

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF EAGLE, STATE OF COLORADO**

ORDINANCE NO. 06 - 01

**An Ordinance Prohibiting Smoking in Public Places, Places of Employment, and Other
Places of Interest in Unincorporated
Eagle County**

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including heart disease, respiratory disease and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke accounts for an estimated 53,000 deaths annually in the U.S. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

WHEREAS, secondhand smoke has been classified as a Group A carcinogen equally hazardous as asbestos by the Environmental Protection Agency; and

WHEREAS, secondhand smoke contains more than 4,000 chemicals, including arsenic, formaldehyde, hydrogen cyanide and radioactive elements. More than 60 of these chemicals have been identified as carcinogens; and

WHEREAS, studies have shown there is no safe level of exposure to secondhand smoke; and

WHEREAS, Eagle County has previously banned smoking in certain public areas owned or operated by the County; and

WHEREAS, the Board of County Commissioners posed the following ballot questions to the electors of Eagle County, Colorado: Are you in favor of elected officials adopting regulations prohibiting smoking in all enclosed public places, including restaurants and bars, in Eagle County, Colorado; and

WHEREAS, on November 1, 2005, seventy-two percent (72%) of the responding electors voted in favor of the adoption of ordinances prohibiting smoking in Eagle County by a margin of 6031 in favor and 2311 opposed; and

WHEREAS, C.R.S. §25-14-105 grants counties the authority to adopt regulations controlling smoking within their unincorporated territory, and provides that such local regulations shall control to the extent of any inconsistency between them and the State's smoking control provisions contained in C.R.S. §25-14-101 et seq.; and

WHEREAS, in consideration of the results of the November 1, 2005 election, the recommendations of the Eagle County staff, and the public input which the Board of County Commissioners has received on this matter, the Board of County Commissioners has determined that the best interests and the health, safety and welfare of the citizens of, workers of, and visitors to unincorporated Eagle County will be served by enacting regulations prohibiting smoking in public place and places of employments, as defined herein, within unincorporated Eagle County.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Eagle County:

1. Purpose

The Board of County Commissioners finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; (2) to guarantee the right to breathe smoke-free air, and 3) to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

2. Definitions

The following words and phrases, whenever used in this Ordinance, shall be construed as defined in this section:

1. “Bar” means a bar area of a restaurant or an establishment 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, including, but not limited to, taverns, nightclubs, and cocktail lounges. As used in this Ordinance, the term Bar shall include any outdoor seating or serving areas within the exterior walls, fences or otherwise defined limits of said Bar.

2. “Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

3. “Commercial Bingo and Gaming Facility” means premises used for the purpose of conducting games of chance.

4. “Employee” means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit or business entity.

5. “Employer” means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.

6. “Enclosed Area” means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from

the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.

7. "Place of Employment" means any area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms and classrooms, employee cafeterias, private clubs, and hallways. "Place of employment" includes all bars and restaurants. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.

8. "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. A Private Club shall not include an establishment that is open to members of the general public upon payment of a nominal fee. A Private Club must have established bylaws and/or other written operating standards to govern its activities, including written definitions and descriptions of its membership policies, including a description of eligibility for membership. A Private Club must administer its membership system consistent with adopted policies and must maintain a written list of current members. A Private Club must structure its memberships so as to provide for membership status to be ongoing as opposed to one-time, weekly or incidental memberships. A Private club must charge a fee or membership in an amount intended to defray the ongoing cost of providing services to members as opposed to a "cover charge" or other nominal fee intended to pay for a single nights or week's entertainment. A Private Club must have been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501. A Private Club must not be open to the general public, although infrequent, occasional public functions may be permissible so long as they constitute an insignificant proportion of the establishment's operation and so long as smoking is prohibited during any such public function. A Private Club must be physically separate from any public place.

9. "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, commercial bingo and gaming facilities, convention halls, covered parking structures, public or private educational facilities, childcare, adult daycare or medical or healthcare facilities, guest rooms in any commercial lodging establishment, laundromats, performance halls, polling places, professional offices, public transportation facilities and vehicles, reception areas, restaurants, bars, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters; every room, chamber, places of meeting or public assembly; all areas of an establishment that are open to, or customarily used by, the general public, including but not limited to elevators, restrooms, lobbies, reception areas, hallways, waiting rooms, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple-unit residential facilities. A private residence, only when in use as a childcare, adult daycare, or healthcare facility. A Private Club is not a public place unless it is being used for a function, to which the general public is invited.

10. "Recreational Facility" means indoor or outdoor sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys,

fairgrounds, skate parks, soccer fields, ball fields, playgrounds and other venues similar to those listed above where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports or other events, including all the spectator stands for such events. Recreational Facility shall not include the outdoor parking lots of said facilities; however, smoking in said parking lots remains subject to the smoke free perimeter requirements set forth in Section 7 hereunder.

11. “Restaurant” means any coffee shop, cafeteria, sandwich stand, open food stand, private and public school cafeteria, and any other eating establishment which gives or offers food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term “restaurant” shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a “bar” as defined in Section 2 (1). A facility shall conclusively be considered to be a “restaurant” for the purposes of this ordinance, regardless of the category of liquor license under which that facility operates, if such facility: (a) serves malt, vinous, and/or spirituous liquors; and (b) includes a restaurant, as defined by C.R.S. 12-47-103(30), or operates a kitchen used for preparing meals, as defined by C.R.S. 12-47-103(20). As used in this Ordinance, the term Restaurant shall include any outdoor seating or serving areas within the exterior walls, fences or otherwise defined limits of said Restaurant.

12. “Retail Tobacco Store” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

13. “Service Line” means any indoor and outdoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money, including but not limited to, movie ticket lines, theatre lines, concert lines, sporting events lines, food vendor lines, lift ticket lines, and chair lift/gondola lines. For purposes of this Ordinance, the term Service Line as it relates to chair lift/gondola lines shall include both the line to embark on a chair lift/gondola and the time spent riding the chair lift/gondola until disembarking.

14. “Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or other lighted plant or combustible substance in any manner or in any form.

15. “Smoke-free” means that an establishment, facility or the premises controlled by said establishment or facility has been declared to be a place in which smoking is prohibited, whether by the terms of this Ordinance or by the owner or operator of said establishment or facility.

3. Application of Ordinance to County-Owned Facilities

A. All facilities including buildings and vehicles owned by the County of Eagle shall be subject to the provisions of this Ordinance. No person shall smoke in any motor vehicle owned or operated by Eagle County; in any public meeting room or during any public meeting held in any building owned or operated by Eagle County; or in any entrance way,

steps, porticos, or other area adjacent to, but which is on the exterior of, a building owned or operated by Eagle County except as set forth herein or as otherwise designated as an allowed outside smoking area by the County Administrator.

B. Upon its effective date, this ordinance shall supersede and replace Ordinance No. 92-01 – An Ordinance Regulating Smoking in Certain Public Areas Owned or Operated by Eagle County, and in County vehicles.

4. Prohibition of Smoking in Public Places

Smoking shall be prohibited in all public places within the unincorporated territory of Eagle County, except as otherwise expressly permitted under this Ordinance.

5. Prohibition of Smoking in Places of Employment

A. Smoking shall be prohibited in all enclosed facilities within places of employment, without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, covered parking garages, hallways, medical facilities, clinics, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.

B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Ordinance and to all prospective employees upon their application for employment.

6. Prohibition of Smoking in Service Lines

Smoking shall be prohibited in all indoor and outdoor Service Lines as defined herein. Smoking shall not occur within twenty-five (25) feet of any Service Line.

7. Prohibition of Smoking at Recreational Facilities

Smoking shall be prohibited in all indoor and outdoor Recreational Facilities as defined herein. Smoking shall not occur within twenty-five (25) feet of any Recreational Facility.

8. Prohibition of Smoking at Outdoor Seating Areas

Smoking shall be prohibited within the exterior walls, fences or otherwise defined limits of an outdoor seating or serving area of a Restaurant or Bar. Smoking shall not occur within twenty-five (25) feet of any outdoor seating or serving area of a Restaurant or Bar.

9. Smoke-free Perimeter

Smoking shall not occur within twenty-five (25) feet outside of an entrance, passageway, operable window, ventilation system or other opening of an enclosed smoke free area to ensure

that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means.

10. Where smoking is not regulated

A. Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt:

1. Private residences, except when used as a childcare, adult care or healthcare facility.
2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than ten percent (10%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms. Employees of such establishments must be notified in the hiring process that the establishment is not a smoke-free place of employment.
3. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of the Ordinance and provided that employees of such establishments are notified in the hiring process that the establishment is not a smoke-free place of employment.
4. Outdoor areas of places of employment except those covered in Sections six (6) and seven (7) of this Ordinance.
5. Private Clubs that have no employees, except when being used for a function to which the general public is invited.
6. Outdoor, uncovered parking garages meeting the perimeter requirements of Sections six (6) through nine (9) of this Ordinance.
7. Performers smoking as part of a stage production at a facility primarily used for exhibiting drama performances.

B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare the entire establishment, facility, or grounds as smoke-free.

11. Posting of Signs

Signs indicating that smoking is prohibited, or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) shall be clearly and conspicuously posted in every building or other areas where

smoking is prohibited by this Ordinance, by the owner, operator, manager or other person having control of such building or other area.

12. Enforcement

A. Enforcement of this Ordinance shall be implemented by the Eagle County Sheriff's Office and the Eagle County Department of Environmental Health, or their designees.

B. Any person who desires to register a complaint under this chapter may initiate enforcement with the Eagle County Sheriff's Office or the Eagle County Department of Environmental Health.

C. The Eagle County Sheriff's Office and the Eagle County Environmental Health Department or their designees may inspect for compliance of this Ordinance while an establishment is undergoing otherwise mandated inspections.

D. Any owner, manager, operator or employee of any establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof and request their compliance.

E. Notwithstanding any other provision of this Ordinance, a private citizen may bring legal action to enforce this Ordinance.

13. Retaliation Prohibited

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 rights afforded by this Ordinance or reports or attempts to prosecute a violation of this Ordinance.

14. Violations and Penalties

A. It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to regulation under this Ordinance to allow or condone smoking in a prohibited location within such premises, or otherwise fail to comply with any of these 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. Any person who owns, manages, operates, or otherwise controls the use of any premises or any other person who violates any provision of this Ordinance shall be guilty of a class 2 petty offense, punishable by:

1. A fine not exceeding one hundred dollars (\$100) for a first violation.

2. A fine not exceeding two hundred dollars (\$200) for a second violation.

3. A fine not exceeding five hundred dollars (\$500) for each additional violation of this Ordinance.

4. The penalty assessment procedure provided in Section 16-2-201, C.R.S., 1973 may be followed in enforcing the provisions of this Ordinance. All fines shall be paid into the treasury of Eagle County.

D. Violation of this Ordinance is hereby declared to be a public nuisance, which may be abated by Eagle County by restraining order, preliminary and permanent injunction, or other means provided for by law, and the County may take action to recover the costs of the nuisance abatement.

E. Each day of continuing violation shall be deemed to be a separate violation.

F. Notwithstanding any other provision of this Ordinance, an employee or private citizen may bring legal action to enforce this Ordinance.

15. Public Education

Eagle County may engage in a continuing program to explain and clarify the purposes and requirements of this ordinance to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance. However, the provision of such an educational program shall not be a prerequisite to the applicability of the terms and conditions herein.

16. Other Applicable Laws

This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

17. Liberal Construction

This Ordinance shall be liberally construed so as to further its purposes.

18. Severability

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.

19. Effective Date

This Ordinance shall be effective sixty (60) days from and after the date of its adoption.

Introduced, First Read and Set for Public Hearing on the 6th day of December, 2005.

Ordinance and Notice of Public Hearing published in the Eagle Valley Enterprise on the 22nd and 29th day of December, 2005.

Approved and Adopted upon Second Reading and after public hearing on the 10th day of January, 2006.

Published after adoption in the Eagle Valley Enterprise on the 19th day January, 2006.

MOVED, READ AND ADOPTED by the Board of County Commissioners of the County of Eagle, State of Colorado, at its regular meeting held the 10th day of January, 2006.

ATTEST:

Clerk to the Board of
County Commissioners

**COUNTY OF EAGLE, STATE OF
COLORADO, by and through its
BOARD OF COUNTY
COMMISSIONERS**

By:_____
Arn M. Menconi
Chairman

Peter F. Runyon
Commissioner

Tom C. Stone
Commissioner