

CHAPTER 6

Smoking in Places of Public Accommodation and Places of Employment *

Sec. 7-6-1. Title.

This Chapter shall be known as the Pueblo Smoke-Free Air Act of 2002. (Ord. No. 6921 §2, 12-9-02)

* Editor's Note: Ord. No. 6921 was approved by vote of the people at a special municipal election on May 20, 2003, by a vote of 11,602 for the ordinance to 7,935 against the ordinance.

Sec. 7-6-2. Findings and purpose.

(a) It is hereby found that studies have determined that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke is a cause of disease. 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. Secondhand smoke has been classified as a Class A carcinogen by the Environmental Protection Agency. Secondhand smoke contains known toxins and carcinogens. Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and bronchospasm.

(b) It is hereby declared that the purpose of this Chapter is to protect the public health and welfare by prohibiting smoking in public places and places of employment. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-3. Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

(1) *Attached bar* means a bar area of a restaurant. An *attached bar*, for the purposes of this Chapter, shall not include any area where full meals are served, but may include the service of appetizers and snacks. Although a restaurant may contain a bar, the term *bar* shall not include the restaurant dining area.

(2) *Business* means a sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making 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.

(3) *Commercial bingo facility* means premises used for the purposes of conducting bingo and related games of chance.

(4) *Employee* means a 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.

(5) *Employer* means a person, business, partnership, association, corporation, including a municipal corporation, trust or nonprofit entity that employs the services of one (1) or more individual persons.

(6) *Enclosed area* means 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, including all space therein screened by partitions, office landscaping or similar structures which do not extend to the ceiling or are not solid.

(7) *Freestanding bar* means an establishment that is devoted to the serving of malt, vinous and/or spirituous liquors for consumption on the premises and in which the serving of food is not more than twenty-five percent (25%) of the gross income of the business of the licensed premises, including but not limited to taverns, nightclubs, cocktail lounges and cabarets.

(8) *Indoor service line* means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(9) *Place of employment* means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including but not limited to work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways and vehicles. A private residence is not a *place of employment* unless it is used as a child care, adult day care or health care facility.

(10) *Place of public accommodation* means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to public buildings, banks, educational facilities, health care facilities, laundromats, public transportation facilities, 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 *place of public accommodation* when functions are held at the club which are open to the general public and are not restricted to the members of the club and their guests. A private residence is not a *place of public accommodation*.

(11) *Private club* means any establishment which restricts admission to members of the club and their guests.

(12) *Private function* means any activity which is restricted to invited guests in a nonpublic setting.

(13) *Private residence* means single- and multiple-family dwelling units, including dwelling units located in apartments, condominiums and common-interest communities.

(14) *Restaurant* means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria and any other eating establishment which 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, except that the term *restaurant* shall not include a cocktail lounge, nightclub, cabaret or tavern if said cocktail lounge, nightclub, cabaret or tavern is a *freestanding bar* as defined in Section 7-6-3(7). A facility other than a *freestanding bar* shall conclusively be considered to be a *restaurant* for the purposes of this Chapter, regardless of the category of liquor license under which the facility operates, if such facility:

- a. Serves malt, vinous and/or spirituous liquors; and
- b. Includes a restaurant, as defined by Section 12-47-103(30), C.R.S.

(15) *Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(16) *Smoke-free* means that air in an establishment is not contaminated by tobacco smoke.

(17) *Smoking* means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.

(18) *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 to engage in physical exercise, participate in athletic competition or witness sports or other events. (Ord. No. 6921 §2, 12-9-02)

(19) *Flow line* means the face of the curb and gutter, or if no curb and gutter, the edge of the pavement.

(20) *Hospital* has the same meaning as set forth in Section 17-2-1(25.1). (Ord. No. 7938 12-8-08)

Sec. 7-6-4. Application to City-owned facilities.

All enclosed facilities, including buildings and vehicles owned or leased by the City, shall be subject to the provisions of this Chapter. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-5. Prohibition in places of public accommodation.

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

- (1) Elevators;
- (2) Restrooms, lobbies, reception areas, hallways and any other common-use areas;
- (3) Buses and other means of public transit under the authority of the City and ticket, boarding and waiting areas of public transit depots;
- (4) Indoor service lines;

(5) Retail stores;

(6) All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including but not limited to professional offices and other offices, banks, laundromats, hotels and motels;

(7) Restaurants;

(8) Freestanding and attached bars;

(9) Public areas of aquariums, galleries, libraries and museums;

(10) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except performers when smoking is part of a stage production;

(11) Sports arenas and convention halls, including bowling facilities;

(12) Every public room, chamber, place of meeting or assembly, including school buildings under the control of any board, council, commission, committee, joint committee or agency of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent that such place is subject to the jurisdiction of the City;

(13) Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including but not limited to hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices;

(14) Lobbies, hallways, elevators and other common areas in apartment buildings, condominiums, mobile home and manufactured home parks, retirement facilities, nursing homes and other multiple-unit residential facilities;

(15) Polling places; and

(16) Commercial bingo facilities.

(b) Notwithstanding any other provisions of this Section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment, facility or grounds as smoke-free. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-6. Prohibition in places of employment.

(a) It shall be the responsibility of employers to provide a smoke-free place of employment for all employees, but employers are not required to incur any expense to make structural or other physical modifications.

(b) Within ninety (90) days of the effective date of this Chapter, each employer having an enclosed place of employment located within the City shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed areas that employees normally frequent during the course of employment. This includes, but is not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and vehicles.

(c) The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.

(d) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-6.1 Prohibition in Public Right-of-Way Adjoining Hospitals.

(a) Smoking is prohibited on the public right-of-way (including, without limitation, sidewalks, lawns, tree lawns, and alleys) adjoining hospitals or other hospital-owned properties or properties leased by any hospital, up to the closest flow line. This prohibition does not apply to persons in moving vehicles in alleys.

(b) Hospitals shall post "No Smoking" or "Smoke Free," or the international "No Smoking" symbol described in Section 7-6-9(a), or both in conspicuous places on their property(ies) sufficient to provide public notice of this smoking prohibition. Failure to post signage under this section is not punishable under this Code.

(c) Notwithstanding a hospital's responsibility to post signs, the presence or absence of signs shall not be a defense to a violation of any provision of this section.

(d) It shall be unlawful and a Class 2 municipal offense for any person to violate the provisions of section 7-6-6.1(a). (Ord. No. 7938 12-8-08)

Sec. 7-6-7. Smoke-free entrances.

Smoking is prohibited within a distance of twenty (20) feet of an entrance to an enclosed area where smoking is prohibited to ensure that tobacco smoke does not enter the area through entrances. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-8. Where not regulated.

(a) Notwithstanding any other provision of this Chapter to the contrary, the following areas shall be exempt from the provisions of this Chapter:

- (1) Private residences, except when used as a licensed child care, adult day care or health care facility;
- (2) No more than twenty-five percent (25%) of hotel and motel rooms rented to guests;
- (3) Retail tobacco stores;

(4) Restaurants; attached bars; freestanding bars; apartment, condominium, hotel and motel conference or meeting rooms; and public and private assembly rooms, when these places are being used for private functions;

(5) Outdoor areas of places of employment except those covered in Section 7-6-6 of this Chapter; and

(6) Private and semiprivate rooms in nursing homes, retirement facilities and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and who have requested in writing to be placed in a room where smoking is permitted.

(b) Notwithstanding any other provision of this Section, any owner, operator, manager or other person who controls any establishment described in this Section may declare that entire establishment, facility or grounds as smoke-free. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-9. Posting of signs.

(a) Within ninety (90) days of the effective date of this Chapter, "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 place of public accommodation and place of employment where smoking is prohibited by this Chapter, by the owner, operator, manager or other person having control of such building or other area.

(b) Every place of public accommodation where smoking is prohibited by this Chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

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

(d) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Chapter by the owner, operator, manager or other person having control of such area. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-10. Enforcement.

(a) This Chapter shall be enforced by the Director of the Health Department or his or her designee.

(b) Notice of the provisions of this Chapter shall be given to all applicants for a business license in the City.

(c) Any person who desires to register a complaint under this Chapter may file such complaint in such person's name with the Health Department.

(d) The Health Department shall inspect for compliance with this Chapter while an establishment is undergoing otherwise mandated inspections.

(e) An owner, manager, operator or employee of an establishment regulated by this Chapter shall inform persons violating this Chapter of the appropriate provisions thereof and request their compliance. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-11. 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 to a smoke-free environment afforded by this Chapter. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-12. Violations and penalties.

(a) It shall be unlawful and a Class 2 municipal offense for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Chapter to fail to comply with any of its provisions.

(b) It shall be unlawful and a Class 2 municipal offense for any person to smoke in any area where smoking is prohibited by the provisions of this Chapter.

(c) Each day of continuing violation shall be deemed to be a separate violation. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-13. Public education.

The Health Department shall engage in a continuing program to explain and clarify the purposes and requirements of this Chapter to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such programs may include publication of a brochure for affected businesses and individuals explaining the provisions of the ordinance codified herein. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-14. Other applicable laws.

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable ordinances. (Ord. No. 6921 §2, 12-9-02)