

Sec. 10-253.

Smoking restrictions.

(a) *Definitions.* As used in this Section, unless the context otherwise requires:

*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 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.

*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 (\$50,000.00) in annual sales from the onsite sale of tobacco products and the rental of onsite 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 (\$50,000.00) in annual sales from the onsite tobacco products and the rental of onsite humidors shall not be defined as a cigar-tobacco bar and shall not thereafter be included in the definition regardless of sales figures.

*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 Subparagraphs a. and b. above, regardless of whether such person is referred to as an employee, contractor, independent contractor or volunteer or 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 Town government or instrumentality thereof.

*Entryway* means the outside of the front or main doorway leading into a building or facility that is not excepted from this Section under Subsection (d) of this Section. Entryway also includes the area of public or private property within fifteen (15) feet

outside of the doorway.

*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.

*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 shortorder 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.

*Place of employment* means any indoor area or portion thereof under the control of any 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, town or instrumentality thereof, or any other political subdivision of the state, a special district, an authority, a commission or an agency; 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 Title [24](#), Part 4 of Article 6, of C.R.S., or any other law of this State.

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

*Smoking* means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

*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 a 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 other plant matter or product that is packed 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.

(b) *Smoking prohibited.* Except as provided in Subsection (d) of this Section, and in order to reduce the levels of exposure to environmental tobacco 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) Any place of employment that is not exempted. In the case of employers who own facilities otherwise exempted from this Section, each such employer shall provide a smoke-free work area for each employee requesting not to breathe environmental tobacco smoke. Every employee shall have a right to work in an area free of environmental tobacco smoke.

(12) Food service establishments.

(13) Bars.

(14) Indoor sports arenas.

(15) Restrooms, lobbies, hallways and other common areas in public and private

buildings, condominiums and other multiple- unit residential facilities.

(16) 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.

(17) Bowling alleys.

(18) Billiard or pool halls.

(19) Facilities in which games of chance are conducted.

(20) The common areas of retirement facilities, publicly owned housing facilities and nursing homes, not including any resident's private residential quarters.

(21) Public buildings.

(22) Auditoria.

(23) Theaters.

(24) Museums.

(25) Libraries.

(26) To the extent not otherwise provided in Section [25-14-103.5](#), C.R.S., public and nonpublic schools.

(27) Other educational and vocational institutions.

(28) The entryways of all buildings and facilitates listed in Paragraphs (1) through (27) of this Subsection.

(c) 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 (1) 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.*

(d) *Exceptions to smoking restrictions.* The provisions of Subsection [\(b\)](#) shall not apply to:

(1) Private homes, private residences and private automobiles, except that Subsection [\(b\)](#) 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) Any retail tobacco business.

(5) A cigar-tobacco bar.

(6) The outdoor area of any business.

(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 Section [39-1-102](#), C.R.S., that has annual gross income of less than five hundred thousand dollars (\$500,000.00).

(e) *Optional prohibitions.*

(1) The owner or manager of any place not specifically listed in Subsection (b) of this Section, including a place otherwise exempted under Subsection (d), 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 Subsection (b) of this Section.

(2) If the owner or manager of a place not specifically listed in Subsection (b), including a place otherwise exempted under Subsection (d), is an employer and receives a request from an employee to create a smoke-free work area as contemplated under Paragraph (b)(11), the owner or manager shall post a sign or signs in the smoke-free work area as provided in Paragraph (e)(1).

(f) *Unlawful acts, penalty.*

(1) It is unlawful for a person who owns, manages, operates or otherwise controls the use of a premises subject to this Section to violate any provision of this Section.

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

(3) A person who violates this Section is guilty of a noncriminal violation and, upon conviction thereof, shall be sentenced under the guidelines of Subsection [1-72\(a\)](#), of this Code. (Ord. 852 §1, 2006; Ord. 855 §2, 2006)

**The Frederick Municipal Code is current through Ordinance 1364, passed August 10, 2021.**

Disclaimer: The Town Clerk's Office has the official version of the Frederick Municipal Code. Users should contact the Town Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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