

FINAL VERSION: JANUARY 26, 2004

ORDINANCE NO. 15

BOARD OF COUNTY COMMISSIONERS

OF THE

COUNTY OF SUMMIT

STATE OF COLORADO

AN ORDINANCE PROHIBITING SMOKING IN PUBLIC PLACES IN UNINCORPORATED SUMMIT COUNTY, COLORADO.

WHEREAS, it is recognized by the Colorado Legislature, the scientific and medical community, the Surgeon General of the United States, and the public generally, that exposure to ambient smoke by smokers and nonsmokers in enclosed environments constitutes not only an unpleasant irritant to nonsmokers, but a real and significant health risk to persons who choose not to smoke; and

WHEREAS, § 25-14-105 of the Colorado Revised Statutes grants counties the authority to adopt regulations controlling smoking within their unincorporated territory, and provides that such local regulations shall control to the extent of any inconsistency between them and the State's smoking-control provisions contained in C.R.S. §§ 25-14-101 et seq.; and

WHEREAS, the Board of County Commissioners posed the following ballot question to the electors of Summit County, Colorado:

SHALL THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO ADOPT AN ORDINANCE PROHIBITING SMOKING IN ALL ENCLOSED PUBLIC PLACES INCLUDING RESTAURANTS AND BARS IN THE UNINCORPORATED AREA OF SUMMIT COUNTY, COLORADO?

;and

WHEREAS, on November 4, 2003 the electors voted in favor of the adoption of ordinances prohibiting smoking in enclosed public places, including restaurants and bars, in Summit County, Colorado by a margin of 3342 in favor and 1856 opposed; and

WHEREAS, following advance public notice in a newspaper of general circulation in Summit County of the Board of County Commissioners' intent to adopt local regulations under §25-14-105 C.R.S., and following public worksessions and public hearings which the Board of County Commissioners held on the proposed regulations, the Board has considered the proposed regulations and has heard and considered the comments of numerous members of the public on said regulations; and

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WHEREAS, in consideration of the results of the November 4, 2003 election, the recommendations of the Summit County staff, and the public input which the Board of County Commissioners has received during the above-referenced public meetings and hearings, the Board of County Commissioners has determined that the best interests and the health, safety and welfare of the citizens of, workers of, and visitors to unincorporated Summit County will be served by enacting regulations prohibiting smoking in public places, as defined herein, within unincorporated Summit County, in order to provide nonsmoking members of the public with a reasonable opportunity to breathe smoke free air in public places in unincorporated Summit County, Colorado.

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

1. Title. This ordinance shall be known as Ordinance No. 15, the “Ordinance Prohibiting Smoking in Public Places in Unincorporated Summit County, Colorado” (hereinafter referred to as the “Ordinance”).
2. Declaration of Policy. It is the express policy of the Board of County Commissioners of Summit County, Colorado (“BOCC”) that abstention from Smoking shall occur in enclosed Public Places in unincorporated Summit County, Colorado, as provided herein.
3. Findings. The BOCC does hereby find that:
 - A. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers. 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
 - B. Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and broncho-spasm.
4. Definitions: 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.

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- B. "Public Place" means any Enclosed Area to which the public is invited or permitted, except as otherwise provided herein. Additionally, "Public Places" shall include buses, taxicabs, gondolas and other means of public transit, as well as any partially or fully enclosed structure used by the public to wait for public transit service.
- C. "Private Club" means any establishment without a liquor license that has a defined membership and restricts admission to members of the club and their guests, or any establishment that holds a "club" liquor license pursuant to C.R.S. § 12-47-416. A Private Club is considered a "Public Place" when functions are held at the club to which the public is invited or in which the public is permitted. "Private Club" shall not include an establishment that is open to members of the general public upon payment of a nominal fee.
- D. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette or pipe.
- E. "Retail Tobacco Store" means any retail store:
 - i. That is utilized primarily for the sale of tobacco products and accessories; and
 - ii. That is not licensed for the consumption of meals or alcoholic beverages on premises or operated in conjunction with another business that is licensed for the on premises consumption of meals or alcoholic beverages; and
 - iii. In which the sale of tobacco products and accessories accounts for not less than 66% of the store's gross sales.

5. Prohibition of Smoking in All Enclosed Public Places. Except as expressly provided in section 6 of this Ordinance, Smoking shall be prohibited in all Public Places within the unincorporated area of the Summit County, Colorado.

6. Where Smoking is Not Regulated. Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the prohibition against Smoking set forth in above Section. 5:

- A. Private residences, except that when a private residence is used as a licensed child care facility, then Smoking is prohibited during business hours in all areas of the private residence where child care is provided.
- B. All rooms or dwellings rented to guests for lodging purposes, including, but not limited to, hotel rooms, motel rooms, bedrooms in bed and breakfast establishments, condominiums and town homes.
- C. Retail Tobacco Stores.

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- D. Private Clubs, except when functions are held at the club to which the public is invited or to which the public is permitted.
7. Posting of Signs.
- A. “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) shall be clearly and conspicuously posted at every public entrance to areas where Smoking is prohibited by this Ordinance.
 - B. All signs referred to in this Section shall be a minimum size of 20 square inches and must be placed at a height of between 4 to 6 feet above the floor.
 - C. Ashtrays shall be removed from all areas where Smoking is prohibited by this Ordinance.
8. 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 this Ordinance to condone Smoking in Public Places within such premises, or to otherwise fail to comply with any of the provisions of this Ordinance.
 - B. It shall be unlawful for any person to smoke in any area where Smoking is prohibited by the provisions of this Ordinance.
 - C. Any person who violates any provision of this article shall be guilty of an infraction, punishable by:
 - i. A fine not exceeding one hundred dollars (\$100) for a first violation.
 - ii. A fine not exceeding two hundred dollars (\$200) for a second violation.
 - iii. A fine not exceeding five hundred dollars (\$500) for each additional violation of this Ordinance.
 - D. Each day of continuing violation shall be deemed to be a separate violation.
9. Other Applicable Laws. This Ordinance shall not be interpreted or construed to permit Smoking where it is otherwise restricted by other applicable laws.
10. 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.
11. Effective Date. This Ordinance shall be effective on June 1, 2004.

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INTRODUCED, READ, ORDERED PUBLISHED IN FULL AND SET FOR PUBLIC HEARINGS THIS 12TH DAY OF JANUARY 2004.

**BOARD OF COUNTY COMMISSIONERS
OF SUMMIT COUNTY, COLORADO**

By: _____
William C. Wallace, Chairman

ATTEST:

By: _____
Cheri Brunvand, Clerk & Recorder

READ, PASSED AND ADOPTED AFTER PUBLIC HEARINGS AND PUBLISHED IN THE SUMMIT COUNTY JOURNAL ON JANUARY 16, 2004. ORDERED PUBLISHED IN FULL THIS 26TH DAY OF JANUARY 2003.

**COUNTY OF SUMMIT
STATE OF COLORADO
By and Through its
BOARD OF COUNTY COMMISSIONERS**

By: _____
William C. Wallace, Chairman

ATTEST:

By: _____
Cheri Brunvand, Clerk & Recorder