

ARTICLE III. SMOKING IN PUBLIC AREAS*

Sec. 12-56. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

Bingo facility shall mean premises used primarily for the purpose of conducting games of chance.

Designated smoking area shall mean any area designated and operated in accordance with the requirements of § 12-63, "Designated Smoking Areas."

Employee shall mean any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services without wages or other compensation.

Employer shall mean any person, organization or entity employing the services of any person, whether or not such employed person is compensated for those services.

Enclosed area shall mean all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) that 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.

Establishment shall mean the buildings or facilities in which a business, enterprise or undertaking, whether or not for profit, is conducted. In the event that a single business or undertaking is conducted in two (2) or more adjacent buildings, those buildings together shall comprise the *establishment* for the purpose of this Article.

Independently ventilated shall mean ventilated so as to prevent the mixing of air between any area in which smoking is allowed and any smoke-free area.

Performance hall shall mean any area or facility that is primarily used for the exhibition of any motion picture, stage, drama, lecture, musical recital or other similar performance, including, but not limited to, concert halls and theaters. An establishment that is used for another, primary purpose, and that has musical or other performances on an occasional basis as incidental or complementary to that different and primary use, shall not be considered to be a *performance hall*. For example, a freestanding bar that occasionally provides or allows the performance of live music is not a *performance hall*.

Physically separated shall mean separated by physical barriers, such as walls and doors extending from floor to ceiling, so as to prevent the mixing of air between any area in which smoking is allowed and any smoke-free area.

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 restrooms, 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.

Private club shall mean any establishment that has a defined membership, charges an annual fee for membership in an amount intended to substantially defray the ongoing costs of operation, and restricts admission to members of the club and their guests. A *private club* shall not be considered a *public place* except

*Cross references – Fire protection and prevention, Ch. 9

when it is the site of a meeting, event or activity that is open to the public.

Private function shall mean any activity that is restricted to invited guests in a nonpublic setting.

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, educational facilities, child-care, adult day care or medical or health care facilities, guest rooms in any lodging establishment, laundromats, 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, restrooms, lobbies, reception areas, hallways, waiting rooms, and other common areas, are *public places*. A private club shall be considered a *public place* when functions are held at the club that are open to the public. 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*.

Restaurant shall mean any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment that gives or offers for sale food to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. If an establishment serves malt, vinous and/or spirituous liquors and actually and regularly serves meals, and either: (1) has a kitchen facility equipped to prepare other than prepackaged food for service to patrons of the establishment; or (2) derives not less than twenty-five (25) percent of its gross income from the sale of food and non-alcoholic drinks, such establishment shall conclusively be considered to be a *restaurant* for the purposes of this Article, regardless of the category of liquor license under which that facility operates.

Retail tobacco store shall mean a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Service line shall mean any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoke or smoking shall mean:

- (1) Carrying or placing of a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment in one's mouth for the purpose of inhaling or exhaling smoke or blowing smoke rings;
- (2) Placing of a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment in an ashtray or other receptacle, and allowing smoke to diffuse in the air;
- (3) Carrying or placing of a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment in one's hands or any appendage or device and allowing smoke to diffuse in the air; or
- (4) Inhaling or exhaling smoke from a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment.

Smoke-free shall mean that an establishment or the premises controlled by that establishment has been declared to be a place in which smoking is prohibited, whether by the terms of this Article or by the owner or operator of said establishment.

(Code 1972, § 91-2; Ord. No. 181, 2002, § 1, 12-17-02; Ord. No. 039, 2004, § 1, 3-16-04)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 12-57. Findings; purposes.

(a) The City 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 a cause of disease, including lung cancer, in nonsmokers. 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; and
- (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 City Council finds and declares that the purposes of this Article are: (i) to protect the public health and welfare by prohibiting smoking in public places and places of employment; (ii) to advance the right of all persons to breathe smoke-free air; and (iii) to recognize that the need to breathe smoke-free air shall have priority in public places and work places over the desire to smoke.

(Ord. No. 181, 2002, § 1, 12-17-02)

Sec. 12-58. Smoking prohibited in city buildings and vehicles.

All enclosed facilities of the city, including but not limited to all city-owned buildings and vehicles owned by the city, shall be subject to the provisions of this Article.

(Ord. No. 181, 2002, § 1, 12-17-02)

Sec. 12-59. Smoking prohibited in public places.

Smoking shall be prohibited in all public places within the city, except as otherwise expressly permitted under this Article.

(Ord. No. 181, 2002, § 1, 12-17-02)

Sec. 12-60. Smoking prohibited in places of employment.

(a) It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers may comply with this requirement through the implementation of policies and practices and are not required to incur any expense to make structural or other physical modifications, unless such modifications are otherwise required under § 12-63.

(b) Each employer having a place of employment located within the city shall adopt, implement, make known and maintain a written smoking policy which shall prohibit smoking in all smoke-free areas within such place of employment. All 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 that are, or are within, places of employment shall be smoke-free areas, whether or not they are public places, except those areas identified in § 12-62(a). An employer having a place of employment that includes both smoke-free areas and areas in which smoking is allowed under this Article shall accommodate any employee who requests a smoke-free work area by assigning the

employee to such an area.

(c) This smoking policy shall be communicated by each such employer to all employees within three (3) weeks of its adoption, and all employers shall supply a written copy of the same upon request, to any existing or prospective employee.

(Ord. No. 181, 2002, §§ 1,2, 12-17-02)

Sec. 12-61. Smoke-free perimeter.

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, unless such person is passing through such area, without stopping, en route to another destination.

(Ord. No. 181, 2002, § 1, 12-17-02)

Sec. 12-62. Where smoking is not prohibited.

(a) Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the smoking prohibition set forth in § 12-59:

- (1) Private clubs, provided that such clubs are equipped with a ventilation system that is adequate, in the judgment of the Director of Building and Zoning, to ventilate the premises and to effectively prevent smoke originating on the premises from entering any adjacent smoke-free areas.
- (2) Private residences, except when used as a child care, adult day care or health care facility.
- (3) Up to twenty-five (25) percent of guest rooms in lodging establishments, including but not limited to bed and breakfasts, hotels, motels and inns.
- (4) Retail tobacco stores.
- (5) Those portions of an establishment used for private functions that are not open to the public, during the period of such private use.
- (6) Performance halls to the extent necessary to allow smoking by a performer as part of a stage production.
- (7) Outdoor places of employment.
- (8) Rooms used for psychological treatment of nicotine addiction by a licensed health care professional, and physically separate and independently ventilated rooms in a hospital, hospice or nursing home that are open to all residents as a smoking room and for no other purpose.
- (9) Buildings or properties under the control of the United States, the state, the county or Poudre School District that have not been designated as smoke-free by the managing authority.
- (10) In a designated smoking area in a bingo facility or bowling alley operated in accordance with § 12-63; provided, however, that no such establishment shall be primarily devoted to the sale or service of alcohol beverages.

(b) Notwithstanding any other provision of this Article, any owner, operator, manager or other person in control of any establishment or property not otherwise required to be smoke-free pursuant to this Article may declare such establishment or property entirely or partially smoke-free.

(Ord. No. 181, 2002, § 1, 12-17-02; Ord. No. 039, 2004, § 2, 3-16-04)

Sec. 12-63. Designated smoking areas.

(a) The owner, lessee, principal manager or other person in control of a bingo parlor or bowling alley as referenced in § 12-62(a)(9) may designate one (1) smoking area in such establishment so long as said designated smoking area meets the following requirements:

(1) The size of the area shall not exceed:

- a. For designated smoking areas in bingo parlors, fifty (50) percent of the square footage of the floor area of the establishment that is open to the public, excluding any waiting area, lobby, hallway, elevator, restroom, or area adjacent to a food service line or service line, or cash register area; or
- b. For designated smoking areas in bowling alleys, fifty (50) percent of the square footage of the floor area of the physically separated bar area; and

(2) The area shall be independently ventilated from the smoke-free areas;

(3) The area shall be physically separated from the smoke-free areas;

(4) The area shall not include any waiting area, lobby, hallway, elevator, restroom or area adjacent to a service line or cash register.

(b) Any service or amenity which the establishment chooses to provide to patrons, other than smoking, shall at all times be at least as available in the smoke-free portion of the establishment as in the designated smoking area. This requirement shall include, but not be limited to, live entertainment and games.

(c) No owner, lessee, principal manager or person in control of an establishment that designates a smoking area shall fail to maintain, post signage for, and otherwise operate such designated smoking area in accordance with the requirements of this Article.

(d) If the seating or admission of patrons at an establishment with a designated smoking area is directed by an employee, no owner, lessee, principal manager or other person in control of the establishment shall fail to ensure that such employee asks each patron for the patron's preference for seating in or use of a no-smoking or a smoking area. If the seating or admission of patrons at an establishment with a designated smoking area is not directed by an employee, no owner, lessee, principal manager or other person in control of the establishment shall fail to post a conspicuous sign on all public entrances or in a position clearly visible on entry into the establishment advising patrons that such a no-smoking area is available and where it is located.

(Ord. No. 181, 2002, § 1, 12-17-02; Ord. No. 118, 2003, § 1, 9-2-03)

Sec. 12-64. Posting of signs.

(a) The owner, operator, manager and other persons in control of an establishment shall be responsible for posting and maintaining the following signs in said establishment, as applicable:

- (1) "No Smoking" signs 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 every entrance of every establishment required or declared to be smoke-free under this Article.
- (2) In an establishment in which certain areas are designated as smoking areas pursuant to this Article, a sign using the words "No Smoking Except in Designated Areas" shall be posted conspicuously at all public entrances and in a position clearly visible upon entry into the establishment.
- (3) In an establishment in which smoking is allowed throughout pursuant to this Article, a sign using the words "Smoking Permitted" and/or the international smoking symbol shall be posted conspicuously

at all public entrances and in a position clearly visible upon entry into the establishment.

(b) All signs referred to in this Section shall be a minimum size of twenty (20) square inches and shall be placed at a height of between four (4) and six (6) feet above the floor.

(c) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited under this Article by the owner, operator, manager or other person in control of the establishment.

(d) The owner or person in control of any vehicle in which smoking is prohibited under this Article shall clearly and conspicuously post in the interior of the vehicle decals or signs stating or indicating that no smoking is permitted in the vehicle.

(Ord. No. 181, 2002, § 1, 12-17-02)

Sec. 12-65. Enforcement.

(a) Enforcement of this Article shall be implemented by the 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 sales/use tax license in the city pursuant to Chapter 25 of this Code.

(c) Any citizen may register a complaint of alleged violation of this Article by filing a sworn complaint with the City Manager or his or her designee.

(d) Any owner, manager, operator or agent of any establishment regulated by this Article shall inform persons violating this Article in such establishment of the appropriate provisions thereof and request their compliance.

(e) The City Manager may make such rules and regulations as he or she deems necessary and beneficial for the interpretation and enforcement of the terms of this Article. Any such rules and regulations shall become effective upon the filing of the same with the office of the City Clerk and the publication in a newspaper of general circulation published in the city of a notice stating the general subject matter and the availability of the same in the office of the City Clerk.

(Ord. No. 181, 2002, § 1, 12-17-02; Ord. No. 118, 2003, § 2, 9-2-03)

Editor's note—The City Manager has established regulations as of September 24, 2003. A copy is on file at the City Clerk's office.

Sec. 12-66. Inspection of books and records.

The owner of each establishment operating as a private club or as an enclosed public place shall keep a complete set of books of account, invoices, copies of orders, shipping instructions, bills of lading, correspondence and all other records necessary to show fully the business transactions of such establishment, all of which records shall be available at all times during business hours for inspection and examination by the City Manager or his or her authorized representatives for use in determining whether an establishment constitutes a private club, retail tobacco store, bingo facility, bowling alley or other establishment, in order to determine the applicability of the provisions of this Article to such establishment. The City Manager may require the owner of any such establishment to furnish such information as he or she considers necessary for such a determination, and may require that the owner of such establishment cause an audit to be made of such books of account and records on such occasions as he or she may consider necessary.

(Ord. No. 181, 2002, § 1, 12-17-02; Ord. 039, 2004, § 3, 3-16-04)

Sec. 12-67. Private club license.

Effective September 1, 2004, no establishment shall allow smoking as a private club unless and until such establishment has been issued a private club license by the City Manager. All applications for such a license shall be submitted on forms acceptable to the City Manager and shall include all information and documentation deemed necessary by the City Manager to demonstrate compliance with the private club requirements of this Article. All such licenses shall be issued for a two-year term and shall be renewed upon application, so long as the establishment holding such license continues to meet the private club requirements of this Article. All establishments filing an application for a private club license shall, upon filing of the same, be made available for inspection by the City Manager or his or her designee, upon request, at all reasonable times, in order to determine compliance with the provisions of this Article, both before the issuance of the private club license and during the term thereof.

(Ord. 039, 2004, § 4, 3-16-04)

Sec. 12-68. Nonretaliation.

No person or employer shall discharge, refuse to hire or serve, or retaliate in any manner against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke-free environment afforded by this Article.

(Ord. No. 181, 2002, § 1, 12-17-02)

Sec. 12-69. 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 a misdemeanor, punishable by a fine or imprisonment in accordance with § 1-15.

(d) Each day of continuing violation shall be deemed to be a separate violation.

(Ord. No. 181, 2002, § 1, 12-17-02)

Sec. 12-70. Public education.

The City Manager shall engage in a continuing program to explain and clarify the purposes and requirements of this Article 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 Article.

(Ord. No. 181, 2002, § 1, 12-17-02)

Sec. 12-71. Other applicable laws.

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

(Ord. No. 181, 2002, § 1, 12-17-02)

Sec. 12-72. 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.

(Ord. No. 181, 2002, § 1, 12-17-02)

Secs. 12-73, 12-74. Reserved.