

ARTICLE 16 Smoking Prohibited

Sec. 10-16-10. Legislative intent.

The City Council finds, determines and declares that it is in the best interest of the people of this City to protect nonsmokers from involuntary exposure to environmental smoke in most areas open to the public, public meetings, food service establishments and places of employment. The City Council further finds, determines and declares that a balance should be struck between the health concerns of nonconsumers 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 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 limiting exposure to tobacco and marijuana smoke.

Sec. 10-16-20. 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:

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 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.

Customer service area means, with respect to any building or facility that is not exempted from this Article under Section 10-16-40, all of the outdoor or semi-enclosed areas, except for designated parking areas, of the building, facility, business or establishment that is used, has ever been used or is reasonably capable of being used to serve customers of, or visitors to, the building facility, business or establishment. Without limiting the generality of the foregoing sentence, a *customer service area* shall mean and include all outdoor or semi-enclosed seating or service areas, all outdoor or semi enclosed waiting areas and any other outdoor areas of any food service establishment or bar other than designated parking areas for the food service establishment or bar.

Employee means any person who:

- a. Performs any type of work for the 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 includes every person described in this Paragraph of this Section, regardless of whether such person is referred to as an employee, contractor, independent contractor or volunteer, or by any other designation or title.

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 corporation 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 10-16-40. *Entryway* also includes the area of public or private property within twenty (20) 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.

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 has the same meaning set forth in Section 10-1-10 of this Code.

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

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:

- a. The State, including the legislative, executive and judicial branches of state government;
- b. 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
- c. 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.

Public transportation waiting area means an area that is designated by a sign, either alone or in conjunction with a structure, shelter, bench or other similar improvement, as a waiting area for transportation pick-up, or drop-off, and that is available to the general public, whether the means of transportation is publicly or privately owned or operated.

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

Smoking means the burning, heating, electrical ignition or vaporization of a cigarette, cigar, pipe or any other similar product, matter or substance that contains tobacco, nicotine, marijuana any other substance or any combination thereof, and the inhaling and exhaling of environmental smoke created thereby.

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 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, 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.

Sec. 10-16-30. General smoking restrictions.

- (a) Except as provided in Section 10-16-40, 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, or in any outdoor area described in Paragraph (31) below, or within the entryway to any indoor area, all 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 Article, 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 from 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 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 Paragraph 10-16-40(6), nursing homes, not including any resident's private residential quarters or areas of assisted living facilities specified in Paragraph 10-16-40(6);
 - (22) Public buildings;
 - (23) Auditoria;
 - (24) Theatres;
 - (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;
 - (29) Tobacco businesses;
 - (30) The entryways of all buildings and facilities listed in Paragraphs (a)(1) through (a)(29) of this Section; and
 - (31) Customer service areas.
- (b) In order to reduce the levels of exposure to environmental smoke, smoking shall not be permitted, and no person shall smoke, in any public park or recreation area within the City, nor within twenty (20) feet of any public transportation waiting area within the City.
- (Ord. 11-10 §1, 2010; Ord. 25-13 §10, 2014; Ord. 2019-04 §5, 2019)

Sec. 10-16-40. Exceptions to smoking restrictions.

This Article shall not apply to:

- (1) Private homes, private residences and private automobiles, except that Section 10-16-30 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 percent (25%);
- (4) The outdoor area of any business, except to the extent that the outdoor area of any business is within twenty (20) feet of an entryway and except to the extent that the outdoor area is a customer service area;
- (5) A private nonresidential building on a farm or ranch, as defined in Section 39-1-102, C.R.S., that has an annual gross income of less than five hundred thousand dollars (\$500,000); or
- (6) 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.

Sec. 10-16-50. Optional prohibitions.

- (a) The owner or manager of any place not specifically listed in Section 10-16-30 above, including a place otherwise exempted under Section 10-16-40 above, 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 Article.
- (b) If the owner or manager of a place not specifically listed in Section 10-16-30 above, including a place otherwise exempted under Section 10-16-40 above, 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. 11-10 §1, 2010)

Sec. 10-16-60. Other applicable regulations of smoking.

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

Sec. 10-16-70. "No Smoking" signs required.

The owner of any entryway that is subject to the prohibitions of Subsection 10-16-30(a) of this Article shall post a clearly legible sign within five (5) feet of each such entryway stating, by way of the international "no smoking" symbol, that smoking is prohibited within twenty (20) feet of the entryway.

Sec. 10-16-80. Unlawful acts - penalty - disposition of fines and surcharges.

- (a) It is unlawful for a person who owns, manages, operates or otherwise controls the use of property subject to the provisions of this Article to violate 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) A 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 two hundred dollars (\$200.00) for a first violation within a calendar year; a fine not to exceed three hundred dollars (\$300.00) for a second violation within a calendar year; and a fine not to exceed five hundred dollars (\$500.00) for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation.

(Ord. 11-10 §1, 2010)