

ORDINANCE NO. 1985

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO, AMENDING SECTIONS 5.11.020, 5.11.030, 5.11.040 AND 8.25.010, AND ADDING SECTION 5.11.035 OF THE GOLDEN MUNICIPAL CODE REGARDING RESTRICTIONS ON THE PUBLIC USE OF TOBACCO

WHEREAS, the City desires to protect the health, welfare, and safety of its citizens by limiting their exposure to second hand exposure to nicotine and related products in public spaces; and

WHEREAS, there is reason to believe that public use of electronic smoking devices results in second hand exposure to nicotine and other potentially harmful chemical vapors; and

WHEREAS, the City desires to create and encourage a healthy, welcoming and comfortable environment for residents and visitors,

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

Section 1. Section 5.11.020(5), (6), (14), and (15), (Smoking in Public Places and Other Areas – Definitions), of the Golden Municipal Code are amended, and Section 5.11.020(18) of the Golden Municipal Code is added, to read as follows:

5.11.020 Definitions

(5) "Entryway" means the twenty five (25) foot radius outside of the front or main doorway leading into a building or facility that is not exempted under section 5.11.040.

(6) "Environmental Tobacco Smoke", "ETS", or "secondhand smoke" means the complex mixture formed from the escaping smoke of a burning tobacco product or the escaping vapor or aerosol of an electronic smoking device, also known as "side stream smoke", and smoke, vapor, or aerosol exhaled by the smoker.

(14) "Smoking" means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco, marijuana, or the active use of an electronic smoking device.

(15) "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. "Tobacco" includes tobacco prepared, treated, or modified in such a manner that it may be ingested through the use of an electronic smoking device.

(18) "Electronic smoking device," means any electronic oral device such as one composed of a heating element, battery, and/ or electronic circuit which provides a vapor of nicotine, vapor of a solution including nicotine, or aerosol of a solution including nicotine, or any other substance for inhalation. This term shall include every variation and type of such devices whether they are manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pen,

an electronic pipe, or an electronic hookah or any other product name or descriptor. The term “electronic smoking device” does not include any device specifically approved by the United States Food and Drug Administration for use in reducing, treating or eliminating nicotine or tobacco dependence, or for any other medical purposes, when such a device is being marketed and sold solely for such approved purpose.

Section 2. Section 5.11.030 of the Golden Municipal Code (Smoking in Public Places and Other Areas – General smoking restrictions), is repealed and re-enacted to read:

Except as provided in section 5.11.040 and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and smoking in any indoor area, or any of the following areas, shall be an administrative violation subject to the provisions of Section 8.25 of the Golden Municipal Code;

- (a) public meeting places;
- (b) elevators;
- (c) government-owned or operated means of mass transportation, including, but not limited to, buses, vans, and trains;
- (d) taxicabs and limousines;
- (e) grocery stores;
- (f) gymnasiums;
- (g) jury waiting and deliberation rooms;
- (h) courtrooms;
- (i) child day care facilities;
- (j) health care facilities including hospitals, health care clinics, doctor's offices, and other health care related facilities;
- (k) (i) any place of employment that is not exempted.

(ii) in the case of employers who own facilities otherwise exempted from this subsection, 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 of environmental tobacco smoke.
- (l) food service establishments;
- (m) bars;

- (n) indoor sports arenas;
- (o) restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
- (p) 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 quests;
- (q) bowling alleys;
- (r) billiard or pool halls;
- (s) the common areas of retirement facilities, publicly owned housing facilities, and nursing homes, not including any resident's private residential quarters;
- (t) public buildings;
- (u) auditoria;
- (v) theaters;
- (w) museums;
- (x) libraries;
- (y) public and nonpublic schools;
- (z) other educational and vocational institutions;
- (aa) any retail tobacco business;
- (bb) all city of Golden owned or controlled parks, open space, indoor or outdoor pools and associated spectator areas, indoor or outdoor sport or athletic fields and associated spectator areas, indoor or outdoor water parks and associated spectator areas, not including smoking areas designated and posted by the City Manager or his designee, pursuant to subsection (ii) below;
- (cc) on city of Golden owned or controlled property that is within 25 feet of any city of Golden owned or controlled portion of the Kinney Run trail, Cressman Gulch trail, Tucker Gulch trail, Clear Creek trail, US 6/SH-93 trail, or any other city of Golden owned or controlled trail, biking path, or walking path;
- (dd) within 25 feet of, any playground located within a City of Golden Park;
- (ee) the Fossil Trace Golf Course and associated grounds and facilities, including the club house, driving ranges and practice facilities, but not to include the actual course of play, or outdoor smoking areas near the clubhouse as designated and posted by the City Manager or his designee, in their discretion;

(ff) all outdoor areas in the Clear Creek RV park, not including smoking areas designated and posted by the City Manager or his designee, in their discretion;

(gg) on any public right of way within 25 feet of the outdoor seating areas of any business that are located on any public right of way:

(hh) all public transit waiting areas;

(ii) any event for which any city street, right of way, park, or parking lot, in non-residential zone districts that are closed by the city in order to accommodate special events, not including smoking areas designated and posted by the City Manager or his designee, in their discretion;

(jj) all public sidewalks and rights of way in the Washington Street Downtown Area, defined as the area along both sides of Washington Avenue between 10th Street and 14th street, the area on along both sides of 12th Street between Arapahoe Street and Ford Street, and the area on along both sides of 13th Street between Arapahoe Street and Ford Street; and

(kk) the entryways of all buildings and facilities to which this subsection applies.

Section 3. Section 5.11.035 of the Golden Municipal Code is added to read as follows

5.11.035. Optional prohibitions

The owner or manager of any place not specifically listed in section 5.11.030, including a place otherwise exempted under section 5.11.040, 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 section 5.11.030.

Section 4. Section 5.11.040(d) of the Golden Municipal Code (Exceptions to smoking restrictions) is amended to read as follows:

(d) the outdoor area of any business, not including seating areas in any public right of way, and not including outdoor areas within twenty five (25) feet of any entryway as defined in 5.11.020(5);

Section 5. Section 8.25.010 of the Golden Municipal Code (Administrative citations) is amended to read as follows:

This chapter provides for administrative penalties that may be imposed for violation of parking offenses as set forth in Part 12 of the Model Traffic Code, 2009 Edition as adopted by the city; litter prohibited, Section 5.01.070 (c) of the Code; smoking in public places, Section 5.11.030 of the Code; animal running at large prohibited, Section 7.05.010 of the Code, and the rules, orders and regulations issued by the city manager pursuant to section 2.08.110 of the Code, which are deemed reasonably necessary for the administration, protection and maintenance of any public property or buildings belonging to or under control of the city.

Section 6. This ordinance shall take effect on January 1st, 2015.

Section 7. If any article, section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 8. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 9. The repeal or modification of any provision of the Municipal Code of the City of Golden by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 10. This ordinance is deemed necessary for the protection of health, welfare, and safety of the community.

Introduced, read, passed and ordered published the 14th day of August, 2014.

Passed and adopted upon second reading and ordered published this 28th day of August, 2014.

Marjorie N. Sloan
Mayor

ATTEST:

Susan M. Brooks, MMC
City Clerk

APPROVED AS TO FORM:

David S. Williamson
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing ordinance was introduced on first reading and read and a public hearing was held at a regular business meeting of the City Council of said city, held on the 14th day of August, 2014, and was published as a proposed ordinance in the Golden Transcript, legal newspaper, as the law directs seven days or more prior to its passage. A public hearing was held on the 28th day of August, 2014, and the said proposed ordinance was read on second reading. The ordinance was passed by the City Council and ordered published in the aforesaid newspaper, as the law directs on the 28th day of August, 2014.

Witness my hand and official seal of the City of Golden, Colorado, this 28th day of August, 2014.

(SEAL)

ATTEST:

Susan M. Brooks, MMC, City Clerk of
the City of Golden, Colorado