

ORDINANCE NO. 11

Series 2022

AN ORDINANCE CONFORMING THE TOWN CODE TO THE
COLORADO CLEAN INDOOR AIR ACT

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. That Section 5-9-2, entitled "DEFINITIONS:", of the Breckenridge Town Code, shall be amended by deleting the language stricken and adding the language underlined, to read as follows:

5-9-2: DEFINITIONS:

As used in this chapter, unless the context otherwise requires:

AUDITORIUM: The part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.

BAR: Any area that is operated and licensed under article 3 of title 44, Colorado Revised Statutes, primarily for the sale and service of alcohol beverages for on premises consumption and where the service of food is secondary to the consumption of such beverages. "Bar" includes, without limitation, any outdoor area operated as part of the licensed premises.

CIGAR-TOBACCO BAR: A bar that, in the calendar year ending December 31, 2005, generated at least five percent or more of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a "cigar-tobacco bar" and shall not thereafter be included in the definition regardless of sales figures.

CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT: has the same meaning as provided in Section 4-5-4 of Title 4 of the Town of Breckenridge Code.

ELECTRONIC SMOKING DEVICE: has the same meaning as in Section 4-5-4 of Title 4 of the Town of Breckenridge Code.

EMPLOYEE: Any person who:

A. Performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or

B. Provides uncompensated work or services to a business or nonprofit entity.

"Employee" includes every person described above in this definition regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.

EMPLOYER: Any person, partnership, association, corporation, or nonprofit entity that employs one or more persons. "Employer" includes, without limitation, the legislative, executive, and judicial branches of state government; any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission, or agency; or any other separate corporate instrumentality or unit of state or local government.

ENTRYWAY: The outside of a public doorway leading into a building or facility that is not exempted from this chapter under section 5-9-4 of this chapter. "Entryway" also includes the area of public or private property within a ten foot (10') radius outside of the doorway.

ENVIRONMENTAL TOBACCO AND MARIJUANA SMOKE: The complex mixture formed from the escaping smoke of burning tobacco or marijuana, and smoke exhaled by the smoker.

"Environmental tobacco and marijuana smoke" also includes the escaping vapor or aerosol of an electronic smoking device, also known as "side stream smoke", and vapor or aerosol exhaled by the smoker.

FOOD SERVICE ESTABLISHMENT: Any area or portion thereof in which the principal business is the sale of food for on premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops, and short order cafes. "Food service establishment" includes, without limitation, any outdoor area operated as part of the business.

GONDOLA: An aerial tramway carrier primarily used to convey persons and property to and from a "ski area" as defined in section 6-3B-18 of this code.

INDOOR AREA: 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.

MARIJUANA: Has the same meaning as in section 16(2)(f) of article XVIII of the Colorado constitution.

PLACE OF EMPLOYMENT: Any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

PUBLIC BUILDING: Any building owned or operated by:

- A. The state, including the legislative, executive, and judicial branches of state government;
- B. Any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the State, a special district, an authority, a commission, or an agency; or
- C. Any other separate corporate instrumentality or unit of State or local government.

PUBLIC MEETING: Any meeting open to the public pursuant to part 4 of article 6 of title 24, Colorado Revised Statutes, or any other law of the State or the Town.

RETAILER: has the same meaning as provided in Section 4-5-4 of Title 4 of the Town of Breckenridge Code.

SMOKE FREE WORK AREA: An indoor area in a place of employment where smoking is prohibited under this chapter.

SMOKING: A. The burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco or marijuana, or

- B. The active use of an electronic smoking device.

TOBACCO BUSINESS: A sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, including ESDs, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

WORK AREA: An area in a place of employment where one or more employees are routinely assigned and perform services for or on behalf of their employer.

Section 2. That Section 5-9-3, entitled "GENERAL SMOKING RESTRICTIONS:" of the Breckenridge Town Code, shall be amended by deleting the language stricken and adding the language underlined, to read as follows:

5-9-3: GENERAL SMOKING RESTRICTIONS:

A. Except as provided in section 5-9-4 of this chapter, and in order to reduce the levels of exposure to environmental tobacco and marijuana smoke, smoking shall not be permitted and no person shall smoke in any indoor area, including, but not limited to:

1. Public meeting places;
2. Elevators;
3. Government owned or operated means of mass transportation, including, but not limited to, buses, vans, trains, indoor public transit facilities and waiting areas, and transit shelters;
4. Taxicabs and limousines;
5. Gondolas;
6. Grocery stores;
7. Gymnasiums;
8. Jury waiting and deliberation rooms;
9. Courtrooms;
10. Child daycare facilities;
11. Healthcare facilities including hospitals, healthcare clinics, doctor's offices, and other healthcare related facilities;
12. Retail stores;
13. Food service establishments;
14. Bars;
15. Indoor sports arenas and facilities;
16. Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple- unit residential facilities
17. Bowling alleys;
18. Billiard or pool halls;
19. Facilities in which games of chance are conducted;
20. The common areas of retirement facilities, publicly owned housing facilities, and nursing homes, but not including any resident's private residential quarters;
21. Public buildings;
22. Auditoria;
23. Theaters;
24. Museums;
25. Libraries;
26. To the extent not otherwise provided in section 25-14-103.5, Colorado Revised Statutes, public and nonpublic schools;
27. Other educational and vocational institutions;
28. Hotel and motel rooms;
29. Assisted living facilities, including nursing facilities as defined in 25.5-4-103 and assisted living residence as defined in 25-27-102;

30. Town owned motor vehicles; and

31. Any place of employment that is not exempted whether or not open to the public and regardless of the number of employees. In the case of employers who own facilities otherwise exempted from this chapter, each such employer shall provide a smoke free work area for each employee requesting not to have to breathe secondhand smoke and emissions from electronic smoking devices.

B. In order to reduce the levels of exposure to environmental tobacco and marijuana smoke, smoking shall not be permitted and no person shall smoke in any of the following outdoor areas:

1. The entryways of all buildings and facilities listed in subsection A of this section.
2. Town owned parks and open space areas;
3. Town owned outdoor sporting and athletic fields and facilities;
4. The town of Breckenridge public golf course grounds and buildings, excluding the course of play;
5. The paved recreational pathway running generally northerly and southerly within the town commonly known as the "bike path"; and
6. Within a ten foot (10') radius of a public transit facility waiting area.

C. A retail tobacco business:

1. Shall prohibit entry by any person under eighteen years of age; and
2. Shall display signage in at least one conspicuous place and at least four inches by six inches in size stating either:
 - (i) "smoking allowed. children under eighteen years of age may not enter."; or
 - (ii) in the case of a retail tobacco business that desires to allow the use of ESDs but not other forms of smoking on the premises, "vaping allowed. children under eighteen years of age may not enter."

Section 3. That Section 5-9-4, entitled "EXCEPTIONS TO SMOKING RESTRICTIONS:" of the Breckenridge Town Code, shall be amended by deleting the language stricken and adding the language underlined, to read as follows:

5-9-4: EXCEPTIONS TO SMOKING RESTRICTIONS:

Except as otherwise expressly provided in this code, this chapter shall not apply to:

- A. Private homes, private residences, and private automobiles; except that this chapter shall apply if any such home, residence, or vehicle is being used for childcare or daycare or if a private vehicle is being used for the public transportation of children or as part of healthcare or daycare transportation;
- B. Limousines under private hire
- C. The indoor area of any retail tobacco business; except that the requirements of a license and penalties in Title 4, Chapter 8 apply to a retail tobacco business;
- D. (Rep. by Ord. 4, Series 2015)
- E. The outdoor area of any business, except as provided in subsection 5-9-3B of this chapter;
- F. A private, nonresidential building on a farm or ranch, as defined in section 39-1-102, Colorado Revised Statutes, that has annual gross income of less than five hundred thousand dollars (\$500,000.00); or

G. The open and public consumption of marijuana in an outdoor area as described in title 6, chapter 3, article I of this code.

Section 4. That Section 5-9-5, entitled "OPTIONAL PROHIBITIONS:" of the Breckenridge Town Code, shall be amended by deleting the language stricken and adding the language underlined, to read as follows:

5-9-5: OPTIONAL PROHIBITIONS:

The owner or manager of any place otherwise exempted under section 5-9-4 of this chapter, 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 chapter.

Section 5. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 6. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 7. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to the provisions of Section ____, C.R.S., and the powers possessed by home rule municipalities in Colorado.

Section 8. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

Section 9. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 26th day of April, 2022.

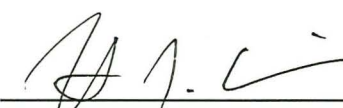
This ordinance was published in full on the Town of Breckenridge website on April 29, April 30, May 1, May 2 and May 3, 2022.

A public hearing on this ordinance was held on May 10, 2022.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 10th day of May, 2022. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE



Helen Cospolich, CMC, Town Clerk



Eric S. Mamula, Mayor

APPROVED IN FORM

Handwritten Signature 6.9.22
Town Attorney Date

This Ordinance was published on the Town of Breckenridge website on May 13, May 14, May 15, May 16 and May 17, 2022. This ordinance shall become effective on June 16, 2022.