

## Chapter 6-23

### BOISE CITY SMOKE-FREE AIR ORDINANCE

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#### 6-23-01 Short title

This Chapter shall be known as the Boise City Smoke-free Air Ordinance, and any other ordinances or resolutions in conflict herewith are repealed upon the effective date of the ordinance codified in this Chapter.

#### 6-23-02 Authority

This Chapter is adopted pursuant to the authority granted by Idaho Code, Sections 39-5511, 39-5713, 50-302, and 50-304.

#### 6-23-03 Findings and intent

Public health officials have concluded that secondhand tobacco smoke causes disease, including lung cancer and heart disease, in nonsmoking adults, as well as causing serious conditions in children such as asthma, respiratory infections, middle ear infections, and sudden infant death syndrome. In addition, public health officials have concluded that secondhand smoke can exacerbate adult asthma and allergies and cause eye, throat and nasal irritation. The conclusions of public health officials concerning secondhand tobacco smoke are sufficient to warrant measures that regulate smoking in public places in order to protect the public health and the health of employees who work in public places.

The intent of this chapter is to protect the public health, the health of employees who work in public places, and the rights of nonsmokers to breathe clean air by prohibiting smoking in public places and in places of employment.

#### 6-23-04 Definitions

As used in this Chapter:

1. “Bar” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, bikini-bars, and cabarets.
2. “Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
3. “E-cigarette” means any electronic oral device, such as one composed of a heating or ultrasonic element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substance, and use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.
4. “Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for an employer.
5. “Employer” means a person, business, association, municipal corporation, or trust that employs the services of one or more individual persons.
6. “Enclosed Area” means all space between a floor and a ceiling that is bounded on all sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.
7. “Exclusive Retail Tobacconist” means a retail tobacco business which derives more than ninety-five percent of sales from tobacco and tobacco products sold on the premises for consumption off the premises and which the sale, manufacture, or promotion of other products is merely incidental. The status as an exclusive retail tobacco business is lost if at any time the business premises provide seating for more than four patrons or is used to sell or serve food or drink, vend lottery tickets or newspapers or magazines not primarily for tobacco enthusiasts, or if the premises are used for dancing, karaoke, gaming, or live entertainment or performance of any kind.
8. “Health Care Facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

9. “Place of Employment” means an area under the control of a public or private employer.
10. “Public Place” means an area to which the public is invited or in which the public is permitted for any purpose, whether the place is publicly owned or private. Public places are as further defined in Boise City Code 6-23-06.
11. “Restaurant” means an eating establishment, including but not limited to, coffee shops, cafeterias, and food stands, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar area within the restaurant.
12. “Retail tobacco business” means a business which, during the normal course of business, primarily distributes any tobacco and/or tobacco product or provides any equipment or material used for the consumption of tobacco.
13. “Service Line” means an indoor or outdoor location in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, persons waiting to use an ATM, attend a concert, obtain food or drink from a vendor, purchase movie tickets, purchase or board public transit or attend a sporting event.
14. “Shopping Mall” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
15. “Smoking” means inhaling, exhaling, burning, carrying, or possessing any combusting (heated, lit, or smoldering) tobacco or any other substance, whether contained in a cigar, cigarette, or pipe, or any other object. Smoking does not include possession of an unlit or unheated cigar, cigarette, or pipe. Smoking does not include use of an e-cigarette which creates only a vapor without any smoke.
16. “Sports Arena” means places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events. This term includes, but is not limited to, sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.
17. “Temporary Special Event Zone” means any outdoor area set aside to accommodate people in a smoke-free space for such activities as concerts, movies, or other entertainment in a public space. A Temporary Special Event Zone shall be designated by a perimeter of “No Smoking” signs placed at each entrance to the zone and spaced approximately every fifty feet at a height of between three feet (measured from the top edge of the sign) and five feet (measured from the bottom edge of the sign). The signs shall be no less than 100 square inches with the words “No Smoking” in letters at least one inch high or displaying the international “No Smoking” symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. If the permit is issued for an area in which smoking is not otherwise

prohibited, a Temporary Special Event Zone may be required as a condition of issuance of a Special Event Permit/Citizen Use Permit for the entire duration of the event authorized in the permit.

18. "Tobacco and Tobacco Products" means tobaccos, cigarettes, cigars, pipes, tobacco pipe tobaccos, humidors, cigar cutters, pipe cleaners, pipe maintenance tools, and literature primarily for tobacco enthusiasts.

**6-23-05 Application to City-owned facilities**

All vehicles and enclosed areas owned, leased, or operated by the City of Boise City shall be subject to the provisions of this Chapter.

**6-23-06 Prohibition of smoking in enclosed public places**

Smoking shall be prohibited in all enclosed public places within the limits of the City of Boise City, including but not limited to, the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Businesses patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gaming facilities.
- J. Health care facilities.
- K. Hotels and motels, except as provided in Idaho Code.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, except where permitted by Idaho Code, nursing homes, and other multiple-unit residential facilities.
- M. Polling places.
- N. Private clubs.

- O. Public transportation vehicles, including buses and taxicabs, under the authority of the City/County/Town, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
- P. Restaurants.
- Q. Restrooms, lobbies, reception areas, hallways, and other common use areas.
- R. Retail Tobacco Businesses, except an exclusive retail tobacconist.
- S. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of a public agency, board, commission, committee or council of a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of Boise City.
- T. Shopping malls.
- U. Sports arenas, including enclosed places in outdoor arenas.
- V. Theaters and theatrical productions, except as provided in Idaho Code.

**6-23-07 Prohibition of smoking in enclosed places of employment**

Smoking shall be prohibited in all enclosed places of employment in the City of Boise City without exception. This includes, but is not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, retail spaces and showrooms, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and garages.

**6-23-08 Prohibition of smoking in outdoor areas**

Smoking shall be prohibited in the following outdoor public places:

- A. Within the bus transfer location known as the Downtown Boise Transit Mall, consisting of the entire sidewalk on the north side of Idaho Street from Capitol Boulevard to 9th Street and the entire sidewalk on the south side of Main Street from Capitol Boulevard to 9th Street.
- B. Within the bus transfer location at the Towne Square Mall, consisting of the entirety of the raised concrete waiting location and extending out twenty (20) feet into the parking lot on all sides.
- C. Within twenty (20) feet of all other bus stops, benches, stations, platforms, and shelters.
- D. Within twenty (20) feet of entrances or exits to schools including public and private elementary, secondary, vocational, and trade schools or colleges, so as to ensure that tobacco smoke does not enter those areas.
- E. Within twenty (20) feet of entrances or exits to buildings owned or managed by the City of Boise City, so as to ensure that tobacco smoke does not enter those areas.

- F. Within twenty (20) feet of any sidewalk café (as defined by the designated footprint area set forth in the sidewalk café map on file with the Boise City Clerks Office and/or the Idaho State Police Bureau of Alcohol Beverage Control) and in any dining patio, and/or outdoor seating or serving areas of restaurant legally accessible to persons under the age of twenty-one.
- G. Within twenty (20) feet of all outdoor service lines.
- H. Within the Grove Plaza bounded by Capitol Boulevard, Ninth Street, Main Street and Front Street, except for those areas specifically designated for smoking by the Boise City Clerk or designee following recommendation of those areas by the Capital City Development Corporation.
- I. Within the sidewalk and roadway of Eighth Street, extending from Main Street to Bannock Street and from the building faces on either side and into the alleyways for the first twenty (20) feet measured from start of the building faces along Eighth Street.
- J. Within any designated “Temporary Special Event Zone.”

**6-23-09 Where smoking is not regulated**

Notwithstanding any other provision of this Chapter to the contrary, the following areas shall be exempt from the provisions of Sections 6-23-06, 6-23-07, and 6-23-08:

- A. Private residences, unless used as a childcare, adult day care, or health care facility, or as a home office that is accessible to one or more employees or members of the public.
- B. Privately owned outdoor spaces legally accessible only to persons age twenty-one and over, including rooftop patios and court yards of bars, but not including sidewalk cafés. Any such privately owned outdoor spaces established consistent with all applicable building and zoning codes existing at the time of the effective date of this ordinance shall be exempt from the twenty foot rule in Section 08 F above.
- C. An exclusive retail tobacconist as defined in section 04 of this title and chapter.
- D. American Indian/Alaska Native Ceremonies. A religious ceremony using a traditional pipe under this section is subject to any applicable state or local law, except as provided in this section. A person is exempt from the restrictions of this chapter if the person:
  1. Is a member of an American Indian/Alaska Native tribe whose members are recognized as eligible for the special programs and services provided by the United States to American Indians/Alaska Natives who are members of those tribes; and
  2. Is an American Indian/Alaska Native who actively practices an American Indian/Alaska Native religion, the origin and interpretation of which is from a traditional American Indian/Alaska Native culture; and
  3. Is smoking tobacco using the traditional pipe of an American Indian/Alaska Native tribal religious ceremony, of which tribe the person is a member, and is smoking the pipe as part of that ceremony; and
  4. The ceremony is conducted by a pipe carrier, American Indian/Alaska Native spiritual person, or medicine person recognized by the tribe of which the person is a member and by the American Indian/Alaska Native community.

**6-23-10 Declaration of establishment as nonsmoking**

Notwithstanding any other provision of this Chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any area in which a sign conforming to the requirements of Section 6-23-11 is posted.

**6-23-11 Posting of signs and removal of ashtrays**

The owner, operator, manager, or other person in control of a place of employment or a public place where smoking is prohibited by this Chapter shall:

- A. Clearly and conspicuously post in that place:
  - 1. “No Smoking” signs or the international “No Smoking” symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it; and
  - 2. A sign at every entrance that clearly states that smoking is prohibited. If the place of employment is a vehicle, there shall be at least one conspicuous sign, visible from the exterior of the vehicle, clearly stating that smoking is prohibited.
- B. Remove all ashtrays from any area where smoking is prohibited by this Chapter, except for ashtrays displayed for sale and not for use on the premises.

**6-23-12 Enforcement**

In addition to any law enforcement officer, any citizen who desires to complain about a violation of this Chapter for which there is probable cause may initiate enforcement by requesting to sign a Uniform Citation as the complaining party and state’s witness.

**6-23-13 Responsibilities, violations, and penalties**

- A. Smoking where prohibited. A person who smokes in any public place where smoking is prohibited by the provisions of this Chapter shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50.00) as prescribed by the Idaho Infraction Rules for smoking in violation of the Idaho Indoor Clean Air Act.
- B. An employer, owner, manager, operator, or employee of an establishment regulated by this Chapter, who observes a person smoking in apparent violation of this chapter shall ask the person to extinguish all lighted smoking products. If the person persists in violating this chapter, the employer, person in charge, agent or employee shall ask the person to leave the premises. Any person who refuses to either extinguish all lighted smoking products or leave the premises is guilty of an infraction and is subject to a fine not to exceed fifty dollars (\$50.00) as prescribed by the Idaho Infraction Rules for smoking in violation of the Idaho Indoor Clean Air Act. Any violation may be reported to a law enforcement officer.
- C. Permitting smoking where prohibited. No employer or other person in charge of a public place or publicly-owned building or office shall knowingly or intentionally permit smoking in violation of this chapter. Any employer or other person in charge of a public

place or publicly-owned building or office who violates the provisions of this section is guilty of a separate act of permitting smoking where smoking is prohibited, each of which is punishable by a fine not to exceed one hundred dollars (\$100) as prescribed by the Idaho Infraction Rules for smoking in violation of the Idaho Indoor Clean Air Act.

- D. Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department of Health and Welfare or the Department of Labor pursuant to this section shall be subject to a civil penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each violation.
- E. Violation of this Chapter is hereby declared to be a public nuisance, which may be abated by the City of Boise City by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City of Boise City may take action to recover attorneys fees and/or costs of the nuisance abatement.

**6-23-14 Other applicable laws**

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

**6-23-15 Liberal construction**

This Chapter shall be liberally construed so as to further its purposes.

**6-23-16 Severability**

If any provision, clause, sentence, or paragraph of this Chapter or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

(6828, 11/29/2011, Enacted)