

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO. 3914

**AN ORDINANCE AMENDING CHAPTER 16, ARTICLE VI, SECTION 16-127,
OF THE
CODE OF ORDINANCES (SMOKING)**

Recitals:

After a full public hearing and much deliberation, Ordinance No. 3540 regulating smoking in public places was adopted on July 2, 2003 and went into effect on January 1, 2004. City Council approved amendments to the ordinance as codified in the Code of Ordinances ("Code") in Chapter 16, Article VI: Air Pollution, Section 16-127 on October 19, 2005 with Ordinance No. 3829. On March 27, 2006, Governor Bill Owens signed into law the new "Colorado Clean Indoor Air Act" ("Act"). City Council has reviewed and considered the terms of the Act that are more restrictive than the City's requirements. City Council has determined that it is necessary and conducive to the protection of the public health, safety, welfare and economic well-being to provide for the maintenance of smoke-free areas. To be more in conformity with State law, City Council deems it appropriate to amend the City's Code regarding smoking.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:

Chapter 16, Article VI, Section 16-127. Smoking in workplaces and public places of the Code is hereby amended as set forth in the attached Exhibit A which is incorporated herein as if fully rewritten.

Introduced on first reading this 17th day of May 2006.

Passed and Adopted on second reading this 7th day of June 2006.

/s/ James J. Doody

President of Council

Attest:

/s/ Stephanie Tuin

City Clerk

EXHIBIT A

ARTICLE VI. AIR POLLUTION

Sec. 16-127. Smoking in workplaces and public places.

(1) **Definitions.** The following words and phrases, whenever used in this Section 16-127 shall have the following meanings:

Bar means an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.

Bingo Hall means any enclosed area used for the management, operation or conduct of a game of bingo by any organization holding a license to manage, operate or conduct games of bingo pursuant to Colorado law and in which food service for consumption on the premises is incidental to the games of bingo.

Bowling Alley means a business open to the public which offers the use of bowling lanes, typically equipped with operable automatic pin setting apparatus and in which food service for consumption on the premises is incidental to bowling and related activities.

Business means any sole proprietorship, partnership, joint venture, corporation or other entity formed for profit-making or non-profit purposes, including retail establishments where goods or services are sold, as well as professional corporations and limited liability companies. *Business* includes entities where legal, accounting, financial, planning, medical, dental, engineering, architectural or other services are delivered.

Employee means any person whether such person is referred to as an employee, contractor, independent contractor, volunteer or by any other designation or title who:

- a. Performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or
- b. Provides uncompensated work or services to a business or nonprofit entity.

Employer means any person, partnership, association, corporation, or nonprofit entity that employs one or more persons.

Enclosed Area means all space between a floor and ceiling within a structure or building which is closed in on all sides by solid walls, doors or windows which extend from the floor to the ceiling.

Indoor Area 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 to an outdoor area.

Person means a natural person or any entity or business recognized by law or formed to do business of any sort.

Place of Employment means any indoor place and any public place or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

Private Club means any establishment which restricts admission to members of the club and their guests. See *Public Place*.

Private Function means any activity which is restricted to invited guests in a nonpublic setting and to which the general public is not invited.

Public Meeting means any meeting open to the public pursuant to Part 4 of Article 6 of Title 24, C.R.S., on any other applicable law.

Public Place means any area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, schools, health facilities, Laundromats, public transportation facilities including bus stations and stops, taxis, shelters, airports, train stations, reception areas, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters and waiting rooms. A private club is considered a *public place* when functions are held at the club which are open to the general public and are not restricted to the members of the club. A private residence is not a *public place* except during times when it is being used as a child care, adult care or health care facility.

Restaurant means a business in which the principal business is the sale of food or meals prepared on site, typically for consumption on site. Examples of restaurants, without limitation, are coffee shops, cafeterias, sandwich stands, private or public school or other cafeterias, and other eating establishments which give or offer food for sale to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

Retail Tobacco Store means a business utilized primarily for the sale of tobacco and accessories and in which the sale of other products is incidental.

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

Smoke-free means that air in an enclosed area is free from smoke caused by smoking.

Smoke or *Smoking* means the carrying or possession of a lighted cigarette, lighted cigar or lighted pipe of any kind, and includes lighting of a pipe, cigar, cigarette, tobacco, weed or other combustible plant.

Sports Arena means sports pavilions, 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 events.

Structure is defined in the International Building Code, including the International Residential Code, ("IBC") as adopted by the City from time-to-time. The term *structure* includes the term *building*, also defined by the IBC.

Tobacco is defined in § 25-14-203(17), C.R.S.

Work Area means an enclosed area in which one or more (≥ 1) employees are routinely assigned and perform services for or on behalf of the employer.

(2) Application to City property.

All enclosed areas and motor vehicles that are owned or leased by the City shall be subject to the provisions of this Section 16-127 as though such areas and vehicles were public places.

(3) Prohibition of Smoking in Public Places and Indoor Areas.

- a. Except as provided herein smoking shall be prohibited in all public places and indoor areas within the City, including, but not limited to, the following:
 1. Elevators.
 2. Restrooms, lobbies, reception areas, hallways and any other common-use areas.
 3. Buses, taxicabs, other means of public transit while operating within the City limits, and ticket, boarding and waiting areas of public transit systems including stops, bus benches, shelters and depots.
 4. Service lines.
 5. Retail stores.
 6. All areas available to and customarily used by the public in all businesses and nonprofit entities patronized by the public, including, but not limited to, professional and other offices, banks, and Laundromats.
 7. Restaurants and bars, except that smoking is allowed in outdoor seating areas of restaurants and bars that are not enclosed and are not under a roof or a projection of a roof as defined by the IBC as a *roof assembly*, such as patios, and any person smoking is at least fifteen feet (15') from the front or main doorway.
 8. Aquariums, galleries, libraries, museums and similar facilities.
 9. Any structure primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance.
 10. Sports arenas whether enclosed or outdoors.
 11. Public meeting places.
 12. Health care facilities including hospitals, clinics, therapists' offices and facilities, physical therapy facilities, doctors' offices, dentists' offices and the offices and facilities of other health care providers.

13. Restrooms, lobbies, hallways, and other common areas in public and private buildings including but not limited to apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
 14. Billiard or pool halls.
 15. Polling places.
 16. Facilities in which games of chance are conducted, including but not limited to bingo halls.
 17. To the extent not otherwise provided in Section 25-14-103.5, C.R.S., public and nonpublic schools.
 18. Other educational and vocational institutions.
 19. Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent (75%) of the sleeping quarters within a hotel or motel that are rented to guests.
 20. Any place of employment that is not exempted in Section 16-127(6).
 21. The indoor area of a private club. Smoking is allowed in the outdoor areas of a private club, except where otherwise prohibited in this Section 16-127.
- b. Notwithstanding any other provision of this Section 16-127, any person or business who controls any business or facility may declare that entire establishment, facility or grounds as smoke-free.

(4) Smoke-free Workplace.

In the case of employers who own facilities otherwise exempted by Section 16-127(6), each such employer shall provide a smoke-free area for each employee requesting a smoke-free area. Every employee shall have the right to work in a smoke-free area.

(5) Smoke-free Exits and Entrances.

Smoking shall not occur in or so close to exterior exits or entrances that the free flow of pedestrian traffic may be affected or so close that the operation of the doors, exits or entrances is affected or diminished. No smoking shall occur within fifteen feet (15') of the front or main doorway leading into a building or facility.

(6) Where indoor smoking is not prohibited.

- a. Notwithstanding any other provision of this Section 16-127 to the contrary, the following areas shall be exempt from the prohibition contained in Section 16-127(3):
 1. Private homes and residences, except when used as a child care, adult day care or health care facility.

2. Retail tobacco stores.
 3. Private vehicle, except if the private vehicle is being used for the public transportation of children or as part of health care or day care transportation.
 4. A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent (25%).
 5. A place of employment that is not open to the public and that is under the control of an employer that employs three or fewer employees (≤ 3).
 6. A private, nonresidential building on a farm or ranch, as defined in Section 39-1-102, C.R.S., that has annual gross income of less than Five Hundred Thousand Dollars.
- b. Notwithstanding any other provision of this Section 16-127, any owner, operator, manager or other person who controls any establishment described in this Section 16-127(6) may declare that entire establishment, facility, or grounds as smoke-free.

(7) Signs.

- a. Each owner, operator, manager and other person having control of an enclosed area or public place subject to the provisions hereof shall be jointly and severally responsible to clearly and conspicuously post:
 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) in every public entrance or other areas where smoking is prohibited by this Section 16-127.
 2. In public places where smoking is allowed pursuant to this Section 16-127, a sign with the words “Smoking is Allowed Inside” at each public entrance to, or in a position clearly visible on entering, the enclosed area in which smoking is permitted.
- b. All signs referred to in this Section 16-127(7) shall be a minimum size of twenty (20) square inches and must be placed at a height of between four to six feet (4’ – 6’) above the floor.

(8) Optional Prohibitions.

The owner or manager of any place not specifically listed in Section 16-127(3), including a place otherwise exempted in Section 16-127(6), may post signs prohibiting smoking or providing smoking and nonsmoking areas. Such posting shall have the effect of including such place, or the designated nonsmoking portion thereof, in the places where smoking is prohibited pursuant to the Section 16-127.

(9) No Retaliation.

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 right to, or complains about the lack of, a smoke-free environment afforded by this Section 16-127.

(10) Violations and Penalties.

- a. It shall be unlawful for any person or business that owns, manages, operates or otherwise controls the use of any premises, enclosed area, public place, or place of employment subject to regulation under this Section 16-127 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 Section 16-127.
- c. Each violation of any provision of Section 16-127 shall be deemed to be a separate violation. Each day shall be treated as a separate violation for continuing violations of Section 16-127(4), (7), and (9).

(11) Other Applicable Laws.

This Section 16-127 shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(12) 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.