

Chapter 10: SMOKING IN PUBLIC PLACES

[HISTORY: Adopted by the City Council of the City of Evanston 12-19-2006 by Ord. No. 06-17, effective 9-4-2007. *Editor's Note: Former Ch. 10 was repealed by Ord. No. 86-1.* Amendments noted where applicable.]

§ 10-1. Purpose; findings.

- A. The governing body of the City of Evanston does hereby find that:
- (1) Numerous peer reviewed studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. 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.
 - (2) Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and bronchospasm.
 - (3) A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a twenty-five- to fifty-percent 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.
- B. Accordingly, the governing body finds and declares that the purposes of the ordinance codified in this chapter 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 of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

§ 10-2. Definitions.

As used in this chapter, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

BUSINESS — Any legal entity, including, but not limited to, a sole proprietorship, partnership, joint venture, corporation or other business entity whether formed for profit-making or nonprofit purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

CITY-OWNED YOUTH AND ADULT ATHLETIC FACILITIES — Include, but are not limited to, facilities where organized youth and adult soccer, softball, baseball and any other youth or adult athletic team activities occur, whether the facility is enclosed or not. This definition shall not include golf courses.

EMPLOYEE — Any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a nonprofit entity.

EMPLOYER — A person, business, partnership, association, corporation, trust, nonprofit entity, or a municipal corporation that employs the services of one or more individual persons.

ENCLOSED AREA — All space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.

FIRE DEPARTMENT — The Uinta County Fire Protection and Emergency Services Joint Powers Board.

HEALTH CARE FACILITY — 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 with these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards with health care facilities.

OUTDOOR PATIO — An outdoor area, open to the air at all times, that either:

- A. Is enclosed by a roof or other overhead covering and not more than two walls or other side coverings; or
- B. Has no roof or other overhead covering at all regardless of the number of walls or other side coverings.

PERFORMANCE HALL — Any area or facility that is primarily used for the exhibition of any motion picture, stage, drama, lecture, musical recital or other similar performances, including, but not limited to, concert halls and theaters.

PLACE OF EMPLOYMENT — An area under the control of an employer which is intended for occupancy by employees during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, waiting areas, offices, stairways, and hallways. A private residence is not a place of employment unless it is used as a licensed child care, licensed adult day care, health care or preschool facility, or any other aforementioned business.

PRIVATE CLUB — Those organizations or entities defined as a "club" in Wyoming Statutes § 12-1-101(a)(iii), which are not open to the public.

PUBLIC PLACE — An enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, and other financial institutions, publicly funded buildings, public conveyances, recreational facilities, taverns, lounges, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, including grocery stores, supermarkets and stores where food items are sold for on-premises or off-premises consumption, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a public place unless it is used as a licensed child care, licensed adult day care, health care or preschool facility.

PUBLIC TRANSPORTATION — Means, but is not limited to, any enclosed mode of public transportation, including a train, passenger bus, school bus or other vehicle used to transport pupils, and taxi; or a vehicle that is owned by or operated by a business and is open to the public, including tour vehicles, passenger buses or vans regularly used to transport customers. Notwithstanding the foregoing, a private vehicle not open to the public or not used for the transportation of the public during the times of use, including a private passenger vehicle, a private charter or rental of a limousine, bus or van, shall not be considered public transportation.

RESTAURANT — An eating establishment, including, but not limited to, coffee shops, cafeterias, and public and private 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 and served elsewhere. The term "restaurant" shall include any tavern, lounge or bar area within the restaurant.

RETAIL SALES — Establishments engaged in the sale of goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. A retail sales establishment is usually a place of business and is engaged in activity to attract the general public to make purchases.

SHOPPING MALL — An enclosed public walkway or hall area that serves to connect retail sale or professional service establishments.

SMOKE or SMOKING — The inhaling, exhaling, burning or carrying of any lighted tobacco product, weed, plant or other combustible product in a smoking instrument or the placement of smoking instruments containing a lighted tobacco product, weed, plant or other combustible product in an ashtray or other receptacle and allowing smoke to diffuse into the air. This definition does not include incense.

SMOKING INSTRUMENT — Any cigar, cigarette, pipe, hookah or water pipe, or any other smoking device.

SPORTS ARENA — Any enclosed sports pavilions, stadiums, gymnasiums, health spas, 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.

TAVERN, LOUNGE OR BAR — Any establishment open to the public whose primary source of revenue is from the sale of alcoholic liquor and malt beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages, including, but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

YOUTH — Any person who has not attained 18 years of age.

§ 10-3. Applicability to City-owned facilities.

All enclosed areas, including buildings and vehicles owned, leased or operated by the City of Evanston, shall be subject to the provisions of this chapter.

§ 10-4. Prohibition of smoking in public places.

Smoking shall be prohibited in all enclosed areas of public places within the City, including, but not limited to, the following:

- A. Galleries, libraries and museums;
- B. Areas available to and customarily used by the general public in businesses and for-profit or nonprofit entities patronized by the public, including, but not limited to, professional offices, banks, laundromats, hotels and motels;
- C. Bingo and/or pull tab gaming premises;
- D. Convention facilities;
- E. Elevators;
- F. Taverns, lounges or bars;
- G. Health care facilities, nursing homes and long-term care facilities;
- H. Licensed child care, adult day care and preschool facilities;
- I. Lobbies, hallways and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- J. Performance halls;

- K. Election polling places;
- L. Private clubs;
- M. Restaurants;
- N. Restrooms, lobbies, reception areas, hallways, and other common-use areas;
- O. Retail stores;
- P. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or governing body of the City of Evanston, to the extent the place is subject to the jurisdiction of the City of Evanston;
- Q. Shopping malls;
- R. Sports arenas and convention halls, including bowling facilities;
- S. Public transportation;
- T. City-owned youth and adult athletic facilities.

§ 10-5. Prohibition of smoking in places of employment.

- A. Smoking shall be prohibited in all enclosed areas within places of employment, including, but not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, public transportation vehicles and all other enclosed facilities.
- B. Employers affected by this chapter shall communicate the provisions of this chapter to all existing employees by the effective date of the ordinance and to all prospective employees on their application for employment.

§ 10-6. Declaration of establishment as nonsmoking.

Notwithstanding any other provision of this chapter, an owner, operator, manager, or other person in control of an establishment, facility or outdoor area may declare that entire establishment, facility or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of § 10-11 of this chapter is posted.

§ 10-7. Where smoking is not regulated.

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of §§ 10-4 and 10-5 of this chapter:

- A. Private residences, except when used as a licensed child care, licensed adult day care, preschool or health care facility;
- B. Hotel and motel rooms that are rented to guests and are designated as smoking rooms;
- C. Outdoor places of employment;
- D. Private offices, provided that the private office is not open to public, the public is not invited, and the office is not intended for occupancy by employees during the course of their employment;
- E. Outside patios. The opening of any sliding or folding windows or doors or other windows or doors from any part of the border to an outdoor patio shall be closed to prevent the migration of smoke into the enclosed area. If sliding or folding windows or doors or other windows or

doors do not prevent the migration of smoke into the enclosed building area, the outdoor patio shall be considered an extension of the enclosed area and subject to the prohibitions of this chapter;

- F. Private or business vehicles, except those used for public transportation.

§ 10-8. Public education.

The City will disseminate public information to explain and clarify the purposes and requirements of this chapter. Information may include the availability of a brochure for affected businesses and individuals.

§ 10-9. Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted or prohibited.

§ 10-10. Citizen complaints; procedures.

Violations of this chapter may be reported to the Evanston Police Department at the time of violation by telephoning nonemergency dispatch. In addition:

- A. The Evanston Police Department shall respond to complaints made for violations occurring at the time of the complaint. The Evanston Police Department may issue citations or warning tickets at the discretion of the responding officer.
- B. Violators will be provided a copy of any warning ticket or citation issued.

§ 10-11. Posting of signs

- A. "No Smoking" signs or 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) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this chapter.
- B. The owner, operator, manager or other person having control of an area where smoking is prohibited shall remove all ashtrays or other smoking instruments if their intended use is for smoking in such enclosed area.

§ 10-12. Nonretaliation.

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

§ 10-13. Violations and penalties.

- A. A person who violates the provisions of this chapter is guilty of a misdemeanor, punishable pursuant to the general provisions of § 1-5 of the City Code.
- B. A person who owns, manages, operates or otherwise controls a public place or place of employment and who knowingly fails to comply with the provisions of this chapter after

receiving oral or written notice from the City shall be guilty of a misdemeanor as set forth in Subsection A above.

- C. In addition to the penalties established by Subsections A and B of this section, violation of this chapter by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any City permit or license issued to the person for the premises on which the violation occurred, pursuant to the ordinance under which the license is issued. Further, violation of this chapter constitutes a public nuisance.
- D. Each separate violation of this chapter shall be considered a separate and distinct violation.

§ 10-14. Enforcement.

- A. Any Evanston Police Department law enforcement officer shall be authorized to enforce the provisions of this chapter.
- B. Notice of the provisions of this chapter shall be given to all applicants for City business, food or alcohol-related licenses and permits and distributed through other means, as determined by the City.
- C. Any citizen who desires to register a complaint under this chapter may initiate enforcement action under the procedures set forth in § 10-10.
- D. Failure of the owner, manager, operator or employee of an establishment to orally inform a person who smokes in an area where smoking is prohibited by the provisions of this chapter shall not constitute a defense.

§ 10-15. Construal of provisions.

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

§ 10-16. Severability.

If any section, subsection, or clause of this chapter shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.

§ 10-17. Territorial jurisdiction.

The territorial jurisdiction of the regulations found in this chapter shall include all of the incorporated lands located within the City and, pursuant to Wyoming Statute § 15-3-202, such other territory peripheral to the City which is located within one-half mile of the corporate limits.