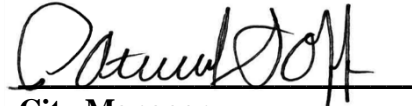


**REQUEST FOR CITY COUNCIL ACTION****TITLE: COUNCIL BILL NO. 08-2020 – AN ORDINANCE  
AMENDING ARTICLE II OF CHAPTER 9 OF THE WHEAT  
RIDGE CODE OF LAWS CONCERNING SMOKING IN  
PUBLIC PLACES**

- |   |   |
|---|---|
| <input type="checkbox"/> PUBLIC HEARING | <input checked="" type="checkbox"/> ORDINANCES FOR 1 <sup>ST</sup> READING (04/27/2020) |
| <input type="checkbox"/> BIDS/MOTIONS   | <input type="checkbox"/> ORDINANCES FOR 2 <sup>ND</sup> READING (05/11/2020)            |
| <input type="checkbox"/> RESOLUTIONS    |   |

QUASI-JUDICIAL:       YES                       NO**City Attorney****City Manager****ISSUE:**

Article II of Chapter 9 of the Wheat Ridge Code of Laws is being amended to reflect changes to the state smoking law, upon which the City's previous ordinance was based.

**PRIOR ACTION:**

Council last amended the smoking ordinance through Ordinance No. 1584 in 2015.

**FINANCIAL IMPACT:**

None

**BACKGROUND:**

HB19-1076 made some significant changes to C.R.S. 25-14-202, et seq. (Colorado Clean Indoor Air Act) including, but not limited to:

- Definition for Electronic Smoking Devices (ESDs) was added to reflect the use of ESDs (i.e., inhaling, exhaling, synthetics, lighted/heated cigars, cigarettes, etc.);
- Significantly changing the definition of "Smoking" to conform with the new definition of ESDs;

- Increasing the entryway distance requirement from fifteen (15) feet to twenty-five (25) feet.
- Changing references to "environmental tobacco smoke" to "secondhand smoke" throughout;
- Removing, amending, or clarifying certain General Smoking Restrictions;
- Deleting certain Exceptions to Smoking Restrictions; and
- Significant deletions to the paragraphs in the "Optional Prohibitions" section.

**RECOMMENDATIONS:**

Staff recommends approval of the ordinance.

**RECOMMENDED MOTION:**

“I move to approve Council Bill No. 08-2020, an ordinance Amending Article II of Chapter 9 of the Wheat Ridge Code of Laws Concerning Smoking in Public Places upon first reading, order it published, public hearing set for Monday, May 11, 2020 at 7:00 p.m. as a virtual meeting, and that it take effect 15 days after final publication.

Or

“I move to postpone indefinitely Council Bill No. 08-2020, an ordinance Amending Article II of Chapter 9 of the Wheat Ridge Code of Laws Concerning Smoking in Public Places for the following reason(s)\_\_\_\_\_.”

**REPORT PREPARED/REVIEWED BY:**

Gerald Dahl, City Attorney

Patrick Goff, City Manager

**ATTACHMENTS:**

1. Council Bill No. 08-2020
2. HB19-1076

**CITY OF WHEAT RIDGE, COLORADO**  
**INTRODUCED BY COUNCIL MEMBER \_\_\_\_\_**  
**COUNCIL BILL NO. 08**  
**ORDINANCE NO. \_\_\_\_\_**  
**Series of 2020**

**TITLE: AN ORDINANCE AMENDING ARTICLE II OF CHAPTER 9 OF  
THE WHEAT RIDGE CODE OF LAWS CONCERNING  
SMOKING IN PUBLIC PLACES**

**WHEREAS**, the City of Wheat Ridge, Colorado (the “City”), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

**WHEREAS**, pursuant to its home rule authority and C.R.S. § 31-15-401, the City, acting through its City Council (the “Council”), is authorized to adopt rules and regulations prohibiting certain conduct and defining general offenses that harm or pose a threat to the public health, safety or welfare; and

**WHEREAS**, in the exercise of that authority Council has previously adopted Article II of Chapter 9 concerning smoking in public places; and

**WHEREAS**, the Council finds that the smoking of tobacco or of any other plant or substance in certain areas is a form of air pollution that threatens the public health, safety and welfare, and that secondhand smoke is a cause of disease, including lung cancer, heart disease, respiratory infection and decreased respiratory function and, as such, there is no safe level of exposure to secondhand smoke; and

**WHEREAS**, the Council finds that the legislature of the State of Colorado (the “State”) has revised the Colorado Clean Indoor Air Act in Part 2 Article 14 of Title 25, Colorado Revised Statutes (the “Act”), and that the Act authorizes local jurisdictions to adopt local smoking regulations that are no less stringent than the Act’s provisions; and

**WHEREAS**, the Council desires to continue to prohibit smoking in most areas within the City that are open to the public in a manner that is not less stringent than the provisions in the Act; and

**WHEREAS**, the Council wishes to amend Article II of Chapter 9 of the Code to reflect recent changes to the Act.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:**

**Section 1.** The following sections or subsections of Article II of Chapter 9 of the Wheat Ridge Code of Laws, concerning smoking in public places, are hereby amended as follows:

## ARTICLE II – SMOKING IN PUBLIC PLACES

### Sec. 9-21. Legislative intent.

The City Council finds, determines and declares that it is in the best interest of the people of this City to protect THE PUBLIC from involuntary exposure to EMISSIONS FROM SECONDHAND smoke AND ELECTRONIC SMOKING DEVICES (ESD) in most areas open to the public, IN public meetings, IN food service establishments, and IN places of employment. ESD EMISSIONS CONSIST OF ULTRAFINE PARTICLES THAT ARE SIGNIFICANTLY MORE HIGHLY CONCENTRATED THAN PARTICLES WITHIN CONVENTIONAL TOBACCO SMOKE. THERE IS CONCLUSIVE EVIDENCE THAT MOST ESDs CONTAIN AND EMIT NOT ONLY NICOTINE BUT ALSO MANY OTHER POTENTIALLY TOXIC SUBSTANCES AND THAT ESDs INCREASE AIRBORNE CONCENTRATIONS OF PARTICULATE MATTER AND NICOTINE IN INDOOR ENVIRONMENTS. IN ADDITION, STUDIES SHOW THAT PEOPLE EXPOSED TO ESD EMISSIONS ABSORB NICOTINE AT LEVELS COMPARABLE TO THE LEVELS EXPERIENCED BY PASSIVE SMOKERS. MANY OF THE ELEMENTS IDENTIFIED IN ESD EMISSIONS ARE KNOWN TO CAUSE RESPIRATORY DISTRESS AND DISEASE, AND ESD EXPOSURE DAMAGES LUNG TISSUES. FOR EXAMPLE, HUMAN LUNG CELLS THAT ARE EXPOSED TO ESD AEROSOL AND FLAVORINGS SHOW INCREASED OXIDATIVE STRESS AND INFLAMMATORY RESPONSES. Therefore, the City Council hereby declares that the purpose of this Article is to preserve and improve the health, comfort, and environment of the people of this City by PROTECTING THE RIGHT OF THE PEOPLE TO BREATHE CLEAN SMOKE-FREE AIR. NOTHING IN THIS ARTICLE IS INTENDED TO INHIBIT A PERSON'S ABILITY TO TAKE MEDICINE USING AN INHALER OR SIMILAR DEVICE, NOR TO PREVENT AN EMPLOYER OR BUSINESS OWNER FROM MAKING A REASONABLE ACCOMMODATION FOR THE MEDICAL NEEDS OF AN EMPLOYEE, CUSTOMER, OR OTHER PERSON IN ACCORDANCE WITH THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990," AS AMENDED, 42 U.S.C. SEC. 12101 ET SEQ..

### Sec. 9-22. Definitions.

The following definitions are amended or enacted:

*ASSISTED LIVING RESIDENCE* OR "RESIDENCE" MEANS A RESIDENTIAL FACILITY THAT MAKES AVAILABLE TO THREE OR MORE ADULTS NOT RELATED TO THE OWNER OF SUCH FACILITY, EITHER DIRECTLY OR INDIRECTLY THROUGH AN AGREEMENT WITH THE RESIDENT, ROOM AND BOARD AND AT LEAST THE FOLLOWING SERVICES: PERSONAL SERVICES; PROTECTIVE OVERSIGHT; SOCIAL CARE DUE TO IMPAIRED CAPACITY TO LIVE

INDEPENDENTLY; AND REGULAR SUPERVISION THAT SHALL BE AVAILABLE ON A TWENTY-FOUR-HOUR BASIS, BUT NOT TO THE EXTENT THAT REGULAR TWENTY-FOUR HOUR MEDICAL OR NURSING CARE IS REQUIRED. THE TERM "ASSISTED LIVING RESIDENCE" DOES NOT INCLUDE ANY FACILITY LICENSED IN THE STATE AS A RESIDENTIAL CARE FACILITY FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES, OR ANY INDIVIDUAL RESIDENTIAL SUPPORT SERVICES THAT ARE EXCLUDED FROM LICENSURE REQUIREMENTS PURSUANT TO RULES ADOPTED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

*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.

*ELECTRONIC SMOKING DEVICE OR "ESD"*

- (a) MEANS ANY PRODUCT, OTHER THAN A PRODUCT DESCRIBED IN SUBSECTION (4.5)(c) OF THIS SECTION, 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;
- (b) INCLUDES ANY PRODUCT DESCRIBED IN SUBSECTION (4.5)(a) OF THIS SECTION AND ANY SIMILAR PRODUCT OR DEVICE, WHETHER MANUFACTURED, DISTRIBUTED, MARKETED, OR SOLD AS AN E-CIGARETTE, E-CIGAR, E-PIPE, E-HOOKAH, OR VAPE PEN OR UNDER ANY OTHER PRODUCT NAME OR DESCRIPTOR; AND
- (c) DOES NOT INCLUDE:
  - (1) A HUMIDIFIER OR SIMILAR DEVICE THAT EMITS ONLY WATER VAPOR; OR
  - (2) AN INHALER, NEBULIZER, OR VAPORIZER THAT IS APPROVED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION FOR THE DELIVERY OF MEDICATION.

*Entryway* means the outside of any doorway leading into the indoor area of any building or facility that is not exempted from this Article under Section 9-24. *Entryway* also includes the area of public or private property within TWENTY-FIVE (25) FEET of the doorway.

**NURSING FACILITY** MEANS A FACILITY, OR A DISTINCT PART OF A FACILITY, THAT MEETS THE STATE NURSING HOME LICENSING STANDARDS IN C.R.S. § 25-1.5-103(1)(A)(I), IS MAINTAINED PRIMARILY FOR THE CARE AND TREATMENT OF INPATIENTS UNDER THE DIRECTION OF A PHYSICIAN, AND MEETS THE REQUIREMENTS IN 42 U.S.C. SEC. 1396R FOR CERTIFICATION AS A QUALIFIED PROVIDER OF NURSING FACILITY SERVICES. THE PATIENTS IN SUCH A FACILITY REQUIRE SUPPORTIVE, THERAPEUTIC, OR COMPENSATING SERVICES AND THE AVAILABILITY OF A LICENSED NURSE FOR OBSERVATION OR TREATMENT ON A TWENTY-FOUR-HOUR BASIS. NURSING CARE MAY INCLUDE TERMINAL CARE; EXTENSIVE ASSISTANCE OR THERAPY IN THE ACTIVITIES OF DAILY LIVING; CONTINUAL DIRECTION, SUPERVISION, OR THERAPY; EXTENSIVE ASSISTANCE OR THERAPY FOR LOSS OF MOBILITY; NURSING ASSESSMENT AND SERVICES THAT INVOLVE ASSESSMENT OF THE TOTAL NEEDS OF THE PATIENT, PLANNING OF PATIENT CARE, AND OBSERVING, MONITORING, AND RECORDING THE PATIENT'S RESPONSE TO TREATMENT; AND MONITORING, OBSERVING, AND EVALUATING THE DRUG REGIMEN. "NURSING FACILITY" INCLUDES PRIVATE, NONPROFIT, OR PROPRIETARY INTERMEDIATE NURSING FACILITIES FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

*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" ALSO INCLUDES THE USE OF AN ESD. , heating, electrical ignition or vaporization of a similar product, , nicotine, , any other substance, or any combination thereof, and the inhaling and exhaling of environmental smoke created thereby.

**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, INCLUDING ESDS, EITHER AT WHOLESALE OR RETAIL, AND IN WHICH THE SALE, MANUFACTURE, OR PROMOTION OF OTHER PRODUCTS IS MERELY INCIDENTAL.

**Sec. 9-23. General smoking restrictions.**

(a) Except as provided in Section 9-24, , smoking IS not permitted and A person shall NOT smoke in any indoor area, including:

(11) (A) Any place of employment that is not exempted;

(B) In the case of employers who own facilities otherwise exempted from this Article, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe SECONDHAND smoke AND EMISSIONS FROM ELECTRONIC SMOKING DEVICES. Every employee shall have a right to work in an area free from SECONDHAND smoke;

(17) Bowling alleys;

(18) Billiard or pool halls;

(19) Facilities in which games of chance are conducted;

(20) The common areas of retirements facilities, publicly owned housing facilities, and, , nursing homes, not including any resident's private residential quarters;

(21) Public buildings;

(22) Auditoria;

(23) Theatres;

(24) Museums;

(25) Libraries;

(26) To the extent not otherwise provided in Section 25-14-103.5, C.R.S., public and nonpublic schools;

(27) Other educational and vocational institutions;

(28) Retail smoking accessory businesses;

(29) A CIGAR-TOBACCO BAR:

(a) SHALL NOT EXPAND ITS SIZE OR CHANGE ITS LOCATION FROM THE SIZE AND LOCATION IN WHICH IT EXISTED AS OF DECEMBER 31, 2005; AND

(b) SHALL PROHIBIT ENTRY BY ANY PERSON UNDER EIGHTEEN YEARS OF AGE AND 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 MAY NOT ENTER."

(30) HOTEL AND MOTEL ROOMS;

(31) ASSISTED LIVING FACILITIES, INCLUDING NURSING FACILITIES, AS DEFINED IN SECTION 9-22;

(32) THE ENTRYWAYS OF ALL BUILDINGS AND FACILITIES LISTED IN SECTION 9-24.

(33) A RETAIL TOBACCO BUSINESS:

(a) SHALL PROHIBIT ENTRY BY ANY PERSON UNDER EIGHTEEN YEARS OF AGE; AND

(b) SHALL DISPLAY SIGNAGE IN AT LEAST ONE CONSPICUOUS PLACE AND AT LEAST FOUR INCHES BY SIX INCHES IN SIZE STATING EITHER:

(1) "SMOKING ALLOWED. CHILDREN UNDER EIGHTEEN YEARS OF AGE MAY NOT ENTER."; OR

(2) IN THE CASE OF A RETAIL TOBACCO BUSINESS THAT DESIRES TO ALLOW THE USE OF ESDs BUT NOT OTHER FORMS OF SMOKING ON THE PREMISES, "VAPING ALLOWED. CHILDREN UNDER EIGHTEEN YEARS OF AGE MAY NOT ENTER."

(34) The entryways of all buildings and facilities listed in SUBSECTIONS (a)1 through (a)(33) of this Section;

**Sec. 9-24. Exceptions to smoking restrictions.**

(a) This Article shall not apply to:

(4) The smoking of tobacco within outdoor seating and patio areas provided by food service establishments and bars;

(5) The smoking of tobacco within the outdoor area of any business not specified under subsection (5) above, except to the extent that the



outdoor area of such business is within TWENTY-FIVE (25) feet of an entryway;

(6) A private nonresidential building on a farm or ranch, as defined in Section 39-1-102, C.R.S., that has annual gross income of less than five hundred thousand dollars (\$500,000);

**Sec. 9-25. Optional prohibitions.**

The owner or manager of any place ~~otherwise~~ exempted under Section 9-24, may choose to prohibit smoking in such place or restrict smoking to certain designated areas only by posting signs that provide notice of the same.

**Section 2. Safety Clause.** The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Wheat Ridge, that it is promulgated for the health, safety, and welfare of the public and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

**Section 3. Severability; Conflicting Ordinances Repealed.** If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**Section 4. Effective Date.** This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

**INTRODUCED, READ, AND ADOPTED** on first reading by a vote of \_\_\_ to \_\_\_ on this 27<sup>th</sup> day of April, 2020, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for May 11, 2020, at 7:00 o'clock p.m., as a virtual meeting.

**READ, ADOPTED AND ORDERED PUBLISHED** on second and final reading by a vote of \_\_\_ to \_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

SIGNED by the Mayor on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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Bud Starker, Mayor

ATTEST:

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Steve Kirkpatrick, City Clerk

Approved As To Form

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Gerald E. Dahl, City Attorney

First Publication: \_\_\_\_\_, 2020  
Second Publication:  
Wheat Ridge Transcript  
Effective Date:

# An Act

HOUSE BILL 19-1076

BY REPRESENTATIVE(S) Michaelson Jenet and Larson, Caraveo, Cutter, Jackson, Mullica, Arndt, Buentello, Duran, Exum, Galindo, Garnett, Herod, Kipp, McCluskie, Roberts, Snyder, Tipper, Titone, Becker, Bird, Buckner, Hansen, Jaquez Lewis, Kennedy, Landgraf, Lontine;  
also SENATOR(S) Priola and Donovan, Ginal, Court, Fields, Foote, Gonzales, Moreno, Pettersen, Story, Tate, Todd, Williams A., Garcia.

CONCERNING UPDATES TO THE "COLORADO CLEAN INDOOR AIR ACT", AND,  
IN CONNECTION THEREWITH, REMOVING CERTAIN EXCEPTIONS AND  
ADDING PROVISIONS RELEVANT TO THE USE OF ELECTRONIC SMOKING  
DEVICES.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, **amend** 25-14-202 as follows:

**25-14-202. Legislative declaration.** (1) The general assembly hereby finds and determines that:

(a) It is in the best interest of the people of this state to protect ~~nonsmokers~~ THE PUBLIC from involuntary exposure to ~~environmental~~

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

~~tobacco and marijuana~~ EMISSIONS FROM SECONDHAND smoke AND ELECTRONIC SMOKING DEVICES (ESD) in most indoor areas open to the public, IN public meetings, IN food service establishments, and IN places of employment; ~~The general assembly further finds and determines that~~ AND

(b) ~~A balance should be struck between the health concerns of nonconsumers of tobacco products and combustible marijuana and the need to minimize unwarranted governmental intrusion into, and regulation of, private spheres of conduct and choice with respect to the use or nonuse of tobacco products, and combustible marijuana in certain designated public areas and in private places~~ ESD EMISSIONS CONSIST OF ULTRAFINE PARTICLES THAT ARE SIGNIFICANTLY MORE HIGHLY CONCENTRATED THAN PARTICLES WITHIN CONVENTIONAL TOBACCO SMOKE. THERE IS CONCLUSIVE EVIDENCE THAT MOST ESDS CONTAIN AND EMIT NOT ONLY NICOTINE BUT ALSO MANY OTHER POTENTIALLY TOXIC SUBSTANCES AND THAT ESDS INCREASE AIRBORNE CONCENTRATIONS OF PARTICULATE MATTER AND NICOTINE IN INDOOR ENVIRONMENTS. IN ADDITION, STUDIES SHOW THAT PEOPLE EXPOSED TO ESD EMISSIONS ABSORB NICOTINE AT LEVELS COMPARABLE TO THE LEVELS EXPERIENCED BY PASSIVE SMOKERS. MANY OF THE ELEMENTS IDENTIFIED IN ESD EMISSIONS ARE KNOWN TO CAUSE RESPIRATORY DISTRESS AND DISEASE, AND ESD EXPOSURE DAMAGES LUNG TISSUES. FOR EXAMPLE, HUMAN LUNG CELLS THAT ARE EXPOSED TO ESD AEROSOL AND FLAVORINGS SHOW INCREASED OXIDATIVE STRESS AND INFLAMMATORY RESPONSES.

(2) Therefore, the general assembly hereby declares that the purpose of this part 2 is to preserve and improve the health, comfort, and environment of the people of this state by ~~limiting exposure to tobacco and marijuana smoke~~ PROTECTING THE RIGHT OF PEOPLE TO BREATHE CLEAN, SMOKE-FREE AIR. NOTHING IN THIS PART 2 IS INTENDED TO INHIBIT A PERSON'S ABILITY TO TAKE MEDICINE USING AN INHALER OR SIMILAR DEVICE, NOR TO PREVENT AN EMPLOYER OR BUSINESS OWNER FROM MAKING REASONABLE ACCOMMODATION FOR THE MEDICAL NEEDS OF AN EMPLOYEE, CUSTOMER, OR OTHER PERSON IN ACCORDANCE WITH THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", AS AMENDED, 42 U.S.C. SEC. 12101 ET SEQ.

**SECTION 2.** In Colorado Revised Statutes, 25-14-203, **amend** (7), (16), and (18); **repeal** (1); and **add** (4.5) as follows:

**25-14-203. Definitions.** As used in this part 2, unless the context otherwise requires:

(1) ~~"Airport smoking concession" means a bar or restaurant, or both, in a public airport with regularly scheduled domestic and international commercial passenger flights, in which bar or restaurant smoking is allowed in a fully enclosed and independently ventilated area by the terms of the concession.~~

(4.5) "ELECTRONIC SMOKING DEVICE" OR "ESD":

(a) MEANS ANY PRODUCT, OTHER THAN A PRODUCT DESCRIBED IN SUBSECTION (4.5)(c) OF THIS SECTION, 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;

(b) INCLUDES ANY PRODUCT DESCRIBED IN SUBSECTION (4.5)(a) OF THIS SECTION AND ANY SIMILAR PRODUCT OR DEVICE, WHETHER MANUFACTURED, DISTRIBUTED, MARKETED, OR SOLD AS AN E-CIGARETTE, E-CIGAR, E-PIPE, E-HOOKAH, OR VAPE PEN OR UNDER ANY OTHER PRODUCT NAME OR DESCRIPTOR; AND

(c) DOES NOT INCLUDE:

(I) A HUMIDIFIER OR SIMILAR DEVICE THAT EMITS ONLY WATER VAPOR; OR

(II) AN INHALER, NEBULIZER, OR VAPORIZER THAT IS APPROVED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION FOR THE DELIVERY OF MEDICATION.

(7) "Entryway" means the outside of the front or main doorway leading into a building or facility that is not exempted from this part 2 under section 25-14-205. "Entryway" also includes the area of public or private property within a specified radius outside of the doorway. The specified radius ~~shall~~ MAY be determined by the local authority ~~or~~ PURSUANT TO SECTION 25-14-207 (2)(a), BUT MUST BE AT LEAST TWENTY-FIVE FEET UNLESS SECTION 25-14-207 (2)(a)(II)(B) OR (2)(a)(II)(C) APPLIES. If the local authority has not acted, the specified radius ~~shall be fifteen~~ IS

TWENTY-FIVE feet.

(16) "Smoking" means ~~the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco or marijuana~~ 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" ALSO INCLUDES THE USE OF AN ESD.

(18) "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, INCLUDING ESDS, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

**SECTION 3.** In Colorado Revised Statutes, 25-14-204, **amend** (1) introductory portion, (1)(k), (1)(u)(I), (1)(bb), (1)(cc), and (2); **repeal** (1)(q); and **add** (1)(dd), (1)(ee), (1)(ff), and (3) as follows:

**25-14-204. General smoking restrictions.** (1) Except as provided in section 25-14-205, ~~and in order to reduce the levels of exposure to environmental tobacco and marijuana smoke,~~ smoking shall IS not be permitted and ~~no~~ A person shall NOT smoke in any indoor area, including: but not limited to:

(k) (I) Any place of employment that is not exempted, WHETHER OR NOT OPEN TO THE PUBLIC AND REGARDLESS OF THE NUMBER OF EMPLOYEES.

(II) In the case of employers who own facilities otherwise exempted from this part 2, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe ~~environmental tobacco~~ SECONDHAND smoke ~~Every employee shall have a right to work in an area free of environmental tobacco smoke~~ AND EMISSIONS FROM ELECTRONIC SMOKING DEVICES.

(q) ~~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;~~

(u) (I) The common areas of retirement facilities, publicly owned housing facilities, and ~~except as specified in section 25-14-205 (1)(k);~~ nursing homes, but not including any resident's private residential quarters. ~~or areas of assisted living facilities specified in section 25-14-205 (1)(k);~~

(bb) Other educational and vocational institutions; ~~and~~

(cc) ~~The entryways of all buildings and facilities listed in paragraphs (a) to (bb) of this subsection (1);~~ AIRPORTS;

(dd) HOTEL AND MOTEL ROOMS;

(ee) ASSISTED LIVING FACILITIES, INCLUDING NURSING FACILITIES AS DEFINED IN SECTION 25.5-4-103 AND ASSISTED LIVING RESIDENCES AS DEFINED IN SECTION 25-27-102; AND

(ff) THE ENTRYWAYS OF ALL BUILDINGS AND FACILITIES LISTED IN SUBSECTIONS (1)(a) TO (1)(ee) OF THIS SECTION.

(2) A cigar-tobacco bar:

(a) 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~~ AND

(b) Shall PROHIBIT ENTRY BY ANY PERSON UNDER EIGHTEEN YEARS OF AGE AND 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~~ MAY NOT ENTER."

(3) A RETAIL TOBACCO BUSINESS:

(a) SHALL PROHIBIT ENTRY BY ANY PERSON UNDER EIGHTEEN YEARS OF AGE; AND

(b) SHALL DISPLAY SIGNAGE IN AT LEAST ONE CONSPICUOUS PLACE AND AT LEAST FOUR INCHES BY SIX INCHES IN SIZE STATING EITHER:

(I) "SMOKING ALLOWED. CHILDREN UNDER EIGHTEEN YEARS OF AGE

MAY NOT ENTER."; OR

(II) IN THE CASE OF A RETAIL TOBACCO BUSINESS THAT DESIRES TO ALLOW THE USE OF ESDS BUT NOT OTHER FORMS OF SMOKING ON THE PREMISES, "VAPING ALLOWED. CHILDREN UNDER EIGHTEEN YEARS OF AGE MAY NOT ENTER."

**SECTION 4.** In Colorado Revised Statutes, 25-14-205, **amend** (1) introductory portion, (1)(d), (1)(g), and (1)(i); and **repeal** (1)(c), (1)(f), (1)(h), and (1)(k) as follows:

**25-14-205. Exceptions to smoking restrictions.** (1) This part 2 ~~shall~~ DOES not apply to:

~~(c) A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent;~~

(d) Any retail tobacco business; EXCEPT THAT THE REQUIREMENTS IN SECTION 25-14-204 (3) AND ANY RELATED PENALTIES APPLY TO A RETAIL TOBACCO BUSINESS;

~~(f) An airport smoking concession;~~

(g) The outdoor area of any business; OR

~~(h) 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;~~

(i) A private, nonresidential building on a farm or ranch, as defined in section 39-1-102, C.R.S., that has annual gross income of less than five hundred thousand dollars. ~~or~~

~~(k) (I) The areas of assisted living facilities:~~

~~(A) That are designated for smoking for residents;~~

~~(B) That are fully enclosed and ventilated; and~~

~~(C) To which access is restricted to the residents or their guests.~~



~~(II) As used in this paragraph (k), "assisted living facility" means a nursing facility, as that term is defined in section 25.5-4-103, C.R.S., and an assisted living residence, as that term is defined in section 25-27-102.~~

**SECTION 5.** In Colorado Revised Statutes, 25-14-206, **amend** (1); and **repeal** (2) as follows:

**25-14-206. Optional prohibitions.** (1) The owner or manager of any place ~~not specifically listed in section 25-14-204, including a place~~ otherwise exempted under section 25-14-205 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 part 2.

~~(2) If the owner or manager of a place not specifically listed in section 25-14-204, including a place otherwise exempted under section 25-14-205, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by section 25-14-204 (1)(k)(II), the owner or manager shall post a sign or signs in the smoke-free work area as provided in subsection (1) of this section.~~

**SECTION 6.** In Colorado Revised Statutes, 25-14-207, **amend** (2)(a) as follows:

**25-14-207. Other applicable regulations of smoking - local counterpart regulations authorized.** (2) (a) (I) A local authority may, pursuant to article 16 of title 31, ~~C.R.S.~~, a municipal home rule charter, or article 15 of title 30, ~~C.R.S.~~, enact, adopt, and enforce smoking regulations that cover the same subject matter as the various provisions of this part 2; ~~No~~ EXCEPT THAT, UNLESS OTHERWISE AUTHORIZED UNDER SUBSECTION (2)(a)(II)(B) OR (2)(a)(II)(C) OF THIS SECTION, A local authority may NOT adopt ~~any~~ A local regulation of smoking that is less stringent than the provisions of this part 2. ~~except that~~

(II) (A) A local authority ~~may~~ IS SPECIFICALLY AUTHORIZED TO specify a radius of ~~less~~ MORE than ~~fifteen~~ TWENTY-FIVE feet for the area included within an entryway.

(B) A LOCAL REGULATION THAT WAS ADOPTED BY A LOCAL

AUTHORITY BEFORE JANUARY 1, 2019, AND THAT SPECIFIES A RADIUS OF LESS THAN TWENTY-FIVE FEET FOR THE AREA INCLUDED WITHIN AN ENTRYWAY REMAINS VALID AND MUST BE GIVEN EFFECT AFTER THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED.

(C) IF A PERSON OWNS OR LEASES BUSINESS PREMISES THAT WERE UNDER CONSTRUCTION OR RENOVATION ON JULY 1, 2019, AND THAT COMPLIED WITH A LOCAL REGULATION OF SMOKING THAT SPECIFIED A RADIUS OF LESS THAN TWENTY-FIVE FEET FOR THE AREA INCLUDED WITHIN AN ENTRYWAY, AND, AS OF JULY 1, 2019, HAS APPLIED FOR OR RECEIVED FROM THE MUNICIPALITY, CITY AND COUNTY, OR COUNTY IN WHICH THE PREMISES ARE LOCATED, A CERTIFICATE OF OCCUPANCY FOR THE STRUCTURE TO BE USED FOR THE BUSINESS PREMISES, THE PERSON IS DEEMED IN COMPLIANCE WITH ALL LOCAL REGULATIONS SPECIFYING THE RADIUS OF THE AREA INCLUDED WITHIN AN ENTRYWAY.

**SECTION 7.** In Colorado Revised Statutes, 25-14-208, **amend** (3) as follows:

**25-14-208. Unlawful acts - penalty - disposition of fines and surcharges.** (3) EXCEPT AS OTHERWISE PROVIDED IN SECTION 25-14-208.5, a person who violates this part 2 is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars for a first violation within a calendar year, a fine not to exceed three hundred dollars for a second violation within a calendar year, and a fine not to exceed five hundred dollars for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation.

**SECTION 8.** In Colorado Revised Statutes, **add** 25-14-208.5 as follows:

**25-14-208.5. Signage violations - limitation on fines.** (1) FOR A VIOLATION OF SECTION 25-14-204 (2) OR (3), THE PENALTY SHALL BE AS FOLLOWS:

(a) A WRITTEN WARNING FOR A FIRST VIOLATION COMMITTED WITHIN A TWENTY-FOUR-MONTH PERIOD; AND

(b) FINES AS SPECIFIED IN SECTION 25-14-208 (3) FOR A SECOND OR

SUBSEQUENT VIOLATION WITHIN A TWENTY-FOUR-MONTH PERIOD.

(2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, NO FINE FOR A VIOLATION OF SECTION 25-14-204 (2) OR (3) SHALL BE IMPOSED UPON A PERSON THAT CAN ESTABLISH AS AN AFFIRMATIVE DEFENSE THAT, PRIOR TO THE DATE OF THE VIOLATION, IT:

(a) HAD ADOPTED AND ENFORCED A WRITTEN POLICY AGAINST ALLOWING PERSONS UNDER EIGHTEEN YEARS OF AGE TO ENTER THE PREMISES;

(b) HAD INFORMED ITS EMPLOYEES OF THE APPLICABLE LAWS REGARDING THE PROHIBITION OF PERSONS UNDER EIGHTEEN YEARS OF AGE TO ENTER OR REMAIN IN AREAS WHERE SMOKING IS PERMITTED;

(c) REQUIRED EMPLOYEES TO VERIFY THE AGE OF PERSONS ON THE PREMISES BY WAY OF PHOTOGRAPHIC IDENTIFICATION; AND

(d) HAD ESTABLISHED AND IMPOSED DISCIPLINARY SANCTIONS FOR NONCOMPLIANCE.

(3) THE AFFIRMATIVE DEFENSE ESTABLISHED IN SUBSECTION (2) OF THIS SECTION MAY BE USED ONLY TWICE AT EACH LOCATION WITHIN ANY TWENTY-FOUR-MONTH PERIOD.

**SECTION 9.** In Colorado Revised Statutes, 30-15-401, **amend** (1.5) as follows:

**30-15-401. General regulations - definitions.** (1.5) In addition to any other powers, the board of county commissioners has the power to adopt a resolution or an ordinance:

(a) Prohibiting minors from possessing cigarettes or tobacco products, as defined by section 39-28.5-101 (5); ~~C.R.S.~~ AND

(b) LIMITING SMOKING, AS DEFINED IN SECTION 25-14-203 (16), IN ANY MANNER THAT IS NO LESS RESTRICTIVE THAN THE LIMITATIONS SET FORTH IN THE "COLORADO CLEAN INDOOR AIR ACT", PART 2 OF ARTICLE 14 OF TITLE 25.

**SECTION 10. Effective date.** (1) Except as provided in subsection (2) of this section, this act takes effect July 1, 2019.

(2) Section 25-14-204 (2) and (3), as amended and enacted, respectively, in section 3 of this act, take effect October 1, 2019.

**SECTION 11. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.



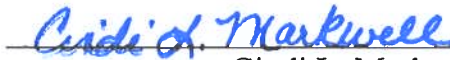
KC Becker  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES



Leroy M. Garcia  
PRESIDENT OF  
THE SENATE

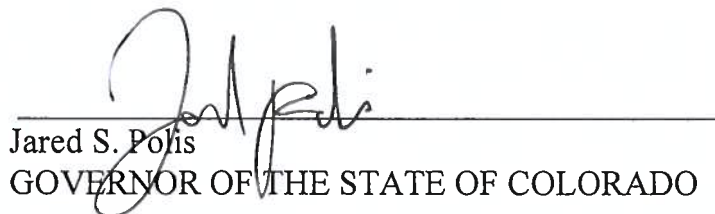


Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES



Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED May 29 2019 at 12:25 pm  
(Date and Time)



Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO