

Chapter 9.38 SMOKING IN PUBLIC PLACES

9.38.010 Purpose.

This chapter is enacted for the purpose of preserving and improving the health, comfort, and environment of the citizens of this City of Lakewood by limiting exposure to environmental smoke.

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-14 § 1, 2014; Ord. O-2012-3 § 1, 2012; Ord. O-2009-36 § 1, 2009; Ord. O-86-78 § 1 (part), 1986).

9.38.020 Definitions.

As used in this chapter, the following words and terms shall be defined as follows:

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 or more of its total annual gross income or \$50,000.00 in annual sales from the on-site sale of tobacco 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 of its total annual gross income or 50,000.00 in annual sales from the on-site sale of tobacco 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.

Electronic smoking device, means any electronic oral device such as one composed of a heating element, battery, and/ or electronic circuit which provide a vapor of nicotine or any other substances for inhalation. This term shall include every variation and type of such devices whether they are manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pen, an electronic pipe, or an electronic hookah or any other product name or descriptor.

Employee means any person who does any type of work for the benefit of another in consideration of direct or indirect wages or profit; or provides uncompensated work or services to a business or nonprofit entity. "Employee" includes every person described in this paragraph, 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 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.

Entryway means the 25-foot radius outside of every public entrance leading into a building or facility that is not exempted from this chapter under Section 9.38.040. For multi-unit buildings with multiple public entrances,

the City of Lakewood shall have the discretion, when appropriate, to interpret "entryway" so as to encompass a single area around multiple public entrances and to revise the signage requirements accordingly.

Environmental smoke or secondhand smoke means the complex mixture formed from the escaping gases, particles, or vapors released into the air as a result of combustion, electrical ignition, vaporization or heating of a tobacco product or a marijuana product when the apparent or usual purpose of the combustion, electrical ignition, vaporization or heating is human inhalation of the byproducts, smoke of a burning tobacco product, also known as "sidestream smoke," and such gases, particles, vapors, or smoke exhaled by the smoker.

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 cafes.

Hookah bar is an establishment where patrons by themselves or by sharing with others smoke tobacco products or similar products from a communal hookah or nargile or similar device.

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 shall have the same meaning as in section 16(2)(f) of article XVIII of the Colorado Constitution.

Marijuana product 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; 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 this state.

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

Smoking means the burning, heating, electrical ignition or vaporizing of a lighted cigarette, cigar, pipe, electronic smoking device, or any other matter or substance that contains tobacco, nicotine, marijuana, or any other substance, or 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.

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; or any electronic device that can be used to deliver nicotine to the person inhaling from the device including but not limited to electronic smoking devices, 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 product" also includes cloves and any other plant matter or product that is packaged for smoking.

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. O-2019-24 § 4, 2019; Ord. O-2014-14 § 2, 2014; Ord. O-2014-3 § 4, 2014; Ord. O-2012-3 § 1, 2012; Ord. O 2009-36 § 1, 2009; Ord. O-95-19 § 1, 1995; Ord. O-86-78 § 1 (part), 1986).

9.38.030 General smoking restrictions.

- A. *Indoor Areas.* Except as provided in Section 9.38.040, 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, 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, doctors' 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 chapter, 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;
 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 75 percent of the sleeping quarters within a hotel or motel that are rented to guests;

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17. Bowling alleys;
 18. Billiard or pool halls;
 19. Facilities in which games of chance are conducted;
 20. (a) The common areas of retirement facilities, publicly owned housing facilities, and, except as specified in Section 24-14-205(1)(k), nursing homes, but not including any resident's private residential quarters or areas of assisted living facilities specified in Section 25-24-205(1)(k);
(b) 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 (20) is a smoke-free area.
 21. Public buildings;
 22. Auditoria;
 23. Theaters;
 24. Museums;
 25. Libraries;
 26. To the extent not otherwise provided in Section 25-14-103.5, public and nonpublic schools; and
 27. Other educational and vocational institutions.
- B. *Outdoor Areas.* Except as provided in Section 9.38.040, and in order to reduce the levels of exposure to environmental smoke, the smoking of tobacco products shall not be permitted and no person shall smoke tobacco in the following outdoor areas:
1. The entryways of all buildings and facilities listed in paragraphs (1) to (27) of subsection (A).
 2. The following facilities in City of Lakewood-owned outdoor parks:
 - a. Playgrounds, swimming pools, skate parks, athletic fields, picnic shelters, tennis courts and similar locations; and
 - b. Outdoor locations where people congregate to partake in City of Lakewood events such as Cider Days or outdoor musical concerts.
 3. Transit stops, including light-rail platforms and bus stops, with or without benches and/or shelters.
- C. Nothing herein shall be deemed to permit the smoking of marijuana that is conducted openly and publicly or in a manner that endangers others or otherwise violates state law.
- (Ord. O-2019-24 § 4, 2019; Ord. O-2014-14 § 3, 2014; Ord. O-2014-3 § 5, 2014; Ord. O-2012-3 § 1, 2012; Ord. O-2009-36 § 1, 2009; Ord. O-95-19 § 2, 1995; Ord. O-86-78 § 1 (part), 1986).

9.38.040 Exceptions to smoking restrictions.

- A. The prohibitions set forth in Section 9.38.030 shall not apply to smoking tobacco products in:
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;

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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 25 percent;
 4. Any retail tobacco business; provided, however, that no person under 18 years of age shall be allowed on the premises. No retail tobacco business may be located in a liquor-licensed premises.
 5. A cigar-tobacco bar as provided herein;
 6. The outdoor area of any business, including the patios of liquor-licensed establishments and business establishments where food or beverages are served;
 7. 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;
 8. 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 \$500,000.00; or
 9. (a) The areas of assisted living facilities:
 - i. That are designated for smoking for residents;
 - ii. That are fully enclosed and ventilated; and
 - iii. To which access is restricted to the residents or their guests.(b) As used in this paragraph (9), "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.
 10. Hookah bars, as provided herein; and
 11. The outdoor areas of golf courses.

(Ord. O-2014-14 § 4, 2014; Ord. O-2014-3 § 6, 2014; Ord. O-2012-3 § 1, 2012; Ord. O-2009-36 § 1, 2009; Ord. O-95-19 § 3, 1995; Ord. O-86-78 § 1 (part), 1986).

9.38.045 Exceptions to marijuana smoking restrictions.

The prohibitions set forth in Section 9.38.030 shall not apply to smoking marijuana in: private homes or private residences; except that this chapter shall apply if such home or residence is being used for child care or day care.

(Ord. O-2014-3 § 7, 2014).

9.38.050 Optional restrictions.

- A. The owner or manager of any place not specifically listed in Section 9.38.030 including a place otherwise exempted under Section 9.38.040 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 9.38.030, including a place otherwise exempted under Section 9.38.040, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by Section 9.38.030(A)(11), 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. O-2012-3 § 1, 2012; Ord. O-2009-36 § 1, 2009; Ord. O-95-19 § 4, 1995; Ord. O-94-33 § 24, 1994; Ord. O-86-78 § 1 (part), 1986).

9.38.060 Hookah bars.

- A. After the effective date of this Ordinance, no new hookah bars shall be permitted within the City of Lakewood's corporate boundaries. Existing hookah bars that are open and operating as of the effective date of this Ordinance may continue operating, but may not expand in size or change locations after the effective date of the Ordinance.
- B. It shall be unlawful for a person under the age of 18 years to enter a hookah bar. It shall be unlawful for the owner or manager of a hookah bar to allow a person under the age of 18 years to enter the premises.
- C. No hookah bar may be located in a liquor-licensed premises.
- D. It shall be unlawful for any person to smoke marijuana in a hookah bar.

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-3 § 8, 2014; Ord. O-2012-3 § 1, 2012).

9.38.070 Cigar—Tobacco bars.

- A. 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.
- B. It shall be unlawful for a person under the age of 18 years to enter a cigar-tobacco bar. It shall be unlawful for the owner or manager of a cigar-tobacco bar to allow a person under the age of 18 years to enter the premises.
- C. After the effective date of this Ordinance O-2012-3, no new cigar-tobacco bar shall be permitted to open.
- D. It shall be unlawful for any person to smoke marijuana in a cigar-tobacco bar.

(Ord. O-2014-3 § 9, 2014; Ord. O-2012-3 § 1, 2012).

9.38.075 Tobacco business.

It shall be unlawful for any person to smoke marijuana in a tobacco business.

(Ord. O-2014-3 § 10, 2014).

9.38.080 Signage.

- A. It shall be unlawful for an owner or lessee or person in charge of a building or business open to the public to fail to post a sign as described herein at each entrance available to the public. The City of Lakewood shall have the discretion, when appropriate, to modify the requirements for the location and number of signs, in applying this provision to multi-unit buildings with multiple public entrances.
 - 1. The sign shall state that no smoking is allowed within 25 feet of the entrance.
 - 2. The sign shall be posted on or adjacent to the entrance door, and shall use letters no less than one inch in height.
 - 3. The international No Smoking symbol may be used in conjunction with the required text on the sign.

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- B. For signs in all outdoor locations other than Entryways, the City of Lakewood shall have the sole discretion to determine the number, size, location and content of all such signs.

(Ord. O-2019-24 § 4, 2019; Ord. O-2012-3 § 1, 2012).

9.38.090 unlawful acts penalty.

- A. It is unlawful for a person who owns, manages, operates, or otherwise controls the use of a premise 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 municipal offense and, upon conviction thereof, shall be punished by a fine not to exceed \$200.00 for a first violation within a calendar year, a fine not to exceed \$300.00 for a second violation within a calendar year, and a fine not to exceed \$500.00 for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation.

(Ord. O-2012-3 § 1, 2012; Ord. O-2009-36 § 1, 2009; Ord. O-86-78 § 1 (part), 1986).

9.38.100 Enforcement.

Peace officers and code enforcement officers shall have the authority to enforce this chapter.

(Ord. O-2012-3 § 1, 2012; Ord. O-2009-36 § 1, 2009; Ord. O-95-19 § 5, 1995; Ord. O-86-78 § 1 (part), 1986).

9.38.110 Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

(Ord. O-2012-3 § 1, 2012; Ord. O-2009-36 § 1, 2009; Ord. O-95-19 § 6, 1995; Ord. O-94-33 § 25, 1994; Ord. O-91-59 § 4 (part), 1991; Ord. O-86-78 § 1 (part), 1986).