

ORDINANCE 2021-1

AN ORDINANCE REPEALING ORDINANCE NO. 2004-2, AND AMENDING AND REENACTING THESE RULES AND REGULATIONS PROHIBITING SMOKING AND ELECTRONIC SMOKING DEVICE USE IN PUBLIC PLACES AND PLACES OF EMPLOYMENT IN UNINCORPORATED BOULDER COUNTY

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF BOULDER, COLORADO, as follows:

Section 1. Purpose

The Board of County Commissioners of Boulder County, Colorado, find and declare that the restrictions and limitations set forth in this Ordinance provide for the public health, safety, and welfare of persons in Boulder County by discouraging the inherently dangerous behavior of smoking and electronic smoking device use in public places around non-users, especially children, elderly people, and individuals with cardiovascular disease and impaired respiratory function, from exposure to secondhand smoke. This Ordinance shall not be interpreted or construed to permit smoking or electronic smoking device use where it is otherwise restricted by any other applicable law.

Section 2. Definitions

County-Owned Facilities means all locations including buildings, outdoor areas, county vehicles and parking lots owned or operated by the County.

Dining Area means any area, including streets and sidewalks, that is available to or customarily used by the general public or an employee, and that is designed, established, or regularly used, for consuming food or drink.

Director means the Executive Director of Boulder County Public Health, or the Director's designee.

Entrances and Exits means the passageways by which persons may enter or exit a building, typically consisting of a door or doorway. This includes the stoop, steps, or ramp leading from the sidewalk or pavement to such a door or doorway.

Electronic Smoking Device means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by an individual to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the product. Electronic Smoking Device includes any refill, cartridge or component part of a product, even when said products are sold separately, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, heat not burn device or under any other product name or descriptor. Electronic Smoking Device does not include a humidifier or similar device that only emits water vapor; or an inhaler, nebulizer or vaporizer that is approved by the United States Food and Drug Administration for the delivery of medication.

Food/Beverage Service Area means any business establishment, including outdoor seating or dining areas, in which the business includes the sale of food or beverages for on-premises consumption.

Health Care Facility means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition includes all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

Indoor Public Place means any enclosed area or portion thereof open to the general public, regardless of any fee or age requirement, that is publicly or privately owned. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor public place to an outdoor public place.

Marijuana has the same meaning as in section 16(2)(f) of article XVIII of the Colorado Constitution.

Outdoor Public Place means any area that does not meet the definition of an indoor public place, that is open to the general public, regardless of any fee or age requirement, that is publicly or privately owned. Outdoor public place includes any parking lot associated with the outdoor public place where smoking and/or electronic smoking device use is prohibited pursuant to this Ordinance.

Playing Field means that portion of an outdoor area that is set up and marked for play of one or more specific games or sports (such as baseball, football, or soccer), and that is owned or operated by the County and open to the general public. For the purposes of this Ordinance, a playing field that is fenced or the outside perimeter of which is otherwise physically demarcated includes all of the area inside such fence or demarcation, together with any bleachers or other designated viewing area and parking lot; a playing field that is not fenced or otherwise demarcated (as to its outside perimeter) includes all of the area customarily required for playing the game or sport for which it is being used, together with any bleachers or other designated viewing area and parking lot.

Reasonable Distance means a distance that ensures that people located within an area where smoking and electronic smoking device use is prohibited are not exposed to secondhand smoke or vapor created by persons smoking or using electronic smoking devices outside of the area. This distance is a minimum of twenty-five (25) feet in any direction from the source of the smoke or vapor.

Recreational Area means any outdoor public place and includes, but is not limited to bike paths, dog parks, hiking trails, walking trails, horseback trails, recreation, natural habitat areas of public parks, park weather shelters, picnic areas, playgrounds. The term recreational area is not intended to include streets and sidewalks unless they are located within a recreational area such as a park.

Service Area means any area designed to be or regularly used by one or more

individual(s) to receive or wait to receive a service, enter a public place, or make a transaction, whether or not such service includes the exchange of money. Service areas include, but are not limited to, bus stops and other mass transit shelters, ATMs, public telephones, ticket lines, bus stops, cab stands, concert lines, sporting event lines, and food vendor lines.

Secondhand smoke means the complex mixture formed from escaping smoke of a burning tobacco, marijuana, or from an electronic smoking device, also known as “environmental smoke” and “sidestream smoke,” and vapor exhaled by person using an electronic smoking device.

Smoke or smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. Smoking includes the use of an electronic smoking device but excludes devices or combination products authorized for sale by the United States Food and Drug Administration as those terms are defined in the Federal Food and Drug and Cosmetic Act.

Tobacco Product means (1) any product that contains tobacco, is made or derived from tobacco, or used to deliver nicotine, synthetic nicotine, or other substances intended for human consumption, whether heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, mints, hand gels, (2) an electronic smoking device; and (3) any component, part, accessory or associated tobacco paraphernalia of a tobacco product whether or not sold separately. *Tobacco Product* does not mean any product that contains marijuana, and any product made from or derived from tobacco and approved by the Food and Drug Administration (FDA) for use in connection with cessation of smoking.

Section 3. Prohibition of Public Smoking and Electronic Smoking Device Use

a. Indoor Public Places

i. Smoking and electronic smoking device use is prohibited and no person may smoke or use an electronic smoking device in the following indoor public places within Boulder County:

1. County-owned buildings;
2. Elevators;
3. County owned mass transportation;
4. Child daycare facilities;
5. Healthcare facilities;
6. Places of employment not exempt pursuant to this Ordinance whether or not open to the public and regardless of the number of employees;
7. Food/beverage service areas;
8. Restrooms, lobbies, hallways and common areas;
9. Theatres;
10. Museums,

11. Libraries;
12. Public and nonpublic schools and other educational and vocational locations;
13. Hotel and motel rooms;
14. Assisted living facilities including nursing facilities as defined in section C.R.S. §25.5-4-103 and assisted living residences as defined in section C.R.S. §25-27-102; and
16. Retail tobacco businesses, which means a sole proprietorship, corporation, partnership, or other enterprise as defined in C.R.S. § 25-14-203(18).

b. Outdoor Public Places

i. Smoking and electronic smoking device use is prohibited and no person may smoke or use an electronic smoking device in the following outdoor public places within the County:

1. County-owned outdoor public places;
2. A twenty-five (25') foot radius from any entrance or exit to an indoor public place;
3. Food/beverage service areas;
4. Playing Fields;
5. Recreational Areas; and
6. Service Areas.

Section 4. Other Requirements and Prohibitions

a. No person, employer, or entity may knowingly permit smoking and/or electronic smoking device use in an area under the legal or de facto control of that person, employer, or other entity and in which smoking and electronic smoking device use is prohibited by law.

b. Nothing in this Ordinance prohibits any person, employer, or other entity with legal control over any property from prohibiting smoking and/or electronic smoking device use on any part of such property, even if smoking and/or electronic smoking device use is not otherwise prohibited in that area.

c. No person, employer or other entity may knowingly or intentionally permit the presence or placement of ash receptacles, such as ash trays or ash cans, within an area under the legal or de facto control of that person, employer or other entity where smoking and/or electronic smoking device use is prohibited by law, including within a reasonable distance required by this Ordinance from any area where smoking and electronic smoking device use is prohibited. The presence of ash receptacles in violation of this subsection is not a defense to a charge of smoking and/or electronic smoking device use in violation of any provision of this Ordinance.

d. No person may dispose of cigarettes, tobacco products or any electronic smoking device waste within the boundaries of an area where smoking and/or electronic smoking device use is

prohibited, including within any reasonable distance of locations where smoking and electronic smoking device use is prohibited as required by this Ordinance.

e. Signs Required

i. A person, employer or other entity that has legal or de facto control of an Indoor or Outdoor Public Place where smoking and/or electronic smoking device use is prohibited by this Ordinance must post clear and conspicuous signs as follows:

1. A sign must be posted at each point of ingress to the area. For Outdoor Public Places that may not have clearly defined points of ingress, a sign shall be posted at each official point of ingress, if such exists, and if such does not exist, at the most commonly used points of ingress.
2. Signs must declare “No Smoking and Electronic Smoking Device Use” or “Smoke-Free” and “Electronic Smoking Device-Free” and have letters of no less than one inch in height. Signs may include the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it), or other pictorial representations that cigarette smoking, electronic smoking device use, and marijuana use are prohibited.
3. Signage posted on the exterior of buildings shall state that smoking and electronic smoking device use is prohibited within a minimum of twenty-five (25) feet from the entryway.
4. Boulder County Parks and Open Space areas are subject to Rules and Regulations established by Resolution No. 2020-099, including Regulation #14 prohibiting smoking and electronic smoking device use within any Boulder County Parks and Open Space Area. No smoking signs have been installed in these areas. As such, Boulder County Parks and Open Space areas are specifically exempted from the above signage requirements in this Section (4)(e)(i).

Section 5. Exceptions to Smoking Restrictions

This Ordinance does not apply to:

- a. Private homes, private residences, and private automobiles; except that this Ordinance shall apply if any such home, residence, or vehicle is being used for childcare or daycare or if a private vehicle is being used for the public transportation of children or as part of health care or daycare transportation;
- b. Limousines under private hire, which does not include ride-share services such as Uber or Lyft;

- c. The outdoor area of any business, not including licensed premises in any public right-of-way, and not including any areas specified in Section 3.b of this Ordinance; and
- d. A private, nonresidential building on a farm or ranch, as defined in C.R.S. § 39-1-102, that has annual gross income of less than five hundred thousand dollars.

Section 6. Responsibilities of Proprietors

The proprietor or person in charge of any place where smoking and/or electronic smoking device use is prohibited must make reasonable efforts to obtain compliance with this Ordinance by:

- a. Asking smokers to refrain from smoking if they are doing so in violation of any provision of this Ordinance.
- b. Affirmatively directing users where smoking and/or electronic smoking device use is permitted outdoors if such use is permitted.

Section 7. Enforcement; Violations

- a. It is unlawful for a person to smoke or use an electronic smoking device in an area where smoking or electronic smoking device use is prohibited pursuant to this Ordinance.
- b. It is unlawful for a person who owns, manages, operates, or otherwise controls the use of a premises subject to this Ordinance to violate any provision of this Ordinance.
- c. Each act in violation of this Ordinance is considered a separate offense. Each instance of smoking and/or electronic smoking device use in violation of this Ordinance is a separate violation. Each calendar day that a violation exists may also be a separate offense under this Ordinance.
- d. The Director may attempt to attain voluntary compliance before initiating other enforcement measures. Efforts at obtaining voluntary compliance may include phone calls, site visits, remediation plans, and issuance of warning letters and emails, for the purpose of educating a violator about the Ordinance.
- e. Determination of a Violation:
 - i. The Director may investigate any complaints of violations of this Ordinance.
 - ii. If the Director discovers a violation of this Ordinance, the Director may charge the violator for the actual cost to Boulder County Public Health ("BCPH") of any follow-up inspections to determine if the violation has been remedied.

iii. When the Director has reason to believe that a violation of this Ordinance exists on a premises that is not accessible to the public, and that entry onto the premises is necessary to verify the violation, the Director shall make a reasonable effort to contact the person who owns, manages, operates, or otherwise controls the use of a premises and request consent to enter and inspect the premises. If the person who owns, manages, operates, or otherwise controls the use of a premises cannot be contacted or if entry is refused, the Director may impose penalties.

iv. If the Director determines that a violation of this Ordinance exists, the Director may impose an administrative fine, task law enforcement personnel with assessing the penalties described in C.R.S. §§ 25-14-208 or -209 for violations of the Colorado Indoor Clean Air Act, as applicable, or seek injunctive relief. The Director must provide notice to the violator, which may be the person who owns, manages, operates, or otherwise controls the use of the premises, by U.S. Mail, first-class postage or via email of the penalties imposed.

f. Administrative fines. If the Director receives a third complaint about a premises within 12 months of the initial complaint and determines that a violation of this Ordinance has occurred, the Director may impose a \$500 fine.

g. Appeal

- i. Hearing Before the Board of County Commissioners. An individual assessed an administrative fine by the Director may file a written appeal with the Board of County Commissioners within 10 days of the imposition of such fine. The Board will schedule a hearing on the appeal, of which the individual will receive reasonable prior notice. The Board, based on the evidence presented at the hearing, may reverse, modify, or confirm the Director's determination. The Board's determination is a final decision appealable under Colorado Rule of Civil Procedure 106(a)(4).

Section 9. Severability Clause

If any provision of this Ordinance, or its application, is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications and, to this end, the provisions of this Ordinance are declared to be severable.

Section 10. Effective Date

This Board of County Commissioners finds, determines, and declares that this Ordinance shall be published in a local newspaper of general circulation and shall take effect thirty days after such publication. Until such time, the preceding ordinance, Ordinance No. 2004-2 shall remain in full force and effect.

Section 11. Revocation of Previous Ordinance

By adoption of this Ordinance No. 2021-1 and subject to Section 10, Ordinance No. 2004-2 is hereby repealed.

ADOPTED ON SECOND AND FINAL READING on May 25, 2021.

THE BOARD OF COMMISSIONERS
OF THE COUNTY OF BOULDER, COLORADO

Matt Jones

Matt Jones, Chair

ATTEST:

Brianna Barber

Clerk to the Board

CERTIFICATION AND ATTESTATION

I, Molly Fitzpatrick, Boulder County Clerk and Recorder, do hereby certify that the foregoing Ordinance No. 2021-1, entitled **“AN ORDINANCE REPEALING ORDINANCE NO. 2004-2, AND AMENDING AND REENACTING THESE RULES AND REGULATIONS PROHIBITING SMOKING AND ELECTRONIC SMOKING DEVICE USE IN PUBLIC PLACES AND PLACES OF EMPLOYMENT IN UNINCORPORATED BOULDER COUNTY”** is a true, correct and complete copy from the records in my office, that said ordinance was duly adopted by the Board of County Commissioners of the County of Boulder. The first reading of Ordinance 2021-1 took place on April 13, 2021, at a regular Board of County Commissioners Meeting. It was published in full in the Longmont Times-Call on April 17, 2021. The Ordinance was adopted on second reading at a public hearing held before the Board of County Commissioners on May 25, 2021. Further, one (1) copy of the Ordinance is now filed in the office of the Clerk and Recorder for the County of Boulder, Colorado, and may be inspected during regular business hours.

Molly Fitzpatrick

Clerk and Recorder