this article is guilty of an offense and, upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars (\$100.00) for a first violation; a fine not to exceed two hundred dollars (\$200.00) for a second violation within the same calendar year; and a fine not to exceed three hundred dollars (\$300.00) for each additional violation within such calendar year. Each day of a continuing violation shall be deemed a separate violation. Fines and costs shall be paid to, receipted and accounted for by the city clerk or court clerk and such funds used to support tobacco education and cessation in the city.
- (f) No person or employer shall discharge or retaliate in any manner against any individual because such individual exercises any right to a smoke-free environment afforded by this article.

(Ord. No. O-2012-15, § 1, 11-20-12)

Sec. 21-116. - Other applicable laws.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted or prohibited by federal, state, or local laws, ordinances and regulations, including, but not limited to C.R.S. § 25-14-201 et seq.

(Ord. No. O-2012-15, § 1, 11-20-12)

Sec. 21-117. - Compliance with C.R.S. Section 39-22-623.

This article is not nor shall it be construed in any way as imposing a fee, license, or tax upon any person as a condition for engaging in the business of selling cigarettes or imposing a tax on cigarettes. This article is not applicable to the sale of cigarettes. If any part of this article is found by a court of competent jurisdiction to impose a fee, license, or tax upon any person as a condition of engaging in the business of selling cigarettes, then such part shall be deemed void.

(Ord. No. O-2012-15, § 1, 11-20-12)

Sec. 21-118. - Severability.

If any section, paragraph, sentence, clause, or phrase of this article is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this article. The city council hereby declares that it would have adopted this article and each part or parts thereof, irrespective of the fact that any one part or parts is subsequently declared to be unconstitutional or invalid.

(Ord. No. O-2012-15, § 1, 11-20-12)