

**STATE OF COLORADO
COUNTY OF SUMMIT
TOWN OF FRISCO**

Ordinance 23-08

AN ORDINANCE AMENDING CHAPTER 127 OF THE TOWN CODE, CONCERNING OFFENSES, BY AMENDING SECTIONS 127-42, CONCERNING DEFINITIONS, 127-43, CONCERNING GENERAL SMOKING RESTRICTIONS, 127-44, CONCERNING EXEMPTIONS TO SMOKING RESTRICTIONS, AND 127-45, CONCERNING OPTIONAL SMOKING PROHIBITIONS, TO CONFORM THE TOWN'S SMOKING PROHIBITIONS TO THE STATE'S PROHIBITIONS.

WHEREAS, it is recognized by the Town of Frisco (the "Town") Town Council (the "Council") that it is in the best interest of the people of the Town to protect nonsmokers from involuntary exposure to environmental tobacco smoke in most indoor areas open to the public; and

WHEREAS, the Town has previously adopted provisions concerning limitations on smoking in public places, codified in sections 127-41 through 127-47 of the Code of the Town of Frisco (the "Code"); and

WHEREAS, the Council finds that the legislature of the State of Colorado has substantially amended Part 2 Article 14 of Title 25, Colorado Revised Statutes (the "Colorado Clean Indoor Air Act" or the "Act"); and

WHEREAS, the Council finds that pursuant to section 25-14-207 (2), C.R.S., the Act applies to and regulates smoking in public places in the Town and, with limited exceptions, authorizes the Town to adopt and enforce local laws that are not less stringent than the state smoking regulations; and

WHEREAS, the Council desires to amend the Town's Code provisions concerning smoking in public places to be not less stringent than the provisions of the Act, except as to those regulations concerning the radius of an entryway as previously adopted by the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO THAT:

Section 1. Section 127-42 of the Code, concerning definitions related to the prohibition of smoking in public places, is hereby amended to add or revise the definitions of the following terms to read as follow in their appropriate alphabetic locations:

Bar means any indoor area that is operated and licensed under Article 347 of Title 4412, C.R.S., 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.

Electronic smoking device or ESD means

1. Means any product, other than a product described in subsection (4.5)(c) of this section, that contains or delivers nicotine or any other substance intended for human consumption and that can be used by a person to enable the inhalation of vapor or aerosol from the product;
2. Includes any product described in subsection (4.5)(a) of this section and any similar product or device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any other product name or descriptor; and
3. Does not include:
 - i. A humidifier or similar device that emits only water vapor;
or
 - ii. An inhaler, nebulizer, or vaporizer that is approved by the federal food and drug administration for the delivery of medication.

Section 2. Section 127-43 of the Code, concerning the prohibition of smoking in public places, is hereby amended to read as follows:

Sec. 127-43. General smoking restrictions.

- A. Except as provided in Section 127-44, and in order to reduce the levels of exposure to environmental tobacco 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, and trains;
4. Taxicabs and limousines;
5. Grocery stores;
6. Gymnasiums;
7. Jury waiting and deliberation rooms;
8. Courtrooms;
9. Child day care facilities;
10. Health care facilities including hospitals, health care clinics, doctor's offices, and other health care related facilities;
11. (I) Any place of employment that is not exempted-, whether or not open to the public and regardless of the number of employees.

(II) 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 environmental tobacco smoke. Every employee shall have a right to work in an area free of environmental tobacco smoke.
12. Food service establishments;
13. Bars;
14. Limited gaming facilities and any other facilities in which any gaming or gambling activity is conducted;

15. Indoor sports arenas;
 16. Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
 17. ~~Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent (75%) of the sleeping quarters within a hotel or motel that are rented to guests~~
Hotel and motel rooms;
 18. Bowling alleys;
 19. Billiard or pool halls;
 20. Facilities in which games of chance are conducted;
 21. The common areas of retirements facilities, publicly owned housing facilities, and nursing homes, not including any resident's private residential quarters;
 22. Public buildings;
 23. Auditoria;
 24. Theatres;
 25. Museums;
 26. Libraries;
 27. To the extent not otherwise provided in Section 25-14-103.5, C.R.S., public and nonpublic schools; and
 28. Other educational and vocational institutions;
 29. Assisted living facilities, including nursing facilities as defined in Section 25.5-4-103, C.R.S. and assisted living residences as defined is Section 25-27-102, C.R.S.;
- B. A cigar-tobacco bar shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005.

A cigar-tobacco bar shall display signage in at least one (1) conspicuous place and at least four inches (4") by six inches (6") in size stating: "Smoking Allowed. Persons ~~Children~~ under twenty-one ~~eighteen (21)(18)~~ years of age may not enter ~~must be accompanied by a parent or guardian.~~"

C. A retail tobacco business:

1. Shall prohibit entry by any person under twenty-one years of age; and
2. Shall display signage it at least one conspicuous place and at least four inches by six inches in size stating either:
 - a. "Smoking allowed. Persons under twenty-one years of age may not enter."; or
 - b. 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. Persons under twenty-one years of age may not enter."

Section 3. Section 127-44 of the Code, concerning exceptions to the prohibition of smoking in public places, is hereby amended to read as follows:

Sec. 127-44. Exceptions to smoking restrictions.

Section 127-43 of this Chapter shall not apply to:

- A. Private homes, private residences, and private automobiles; except that Section 127-43 of this Chapter 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_;
- B. Limousines under private hire;
- ~~C. A hotel or motel room rented to one (1) or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent (25%);~~

~~CD.~~ Any retail tobacco business; except that requirements in Section 127-43(c) of this Chapter and any related penalties apply to a retail tobacco business;

~~DE.~~ A cigar-tobacco bar;

~~EF.~~ The outdoor area of any business;

~~G.~~ A place of employment that is not open to the public and that is under the control of an employer that employs three (3) or fewer employees;

~~FH.~~ A private nonresidential building on a farm or ranch, as defined in Section 39-1-102, C.R.S., that has annual gross income of less than five hundred thousand dollars (\$500,000); or

~~I.~~ The retail floor plan, as defined in Section 12-47.1-509, C.R.S., of a licensed casino.

Section 4. Section 127-45 of the Code, concerning optional smoking prohibitions, is hereby amended to read as follows:

Sec. 127-45. Optional prohibitions.

A. The owner or manager of any place not specifically listed in Section 127-43, including a place otherwise exempted under Section 127-44, 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.

~~B. If the owner or manager of a place not specifically listed in Section 127-43, including a place otherwise exempted under Section 127-44, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by Section 127-43(a)(11)(II), the owner or manager shall post a sign or signs in the smoke-free work area as provided in subsection (a) of this Section.~~

Section 5. 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.

Section 6. Existing ordinances or parts of ordinances covering the same matters as embraced in this ordinance are hereby repealed and any and all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed provided, however, that the repeal of any ordinance or parts of ordinances of the Town of Frisco shall not revive any other section of any ordinance or ordinances hereto before repealed or superseded and further provided that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this ordinance.

Section 7. This Ordinance shall take effect pursuant to the Charter for the Town of Frisco.

INTRODUCED, PASSED ON FIRST READING, AND POSTING AND PUBLICATION ORDERED THIS _____ DAY OF _____, 2023.

ADOPTED ON SECOND AND FINAL READING, AFTER PUBLIC HEARING, AND PUBLICATION BY TITLE ORDERED ON THIS _____ DAY OF _____, 2023.

TOWN OF FRISCO

Hunter Mortensen, Mayor

ATTEST:

Stacey Nell, Town Clerk