

ORDINANCE NO. 11
Series of 2019

**AN ORDINANCE OF THE TOWN OF CARBONDALE, COLORADO AMENDING
CHAPTER 10, ARTICLE 11 OF THE MUNICIPAL CODE OF THE TOWN OF
CARBONDALE REGARDING SMOKING AND ELECTRONIC SMOKING DEVICE
USE IN PUBLIC PLACES.**

WHEREAS, Governor Polis recently signed into law HB 19-1076, which amends the Colorado Clean Indoor Air Act (the "Act"), C.R.S. §§ 25-14-201-209, which regulates smoking in most indoor areas open to the public, in public meetings, in food service establishments, and in places of employment; and

WHEREAS, HB 19-1076 took effect on July 1, 2019; and

WHEREAS, the Act prohibits a local jurisdiction from adopting a local regulation of smoking that is less stringent than the Act; and

WHEREAS, the Town Municipal Code needs to be amended to be consistent with, and at least as stringent as, the Act; and

WHEREAS, according to the U.S. Surgeon General, there is no safe level of exposure to secondhand smoke andⁱ even brief exposure to secondhand smoke can be harmful to healthⁱⁱ; and

WHEREAS, when measured up to twenty-five (25) feet from a person actively smoking outdoors, toxicity levels can reach those similar to indoor smoking levelsⁱⁱⁱ; and

WHEREAS, the aerosol or vapor from Electronic Smoking Devices (aka e-cigarettes) is not harmless water vapor and not as safe as clean air^{iv}; and

WHEREAS, the Board of Trustees finds and determines that these regulations promote the health, safety, and welfare of the citizens of the Town of Carbondale.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO that the Town of Carbondale Municipal Code shall be amended as follows:

1. The foregoing recitals are hereby adopted as findings and determinations of the Board of Trustees.

2. Chapter 10, Article 11 shall be amended by deleting the language stricken and adding the language underlined to read as follows:

Sec. 10-11-10. Intent.

The Board of Trustees intends that the restrictions and limitations set forth in this Article ~~be viewed as minimum standards and would not be construed as limiting, in any way, the authority of persons or entities in control of public places from prohibiting smoking within their establishments altogether~~ will provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking and electronic smoking device use in public places around non-users, especially children and protecting the public from exposure to secondhand smoke. This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law.

Sec. 10-11-20. Definitions.

Auditorium means the part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.

...

~~*Cigarette, tobacco product or nicotine product* means a product that contains tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual; or any device that can be used to deliver tobacco or nicotine to the person inhaling from the device, including an electronic cigarette, cigar, cigarillo or pipe.~~

Electronic smoking device means an electronic device that, when activated, emits a vapor, aerosol, fume, or smoke that may be inhaled or absorbed by the user, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, e-hookah, and similar devices. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance, with or without nicotine, intended to be aerosolized, vaporized, or which produces a fume or smoke during the use of the device intended for human consumption. Electronic smoking device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco cessation product or for other medically approved or certified purposes.

...

Entryway means the outside of the front or main doorway leading into a building or facility that is not exempted from this Article under Section 10-11-40. *Entryway* also includes the area of public or private property within a specified radius outside of the front or main doorway, which minimum radius is specified in C.R.S. § 25-14-203, as it may be amended from time to time.

Food service establishment means any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.

...

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 into an outdoor area.

Marijuana has the same meaning as in section 16(2)(f) of article XVIII of the state constitution.

~~Motion picture theater and auditorium means any theater or auditorium engaged in the business of exhibiting motion pictures or presenting theatrical performances, lectures or similar entertainment.~~

Place of employment means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

Public building means any building owned or operated by: (1) the state, including the legislative, executive, and judicial branches of state government; (2) any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, a special district, an authority, a commission, or an agency; or (3) any other separate corporate instrumentality or unit of state or local government.

...

Retail tobacco business means a sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, including electronic smoking devices, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

Secondhand smoke means the complex mixture formed from the escaping smoke and emissions of a burning tobacco, marijuana, or electronic smoking device product, also known as "environmental smoke" and "sidestream smoke."

~~Service line means any indoor line in which one or more persons is waiting for, purchasing or receiving goods or services.~~

Smoke-free work area means an area free of environmental tobacco secondhand smoke.

Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. Smoking also includes the use of an electronic smoking device the combustion of any cigar, cigarette, pipe or similar article, using any form of tobacco or other combustible substance in any form.

Theater means any theater engaged in the business of exhibiting motion pictures or presenting theatrical performances, lectures or similar entertainment and includes any corridors, hallways, or lobbies adjacent thereto.

Tobacco means 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 sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. "Tobacco" also includes cloves and any other plant matter or product that is packaged for smoking.

~~Tobacco store means a business devoted primarily to the sale of tobacco and tobacco-related products and accessories and in which the sale of other products is only incidental.~~

~~Work area or work place means any area of a place of employment enclosed by floor-to-ceiling walls in which two or more employees are assigned to perform work for an employer.~~

Sec. 10-11-30. Smoking in public places. General smoking restrictions.

~~No person shall smoke or carry any cigarette or other lighted smoking instrument for tobacco, marijuana as defined by Section 16(2) of Article XVIII of the Colorado Constitution or otherwise, into, or within 15 feet of, the following places, whether operated for profit or not:~~

Except as provided in Section 10-11-40, smoking shall not be permitted, and a person shall not smoke in any indoor area, including, but not limited to:

- (1) ~~Public meeting places; In any restroom while such restroom is available for public use;~~
- (2) ~~In any motion picture theater and auditorium which is open to the public, whether or not payment is required for admission for any purpose except in areas not open to the public;~~
- (3) ~~In a~~Any place where smoking is prohibited by the Fire Chief;
- (4) ~~In any public place inside a g~~Grocery stores;
- (5) ~~In a~~Any health care facility, including, but not limited to, hospitals, clinics, physical therapy facilities and medical and dental offices;
- (6) ~~In a~~Any area of a publicly owned building, except as otherwise provided by this Article and which is properly posted; Public buildings;

~~(7) Except as provided in this Article, in any area of a business frequented by the public which has been designated "nonsmoking" by the owner or person in charge of such establishment and clearly marked with one or more signs.~~

(7) ~~In public areas of Auditoria, aquariums, galleries, zoos, libraries, and museums when open to the public;~~

(8) ~~In Elevators, elevator lobbies, stairwells, and escalators;~~

(9) ~~In Restrooms, indoor public walkways, hallways, and lobbies, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;~~

(10) ~~In a Any child care establishment (including home-based);~~

(11) ~~In a Any public polling place;~~

(12) Gymnasiums;

(13) Taxicabs and limousines;

(14) Any place of employment that is not exempted whether or not open to the public and regardless of the number of employees. In the case of employers who own facilities otherwise exempted from this chapter, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe secondhand smoke. Every employee shall have a right to work in an area free of secondhand smoke;

(15) Common areas of retirement facilities, assisted living facilities, publicly owned housing facilities, and nursing homes, but not including any resident's private residential quarters;

(16) Hotel and motel rooms;

(17) Food service establishments;

(18) Bars;

(19) To the extent not otherwise provided in C.R.S. § 25-14-103.5, public and nonpublic schools;

(20) Other educational and vocational institutions;

(21) Government-owned or -operated means of mass transportation, including but not limited to buses and vans;

(22) Retail stores and shops; and

(23) Entryways of all buildings and facilities listed in subsections (1) to (22) of this Section.

Sec. 10-11-40. - ~~Smoking in places of employment.~~ Exceptions to smoking restrictions.

This Article shall not apply to:

(1) Private homes, private residences, and private automobiles; except that this chapter shall apply if any such home, residence, or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation;

(2) Limousines under private hire;

(3) Retail tobacco businesses;

(4) Licensed marijuana tasting rooms;

(5) The outdoor area of any business, not including licensed premises in any public right-of-way, and not including outdoor areas within the smoke-free entryway radius as defined in C.R.S. § 25-14-203, as it may be amended from time to time;

(6) A private, nonresidential building on a farm or ranch, as defined in C.R.S. § 39-1-102, that has annual gross income of less than five hundred thousand dollars; or

(7) Facilities of a private or members-only organization which are never available for public use.

~~The following regulations shall apply to places of employment at a minimum, except for bars and tobacco stores:~~

~~(1) It shall be the responsibility of employers to provide smoke-free work areas for nonsmoking employees.~~

~~(2) Each employer having an indoor place of employment shall implement, make known and enforce a written smoking policy which shall contain at a minimum the following requirements:~~

~~a. Any employee shall have the right to work in a nonsmoking area. If the nonsmoking area does not sufficiently protect the employee from environmental tobacco smoke, the employer shall make additional accommodation by expanding the size of the nonsmoking work area or implementing other measures designed to eliminate the effects of smoke on the employee. In restaurants, employers shall make a reasonable~~

~~effort to accommodate an employee's desire to work in the nonsmoking section of the restaurant.~~

- ~~b. Smoking shall be prohibited in enclosed areas in which two or more employees work, unless every person who works in that area agrees to allow smoking.~~
- ~~c. Smoking shall be prohibited in auditoriums, classrooms, conference and meeting rooms, elevators, elevator lobbies, stairwells, escalators, hallways, medical facilities and restrooms.~~
- ~~d. Smoking shall be prohibited in cafeterias, lunchrooms and employee lounges unless separate facilities are available to nonsmokers. Such nonsmoking areas shall consist of 75 percent of the total cafeteria, lunchroom or employee lounge space.~~
- ~~e. In any dispute arising under the smoking policy, the health, welfare and safety concerns of the nonsmoker shall take precedence.~~
- ~~f. Employers shall designate a person or committee to receive complaints or grievances about the smoking policy and to respond to the complaint within ten working days.~~

Sec. 10-11-50. Posting of signs required.

To advise persons of the existence of "no smoking" or "smoking permitted" areas, signs with letters no less than one-half inch high or symbols no less than two inches high, shall be posted as follows:

- (1) A person, employer or other entity that has legal or de facto control of an area where smoking and electronic smoking device use is prohibited by this Article shall post clear and conspicuous "No Smoking" or "Smoke-free" signs as follows:
 - (a) Signs shall be conspicuously posted no less than four feet and no more than six feet from the bottom of each public entrance. Additionally, no portion of the sign shall be more than 24 inches away from the outside edge of the doorway. All signs must be easily read from the outside of all public entrances.
 - (b) Signage shall include 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).
- (2) For purposes of this section, the Town Manager or his/her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the Town.
- (3) Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of smoking and/or electronic smoking device use in violation of any other provision of this Article.

~~(1) — In public places where the proprietor or person in charge prohibits smoking in the entire establishment, a sign using the words "No Smoking" and/or the international no-smoking symbol shall be conspicuously posted no less than four feet and no more than six feet from the bottom of the doorway. Additionally, no portion of the sign shall be more than 24 inches away from the outside edge of the doorway. All signs must be easily read from the outside of all public entrances.~~

~~(2) — In public places where certain areas are designated as smoking areas, a sign stating "Smoking Permitted in Designated Areas Only" shall be conspicuously posted on or adjacent to all public entrances, no less than four feet and no more than six feet from the bottom of the doorway. Additionally, no portion of the sign shall be more than 24 inches away from the outside edge of the doorway. All signs must be easily read from the outside of all public entrances.~~

~~(3) — In public places where smoking is permitted in the entire establishment, a sign using the words "Smoking Permitted" and/or the international symbol shall be conspicuously posted either on or adjacent to all public entrances, no less than four feet and no more than six feet from the bottom of the doorway. Additionally, no portion of the sign shall be more than 24 inches away from the outside edge of the doorway. All signs must be easily read from the outside of all public entrances.~~

Sec. 10-11-60. - Optional prohibitions.

Nothing in this Article prohibits any person, employer, or other entity with legal control over any property from prohibiting smoking and/or electronic smoking device use on any part of such property, even if smoking and/or electronic smoking device use is not otherwise prohibited in that area.

Sec. 10-11-670. Responsibilities of proprietors.

The proprietor or person in charge of any place where smoking is prohibited shall make reasonable efforts to obtain compliance with this Article by:

- (1) Posting signs as required by this Article.
- (2) Asking smokers to refrain from smoking if they are doing so in violation of any provision of this Article.
- (3) Affirmatively directing smokers to outdoor areas of the business designated ~~smoking areas~~ if there are any.
- ~~(4) — Using existing physical barriers and ventilation systems to minimize the toxic effect of transient smoke in adjacent no-smoking areas.~~
- (5 ~~4~~) Any other means which may be appropriate.

Sec. 10-11-780. - Structural modification not required.

Nothing in this Article shall require the owner, operator or manager of any existing business to incur any expense to make structural or other physical modifications, except the posting of signs required by this Article.

~~Sec. 10-11-80. Exceptions.~~

~~"No Smoking" areas are not required in private areas, hotel, motel and lodge rooms rented to guests, rooms while in use for private social functions, the facilities of a private or members-only organization, private hospital rooms, private nursing home rooms or stores that deal exclusively in tobacco products and accessories.~~

Sec. 10-11-90. Enforcement; violation.

- (a) It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to Section 10-11-30 of this Article.
- (b) It is unlawful for a person who owns, manages, operates, or otherwise controls the use of a premises subject to this Article to violate any provision of this Article.
- (a c) The Town Manager shall be responsible for compliance with this Article when facilities owned by the Town are involved.

- (b d) ~~The owner, operator or manager of any facility, business or agency shall post or cause to be posted all "no smoking" or other signs required by this Article. Owners, operators, managers or employees of any premises subject to this Article the same shall be required to orally inform persons violating this Article of the provisions of this Article. The duty to inform such violator shall arise when such owner, operator, manager or employee becomes aware of such violation.~~
- (e) Any person violating the provisions of this Article shall be subject to a penalty of \$100.00 for a first offense, \$250.00 for a second offense within a 12-month period following the first offense; and \$500.00 for a third offense within the 12-month period following the first offense. Any person violating the provisions of this Article more than three times within the same 12-month period may be punished as set forth in Section 1-4-20 of this Code.
- (e) ~~The Town Manager or the Fire Chief shall enforce provisions of this Article by either or both of the following actions:~~
 - (1) ~~Serving a notice requiring correction of any violation of this Article.~~

~~(2) If the violation is not corrected within 15 days of serving the notice, the Town may commence action in the Municipal Court or any other court of law having competent jurisdiction.~~

Sec. 10-11-100. Nonretaliation.

~~It is unlawful for an employer to retaliate against or discharge any employee for requesting a nonsmoking work area, filing a complaint or otherwise reporting a violation of this Article.~~

No person or employer shall intimidate, threaten any reprisal, or effect any reprisal for the purpose of retaliating against another person who seeks to attain compliance with this Article.

3. This Ordinance shall be effective upon posting and publication in accordance with the Carbondale Home Rule Charter.

INTRODUCED, READ AND PASSED THIS ____ day of _____, 2019.

TOWN OF CARBONDALE, COLORADO
a Colorado home rule municipal corporation,



Dan Richardson, Mayor

ATTEST


Cathy Derby, Town Clerk

POSTED: 8/14/19
PUBLISHED: _____
EFFECTIVE: _____

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¹ U.S. Department of Health and Human Services. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*. Atlanta, GA: 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, 2014. Printed with corrections, January 2014. Available at: http://www.cdc.gov/tobacco/data_statistics/sg/50th-anniversary/index.htm

² Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs — 2014*. Atlanta: 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, 2014. Available at: http://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf

³ Center for Disease Control and Prevention, Office on Smoking and Health. (2016). *Electronic Nicotine Delivery Systems: Key Facts*. [Fact Sheet]. Retrieved from: <https://www.cdc.gov/tobacco/stateandcommunity/pdfs/ends-key-facts2015-508tagged.pdf>