

Commissioner Scherr moved adoption
of the following Ordinance:

ORDINANCE NO. 2022-01

**AN ORDINANCE REPEALING EAGLE COUNTY ORDINANCE NO. 92-01 AND
EAGLE COUNTY ORDINANCE NO. 06-01 AND PROHIBITING SMOKING AND THE
USE OF ELECTRONIC SMOKING DEVICES IN PUBLIC PLACES, PLACES OF
EMPLOYMENT, AND OTHER PLACES OF INTEREST IN UNINCORPORATED
EAGLE COUNTY**

WHEREAS, numerous studies have found that tobacco smoke and emissions from electronic smoking devices are a major contributor to indoor air pollution and cause secondhand smoke and secondhand aerosol; and

WHEREAS, breathing secondhand smoke or secondhand aerosol is a significant cause of disease, including heart disease, respiratory disease, and lung cancer; and

WHEREAS, the Centers for Disease Control and Prevention determined in 2014 that secondhand smoke accounts for an estimated 41,000 deaths annually in the United States. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

WHEREAS, secondhand smoke and secondhand aerosol can contain more than 4,000 chemicals, including arsenic, formaldehyde, hydrogen cyanide, and radioactive elements. More than 60 of these chemicals have been identified as carcinogens; and

WHEREAS, studies have shown there is no safe level of exposure to secondhand smoke or secondhand aerosol; and

WHEREAS, the United States Surgeon General has called upon local government entities to adopt policies related to preventing the harm of secondhand smoke and secondhand aerosol and to include electronic smoking devices in smoke-free policies in order to protect the public from both secondhand smoke secondhand aerosol; and

WHEREAS, in order to protect individuals in Eagle County (the "County") from the harmful impacts of secondhand smoke, the Eagle County Board of County Commissioners (the "Board") previously adopted County Ordinance No. 92-01 regulating smoking in public areas owned or operated by the County and County Ordinance No. 06-01 prohibiting smoking in public places, places of employment, and other places of interest in the County; and

WHEREAS, following the adoption of County Ordinances No. 92-01 and No. 06-01, the Legislature for the State of Colorado passed C.R.S. §§ 25-14-201 to 25-14-209 (the "Colorado

Eagle County, CO
Regina O'Brien
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Clean Indoor Air Act”) in order to protect the public throughout Colorado from involuntary exposure to emissions from secondhand smoke; and

WHEREAS, a violation of the Colorado Clean Indoor Air Act is a petty offense punishable by up to a fine of not more than three hundred dollars, imprisonment for not more than ten days in a county jail, or both, pursuant to C.R.S. § 25-14-208 and C.R.S. § 18-1.3-503; and

WHEREAS, both C.R.S. § 25-14-207(2)(a)(I) and C.R.S. § 30-15-401(1.5)(b) allow the Board to adopt and enforce additional smoking regulations that are not less stringent than the Colorado Clean Indoor Air Act; and

WHEREAS, the Legislature for the State of Colorado also revised C.R.S. § 18-1.3-503 and C.R.S. §§ 30-15-401 to 30-15-411, which modified the potential penalties for a violation of a county ordinance and provided that violations of a county ordinance shall generally constitute a civil infraction; and

WHEREAS, the Board, as a result of the passage of the Colorado Clean Indoor Air Act, the change to potential penalties for violation of a county ordinance, and the rise in prevalence of electronic smoking devices, desires to implement the following Ordinance Repealing Eagle County Ordinance No. 92-01 and Eagle County Ordinance No. 06-01 and Prohibiting Smoking and the Use of Electronic Smoking Devices in Public Places, Place of Employment, and Other Places of Interest in Unincorporated Eagle County (the “Ordinance”); and

WHEREAS, this Ordinance shall clarify that the Colorado Clean Indoor Act governs smoking and the use of electronic smoking devices within the County and shall also apply more stringent smoking restrictions within the County; and

WHEREAS, this Ordinance is necessary to preserve the public peace, health, safety, and welfare of the citizens of Eagle County.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Eagle County:

THAT, County Ordinance No. 92-01 and County Ordinance No. 06-01 are hereby repealed; and

THAT, unauthorized smoking and the use of electronic smoking devices within the County shall be governed and enforced through the Colorado Clean Indoor Air Act; and

THAT, in addition to the Colorado Clean Indoor Air Act, the following provisions, prohibitions, and penalties shall apply to smoking and the use of electronic smoking devices within the County pursuant to C.R.S. § 25-14-207(2)(a)(I) and C.R.S. § 30-15-401(1.5)(b):

SECTION 1. PURPOSE

The Board finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking and the use of electronic smoking devices in public places and places of employment; (2) to guarantee the right to breathe smoke and aerosol-free air; and (3) to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke or use electronic smoking devices.

SECTION 2. DEFINITIONS

The Board adopts the definitions as set forth by the Colorado Clean Indoor Air Act in C.R.S. 25-14-203. Additionally, the following words and phrases, whenever used in this Ordinance, shall be construed as defined in this section:

A. Enclosed Area - means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, office landscaping, or similar structures.

B. Recreational Facility - means indoor or outdoor sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, fairgrounds, skate parks, soccer fields, ball fields, playgrounds and other venues similar to those listed above where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports or other events, including all the spectator stands for such events. Recreational Facility shall not include the outdoor parking lots of said facilities; however, smoking in said parking lots remains subject to the 25-foot perimeter requirements set forth in Section 6 and Section 7 hereunder.

C. Service Line - means any indoor and outdoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money, including but not limited to, movie ticket lines, theatre lines, concert lines, sporting events lines, food vendor lines, lift ticket lines, and chair lift/gondola lines. For purposes of this Ordinance, the term Service Line as it relates to chair lift/gondola lines shall include both the line to embark on a chair lift/gondola and the time spent riding the chair lift/gondola until disembarking.

SECTION 3. APPLICABILITY

This Ordinance shall apply to all portions of unincorporated Eagle County for the entirety of each year.

SECTION 4. PROHIBITION OF SMOKING OR THE USE OF ELECTRONIC SMOKING DEVICES IN SERVICE LINES

In addition to the prohibitions set forth in the Colorado Clean Indoor Air Act, smoking or the use of electronic smoking devices shall be prohibited in all indoor and outdoor Service Lines. Smoking or the use of electronic smoking devices shall not occur within twenty-five (25) feet of any Service Line.

SECTION 5. PROHIBITION OF SMOKING OR THE USE OF ELECTRONIC SMOKING DEVICES AT RECREATIONAL FACILITIES

In addition to the prohibitions set forth in the Colorado Clean Indoor Air Act, smoking or the use of electronic smoking devices shall be prohibited in all indoor and outdoor Recreational Facilities as defined herein. Smoking or the use of electronic smoking devices shall not occur within twenty-five (25) feet of any Recreational Facility.

SECTION 6. PROHIBITION OF SMOKING OR THE USE OF ELECTRONIC SMOKING DEVICES AT OUTDOOR SEATING AREAS

In addition to the prohibitions set forth in the Colorado Clean Indoor Air Act, smoking or the use of electronic smoking devices shall be prohibited within the exterior walls, fences, or otherwise defined limits of an outdoor seating or serving area of a Food Service Establishment or Bar. Smoking or the use of electronic smoking devices shall not occur within twenty-five (25) feet of any outdoor seating or serving area of a Food Service Establishment or Bar.

SECTION 7. SMOKE FREE PERIMETER

Smoking or the use of electronic smoking devices shall not occur within twenty-five (25) feet outside of an entrance, passageway, operable window, ventilation system, or other opening of an enclosed area subject to the Colorado Clean Indoor Air Act or this Ordinance to ensure that smoke or aerosol does not enter the area through entrances, windows, ventilation systems, or any other means.

SECTION 8. POSTING OF SIGNS

Signs indicating that smoking or use of electronic smoking devices is prohibited, or the international "No Smoking/No Vaping" symbol (consisting of a pictorial representation of a burning cigarette and electronic smoking device enclosed in a circle with a bar across it) shall be clearly and conspicuously posted in every building or other areas where smoking or use of electronic smoking devices is prohibited by the Colorado Clean Indoor Air Act or this Ordinance, by the owner, operator, manager, or other person having control of such building or other area.

SECTION 9. ENFORCEMENT

A. Enforcement of the Colorado Clean Indoor Air Act and this Ordinance shall be implemented by the Eagle County Sheriff's Office or the Eagle County Department of Environmental Health or their designees.

B. Any person who desires to register a complaint under this chapter may initiate enforcement with the Eagle County Sheriff's Office or the Eagle County Department of Environmental Health.

C. The Eagle County Sheriff's Office or the Eagle County Environmental Health Department or their designees may inspect for compliance of the Colorado Clean Indoor Air Act or this Ordinance while an establishment is undergoing otherwise mandated inspections.

D. Any owner, manager, operator or employee of any establishment regulated by this Ordinance shall inform persons violating the Colorado Clean Indoor Air Act or this Ordinance of the appropriate provisions thereof and request their compliance.

SECTION 10. RETALIATION PROHIBITED

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 rights afforded by the Colorado Clean Indoor Air Act or this Ordinance.

SECTION 11. VIOLATIONS AND PENALTIES

A. It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to regulation under the Colorado Clean Indoor Air Act or this Ordinance to allow or condone smoking or the use of electronic smoking devices in a prohibited location within such premises, or otherwise fail to comply with any of these provisions.

B. It shall be unlawful for any person to smoke or use an electronic smoking device in any area where smoking is prohibited by the provisions of the Colorado Clean Indoor Air Act or this Ordinance.

C. Any person who owns, manages, operates, or otherwise controls the use of any premises or any other person who violates any provision of the Colorado Clean Indoor Air Act shall be guilty of a petty offense as set forth by C.R.S. § 25-14-208, as amended, punishable by up to a fine of not more than three hundred dollars, imprisonment for not more than ten days in a county jail, or both, pursuant to C.R.S. § 18-1.3-503(1.5).

D. Any person who owns, manages, operates, or otherwise controls the use of any premises or any other person who violates any additional provision of this Ordinance not covered by the Colorado Clean Indoor Air Act shall be guilty of a civil infraction as set forth by C.R.S. 30-15-402, as amended, punishable by up to a fine of not more than one hundred dollars pursuant to C.R.S. § 18-1.3-503(1.6)(a).

E. The penalty assessment procedure provided in C.R.S. § 16-2-201 may be followed in enforcing the provisions of the Colorado Clean Indoor Act and this Ordinance. All fines shall be paid into the treasury of Eagle County or as otherwise provided by law.

E. Each day of a continuing violation shall be deemed to be a separate violation.

F. Notwithstanding any other provision of this Ordinance, an employee or private citizen may bring legal action to enforce this Ordinance.

SECTION 12. PUBLIC EDUCATION

Eagle County may engage in a continuing program to explain and clarify the purposes and requirements of the Colorado Clean Indoor Air Act and this Ordinance to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance. However, the provision of such an educational program shall not be a prerequisite to the applicability of the terms and conditions herein.

SECTION 13. OTHER APPLICABLE LAWS

This Ordinance shall not be interpreted or construed to permit smoking or the use of an electronic smoking device where it is otherwise restricted by other applicable laws.

SECTION 14. LIBERAL CONSTRUCTION

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

SECTION 15. SEVERABILITY

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

SECTION 16. EFFECTIVE DATE

This Ordinance shall be effective thirty (30) days from and after the date of its adoption, This Ordinance shall apply throughout all of Unincorporated Eagle County all year round.

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INTRODUCED AND READ ON FIRST READING July 12, 2022 and ordered published in the Eagle Valley Enterprise.

ADOPTED ON SECOND AND FINAL READING on August 16, 2022,



DocuSigned by: COUNTY OF EAGLE, STATE OF COLORADO, By and Through Its BOARD OF COUNTY COMMISSIONERS

ATTEST:

DocuSigned by: Regina O'Brien
Clerk to the Board of
County Commissioners

DocuSigned by: Jeanne McQueeney
By: Jeanne McQueeney
County Commissioners Chair

DocuSigned by: Kathy Chandler-Henry
By: Kathy Chandler-Henry
Commissioner

DocuSigned by: Matt Scherr
By: Matt Scherr
Commissioner

Commissioner Chandler-Henry seconded adoption of the foregoing Ordinance. The roll having been called, the vote was as follows:

Commissioner McQueeney Aye
Commissioner Chandler-Henry Aye
Commissioner Scherr Aye

This Ordinance passed by 3/0 vote of the Board of County Commissioners of the County of Eagle, State of Colorado.

