

ORDINANCE NO. 23

Series of 2019

AN ORDINANCE OF THE CITY OF GLENWOOD SPRINGS, COLORADO, AMENDING THE GLENWOOD SPRINGS MUNICIPAL CODE REGARDING THE REGULATION OF SMOKING IN PUBLIC PLACES.

WHEREAS, the City of Glenwood Springs (the “City”) is a Colorado home rule municipality organized pursuant to Article XX of the Colorado Constitution and with the authority of the Glenwood Springs Home Rule Charter; and

WHEREAS, the City is an international tourism destination, hosting opportunities for outdoor recreation, shopping, lodging, and entertainment; and

WHEREAS, the City has invested significant resources in making improvements to its downtown core; and

WHEREAS, the City has developed further plans to foster commercial development in a larger area within the boundary of the Downtown Development Authority plan of development; and

WHEREAS, in order keep a clean, safe, and attractive environment in the downtown core, the City may exercise its police powers to regulate smoking and vaping; and

WHEREAS, the activities of smoking and vaping of tobacco products are known to cause significant health effects to both those consuming and those in their general proximity; and

WHEREAS, during the 2019 session the Colorado General Assembly adopted HB 19-1076, which amended the Colorado Clean Indoor Air Act, C.R.S. § 25-14-201 *et seq.* to, among other things, consider vaping and smoking together, and requires certain amendments to be made by local governments; and

WHEREAS, the activities of smoking and vaping of tobacco products detract from the attractiveness of commercial areas; and

WHEREAS, City Council finds and declares that the amendments to the Municipal Code regarding certain activities in the downtown core set forth herein are proper in light of the needs and desires of the City and in the promotion of the public health, safety and welfare of the City’s residents and visitors.

NOW THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF GLENWOOD SPRINGS, COLORADO, THAT:

Section 1. The recitals above are hereby adopted as findings and incorporated herein.

Section 2. Article 040 of Title 100 of the Glenwood Springs Municipal Code is hereby repealed and readopted as set forth in **Exhibit A**.

INTRODUCED, READ ON FIRST READING, PASSED AND ORDERED
PUBLISHED BY TITLE ONLY THIS 15 DAY OF AUGUST 2019.

ATTEST:



CITY OF GLENWOOD SPRINGS, COLORADO

Jon Godes
Jonathan Godes, Mayor

Catherine Mythen Fletcher
Catherine Mythen Fletcher, City Clerk

INTRODUCED, READ ON SECOND READING, PASSED AND ORDERED
PUBLISHED BY TITLE ONLY TO BE EFFECTIVE TEN DAYS FOLLOWING THE DATE
OF SECOND PUBLICATION THIS 5 DAY OF September 2019.

ATTEST:



CITY OF GLENWOOD SPRINGS, COLORADO

Jon Godes
Jonathan Godes, Mayor

Lindsey Christensen
Lindsey Christensen, Deputy City Clerk

EXHIBIT A

ARTICLE 100.040 - CONTROL OF SMOKING

100.040.010 - Legislative Declaration.

The City of Glenwood Springs hereby finds and determines that it is in the best interest of the people of this City to protect nonsmokers from involuntary exposure to environmental tobacco smoke and aerosol vapor in areas open to the public, and places of employment. Therefore, the City hereby declares that the purpose of this article is to preserve and improve the health, comfort and environment of the people of this City by limiting exposure to tobacco smoke and aerosol vapor.

100.040.020 - Definitions.

As used in this article, the following words and phrases are defined as follows:

Business means any sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity formed for profit-making purposes.

Downtown area means, for purposes of this article, the areas described below, for which a map is available for public inspection in the office of the City Clerk at 1010 West 8th Street, Glenwood Springs, Colorado.

(a) the area south of the Colorado River and north of 9th Street, extending from Colorado Avenue on the west to Blake Avenue on the east;

(b) the area from 9th Street up to and including 10th Street, extending from Colorado Avenue on the West to Cooper Avenue on the east;

(c) the 6th Street right-of-way;

(d) U.S. Highway 6 from its intersection with 6th Street to its intersection with Devereux Road; and

(e) the pedestrian bridge crossing the Colorado River from 6th Street to 7th Street.

Electronic Smoking Device has the same meaning as set forth in section 050.110.020 of this Code.

Employee means any Person who is employed or retained as an independent contractor by any Employer in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for an Employer.

Employer means any Business that retains the service of one or more Employee.

Entrances and Exits means the passageways by which persons may enter or exit a building or facility, typically consisting of a door or doorway. For the purposes of this chapter, this includes the stoop, steps, or ramp leading from the sidewalk or pavement to such a door or doorway.

Flavored Tobacco Product has the same meaning as set forth in section 050.110.020 of this Code.

Food/Beverage Service Area means any business establishment, including Outdoor Dining Areas of the establishment thereof, in which the business includes the sale of food or beverages for on-premises consumption.

Indoor Public Place 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.

Outdoor Dining Area means any area, including streets and sidewalks, that is available to or customarily used by the general public or an Employee, and that is designed, established, or regularly used, for consuming food or drink.

Outdoor Public Place means any Public Place not specifically characterized as an Indoor Public Place.

Public Place means any place, indoors or outdoors that is publicly or privately owned, and open to the general public regardless of any fee or age requirement.

Person means any natural person, cooperative association, employer, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.

Playing Field means that portion of an outdoor Recreational Area that is set up and marked in some way for the playing of one or more specific games or sports (such as baseball, football, or soccer), and that is owned or operated by the City and open to the general public. For the purposes of this chapter, a playing field that is fenced or the outside perimeter of which is otherwise physically demarcated shall be deemed to include all of the area inside such fence or demarcation, together with any bleachers or other designated viewing area; a playing field that is not fenced or otherwise demarcated (as to its outside perimeter) shall be deemed to include all of the area customarily required for playing the game for which it is being used, together with any bleachers or other designated viewing area.

Public Event shall mean a festival, concert, parade, athletic contest, street fair, art and craft show, carnival, block party, racing event, or any other outdoor event sponsored, hosted by or requiring a permit from the City.

Reasonable Distance means a distance that ensures that people located within an area where Smoking and Electronic Smoking Device use is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty-five (25) feet in any direction.

Recreational Area means any outdoor area that is owned or operated by the City and open to the general public for recreational purposes, regardless of any fee or age requirement. The term "Recreational Area" includes but is not limited to Playing Fields, playgrounds, parks, picnic areas, golf courses, walking paths, gardens, hiking trails, bike paths, horseback riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, and amusement parks. The term "Recreational Area" is not intended to include streets and sidewalks unless they are located within a demarcated Recreational Area such as a park.

Service Area means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not such service includes the exchange of money. Service Areas include, but are not limited to, bus stops and other mass transit shelters, ATMs, public telephones, ticket lines, bus stops, cab stands, concert lines, sporting event lines, and food vendor lines.

Smoke means the emissions or release of gases, particles, vapors or aerosols into the air from burning, heating or activation of any device, including, but not limited to a cigarette, Electronic Smoking Device, e-cigarette, vape pens, e-hookahs or any other product by any name or descriptor when the apparent or usual purpose of burning, heating or activation of the device is human tasting and inhalation.

Smoking means the act of burning, heating, activation or carrying of any device, including, but not limited to a cigarette, cigar, pipe, hookah, Electronic Smoking Device, electronic cigarette, vape pen, e-hookah or similar device, by any other product name or descriptor, that results in the release of smoke, vapors or aerosols when the apparent or usual purpose of the burning, heating or activation of the device is human inhalation.

Tobacco Product has the same meaning as set forth in section 050.110.020 of this Code.

100.040.030 - Prohibition of Public Smoking and Electronic Smoking Device Use.

Except as provided in Section 100.040.040, and in order to reduce the levels of exposure to environmental tobacco smoke and aerosol vapor, smoking shall not be permitted and no person shall smoke in the following areas:

- (a) Smoking is not permitted and no person shall smoke or use electronic smoking devices in any Indoor Public Place within the City of Glenwood Springs including:
 - (1) Indoor Public Place not exempt under this Article or pursuant to C.R.S. 25-14-205;
 - (2) Twenty-five foot (25') radius from the entrance or exit of an Indoor Public Place; or
 - (3) Hotel or motel rooms rented to one or more guests.
- (b) Smoking and Electronic Smoking Device use is prohibited in Outdoor Public Places within the City of Glenwood Springs including:
 - (1) Outdoor Dining Areas;

- (2) Food/Beverage Service Areas;
- (3) Playing Fields;
- (4) Public Events;
- (5) Recreational Areas;
- (6) Within twenty-five (25) feet of a transit stop;
- (7) On any park, parkland, or recreation area or facility as established in Section 090.030.010; and
- (8) Within twenty-five (25) feet of any common open space as defined in Section 070.040.040.

100.040.040 - Exceptions to smoking restrictions.

- (a) This Article shall not apply to:
 - (1) Private homes, private residences, and private automobiles; except that this article 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 retail tobacco business;
 - (4) A private, nonresidential building on a farm or ranch, as defined in C.R.S. § 39-1-102, that has annual gross income of less than five hundred thousand dollars (\$500,000.00).

100.040.050 - Optional prohibitions.

- (a) The owner or manager of any place not specifically listed in Section 100.040.030, including a place otherwise exempted under Section 100.040.040, 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 article.
- (b) If the owner or manager of a place not specifically listed in Section 100.040.030, including a place otherwise exempted under Section 100.040.040, is an Employer and receives a request from an Employee to create a smoke-free work area, the owner or manager shall post a sign or signs in the smoke-free work area as provided in subsection (a) of this section.

100.040.060 - Signage required.

- (a) A Person or Employer or other entity that has legal or de facto control of an area in which Smoking and the use of Electronic Smoking Devices are prohibited by this Article shall post a clear and conspicuous “No Smoking and use of Electronic Smoking Devices” signs as follows:
 - (1) At each point of ingress to the area, and in other conspicuous location(s); and
 - (2) Signage shall have letters of no less than one inch in height and shall include 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); and
 - (3) Signage posted on the exterior of buildings to comply with this section shall include the Reasonable Distance requirement set forth in Section 100.040.020; and
 - (4) At least one sign with the City phone number to where complaints can be directed and placed conspicuously in each place where Smoking and Electronic Smoking Device use is prohibited.
- (b) For purposes of this section, the City Manager or his/her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the City.
- (c) Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of Smoking and the use of Electronic Smoking Devices in violation of any other provision of this Article.
- (d) No Person or Employer shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another Person who seeks to attain compliance with this Article.

100.040.070 - Penalties and Enforcement.

- (a) The remedies provided by this Article are cumulative and in addition to any other remedies available at law or in equity.
- (b) Each instance of Smoking or Electronic Smoking Device use in violation of this Article shall constitute a separate violation.
- (c) A person violating this article shall be subject to the penalty provisions of Section 120.050.020 of this Code.
- (d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Article shall also constitute a violation of this Article.
- (e) Any violation of this Article is hereby declared to be a nuisance.