

**TOWN OF TIMNATH, COLORADO
ORDINANCE NO. 14, SERIES 2018**

**AN ORDINANCE AMENDING AND RESTATING CHAPTER 7, ARTICLE 10 OF THE
TIMNATH MUNICIPAL CODE PERTAINING TO REGULATIONS OF SMOKING
AND ELECTRONIC SMOKING DEVICE USE**

WHEREAS, The Town of Timnath (the "Town") is a home rule municipality operating under the Timnath Home Rule Charter (the "Charter") adopted on November 7, 2006 and the Town's Municipal Code (the "Code"). Pursuant to the Charter, the Code and the authority given home rule municipalities, the Town may adopt and amend ordinances; and

WHEREAS, there is no risk-free level of contact with second hand smoke; even brief exposure can be harmful to health; and

WHEREAS, Smoke-free policies are proven to reduce secondhand smoke exposure, decrease tobacco use, increase quit attempts and prevent kids from using tobacco products; and

WHEREAS, the Environmental and Protection Agency (EPA) classifies secondhand smoke as a Group A carcinogen and estimates that approximately 3,000 American nonsmokers die each year from lung cancer caused by secondhand smoke; and

WHEREAS, many Coloradans are still exposed to the dangers of secondhand smoke in many settings which can have immediate adverse effects that can lead to serious health problems; and

WHEREAS, laws restricting Electronic Smoking Devices benefit the public because there are at least nine (9) chemicals in secondhand aerosol (vapor) emitted from electronic smoking devices, also known as e-cigarettes, which have been identified as carcinogens and reproductive toxins; and

WHEREAS, E-cigarettes and other Electronic Smoking Devices expose the public to harmful chemicals, make the enforcement of smoke-free laws a challenge; and

WHEREAS, the Town Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of public health, welfare, peace, safety and property and that this Ordinance is necessary for the protection of public convenience and welfare.

NOW, THEREFORE, THE COUNCIL OF THE TOWN OF TIMNATH, COLORADO, ORDAINS:

ARTICLE 1 - The Town Council hereby approves the attached amendment to Article X of Chapter 7 of the Code of the Town of Timnath as per exhibit A.

ARTICLE 2 – SEVERABILITY

If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

ARTICLE 3 – EFFECTIVE DATE

This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, ON JULY 24, 2018 AND SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON AUGUST 14, 2018 AT THE TIMNATH ADMINISTRATION BUILDING, 4800 GOODMAN STREET, TIMNATH COLORADO AND ORDERED PUBLISHED BY TITLE THIS 24TH DAY OF JULY 2018.

MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON AUGUST 14, 2018.

TOWN OF TIMNATH, COLORADO

Jill Grossman-Belisle, Mayor

ATTEST:

Milissa Peters, CMC
Town Clerk

EXHIBIT A

CHAPTER 7 – Health, Sanitation and Animals

ARTICLE 10 – Regulations of Smoking and Electronic Smoking Device Use

Sec. 7-10-10 Definitions.

As used in this Article, the following terms shall have the meanings indicated:

Business means any sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity formed for profit-making purposes.

Cigar 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) 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 (5%) of its total annual gross income or fifty thousand dollars (\$50,000) 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 Bar* and shall not thereafter be included in the definition regardless of sales figures.

Entrances and Exits means the passageways by which persons may enter or exit a building or facility, typically consisting of a door or doorway. For the purposes of this chapter, this includes the stoop, steps, or ramp leading from the sidewalk or pavement to such a door or doorway.

Electronic Smoking Device means any device that when activated emits a vapor, aerosol, or smoke or can be used to deliver nicotine or any other substance to the person inhaling from the device, including, but not limited to e-cigarettes, e-cigars, e-pipes, vape pens, e-hookahs, inhalant delivery systems or any other similar product by any other name or descriptor. An electronic smoking device includes any component, part or accessory of such device whether or not sold separately, regardless of nicotine content or any other substance intended to be vaporized or aerosolized for human inhalation during the use of the device.

Employee means any Person who is employed or retained as an independent contractor by any Employer in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for an Employer.

Employer means any Business that retains the service of one or more Employee.

Food /Beverage Service Area means any business establishment, including Outdoor Dining Areas of the establishment thereof, in which the business includes the sale of food or beverages for on-premises consumption.

Indoor Public Place 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.

Outdoor Dining Area means any area, including streets and sidewalks, that is available to or customarily used by the general public or an Employee, and that is designed, established, or regularly used, for consuming food or drink.

Outdoor Public Place means any area not specifically characterized as an “indoor area.”

Person means any natural person, cooperative association, Employer, personal representative receiver, trustee, assignee, or any other legal entity including a government agency.

Playing Field means that portion of an outdoor Recreational Area that is set up and marked in some way for the playing of one or more specific games or sports (such as baseball, football, or soccer), and that is owned or operated by the Town and open to the general public. For the purposes of this Article, a playing field that is fenced or the outside perimeter of which is otherwise physically demarcated shall be deemed to include all of the area inside such fence or demarcation, together with any bleachers or other designated viewing area; a playing field that is not fenced or otherwise demarcated (as to its outside perimeter) shall be deemed to include all of the area customarily required for playing the game for which it is being used, together with any bleachers or other designated viewing area.

Public Event shall mean a festival, concert, parade, athletic contest, street fair, art and craft show, carnival, block party, soap box derby, or any other outdoor event sponsored, hosted or requiring a permit from the Town

Public Place means any place, indoors or outdoors that is publicly or privately owned, and open to the general public regardless of any fee or age requirement.

Reasonable Distance means a distance that ensures that people located within an area where smoking and Electronic Smoking Device use is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty-five (25) feet in any direction.

Recreational Area means any outdoor area that is owned or operated by the Town and open to the general public for recreational purposes, regardless of any fee or age requirement. The term Recreational Area includes but is not limited to Playing Fields, playgrounds, parks, picnic areas, golf courses, walking paths, gardens, hiking trails, bike paths, horseback riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, and amusement parks. The term Recreational Area is not intended to include streets and sidewalks unless they are located within a demarcated Recreational Area such as a park.

Service Area means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not such service includes the exchange of money. Service Areas include, but are not limited to, bus stops and other mass transit shelters, ATMs, public telephones, ticket lines, bus stops, cab stands, concert lines, sporting event lines, and food vendor lines.

Smoke means the emissions or release of gases, particles, vapors or aerosols into the air from burning, heating or activation of any device, including, but not limited to a cigarette, electronic smoking device, e-cigarette, vape pens, e-hookahs or any other product by any name or descriptor

when the apparent or usual purpose of burning, heating or activation of the device is human tasting and inhalation.

Smoking means the act of burning, heating, activation or carrying 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 aerosols when the apparent or usual purpose of the burning, heating or activation of the device is human inhalation.

Tobacco Product means:

- (1) any product containing, made, or derived from tobacco or synthetic tobacco whether or not said product contains nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
- (2) any Electronic Smoking Device; and
- (3) notwithstanding any provision of subsections (1) and (2) to the contrary, Tobacco Product includes any component, part, or accessory of Tobacco Product, whether or not sold separately.

Sec. 7-10-20 Findings and Purpose.

- (a) The Town Council has found and determined as follows:
 - (1) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is the cause of disease, including lung cancer, in non-smokers. At special risk are children, elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and
 - (2) Secondhand smoke has been classified as a Class A carcinogen like asbestos by the Environmental Protection Agency;
 - (3) Secondhand smoke contains almost five thousand (5,000) chemicals, sixty (60) which are known toxins and carcinogens, including arsenic, formaldehyde, hydrogen cyanide and radioactive elements; and
 - (4) There is no safe level of exposure to secondhand smoke; and
 - (5) Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection and decreased respiratory function, including bronchoconstriction and bronchospasm.
- (b) Based on the foregoing, the Town Council finds and declares that the purposes of this Article are to protect the public health and welfare by prohibiting smoking in public places

and places of employment, to advance the right of all persons to breath smoke-free air, and to recognize that the need to breath smoke-free air shall have priority in public places and work places over the desire to smoke.

Sec. 7-10-30 Prohibition of Public Smoking and Electronic Smoking Device Use

(a) Smoking and Electronic Smoking Device Use in Indoor Public Places.

(1) Smoking is not permitted and no person shall smoke or use electronic smoking devices in any Indoor Public Place within the Town of Timnath including:

- a. Indoor areas not exempt under this Article or pursuant to C.R.S. § 25-14-204;
- b. Within a Reasonable Distance from the entrance or exit into or out of any building or facility not exempt under this Article or pursuant to § 25-14-203, C.R.S.;
- c. Tobacco Businesses as defined in § 25-14-203, C.R.S.;
- d. Cigar Bars;
- e. Hotel or motel rooms rented to one or more guests; and
- f. Places of employment with three (3) or fewer employees under the control of one employer that have a common or shared air space with an Indoor Public Place where smoking is prohibited by law, such as, without limitation, openings, cracks, air ventilation systems, doorways, hallways, and stairways. Notwithstanding any other provision, the fact that Smoke enters one Indoor Public Place from another Indoor Public Place is conclusive proof that the areas share a common or shared air space.

(b) The use of an Electronic Smoking Device(s) is prohibited in all Indoor Public Places where combustible indoor smoking is prohibited pursuant to the Colorado Clean Indoor Air Act (CCIAA) § 25-14-201 *et seq.*, C.R.S. and the provisions of this Article.

(c) Smoking and Electronic Smoking Device Use in Outdoor Public Places.

(1) Smoking and Electronic Smoking Device use is prohibited in Outdoor Public Places within the Town of Timnath including:

- a. Outdoor Dining Areas;
- b. Food/Beverage Service Areas;
- c. Playing Fields;
- d. Public Events; and
- e. Recreational Areas.

Sec. 7-10-40 Other Requirements and Prohibitions

(a) No Person, Employer, or entity shall knowingly permit Smoking and the use of Electronic Smoking Devices in an area under the legal or de facto control of that Person, Employer, or other entity and in which Smoking and the use of Electronic Smoking Devices is prohibited by law.

(b) Nothing in this Article prohibits any Person, Employer, or other entity with legal control over any property from prohibiting Smoking and the use of Electronic Smoking Devices on any part of such property.

(c) No Person or Employer shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or de facto control of that Person or Employer or other entity where Smoking and the use of Electronic Smoking Devices is prohibited by law, including, without limitation, within a Reasonable Distance from any area where Smoking and the use of Electronic Smoking Devices are prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of Smoking and the Use of Electronic Smoking Devices in violation of any provision of this Article.

(d) No Person shall dispose of used Smoking or Electronic Smoking Device waste within the boundaries of an area in which Smoking Electronic Smoking Device use is prohibited, including within any Reasonable Distance as required by this Article.

(e) Signage required.

(1) A Person or Employer or other entity that has legal or de facto control of an area in which Smoking and the use of Electronic Smoking Devices are prohibited by this Article shall post a clear and conspicuous “No Smoking or Use of Electronic Smoking Devices” signs as follows:

a. At each point of ingress to the area, and in other conspicuous location(s); and

b. Signage shall have letters of no less than one (1) inch in height and shall include the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it); and

c. Signage posted on the exterior of buildings to comply with this section shall include the Reasonable Distance requirement as required by this Article; and

(iv) At least one sign with the Town phone number to where complaints can be directed.

(2) For purposes of this section, the Town Manager or his/her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the Town.

(3) Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of Smoking and the use of Electronic Smoking Devices in violation of any other provision of this Article.

(4) No Person or Employer shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another Person who seeks to attain compliance with this Article.

Sec. 7-10-50 Restrictions on Sale of Tobacco

- (a) It is unlawful for any person to furnish to any person who is under 18 years of age, by gift, sale or any other means, any cigarette or tobacco product.
- (b) It is unlawful for any person to sell or offer to sell any cigarette or tobacco product by use of a vending machine.
- (c) It is an affirmative defense to a charge of violating subsection (a) above that the person furnishing the cigarette or tobacco product was presented with and reasonably relied upon a document which identified the person receiving the prohibited items as being 18 years of age or older.
- (d) It is a specific defense to a charge of violating subsection (b) above that the vending machine was located in a place of work not open to the public where persons under 18 years of age are not permitted access.

Sec. 7-10-60 Penalties and Enforcement

- (a) The remedies provided by this Article are cumulative and in addition to any other remedies available at law or in equity.
- (b) Each instance of Smoking or Electronic Smoking Device use in violation of this Article shall constitute a separate violation.
- (c) Each incident of Smoking or Electronic Smoking Device use in violation of this Article is an infraction subject to a fifty dollar (\$50) fine or otherwise punishable pursuant to Chapter 10 of the Code. Other violations of this Article may, at the discretion of the Town attorney be prosecuted as infractions or misdemeanors when the interests of justice so require. Enforcement of this chapter shall be the responsibility of and Town police or code enforcement officer. In addition, any peace officer or code enforcement official also may enforce this chapter.
- (d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Article shall also constitute a violation of this Article.

(e) Any violation of this Article is hereby declared to be a nuisance.

(f) In addition to other remedies provided by this Article or by other law, any violation of this Article may be remedied by a civil action brought by the Town attorney including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

Sec. 7-10-70 Right of Action

Except as otherwise provided, enforcement of this Article is at the sole discretion of the Town. Nothing in this Article shall create a right of action in any Person against the Town or its agents to compel public enforcement of this Article against private parties.

Sec. 7-10-80 Severability

It is the intent of the Town of Timnath to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, paragraphs, sentences, clauses, or phrases hereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.