

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2021

COUNCIL BILL NO. _____
COMMITTEE OF REFERENCE:

4
5 A BILL

6
7 For an ordinance amending Article IX of Chapter 24 of the Revised Municipal Code,
8 relating to environmental smoke control.

9
10 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

11 **Section 1.** That article IX of chapter 24, D.R.M.C. shall be amended by deleting the language
12 stricken and adding the language underlined, to read as follows:

13 **ARTICLE IX. - ENVIRONMENTAL TOBACCO SMOKE CONTROL.**

14 **Sec. 24-301. - Definitions.**

15 ~~(a) Food service establishment means any business licensed by the city to serve food in~~
16 ~~an indoor area.~~

17 ~~(b) Public places means places open to the public or open to the public upon payment of~~
18 ~~a fee.~~

19 ~~(c) Smoke or smoking means inhaling, exhaling, or carrying any burning tobacco~~
20 ~~product.~~

21 ~~(d) Smoke-free area means an area free of environmental tobacco smoke.~~

22 ~~(e) Work area means any part of an indoor area at a place of employment where an~~
23 ~~employee carries out his or her responsibilities.~~

24 Unless otherwise specifically stated below, the definitions in this article shall have the same
25 meaning as in C.R.S., section 25-14-203:

26 (a) "Flow line" means the face of the curb and gutter, or if no curb and gutter, the edge
27 of the pavement.

28 (b) "Hookah" means a type of waterpipe, used to smoke shisha or other tobacco
29 products, with a long flexible tube for drawing aerosol through water. Components of a hookah
30 may include heads, stems, bowls, and hoses.

31 (c) "Hookah tobacco retailer" means a tobacco retailer that is engaged in the retail sale
32 of hookah, hookah smoking accessories, or hookah tobacco, which includes shisha tobacco,
33 waterpipe tobacco, maassel, narghile, and argileh.

1 (d) "Retail tobacco-focused business" means any retail store operating as a tobacco
2 business, as defined in C.R.S. 25-14-203(18), and includes smoke shops and cigar shops, but
3 does not include hookah tobacco retailers.
4

5 **~~Sec. 24-302. - Smoking regulated.~~**

6 ~~Smoking in the city is regulated as provided in this article.~~
7

8 **Sec. 24-303.2. - No-smoking areas.**

9 Notwithstanding any other provision in this article, no person shall smoke in any place designated,
10 by signs conforming to section 24-3096, by the owner, operator or person in charge as a no-
11 smoking area.
12

13 **Sec. 24-303. - Smoking in outdoor areas.**

14 Smoking shall be allowed in outdoor areas except as follows:

15 (a) Within the exterior walls/fences of an open-air theater, smoking is prohibited in open
16 seating areas, food/drink concession areas and related lines leading thereto, restrooms and
17 amphitheater aisles and allowed elsewhere within the facility only in designated smoking areas
18 established by the owner, operator or person in charge;

19 (b) During special events open to the public and held within the exterior walls/fences of a
20 botanic garden or zoo, smoking is prohibited except in smoking areas established therein by the
21 facility owner, operator or person in charge, in places apart from visitor viewing areas and
22 walkways;

23 (c) Within the exterior walls/fences of a sport stadium, smoking is prohibited in open
24 seating areas, aisles, interior ramps or stairs leading to seating areas, food/drink concession areas
25 and the area of lines leading thereto and allowed elsewhere within the facility only in designated
26 smoking areas established by the owner, operator or person in charge;

27 (d) Within the exterior walls/fences of tennis courts and swimming pools;

28 (e) On certain public premises adjoining hospital properties, as prohibited by section 38-
29 8; and

30 (f) On the 16th Street pedestrian and transit mall, as prohibited by section 38-9.

31 (g) On the premises, or on the public right-of-way (including sidewalks, tree lawns, and
32 alleys) of any hookah tobacco retailer, between the hours of 12 midnight and 7:00 A.M., up to the
33 closest flow line. This prohibition does not apply to persons in moving vehicles in alleys.

1
2 **Sec. 24-304. - Smoking in public places indoor areas.**

3 (a) ~~In indoor spaces, smoking shall be prohibited except:~~

4 (1) ~~In a fully enclosed, independently ventilated smoking area, which shall not exceed~~
5 ~~one-half (1/2) of the facility;~~

6 (2) ~~When exempted by section 24-306; and~~

7 (3) ~~In designated smoking areas established under section 24-307.~~

8 (b) ~~In outdoor spaces smoking shall be allowed except as follows:~~

9 (1) ~~Within the exterior walls/fences of an open-air theater, smoking is prohibited in open~~
10 ~~seating areas, food/drink concession areas and related lines leading thereto, restrooms and~~
11 ~~amphitheater aisles and allowed elsewhere within the facility only in designated smoking areas~~
12 ~~established by the owner, operator or person in charge, in a manner consistent with section 24-~~
13 ~~307(a);~~

14 (2) ~~During special events open to the public and held within the exterior walls/fences of a~~
15 ~~botanic garden or zoo, smoking is prohibited except in smoking areas established therein by the~~
16 ~~facility owner, operator or person in charge, in places apart from visitor viewing areas and~~
17 ~~walkways, in a manner consistent with section 24-307(a);~~

18 (3) ~~Within the exterior walls/fences of a sport stadium, smoking is prohibited in open~~
19 ~~seating areas, aisles, interior ramps or stairs leading to seating areas, food/drink concession areas~~
20 ~~and the area of lines leading thereto and allowed elsewhere within the facility only in designated~~
21 ~~smoking areas established by the owner, operator or person in charge, in a manner consistent~~
22 ~~with section 24-307(a);~~

23 (4) ~~Within the exterior walls/fences of tennis courts and swimming pools, smoking is~~
24 ~~prohibited;~~

25 (5) ~~On certain public premises adjoining hospital properties, as prohibited by section 38-~~
26 ~~8; and~~

27 (6) ~~On the 16th Street pedestrian and transit mall, as prohibited by section 38-9.~~

28 It shall be unlawful to smoke tobacco in any indoor area except:

29 (a) Private residences, except portions used for commercial child care, teaching,
30 tutoring, health services, or personal care services while being so used;

31 (b) Limousines under private hire;

32 (c) Any hookah tobacco retailer, between the hours of 7:00 AM and 12:00 midnight;

33 (d) A cigar-tobacco bar;

34 (e) Any retail tobacco-focused business;

1 (f) The licensed premises of a marijuana hospitality business licensed pursuant to
2 section 6-217, or a retail marijuana hospitality and sales business licensed pursuant to section 6-
3 218; except that this exception only applies to the smoking of marijuana and does not allow the
4 smoking of tobacco within such premises.

5
6 **Sec. 24-305. -Regulation of smoking in places of employment.**

7 (a) ~~Employers shall provide a smoke-free work area for every employee requesting not~~
8 ~~to have to breathe environmental tobacco smoke.~~

9 (b) ~~Each employer having an indoor place of employment shall implement, make known,~~
10 ~~follow and enforce a written smoking policy which shall:~~

11 (1) ~~State that every employee has a right to work in an area free of environmental~~
12 ~~tobacco smoke. If a designated smoke-free area does not eliminate environmental tobacco smoke~~
13 ~~from the employee's work area, except in food service establishments, the employer will take steps~~
14 ~~to eliminate the environmental tobacco smoke. In any dispute concerning the smoking policy, the~~
15 ~~health of the nonsmoker shall take precedence. In food service establishments, employers shall~~
16 ~~accommodate an employee's request to work in the no-smoking section unless such~~
17 ~~accommodation is impractical;~~

18 (2) ~~Prohibit smoking in auditoriums, classrooms, conference/meeting rooms, elevators,~~
19 ~~elevator lobbies, hallways, stairwells, escalators, medical facilities, and restrooms; and~~

20 (3) ~~Prohibit smoking in employee cafeterias, lunchrooms and lounges unless separate~~
21 ~~facilities are available to nonsmokers.~~

22 (c) ~~An employer may prohibit smoking throughout an entire place of employment by~~
23 ~~posting signs required by section 24-309.~~

24
25 **Sec. 24-306. - Smoking restriction not applicable.**

26 ~~Except when a facility or a portion thereof has been designated by the owner, operator,~~
27 ~~lessee/licensee, or person in charge as nonsmoking, the regulations of this article do not apply to:~~

28 (a) ~~A bar or bar area of any facility, except the dining area therein which shall be treated~~
29 ~~as a food service establishment;~~

30 (b) ~~Private residences, except portions used for commercial child care, teaching,~~
31 ~~tutoring, health services, or personal care services while being so used;~~

32 (c) ~~Hotel and motel rooms when rented to guests;~~

33 (d) ~~Conference or meeting rooms within restaurants, hotels and motels while being used~~
34 ~~exclusively for private functions;~~

1 ~~(e) — Retail tobacco stores;~~

2 ~~(f) — A private enclosed office work place occupied exclusively by a smoker or smokers,~~
3 ~~even though such office may be visited by nonsmokers. However, an office work area with a cash~~
4 ~~register, service counter, or waiting area open to the public shall be subject to this article;~~

5 ~~(g) — A private function not open to the public;~~

6 ~~(h) — Food service establishments with a seating capacity of less than twenty-five (25)~~
7 ~~persons; and~~

8 ~~(i) — A business which has four (4) or fewer employees.~~

9 **~~Sec. 24-307. — Designating smoking areas.~~**

10 ~~(a) — So long as the smoking area does not exceed the nonsmoking area and smoke or~~
11 ~~the products of smoking do not contaminate the nonsmoking area, the owner, manager or person~~
12 ~~in charge of a facility may designate smoking areas which do not meet the requirements of section~~
13 ~~24-304(a)(1) except in the indoor portions of the following facilities:~~

14 ~~(1) — Elevators, elevator lobbies, stairwells, and escalators;~~

15 ~~(2) — Public walkways, hallways, lobbies;~~

16 ~~(3) — Buses, taxicabs, and other means of public transit;~~

17 ~~(4) — Public restrooms;~~

18 ~~(5) — Ticketing, boarding, baggage collection, and waiting areas in public transportation~~
19 ~~depots;~~

20 ~~(6) — Service lines, check-out counters, cash register areas, or cashier areas;~~

21 ~~(7) — Retail stores;~~

22 ~~(8) — All areas available to and customarily used by the public in all businesses,~~
23 ~~commercial establishments and nonprofit entities;~~

24 ~~(9) — Indoor malls of buildings or structures which are open to the public including, but not~~
25 ~~limited to, food courts (to be treated as a separate food service establishment) located within or~~
26 ~~adjacent to the mall;~~

27 ~~(10) — All public areas in grocery stores, supermarkets, convenience stores or any other~~
28 ~~retail food establishment whose primary function is to sell food to the public for consumption on or~~
29 ~~off the premises;~~

30 ~~(11) — All educational facilities;~~

31 ~~(12) — Aquariums, galleries, zoos, libraries, museums, recreation centers and botanic~~
32 ~~gardens;~~

33 ~~(13) — Any facility open to the public and used for the presentation of motion pictures,~~
34 ~~dramas, lectures, musicals, recitals or similar functions;~~

1 ~~(14) Health care facilities including, but not limited to, hospitals, clinics, physical therapy~~
2 ~~facilities, and medical and dental offices;~~

3 ~~(15) Commercial child care centers and those areas of private homes used for~~
4 ~~commercial child care, teaching, tutoring, or health or personal care services while being so used;~~

5 ~~(16) Polling places;~~

6 ~~(17) Any room being used by any board, council, commission, committee or agency of the~~
7 ~~City and County of Denver for a public meeting;~~

8 ~~(18) Courtrooms, jury waiting rooms and deliberation rooms in any building which serves~~
9 ~~as a place for the convening of any court organized under the City Charter;~~

10 ~~(19) Amusement centers, including video arcades and children's play areas;~~

11 ~~(20) Theaters and concert halls.~~

12 ~~(b) In food service establishments, including dinner theaters, with a seating capacity of~~
13 ~~twenty-five (25) persons or more, the owner, operator or person in charge shall designate a no-~~
14 ~~smoking area of sufficient size to accommodate, without unreasonable delay, patrons who request~~
15 ~~to be seated in such an area. The delay shall be deemed reasonable if it is equal for smokers and~~
16 ~~nonsmokers. The smoking and no-smoking areas may be adjusted at any time to meet the needs~~
17 ~~of smoking and no-smoking patrons. Smoking shall be prohibited in the waiting areas of all food~~
18 ~~service establishments with a seating capacity of twenty-five (25) persons or more. This paragraph~~
19 ~~shall apply only to fully enclosed areas within food service establishments and not to open air~~
20 ~~areas.~~

21
22 **Sec. 24-3086. - Procedure for designating smoking areas.**

23 An area is designated as a smoking area by the installation of signs as follows:

24 (a) Signs stating "Smoking Permitted in this Area" shall be permanently posted in every
25 smoking area in such a manner that the area where smoking is allowed is clearly delineated.

26 (b) Ash receptacles shall be placed at entrances to no-smoking areas from smoking
27 areas and signs shall be posted at or near the receptacles stating: "No Smoking by City
28 Ordinance, Extinguish Here."

29
30 **Sec. 24-3097. - Signs.**

31 "No Smoking," "No Smoking Except In Designated Areas," "No Smoking by City Ordinance,
32 Extinguish Here," and "Smoking Permitted in this Area" signs shall measure not less than forty
33 (40) square inches in size with "NO SMOKING" in all upper case letters not less than one (1) inch
34 high, the remainder of the lettering may be lower case and shall be not less than one-half (½) inch

1 high. The international "No Smoking" symbol, not less than five (5) inches high, may be used as a
2 substitute for a "No Smoking" sign. A sign stating "No Smoking," "No Smoking Except in
3 Designated Areas," and the "No Smoking" symbol may also contain the words "By City Ordinance"
4 or "by Article IX of Chapter 24 of the Revised Municipal Code."
5

6 **Sec. 24-31408. - Location of signs and other notices.**

7 In addition to other locations set forth in this chapter, signs shall be posted as follows:

8 (a) No smoking signs shall be visible at all public entrances to every facility where
9 smoking is regulated. Facilities with designated smoking and no-smoking areas shall post signs
10 which read "No Smoking" or "No Smoking Except in Designated Areas."

11 (b) In the following specific settings, these additional requirements shall also apply:

12 (1) In theaters, signs shall be posted in the lobby stating that smoking is prohibited
13 within the theater or auditorium. Motion picture theaters shall project, prior to each feature, a five-
14 second message saying smoking is prohibited.

15 (2) In addition to appropriate signs at the entrance, in indoor malls no smoking signs
16 shall be prominently and clearly posted in sufficient locations to alert persons using the mall of the
17 prohibition against smoking.

18 (3) At indoor food service lines, no smoking signs shall be clearly visible from the
19 entrance to the food service line.

20 (4) In grocery stores, supermarkets, convenience stores or retail establishments, clearly
21 visible "No Smoking" signs shall be posted at all public entrances.
22

23 **Sec. 24-31409. - Responsibility of the owner, operator, manager or person in charge.**

24 The owner, operator or manager of every facility open to the public or open to the public upon the
25 payment of a fee where smoking is regulated shall:

26 (a) Post signs as required by this article;

27 (b) Request that anyone known to be smoking in a no-smoking area comply with the
28 law;

29 (c) If a host or hostess is on duty, ask patrons for their seating preference between
30 smoking or nonsmoking areas prior to seating or, if no host or hostess is on duty, adequately post
31 the entrance so that patrons will be aware of the location of smoking and nonsmoking areas;

32 (d) In sports arenas, stadiums and indoor malls where a public address system is
33 available and regularly used for nonemergency announcements, make public address
34 announcements regarding the smoking regulations at appropriate times.

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Sec. 24-3120. - Enforcement.

~~In enforcing this article, any police officer may issue a summons and complaint to be filed in county court to:~~

(a) It shall be unlawful for Any person personally observed not complying with a "No Smoking" sign posted in accordance with this article to smoke in an area within the City and County of Denver where smoking is prohibited pursuant to this article;

(b) ~~The owner, operator or manager of any facility that has not posted the required signs; and~~ It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of a premises within the City and County of Denver to violate any provision of this article;
and

(c) It shall be unlawful for Any person who, according to a written statement by the owner, operator, manager, patron or employee of any facility, ~~is not complying~~ to not comply with a "No Smoking" sign posted in accordance with this article.

Sec. 24-3131. - Agency responsibility.

Every department, agency and office of the city shall implement this article in all facilities under its management control.

~~**Sec. 24-314. - Nonretaliation.**~~

~~It shall be unlawful for an employer to retaliate against or discharge any employee for requesting a nonsmoking work area, or filing a complaint or otherwise reporting a violation of this article.~~

Sec. 24-3152. - Other applicable laws.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 24-3163. - Power of board of public health and environment.

The board of public health and environment is hereby authorized to adopt, and the manager of public health and environment may promulgate, rules and regulations deemed necessary for the proper and effective enforcement of the provisions of this article.

~~**Sec. 24-317. - Effective date.**~~

1 ~~This article shall be effective sixty (60) days from and after the date of its enactment, except~~
2 ~~insofar as the application of this article to professional sports stadiums where it shall not be~~
3 ~~effective until February 1, 1994.~~

4

5 **Secs. 24-3184—24-350. - Reserved.**

6

7 **Section 2.** That section 38-7, D.R.M.C., entitled "Smoking in retail food establishments" is
8 hereby repealed.

9

10 **Section 3. Effective Date.**

11

12 COMMITTEE APPROVAL DATE: _____, 2021.

13 MAYOR-COUNCIL DATE: _____, 2021.

14 PASSED BY THE COUNCIL _____ 2021

15 _____ - PRESIDENT

16 APPROVED: _____ - MAYOR _____ 2021

17 ATTEST: _____ - CLERK AND RECORDER,
18 EX-OFFICIO CLERK OF THE
19 CITY AND COUNTY OF DENVER

20

21 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2021; _____ 2021

22

23 PREPARED BY: Jonathan Griffin, Assistant City Attorney DATE: _____

24

25 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the
26 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
27 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
28 3.2.6 of the Charter.

29

30 Kristin M. Bronson

31 City Attorney

32

33 BY: _____, _____ City Attorney DATE: _____