

ORDINANCE NO. 158, 2013
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE III OF CHAPTER 12 OF THE CODE OF THE CITY
OF FORT COLLINS PERTAINING TO SMOKING IN PUBLIC AREAS

WHEREAS, Chapter 12, Article III of the City Code prohibits smoking in enclosed public places, within a 20-foot perimeter of any entrance to an enclosed public place, and generally in places of employment; and

WHEREAS, City staff has received increasing complaints and concerns regarding exposures to secondhand smoke not currently prohibited under the restrictions on smoking currently in effect in the City; and

WHEREAS, the City Council has previously found and determined that there is no safe level of exposure to secondhand smoke; and

WHEREAS, the concern over the health impacts of secondhand smoke continues to rise among the citizens of Fort Collins; and

WHEREAS, there is a need in the City to create more smoke-free zones to reduce public exposure to secondhand smoke and related impacts; and

WHEREAS, in 2006, the Colorado General Assembly enacted Article 14 of title 25, Part 2, Colorado Revised Statutes, known as the Colorado Clean Indoor Air Act (the "Act"), to impose statewide restrictions on smoking; and

WHEREAS, on October 17, 2006, the City Council adopted Ordinance No. 122, 2006, clarifying certain provisions of Article III of Chapter 12 to align the City Code with the Act; and

WHEREAS, the Act specifically allows local restrictions on smoking to be more, but not less, restrictive than provided in the Act; and

WHEREAS, the Act effectively prohibits smoking except where otherwise allowed by the Act; and

WHEREAS, Article III of Chapter 12 of the City Code effectively allows smoking except where otherwise prohibited by the City Code; and

WHEREAS, because the construction of Article III of Chapter 12 of the City Code differs from that of the provisions of the Act, the City Code may be construed to be less restrictive than some provisions of the Act; and

WHEREAS, in order to eliminate any ambiguity, this Ordinance includes a provision which brings the City Code into compliance with the Act; and

WHEREAS, the City Council has determined that it is in the best interest of the health, safety, and welfare of the residents of the City that Article III of Chapter 12 of the Code of the

City of Fort Collins be amended to include the creation of smoke-free areas (1) in outdoor serving areas in restaurants, (2) in bar patios, and (3) at all public transportation transit facilities where either a bench or shelter is located.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 12-56 of the Code of the City of Fort Collins is hereby amended to add new definitions and amend existing definitions, to read as follows:

Bar shall mean any 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, if any, is secondary to the consumption of such beverages.

...

Food service establishment shall mean any premises upon which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.

...

Marijuana shall mean 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. *Marijuana* shall not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

Outdoor serving area shall mean any location on the premises of a food service establishment or bar that is not an enclosed area where food or drink is provided to the public, including, but not limited to, seating areas located on the premises of a restaurant or bar where patrons are permitted to consume food or alcohol.

...

Place of employment shall mean any area under the control of a public or private employer that employees normally frequent or use during the course of employment, including but not limited to work areas, employee lounges and rest rooms, conference and class rooms, employee cafeterias and hallways. *Place of employment* shall not include ~~a private club or~~ a private residence unless the residence is used as a child care, adult day care or health care facility.

Public place shall mean any enclosed area to which the public is invited or in which the public is permitted, including but not limited to attached and freestanding bars, banks, commercial bingo facilities, convention halls, education facilities, child care, adult day

care or medical or health care facilities, **food service establishments**, guest rooms in any lodging establishment, **L**audromats, performance halls, polling places, professional offices, public transportation facilities and vehicles, reception areas, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, service lines, and sports arenas. Every room, chamber, place of meeting or public assembly shall be considered a *public place* during the period of time that a public meeting is in progress. All areas of an establishment that are open to, or customarily used by, the general public, including but not limited to elevators, rest rooms, lobbies, reception areas, hallways, waiting rooms and other common areas, are *public places*. A private residence shall be considered a *public place* only when in use as a child care, adult day care or health care facility. Common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple unit residential facilities are *public places*. A private nursing home room shall be considered to be the equivalent of a private residence, but a nonprivate nursing home room shall be considered to be a public place. **Every outdoor serving area, bus bench, bus shelter, transit facility, and bus stop shall be considered a *public place*, except that a bus stop without either a bench or a structure shall not be considered a *public place*.**

Retail tobacco business shall mean an establishment utilized primarily for the retail sale of tobacco products and accessories for offsite use and consumption, and in which the sale of other products and nonsales activities are merely incidental. **The term *retail tobacco business* shall not include any establishment that is in the business of selling retail or medical marijuana.** In order for an ~~for an~~ establishment to be considered a *retail tobacco business* for purposes of this definition:

- (1) The revenues of the business must be generated primarily from the on-site sale of tobacco products, and from the sale of tobacco consumption accessories. The sale of incidental goods other than tobacco products or tobacco consumption accessories may generate limited revenues of no more than eight (8) percent of the total on-site revenues of the retail tobacco business.
- (2) The business shall not operate under a liquor license or other license associated with sale or consumption of other than tobacco products.
- (3) The business shall not exceed two thousand five hundred (2,500) square feet of gross floor area in size, and no more than twenty (20) percent of the business may be utilized as a seating area, lounge or other area intended to accommodate smoking for the purpose of sampling tobacco products that are offered for sale.
- (4) An establishment in operation as of July 1, 2006, that as of that date was an establishment utilized primarily for the retail sale or promotion of tobacco products and accessories and that met the requirements in Paragraphs (1) and (2) above, shall be deemed to constitute a retail tobacco business for so long as the establishment:
 - a. Continues to meet the requirements in Paragraphs (1) and (2), above;
and

b. Does not expand the size of the area in which smoking is allowed from the size of said area as it existed on July 1, 2006; and

c. At all times after December 31, 2006, operates in compliance with the requirements of Paragraph 12-62(a)(2) below.

...

Tobacco shall mean 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 seepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for both 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.

Section 2. That Section 12-61 of the Code of the City of Fort Collins is hereby amended to read as follows:

In order to prevent smoke from entering any smoke-free area, no person shall smoke within a distance of twenty (20) feet from any entrance, passageway, operable window or ventilation system of any smoke-free establishment or area, or within twenty (20) feet of the exterior boundary of any unenclosed areas required to be smoke-free under this Article, including, but not limited to, outdoor serving areas, bus benches, bus shelters, and transit centers, unless such person is immediately passing through such areas, without stopping or standing, en route to another destination.

Introduced, considered favorably on first reading, and ordered published this 5th day of November, A.D. 2013, and to be presented for final passage on the 19th day of November, A.D. 2013.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 19th day of November, A.D. 2013.

Mayor

ATTEST:

City Clerk