

**CITY OF WHEAT RIDGE, COLORADO**  
**INTRODUCED BY COUNCIL MEMBER HUTCHINSON**  
**COUNCIL BILL NO. 08**  
**ORDINANCE NO. 1688**  
**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.

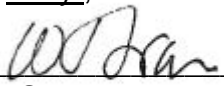
**Section 3. Severability; Conflicting Ordinances Repealed.** If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts 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 8 to 0 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 8 to 0, this 11<sup>th</sup> day of May, 2020.

SIGNED by the Mayor on this 11<sup>th</sup> day of May, 2020.

  
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Bud Starker, Mayor

ATTEST:

  
\_\_\_\_\_  
Steve Kirkpatrick, City Clerk

Approved As To Form



Gerald E. Dahl, City Attorney

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