

Department of Community Development

Reference: Indoor Smoking Provisions

To:	Mayor Gregory Mills and Members of City Council
Through:	Jane Bais-DiSessa, City Manager Marv Falconburg, AICP, Assistant City Manager Holly Prather, AICP, Community Development Director
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PURPOSE

To amend certain sections of Article 8-44 of the *Brighton Municipal Code* (BMC) to permit smoking within tobacco retail stores, provided it is done so in a way that is compliant with Colorado law and to reflect changes to the Colorado Clean Indoor Air Act with the passage of House Bills 19-076 and 20-1001.

STRATEGIC FOCUS AREA

- Safe, Active and Engaged Community

BACKGROUND

Colorado Clean Indoor Air Act (House Bill 06-1175)

Enacted July 1, 2006, House Bill 06-1175 protects non-smokers from involuntary exposure to environmental tobacco smoke by prohibiting smoking in most indoor areas open to the public. There are, however, exemptions to this restriction including any retail tobacco business. In addition, the bill authorizes a Municipal Home Rule Charter to enact, adopt, and enforce smoking regulations that are no less stringent than the Act.

Brighton City Ordinance 1886 (Effective July 1, 2006)

House Bill 06-1175 gives local jurisdictions the discretion to regulate more stringently with regards to indoor smoking. Ordinance 1886 implemented the State Law, but included other provisions that were specific to Brighton.

Brighton City Ordinance 2073 (Introduced September 7, 2010)

Through the adoption of Ordinance 2073, smoking prohibitions of Article 8-44 of the BMC were extended to newly operating tobacco stores. Pursuant to Section 8-44-30(6) of the BMC, a tobacco store authorized, open and operating with a City business license on August 1, 2010, and was, at that time, exempt from the smoking ban of Article 8-44, could continue to operate with that exemption. Tobacco stores operating with a City business license after August 1, 2010 were not exempt from the smoking restrictions set forth in Article 8-44. According to the recorded minutes, several Councilmembers took notice of the necessity and justification to enact laws to create healthy environments, recognizing the statistics indicating the vulnerability of youth to the hazards of smoking.

While this provision was more stringent than Colorado law, it did not allow new tobacco retail stores (many of which have designated indoor smoking areas for customers) to function at their full capacity. City staff, per direction from the City Council at a Study Session meeting held on July 28, 2020, has proposed an amendment to Section 8-33-30 of the BMC to exempt tobacco retail stores from indoor smoking restrictions regardless of operation date. This amendment would comply with State law.

House Bill 19-1076 (Update to the Colorado Clean Indoor Air Act)

Enacted October 1, 2019, House Bill 19-1076 made several amendments to the Colorado Clean Indoor Air Act, including but not limited to: increasing the radius of an “entryway”, the area around the doorway to a building where smoking is not permitted, from a minimum of 15 feet to a minimum of 25 feet. To comply with Colorado law, City staff has also proposed an amendment to Section 8-44-80 of the BMC to increase the smoke-free radius around entryways and windows from 15 feet to 25 feet.

House Bill 20-1001

Signed by Governor Jared Polis on July 14, 2020, House Bill 20-1001 raises the minimum age of a person to whom cigarettes, tobacco products, and nicotine products may be sold from 18 years of age to 21 years of age. With this, City staff has proposed an amendment to Section 8-44-90 of the BMC to require tobacco retail stores to display signage stating that persons under the age of 21 may not enter.

Public Outdoor Places

As defined in Section 8-44-20 of the BMC, “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. To provide for the health, safety, and welfare of Brighton residents, City staff has proposed an amendment to Section 8-44-20 of the BMC to include all parks and playgrounds and similar places where families and children congregate for recreation in the definition of “public outdoor places”.

STAFF RECOMMENDATION

Staff is recommending approval of the proposed BMC amendments set forth in the draft Ordinance with input and/or revisions per City Council’s direction.

OPTIONS FOR COUNCIL CONSIDERATION

The City Council has four options when reviewing this Ordinance. City Council may:

- 1) Approve the Ordinance as drafted at first reading;
- 2) Approve the Ordinance with specific changes at first reading;
- 3) Deny the Ordinance as drafted; or
- 4) Continue the item to be heard at a later, specified date.

ATTACHMENTS

- Draft Ordinance
- Staff Presentation

WEBSITE ADDRESSES FOR FURTHER READING IF DESIRED

- **House Bill 06-1175:**
https://www.colorado.gov/pacific/sites/default/files/Clean%20Indoor%20Air%20Act_0.pdf
- **House Bill 19-1076:**
https://leg.colorado.gov/sites/default/files/documents/2019A/bills/2019a_1076_01.pdf
- **House Bill 20-1001:**
https://leg.colorado.gov/sites/default/files/2020a_1001_signed.pdf