

DRAFT: “Breathe Easy on the Mall” Ordinance

Before filing, recitals will be included in the ordinance, describing the purposes of the ordinance to include these among others:

- In the interest of public health, to reduce involuntary exposure to environmental tobacco and marijuana smoke and vapors in the city’s most highly concentrated pedestrian environment.
- To include electronic smoking devices within the ambit of the prohibition because of the dramatic increase in the use of such devices in recent years, the tendency of such devices to mimic traditional smoking and thereby “re-normalize” the act of smoking in public places and create the impression, particularly among children, that the use of such devices is associated with a healthy lifestyle, and to follow the lead of the federal government in treating such devices as being subject to regulation in the same manner as traditional smoking.
- A further rationale for including electronic smoking devices within the scope of the prohibition is because the increasing use of such devices for consuming marijuana and marijuana concentrates frustrates the enforcement of other state and city laws regulating the possession or use of marijuana, including the general prohibition on open and public consumption of marijuana and laws prohibiting the possession and use of marijuana by persons under the age of 21.

Section 1. Section 24-304, D.R.M.C., shall be amended by deleting the language stricken and adding new subsections (b)(5) and (b)(6) underlined, to read as follows:

Sec. 24-304. - Smoking in public places.

Smoking in public places is regulated as follows:

- (b) In outdoor spaces smoking shall be allowed except as follows:
- (1) Within the exterior walls/fences of an open-air theater, smoking is prohibited in open seating areas, food/drink concession areas and related lines leading thereto, restrooms and amphitheater aisles and allowed elsewhere within the facility only in designated smoking areas established by the owner, operator or person in charge, in a manner consistent with section 24-307(a);
 - (2) During special events open to the public and held within the exterior walls/fences of a botanic garden or zoo, smoking is prohibited except in

smoking areas established therein by the facility owner, operator or person in charge, in places apart from visitor viewing areas and walkways, in a manner consistent with section 24-307(a);

- (3) Within the exterior walls/fences of a sport stadium, smoking is prohibited in open seating areas, aisles, interior ramps or stairs leading to seating areas, food/drink concession areas and the area of lines leading thereto and allowed elsewhere within the facility only in designated smoking areas established by the owner, operator or person in charge, in a manner consistent with section 24-307(a); ~~and~~
- (4) Within the exterior walls/fences of tennis courts and swimming pools, smoking is prohibited;
- (5) On certain public premises adjoining hospital properties, as prohibited by section 38-8.
- (6) On the 16th Street Pedestrian and Transit Mall, as prohibited by section 38-9.

Section 2. Article I of Chapter 38, D.R.M.C. shall be amended by adding a new section 38-9, to read as follows:

Sec. 38-9. Smoking on the 16th Street Pedestrian and Transit Mall prohibited.

- (a) *Definitions.* For the purposes of this section, the following words and phrases have the meanings set forth below:

- (1) *Electronic smoking device* means any electronic oral device such as one composed of a heating element, battery, or electronic circuit which provides a vapor of nicotine or marijuana, vapor of a solution including nicotine or marijuana, or aerosol of solution including nicotine or marijuana, 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, and electronic or vape pen, an electronic pipe, 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 State Food and Drug Administration for use in reducing, treating or

eliminating nicotine or tobacco dependence, or for any other medical purpose, when such device is being used for such purpose.

- (2) *Marijuana* means all parts of the plant of the genus cannabis, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate.
 - (3) *16th Street Pedestrian and Transit Mall* shall mean the portion of 16th Street and an area north or south of 16th Street within fifty (50) feet of 16th Street between the west curb line of Broadway and the southeasterly curb line of Chestnut Street, and shall include any area on the Mall that has been permitted for vending, outdoor dining areas, and special events.
 - (4) *Smoke or smoking* means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco or marijuana, or the use of an electronic smoking device.
 - (5) *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.
- (b) *Prohibition.* It shall be unlawful for any person to smoke on the 16th Street Pedestrian and Transit Mall.
 - (c) *Penalty.* Any violation of subsection (a) of this section is hereby declared to be a non-criminal offense and, upon an admission or finding or judgment of guilt or liability by default or otherwise, the violator shall be subject to a fine not to exceed one hundred dollars (\$100.00).