



## Work Session Agenda Summary

January 24, 2023

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### Title:

Overview of “Cigar Bar” Legislative Options

### Background:

Brad Inhulsen, a local businessperson, wishes to establish a venue at which smoking of cigars and consumption of other incidental refreshments could occur. Greeley’s Municipal Code Article IV, Section 12.153 expressly bans any form of smoking in any public or private establishment.

Council has indicated it is receptive to consideration of a code amendment to accommodate this request. To enable such a use, an ordinance is required to amend the Greeley Municipal Code in order to 1) permit an exception for smoking of tobacco products in certain circumstances; and 2) establish the zoning category and define the physical and operational characteristics associated with such a use.

The following review further describes a suggested scope and rationale for such permission, if Council wishes to proceed with this request.

### Current Code limitations

Greeley Municipal Code, Section 12-151 describes the **intent** of Greeley’s smoking ban as follows:

*“Medical science has determined that smoking and secondhand smoke are leading health problems throughout the United States. Secondhand smoke has been identified as a Class A carcinogen, and there is no safe level of exposure. It is the intent of this chapter to protect the health, safety, comfort and welfare of city citizens from the harmful effects of secondhand smoke by banning smoking in all places where people are likely to gather in close proximity to one another and to enhance the existing health protections provided under the law.”*

Sec. 12-153. **bans smoking** as follows:

*“Smoking is prohibited in public places or common areas, as defined by this chapter, and within 25 feet in any direction of a public place or common area ....”*

Public places are further broadly defined as indoor and outdoor areas to which the general public is invited or permitted such as (but not limited to) restaurants, taverns, commercial and business establishments, reception and waiting areas, recreational facilities, public ball fields, skate parks, playgrounds, and so forth.

### **General Types of Smoking Establishments Allowed**

Commercial Uses: Some communities permit business establishments which allow the smoking of tobacco products, electronic cigarettes, or other substances. Such establishments may be known variously as cigar lounges, hookah lounges, tobacco clubs, or tobacco bars. It is common to require a minimum percentage of the gross revenue (e.g. 51% or more) to be derived from on-premise sale of tobacco products or rental of humidors or smoking devices, excluding vending machine sales. Associated regulations limit food or alcohol sales, may require distance separation from residential uses, schools, public recreation facilities or other such lounges, may limit live entertainment and games, restrict the use of cover charges, and can include limited hours of operation and age restrictions for patrons.

These regulations appear to attempt to allow smoking establishment on a restricted basis and as a focused use, which would distinguish from and not compete with restaurants, taverns, etc. in which the greater public may access and for which smoking is not allowed as a matter of public health. A consideration with this approach is the realistic ability to balance regulations with practical enforcement.

Private Smoking or Cigar Club: a more measured approach would allow cigar or smoking lounges as private clubs. Generally, private membership clubs are organizations that generally have some meaningful conditions for membership, with operations often controlled by the membership, and whose facilities and activities are only open to members and their guests. Club membership criteria would need to be a meaningful restriction so that the general public could not access the club with a “day pass” or similar exception; otherwise, this limited use could easily migrate to a pseudo-commercial use without associated regulations and to the disadvantage of other local businesses. Fees paid by members would be typical and sales or rental of smoking products would be limited to or a benefit of membership and not available to the general public. Any incidental alcohol sale or consumption, if permitted, would be subject to local liquor license regulations. Such clubs are typically exempt from payment of federal income tax but may still need to obtain a business or sales tax license if any sale of product occurs in association with the operation.

The GMC/Development Code includes a definition for a “private marijuana club” which is expressly considered a prohibited use. In either a commercial smoking lounge or a private

club, no use of marijuana would be legal unless this section of code is also modified, which is not a part of this land use request or recommended by staff.

**Recommended Action Steps:** of the two basic approaches discussed, the exception to allow a smoking establishment on a limited basis as a private club is recommended, if Council is interested in advancing this request. This would involve crafting an ordinance that would accomplish (*sample* amendment language in **bold**):

1. Amend the ban on smoking to provide an exception for Private Smoking Clubs

**Sec. 12-153. - Ban.**

Smoking is prohibited in public places or common areas, as defined by this chapter, and within 25 feet in any direction of a public place or common area, **with the exception of Private Smoking Clubs as defined in Section XXX.** Smoking is also prohibited anywhere designated by the city by posting a sign using the words "No Smoking" or the international "no smoking" symbol.

2. Provide a definition of a Private Smoking Club

**Private Smoking Club means a not-for-profit organization, that maintains selective members, is operated by the membership, and has as its primary purpose the legal consumption or use of tobacco smoking products as an aspect of its recreational, fraternal or social purpose for its members, but not for pecuniary gain, and which only sells or distributes alcoholic beverages to its members incidental to its operation.**

3. Assign the land use category for this land use, including any further conditions associated with such a club

**Allow Private Smoking Clubs as a Use by Special Review (USR) in the C-H (Commercial High Intensity), MU-H (Mixed Use High Intensity), I-L (Industrial low Intensity), I-M (Industrial Medium Intensity), I-H (Industrial High Intensity) or in a Planned Unit Development (PUD) zone. The USR and PUD will include provisions will define limitations on signage, access to the public, occupancy in a stand-alone facility or in a portion of another facility that is able to fully contain air emissions, evidence of is non-profit status as a private club, and all required business licenses.**

If the Council's direction is to proceed, this draft language will be refined further and, if desired, forwarded to the Planning Commission for comment and recommendation.

Strategic Focus Area:



Business Growth

*Attachments:*

Slide presentation