

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER WOODEN
Council Bill No. 22
Ordinance No. 1584
Series of 2015

**TITLE: AN ORDINANCE REPEALING AND REENACTING 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, 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") adopted 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 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, pursuant to its home rule authority, its police power, C.R.S. § 25-14-207 and Section 16, Article XVIII of the Colorado Constitution ("Amendment 64"), the City possesses the authority to regulate and prohibit the indoor smoking of marijuana and the consumption of marijuana that is conducted openly and publicly or in a manner that endangers others; and

WHEREAS, the Council finds that it is prudent to include marijuana smoking and marijuana consumption generally within any prohibition of smoking in public places to minimize the exposure of citizens to secondhand environmental smoke, vapor, fumes and odor; to minimize the opportunities of minor children to observe marijuana consumption; and to remain consistent with the explicit prohibition of open and public consumption of marijuana as set forth in Amendment 64.

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

Section 1. Article II of Chapter 9 of the Wheat Ridge Code of Laws, concerning smoking in public places, is hereby repealed and reenacted, to read in its entirety 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 nonsmokers from involuntary exposure to environmental smoke in most areas open to the public, public meetings, food service establishments, and places of employment. The City Council further finds, determines and declares that a balance should be struck between the health concerns of nonconsumers of tobacco and marijuana products 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 and marijuana products in certain designated public areas and in private places. 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 limiting exposure to tobacco and marijuana smoke.

Sec. 9-22. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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.

Bar means any 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.

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.

Employee means any person who, regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or

by any other designation or title, either: (I) performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or (II) provides uncompensated work or services to a business or nonprofit entity.

Employer means any person, partnership, association, corporation, or nonprofit entity that employs one (1) 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.

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 fifteen (15) feet of the doorway.

Environmental smoke or secondhand smoke means gases, particles and vapors released into the air as a result of the combustion, electrical ignition, vaporization or heating of any substance, including but not limited to tobacco, nicotine or a marijuana product, also known as "sidestream smoke," and such gases, particles and vapors that are exhaled by the smoker.

Food service establishment means any indoor or outdoor 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.

Hookah bar is an establishment where patrons by themselves or by sharing with others smoke tobacco, marijuana or similar products from a communal hookah or nargile or similar device.

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.

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. It does not include industrial hemp, fiber produced from the stalks, oil or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product, if these items exist apart from any other item defined as marijuana.

Marijuana products means products that are comprised of marijuana and other ingredients and are intended to be consumed by smoking or inhalation.

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.

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 of any of the same; or

(3) Any other separate corporate instrumentality or unit of state or local government.

Public meeting means any meeting open to the public pursuant to Part 4 of Article 6 of Title 24, C.R.S., or any other law of the state.

Retail smoking accessory business means a sole proprietorship, corporation, partnership or other enterprise engaged primarily in the sale or promotion of smoking devices, accessories or paraphernalia, such as but not limited to pipes, chillums, bongs, hookahs and products intended for use in connection with such devices, and in which the sale, manufacture or promotion of other products is merely incidental.

Retail tobacco business means a sole proprietorship, corporation, partnership or other enterprise engaged primarily in the sale or promotion of tobacco or tobacco products at retail, and in which the sale, manufacture or promotion of other products is merely incidental.

Smoke-free work area means an indoor area in a place of employment where smoking is prohibited under this Chapter.

Smoking means the burning, heating, electrical ignition or vaporization of a cigarette, cigar, pipe, or any other similar product, matter or substance that contains tobacco, nicotine, marijuana, any other substance, or any combination thereof, and the inhaling and exhaling of environmental smoke created thereby.

Specialty vaping store means a sole proprietorship, corporation, partnership or other enterprise operating as a retail outlet deriving the majority of its revenue from the sale at retail of electronic smoking devices or other electronic smoking products and accessories.

Tobacco means cigarettes, cigars, cheroots, stogies, and periques; 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, or otherwise, or both for chewing and smoking. *Tobacco* also includes cloves and any other plant matter, or product, excluding marijuana and marijuana products, that is packaged for smoking.

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.

Sec. 9-23. General smoking restrictions.

(a) Except as provided in Section 9-24, and in order to reduce the levels of exposure to environmental 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 Article, 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 from 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 (75%) 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 retirements facilities, publicly owned housing facilities, and, except as specified in section 9-24(6), nursing homes, not including any resident's private residential quarters or areas of assisted living facilities specified in Section 9-24(6);

(22) Public buildings;

(23) Auditoria;

(24) Theatres;

(25) Museums;

(26) Libraries;

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

(28) Other educational and vocational institutions;

(29) Retail smoking accessory businesses;

(30) The entryways of all buildings and facilities listed in paragraphs (a)(1) through (a)(29) of this Section.

(b) Except as provided in Section 9-24, and in order to reduce the levels of exposure to environmental smoke, smoking shall not be permitted and no person shall smoke in the following outdoor areas:

(1) The following facilities and areas of any public property within the City:

a. Parks, playgrounds, swimming pools, recreation facilities, skate parks, athletic fields, picnic shelters, tennis courts, greenbelts, trails and open space and similar locations; and

b. Outdoor locations to which the general public has access to participate in City events, such as the Carnation Festival and other City events.

(2) Transit stops, including light-rail platforms and bus stops, with or without benches and/or shelters.

(c) Nothing herein shall be deemed to permit the consumption of marijuana that is conducted openly and publicly, in a manner that endangers others or otherwise violates state law.

Sec. 9-24. Exceptions to smoking restrictions.

(a) This Article shall not apply to:

(1) Private homes, private residences, and private automobiles; except that Section 9-23 of this Article shall apply if any such home, residence, or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation;

(2) Limousines under private hire;

(3) A hotel or motel room rented to one (1) or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent (25%);

(4) The smoking of tobacco in a cigar-tobacco bar;

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

(6) 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 fifteen (15) feet of an entryway;

(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 Section 39-1-102, C.R.S., that has annual gross income of less than five hundred thousand dollars (\$500,000);

(9) A. The areas of assisted living facilities:

- (i) That are designated for smoking for residents;
- (ii) That are fully enclosed and ventilated; and
- (iii) To which access is restricted to the residents or their guests; or

(10) The smoking of tobacco in a retail tobacco business.

(11) Smoking in specialty vaping stores.

B. As used in this subparagraph (a)(9), "assisted living facility" means a nursing facility, as that term is defined in 25.5-4-103, C.R.S., and an assisted living residence, as that term is defined in section 25-27-102, C.R.S.

Sec. 9-25. Optional prohibitions.

(a) The owner or manager of any place not specifically listed in Section 9-23, including a 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. Where signs are posted that prohibit smoking, whether in all areas or only in certain designated non-smoking 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 Article.

(b) If the owner or manager of a place not specifically listed in Section 9-23, including a place otherwise exempted under Section 9-24, is an employer and receives a request from an employee to create a smoke-free work area, the owner or manager shall post a sign or signs in the smoke-free work area as provided in subsection (a) of this Section.

Sec. 9-26. Other applicable regulations of smoking.

This Article shall not be construed to permit smoking where it is otherwise restricted by any other applicable law, including, but not limited to Section 11-404(e) of this Code, prohibiting marijuana clubs, and Section 16-131(c) of this Code, prohibiting the open and public consumption of marijuana products, marijuana, cannabis, or cannabis concentrate.

Sec. 9-27. Hookah bars prohibited.

Hookah bars are prohibited within the City.

Sec. 9-28. Unlawful acts.

(a) It is unlawful for a person who owns, manages, operates, or otherwise controls the use of property subject to the provisions in this Article to violate or to knowingly permit the violation of any provision of this Article.

(b) It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to this Article.

Sec. 9-29. Reserved.

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 8 to 0 on this 28th day of September, 2015, 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 October 12, 2015, at 7:00 o'clock p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 8 to 0, this 12th day of October, 2015.

SIGNED by the Mayor on this 13th day of October, 2015.

ATTEST:



Janelle Shaver
Janelle Shaver, City Clerk

Joyce Jay
Joyce Jay, Mayor

Approved As To Form

Gerald E. Dahl
Gerald E. Dahl, City Attorney

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Amended on Reconsideration and readopted as amended on December 14, 2015