

ORDINANCE NO. 2399

AN ORDINANCE REGULATING SMOKING IN PUBLIC PLACES WITHIN THE CITY OF DERBY, KANSAS; AMENDING AND REPEALING SECTIONS 9.30.010, 9.30.020 AND 9.30.030 OF THE DERBY MUNICIPAL CODE AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS:

Section 1. Section 9.30.010 of the Derby Municipal Code is hereby amended to read as follows:

“9.30.010 – Purpose.

The purposes of this chapter are to promote public health by eliminating smoking in public places, places of employment, and certain outdoor areas; ensure the rights of nonsmokers to breathe smoke-free air; regulate the use of electronic cigarettes and vapor products in the interest of the public health by reducing exposure to the vapor, aerosol and other environmental emissions emitted from use of electronic cigarettes and vapor products thereby minimizing the use of products that pose an unknown health risk; prevent confusion in the enforcement of smoke-free laws; and reduce youth initiation to nicotine and tobacco products.”

Section 2. Section 9.30.020 of the Derby Municipal Code is hereby amended to read as follows:

“9.30.020 – Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

"Access point" means the area within a ten-foot radius of any window, air intake, or doorway, other than a doorway designated as a main entrance pursuant to this chapter, leading into a building or facility within any part of which smoking is prohibited pursuant to this chapter.

"Business" means any nonprofit entity or any sole proprietorship, partnership, association, joint venture, corporation, professional corporation or other business entity of any kind wherein goods or services are sold or offered for sale or where legal, medical, dental, engineering, architectural or other professional services are performed.

"City" means the City of Derby, Kansas.

"Community event" means any event which is open to and may be attended by the

general public including, but not limited to shows, movies, plays, lectures, exhibitions, demonstrations, concerts, arts and craft shows, fairs, festivals, pageants, farmers markets, whether or not an admission fee is charged or other compensation is required for entry.

"Designated smoking area" means any area designated for smoking at a community event pursuant to this chapter. A designated smoking area shall be as small as practicable to accommodate the number of smokers that are expected to use the area, but in no event may the designated smoking area exceed more than 10% of the total event area. Designated smoking areas shall be posted with one or more signs that identify the area as a designated smoking area.

"Electronic cigarette (E-cigarette)" means an electronic or battery-operated device, whether or not such device is shaped like a cigarette that uses an atomizer, aerosol or similar device that allows users to inhale nicotine vapor or flavored vapor, without fire, smoke or ash. An electronic cigarette includes but is not limited to any electronic nicotine delivery system, electronic vaping device, personal vaporizer, electronic pipe, electronic hookah, or vapor pen.

"Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, is an independent contractor or is a volunteer.

"Employer" means any person, partnership, corporation, professional corporation, municipal corporation, or nonprofit entity having one or more employees.

"Enclosed area" means that space between a floor and ceiling which, exclusive of doors or passage ways, is enclosed on all sides by solid walls or windows extending from floor to ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, office landscaping or similar structures.

"Food service establishment" means a place in which food is served or is prepared for sale or service on the premises or elsewhere, with or without charge, including but not limited to a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside kitchen or commissary.

"Health care facility" means an institution, place, building, or agency required to be licensed under Kansas law, including but not limited to a hospital, nursing facility or nursing home, boarding home, assisted living facility, supervised living facility, or ambulatory medical and surgical center, but excluding a private residence being visited by a health care provider for the purposes of providing in-home health care.

"Licensed premises" means any premises where alcoholic liquor or cereal malt beverage, or both, is served or provided by the individual drink as defined in Chapter 41 of the Kansas Statutes Annotated (K.S.A.) and amendments thereto, for

consumption or use on the premises, with or without charge. Such term shall include drinking establishments, Class A Private Clubs, Class B Private Clubs, and cereal malt beverage retailers, all as defined by K.S.A. Chapter 41 and amendments thereto, and this code.

"Main entrance" means each entrance to a public place or place of employment that is available for regular use by the public and designated as a main entrance by the person in charge thereof; provided that at least one main entrance shall be designated for each public place and place of employment.

"Office landscaping" means an indoor office area without permanent walls, or with walls that are not floor to ceiling; open space such as waiting areas and atriums; cubicles and/or open desk seating areas.

"Outdoor gathering area" means any non-enclosed area accessible to the general public where people are gathered. For the purposes of this section, such gathering areas include, but are not limited to, permanent or temporary grandstands, bleachers, other seating areas, standing areas, viewing areas, playing courts and fields, amphitheaters, park shelters, concession areas, and playground areas.

"Place of employment" means any enclosed area under the control of a public or private employer and which employees normally frequent during the course of employment, including but not limited to work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, employee lounges, eating areas, stairs and restrooms; access points; and any area outside of any such enclosed area and within twenty feet of a main entrance. A private residence is not a place of employment unless used as a childcare, adult day care or health care facility.

"Private place" means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to personal residences and personal motor vehicles. A privately-owned business, open to the public, is not a private place.

"Public place" means any enclosed area other than a private place, to which the public is invited or in which the public is permitted, including but not limited to:

1. Production and marketing establishments;
2. Retail service establishments;
3. Grocery stores, retail stores and shopping malls;
4. Professional and other offices, banks, laundromats, hotels, and motels;
5. Libraries, educational facilities, school buses, child care and adult day care facilities;
6. Food service establishment and licensed premises;
7. Galleries, libraries, aquariums, and museums;
8. Health care facilities, including but not limited to hospitals, clinics, physical therapy facilities, medical and dental offices, and other health care institutions

- or any other place where health care services are provided to the public;
9. Sports arenas and convention halls, including enclosed places in outdoor arenas;
 10. Any facility which is primarily used for exhibiting any motion picture, play, drama, lecture, musical recital or other similar performance, except that performers may smoke when smoking is part of a stage production;
 11. Any place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, betting establishments, bowling facilities, arenas, swimming pools, and any other recreational facility;
 12. Every room, chamber, place of meeting or public assembly, including school buildings, under the control of any board, council, commission, committee, including a joint committee, or any agency of the city or any political subdivision of the state, to the extent such place is subject to the jurisdiction of the city, during such time as a public meeting is in progress;
 13. Polling places;
 14. Bus terminals, airports, train stations, and other public transit depots, facilities and means of public transit, and buses, limousines, and taxicabs under the authority of the city, as well as ticket, boarding, and waiting areas;
 15. Private residences, when used as a child care, adult day care or health care facility;
 16. Courtrooms and any other building owned or operated by: (1) the state of Kansas, including any branch, department, agency, bureau, commission, authority or other instrumentality thereof; (2) any county, city, township, other political subdivision, including any commission, authority, agency or instrumentality thereof; or (3) any other separate corporate instrumentality or unit of the state of Kansas or any municipality;
 17. All enclosed spaces within any of the foregoing and customarily used or patronized by the public, including but not limited to:
 - a. Lobbies, waiting rooms, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities,
 - b. Restrooms, lobbies, reception areas, hallways, and any other common-use areas,
 - c. Service lines, and
 - d. Elevators; and
 18. All access points and all areas outside and within twenty feet of a main entrance.

"Service line" means any indoor 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.

"Smoking or smoke" means possession of a lighted cigarette, cigar, pipe or any other lighted smoking equipment burning tobacco in any other form or other device designed for the use of tobacco or use of an electronic cigarette or other battery-powered vaporizer that simulates tobacco smoking by producing an aerosol that resembles smoke.

"Sports arena" means a sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling alley or other place where members of the public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

"Vapor retailer" means any indoor area operated primarily for the retail sale of electronic cigarettes or battery-powered vaporizers and vapor-related accessories, and which derives not less than eighty (80%) of its gross receipts from the sale of electronic cigarettes or battery-powered vaporizers and vapor-related accessories."

Section 3. Section 9.30.030 of the Derby Municipal Code is hereby amended to read as follows:

"9.30.030 – Smoking prohibited in public places, places of employment, and certain outdoor areas.

- A. Except as otherwise provided in this section, no person shall smoke and no smoking shall be permitted in any public place or place of employment within the City.
- B. Except as otherwise provided in this section, no person shall smoke and no smoking shall be permitted in the following outdoor areas within the City:
 - 1. All public outdoor gathering areas and within twenty (20) feet of the perimeter of such outdoor gathering areas;
 - 2. All public outdoor swimming pool facilities and within twenty (20) feet of the fence surrounding such swimming pool facilities; and
 - 3. Within twenty (20) feet of the perimeter of the area of a community event except within a "designated smoking area" at said community event.
- C. Subsection A of this section shall not apply to:
 - 1. Rooms or areas enclosed by walls, windows or doorways, having neither a ceiling nor a roof and which are completely open to the elements and weather at all times unless smoking within said room or area would otherwise be prohibited by the provisions of subsection B of this section 9.30.030;
 - 2. Rooms or areas enclosed by walls, fences, windows or doorways and a roof or ceiling, having openings that are permanently open to the elements and weather, the area of which is equal to at least thirty percent (30%) of the total perimeter wall area of such room or area unless smoking within said room or area would otherwise be prohibited by the provisions of subsection B of this section 9.30.030; and
 - 3. Within a class A club, as defined in K.S.A. 41-2601 and amendments thereto, which held a license pursuant to K.S.A. 41-2606 *et seq.*, and amendments thereto, as of January 1, 2009, rooms or areas enclosed by walls, fences, windows, or doorways and a roof or ceiling, having openings that are permanently open to the elements and weather, the area of which is equal to at

- least ten percent (10%) of the total perimeter wall area of such room or area.
- 4. The use of electronic cigarettes (E-cigarettes) within a Vapor retailer.

D. Subsection B of this section shall not apply to:

- 1. Outdoor areas of city-owned facilities when said outdoor area is designated by the City as an area permitted for smoking in connection with a private event not open to the general public.”

Section 4. Repeal

Original sections 9.30.010, 9.30.020 and 9.30.030 of the Derby Municipal Code are hereby repealed. All other provisions of the Municipal Code of the City of Derby, Kansas shall remain in full force and effect except as specifically amended herein. All other ordinances or parts of other ordinances in conflict herewith are repealed. However, any section of an existing ordinance not in conflict herewith is not repealed and remains in full force and effect.



Section 5. Severability

Should any section, clause, sentence, or phrase of this ordinance be found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any remaining provisions herein.

Section 6. Effective Date

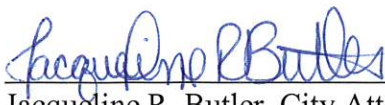
This Ordinance shall take effect and be in force from and after its passage and publication of the ordinance or a summary thereof once in the City’s official newspaper as provided by State law.

PASSED by the City Council this 10th day of September, 2019 and **SIGNED** by the Mayor.

Seal of the City of Derby
 Attest:


 Hillary Lawrence, City Clerk


 Randy White, Mayor

Approved as to form:


 Jacqueline R. Butler, City Attorney