

As Amended May 4, 2015

COUNCIL BILL NO. 15-017
ORDINANCE NO. 4501

AN ORDINANCE AMENDING CERTAIN PROVISIONS OF DIVISION 3, SMOKING RESTRICTED IN PUBLIC PLACES, OF ARTICLE VII, AIR POLLUTION, OF CHAPTER 38, ENVIRONMENT, OF THE ARVADA CITY CODE TO MAKE IT UNLAWFUL TO SMOKE ELECTRONIC SMOKING DEVICES IN PUBLIC PLACES OR SPORTS ARENAS, TO PROHIBIT MINORS FROM ENTERING SMOKING BUSINESSES, AND TO PROHIBIT THE SALE OR DISTRIBUTION OF ELECTRONIC SMOKING DEVICES AND OTHER SMOKING PRODUCTS TO MINORS

WHEREAS, the City of Arvada adopted Ordinance No. 4003 in 2006; and

WHEREAS, that Ordinance prohibited the smoking of traditional tobacco cigarettes matter in public places sports arenas in Arvada and prohibited the sale and distribution of cigarettes and tobacco products to minors; and

WHEREAS, since that Ordinance was adopted, technological advances have allowed for the mass production and sale of electronic smoking devices; and

WHEREAS, these devices are increasingly being marketed as a safer alternative to conventional cigarettes; and

WHEREAS, electronic smoking devices are not currently regulated by the federal government, so the safety of these devices is still unclear; and

WHEREAS, the use of these devices releases into the atmosphere certain known and unknown chemicals in the form of gases, particles, and vapors; and

WHEREAS, these devices are now used to deliver nicotine and a variety of other chemicals to human beings; and

WHEREAS, liquid nicotine is known to be a highly addictive and extremely toxic substance; and

WHEREAS, according to the National Institutes of Health, the vapors from some electronic smoking devices have been found to contain known carcinogens and toxic chemicals; and

WHEREAS, until more studies are conducted, there is no way of knowing what the health consequences to children and adults of exposure to these chemicals may be; and

WHEREAS, electronic smoking devices are sometimes marketed using e-liquids that are infused with flavors such as chocolate or bubble gum that may entice children to use the devices; and

WHEREAS, the State of Colorado has, in C.R.S. §25-14-301, banned the sale or giving to a minor any tobacco product, including any device that can be used to deliver nicotine by inhalation, such as an electronic smoking device; and

WHEREAS, the City Council has determined that conforming the City's smoking ordinance with State smoking laws will reduce confusion and enhance efficient enforcement efforts in this area; and

WHEREAS, the City Council wishes to expand the definition of smoking to include the use of electronic smoking devices and to take other legislative action to protect against harm to the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. Sec. 38-302, Legislative intent, of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code is hereby repealed and reenacted to read as follows:

Sec. 38-302. Legislative intent.

The city council finds, determines, and declares that the smoking of tobacco or of any other plant or weed in certain areas is a form of air pollution that threatens the health, safety, and welfare of the public. The city council has also determined 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. Furthermore, the city council has determined that according to the National Institutes of Health ("NIH"), the use of electronic smoking devices is on the rise. These devices contain and emit a variety of complex chemical substances. The NIH has stated that the vapor from some electronic smoking devices has been found to contain known carcinogens and toxic chemicals. The city council has also determined that there is currently no way of knowing the exact health effects of repeated exposure to electronic smoking device gases, particles, and vapors upon those in close proximity to electronic smoking device users. The city council deems it necessary to prohibit smoking of traditional nicotine products and electronic smoking devices in common areas, public places, and work places except as otherwise permitted by this division. The provisions of this division shall not apply to a residential dwelling unit. This division is intended to enact and adopt smoking regulations that are to be enforced in the Arvada Municipal Court that generally cover the same subject matter as the various provisions of the Colorado Clean Indoor Air

Act (HB 06-1175, Part 2 of Article 14, Title 25, C.R.S.), as well as regulating electronic smoking devices.

Section 2. Sec. 38-303, Definitions, of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code is hereby repealed and reenacted to read as follows:

Sec. 38-303. Definitions.

Electronic smoking device means a device that can be used to deliver particulates or vaporized substances, including but not limited to nicotine, to the person inhaling from the device. An electronic smoking device may be homemade, manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, an electronic hookah, electronic pen, electronic pipe, a heat stick, a hookah, or under any other product name or descriptor. “Electronic smoking device” does not include any product specifically approved by the United States Food and Drug Administration as a tobacco cessation product or for use in mitigating, treating, or preventing disease.

Public place means any indoor or outdoor facility or area that is open to members of the public who enter such facility or area, including but not limited to parks, trails, golf courses, mercantile establishments, restaurants, taverns, theaters, financial institutions, educational facilities, hospitals, health care facilities and institutions, libraries, auditoriums, arenas, assembly or meeting rooms, public conveyances including, but not limited to, taxicabs and limousines excepting those limousines that are under private hire, government-owned or operated means of mass transportation, including, but not limited to, buses, vans, and trains, all public transit platforms, waiting areas, and stations, governmental buildings, office buildings, restrooms, elevators, child care centers, outdoor customer seating areas, and waiting rooms of professional persons.

Smoke or smoking means:

The possession of a lighted cigarette, cigar, or pipe containing tobacco or other matter or substance, regardless of its composition, or the lighting of such cigarette, cigar, or pipe; or

The possession of an electronic smoking device which is emitting a vapor, or which is otherwise active, burning, lit, or operating.

“Smoke or smoking” does not include the use or possession of a product specifically approved by the United States Food and Drug Administration as a tobacco use cessation product or for use in mitigating, treating, or preventing disease.

Smoking 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, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental; or

A sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale or manufacture of hookah or shisha products and related smoking products, including, but not limited to, any plant or other organic matter packaged for smoking or held out as a smoking product, or any sole proprietorship, corporation, partnership, or other enterprise engaged in the promotion of hookah or shisha smoking, sometimes referred to as a hookah bar, café, or lounge; or

A sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the manufacture of electronic smoking devices or other electronic smoking products and accessories or in the distribution or sale at wholesale of any of these devices, products, or accessories; or

A sole proprietorship, corporation, partnership, or other enterprise operating as a retail outlet deriving a majority of its revenue from the sale at retail of electronic smoking devices or other electronic smoking products and accessories, or which is engaged primarily in the sale at retail of electronic smoking devices or other electronic smoking products and accessories. This type of smoking business will be known as a specialty vaping store.

Sports arena means any indoor or outdoor sports pavilions, athletic fields, gymnasiums, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble either to engage in the physical exercise, participate in athletic competition, or witness sports events.

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 that is packaged for smoking.

Section 3. Sec. 38-304, Smoking prohibited, of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code is hereby amended by adding two Exceptions to read as follows:

Exceptions:

The use of an electronic smoking device is allowed on stage at a theatrical production site if smoking by a theatrical character is an integral part of the storyline of the production.

Any person who is 18 years of age or older may use or operate an electronic smoking device within a specialty vaping store as defined in section 38-303.

Section 4. Sec. 38-305, Minors prohibited on premises, of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code is hereby repealed and reenacted to read as follows:

Sec. 38-305. Minors prohibited on premises.

- (a) It shall be unlawful for a person under the age of 18 years to be admitted to or be on the premises of a smoking business.
- (b) The owner, operator, manager, or other person who controls a smoking business shall post and keep at all times visible to the public in a conspicuous place on the premises, a sign to be provided by the city clerk's office which shall read as follows:

“WARNING: It is illegal for any person under 18 years of age to be on the premises of this business, and upon conviction, a fine may be imposed.”

Section 5. Sec. 38-305.5, No distribution to minors, of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code is hereby repealed and reenacted to read as follows:

Sec. 38-305.5 No distribution to minors.

- (a) It shall be unlawful to give, sell, distribute, dispense, or offer for sale to any person who is under 18 years of age a cigarette, tobacco product, or nicotine product, or coupon therefor.
- (b) As used in this section, “cigarette, tobacco product, or nicotine product” means:

- (1) A product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual; or
- (2) Any device that can be used to deliver tobacco or nicotine to the person inhaling from the device. The device may be homemade, manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, an electronic hookah, electronic pen, electronic pipe, a heat stick, a hookah, or under any other product name or descriptor.
- (3) As used in this section, "cigarette, tobacco product, or nicotine product" does not include a product that the food and drug administration of the United States department of health and human services has approved as a tobacco use cessation product.

Section 6. Sec. 38-307, Enforcement and penalties, of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code is hereby amended by the addition of a new subsection (i) to read as follows:

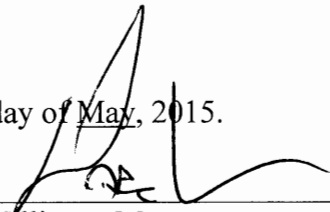
- (i) A person who commits any act that is unlawful pursuant to this division will be punished as set forth in herein, except that any violation of this division that would also constitute a felony under the Colorado Revised Statutes will be charged and prosecuted pursuant to the applicable Title thereof.

Section 7. The remaining provisions of the Smoking Restricted in Public Places Ordinance shall remain unchanged.

Section 8. This Ordinance shall take effect five days after publication following passage.

INTRODUCED, READ, AND ORDERED PUBLISHED this 20th day of April, 2015.

PASSED, ADOPTED, AND APPROVED this 4th day of May, 2015.

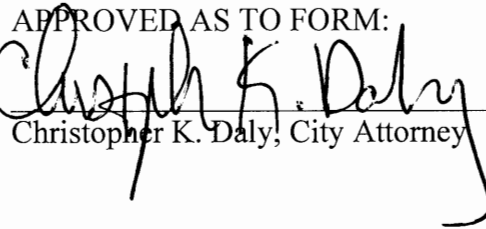


Marc Williams, Mayor

ATTEST:

Deputy


City Clerk

APPROVED AS TO FORM:


Christopher K. Daly, City Attorney

Publication Dates: April 23, 2015
May 7, 2015

