

## ORDINANCE 1105

**AN ORDINANCE ENACTING CHAPTER 8.10, UNDER TITLE 8, KETCHUM MUNICIPAL CODE, ENTITLED SMOKE-FREE AIR ORDINANCE, REGULATING SMOKING IN PUBLIC PLACES; SETTING FORTH THE STATUTORY AUTHORITY FOR LOCAL GOVERNMENT REGULATION OF SMOKING; PROVIDING LEGISLATIVE FINDINGS; PROVIDING DEFINITIONS OF KEY TERMS; PROHIBITING SMOKING ON ALL CITY OWNED PROPERTY AND IN ALL CITY OWNED FACILITIES AND ALL PLACES OF EMPLOYMENT AND SETTING FORTH A NONEXCLUSIVE LIST OF ENCLOSED PLACES WHERE SMOKING IS PROHIBITED; PROHIBITING SMOKING OUTDOORS ON PUBLIC AND PRIVATE SCHOOL PROPERTY, WITHIN TWENTY FEET OF PUBLIC TRANSPORTATION FACILITIES; PROVIDING EXEMPTIONS FROM THE SMOKING PROHIBITION FOR EXCLUSIVE RETAIL TOBACCONISTS, IN RESIDENCES, EXCEPT FOR ANY PORTION THAT IS USED AS A BUSINESS WITH EMPLOYEES OR CUSTOMERS, AND FOR BONA FIDE NATIVE AMERICAN RELIGIOUS PRACTICES; PERMITTING BUSINESSES WHERE SMOKING IS NOT PROHIBITED TO DESIGNATE ANY OR ALL OF THE BUSINESS NONSMOKING; PROVIDING FOR A PUBLIC EDUCATION PROGRAM PRIOR TO ENFORCEMENT; PROVIDING INFRACTION PENALTIES FOR VIOLATION; SETTING FORTH A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, 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; and

**WHEREAS**, 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; and

**WHEREAS**, unregulated high-tech smoking devices, commonly referred to as electronic cigarettes (ecigarettes), produce a vapor of undetermined and potentially harmful substances; and

**WHEREAS**, the use of ecigarettes in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions; and

**WHEREAS**, the Mayor and Council, by way of Idaho Code Sections 39-5511, 39-5713, 50-302, and 50-304, are empowered to impose reasonable limitations and regulations upon smoking to reduce the harmful effects thereof; and

**WHEREAS**, 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; and

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KETCHUM, IDAHO:**

**Section 1.** That Title 8, Chapter 8.10, Ketchum Municipal Code, be, and the same is hereby enacted to read as follows:

**8.10.01 Short title.**

This Chapter shall be known as the Ketchum 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.

**8.10.02 Authority.**

This Chapter is adopted pursuant to the authority granted by the Idaho Constitution and Idaho Code, including, but not limited to, Sections 39-5511, 39-5713, and 50-302.

**8.10.03 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.

**8.10.04 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 element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the 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. "Enclosed Public Space" 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, and which also meets the definition of "Enclosed Area".

8. "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.

9. "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.

10. "Place of Employment" means an area under the control of a public or private employer.

11. "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.

12. "Public Property" means any and all lands owned by the City of Ketchum including all City Parks and open spaces but not including City rights of way.

13. "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.

14. "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.

15. "Smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. "Smoking" also includes the use of an e-cigarette which creates vapor, in any manner or any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Chapter.

16. "Special Event Zone" means any outdoor area delineated through a Special Event permit to accommodate people in a smoke-free space for such activities as concerts, movies, or other entertainment in a space.

17. "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.

#### **8.10.05 Application to City-owned facilities.**

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

#### **8.10.06 Prohibition of smoking in enclosed public places.**

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

- A. 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.
- 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 under the authority of the Mountain Rides transportation authority, and ticket, boarding, and waiting areas of public transportation 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 Ketchum.
- T. Theaters and theatrical productions, except as allowed by Idaho Code 39-5503(e).

#### **8.10.07 Prohibition of smoking in enclosed places of employment.**

Smoking shall be prohibited in all enclosed places of employment in the City of Ketchum 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.

#### **8.10.08 Prohibition of smoking in outdoor areas.**

Smoking shall be prohibited in the following outdoor public places:

- A. On any Public Property as defined herein.
- B. Within twenty (20) feet of all designated bus stops.
- C. On all school property, including public and private elementary, secondary, vocational, and trade schools or colleges.
- D. Within any designated "Special Event Zone", unless the "Special Event Zone" has a designated and delineated smoking area identified in an approved Ketchum Special Event Permit application.

### **8.10.09 Where smoking is not regulated.**

Notwithstanding any other provision of this Chapter to the contrary, the following areas shall be exempt from the provisions herein:

- 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, including rooftop patios, court yards, bars and 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 8.10.08(B) above.
- C. An exclusive retail tobacconist as defined in section 8.10.04(7) 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.

### **8.10.10 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 8.10.11 is posted.

#### **8.10.11 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.

#### **8.10.12 Education.**

The City shall conduct an education process for a period of one (1) year prior to the commencement of Section 8.10.13, below. Said process shall be led by the Ketchum Police Department.

#### **8.10.13 Enforcement, violations, and penalties.**

Enforcement of this ordinance shall be conducted through the Ketchum Police Department.

- 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, and subject to the warning and fines outlined in E below..
- 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 subject to the warning and fines outlined in E below. 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 property, 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, and is subject to the warning and fines outlined in Subsection E below.

- 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. A person who violates sections A-C above will be issued a written warning for the first violation; a person who violates these sections a second time within two years will be issued a civil penalty of twenty five dollars (\$25.00); and a person who violates these sections a third and subsequent time within two years will be issued a civil penalty of fifty two dollars (\$52.00).
- F. Violation of this Chapter is hereby declared to be a public nuisance, which may be abated by the City of Ketchum by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City of Ketchum may take action to recover attorney's fees and/or costs of the nuisance abatement.

#### **8.10.14 Other applicable laws.**

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

#### **8.10.15 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.

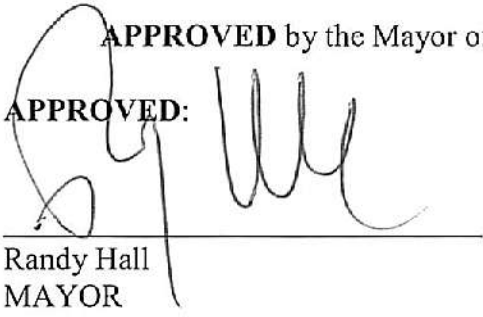
**Section 2.** That this Ordinance shall be in full force and effect, following its passage, approval and publication.

**Section 3.** That the Summary of this Ordinance, attached hereto as Exhibit A, is approved as to both form and content.




APPROVED by the Mayor of the City of Ketchum, Idaho this 15<sup>th</sup> day of April, 2013.

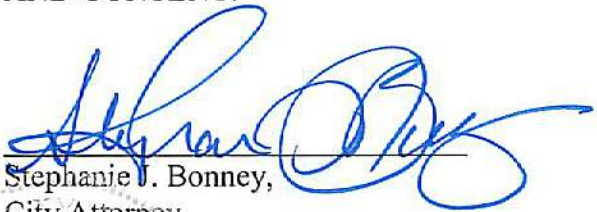
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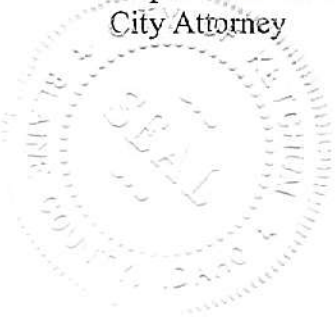
  
Randy Hall  
MAYOR

ATTEST:

  
Sandy Cady  
CITY CLERK

APPROVED AS TO FORM  
AND CONTENT:

  
Stephanie J. Bonney,  
City Attorney



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## EXHIBIT A

### SUMMARY OF ORDINANCE NUMBER 1105 OF THE CITY OF KETCHUM, IDAHO

**PUBLIC NOTICE IS HEREBY GIVEN** that the City of Ketchum, Idaho, adopted at its regular meeting of April 15, 2013, that Ordinance No. 1105 entitled:

**AN ORDINANCE ENACTING CHAPTER 8.10, UNDER TITLE 8, KETCHUM MUNICIPAL CODE, ENTITLED SMOKE-FREE AIR ORDINANCE, REGULATING SMOKING IN PUBLIC PLACES; SETTING FORTH THE STATUTORY AUTHORITY FOR LOCAL GOVERNMENT REGULATION OF SMOKING; PROVIDING LEGISLATIVE FINDINGS; PROVIDING DEFINITIONS OF KEY TERMS; PROHIBITING SMOKING ON ALL CITY OWNED PROPERTY AND IN ALL CITY OWNED FACILITIES AND ALL PLACES OF EMPLOYMENT AND SETTING FORTH A NONEXCLUSIVE LIST OF ENCLOSED PLACES WHERE SMOKING IS PROHIBITED; PROHIBITING SMOKING OUTDOORS ON PUBLIC AND PRIVATE SCHOOL PROPERTY, WITHIN TWENTY FEET OF PUBLIC TRANSPORTATION FACILITIES; PROVIDING EXEMPTIONS FROM THE SMOKING PROHIBITION FOR EXCLUSIVE RETAIL TOBACCONISTS, IN RESIDENCES, EXCEPT FOR ANY PORTION THAT IS USED AS A BUSINESS WITH EMPLOYEES OR CUSTOMERS, AND FOR BONA FIDE NATIVE AMERICAN RELIGIOUS PRACTICES; PERMITTING BUSINESSES WHERE SMOKING IS NOT PROHIBITED TO DESIGNATE ANY OR ALL OF THE BUSINESS NONSMOKING; PROVIDING FOR A PUBLIC EDUCATION PROGRAM PRIOR TO ENFORCEMENT; PROVIDING INFRACTION PENALTIES FOR VIOLATION; SETTING FORTH A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.**

This ordinance bans smoking in most enclosed public places and businesses, including bars and private clubs, and bans smoking in some outdoor areas such as within 20 feet of bus stops, on public property including parks, and on school property. Smoking includes the use of electronic cigarettes.

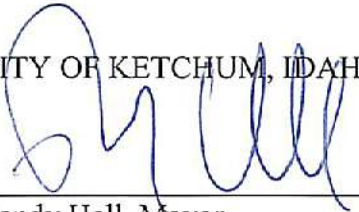
Smoking will be allowed, if allowed by the owner, within private residences provided it doesn't contain a business; privately owned outdoor spaces, including rooftop patios, court yards, bars and sidewalk cafés; retail tobacconists; and qualifying Native American ceremonies. Any business where smoking is prohibited is obligated to conspicuously place "No Smoking" signs or symbols at every entrance.

The first year of enactment shall provide for education. Thereafter, enforcement will be done with an emphasis on compliance. If a violator complies with a request to extinguish his/her cigarette, then an infraction citation will generally not be issued. If an infraction citation is written, the penalty is a \$25 fine for the first offense or a \$52 fine for subsequent offences. Employers that allow violations will be issued an infraction citation.

The effective date of Ordinance 1105 is the date of its passage, approval and publication.

A copy of the full text of the Ordinance is available at the Office of the City Clerk, Ketchum City Hall, 480 East Avenue North, Ketchum, Idaho 83340, and will be provided to any citizen upon personal request during normal office hours pursuant to Idaho Code §50-901A(4).

DATED this 15<sup>th</sup> day of April, 2013.

CITY OF KETCHUM, IDAHO  
  
\_\_\_\_\_  
Randy Hall, Mayor

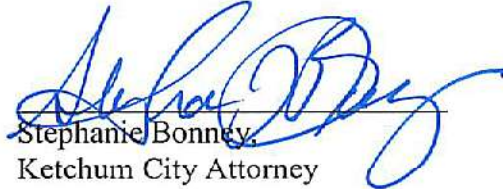
ATTEST:

\_\_\_\_\_  
Sandra E. Cady, CMC  
Clerk/Treasurer

**STATEMENT OF LEGAL ADVISOR**

I, the undersigned attorney at law, duly licensed in the State of Idaho and serving as City Attorney to the City of Ketchum, Idaho, hereby certify that I have read the attached Summary of Ordinance No. 1105 of the City of Ketchum and that the same is true and complete and provides adequate notice to the public of the contents of said Ordinance.

Dated this 15<sup>th</sup> day of April, 2013.

  
Stephanie Bonney  
Ketchum City Attorney

Publish: Idaho Mountain Express

Date: \_\_\_\_\_