

INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE NO. 02-300

AN ORDINANCE AMENDING CHAPTER 18, ARTICLE IV, OF THE CODE OF ORDINANCES OF THE INCORPORATED COUNTY OF LOS ALAMOS TO BRING IT INTO COMPLIANCE WITH CHANGES MADE TO THE DEE JOHNSON CLEAN INDOOR AIR ACT TO INCLUDE E-CIGARETTES AND EXPAND THE SCOPE OF THE DEFINITIONS OF "SECONDHAND SMOKE" AND "SMOKING"

WHEREAS, both the State of New Mexico and the Incorporated County of Los Alamos ("County") have recognized the detrimental health effects of secondhand smoke to citizens; and

WHEREAS, County had previously enacted Article IV to Chapter 18 of its Code of Ordinances to strike a balance between the rights of individuals who smoke and those who are subject to the effects of secondhand smoke; and

WHEREAS, the State of New Mexico subsequently amended the Dee Johnson Clean Indoor Air Act to include e-cigarettes; and

WHEREAS, the County Council deems it to be in the best interests of the public health, safety and welfare of the community to update Article IV of Chapter 18 in order to bring it into compliance with the changes made State law.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS that:

Section 1. Section 18-131 of the Los Alamos County Code of Ordinances is amended to read as follows:

Sec. 18-131. Definitions.

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

Bar means an establishment that is devoted to the selling or serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of those beverages, including taverns, nightclubs, cocktail lounges and cabarets.

~~*Common area* means any enclosed area designated or otherwise allowed to be used for the mutual enjoyment of the general public or for customers or patrons in general.~~

Cigar bar means an establishment that is a bar as defined in this section and is engaged in the business of selling cigars for consumption by patrons on the premises and generates ten percent or more of its total annual gross revenue or at least ten thousand dollars (\$10,000) in annual sales from the sale of cigars, not including any sales from vending machines. A cigar bar that fails to generate at least ten percent of its total annual sales from the sale of cigars shall not be defined as a cigar bar and shall not be treated as such for purposes of this ordinance. A cigar

bar shall agree to provide adequate information to demonstrate to the county's satisfaction compliance with this definition.

Designated outdoor smoking area means an area where smoking may be permitted, designated by an employer or manager, outside an indoor workplace or indoor public place; provided that the following conditions are maintained:

- (1) Smoking shall not be permitted near any building entrance, including a door, window or ventilation system of any facility where smoking is prohibited under the provisions under this ordinance so as to prevent secondhand smoke from entering the indoor workplace or indoor public place; and
- (2) Employees or members of the general public are not required to walk through the smoking area to gain entrance to the indoor workplace or indoor public place.

Dining area means any enclosed area containing a counter or tables upon which meals are provided. Any outdoor dining area is excluded.

E-Cigarette means a product containing or delivering nicotine or another substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product, including a device, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe, e-hookah or vape pen, or under another product name or descriptor.

Employee means any person who is employed by an employer in consideration of the payment direct or indirect monetary wages or profit and includes any person who volunteers his services to a non-profit entity.

Employer means any person, partnership, corporation, including a non-profit entity, or the county which employs the services of one or more persons.

Enclosed means any interior space predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include uncovered openings, screened or otherwise partially covered openings or open or closed windows.

Indoor public place means the enclosed area within any governmental or nongovernmental place to which the public is invited or in which the public is permitted regardless of whether work or public business, meetings or hearings occur at any given time.

Indoor workplace means any enclosed place where one or more persons engage in work, including lobbies, reception areas, offices, conference and meeting rooms, employee cafeterias and lunchrooms, break rooms and employee lounges, classrooms, auditoriums, hallways, stairways, waiting areas, elevators and restrooms and includes all indoor workplaces and enclosed parts regardless of whether work occurs at any given time.

~~*Place of employment* means an enclosed indoor area under the control of a private or public employer intended for occupancy by employees during the course of employment including, but not limited to, work areas, lobbies, reception areas, offices, conference and meeting rooms, employee cafeterias and lunchrooms, classrooms, auditoriums, hallways, stairways, waiting areas and restrooms.~~

Private club means an organization, whether incorporated or not, that is the owner, lessee or occupant of a building or portion thereof used exclusively for the organization's purposes at all times, that is operated solely for recreational, fraternal, social, patriotic, political, benevolent or athletic purposes, but not for pecuniary gain, and that only sells alcoholic beverages incidental to its operation. The organization shall have bylaws or a constitution to govern its activities and shall have been granted an exemption as a club under the provisions of Section 501 of the Internal Revenue Code of 1986 as amended.

Public place means any enclosed area to which the public is invited or in which the public is permitted, but does not include the offices or work areas not entered by the public in the normal course of business or use of the premises. A private residence is not a public place.

~~*Restaurant* means any coffee shop, cafeteria, private or public school cafeteria or eating establishment, and any other eating establishment which gives or offers for sale food to the public, patrons or employees, including kitchens and catering facilities in which food is prepared on the premises for serving elsewhere or a bar area within or attached to the premises.~~

Retail tobacco store means a retail store utilized primarily for the sale of tobacco products, including e-cigarettes, and accessories and in which the sale of other products is merely incidental, including smoke shops, cigar shops or hookah lounges, and does not include establishments that offer for sale alcoholic beverages for consumption by patrons on the premises.

Second hand smoke means: ~~smoke emitted from lighted, smoldering or burning tobacco when the smoker is not inhaling, smoke emitted at the mouthpiece during puff drawing and smoke exhaled by the smoker~~

- 1) Smoke emitted from inhaling from, exhaling from, burning, carrying or holding:
 - a) a lighted or heated cigar, cigarette, hookah or pipe; or
 - b) any other lighted or heated tobacco or plant product intended for inhalation, including cannabis, whether natural or synthetic; or
- 2) the aerosol or vapor emitted from inhaling or exhaling or any other use of an e-cigarette.

Smoke free area means any building or other enclosed space where smoking is prohibited.

~~*Smoking* means: inhaling, exhaling, burning, carrying or holding any lighted tobacco product, including all types of cigarettes, cigars and pipes and any other lighted tobacco product~~

- 1) inhaling from, exhaling from, burning, carrying or holding:
 - a) a lighted or heated cigar, cigarette, hookah or pipe; or
 - b) any other lighted or heated tobacco or plant product intended for inhalation, including cannabis, whether natural or synthetic; or
- 2) any use of an e-cigarette that creates an aerosol or vapor.

Smoking permitted area means any building or other enclosed space where smoking may be permitted; provided that secondhand smoke does not infiltrate any area where smoking is prohibited pursuant to this article.

Standalone building means a building whose heating, air conditioning and ventilation system services only that building.

Section 2. Section 18-133 of the Los Alamos County Code of Ordinances is amended to read as follows:

Sec. 18-133. Prohibition of smoking near entrances, windows and ventilation systems.

(a) Smoking is prohibited near entrances, windows and ventilation systems of all workplaces and public places where smoking is prohibited by this ordinance. An individual who owns, manages, operates or otherwise controls the use of any premises subject to the provisions of this ordinance shall establish a smoke free area that extends a reasonable distance from any entrances, windows and ventilation systems to any enclosed areas where smoking is prohibited. The reasonable distance shall be a distance sufficient to ensure that persons entering or leaving the building or facility shall not be subjected to breathing ~~tobacco~~ secondhand smoke and to ensure that ~~tobacco~~ secondhand smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means.

(b) For County owned buildings, smoking shall be prohibited for a distance of twenty-five (25) feet from doors, window and ventilation system intakes.

Section 3. Section 18-134 of the Los Alamos County Code of Ordinances is amended to read as follows:

Sec. 18-134. Smoking-permitted areas.

Notwithstanding any other provisions of this ordinance, smoking-permitted areas include the following:

- (1) A private residence, ~~except during hours of business operation while it is being~~ unless it is used commercially to provide child care, adult care or health care or any combination of those activities;
- (2) A retail tobacco store; provided that, for a retail tobacco store established on or after the effective date of this ordinance, the store shall be located in a standalone building;
- (3) A cigar bar; provided that, for a cigar bar established on or after the effective date of this ordinance, the store shall be located in a standalone building;
- (4) The facilities of a tobacco manufacturing company licensed by the United States to manufacture tobacco products that are operated by the company in its own name and that are used exclusively by the company in its business of manufacturing, marketing or distributing its tobacco products; provided that secondhand smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited under this ordinances;
- (5) A state-licensed gaming facility, casino or bingo parlor;
- (6) ~~An indoor workplace to the extent that tobacco smoking is an integral part of a smoking cessation program that is approved by the department or of medical or scientific research that is conducted in the indoor workplace and in which each room of the indoor workplace in which tobacco smoking is permitted complies with signage requirements;~~

~~(7)~~ (6) Designated outdoor smoking areas;

~~(8)~~ (7) Private clubs;

~~(9)~~ A limousine under private hire;

~~(10)~~ A privately owned vehicle that is not carrying passengers for hire;

~~(11)~~ (8) Hotel and motel rooms that are rented to guests and are designated as smoking-permitted rooms; provided that not more than ~~twenty-five~~ ten percent of rooms rented to guests in a hotel or motel may be so designated;

~~(12)~~ Enclosed areas within restaurants, bars, hotel and motel conference or meeting rooms while these places are being used for private functions; provided that none of these areas are open to the general public while the private functions are occurring and provided that smoke does not infiltrate other indoor workplaces or indoor public places where smoking is otherwise prohibited under this ordinance;

~~(13)~~ (9) A site that is being used in connection with the practice of cultural or ceremonial activities by Native Americans and that is in accordance with the federal American Indian Religious Freedom Act; and

~~(14)~~ A business of a sole proprietor or a business with fewer than two employees that is not commonly accessible to the public, provided that:

a. The business is not a restaurant or bar;

b. The employer or manager of such business shall provide a smoke free work environment for each employee requesting a smoke free work environment; and

c. Cigarette smoke does not infiltrate other smoke free work environments as provided for in this ordinance; and

~~(15)~~ (10) A theatrical state or a motion picture or television production set when it is necessary for performers to smoke as part of the production.

Section 4. Effective Date. This Ordinance shall become effective thirty (30) days after notice is published following its adoption.

Section 5. Severability. Should any section, paragraph, clause or provision of this ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

Section 6. Repealer. All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

ADOPTED this 29th day of October, 2019.

**COUNCIL OF THE INCORPORATED
COUNTY OF LOS ALAMOS**

**Sara C. Scott
Council Chair**

ATTEST: (SEAL)

**Naomi D. Maestas
Los Alamos County Clerk**