

ORDINANCE NO. 2104

AN ORDINANCE AMENDING CERTAIN SECTIONS OF CHAPTER 8-02 OF THE BROOMFIELD MUNICIPAL CODE RELATING TO SMOKING PROHIBITED

WHEREAS, HB 19-1076, effective July 1, 2019, amends the Colorado Clean Indoor Air Act (the "Act"), C.R.S. §§ 25-14-201-209, that regulates smoking in most indoor areas open to the public, in public meetings, in food service establishments, and in places of employment; and

WHEREAS, the Act prohibits a local jurisdiction from adopting a local regulation of smoking that is less stringent than the Act; and

WHEREAS, this ordinance amends the City Municipal Code to be consistent with, and at least as stringent as, the Act; and

WHEREAS, according to the U.S. Surgeon General, there is no safe level of exposure to secondhand smoke and even brief exposure to secondhand smoke can be harmful to health and;

WHEREAS, vaping and smoking in public sends a message to youth that it is safe, acceptable and normal; and

WHEREAS, studies show that adolescents who live in communities with strong smoke-free protections are less likely to smoke than adolescents who live in communities with weaker protections; and

WHEREAS, the aerosol or vapor from Electronic Smoking Devices (e-cigarettes) is not harmless water vapor and not as safe as clean air; and

WHEREAS, the City Council finds and determines that these regulations promote the health, safety, and welfare of the citizens of Broomfield, Colorado.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY AND COUNTY OF BROOMFIELD, COLORADO:

Section 1. Sections 8-02-010 through 8-02-060 of the Broomfield Municipal Code are amended to read as follows:

*Bold type indicates new material to be added to the Broomfield Municipal Code.
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8-02-010 - Legislative Intent:

The purpose of this chapter is to protect the public health by prohibiting smoking **and use of electronic smoking devices** in certain common areas where the public is likely to gather in close proximity and requiring no-smoking areas in certain public places.

8-02-020 - Definitions.

The following terms and phrases shall have the following meanings unless the context clearly indicates otherwise.

- (A) *Alcoholic beverages* means any fermented malt beverage, as defined in section 5-32-030 of this code, or any malt, vinous, or spirituous liquor as defined in section 5-28-030 of this code.
- (B) *Commercial establishment* means all places of business to which the public is invited or in which the public is permitted, except restaurants and taverns.
- (C) *Employer* means any person, partnership, corporation, including municipal corporation, which employs more than four persons.
- (D) **“Electronic Smoking Device” or “ESD” means any product that contains or delivers nicotine or any other substance intended for human consumption and that can be used by a person to enable the inhalation of vapor or aerosol from the product and includes but is not limited to a product manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or any other product name or descriptor. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. Electronic smoking device does not include a humidifier or similar device that emit only water vapor, or an inhaler, nebulizer, or vaporizer that is approved by the Federal Food and Drug Administration for the delivery of medication.**
- (E) *Public*, used as a noun, refers to the people at large. *Public*, used as an adjective, refers to a place, use, or activity which is open or accessible to any member of the public.
- (F) *Restaurant* means an establishment licensed as a hotel/restaurant or brew pub under the liquor laws of the State of Colorado, or any establishment engaged in the sale of prepared food and beverages and has seating for on-premises consumption of food.
- (G) ~~*Smoke* or *smoking* means the lighting of any cigarette, cigar, or pipe, or the possession of any lighted cigarette, cigar, or pipe, regardless of the composition of the burning material.~~ **inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe or any other lighted or heated tobacco, plant product, or any other substance**

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intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an ESD.

(H) *Tavern* means an establishment licensed as a tavern under the liquor laws of the State whose primary business is the sale of alcoholic beverages by the drink.

(I) **Transit waiting area - an area where people wait for transportation.**

8-02-030 Prohibition of smoking in certain public places

No person shall smoke in any of the following locations:

- ~~(A) In any elevator or restroom while such elevator or restroom is available for public use;~~
- ~~(B) In any theater, auditorium, or room in which a public meeting or hearing is being conducted, including recesses;~~
- ~~(C) In any theater, auditorium, or room in which a motion picture is being exhibited, or in which a live performance of theater, ballet, or opera or a live concert is being presented, if such event is open to the public, whether or not payment for admission is required; except that where meals or alcoholic beverages by the drink are sold during the actual performance or presentation, the provisions of section 8-02-040, applicable to restaurants, shall apply in lieu of this subsection;~~
- ~~(D) In any auditorium, arena, or room being used for athletic or sporting activities by or for the public or for conducting an athletic or sports event and exhibiting it to the public, whether or not payment for admission is required, including bowling alleys and pool halls;~~
- ~~(E) In any room being used for the principal purpose of providing instruction or training in a trade, craft, business, skill, or athletic or sports activity, or of providing child care or primary, secondary, or higher education;~~
- ~~(F) In any area of a hospital, doctor's office, or other health care facility open to the general public, including waiting rooms, public hallways, and lobbies, except specially designated and physically separate smoking areas;~~
- ~~(G) In any area of a grocery store, retail store, or other commercial establishment open to the general public. Retail stores which are primarily engaged in the sale of tobacco and tobacco products shall be exempt from this provision;~~
- ~~(H) In any area of a museum, gallery, or library open to the general public;~~
- ~~(I) In any lobby, hallway, corridor, or stairway which is open to the general public, except that up to 25% of a lobby may be designated as a smoking area;~~
- ~~(J) In any building or structure owned or leased by the city for any municipal purpose;~~

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- ~~(K) In any outdoor service line where more than one person is giving or receiving services of any kind, whether or not such service involves the exchange of money;~~
- ~~(L) Within twenty feet of the front entrances, operable windows, passageways, and ventilation systems of smoke-free establishments, except for passersby who do not stop;~~
- (A) In any location prohibited by Colorado law;**
- (B) Within any park, as defined in B.M.C. 12-28-030;**
- (C) Within any public transit waiting area;**
- (D) At any public event that requires a city permit; or**
- (E) Within any outdoor area being used for an athletic or sporting activity by or for the public.**
- (F) In any outdoor patio, dining or bar areas open to the public.**

~~08-02-040 Smoking prohibited in restaurants and taverns:~~

~~Smoking shall be prohibited in restaurants and taverns, provided, however, that a restaurant or tavern may provide a smoking area to accommodate patrons who request seating in such area so long as it constitutes no more than 40% of the floor area open to the public, and meets the following criteria:~~

~~8-02-050 - Private functions:~~

~~Smoking is allowed in private drinking establishments operated by local or national chapters of nonprofit fraternal organizations that require exclusive, nonpublic membership and which are licensed as a club in accordance with the liquor laws of the State, and in rooms or halls being used exclusively for a private social or business function at the discretion of the sponsor of the function.~~

~~8-02-060 - Places of employment~~

- ~~(A) Within 120 days of the effective date of the ordinance codified herein, each employer within the city shall adopt, implement, and maintain a written smoking policy which shall specify whether and to what extent smoking is allowed on the employer's premises.~~
- ~~(B) The smoking policy shall be given to current employees upon its adoption, and to future employees when they are hired.~~

Section 2. This ordinance shall be effective January 1, 2020.

INTRODUCED AND APPROVED after first reading on September 24, 2019, and ordered published in full.

INTRODUCED A SECOND TIME and approved on October 22, 2019, and further ordered published.

THE CITY AND COUNTY OF BROOMFIELD,
COLORADO



Mayor

ATTEST:



City and County Clerk



APPROVED AS TO FORM:



City and County Attorney

First Publication: September 29, 2019

Second Publication: October 27, 2019

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