

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 26

DATE: September 19, 2006

STAFF: Felix Lee/
Carrie Daggett

SUBJECT

Second Reading of Ordinance No. 122, 2006, Amending Article III of Chapter 12 of the Code of the City of Fort Collins to Conform to the Colorado Clean Indoor Air Act, and to Clarify Certain Provisions.

RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

FINANCIAL IMPACT

No fiscal impact is anticipated.

EXECUTIVE SUMMARY

Certain exceptions to the smoking restrictions found in the City Code are inconsistent with the requirements of the Colorado Clean Indoor Air Act, which was enacted in 2006. Ordinance No. 122, 2006, adopted on First Reading on August 15, 2006 by a vote of 5-2 (Nays: Roy, Manvel), eliminates those exceptions. In addition, the Ordinance amends the restriction on placement of ashtrays in nonsmoking areas to allow ashtrays in the 20-foot exterior perimeter of a nonsmoking area where physical constraints make placement of ashtrays difficult. The Ordinance also adds to the City Code additional provisions regarding private nursing home rooms. In response to Council discussion on First Reading, the Ordinance that was presented to the Council for consideration on Second Reading on September 5th added definitions of the terms "retail tobacco business" and "tobacco", and outlines requirements for operation of a "retail tobacco business". (The retail tobacco business exception replaces the existing "retail tobacco store" exception.)

The Ordinance was postponed for further consideration on September 19th, after considerable Council discussion, and has been revised to reflect the direction received from the Council at the meeting on September 5th, clarified by discussion with the Leadership Team.

The changes (which are marked as changes from the original second reading version of the ordinance), are as follows:

1. A requirement that any new retail tobacco business meet the definition of a "retail establishment" in the Land Use Code has been added.

2. A requirement that retail tobacco businesses require proof of age from all persons entering the business, and provide adequate staffing and training to ensure an effective system for preventing underage persons from entering, has been added.
3. A requirement that retail tobacco businesses post a sign that persons under 18 aren't permitted on the premises, and containing the standard surgeon general's warning regarding smoking, has been added.
4. A provision has been added to allow an establishment in operation as of July 1, 2006, used primarily for the sale or promotion of tobacco products to continue in operation without enlarging or relocating as long as it meets the ventilation, certificate of occupancy, no underage customers, and warning sign requirements by the beginning of 2007.

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

ITEM NUMBER: 21

DATE: August 15, 2006

**STAFF: Felix Lee/
Carrie Daggett**

SUBJECT

First Reading of Ordinance No. 122, 2006, Amending Article III of Chapter 12 of the Code of the City of Fort Collins to Conform to the Colorado Clean Indoor Air Act, and to Clarify Certain Provisions.

RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

FINANCIAL IMPACT

No fiscal impact is anticipated.

EXECUTIVE SUMMARY

Certain exceptions to the smoking restrictions found in the City Code are inconsistent with the requirements of the Colorado Clean Indoor Air Act, which was enacted in 2006. The Ordinance eliminates those exceptions. In addition, the Ordinance amends the restriction on placement of ashtrays in nonsmoking areas to allow ashtrays in the 20-foot exterior perimeter of a nonsmoking area where physical constraints make placement of ashtrays difficult. The Ordinance also adds to the City Code additional provisions regarding private nursing home rooms and the definition and operation of a "retail tobacco store".

BACKGROUND

In view of the adoption in the 2006 legislative session by the Colorado General Assembly of the "Colorado Clean Indoor Air Act" (HB-06-1175), which specifically allows local restrictions on smoking to be more, but not less, restrictive than the new state law provisions, staff has prepared the proposed Ordinance to modify the City Code smoking provisions to conform to state law where required.

In general, the City Code includes a number of exceptions (places in which smoking is allowed) that are not provided for in the state law, including: 1) private clubs, 2) designated smoking areas of bingo parlors and bowling alleys, 3) private functions, 4) smoking in theatrical performances, 5) rooms for psychological treatment of nicotine addiction, and 6) buildings under the control of other governmental entities. The Ordinance eliminates these exceptions from the City Code, consistent with the new state law.

In addition, there are three other modifications that staff is proposing to the smoking provisions of the Code.

First, the Code currently prohibits smoking receptacles in areas where smoking is prohibited. Because this includes the twenty-foot smoke-free perimeter around public establishments, there are locations in which close proximity of a number of businesses has made the location of ashtrays difficult, in particular in Old Town. In order to allow more flexibility for addressing problems of cigarette disposal in areas such as Old Town, the Ordinance includes amended Code language to allow this limited exception for ashtrays in physically constrained areas.

Second, the City Code does not currently specify the status of private nursing home rooms for the purpose of determining applicability of the prohibition on smoking. The administrative regulations established by the City Manager pursuant to the Code state that private nursing home rooms should be deemed to be private residences, rather than public places, for the purposes of Article III. For public convenience and awareness, this clarification is included as an addition to the definition of "public place" in the Code.

Third, because there has been substantial interest in use of the "retail tobacco store" exception currently in the City Code, staff has worked extensively to prepare a more extensive definition of what constitutes a "retail tobacco store". This additional interpretation was originally prepared to be included in administrative regulations established by the City Manager pursuant to the Code. However, it is expected that interest in the "retail tobacco store" exception will continue and potentially increase. Inclusion of this more detailed explanation of the concept of "retail tobacco store" in the City Code is intended to assist with public awareness and enforcement of the applicable requirements.

COPY

ORDINANCE NO. 122, 2006
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE III OF CHAPTER 12
OF THE CODE OF THE CITY OF FORT COLLINS
TO CONFORM THE CODE TO THE COLORADO CLEAN INDOOR AIR ACT
AND TO CLARIFY CERTAIN PROVISIONS

WHEREAS, on December 17, 2002, the City Council adopted Ordinance No. 181, 2002, appealing and re-enacting Article III of Chapter 12 of the Code of the City of Fort Collins regarding smoking in public places and places of employment; and

WHEREAS, by reason of the adoption of said ordinance, Section 12-59 of the City Code now prohibits smoking in all public places within the City, except as otherwise expressly permitted under said Article III; and

WHEREAS, in its 2006 regular legislative session, the Colorado General Assembly enacted House Bill 06-1175, known as the Colorado Clean Indoor Air Act (the "Act"), to impose statewide restrictions on smoking, and the Act has been signed into law and became effective on August 1, 2006; and

WHEREAS, the Act specifically allows local restrictions on smoking to be more, but not less, restrictive than provided in the Act; and

WHEREAS, the provisions of Article III of Chapter 12 of the Code of the City Code, while generally consistent with the Act, include certain specific exceptions that are not included in the Act, making those provisions less strict than the Act; and

WHEREAS, included among the exceptions in the City Code but not exempted from compliance from the Act, are 1) private clubs, 2) designated smoking areas of bingo parlors and bowling alleys, 3) private functions, 4) smoking in theatrical performances, 5) rooms for psychological treatment of nicotine addiction, and 6) buildings under the control of other governmental entities; and

WHEREAS, this Ordinance eliminates these exceptions from the City Code so as to conform to the Act; and

WHEREAS, the City Code currently prohibits smoking receptacles in areas where smoking is prohibited; and

WHEREAS, because this prohibition includes the twenty-foot smoke-free perimeter around public establishments, there are locations in which close proximity of a number of businesses has made the location of ashtrays difficult, in particular in Old Town; and

WHEREAS, in order to allow more flexibility for addressing problems of cigarette disposal in areas such as Old Town, City staff has recommended the City Code be amended to allow for a limited exception for ashtrays in physically constrained areas; and

WHEREAS, the City Code does not currently specify the status of private nursing home rooms for the purpose of determining applicability of the prohibition on smoking, and it has previously been determined administratively that private nursing home rooms should be deemed to be private residences, rather than public places, for the purposes of Article III, which determination would be codified by this Ordinance; and

WHEREAS, the Act exempts “retail tobacco businesses” from the prohibition on smoking in enclosed places; and

WHEREAS, the Council has determined that it is appropriate to also allow smoking in retail tobacco businesses within the City subject to certain requirements and restrictions, and that a definition of that term should be added to the Code, as well as a definition of the term “tobacco,” consistent with the definition of those terms in the Act; and

WHEREAS, in order to reduce the impacts to existing retail tobacco businesses of the new requirements to be imposed upon retail tobacco businesses, the Council has determined that it is necessary and appropriation to enact a limited exception allowing sales for on-site consumption to continue in those existing businesses; and

WHEREAS, the City Council wishes to conform the City Code to the Colorado Clean Indoor Air Act and to make other amendments to Chapter 12, Article III to: (1) allow placement of ashtrays in outdoor smoke-free perimeters where conditions require, (2) clarify that private nursing home rooms are not “public places”; and (3) detail the requirements related to smoking in retail tobacco businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 12-56 of the Code of the City of Fort Collins is hereby amended so as to delete the definitions of the terms *bingo facility*, *designated smoking area*, *performance hall*, *private club*, *private function*, *restaurant*, *retail tobacco store* and *service line*, and to modify the definition of *public place* to read in its entirety as follows:

Public place shall mean any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, attached and freestanding bars, banks, commercial bingo facilities, convention halls, educational facilities, child-care, adult day care or medical or health care facilities, guest rooms in any lodging establishment, Laundromats, performance halls, polling places, professional offices, public transportation facilities and vehicles, reception areas, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, service lines, and sports arenas. Every room, chamber, place of meeting or public assembly shall be considered a *public place* during the period of time that a public meeting is in progress. All areas of an establishment that

are open to, or customarily used by, the general public, including but not limited to elevators, rest rooms, lobbies, reception areas, hallways, waiting rooms, and other common areas, are *public places*. A private residence shall be considered a *public place* only when in use as a child-care, adult day care, or health care facility. Common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple-unit residential facilities are *public places*. A private nursing home room shall be considered to be the equivalent of a private residence, but a nonprivate nursing home room shall be considered to be a *public place*.

Section 2. That Section 12-56 of the Code of the City of Fort Collins is hereby amended to add definitions of *retail tobacco business* and *tobacco* to read in their entirety as follows:

Retail tobacco business shall mean an establishment utilized primarily for the retail sale or promotion of tobacco products and accessories **for offsite use and consumption**, and in which the sale of other products is merely incidental. In order for an establishment to be considered a "retail tobacco business" for purposes of this definition:

1. The revenues of the business must be generated primarily from the on-site sale of tobacco products, and from the sale of tobacco consumption accessories. The sale of incidental goods other than tobacco products or tobacco consumption accessories may generate limited revenues of no more than eight percent (8%) of the total on-site revenues of the retail tobacco business.
2. The business shall not operate under a liquor license or other license associated with sale or consumption of other than tobacco products.
3. **The business must meet the criteria set forth in the definition of retail establishment contained in the Land Use Code.**
4. **An establishment in operation as of July 1, 2006, that as of that date was an establishment utilized primarily for the retail sale or promotion of tobacco products and accessories and that met the requirements in subsections 1 and 2, above, shall be deemed to constitute a *retail tobacco business* for so long as the establishment:**
 - a. **Continues to meet the requirements in subsections 1 and 2, above; and**
 - b. **Does not expand its size or change its location from the size and location in which it existed as of July 1, 2006; and**

- c. At all times after December 31, 2006, operates in compliance with the requirements of §12-62(a)(2).

Tobacco shall mean cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobacco, shorts, refuse scraps, clippings, cuttings, and seepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. *Tobacco* also includes cloves and any other plant matter or product that is packaged for smoking.

Section 3. That Section 12-62 of the Code of the City of Fort Collins is hereby amended so as to read in its entirety as follows:

Sec. 12-62. Where smoking is not prohibited.

(a) Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the smoking prohibition set forth in § 12-59:

- (1) Up to twenty-five (25) percent of guest rooms in lodging establishments, including but not limited to bed and breakfasts, hotels, motels and inns; and
- (2) Retail tobacco businesses, provided that the following conditions shall apply:
 - a. The business must be designed, constructed and operated in such fashion as to prevent smoke originating on its premises from entering any smoke-free area. It must be also physically separated from other establishments and independently ventilated as prescribed by the most current building and mechanical codes adopted by the city and as administered by the Building Official.
 - b. The business must, prior to allowing smoking on the premises, first obtain a certificate of occupancy from the Building Official allowing such smoking in or on the premises of the store depicting floor space used for retail sales and floor space used for other purposes. Any certificate of occupancy allowing smoking shall be conditioned upon compliance with these regulations and conformance to the floor plan approved by the Building Official as the basis for issuance of the certificate of occupancy. Failure to comply with these regulations and any other laws applicable to the

sales and consumption of tobacco products shall be cause for revocation of the certificate of occupancy.

c. A violation of any of the conditions or limitations of a certificate of occupancy for a retail tobacco business, whether by the store owner, proprietor, manager, employee, agent or otherwise, or violation of the requirements for operation of a retail tobacco business set forth in this Article, shall be the responsibility of the business owner and shall be grounds for revocation of the certificate of occupancy, in addition to any other penalties imposed by the provisions of § 12-68.

d. Persons under eighteen (18) years of age shall not be permitted on the premises of the business, and proof of age shall be required for all persons entering the business. The retail tobacco business shall be responsible for providing adequate staffing and training so as to ensure an effective system for preventing persons under eighteen (18) years of age from entering the business.

e. In addition to other signs required to be posted pursuant to this Article, any retail tobacco business shall post and maintain a sign at all public entrances thereto, in a conspicuous position clearly visible upon entry, stating the phrase "Persons under the age of 18 not permitted". In addition, the sign, or another similarly posted sign, shall state the phrase "Surgeon General's Warning: Smoking Can Cause Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy." Any sign required hereunder shall meet the size and location requirements of §12-64(b).

Section 4. That Section 12-63 of the Code of the City of Fort Collins is hereby deleted in its entirety.

Section 5. That Section 12-64(a) of the Code of the City of Fort Collins is hereby amended to read in its entirety as follows:

Section 6. That Section 12-64(c) of the Code of the City of Fort Collins is hereby amended to read in its entirety as follows:

(c) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited under this Article by the owner, operator, manager or other person in control of the establishment, except that, where the provisions of § 12-61 dealing with smoke-free

perimeters would otherwise preclude the installation of an ashtray for disposal of cigarettes, cigars, or other tobacco products in the general vicinity of the establishment, such an ashtray shall be allowed provided that any such ashtray is:

- (1) placed as far as practicable from the entrance, passageway, operable window or ventilation system of any smoke-free establishment; and
- (2). prominently marked with a sign declaring as follows: “Smoking Not Permitted Within 20 Feet of Any Smoke Free Establishment”.

Section 7. That Section 12-66 of the Code of the City of Fort Collins is hereby amended to read in its entirety as follows:

Sec. 12-66. Inspection of books and records.

The owner of each establishment operating as an enclosed public place shall keep a complete set of books of account, invoices, copies of orders, shipping instructions, bills of lading, correspondence and all other records necessary to show fully the business transactions of such establishment, all of which records shall be available at all times during business hours for inspection and examination by the City Manager or his or her authorized representatives for use in determining the applicability of the provisions of this Article to such establishment. The City Manager may require the owner of any such establishment to furnish such information as he or she considers necessary for such a determination, and may require that the owner of such establishment cause an audit to be made of such books of account and records on such occasions as he or she may consider necessary.

Section 8. That Section 12-67 of the Code of the City of Fort Collins is hereby deleted in its entirety and the remaining Sections in Article III are renumbered accordingly.

Introduced, considered favorably on first reading, and ordered published this 15th day of August, A.D. 2006, and to be presented for final passage on the 19th day of September, A.D. 2006.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 19th day of September, A.D. 2006.

Mayor

ATTEST:

City Clerk