

Town of Mountain View, Wyoming

ORDINANCE 2011-1

AN ORDINANCE OF THE TOWN OF MOUNTAIN VIEW PROHIBITING SMOKING IN PUBLIC PLACES.

Section 1. Title

This Article shall be known as the Mountain View Smokefree Air Act of 2011.

Section 2. Purpose, Findings.

The governing body of the Town of Mountain View, Wyoming does hereby find as follows:

(A) The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.)

(B) Numerous peer reviewed studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke is a cause of disease in healthy nonsmokers, including heart disease, stroke respiratory disease, and lung cancer. 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.

(C) Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection and decreased respiratory function, including bronchoconstriction and bronchospasm.

(D) A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a twenty-five to fifty-percent higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.

Accordingly, the governing body finds and declares that the purposes of the ordinance codified in this chapter are: (1) To protect the public health and welfare by prohibiting smoking in public places and in places of employment; and (2) To guarantee the right of nonsmokers to breathe smokefree air, and to recognize that need to breathe smokefree air shall have priority over the desire to smoke.

Section 3. Definitions

For the purpose of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this section:

A. "Business" means any legal entity, including but not limited to, a sole proprietorship, partnership, joint venture, corporation or other business entity whether formed for profit-making or nonprofit purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

B. "Town Owned Youth and Adult Athletic Facilities" shall include, but not limited to, facilities where organized youth and adult soccer, softball, baseball, and any other youth or adult athletic team activities occur, whether the facility is enclosed or not. This definition includes the Mountain View Town Park.

C. "Employee" means any 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 a nonprofit entity.

D. "Employer" means a person, business, partnership, association, corporation, trust, nonprofit entity, or a municipal corporation that employs the services of one or more individual persons.

E. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from floor to ceiling.

F. "Fire Department" means the Uinta County Fire Protection and Emergency Services Joint Powers Board.

G. "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, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and

all specialists with these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards with health care facilities.

H. "Outdoor Patio" means an outdoor area, open to the air at all times, that either: (a) is enclosed by a roof or other overhead covering and not more than two walls or other side coverings; or (b) has no roof or other overhead covering at all regardless of the number of walls or other side coverings.

I. "Place of Employment" means an area under the control of an employer which is intended for occupancy by employees during the course of employment, including but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, waiting areas, offices, stairways, and hallways. A private residence is not a place of employment unless it is used as a licensed child care, licensed adult day care, health care or preschool facility, or any other aforementioned business.

J. "Private Club" means those organizations or entities defined as a "club" in Wyoming Statutes § 12-1-101(a)(iii), which are not open to the public.

K. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, and other financial institutions, publicly funded buildings, public conveyances, recreational facilities, taverns, lounges, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, including grocery stores, supermarkets and stores where food items are sold for on-premises or off-premises consumption, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a public place unless it is used as a licensed child care, licensed adult day care, health care or preschool facility.

L. "Public Transportation" means any means of transportation, not limited to, any enclosed mode of transportation, including a train, passenger bus, school bus or other vehicle used to transport pupils, and taxi, or a vehicle that is owned by or operated by a business and is open to the public, including tour vehicles, passenger buses or vans regularly used to transport customers. Notwithstanding the foregoing, a private vehicle not open to the public or not used for the transportation of the public during the times of use, including a private passenger vehicle, a private charter or rental or a limousine, bus or van, shall not be considered public transportation.

M. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, and public and private school cafeterias, 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 and served elsewhere. The term "restaurant" shall include any tavern, lounge or bar area within the restaurant.

N. "Retail Sales" means establishments engaged in the sale of goods or merchandise to the general public for personal or household consumption and rendering services incidental to

the sale of such goods. A retail sales establishment is usually a place of business and is engaged in activity to attract the general public to make purchases.

O. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail sale or professional service establishments.

P. "Smoke or Smoking" means the inhaling, exhaling, burning or carrying of any lighted tobacco product, weed, plant or other combustible product in a smoking instrument or the placement of smoking instruments containing a lighted tobacco product, weed, plant or other combustible product or ashtray or other receptacle and allowing smoke to diffuse into the air. This definition does not include incense.

Q. "Smoking Instrument" means any cigar, cigarette, pipe, hookah or water pipe, or any other smoking device.

R. "Sports Arena" means any enclosed sports pavilions, stadiums, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

S. "Tavern, Lounge or Bar" means any establishment open to the public whose primary source of revenue is from the sale of alcoholic liquor and malt beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages, including, but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

T. "Youth" shall mean any person who has not attained 18 years of age.

Section 4. Applicability to Town-Owned Facilities

All of the enclosed areas, including buildings and vehicles owned, leased or operated by the Town of Mountain View shall be subject to this act.

Section 5. Prohibition of Smoking in Public Places.

Smoking shall be prohibited in all enclosed public places within the Town of Mountain View, including but not limited to, the following:

- (A) Galleries, libraries and museums;
- (B) Areas available and customarily used by the general public in businesses and for-profit or nonprofit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels and motels;
- (C) Bingo and/or pull tab gaming premises;

- (D) Convention facilities;
- (E) Elevators;
- (F) Taverns, lounges or bars;
- (G) Health care facilities, nursing homes and long-term care facilities;
- (H) Licensed child care, adult day care and preschool facilities;
- (I) Lobbies, hallways and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple-unit residential facilities;
- (J) Performance halls;
- (K) Election polling places;
- (L) Private clubs;
- (M) Restaurants;
- (N) Restrooms, lobbies, reception areas, hallways, and other common-use areas;
- (O) Retail stores;
- (P) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or governing body of the Town of Mountain View, to the extent the place is subject to the jurisdiction of the Town of Mountain View;
- (Q) Shopping malls;
- (R) Sports arenas and convention halls, including bowling facilities;
- (S) Public transportation;
- (T) Town-owned youth and adult athletic facilities.

Section 6. Prohibition of Smoking in Places of Employment.

(A) Smoking shall be prohibited in all enclosed areas within places of employment, including, but not limited to, common work areas, auditoriums, classrooms, conference and rooms, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, public transportation vehicles and all other enclosed facilities.

(B) Employers affected by this Act shall communicate the provisions of this chapter to all existing employees by the effective date of the ordinance and to all prospective employees on their application for employment.

Section 7. Prohibition of Smoking in Outdoor Areas.

Smoking shall be prohibited in the following outdoor places:

(A) Mountain View Town Park and within a reasonable distance of 15 feet of the Mountain View Town Park;

(B) Within a reasonable distance of 10 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas;

Section 8. Declaration of Establishment as Nonsmoking.

Notwithstanding any other provision of this Act, 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 place in which a sign conforming to the requirements of Section 13 is posted.

Section 9. Where Smoking is Not Regulated.

Notwithstanding any other provisions of this chapter to the contrary, the following areas shall be exempt from provisions of Section 5 and Section 6 of this chapter:

(A) Private residences, except when used as a licensed child care, licensed adult day care, preschool or health care facility;

(B) Hotel and motel rooms that are rented to guests and are designed as smoking rooms;

(C) Outdoor places of employment;

(D) Outside patios. The opening of any sliding or folding windows or doors or other windows or doors from any part of the border to an outdoor patio shall be closed to prevent the migration of smoke into the enclosed area. If sliding or folding windows or doors or other windows or doors do not prevent the migration of smoke into the enclosed building area, they are subject to the prohibitions of this chapter;

(E) Private or business vehicles, except those used for public transportation.

Section 10. Public Education.

The Town of Mountain View will disseminate public information to explain and clarify the purposes and requirements of this chapter. Information may include the availability of a brochure for affected businesses and individuals.

Section 11. Other Applicable Laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted or prohibited.

Section 12. Citizen Complaints; Procedures.

Violations of this chapter may be reported to the Mountain View Police Department at the time of the violation by telephoning nonemergency dispatch. In addition:

(A) The Town of Mountain View Police Department shall respond to complaints made for violations occurring at the time of the complaint. The Mountain View Police Department may issue citations or warning tickets at the discretion of the responding officer.

(B) Violators will be provided a copy of any warning ticket or citation issued.

Section 13. Posting of Signs and Removal of Ashtrays.

The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Act shall:

(A) Clearly and conspicuously post “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) in that place;

(B) Remove all ashtrays from any area where smoking is prohibited by this Act if their intended use is for smoking in such enclosed area.

Section 14. Nonretaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant, or customer exercises any rights afforded by this chapter or reports or attempts to prosecute a violation of this chapter.

Section 15. Enforcement.

(A) Any Town of Mountain View law enforcement officer shall be authorized to enforce the provisions of this chapter.

(B) Notice of the provisions of this chapter shall be given to all applicants for Town business, food or alcohol-related licenses and permits and distributed through other means, as determined by the Town.

(C) Any citizen who desires to register a complaint under this chapter may initiate enforcement action under the procedures set forth in Section 12.

(D) Failure of the owner, manager, operator or employee of an establishment to orally inform a person who smokes in an area where smoking is prohibited by the provisions of this chapter shall not constitute a defense.

Section 16. Violations and Penalties.

(A) A person who violates the provisions of this chapter is guilty of a misdemeanor, punishable by:

(1) A fine not exceeding one hundred dollars (\$100.00) for a first violation.

(2) A fine not exceeding two hundred dollars (\$200.00) for a second violation within one (1) year from the date of the last violation;

(3) A fine not exceeding five hundred dollars (\$500.00) for each additional violation within one (1) year from the date of the last violation.

(B) A person who owns, manages, operates or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Act shall be guilty of a misdemeanor, punishable by:

(1) A fine not exceeding one hundred dollars (\$100.00) for a first violation.

(2) A fine not exceeding two hundred dollars (\$200.00) for a second violation within one (1) year from the date of the last violation;

(3) A fine not exceeding five hundred dollars (\$500.00) for each additional violation within one (1) year from the date of the last violation.

(C) In addition to the penalties established by Subsections (A) and (B) of this section, violation of this chapter by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any Town Permit of license issued to the person for the premises on which the violation occurred, pursuant to the ordinance under which the license is issued. Further, violation of this chapter constitutes a public nuisance.

(D) Each separate violation of this section shall be considered a separate and distinct violation.

Section 17. Liberal Construction.

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

Section 18. Severability.

If any section, subsection, or clause of this chapter shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.

Section 19. Territorial Jurisdiction.

The territorial jurisdiction of the regulations found in this Act shall include all of the incorporated lands located within the Town and pursuant to Wyoming Statute § 15-3-202, such other territory peripheral to the Town which is located within one-half mile of the corporate limits.

Section 20. Effective Date.

This Act shall be effective on June 1, 2011.

PASSED AND APPROVED ON FIRST READING THIS THE 4th DAY OF JANUARY, 2011.

Scott Dellinger, Mayor

ATTEST:

Bonnie Halford, Clerk

PASSED AND APPROVED ON SECOND READING THIS THE 18th DAY OF JANUARY, 2011.

Scott Dellinger, Mayor

ATTEST:

Bonnie Halford, Clerk

PASSED, APPROVED AND ADOPTED ON THIRD AND FINAL READING THIS THE 1st DAY OF FEBRUARY, 2011, AND BE IT THEREFORE ORDAINED TO BE IN FULL FORCE AND AFFECT.

Scott Dellinger, Mayor

ATTEST:

Bonnie Halford, Clerk

CERTIFICATE OF PUBLICATION

I, **Bonnie Halford**, duly authorized Clerk of the Town of Mountain View, Wyoming, do hereby certify that a copy of the above Ordinance 2011-1 was published in the Bridger Valley Pioneer on the ___ day of _____, 2011.

WITNESS MY HAND AND THE OFFICIAL SEAL OF THE TOWN OF MOUNTAIN VIEW, WYOMING.

Bonnie Halford, Clerk

SEAL