

0-2009-

AN ORDINANCE

REPEALING AND REENACTING CHAPTER 9.38 OF THE LAKEWOOD MUNICIPAL  
CODE PERTAINING TO SMOKING IN PUBLIC PLACES

WHEREAS, it is in the best interests of the people of this City to protect nonsmokers from involuntary exposure to environmental tobacco smoke in most indoor areas open to the public, public meetings, food service establishments, and places of employment; and

WHEREAS, a balance should be struck between the health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into, and regulation of, private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Chapter 9.38 of the Lakewood Municipal Code is hereby repealed and reenacted to read in full as follows:

**CHAPTER 9.38**

**SMOKING IN PUBLIC PLACES**

9.38.010 PURPOSE

This Chapter is enacted for the purpose of preserving and improving the health, comfort, and environment of the citizens of this City by limiting exposure to tobacco smoke.

9.38.020 DEFINITIONS

As used in this Chapter, the following words and terms shall be defined as follows:

"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.

"Bar" means any indoor 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 is secondary to the consumption of such beverages.

"Cigar-tobacco bar" means a bar that, in the calendar year ending December 31, 2005, generated at least five percent or more of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a "cigar-tobacco bar" and shall not thereafter be included in the definition regardless of sales figures.

"Employee" means any person who does any type of work for the benefit of another in consideration of direct or indirect wages or profit; or provides uncompensated work or services to a business or nonprofit entity. "Employee" includes every person described in this paragraph, regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.

"Employer" means any person, partnership, association, corporation, or nonprofit entity that employs one or more persons. "Employer" includes, without limitation, the legislative, executive, and judicial branches of state government; any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission, or agency; or any other separate corporate instrumentality or unit of state or local government.

"Entryway" means the fifteen - foot radius outside of the front or main doorway leading into a building or facility that is not exempted from this Chapter under Section 9.38.040.

"Environmental tobacco smoke," "ETS," or "secondhand smoke," means the complex mixture formed from the escaping smoke of a burning tobacco product, also known as "sidestream smoke," and smoke exhaled by the smoker.

"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.

"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:

- (a) The state, including the legislative, executive, and judicial branches of state government;
- (b) 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
- (c) Any other separate corporate instrumentality or unit of state or local government.

"Public meeting" means any meeting open to the public pursuant to Part 4 of Article 6 of Title 24, C.R.S., or any other law of this state.

"Smoke-free work area" means an indoor area in a place of employment where smoking is prohibited under this chapter.

"Smoking" means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.

"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 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, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

"Work area" means an area in a place of employment where one or more employees are routinely assigned and perform services for or on behalf of their employer.

### 9.38.030 GENERAL SMOKING RESTRICTIONS

A. Except as provided in Section 9.38.040, and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any indoor area, including, but not limited to:

- 1. Public meeting places;

2. Elevators;
3. Government-owned or operated means of mass transportation, including, but not limited to, buses, vans, and trains;
4. Taxicabs and limousines;
5. Grocery stores;
6. Gymnasiums;
7. Jury waiting and deliberation rooms;
8. Courtrooms;
9. Child day care facilities;
10. Health care facilities including hospitals, health care clinics, doctors' offices, and other health care related facilities;
11. Any place of employment that is not exempted. 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 environmental tobacco smoke. Every employee shall have a right to work in an area free of environmental tobacco smoke;
12. Food service establishments;
13. Bars;
14. Indoor sports arenas;
15. Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
16. Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests;
17. Bowling alleys;
18. Billiard or pool halls;
19. Facilities in which games of chance are conducted;

20. (a) The common areas of retirement facilities, publicly owned housing facilities, and, except as specified in Section 24-14-205(1)(k), nursing homes, but not including any resident's private residential quarters or areas of assisted living facilities specified in Section 25-24-205(1)(k);

(b) Nothing in this Chapter affects the validity or enforceability of a contract, whether entered into before, on, or after July 1, 2006, that specifies that a part or all of a facility or home specified in this paragraph (20) is a smoke-free area.

21. Public buildings;

22. Auditoria;

23. Theaters;

24. Museums;

25. Libraries;

26. To the extent not otherwise provided in Section 25-14-103.5, public and nonpublic schools;

27. Other educational and vocational institutions; and

28. The entryways of all buildings and facilities listed in paragraphs (1) to (27) of this subsection (A).

B. A cigar-tobacco bar shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005. A cigar-tobacco bar shall display signage in at least one conspicuous place and at least four inches by six inches in size stating: "Smoking allowed. Children under eighteen years of age must be accompanied by a parent or guardian."

#### 9.38.040 EXCEPTIONS TO SMOKING RESTRICTIONS

This Chapter 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. 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;

4. Any retail tobacco business;

5. A cigar-tobacco bar;

6. The outdoor area of any business;

7. 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;

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

9. (a) The areas of assisted living facilities:

i. That are designated for smoking for residents;

ii. That are fully enclosed and ventilated; and

iii. To which access is restricted to the residents or their guests.

(b) As used in this paragraph (9), “assisted living facility” means a nursing facility, as that term is defined in Section 25.5-4-103, C.R.S., and an assisted living residence, as that term is defined in Section 25-27-102.

#### 9.38.050 OPTIONAL RESTRICTIONS

A. The owner or manager of any place not specifically listed in Section 9.38.030 including a place otherwise exempted under Section 9.38.040 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 or restricted pursuant to this chapter.

B. If the owner or manager of a place not specifically listed in Section 9.38.030, including a place otherwise exempted under Section 9.38.040, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by Section 9.38.030 (A)(11), the owner or manager shall post a sign or signs in the smoke-free work area as provided in subsection (A) of this section.

#### 9.38.060 UNLAWFUL ACTS – PENALTY

A. It is unlawful for a person who owns, manages, operates, or otherwise controls the use of a premise subject to this Chapter to violate any provision of this Chapter.

B. It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to this Chapter.

C. A person who violates this Chapter is guilty of a municipal offense and, upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars for a first violation within a calendar year, a fine not to exceed three hundred dollars for a second violation within a calendar year, and a fine not to exceed five hundred dollars for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation.

#### 9.38.070 ENFORCEMENT

Peace officers and code enforcement officers shall have the authority to enforce this Chapter.

#### 9.38.080 SEVERABILITY

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

SECTION 2. This Ordinance shall take effect thirty (30) days after final publication.