

ORDINANCE NO. 2181

INTRODUCED BY: Bell

AN ORDINANCE OF THE CITY COUNCIL AMENDING THE BRIGHTON **MUNICIPAL CODE** CHAPTER 8. **HEALTH AND SAFETY**, AMENDING ARTICLE 8-44, **SMOKING PROHIBITED**; TO INCORPORATE THE USE OF ELECTRONIC CIGARETTES, AND CHAPTER 17. **LAND USE AND DEVELOPMENT CODE**, AMENDING ARTICLE 17-12. **DEFINITIONS**; TO ADD A NEW DEFINITION REFERENCING THE MUNICIPAL CODE; AND SETTING FORTH DETAILS IN RELATION TO THE FOREGOING.

WHEREAS, from time to time the Land Use and Development Code must be updated for the sake of efficiency and ease of use, in order to relate to present and future land uses; and

WHEREAS, the adoption of this ordinance complies with and shall facilitate the implementation of the Comprehensive Plan 2020;

WHEREAS, a notice of the public hearing was published in the *Brighton Banner*, a legal newspaper of general circulation in the City of Brighton, on October 30, 2014; and

WHEREAS, the Planning Commission of the City of Brighton reviewed the proposed amendment to the *Land Use and Development Code* and recommended denial of the same by the City Council at the conclusion of a continued meeting held on November 10, 2014;

WHEREAS, the City Council finds that the current use of electronic devices, in order to take in nicotine or other products, should be similarly restricted to tobacco use in order to prevent confusion, to discourage use with minors, and prevent any negative secondhand impacts to surrounding persons; and

WHEREAS, the City Council finds that it is in the interest of the public health, safety and welfare to adopt the Municipal Code amendments set forth herein.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. **Article 8-44-20 Definitions** of **Chapter 8** of the Brighton Municipal Code is hereby amended to read as follows:

(A) Article 8-44-20, **Definitions**, is hereby amended in its entirety to read as follows:

The following terms used in this Article have the following meanings unless the context clearly indicates otherwise:

Building means any structure enclosed for protection from the weather, whether or not windows or doors are open. The opening of windows or doors, or the temporary removal of wall panels, does not convert a building into an outdoor area.

Cigar-tobacco bar means a bar that, in the calendar year ending December 31, 2005, generated at least five percent (5%) or more of its total annual gross income or fifty thousand

dollars (\$50,000.00) 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 (5%) of its total annual gross income or fifty thousand dollars (\$50,000.00) 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 means an electronic and/or battery operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine, marijuana, or other substances. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, and electronic cigar, an electronic cigarillo, and electronic pipe, an electronic hookah, or any other product name or description. "Electronic Smoking Device" does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

Electronic smoking device paraphernalia means cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic smoking device batteries and/or chargers, and any other item specifically designed for the preparation, charging, or use of Electronic Smoking Devices.

Employee includes every person who performs any type of work for the benefit of another in consideration of direct or indirect wages or profit; regardless of whether such person is referred to as an employee, contractor, independent contractor or volunteer or by any other designation or title; or 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.

Entryway means the doorway leading into a building or facility that is not exempted from the terms of this Article. *Entryway* also includes the area of public or private property within a specified radius outside of the doorway.

Environmental tobacco smoke or vapor or secondhand smoke or vapor means the complex mixture formed from the escaping smoke of a burning tobacco, marijuana or other product which is being smoked or a vapor from an electronic smoking device. Also known as *sidestream smoke or vapor* and exhaled by the smoker or user of an electronic smoking 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.

Place of employment shall mean any area under the control of a public or private employer that employees normally frequent or use during the course of employment, including but not limited to work areas, employee lounges, restrooms, conference and classrooms, employee cafeterias, hallways, stairways, enclosed parking and storage. *Place of employment* shall not include a private residence unless the residence is used as a child care, adult day care or health care facility.

Private dwelling means any place used primarily for sleeping overnight and conducting activities of daily living, including, without limitation, private residences, hotel or motel rooms or suites; and a hospital, hospice or nursing home room, but not the lobby, common elevator, common hallway or stairway, public restrooms or other common areas of a hotel, motel, hospital, hospice or nursing home.

Public conveyance means any motor vehicle or other means of conveyance licensed by the Public Utilities Commission of the State for the transportation of passengers for hire, and includes without limitation buses, taxicabs, limousine services and airport passenger services.

Public outdoor places means any outdoor facility or area that is open to members of the public who enter such area or place, including but not limited to sports fields, sports venues, restrooms, outdoor seating areas for participants and/or observers, recreational facilities and the designated area surrounding such places and areas.

Service line shall mean any indoor or outdoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money. *Service line* does not include lines in which one (1) or more persons are enclosed in a private vehicle while waiting in line.

Smoke or smoking means:

a. The lighting or activation of any cigarette, cigar, pipe, hookah, bong, shabong, electronic smoking device, or other device of whatever nature intended for or being used for smoking or inhaling nicotine, marijuana or other vapor, or the possession of any lighted cigarette, cigar, pipe, hookah, bong, shabong, or other device of whatever nature intended for or being used for smoking, regardless of the composition of the lighted material, or contents within an activated electronic smoking device;

b. Carrying or placing of a lighted cigarette, cigar, pipe, bong, shabong, chillum or tube from a lighted hookah or any other lighted smoking object, or electronic smoking device in one's mouth for the purpose of inhaling or exhaling smoke or vapors from the electronic smoking device;

c. Placing of a lighted cigarette, cigar, pipe, bong, shabong, chillum, electronic smoking device or any other similar object or equipment in an ashtray or other receptacle and allowing smoke or vapor to diffuse in the air;

d. Carrying or placing of a lighted cigarette, cigar, pipe, bong, shabong, chillum, activated electronic smoking device or any other object, material or equipment in one's hands or any appendage or device and allowing smoke or vapor therefrom to diffuse in the air; or

e. Inhaling or exhaling smoke from a lighted cigarette, cigar, pipe, hookah, bong, shabong or any other device, object or material of whatever nature intended for or being used for smoking or any other lighted smoking material or equipment.

f. Inhaling or exhaling vapors from an electronic smoking device of whatever nature, intended for or being used for inhaling a vapor from the electronic smoking device.

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

Sports venues means any outdoor parks, facilities and athletic fields designed and improved for use for a specific sport or recreational activity which by illustration includes skate parks, tennis courts, soccer fields, ball fields; swimming and aquatic pools and facilities; and other similar places or venues where members of the general public assemble either to engage in the physical or recreational activity, participate in athletic competition or witness the activities or sports events.

Tobacco includes cigarettes, cigars, cheroots, stogies, any 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 craps, clippings, cuttings and sweeping of tobacco; marijuana and other kinds and forms of tobacco and/or marijuana, prepared in such a manner as to be suitable for chewing or for smoking in a cigarette, pipe, hookah, bong, shabong, chillum or other device of whatever nature intended for or being used for smoking 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 store or sales means a retail business open to the public if more than eighty-five percent (85%) of its gross revenue from that location is from the retail sale of cigarettes, tobacco products, electronic smoking devices or electronic smoking device paraphernalia or products related to the use of cigarettes, tobacco products, electronic smoking devices and electronic smoking device paraphernalia.

Work area means an area in a place of employment where one (1) or more employees are routinely assigned and perform services for or on behalf of their employer.

Section 2. **Article 17-12-20 Definitions of Chapter 17** of the Brighton Municipal Code is hereby amended with the addition of the following definition:

(A) Article 17-12-20, **DEFINITIONS**, is hereby amended with the addition of a definition to read as follows:

Tobacco Sales: shall be as defined in Section 8-44-20 of the Brighton Municipal Code, as the same may be amended from time to time.

Section 5. **Purpose.** The purpose of this Ordinance is to provide for the health, safety and welfare of the people.

Section 6. **Repeal.** Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in

violation of any ordinance hereby repealed prior to the taking effect of this Ordinance

Section 7. Validity. If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

Section 8. Interpretation. This Ordinance shall be so interpreted and construed as to effectuate its general purpose.

Section 9. Certification. The City Clerk shall certify to the passage of this ordinance and make not less than three copies of the adopted Land Use and Development Code available for inspection by the public during regular business hours.

**INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS
18th DAY OF NOVEMBER, 2014.**

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

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PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY TITLE
ONLY THIS 2nd DAY OF December, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

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