

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO. 3829

AN ORDINANCE AMENDING CHAPTER 16, ARTICLE VI, SECTION 16-127,
OF THE
CODE OF ORDINANCES (SMOKING)

Recitals:

After a full public hearing and much deliberation, Ordinance No. 3540 regulating smoking in public places was adopted on July 2, 2003 and went into effect on January 1, 2004. City Council has determined that amendments to the ordinance as codified in the Code of Ordinances ("Code") in Chapter 16, Article VI: Air Pollution, Section 16-127. Smoking in workplaces and public places will clarify the intent and meaning for enforcement of the law. In addition, City Council has also reconsidered where it is appropriate for smoking to occur in a bowling alley and bingo hall. City Council's position has not changed, but these amendments more fully explain the City Council's intent.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:

Chapter 16, Article VI, Section 16-127. Smoking in workplaces and public places of the Code is hereby amended as set forth in the attached Exhibit A which is incorporated herein as if fully rewritten.

Introduced on first reading this 5th day of October 2005.

Passed and Adopted on second reading this 19th day of October 2005.



President of Council

Attest:





City Clerk

EXHIBIT A

ARTICLE VI. AIR POLLUTION

Sec. 16-127. Smoking in workplaces and public places.

(1) **Definitions.** The following words and phrases, whenever used in this Section 16-127 shall have the following meanings:

Attached Bar means a bar area of a restaurant.

Bar means an area 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. Although a restaurant may contain a bar, the term "bar" shall not include any restaurant dining area.

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.

Bowler's settee means the area immediately behind the bowling lane in which score is kept and seating is provided for bowlers waiting their turn to bowl.

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.

Bowling center concourse means that area separated from the bowling lane, bowlers' settee and visitors' settee by at least one step or a physical barrier.

Bowling lane means and includes a bowler's approach, the foul line and the lanes.

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.

Enclosed Area means all space between a floor and ceiling within a structure or building which is closed in on all sides by solid walls, doors or windows which extend from the floor to the ceiling.

Freestanding Bar means an establishment licensed for on-premise 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.

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.

Person means a natural person or any entity or business recognized by law or formed to do business of any sort.

Physically Separated means separated from smoke-free public places by continuous solid floor-to-ceiling walls, doors or windows which are interrupted only by entrances or exits to smoking areas. Such entrances, exits, and windows shall be fitted with self-closing or automatic closing devices.

Private Club means any establishment which restricts admission to members of the club and their guests. See *Public Place*.

Private Function means any activity which is restricted to invited guests in a nonpublic setting and to which the general public is not invited.

Public Place means any 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 (30) minutes before such uses.

Restaurant means a business with fifty-five percent (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. 16-127(8).

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.

Service Line means any indoor or outdoor line at which one or more (≥ 1) persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoke-free means that air in an enclosed area is free from smoke caused by smoking.

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.

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.

Structure is defined in the International Building Code, including 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.

Tobacco is defined in § 25-14-103.5(2)(c), C.R.S.

Visitors' settee means seating provided immediately behind the bowlers' settee.

Workplace means an enclosed area in which three or more (≥3) 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 Section 16-127 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 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 IBC as a *roof assembly*, 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 16-127(6)(a)(iv).
10. Whether enclosed or outdoors: sports arenas, convention halls and bowling alleys; except that smoking is allowed in portions of a bowling alley in the bowling center concourse that are physically separated from areas in which smoking is prohibited, such as a bowler's settee or visitors' settee.
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 semiprivate 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 portions of a bingo hall that are physically separated from areas in which smoking is prohibited, such as a restaurant.
15. Polling places.

- b. Notwithstanding any other provision of this Section 16-127, 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 Section 16-127, 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 indoor smoking is not prohibited.

- a. Notwithstanding any other provision of this Section 16-127 to the contrary, the following areas shall be exempt from the prohibition contained in Section 16-127(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) A freestanding bar that may lawfully allow smoking pursuant to Section 16-127(8), and an attached bar that is physically separated from nonsmoking areas.

(vi) In a bingo hall, those portions of an enclosed area that are physically separated from the nonsmoking areas of the bingo hall.

(vii) In portions of a bowling alley in the bowling center concourse that are physically separated from areas in which smoking is prohibited, such as the bowler's settee or visitors' settee.

b. Notwithstanding any other provision of this Section 16-127, any owner, operator, manager or other person who controls any establishment described in this Section 16-127(6) 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 Section 16-127.

(ii) In public places where smoking is allowed pursuant to this Section 16-127, 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 16-127(7) 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 nonsmoking provisions of this Section 16-127 if a freestanding bar establishes the following:

(i) The annual gross sales from the sale and service of food and meals is less than fifty-five percent (55%) of the total annual sales of the freestanding bar for the previous twelve (12) months; the prior twelve (12) 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 freestanding bar lawfully allowing smoking therein 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 fifty-five percent (55%).

c. The signage and other requirements of this Section 16-127 shall continue to apply to a freestanding bar filing the certificate.

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 16-127(8) shall have the burden to establish to the City that such business complied with all requirements of this Section 16-127.

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 16-127(8) as confidential, except as required pursuant to the Colorado Open Records Act, Title 24, Article 72 of the Colorado Revised Statutes and as amended, as required by federal law, 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 16-127(8).

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.

g. An attached bar need not certify.

(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 Section 16-127.

(10) Violations and Penalties.

a. It shall be unlawful for any person or business that owns, manages, operates or otherwise controls the use of any premises, enclosed area, public place, or place of employment subject to regulation under this Section 16-127 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 Section 16-127.

c. Each violation of any provision of Section 16-127 shall be deemed to be a separate violation. Each day shall be treated as a separate violation for continuing violations of Section 16-127(4), (7), and (9)

(11) Other Applicable Laws.

This Section 16-127 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 allow such lawful use as it existed on May 1, 2003, as long as the square footage of the designated smoking area is not increased and no additional seats or tables are added to the designated smoking area, until January 1, 2006, notwithstanding the provisions of Section 16-127(3) hereof.

I HEREBY CERTIFY THAT the foregoing Ordinance, being Ordinance No. 3829 was introduced by the City Council of the City of Grand Junction, Colorado at a regular meeting of said body held on the 5th day of October, 2005 and that the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, at least ten days before its final passage.

I FURTHER CERTIFY THAT a Public Hearing was held on the 19th day of October, 2005, at which Ordinance No. 3829 was read, considered, adopted and ordered published in full by the Grand Junction City Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 20th day of October 2005.



Stephanie Tuin
City Clerk

Published: October 7, 2005
Published: October 21, 2005
Effective: November 20, 2005