

**ORDINANCE NO. 3540**

**AN ORDINANCE PROHIBITING SMOKING  
IN WORKPLACES AND PUBLIC PLACES  
IN THE CITY OF GRAND JUNCTION**

Recitals.

- A. Cigarette smoking is dangerous to human health. Substantial scientific evidence has clearly established that smoking tobacco products causes cancer, chronic pulmonary disease, heart disease, and various other life threatening and life-impairing medical disorders. The U.S. EPA has classified secondhand smoke as a Class A human carcinogen.
- B. Reputable studies have identified that secondhand smoke contains almost 5,000 chemicals, 60 of which are known toxins and 43 of which are known carcinogens, including arsenic, formaldehyde, hydrogen cyanide and radioactive elements.
- C. The damage and dangers of smoking extend to those who passively inhale cigarette smoke.
- D. State law, § 25-14-101, C.R.S., *et seq.*, prohibits smoking in elevators, museums, libraries, on school properties, and other listed places. Restaurants and taverns are exempted from that law, although the owners are encouraged to separate smokers from non-smokers.
- E. Section 105 of that state law authorizes towns, cities and counties to regulate smoking.
- F. Based on the foregoing authority and the authority granted by the City's charter, we determine that this ordinance pertains to and is in the furtherance of health, welfare and safety of the residents of Grand Junction.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

**1. Definitions**

The following words and phrases, whenever used in this ordinance shall have the following meanings:

- a. "Attached Bar" means a bar area of a restaurant. An "attached bar" shall not include any area where full meals are served, but may include premises in which appetizers and snacks are served. Although a restaurant may contain a bar, the term "bar" shall not include any restaurant dining area.
- b. "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.
- c. "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.
- d. "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.
- e. "Enclosed Area" means all space between a floor and ceiling within a structure or building which is enclosed on all sides by solid walls or windows which extend from the floor to the ceiling. Doors and openings in such solid walls shall be fitted with self-closing or automatic closing devices. "Enclosed Area" includes all space that is not physically separated from any areas in which smoking occurs or is allowed.
- f. "Freestanding Bar" means an establishment licensed for on-premises consumption of alcohol in an enclosed area that is physically separated from restaurants and other public places in which smoking is prohibited. Taverns, nightclubs, cocktail lounges and cabarets are typical examples of Freestanding Bars.
- g. "Licensee" means any person licensed by, or subject to regulation pursuant to, the Colorado Liquor Code, including proprietors and businesses within the definition in § 12-47-401, C.R.S.
- h. "Person" means a natural person or any entity or business recognized by law or formed to do business of any sort.
- i. "Physically Separated" means separated from smoke-free public places by continuous floor-to-ceiling walls which are interrupted only by entrances or

exits to smoking areas. Such entrances and exits shall be fitted with self-closing or automatic closing devices.

- j. "Private Club" means any establishment which restricts admission to members of the club and their guests.
- k. "Private Function" means any activity which is restricted to invited guests in a non-public setting and to which the general public is not invited.
- l. "Public Place" means any enclosed 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, and for thirty minutes before such uses.
- m. "Restaurant" means a business with fifty five per cent (55%) or more of its gross annual sales coming from the sale of food or meals prepared on site, typically for consumption on site. Examples of restaurants 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. Also see section 8.
- n. "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.
- o. "Service Line" means any indoor or outdoor line at which one or more ( $\geq 1$ ) persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- p. "Smoke-free" means that air in an enclosed area is free from smoke caused by smoking.
- q. "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.

- r. "Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, 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.
- s. "Structure" is defined in the International Building Code, and includes 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.
- t. "Tobacco" is defined in § 25-14-103.5(1)(c), C.R.S.
- u. "Workplace" means an enclosed area in which three or more persons work at gainful employment.

## **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 article as though such areas and vehicles were public places.

## **3. Prohibition of Smoking in Public Places**

- a. Except as provided herein smoking shall be prohibited in all public places 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 non-profit entities patronized by the public, including, but not limited to, professional and other offices, banks, and laundromats.

7. Restaurants except that smoking is allowed: (a) in an attached bar that is physically separated from enclosed areas of the business in which smoking is prohibited; and (b) in outdoor seating areas of restaurants that are not enclosed and are not under a roof (or a projection of a roof) as defined by the Building Code, such as patios.
  8. Public areas of 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 except as covered in Section 6(a)(v) of this ordinance.
  10. Whether enclosed or outdoors: sports arenas, convention halls and bowling alleys; except that smoking is allowed in attached bars in bowling alleys that are physically separated from areas in which smoking is prohibited.
  11. During such time as a public meeting is in progress: every room, chamber, place of meeting or public assembly; including school buildings under the control of any board, council, commission, committee, and including joint committees and agencies of the City and political subdivisions of the State.
  12. Waiting rooms, hallways, wards and semi-private rooms of health 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. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
  14. Bingo halls except that smoking is permitted in the portion of a bingo hall that is physically separated from the rest of the bingo hall.
  15. Polling places.
- b. Notwithstanding any other provision of this section, 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**

Except in the areas in which smoking is allowed by this ordinance, in workplaces in which smokers and nonsmokers work in the same enclosed areas, offices or rooms, the employer shall provide a smoke-free workplace to accommodate an employee who requests a smoke-free workplace.

#### **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.

#### **6. Where in-door smoking is not prohibited**

- a. Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the prohibition contained in section 3:
  - (i) Private residences; except when used as a child-care, adult day care or health care facility and during the thirty (30) minutes in advance of such use(s).
  - (ii) Retail tobacco stores.
  - (iii) Only while being used for private functions: restaurants, bars, hotel and motel conference or meeting rooms and public and private assembly rooms.
  - (iv) When smoking is part of a stage production and then only by the actors as a part of the role in the facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance.
  - (v) Freestanding bars, and attached bars that are physically separated from non-smoking areas.
  - (vi) In bingo halls, the portion of the enclosed area that is physically separated from the non-smoking areas of the bingo hall.
  - (vii) Attached bars in a bowling alley if the attached bar is physically separated from the rest of the bowling alley.
- b. Notwithstanding any other provision of this ordinance, 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.

## **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:
  - (i) “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 article.
  - (ii) In public places where smoking is allowed pursuant to this article, 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 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. Freestanding Bar Annual Certification/Affirmative Defense**

- a. It shall be an affirmative defense to enforcement of the non-smoking provisions of this ordinance if a freestanding bar is being classified as a “bar” instead of a “restaurant.” If so classified, the freestanding bar may lawfully allow smoking therein, only if:
  - (i) The annual gross sales from the sale and service of food and meals is less than fifty-five percent (55.00%) of the total annual sales of the freestanding bar for the previous twelve months; the prior twelve months shall be measured as of the date a complaint is received by the City or an investigation begun; and
  - (ii) The certification required below has been made.
- b. During each December with respect to the following calendar year, the owner or other person in charge of the freestanding bar who desires to be treated as a bar for such calendar year shall deliver to the City Clerk his or her certification given under oath, on a form available from the City Clerk, that the percentage of food and meal sales relative to total annual sales is less than 55.00%.

- c. The signage and other requirements of this ordinance shall continue to apply to a freestanding bar filing the certificate under this section.
- d. In any investigation or prosecution by the City whether upon complaint from any person or otherwise, each owner and other person in charge of the freestanding bar who has allowed smoking in an enclosed area pursuant to this section shall have the burden to establish to the City that such business complied with all requirements of this section.
- e. At the request of the owner or other person in charge, the City shall treat financial and sales information required to establish the affirmative defense under this section as confidential, except as ordered by a court of competent jurisdiction or as the City deems necessary to investigate a complaint, prosecute an alleged violation or evaluate the assertion of the affirmative defense created by this section.
- f. Each owner and other person in charge of a freestanding bar for which a certificate has been filed pursuant to (a)(ii), above shall notify the City Clerk in writing at any time that such owner and/or other person in charge reasonably believes that such freestanding bar is no longer satisfying all of the elements in (a)(i), above.

## **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 ordinance.

## **10. Violations and Penalties**

- a. It shall be unlawful for any person or business who owns, manages, operates or otherwise controls the use of any premises or enclosed area or place of employment 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 ordinance.
- c. Each day of a continuing violation of any provision of this ordinance shall be deemed to be a separate violation.

## **11. Other Applicable Laws**

This article 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.

**13. Amortization**

Any restaurant, bowling alley, bingo hall or other business in which smoking was lawful on May 1, 2003 shall be entitled to continue such lawful use as it existed on May 1, 2003, without adding any additional seats or tables and without increasing the square footage of the designated smoking area, until January 1, 2006, notwithstanding the provisions of section 3 hereof.

**14. Effective Date**

This ordinance shall be effective on January 1, 2004.

**INTRODUCED for PUBLICATION this 4<sup>th</sup> day of June, 2003.**

**Adopted on SECOND READING this 2nd day of July, 2003**

**ATTEST:**

**/s/ Stephanie Tuin**  
City Clerk

**/s/ Jim Spehar**  
President of City Council