

ORDINANCE NO. 2004-2  
AN ORDINANCE PROHIBITING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT IN  
UNINCORPORATED BOULDER COUNTY

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers. 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; and

WHEREAS, secondhand smoke has been classified as a Group A carcinogen like asbestos by the Environmental Protection Agency; and

WHEREAS, secondhand smoke contains more than 4,000 chemicals, including arsenic, formaldehyde, hydrogen cyanide and radioactive elements. More than 60 of these chemicals have been identified as carcinogens; and

WHEREAS, there is no safe level of exposure to secondhand smoke; and

WHEREAS, health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and bronchospasm; and

WHEREAS, § 25-14-105 of the Colorado Revised Statutes grants counties the authority to adopt regulations controlling smoking within their unincorporated territory, and provides that such local regulations shall control to the extent of any inconsistency between them and the State's smoking-control provisions contained in C.R.S. §§ 25-14-101 et seq.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Boulder County:

1. Purpose

The Board of County Commissioners of Boulder County finds and declares that the purposes of this ordinance 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 to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

2. Definitions

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

1. "Attached Bar" means a bar area of a restaurant.
2. "Freestanding Bar" means an establishment 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, including, but not limited to taverns, nightclubs, cocktail lounges, and cabarets.
3. "Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
4. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.
5. "Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.
6. "Health Care Facility" means 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 within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
7. "Place of Employment" means any area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility.
8. "Private club" means any enclosed, indoor facility or area that is:
  - A. physically separate from any public place, or
  - B. independently ventilated and separated by impermeable ceilings and walls from any other public place; and is either:

1. a church, synagogue, mosque, temple, or building used primarily for bona fide religious worship and related religious activities that involve smoking; or

2. operated and owned or leased by a non-profit corporation that:

a. is organized under Chapter 501 (c)(3) of the U.S. Internal Revenue Code;

b. has a defined membership;

c. restricts admission to members of the club and their guests; and

d. is not open to members of the general public upon payment of a nominal fee; and

e. is not formed to circumvent this Chapter, where, for example, persons pay nominal dues or the "members" do not control the operation of the "club."

9. "Public Place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, attached and freestanding bars, banks, commercial bingo facilities, convention halls, licensed child-care or certified adult day care, medical or health care facilities, educational facilities, laundromats, performance halls, polling places, professional offices, public transportation facilities and vehicles, reception areas, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, sports arenas, and theaters. All areas of an establishment that are open to, or customarily used by, the general public, including but not limited to elevators, restrooms, lobbies, reception areas, hallways, waiting rooms, and other common area, are "public places." A private residence is not considered a "public place" except when used as a licensed child-care, certified adult day care, or health care facility, and shall not be subject to this ordinance except for the time period beginning one half hour before and ending one half hour after the hours of operation of such licensed child-care, certified adult day care or health care facility. Common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple-unit residential facilities are "public places." A private club is considered a "public place" only when functions are held at the club which are open to the general public and are not restricted to the members of the club.

10. "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.

11. "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.

12. "Sports Arena" means any enclosed 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.

13. "Commercial bingo facility" means premises used for the purpose of conducting games of chance.

14. "Smoke-free" means that an establishment or the premises controlled by that establishment has been declared to be a place in which smoking is prohibited, whether by the terms of this Article or by the owner or operator of said establishment.

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.

### 3. Smoking Prohibited in County-Owned Facilities

All enclosed areas in facilities including buildings and vehicles owned by Boulder County shall be subject to the provisions of this article.

### 4. Smoking Prohibited in Public Places

Smoking shall be prohibited in all public places within the unincorporated territory of Boulder County, except as otherwise expressly permitted under this Article.

### 5. Smoking Prohibited in Places of Employment

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

B. Within 90 days of the effective date of this article, each employer having an enclosed area located within the unincorporated territory of Boulder County 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 within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed areas.

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.

## 6. Smoke-free Perimeter

Smoking shall not occur within a reasonable distance of an enclosed area, to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means.

## 7. Where smoking is not prohibited

A. Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the smoking prohibitions set forth above:

1. Private residences, except when used as licensed child-care, certified adult day care or health care facilities, including the half hour before and after such use.
2. Up to twenty percent (20%) of guest rooms in lodging establishments, including but not limited to bed and breakfasts, hotels, motels, and inns.
3. Retail tobacco stores.
4. Performance halls to the extent necessary to allow smoking by a performer as part of a stage production.
5. Outdoor places of employment.
6. Private clubs.

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.

## 8. Posting of Signs

"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) shall be clearly and conspicuously posted in every building entrance or other areas where smoking is prohibited by this article, by the owner, operator, manager or other person having control of such building or other area. Public places which are also private residences shall not be required to post signs.

Every public place where smoking is prohibited by this Ordinance, except for private residences, shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

All signs referred to in this section shall be a minimum size of 20 square inches and must be placed at a height of between 4 to 6 feet above the floor.

All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Ordinance by the owner, operator, manager or other person having control of such area.

## 9. Enforcement

A. Enforcement of this article shall be initiated by the Boulder County Sheriff, or his or her designee.

B. Notice of the provisions set forth in this article shall be given to all applicants for a business license in Boulder County.

Any citizen who desires to register a complaint under this chapter may do so by contacting the Boulder County Sheriff.

D. Boulder County Public Health or the Fire Department shall inspect for compliance of this ordinance while an establishment is undergoing otherwise mandated inspections.

E. Any owner, manager, operator or employee of any establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof and request their compliance.

F. Notwithstanding any other provision of this article, a private citizen may bring legal action to enforce this article.

## 10. Nonretaliation

No person or employer shall discharge, refuse to hire or serve, or retaliate in any manner against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke-free environment afforded by this Ordinance.

## 11. Violations and Penalties

A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Ordinance 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 article.

C. Any person who violates any provision of this article shall be guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars (\$100) for a first violation.
2. A fine not exceeding two hundred dollars (\$200) for a second violation.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation of this article.

Each day of continuing violation shall be deemed to be a separate violation.

Notwithstanding any other provision of this article, an employee or private citizen may bring legal action to enforce this article.

#### 12. Other Applicable Laws

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

#### 13. Severability

If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

#### 14. Effective Date

ADOPTED ON SECOND AND FINAL READING on October 19, 2004, and amendments ordered published.

THE BOARD OF COMMISSIONERS OF THE COUNTY OF BOULDER, COLORADO