

**CITY OF EDGEWATER  
ORDINANCE 11-10  
SERIES OF 2010**

**AN ORDINANCE AMENDING CHAPTER 10 OF THE EDGEWATER MUNICIPAL CODE,  
CONCERNING GENERAL OFFENSES, BY ADOPTING A NEW ARTICLE 16 CONCERNING  
THE PROHIBITION OF SMOKING IN PUBLIC PLACES.**

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

WHEREAS, the Council finds that the City's Code does not address smoking in public places; and

WHEREAS, the Council finds that the legislature of the State of Colorado (the "State") adopted the Colorado Clean Indoor Air Act in Part 2 Article 14 of Title 25, Colorado Revised Statutes (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 City; and

WHEREAS, the Council finds that the Act also authorizes local authorities to adopt regulations that cover the same subject matter that is addressed in the Act so long as, with limited exceptions, those regulations are not less stringent than the Act's provisions; and

WHEREAS, the Council desires to prohibit smoking in most public areas within the City, including tobacco businesses, in a manner that is not less stringent than the provisions in the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EDGEWATER THAT:

Section 1. There is hereby established a new Article 16 of Chapter 10 of the Edgewater Municipal Code, concerning general offenses, to read in its entirety as follows:

**ARTICLE 16**

**Smoking Prohibited**

**Sec. 10-16-10. Legislative intent.**

The City Council finds, determines and declares that it is in the best interest of the people of this City to protect nonsmokers from involuntary exposure to environmental tobacco smoke in most areas open to the public, public meetings, food service establishments, and places of employment. The City Council further finds, determines and declares that a balance should be struck between the

health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into, and regulation of, private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places. Therefore, the City Council 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.

**Sec. 10-16-20. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) *Auditorium* means the part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.

(b) *Bar* means any area that is operated and licensed under Article 47 of Title 12, 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.

(c) *Customer service area* means, with respect to any building or facility that is not exempted from this Article under Section 10-16-40, all of the outdoor or semi-enclosed areas, except for designated parking areas, of the building, facility, business or establishment that is used, has ever been used, or is reasonably capable of being used to serve customers of, or visitors to, the building, facility, business or establishment. Without limiting the generality of the foregoing sentence, a customer service area shall mean and include all outdoor or semi-enclosed seating or service areas, all outdoor or semi-enclosed waiting areas, and any other outdoor areas of any food service establishment or bar other than designated parking areas for the food service establishment or bar.

(d) (1) *Employee* means any person who:

(I) Performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or

(II) Provides uncompensated work or services to a business or nonprofit entity.

(2) *Employee* includes every person described in paragraph (1) of this subsection (c), regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.

(e) *Employer* means any person, partnership, association, corporation, or nonprofit entity that employs one (1) 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.

(f) *Entryway* means the outside of any doorway leading into the indoor area of any building or facility that is not exempted from this Article under Section 10-16-40. *Entryway* also includes the area of public or private property within twenty (20) feet of the doorway.

(g) *Environmental tobacco smoke, ETS, or secondhand smoke* means the complex mixture formed from the escaping smoke of a burning tobacco product, also known as “sidestream smoke,” and smoke exhaled by the smoker.

(h) *Food service establishment* means any indoor or outdoor 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.

(i) *Indoor area* 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.

(j) *Place of employment* means 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.

(k) *Public building* means any building owned or operated by:

(1) The state, including the legislative, executive, and judicial branches of state government;

(2) 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 of any of the same; or

(3) Any other separate corporate instrumentality or unit of state or local government.

(l) *Public meeting* means any meeting open to the public pursuant to Part 4 of Article 6 of Title 24, C.R.S., or any other law of the state.

(m) *Smoke-free work area* means an indoor area in a place of employment where smoking is prohibited under this Chapter.

(n) *Smoking* means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.

(o) *Tobacco* means cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. *Tobacco* also includes cloves and any other plant matter or product that is packaged for smoking.

(p) *Tobacco business* means 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, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

(q) *Work area* means 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.

**Sec. 10-16-30. General smoking restrictions.**

(a) Except as provided in Section 10-16-40, 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, or in any outdoor area described in subsection (31) below, or within the entryway to any indoor area, all 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) (A) Any place of employment that is not exempted;  
(B) In the case of employers who own facilities otherwise exempted from this Article, 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 from 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;
- (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, except as specified in section 10-16-40(a)(7) nursing homes, not including any resident's private residential quarters or areas of assisted living facilities specified in Section 10-16-40(a)(7);
- (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;

(28) Other educational and vocational institutions;

(29) Tobacco businesses;

(30) The entryways of all buildings and facilities listed in subparagraphs (a)(1) through (a)(29) of this Section; and

(31) Customer service areas.

(b) In order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any public park, or certain designated areas therein, within the City of Edgewater when the park, or certain designated areas of the park, have been posted with official signs prohibiting smoking. For purposes of this subsection (b), an "official" sign shall be any sign placed or authorized for placement by the City's Parks and Recreation Director.

**Sec. 10-16-40. Exceptions to smoking restrictions.**

(a) This Article shall not apply to:

(1) Private homes, private residences, and private automobiles; except that Section 10-16-30 of 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 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%);

(4) The outdoor area of any business, except to the extent that the outdoor area of any business is within twenty (20) feet of an entryway and except to the extent that the outdoor area is a customer service area;

(5) 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

(6) A. The areas of assisted living facilities:

- (i) That are designated for smoking for residents;
- (ii) That are fully enclosed and ventilated; and
- (iii) To which access is restricted to the residents or their guests.

B. As used in this subparagraph (a)(6), "assisted living facility" means a nursing facility, as that term is defined in 25.5-4-103, C.R.S., and an assisted living residence, as that term is defined in section 25-27-102, C.R.S.

**Sec. 10-16-50. Optional prohibitions.**

(a) The owner or manager of any place not specifically listed in Section 10-16-30, including a place otherwise exempted under Section 10-16-40, 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 10-16-30, including a place otherwise exempted under Section 10-16-40, 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.

**Sec. 10-16-60. Other applicable regulations of smoking.**

(a) This Article shall not be construed to permit smoking where it is otherwise restricted by any other applicable law.

**Sec. 10-16-70. "No Smoking" signs required.**

The owner of any entryway that is subject to the prohibitions of subsection 10-16-30(a) of this Article shall post a clearly legible sign within five (5) feet of each such entryway stating, by way of the international "no smoking" symbol, that smoking is prohibited within twenty (20) feet of the entryway.

**Sec. 10-16-80. Unlawful acts – penalty – disposition of fines and surcharges.**

(a) It is unlawful for a person who owns, manages, operates, or otherwise controls the use of property subject to the provisions in this Article to violate any provision of this Article.

(b) It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to this Article.

(c) A person who violates any provision of this Article is guilty of an offense and, upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars (\$200) for a first violation within a calendar year, a fine not to exceed three hundred dollars (\$300) for a second violation within a calendar year, and a fine not to exceed five hundred dollars (\$500) for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation.

Section 2. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3. Repeal. All other ordinances or portions thereof that are inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 4. Safety Clause. The City Council hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare, and that this ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 5. Effective Date. This ordinance shall become effective five (5) days after final publication.

INTRODUCED, READ, PASSED ON FIRST READING AND ORDERED PUBLISHED this 20th day of May, 2010.

/s/ Bonnie McNulty, Mayor

ATTEST:

/s/ Elizabeth A. Hedberg, CMC  
City Clerk

PASSED AND ADOPTED ON SECOND READING AND ORDERED PUBLISHED this 8th  
day of July, 2010.

/s/ Bonnie McNulty, Mayor

ATTEST:

/s/ Elizabeth A. Hedberg, CMC  
City Clerk

APPROVED AS TO FORM:

/s/ Thad Renaud, City Attorney

**SUMMARIZED HISTORY FOR ORDINANCE NO. 11-10**

Action	Date
Workshopped	April 22, 2010
First Reading	May 20, 2010
Posted	May 25, 2010
Publication	May 27, 2010
Workshopped	May 27, 2010
Workshopped	June 10, 2010
Second Reading	July 8, 2010
Sent to Codifier	July 12, 2010
Publication	July 15, 2010
Enacted	July 20, 2010