

COPY

TOWN OF TIMNATH

ORDINANCE NO. 3-2005

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF TIMNATH AMENDING CHAPTER 7 OF THE TIMNATH MUNICIPAL CODE BY THE ADDITION OF A NEW ARTICLE V REGARDING REGULATIONS OF SMOKING

WHEREAS, the Board of Trustees of the Town of Timnath recognizes that smoking may be hazardous to the human health; and

WHEREAS, the Board of Trustees of the Town of Timnath has determined that it is necessary to regulate smoking in public places to preserve the health, safety and welfare of the citizens of the Town of Timnath; and

WHEREAS, the Board of Trustees desires to adopt and establish such regulation to provide notice thereof prior to the establishment of additional businesses in Town.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF TIMNATH, COLORADO as follows:

Section 1. Chapter 7 of the Timnath Municipal Code is hereby amended by the addition of a new Article V regarding regulations of smoking as follows:

ARTICLE V REGULATIONS OF SMOKING

7.100 Definitions

As used in this Article, the following terms shall have the meanings indicated:

*Building* means any structure enclosed for protection from the weather, whether or not windows or doors are open. If a person leases or possesses only a portion of a building, the term *building* applies to the leasehold or possessory interest as well.

*Dwelling* means any place used primarily for sleeping overnight and conducting activities of daily living, including

without limitation a hotel or motel room or suite or hospice, but not the lobby of a hotel, motel or hospice, common elevator, common hallway or other common area.

*Outdoor eating area* means an area adjacent to a restaurant that the restaurant establishment provides for its customers.

*Public conveyance* means any motor vehicle or other means of conveyance licensed by the Public Utilities Commission of the State for the transportation of passengers for hire, and includes without limitation busses, taxicabs, limousine services and airport passenger services.

*Restaurant* means an establishment licensed as a hotel/restaurant under the liquor laws of the State, or an establishment whose principal business is the retail sale of prepared food and beverages and has seating for on-premises consumption of food.

*Smoke or smoking* means the lighting of any cigarette, cigar or pipe or the possession of any lighted cigarette, cigar or pipe, regardless of its composition.

*Tavern* means an establishment licensed as a tavern under the liquor laws of the State.

*Tobacco product* means cigarettes, cigars, cheroots, stogies, periques and other products containing any measurable amount of tobacco, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, short, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco.

Tobacco store means a retail business open to the public if more than fifty percent (50%) of its gross revenue from that location is from the retail sale of cigarettes and tobacco products, or products related to the use of cigarettes and tobacco products.

7.101 Smoking prohibited within buildings

- A. It shall be unlawful for any person to smoke within any building except in one (1) of the following locations:
1. In any dwelling. This exception does not extend to a lobby, common elevator, common hallway or any other common area of a building containing attached dwelling units, hotel rooms or motel rooms, but if a hospital, hospice or nursing home permits smoking in its dwelling rooms, smoking is not allowed in any room shared with a nonsmoker without that person's consent;
  2. In a room or hall being used for psychological treatment of nicotine addiction by a licensed health care professional;
  3. In a building or on property which is occupied by the State of Colorado, the United States Government, Larimer County, the Poudre Valley School District, or any other government or quasi-governmental entity which was not designated as a no-smoking area by the manager of such area. The Board of Trustees urges such governmental entities to designate no-smoking areas in order to promote full access by the public and protect the health of employees; or
- B. Unless excepted under Subsection (A) above, the prohibitions of this Article apply to all buildings which serve as places of work,

but this Subsection (B) neither enlarges nor diminishes the meaning of Subsection (A).

7.102 Smoking prohibited in public conveyances

It shall be unlawful for any person to smoke in any public conveyance.

7.103 Smoking prohibited in outdoor areas

It shall be unlawful for any person to smoke in the following outdoor areas:

1. Among the tables or within the exterior walls or fences of an outdoor eating area of a restaurant;
2. Within the exterior walls or fences of an open-air theater, open seating areas, food/drink concession areas, restrooms, and related lines leading thereto;
3. Within the exterior walls or fences of sporting areas, including but not limited to tennis courts, swimming pools, and sports fields during organized events; and
4. Within 20 feet from any entrance, passageway, operable window or ventilation system of any building or outdoor area in which smoking is prohibited by this Article, or designation by the person in possession of the property.

7.104 Signs required to be posted

To advise persons of the existence of "No Smoking" or "Smoking Permitted" areas, no owner, lessee, principal manager or person in control of a building or an establishment within a building or an outdoor eating area shall fail to post signs with letters no less than one (1) inch high

or symbols no less than three (3) inches high as follows:

1. Where smoking is prohibited and where all or part of the restaurant is outdoors, a sign using the words "No Smoking" or the international no-smoking symbol shall be posted conspicuously either on all public entrances or in a position clearly visible on entry into the building or establishment or outdoor restaurant area.
2. If an ashtray or other receptacle for extinguished smoking materials is located in a building, except in an area where smoking is permitted, a sign with the international no-smoking symbol and letters no less than one (1) inch high using the words "No Smoking" and three-quarters (¾) inch high using the words "Extinguish Here," shall be posted within twelve (12) inches above each such ashtray or other receptacle.
3. The requirements of this Section do not apply to an exempt dwelling.

**7.105 Additional Responsibilities of proprietors**

It shall be unlawful for any owner, lessee, principal manager or person in control of a building or establishment or an outdoor eating area to fail to:

1. Ask any person smoking to refrain from smoking in any no-smoking area at the earliest possible time after any person starts smoking in an area where smoking is prohibited;
2. Use any other means which may be appropriate to further the intent of this Article.

7.106        Restrictions on sale of tobacco

- A.    It shall be unlawful for any person to furnish to any person who is under eighteen (18) years of age, by gift, sale or any other means, any cigarette or tobacco product.
- B.    It shall be unlawful for any person to sell or offer to sell any cigarette or tobacco product by use of a vending machine.
- C.    It is an affirmative defense to a charge of violating Subsection (A) of this Section that the person furnishing the cigarette or tobacco product was presented with and reasonably relied upon a document which identified the person receiving the prohibited items as being eighteen (18) years of age or older.
- D.    It is a specific defense to a charge of violating Subsection (B) of this Section that the vending machine was located in a place of work not open to the public where persons under eighteen (18) years of age are not permitted access.

7.107        Retaliation prohibited

It shall be unlawful for any person to 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 Article or reports or attempts to prosecute a violation of this Article.

Section 2.        Penalty.    Violations of this ordinance shall be punishable in accordance with Article IV of Chapter 1, Section 1-72 of the Timnath Municipal Code.


Section 3.        Severability.    If any article, 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 Board of

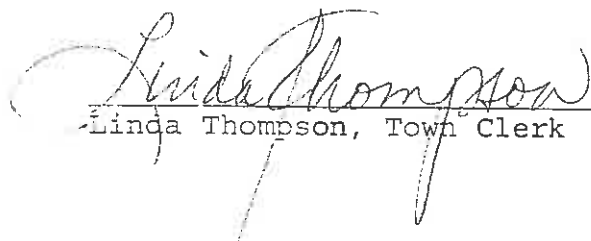
Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or part or parts be declared unconstitutional or invalid.

Section 4. Safety. This Ordinance is deemed necessary for the immediate protection of the health, welfare and safety of the community.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 27th day of April, 2005.

ATTEST:

  
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Donna Benson, Mayor

  
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Linda Thompson, Town Clerk