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ORDINANCE NO. 8015

AN ORDINANCE AMENDING CHAPTER 6-4, B.R.C. 1981, ADDING A NEW SECTION 6-4-3.5 "SMOKING PROHIBITED IN PUBLIC PLACES," INCLUDING ELECTRONIC SMOKING DEVICES IN THE DEFINITION OF SMOKING, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Chapter 6-4, "Regulation of Smoking," B.R.C. 1981, is amended as follows:

6-4-1. Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by prohibiting smoking in designated public places and prohibiting smoking in buildings open to the public or serving as places of work, except in certain buildings or parts of buildings where the council has determined that smoking should not be prohibited, and fixing the requirements of property owners in this regard. ~~In addition,~~ this chapter also regulates access of minors to tobacco products.

In addition, the city council finds that electronic smoking devices are battery operated devices designed to deliver nicotine, flavor, and/or other substances through a vapor inhaled by the user and that use of electronic smoking devices has increased significantly in recent years. The city council further finds that electronic smoking devices often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products.

City council finds that the use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment.

Therefore, the purpose of this chapter is also to protect the public health, safety, and welfare by discouraging the use of electronic smoking devices around non-users, especially children; by protecting the public from exposure to secondhand byproducts of electronic smoking devices where they live, work, and play; by facilitating uniform and consistent enforcement of smoke-free air laws; by reducing the potential for re-normalizing smoking in public places and places of employment; and by reducing the potential for children to associate the use of electronic smoking devices with a normative or healthy lifestyle.

6-4-2. Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

1 "Bar" means any indoor area that is operated and licensed as a tavern liquor license under Article
2 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.

3 "Boulder High School Area" means the entire area between the east curb line of Broadway
4 Street, the south curb line of Arapahoe Avenue, the west curb line of 17th Street, and the north
5 curb line of University Avenue, provided, however, that this definition shall not apply to the
6 public right of way associated with Hillside Road, to moving vehicles traveling on any public
7 right of way in the area described, or unless otherwise prohibited by this Chapter, to real property
8 that is privately owned.

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

12 "City Municipal Campus," as used in this Chapter shall mean the entire area between the east
13 curb line of 13th Street, to the east curb line of 9th Street and between the north curb line of
14 Arapahoe Avenue and the south curb line of Canyon Boulevard, provided, however, that this
15 definition shall not apply to moving vehicles on Broadway or 13th Street or, unless otherwise
16 prohibited by this Chapter, to real property that is privately owned.

17 "Cigar-tobacco bar" means a bar that, in the calendar year ending December 31, 2005, generated
18 at least five percent or more of its total annual gross income or fifty thousand dollars in annual
19 sales from both the onsite sale of tobacco products and the rental of onsite humidors. In any
20 calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total
21 annual gross income or fifty thousand dollars in annual sales both from the onsite sale of tobacco
22 products and the rental of onsite humidors, shall not be defined as a "cigar-tobacco bar" and shall
23 not thereafter be included in the definition, regardless of sales figures.

24 "Dwelling," as used in this chapter, means any place used primarily for sleeping overnight and
25 conducting activities of daily living, not including a hotel or motel room or suite or bed and
breakfast.

"Downtown Boulder Business Improvement District" is as depicted in Appendix 8-B of Chapter
8-6.

20 "Electronic smoking device" means an electric or battery-operated device, the use of which
21 resembles conventional smoking, which can be used to deliver substances, including, but not
22 limited to, nicotine, tobacco, or marijuana, to the person using such device. Electronic smoking
23 device shall include, without limitation, an electronic cigarette, cigar, cigarillo, pipe, or hookah.
24 Electronic smoking device shall not include any product approved by the food and drug
25 administration as a drug or medical device that is used in accordance with its purpose.

"Enclosed area," as used in this chapter, means an area which contains a structure made up of a
roof and two or more walls regardless of the composition of the walls or roof. This includes, but
is not limited to, the following: park shelters, event tents, bus shelters, patio awnings and
canopies.

1 “Entryway” means the outside of any doorway leading into and exiting from a building or
2 enclosed area. “Entryway” also includes the area of public or private property within ~~fifteen~~
twenty-five feet of the doorway.

3 “Mall” means the Downtown Boulder Mall as defined in Ordinance No. 4267, as amended by
4 Ordinance No. 4543 and any successor ordinance.

5 “Public,” as used in this Chapter shall mean any property that is city owned; city maintained; city
owned and leased to others; designated by the city as a path or trail for bicycles or pedestrians; or
6 a transit stop as defined in this section.

7 “Public conveyance” means any motor vehicle or other means of conveyance licensed by the
8 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.

9 “Smoke” or “smoking” means the lighting of any cigarette, cigar, ~~or~~, pipe or activation of an
10 electronic smoking device, or the possession of any lighted cigarette, cigar, ~~or pipe~~, or activated
electronic smoking device regardless of its composition.

11 “Tobacco product” means cigarettes, cigars, cheroots, stogies, periques, and other products
12 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
13 chewing tobaccos, 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 both chewing or for
14 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.

15 “Tobacco store” means a retail business open to the public where alcohol is not sold, if more
16 than eighty-five percent 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.

17 “Transit Stop,” as used in this chapter, means a public conveyance passenger waiting area
18 designated by signage attached to a post and the public right of way around the stop, including
19 but not limited to the bus shelter, and bench.

20 **6-4-3. Smoking Prohibited Within Buildings and Enclosed Areas.**

- 21 (a) No person shall smoke within any building or enclosed area except in one of the
following locations:
- 22 (1) In any dwelling. This exception does not extend to a city owned dwelling;
23 or a lobby, common elevator, common hallway or any other common area
of a building containing attached dwelling units;
- 24 (2) In a hotel/motel room or bed and breakfast guest room rented to one or
25 more guests if the total percentage of such smoking rooms in such
hotel/motel or bed and breakfast does not exceed twenty-five percent. This

1 exception does not extend to a lobby, common elevator, common hallway
2 or any other common area of a hotel/motel or bed and breakfast;

- 3 (3) In a tobacco store;
- 4 (4) In a cigar-tobacco bar which existed as of December 31, 2005, provided
5 that it does not expand its size or change its location from the size and
6 location in which it existed as of December 31, 2005;
- 7 (5) In a building or on property which is occupied by the state of Colorado,
8 the United States government, Boulder County or the Boulder Valley
9 School District which was not designated as a smoke free area by the
10 manager of such area. The city council urges such governmental entities to
11 designate smoke free areas in order to promote full access by the public
12 and protect the health of employees;
- 13 (6) In private homes, private residences and private automobiles; not to
14 include any such home, residence or vehicle being used for child care or
15 day care or a private vehicle being used for the public transportation of
16 children or as part of health care or day care transportation; or
- 17 (7) In a limousine under private hire.
- 18 (b) Unless excepted under subsection (a) of this section, the prohibitions of this
19 chapter apply to all buildings or enclosed areas which serve as places of work, but
20 this subsection (b) neither enlarges nor diminishes the meaning of subsection (a)
21 of this section.
- 22 (c) Nothing in this chapter shall prevent an owner, lessee, principal manager or
23 person in control of any place, including, without limitation, any motor vehicle,
24 outdoor area or dwelling, from prohibiting smoking completely in such place, and
25 no person shall fail to abide by such a private prohibition.

18 **6-4-3.5. Smoking Prohibited in Public Areas.**

19 No person shall smoke in a public area:

- 20 (a) in the Downtown Boulder Business Improvement District including the Mall;
- 21 (b) on any park, parkland or facility;
- 22 (c) on any open space and mountain parks property;
- 23 (d) on any trail, path or multi-use path and within twenty-five feet of curtilage to any
24 trail, path or multi-use path;
- 25 (e) within twenty-five feet of a library facility;

- 1 (f) within twenty-five feet of a transit stop;
2 (g) within the City Municipal Campus; and
3 (h) within the Boulder High School Area as defined in this Chapter.

4 **6-4-5.5 Smoking Prohibited ~~on the Mall~~ Outdoors at Restaurants and Taverns.**

5 No person shall smoke ~~on the Mall~~ outdoors at a restaurant or tavern where food or beverages
6 are served or consumed.

7 **6-4-6. Signs Required to Be Posted.**

8 To advise persons of the existence of “No Smoking” or “Smoking Permitted” areas, no owner,
9 lessee, principal manager or person in control of a building, enclosed area or an establishment
10 within a building shall fail to post signs with letters no less than one inch high or symbols no less
11 than three inches high as follows:

- 12 (1) Where smoking is prohibited in the entire establishment, a sign using the words
13 “No Smoking” or the international no-smoking symbol shall be posted
14 conspicuously either on all public entrances or in a position clearly visible on
15 entry into the building, enclosed area or establishment.
- 16 (2) Where certain areas are designated as smoking areas pursuant to this chapter, a
17 sign using the words “No Smoking Except in Designated Areas” shall be posted
18 conspicuously either on all public entrances or in a position clearly visible on
19 entry into the building or establishment.
- 20 (3) In tobacco stores, a sign shall be posted conspicuously either on all public
21 entrances or in a position clearly visible on entry into the building or
22 establishment using the words “Smoking Permitted: children under eighteen years
23 of age must be accompanied by a parent or guardian.”
- 24 (4) A sign using the words “No Smoking within fifteen feet of the entryway” shall be
25 posted conspicuously on all entryways of buildings, enclosed areas or
26 establishments.
- 27 (5) The requirements of this section do not apply to an exempt dwelling or any public
28 areas designated in section 6-4-3.5.

29 **Section 2.** This ordinance is necessary to protect the public health, safety, and welfare of
30 the residents of the city, and covers matters of local concern.

