

CHAPTER 7.40. - SMOKING IN PUBLIC PLACES

7.40.010 - Intent.

It is the intent of this chapter to protect the public health, safety and welfare by prohibiting smoking in areas which are used by or open to the public and in areas where persons are likely to gather in close proximity to one another unless such areas are designated as smoking areas pursuant to this chapter. This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by State law.

7.40.020 - Definitions.

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

*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.

*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.

*Employee* means any person who:

- A. Performs any type of work for 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 paragraph A above, 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 outside of the front or main doorway leading into a building or facility that is not exempted from this chapter under Section 7.40.040. "Entryway" also includes the area of public or private property within a 15-foot radius 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," and 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.

*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* means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate.

*Person* means any individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.

*Personal property* includes money, goods, chattels, things in action and evidences of debt.

*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.

*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 of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco including, without limitation, marijuana.

*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, marijuana, 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 or more employees are routinely assigned and perform services for or on behalf of their employer.

(Ord. 5839 § 2, 2013)

7.40.030 - General smoking restrictions.

- A. Except as provided in Section 7.40.040 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.
    - 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. Every employee shall have a right to work in an area free of environmental tobacco 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 75 percent 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 nursing homes, not including any resident's private residential quarters;
  22. Public buildings;
  23. Auditoria;
  24. Theaters;
  25. Museums;
  26. Libraries;
  27. To the extent not otherwise provided in C.R.S. § 25-14-103.5, public and nonpublic schools;
  28. Other educational and vocational institutions; and
  29. The entryways of all buildings and facilities listed in Subsections A.1 to A.28 of this section.
- 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 inches by six inches in size stating: "Smoking allowed. Children under 18 years of age must be accompanied by a parent or guardian."

7.40.035 - Specific smoking restrictions for city-owned property.

In order to reduce the levels of exposure to environmental tobacco smoke, smoke or aerosol generated from electronic smoking devices, and secondhand smoke, smoking shall not be permitted and no person shall smoke in any indoor area of any property belonging to the City of Loveland or within 15 feet from any entry way of any property belonging to the City of Loveland. For purposes of this section, "smoking" shall mean the act of burning, heating, or activation of any device, including, but not limited to, a cigarette, cigar, pipe, hookah, or electronic smoking device, electronic cigarette, vape pen, e-hookah or

similar device by any other product name or descriptor, that results in the release of smoke, vapors or aerosol when the apparent or usual purpose of the burning, heating or activation of the device is human inhalation.

(Ord. 6029 § 1, 2016)

7.40.040 - Exceptions to smoking restrictions.

- A. Except as is provided in Section 7.40.045, 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 25 percent;
  4. Any retail tobacco business;
  5. A cigar-tobacco bar;
  6. An airport smoking concession;
  7. The outdoor area of any business;
  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 C.R.S. § 39-1-102, that has annual gross income of less than \$500.00; or
  10. The retail floor plan, as defined in C.R.S. § 12-47.1-509, or a licensed casino.

(Ord. 5839 § 3, 2013)

7.40.045 - Marijuana smoking restrictions.

- A. In addition to the smoking restrictions of Section 7.40.030 and notwithstanding the exceptions to smoking restrictions provided in Section 7.40.040, it shall be unlawful for any person to openly and publicly smoke marijuana within any enclosed area.
- B. As used in this section, the following words and terms shall have the following meanings:
1. "*Enclosed area*" shall mean a permanent or semi-permanent area covered and surrounded on all sides and the temporary opening of windows or the temporary removal of wall or ceiling panels shall not convert that area into an unenclosed area or space.
  2. "*Openly*" shall mean occurring or existing in a manner that is unconcealed, undisguised, or obvious.
  3. "*Publicly*" shall mean occurring or existing in a public place or occurring or existing in any outdoor location where the consumption of marijuana is clearly observable from a public place.
  4. "*Public place*" shall mean a place to which the public or a substantial number of the public have access and shall include, without limitation: public sidewalks, trails, streets and highways; public transportation facilities and vehicles; schools; places of amusement; parks, playgrounds and other outdoor recreational areas; and the common areas of public and private buildings and facilities.

(Ord. 5839 § 4, 2013)

7.40.050 - Optional prohibitions.

- A. The owner or manager of any place not specifically listed in Section 7.40.030, including a place otherwise exempted under Section 7.40.040, 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 7.40.030, including a place otherwise exempted under Section 7.40.040, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by Subsection 7.40.030.A.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.

7.40.060 - Violations.

- 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. Any person violating any provision of this chapter, except Section 7.40.045, shall be deemed guilty of a misdemeanor 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.
- D. Any person violating Section 7.40.045 shall be guilty of a misdemeanor offense and subject to the penalties authorized in Code Section 1.12.010. Each day of a continuing violation shall be deemed a separate violation.

(Ord. 5839 § 5, 2013; Ord. 5161 § 1, 2007)