

**ORDINANCE NO. 1249**

**AN ORDINANCE OF THE TOWN OF BERTHOUD MUNICIPAL CODE TO ADDRESS THE USE OF SMOKING TOBACCO AND ELECTRONIC SMOKING DEVICES IN PUBLIC PLACES**

**WHEREAS**, secondhand smoke is more than an annoyance, it is a killer. It causes cancer, heart disease, strokes and many other illnesses. Secondhand smoke also exacerbates other medical conditions such as asthma, emphysema, heart failure and anemia; and

**WHEREAS**, in 2006 the State of Colorado Legislature enacted the Clean Indoor Air Act which prohibits smoking in most public places. Colorado's passage of the Clean Indoor Air legislation and smoke-free laws do not harm business and smoke-free ordinances do not affect restaurant and bar revenues; and

**WHEREAS**, smoking and the use of electronic smoking devices in areas which are used by, or open to the public, may adversely affect the public's health, safety, and welfare; and

**WHEREAS**, although electronic smoking devices do not contain conventional tobacco, users of such devices inhale vaporized, or aerosolized liquid nicotine or other liquids created by heat through an electronic ignition system and exhaled in a manner that simulates conventional smoking; and

**WHEREAS**, the United States Food and Drug Administration conducted laboratory tests on numerous brands of electronic smoking devices and found that, in addition to nicotine, they contain toxic chemicals and carcinogens; and

**WHEREAS**, concerns regarding the health impacts of secondhand and thirdhand smoke continues to rise among the citizens of Berthoud; and

**WHEREAS**, smoking and electronic smoking devices are not regulated within the Berthoud Municipal Code; and

**WHEREAS**, Town Board determines that it is in the best interest of Berthoud residents with respect to their health, safety, welfare and to protect from involuntary exposure to tobacco smoking and the smoke from electronic smoking devices to adopt an ordinance prohibiting smoking in public places.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF BERTHOUD, COLORADO:**

**Section 1.** That Section 17.5-10 be enacted of the Berthoud Municipal Code as follows:

### **17.5-10(1) Intent**

It is the intent of this chapter to protect the public health, safety and welfare by prohibiting smoking in areas which are used by or open to the public and in areas where persons are likely to gather in close proximity to one another unless such areas are designated as smoking areas pursuant to this chapter.

### **17.5-10(2) Definitions.**

As used in this chapter, the following words and terms shall be defined as follows, unless the context requires otherwise:

- 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 indoor 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. "Cigar-tobacco bar" means a bar that, in the calendar year ending December 31, 2005, generated at least five percent or more of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a "cigar-tobacco bar" and shall not thereafter be included in the definition regardless of sales figures.
- D. "Electronic Smoking Device" means any device that can be used to deliver nicotine or any other substance to the person inhaling from such device, including, but not limited to, e-cigarettes, e-cigars, e-pipes, vape pens, e-hookahs or any other similar product by any other name or descriptor. An electronic smoking device includes any component, part or accessory of such device whether or not sold separately, regardless of nicotine content or any other substance intended to be vaporized or aerosolized during the use of the device.
- E. "Employees" means any person who:
  - a. performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or
  - b. provides uncompensated work or services to a business or nonprofit entity.

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

- F. “Employer” means any person, partnership, association, corporation, or nonprofit entity that employs one 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.
- G. “Entryway” means the outside of the front or main doorway leading into a building or facility that is not exempted from this chapter under 17.5-10(4). “Entryway” also includes the area of public or private property within a fifteen (15) foot radius outside of the doorway.
- H. “Environmental tobacco smoke,” “ETS,” or “secondhand smoke” means the complex mixture formed from the escaping smoke of a burning tobacco product or marijuana product or the escaping vapor or aerosol of an electronic smoking device, also known as “side stream smoke,” and smoke, vapor or aerosol exhaled by the smoker.
- I. “Food service establishment” means any indoor 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.
- J. “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.
- K. “Marijuana” means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. Marijuana shall also have the same meaning as in section 16(2)(f) of article XVIII of the Colorado State Constitution.
- L. “Person” means any individual including minors under the age of 18, corporation, government, or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.
- M. “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.
- N. “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; or
  3. any other separate corporate instrumentality or unit of state or local government.
- O. "Public meeting" means any meeting open to the public pursuant to any town ordinance and Colorado Revised Statute 24-6-4, or any other law of this state.
- P. "Smoke-free work area" means an indoor area in a place of employment where smoking is prohibited under this chapter.
- Q. "Smoke" means the release of gasses, particles, vapors or aerosols into the air from burning, heating, or activation of any device, including, but not limited to, a cigarette, electronic smoking device, e-cigarette, e-hookah or any other product by name or descriptor when the apparent or usual purpose of burning, heating, or activation of the device is human inhalation.
- R. "Smoking" means the act of burning, heating, activation, or carrying of any device, including, but not limited to, a cigarette, cigar, pipe, hookah, or electronic smoking device, electronic cigarette, vape pen, e-hookah or similar device by any other product name or descriptor, that results in the release of smoke, vapors or aerosol when the apparent or usual purpose of the burning, heating or activation of the device is human inhalation.
- S. "Tobacco" means cigarettes, cigars, cheroots, stogies, and perique; 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, electronic smoking device or otherwise, or both for chewing and smoking. "Tobacco" also includes cloves, marijuana, and any other plant matter or product that is packaged for smoking.
- T. "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.

- U. "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.

**17.5-10(3) General Smoking Restrictions**

A: In order to reduce the levels of exposure to environmental tobacco smoke, marijuana smoke and smoke or aerosol generated from electronic smoking devices, and secondhand smoke, smoking shall not be permitted, and no person shall smoke in any indoor area, 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 chapter, 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 of 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 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 retirement facilities, publicly owned housing facilities, and nursing homes, not including any resident's private residential quarters;
22. Public Buildings; Public Parks, Public Trails, City Owned Facilities.
23. Auditoria;
24. Theaters;
25. Museums;

26. Libraries;
27. To the extent not otherwise provided in Colorado Revised Statute 25-14-103.5, public and nonpublic schools;
28. Other educational and vocational institutions; and
29. The entryways of all buildings and facilities listed in paragraphs (1) to (28) of this subsection A.

B. A cigar-tobacco bar shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005. A cigar-tobacco bar shall display signage in at least one conspicuous place and at least four inches by six inches in size stating: "Smoking allowed. Children under eighteen years of age must be accompanied by a parent or guardian."

#### **17.5-10(4) Exceptions to Smoking Restrictions**

A. This chapter shall not apply to:

1. Private homes, private residences and private automobiles; except that this chapter shall apply if any such home, residence or vehicle is being used for child care or daycare or if a private vehicle is being used for the public transportation of children or as a part of health care or day care transportation;
2. Limousines under private hire;
3. A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel room in such hotel or motel does not exceed twenty-five percent;
4. Any retail tobacco business;
5. A cigar-tobacco bar;
6. The outdoor area of any business;
7. A place of employment that is not open to the public and that is under the control of an employer that employs three or fewer employees;
8. 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;
9. The areas of assisted living facilities that are designated for smoking for residents, are fully enclosed and ventilated and to which access is restricted to the residents or their guests. As used in this subsection (9), "assisted living facility" means a nursing facility, as that term is defined in Colorado Revised Statute 25.5-4-103, and an assisted living residence, as that term is defined in Colorado Revised Statute 25-27-102.

#### **17.5-10(5) Operational Prohibitions**

A. The owner or manager of any place not specifically listed in 17.5-10, including a place otherwise exempted under 17.5-10, 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 chapter.

B. If the owner or manager of a place not specifically listed in 17.5-10, including a place otherwise exempted under 17.5-10, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by 17.5-10, the owner or manager shall post a sign or signs in the smoke free work area as provided in subsection A of this section.

**17.5-10(6) Scope**

This ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law.

**17.5-10(7) Violations**

A. It is unlawful for a person who owns, manages, operates, or otherwise controls the use of a premises subject to this chapter to violate any provision of this chapter.

B. It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to this chapter.

C. It is unlawful for a person under the age of eighteen (18) years to be in possession of tobacco products, smoking and electronic smoking devices.

D. Any person who shall be convicted on a violation of this Code shall be fined in a sum of not less than \$1.00 nor more than \$300.00, or imprisoned for a term not exceeding ninety (90) days, or by both fine and imprisonment for each offense. Where any violation is a continuing offense, each day that the violation continues shall be considered and held to be a separate and distinct offense. (C.R.S. 1963, 139-32-1 (79), 139-33-1)

PASSED, APPROVED, ADOPTED and ORDERED PUBLISHED on this 11 day of

September, 2018.

ATTEST:

Michelle J Adams  
Town Clerk

on behalf of Town Clerk.



William Karspeck  
William Karspeck, Mayor