

## ORDINANCE NO. 4954

### AN ORDINANCE TO AMEND CHAPTER 8.20 REGARDING SMOKING IN WORKPLACES TO INCREASE THE DISTANCE REQUIREMENTS FOR SMOKING NEAR ENTRYWAYS AND TO PROHIBIT SMOKING IN HOTELS AND MOTELS AND TO AMEND CHAPTER 9.04 REGARDING THE REGULATION OF TOBACCO PRODUCTS BY CHANGING THE TERM "MINOR" TO "MINIMUM LEGAL SALE AGE", INCREASING THE MINIMUM LEGAL SALE AGE FROM 18 TO 21 AND REMOVING TERMS RELATING TO THE POSSESSION, CONSUMPTION AND USE OF TOBACCO PRODUCTS BY PERSONS UNDER THE LEGAL SALE AGE

#### RECITALS:

House Bill 19-1076 updated the *Colorado Clean Indoor Air Act* ("CCIAA") by increasing the protections available to the public for involuntary exposure to emissions from secondhand smoke and electronic smoking devices in areas open to the public. The purpose of the revisions was to preserve and improve the health, comfort and environment of the people in the state by protecting the right of people to breath clean, smoke-free air.

The definition of an "entryway" was amended to increase the entryway radius outside the doorway of a public or private property from 15 feet to 25 feet. The law provides that local authorities may determine the specified radius for entryways in its jurisdiction; Chapter 8.20 of the Grand Junction Municipal Code ("GJMC") presently defines the entryway radius as 15 feet. This ordinance amends the GJMC to define an entryway radius to uniformly be 25 feet.

Chapter 8.20 of the GJMC allows smoking in twenty five percent of the rooms available in hotels and motels. This ordinance amends the GJMC to be consistent with the CCIAA and disallow smoking in all hotel and motel rooms. Nothing in this ordinance is intended to inhibit a person's ability to take medicine using an inhaler or a similar device, nor to prevent an employer or business owner from making reasonable accommodation for the medical needs of an employee, customer, or other person in accordance with the Americans with Disabilities Act.

Public Law 116-94 known as the *Further Consolidated Appropriations Act 2020* amends Section 906(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387f(d)) increasing the minimum age for any retailer to sell tobacco products from 18 to 21 years of age. Chapter 9.04 of the GJMC currently defines a "minor" as a person under the age of 18. This ordinance amends the GJMC to be consistent with the federal requirements by changing the term "minor" to "minimum legal sales age" and amends the minimum age for the sale/purchase of tobacco products from 18 to 21.

On July 14, 2020 Governor Polis signed HB 20-1001 concerning nicotine product regulation and as provided by that law, HB19-1076 and Public Law 116-94 and a request from the Mesa County Health Department, this ordinance is being proposed to integrate the various provisions of law.

Furthermore, the ordinance amends the GJMC by striking §(b) of Chapter 9.04.210 regarding the possession, consumption or use of tobacco products by persons under the legal sale age.

According to research by the *Campaign for Tobacco Free Kids* youth purchase, use, or possession ("PUP") laws are ineffective in reducing youth tobacco use. Mesa County Health and the *Campaign for Tobacco Free Kids* assert that a) purchase, use or possession laws can inappropriately shift the responsibility for underage tobacco use from the tobacco industry and retailers to young persons'; b) young people often become addicted to tobacco products because of aggressive marketing by the tobacco industry; and, c) penalizing youth could deter them from seeking support for cessation. This ordinance proposes amendment of the GJMC by the deletion of provisions that punish the purchase, use, or possession of tobacco products by persons under the minimum legal sales age.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:**

Chapter 8.20 shall be amended and revised as follows (additions shown in **bold print** and deletions marked with ~~strike-through~~):

CHAPTER 8.20 SMOKING IN WORKPLACES AND PUBLIC PLACES

8.20.020 Smoking in workplaces and public places.

(a) Definitions. The following words and phrases, whenever used in this section, shall have the following meanings:

*Bar* means an area which 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 such beverages.

*Bingo hall* means any enclosed area used for the management, operation or conduct of a game of bingo by any organization holding a license to manage, operate or conduct games of bingo pursuant to Colorado law and in which food service for consumption on the premises is incidental to the games of bingo.

*Bowling alley* means a business open to the public which offers the use of bowling lanes, typically equipped with operable automatic pin setting apparatus and in which

food service for consumption on the premises is incidental to bowling and related activities.

*Business* means any sole proprietorship, partnership, joint venture, corporation or other entity formed for profit-making or nonprofit purposes, including retail establishments where goods or services are sold, as well as professional corporations and limited liability companies. *Business* includes entities where legal, accounting, financial, planning, medical, dental, engineering, architectural or other services are delivered.

*Electronic smoking device* means an electric or battery-operated device, which can be used to deliver substances, including but not limited to, nicotine, tobacco, or marijuana, to the person using such device. Electronic smoking devices shall include, without limitation, electronic cigarettes, cigars, cigarillos, pipes, and hookahs.

*Employee* means any person whether such person is referred to as an employee, contractor, independent contractor, volunteer or by any other designation who:

- (1) Performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or
- (2) Provides uncompensated work or services to a business or nonprofit entity.

*Employer* means any person, partnership, association, corporation, or nonprofit entity that employs one or more persons.

*Enclosed area* means all space between a floor and ceiling within a structure or building which is closed in on all sides by solid walls, doors or windows which extend from the floor to the ceiling.

*Indoor area* means any enclosed area or portion thereof. The opening of windows or doors, or the temporary removed of wall panels, does not convert an indoor area to an outdoor area.

*Lighted* means to illuminate by electricity, battery or fire; to ignite by electricity, battery or fire; to burn by electricity, battery or fire; or to emit light by electricity, battery or fire.

*Marijuana* (which may alternatively be spelled as "*marihuana*") shall have the same meaning as set forth in Article XVIII, Section 16 of the Colorado Constitution or as may be more fully defined in any applicable State law or regulation.

*Person* means a natural person or any entity or business recognized by law or formed to do business of any sort.

*Place of employment* means any indoor place and any public place or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

*Private club* means any establishment which restricts admission to members of the club and their guests. See *Public place*.

*Private function* means any activity which is restricted to invited guests in a nonpublic setting and to which the general public is not invited.

*Public meetings* means any meeting open to the public pursuant to Part 4 of Article 6 of Title 24, C.R.S., or any other applicable law.

*Public place* means any area to which the public is invited or in which the public is permitted, including but not limited to banks, educational facilities, schools, health facilities, laundromats, public transportation facilities including bus stations and stops, taxis, shelters, airports, train stations, reception areas, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters and waiting rooms. A private club is considered a *public place* when functions are held at the club which are open to the general public and are not restricted to the members of the club. A private residence is not a *public place* except during times when it is being used as a child care, adult care or health care facility.

*Restaurant* means a business in which the principal business is the sale of food or meals prepared on-site, typically for consumption on-site. Examples of restaurants, without limitation, are coffee shops, cafeterias, sandwich stands, private or public school or other cafeterias, and other eating establishments which give or offer food for sale to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

*Retail tobacco store* means a business utilized primarily for the sale of tobacco and accessories and in which the sale of other products is incidental.

*Service line* means any indoor or outdoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

*Smoke* or *smoking* means and includes, but is not limited to:

- 1) the carrying or possession of smoking instrument in one's mouth for the purpose of inhaling or exhaling smoke or vapor or blowing smoke rings;

- 2) the placing of a lighted smoking instrument in an ashtray or other receptacle, and allowing smoke or vapor to diffuse in the air;
- 3) the possession, carrying or placing of a lighted smoking instrument in one's hands or any appendage or device and allowing smoke or vapor to diffuse in the air; or
- 4) the inhaling or exhaling of smoke or vapor from a lighted smoking instrument.

*Smoking instrument* means an instrument of any kind which can be used to deliver substances, including but not limited to nicotine, tobacco, or marijuana, to the person using such instrument. Smoking instrument shall include, without limitation, cigarettes, cigars, cigarillos, pipes and hookahs. Smoking instrument shall specifically include electronic smoking devices.

*Smoke-free* means that air in an enclosed area is free from smoke caused by smoking.

*Sports arena* means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

*Structure* is defined in the International Building Code, including the International Residential Code, ("IBC") as adopted by the City from time to time. The term *structure* includes the term *building*, also defined by the IBC.

*Tobacco* is defined in § 25-14-203(17), C.R.S.

*Work area* means an enclosed area in which one or more employees are routinely assigned and perform services for or on behalf of the employer.

(b) Application to City Property. All enclosed areas and motor vehicles that are owned or leased by the City shall be subject to the provisions of this section as though such areas and vehicles were public places.

(c) Prohibition of Smoking in Public Places and Indoor Areas.

(1) Except as provided herein, smoking shall be prohibited in all public places and indoor areas within the City, including, but not limited to, the following:

(i) Elevators.

(ii) Restrooms, lobbies, reception areas, hallways and any other common-use areas.

- (iii) Buses, taxicabs, other means of public transit while operating within the City limits, and ticket, boarding and waiting areas of public transit systems including stops, bus benches, shelters and depots.
- (iv) Service lines.
- (v) Retail stores.
- (vi) All areas available to and customarily used by the public in all businesses and nonprofit entities patronized by the public, including, but not limited to, professional and other offices, banks, and laundromats.
- (vii) Restaurants and bars except that smoking is allowed in outdoor seating areas of restaurants and bars that are not enclosed and are not under a roof or a projection of a roof as defined by the IBC as a *roof assembly*, such as patios, and any person smoking is at least ~~15~~ **25** feet from the front or main doorway.
- (viii) Aquariums, galleries, libraries, museums and similar facilities.
- (ix) Any structure primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance.
- (x) Sports arenas whether enclosed or outdoors.
- (xi) Public meeting places.
- (xii) Health care facilities including hospitals, clinics, therapists' offices and facilities, physical therapy facilities, doctors' offices, dentists' offices and the offices and facilities of other health care providers.
- (xiii) Restrooms, lobbies, hallways, and other common areas in public and private buildings including but not limited to apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (xiv) Billiard or pool halls.
- (xv) Polling places.
- (xvi) Facilities in which games of chance are conducted, including but not limited to bingo halls.

(xvii) To the extent not otherwise provided in § 25-14-103.5, C.R.S., public and nonpublic schools.

(xviii) Other educational and vocational institutions.

(xix) Restrooms, lobbies, hallways, and other common areas in hotels and motels. ~~and in at least 75 percent of the sleeping quarters within a hotel or motel that are rented to guests.~~

(xx) Any place of employment that is not exempted in subsection (f) of this section-, **whether or not open to the public and regardless of the number of employees.**

(xxi) The indoor area of a private club. Smoking is allowed in the outdoor areas of a private club, except where otherwise prohibited in this section.

**(xxii) Hotel and motel rooms.**

(2) Notwithstanding any other provision of this section, any person or business who controls any business or facility may declare that entire establishment, facility or grounds as smoke-free.

(d) Smoke-Free Workplace. In the case of employers who own facilities otherwise exempted by subsection (f) of this section, each such employer shall provide a smoke-free area for each employee requesting a smoke-free area **that is free from secondhand smoke and emissions from electronic smoking devices.** Every employee shall have the right to work in a smoke-free area.

(e) Smoke-Free Exits and Entrances. Smoking shall not occur in or so close to exterior exits or entrances that the free flow of pedestrian traffic may be affected or so close that the operation of the doors, exits or entrances is affected or diminished. No smoking shall occur within 45 **25** feet of the front or main doorway leading into a building or facility.

(f) Where Indoor Smoking Is Not Prohibited.

(1) Notwithstanding any other provision of this section to the contrary, the following areas shall be exempt from the prohibition contained in subsection (c) of this section:

(i) Private homes and residences; except when used as a child care, adult day care or health care facility.

(ii) Retail tobacco stores.

(iii) Private vehicle, except if the private vehicle is being used for the public transportation of children or as part of health care or day care transportation.

~~(iv) — A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 25 percent.~~

~~(v) A place of employment that is not open to the public and that is under the control of an employer that employs three or fewer employees.~~

~~(vii) A private, nonresidential building on a farm or ranch, as defined in § 39-1-102, C.R.S., that has annual gross income of less than \$500,000.~~

(2) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this subsection (f) may declare that entire establishment, facility, or grounds as smoke-free.

(g) Signs.

(1) Each owner, operator, manager and other person having control of an enclosed area or public place subject to the provisions hereof shall be jointly and severally responsible to clearly and conspicuously post:

(i) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) in every public entrance or other areas where smoking is prohibited by this section.

(ii) In public places where smoking is allowed pursuant to this section, a sign with the words "Smoking is Allowed Inside" at each public entrance to, or in a position clearly visible on entering, the enclosed area in which smoking is permitted.

(2) All signs referred to in this subsection (g) shall be a minimum size of 20 square inches and must be placed at a height of between four and six feet above the floor.

(3) All signs at public parks or unenclosed public places shall be visible to persons entering from the primary entrance or shall be posted at reasonable intervals along the property boundary. The primary entrance shall be referred to as the location where a sign identifies the park name, hours it is open to the

public and other rules and regulations. For purposes of this section, "reasonable intervals" shall be presumed to be no less than 300 feet.

(h) **Optional Prohibitions.** The owner or manager of any place not specifically listed in subsection (c) of this section, including a place otherwise exempted in subsection (f) of this section, may post signs prohibited smoking or providing smoking and nonsmoking areas. Such posting shall have the effect of including such place, or the designated nonsmoking portion thereof, in the places where smoking is prohibited pursuant to this section.

(i) **No Retaliation.** No person or employer shall discharge, refuse to hire or retaliate in any manner against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to, or complains about the lack of, a smoke-free environment afforded by this chapter.

(j) **Violations and Penalties.**

(1) It shall be unlawful for any person or business that owns, manages, operates or otherwise controls the use of any premises, enclosed area, public place, or place of employment subject to regulation under this section to fail to comply with any of its provisions.

(2) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this section.

(3) Each violation of any provision of this section shall be deemed to be a separate violation. Each day shall be treated as a separate violation for continuing violations of subsections (d), (g) and (i) of this section.

(k) **Other Applicable Laws.** This section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

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

Chapter 9.04 shall be revised as follows (additions documented in bold print and deletions marked with strike-through notations):

9.04.210 Regulation of tobacco products.

(a) Definitions. For the purposes of this section, the following words or phrases shall have the meanings set forth.

(1) *Tobacco product* shall include, but is not limited to, cigars, cigarillos, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, tobacco-containing shisha, and dissolvable tobacco product. *Tobacco product* shall also include electronic smoking devices that deliver substances to the user by turning liquid into vapor that is inhaled. Electronic smoking devices include but are not limited to electronic cigarettes, cigars, cigarillos, pipes, and hookahs. This definition does not include any products that the Food and Drug Administration of the United States Department of Health and Human Services has approved as a tobacco use cessation product.

(2) *Smoking* means, but is not limited to:

(i) The carrying or possession of a smoking instrument in one's mouth for the purpose of inhaling or exhaling smoke or vapor or blowing smoke or vapor rings;

(ii) The placing of a lighted smoking instrument in an ashtray or other receptacle, and allowing smoke or vapor to diffuse in the air;

(iii) The possession, carrying or placing of a lighted smoking instrument in one's hands or any appendage or device and allowing smoke or vapor to diffuse in the air; or

(iv) The inhaling or exhaling of smoke or vapor from a lighted smoking instrument.

(3) *Self-service display* means any retail tobacco display to which customers have direct physical access, including cigarette vending machines.

(4) ~~*Minor* means any person under the age of 18.~~ ***Minimum Legal Sales Age is 21 years of age; (MLSA) means minimum legal sales age which is 21 years of age.***

(5) *Vending machine* means any mechanical, electric or electronic self-service device which, upon insertion of money, tokens or other form of payment, dispenses a tobacco product.

(6) *Smoking instrument* means an instrument of any kind which can be used to deliver substances, including but not limited to nicotine, tobacco, marijuana, or any other substance, or a combination thereof to the person using the

instrument. *Smoking instrument* shall include, but not limited to, cigarettes, cigars, cigarillos, pipes and hookahs. *Smoking instrument* shall include electronic smoking devices.

(7) *Lighted* means to illuminate by electricity, battery, or fire; to ignite by electricity, battery or fire; to burn by electricity, battery or fire; or to emit light by electricity, battery or fire.

(8) *Electronic smoking device* means an electric or battery-operated device which can be used to deliver substances, including but not limited to nicotine, tobacco, or marijuana, to the person using such device. Electronic smoking devices shall include, without limitation, electronic cigarettes, cigars, cigarillos, pipes, and hookahs. An electronic smoking device includes any component, part or accessory of such device whether or not sold separately, regardless of nicotine content or any other substance intended to be vaporized for human inhalation during the use of the device.

~~(b) Possession and Use of a Tobacco Products by Minors.~~

~~(1) It shall be unlawful for any minor to knowingly possess, consume, or use, either by smoking, ingesting, absorbing, vaping or chewing, any tobacco product.~~

~~(2) It shall be unlawful for any minor to knowingly obtain or attempt to obtain any tobacco product by misrepresentation of age or by any other method.~~

~~(3) It shall be rebuttably presumed that the substance within a package or container is a tobacco product if the package or container has affixed to it a label which identifies the package or container as containing a tobacco product.~~

~~(c)(b) Furnishing Tobacco Products Prohibited.~~

(1) Any person who knowingly furnishes any tobacco product to any ~~minor~~ **person under the MLSA** by gift, sale, or any other means commits a violation hereof.

(2) It shall be an affirmative defense to a prosecution under this section that the person furnishing the tobacco product was presented with and reasonably relied upon a document which identified the person receiving the tobacco product as being ~~18~~ **21** years of age or older.

(d) (c) Vending Machines. It shall be unlawful for any person to sell a tobacco product by use of a vending machine or other coin-operated machine; except that cigarettes may be sold at retail through vending machines only in:

- (1) Factories, businesses, offices, or other places not open to the public; or
- (2) Places to which ~~minors~~ **persons under the MLSA** are not permitted access.

(e) (d) Retail Sale of Tobacco Products.

(1) It shall be unlawful for any business proprietor, manager, or other person in charge or control of a retail business of any kind to engage, employ or permit any ~~minor~~ **person under the MLSA** to sell any tobacco product from such retail business.

(2) It shall be unlawful for any business proprietor, manager or other person in charge or control of a retail business of any kind to use a self-service display of tobacco products or stock a tobacco product in any way which allows a customer to access such tobacco product without first securing the physical assistance of an adult business employee for each transaction. The provisions of this subsection (e)(2) shall not apply to stores possessing a valid retail liquor store license, as defined by the Colorado Liquor Code, issued by the City and to vending machines meeting the requirements of subsection (d) of this section.

(3) Any person who sells or offers to sell any cigarettes or tobacco products at retail shall display a warning sign, as specified in this subsection.

(4) Said warning sign shall be displayed in a prominent place in the building and on such machine at all times and shall have a minimum height of three inches and a width of six inches, and shall read as follows:

WARNING:

IT IS ILLEGAL FOR ANY PERSON UNDER ~~EIGHTEEN~~ **TWENTY-ONE** YEARS OF AGE TO PURCHASE OR POSSESS CIGARETTES AND TOBACCO PRODUCTS. UPON CONVICTION A FINE OF UP TO \$500 PLUS NOT MORE THAN 48 HOURS OF USEFUL PUBLIC SERVICE MAY BE IMPOSED.

(f) (e) Sale of Single Cigarettes Prohibited. It shall be unlawful for any business proprietor, manager or other person in charge or control of a retail business of any kind

to sell or offer to sell single cigarettes or any pack of cigarettes containing fewer than 20 cigarettes.

~~(g)~~ **(f)** False or Altered Identification. It shall be unlawful for any person under the age of 18 years of age **MLSA** to misrepresent that person's identity or age, or use any false or altered identification for the purpose of purchasing any tobacco product.

~~(h)~~ **(g)** Penalty. Any person who violates any provision hereof is guilty of a petty offense and upon conviction shall be subject to:

(1) A fine of up to \$50.00 for the first offense; a fine of up to \$100.00 for the second offense; a fine of up to \$500.00 for a third offense; and up to \$1,000 for each subsequent offense; and one year in jail;

(2) Except that a ~~minor~~ **person under the age of eighteen years** shall not be subject to any jail time but may be required to pay a fine not to exceed \$500.00, as provided, and may be required to perform not more than 48 hours useful public service (which may include educational efforts or programs) or any combination of fine, public service and education.

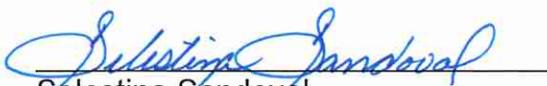
~~(i)~~ **(h)** Savings Clause. Should any provision of said ordinance be found by a court of competent jurisdiction to be unconstitutional or otherwise unenforceable, the rest of the provisions hereof shall remain in full force and effect.

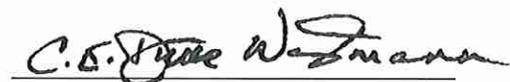
**ALL OTHER PROVISIONS OF CHAPTERS 8.20 AND 9.04 SHALL REMAIN IN FULL FORCE AND EFFECT.**

Introduced on first reading the 19<sup>th</sup> day of August 2020 and ordered published in pamphlet form.

Adopted on second reading this 2<sup>nd</sup> day of September 2020 and ordered published in pamphlet form.

ATTEST:

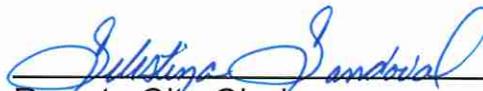
  
Selestina Sandoval  
Deputy City Clerk

  
C.E. "Duke" Wortmann  
President of City Council

I HEREBY CERTIFY THAT the foregoing Ordinance, being Ordinance No. 4954 was introduced by the City Council of the City of Grand Junction, Colorado at a regular meeting of said body held on the 19<sup>th</sup> day of August 2020 and the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, in pamphlet form, at least ten days before its final passage.

I FURTHER CERTIFY THAT a Public Hearing was held on the 2<sup>nd</sup> day of September 2020, at which Ordinance No. 4954 was read, considered, adopted and ordered published in pamphlet form by the Grand Junction City Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 4<sup>th</sup> day of September 2020.

  
Deputy City Clerk

Published: August 21, 2020  
Published: September 4, 2020  
Effective: October 4, 2020

