

**Colorado's Model Ordinance for
Smoke-Free Workplaces and Public Places**
Revised 2007

Endorsed By:

The American Cancer Society • American Heart Association • American Lung Association • Colorado Breath (Bar and Restaurant Employees Against Tobacco Hazards) • CoPIRG (Colorado Public Interest Research Group) • CTEPA (Colorado Tobacco Education and Prevention Alliance) • GASP of Colorado (Group To Alleviate Smoking Pollution)

A committee of health groups and local health agencies in Colorado developed this model ordinance. It is intended as guidance for Colorado cities and counties that wish to adopt or strengthen local smoke-free ordinances and is not offered or intended as legal advice. Please contact any of the groups listed above for assistance with tailoring the model ordinance to a particular community.

Sec. 1000. Title

This article shall be known as the [City or County name] _____ Smoke-Free Air Act of [year] _____.

Sec. 1001. Findings and Purpose

The City Council [or County Commissioners] does hereby find that:

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that: 1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; 2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome SIDS, acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; 3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; 4) there is no risk-free level of exposure to secondhand smoke; 5) establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control people's exposure to secondhand smoke; and 6) evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry.ⁱ

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease — including heart disease, stroke, respiratory disease, and lung cancer — in people who do not smoke. Secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually, a fact established by The National Cancer Institute in 1999.ⁱⁱ

Secondhand smoke has been classified as a Group A carcinogen equally hazardous as asbestos by the Environmental Protection Agency. There is no safe exposure level.ⁱⁱⁱ

Secondhand smoke contains more than 4,000 chemicals, including arsenic, formaldehyde, hydrogen cyanide and radioactive elements. More than 250 chemicals of these chemicals are toxic or can cause cancer, with more than 60 of these chemicals specifically identified as carcinogens.⁴

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-

filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.⁵

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.⁶

It has been determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and it is recommended that indoor environments be smoke-free in their entirety, according to The American Society of Heating, Refrigerating and Air Conditioning Engineers, ASHRAE.⁷

Air cleaners, which are capable only of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke according to The Environmental Protection.⁸

Creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety. Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free.⁹

Secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure, and \$4.6 billion in lost productivity, according to The Society of Actuaries.¹⁰

Accordingly, the City Council [or County Commissioners] finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

Sec. 1002. Definitions

The following words and phrases, whenever used in this Article, shall be construed as defined in this section:

“Adjacent Outdoor Area” means any covered area, partially covered area, or any area open to the sky adjacent to a place of employment that the employer provides for its employees or customers.

"Bar" means any establishment 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 incidental to the consumption of such beverages. This includes, but is not limited to, taverns, nightclubs, cocktail lounges, cabarets, cigar bars, and private clubs. For the purposes of this Article, service of food shall be considered incidental to the sale or consumption of alcoholic beverages if the food service generates less than forty percent of total annual gross sales.

“Cigar bar” means a bar, which generates ten percent or more of its total annual gross sales from the on-site sale of cigars, not including any sales of cigarettes or any sales of other tobacco products from vending machines.

"Employee" means any person who: (I) performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or (II) provides uncompensated work or services to a business or nonprofit entity. "Employee" includes every person described 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.

"Enclosed Area," means the space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures. Any space that has a roof, regardless of roof material, is an enclosed area. The temporary removal of a roof does not convert an enclosed area into an outdoor area. The opening of windows or doors, or the temporary removal of wall panels or plastic windows does not convert an enclosed area into an outdoor area. For the purposes of this article any indoor area as defined by C.R.S. 25-14-203 (10) shall be considered an "enclosed area".

"Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

"Place of Employment" means any area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms and classrooms, employee cafeterias, private clubs, and hallways. "Place of employment" includes all bars and restaurants. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.

"Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

"Public Place" means an enclosed area or adjacent outdoor area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, restaurants, educational facilities, gaming facilities, health care facilities, hotels and motels, Laundromats, public transportation facilities, reception areas, retail food production and marketing establishments, retail service establishments, retail stores, retail tobacco stores, private clubs, shopping malls, sports arenas, theaters, waiting rooms, places of meeting or public assembly. A private residence is not a "public place" except when used as a child care, adult day care, or health care facility and areas of a private residence that constitute common areas of a multiple dwelling.

"Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant. A facility shall conclusively be considered to be a "restaurant" for the purposes of this ordinance, regardless of the category of liquor license under which that facility operates, if such facility: (a) serves malt, vinous, and/or spirituous liquors; and (b)

includes a restaurant, as defined by C.R.S. 12-47-103(30), or operates a kitchen used for preparing meals, as defined by C.R.S. 12-47-103(120).

“Smoking” means inhaling, exhaling, burning or carrying any lighted cigarette, cigar, water pipe, or pipe containing tobacco or other organic burning matter, regardless of its composition.

“Sports Arena” means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports or other events.

“Smoke-free” means the absence of any smoke by-product from the inhaling, exhaling, burning or carrying any lighted cigarette, cigar, water pipe, or pipe containing tobacco or other organic burning matter, regardless of its composition.

Sec. 1003. Application of Article to City-Owned [County-Owned] Facilities

All enclosed areas including buildings and vehicles owned by the City [County] of _____ shall be subject to the provisions of this Article.

Sec. 1004. Prohibition of Smoking in Public Places

A. Smoking shall be prohibited in all public places within the City [County] of _____ except as otherwise expressly permitted in this Article.

Sec. 1005. Prohibition of Smoking in Places of Employment

A. Smoking shall be prohibited in all enclosed facilities within places of employment, without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles and all other enclosed facilities.

B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

C. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

Sec. 1006. Prohibition of Smoking in Outdoor Areas

Smoking shall be prohibited in the following outdoor places:

A. Within a distance of 15 to 25 feet outside entrances or adjacent outdoor areas of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

B. In all outdoor arenas, stadiums, and amphitheaters, seating areas, concession stands, bleachers, and grandstands for use by spectators at sporting and other public events. Smoking shall also be prohibited 15 to 25 feet from any of the above areas.

C. In all public transit stations, platforms, and shelters under the authority of the _____ [City or County].

Sec. 1007. Prohibition of Smoking in Public Places

A. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment, facility or grounds as smoke-free.

Sec. 1008. Where smoking is not regulated

A. Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from Sections 1004 and 1005:

1. Private residences, except when used as a childcare, adult care or healthcare facility.
2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, 10 to 20% of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and separately ventilated from rooms and areas where smoking is prohibited under the provisions of this Article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
3. Outdoor areas of places of employment except those covered in Section 1006 of this Article.

Sec. 1009. Posting of Signs

A. Signs indicating that smoking is prohibited, or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) shall be clearly and conspicuously posted at eye-level in every building entrance or other areas where smoking is prohibited by this Article, by the owner, operator, manager or other person having control of such building or other area.

B. A conspicuous sign shall be posted at every entrance where this Article prohibits smoking, including but not limited to the perimeter requirements.

C. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager or other person having control of such area.

Sec. 1010. Enforcement

A. Enforcement of this Article shall be implemented by the [Department of Health, City or County Law Enforcement, City or County Code Enforcement or City Manager], or his or her designee.

B. Notice of the provisions set forth in this Article shall be given to all applicants for a business license in the City [County] of _____

C. Any person who desires to register a complaint under this chapter may initiate enforcement with the [Department of Health, City or County Law Enforcement, City or County Code Enforcement or City Manager].

D. The Health Department or the Fire Department shall inspect for compliance of this ordinance while an establishment is undergoing otherwise mandated inspections.

E. Any owner, manager, operator or employee of any establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof and request their compliance.

F. Notwithstanding any other provision of this Article, a private citizen may bring legal action to enforce this Article.

Sec. 1011. Retaliation Prohibited

A. No person or employer shall discharge, refuse to hire or retaliate in any manner against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.

B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 1012. Violations and Penalties

A. It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to regulation under this Article to fail to comply with any of its provisions.

B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Article.

C. Any person who violates any provision of this Article shall be guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars (\$100) for a first violation.
2. A fine not exceeding two hundred dollars (\$200) for a second violation.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation of this Article.

B. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the _____ [Department of Health *or* City Manager *or* County Administrator] by restraining order, preliminary and permanent injunction, or other means provided for by law, and the _____ [City or County] may take action to recover the costs of the nuisance abatement.

E. Each day of continuing violation shall be deemed to be a separate violation.

Sec. 1013. Public Education

The Department of Health [or City Manager] shall engage in a continuing program to explain and clarify the purposes and requirements of this ordinance to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Sec. 1014. Other Applicable Laws

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 1015. Liberal Construction

This Article shall be liberally construed so as to further its purposes.

Sec. 1016. Severability

If any provision, clause, sentence or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Sec. 1017. Effective Date

This Article shall be effective sixty (60) days from and after the date of its adoption.

Possible Additional Local Control of Secondhand Smoke in Outdoor Places

Communities that are ready to pass a strong comprehensive ordinance protecting individuals in the places they live, work, and gather are encouraged to use the Colorado Smoke-free Workplaces and Public Places Model Ordinance. This revised model ordinance prohibits smoking in some outdoor areas and removes several of the exemptions created by the state smoke-free workplace law. Communities ready to go beyond the provisions of the model ordinance in restricting smoking in outdoor public places may consider the following language from other Colorado communities.

- Golf Course Patios – The City of Arvada prohibits smoking in certain areas of golf courses by stating that smoking is permitted on “all areas of golf courses *except* there shall be no smoking in club houses, club house patios and club house restaurants, regardless of the type of liquor license held.” Arvada City Code 21-69(7) (emphasis added).
- Parks & Trails – The definition of “public places” can be amended to include parks. For example, the City of Arvada defines “public places” as “any indoor or outdoor facility or area that is open to members of the public who enter such facility as invitees, including but not limited to ***parks, trails***, mercantile establishments, restaurants, taverns, theaters, financial institutions, educational facilities, hospitals, health care facilities and institutions, libraries, auditoriums, arenas, assembly or meeting rooms, public conveyances, governmental buildings, office buildings, restrooms, elevators, child care centers, and waiting rooms of professional persons.” Arvada City Code 21-67(5) (emphasis added).
- Playgrounds – Steamboat Springs includes playgrounds in its smoke-free ordinance by prohibiting smoking playgrounds that are either owned or leased by the City and defines “playgrounds” “an area in which playground apparatus for children is located, including a perimeter of 25 feet from said areas.” Steamboat Springs Code of Ordinances 11-4(b)(5).
- Pools – Several Colorado communities ban smoking near swimming pools.
 - Both Arvada and Steamboat Springs prohibit smoking near pools by including pools in their definition of a “sports arena” and prohibiting smoking in sports arenas. For example, Steamboat Springs define “sports arena” as “any enclosed area for sports, pavilions, gymnasiums, health clubs, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports or other events.” Steamboat Springs Code of Ordinances 11-3(a)(18); see also Arvada City Code 21-67(10).

- Denver and Timnath prohibit smoking “[w]ithin the exterior wall/fences of tennis courts and swimming pools.” Denver Code of Ordinances Art. IX, Sec. 24-304(a) (4); Town of Timnath Ordinances 7.103(3).
- Greeley prohibits smoking in “places,” which is defined to include “outdoor public ball fields, *pools*, arenas and outdoor publicly owned areas where seating is provided and within 50 feet of such seating when 'no smoking' signs are posted.” Greeley Municipal Code 9.44.020-030.
- Skating Rinks – Both Arvada and Steamboat Springs prohibit smoking near skating rinks by including “rinks” in their definition of a “sports arena” and prohibiting smoking in sports arenas. For example, Steamboat Springs define “sports arena” as “any enclosed area for sports, pavilions, gymnasiums, health clubs, health spas, boxing arenas, swimming pools, *roller and ice rinks*, bowling alleys and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports or other events.” Steamboat Springs Code of Ordinances 11-3(a)(18); see also Arvada City Code 21-67(10).
- Service Lines –
 - Avon and Eagle County prohibit smoking in service lines and within 25 feet of any service line. Avon Municipal Code 8.24.060; Eagle County Ordinance No. 06-01(6). A service line is defined as “any outdoor or indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service includes the exchange of money, including but not limited to movie ticket lines, theater lines, concert lines, sporting event lines, food vendor lines, lift ticket lines, and chair/gondola lines.” Avon Municipal Code 8.24.020; Eagle County Ordinance No. 06-01(2)(13).
 - The City & County of Broomfield prohibits smoking in “any outdoor service line where more than one person is giving or receiving services of any kind, whether or not such service involves the exchange of money.” Broomfield Municipal Code 8-02-030(K).
- Tennis Courts - Denver and Timnath prohibit smoking “[w]ithin the exterior wall/fences of tennis courts and swimming pools.” Denver Code of Ordinances Art. IX, Sec. 24-304(a) (4); Town of Timnath Ordinances 7.103(3).

Citations

¹ U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

² National Cancer Institute NCI, "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. *Smoking and Tobacco Control Monograph 10*," Bethesda, MD: National Institutes of Health, National Cancer Institute NCI, August 1999

³ US Environmental Protection Agency, EPA, 1993

⁴ Same as #1

⁵ Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

⁶ California Environmental Protection Agency, "Health effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.

⁷ Samet, J.; Bohanon, Jr., H.R.; Coultas, D.B.; Houston, T.P.; Persily, A.K.; Schoen, L.J.; Spengler, J.; Callaway, C.A.,

"ASHRAE position document on environmental tobacco smoke," American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), 2005

⁸ Same as #3.

⁹ Glantz, S.A. & Smith, L. "The effect of ordinances requiring smoke-free restaurants on restaurant sales in the United States". *American Journal of Public Health*, 87:1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," GPI Atlantic, September 2001.

¹⁰ Behan, D.F.; Eriksen, M.P.; Lin, Y., "Economic Effects of Environmental Tobacco Smoke," *Society of Actuaries*, March 31, 2005.