

ORIGINAL ORDINANCE NO.: 1650
ENROLLED ORDINANCE NO.: 1439

INTRODUCED BY: Perkins

ORDINANCE TO AMEND SECTIONS 8.56.010, 8.56.020, 8.56.030, 8.56.040, 8.56.050, 8.56.070, 8.56.080 AND 8.56.090, AND FURTHER TO CREATE SECTIONS 8.56.025, 8.56.035, 8.56.045, 8.56.055, 8.56.085, 8.56.095, 8.56.100, 8.56.110, 8.56.120 and 8.32.180.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LARAMIE:

Section 1. The purpose of the proposed amendments and additions of sections is to eliminate smoking in all places of employment and public places and to create penalty and nuisance provisions for enforcement.

Section 2. Section 8.56.010 of the Laramie Municipal Code is amended as follows:

8.56.010. Findings.

A. The Laramie City Council does hereby find that:

1. 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;

2. Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and broncho-spasm; and

3. A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% 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.

B. Accordingly, the Laramie City Council finds and declares that the purposes of this ordinance are:

1. to protect the public health and welfare by prohibiting smoking in public places and places of employment; and

2. to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

Section 3. Section 8.56.020 of the Laramie Municipal Code is amended as follows:

8.56.020. Definitions.

As used in this Chapter, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

A. “Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making 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. “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 non-profit entity.

C. “Employer” means a person, business, partnership, association, corporation, including a municipal corporation or other political subdivision of the state, trust, or non-profit entity that employs the services of one or more individual persons.

D. “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 the floor to the ceiling.

E. “Fire Department” means the City of Laramie, Wyoming Department of Fire.

F. “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 within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

G. “Outdoor patio” means an outdoor area, open to the air at all times, that is either:

1. enclosed by a roof or other overhead covering and not more than two walls or other side coverings; or

2. has no roof or other overhead covering at all regardless of the number of walls or other side coverings.

H. "Performance hall" shall mean any area or facility that is primarily used for the exhibition of any motion picture, stage, drama, lecture, musical recital or other similar performances, including but not limited to, concert halls and theaters.

I. "Place of employment" means an area under the control of a public or private 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, or health care facility, or any other aforementioned business.

J. "Private club" means those organizations or entities defined as a "Club" in Section 5.08.010 of the Laramie Municipal Code.

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, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments including grocery stores, supermarket 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, or health care facility.

L. "Public transportation" means a vehicle used in mass public transportation or in the transportation of the public, 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 of 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 a 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 or professional 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 instrument containing a lighted tobacco product, weed, plant or other combustible product in an 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 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 (or 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 such beverages, including but not limited to taverns, nightclubs, cocktail lounges, and cabarets.

Section 4. Section 8.56.025 of the Laramie Municipal Code is hereby created as follows:

8.56.025. Application of Chapter to City-Owned Facilities.

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

Section 5. Section 8.56.030 of the Laramie Municipal Code is amended as follows:

8.56.030. Prohibition of Smoking in Public Places.

A. Smoking shall be prohibited in all enclosed areas of public places within the City of Laramie, including, but not limited to, the following places:

1. Galleries, libraries and museums.
2. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels and motels.
3. Bingo facilities.
4. Convention facilities.
5. Elevators.
6. Taverns (or Bars).
7. Health care facilities.
8. Licensed child care and adult day care facilities.
9. Lobbies, hallways and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
10. Performance halls.
11. Polling places.
12. Private clubs.
13. Restaurants.
14. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
15. Retail stores.
16. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City of Laramie or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of Laramie.
17. Shopping malls.
18. Sports arenas and conventions halls, including bowling facilities.

19. Public Transportation.

Section 6. Section 8.56.035 of the Laramie Municipal Code is hereby created as follows:

8.56.035. Prohibition of Smoking in Places of Employment.

A. Smoking shall be prohibited in all enclosed areas within places of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles and all other enclosed facilities.

B. All employers subject to this Chapter shall communicate this prohibition on smoking to all existing employees by the effective date of this Chapter and to all prospective employees on their application for employment.

Section 7. Section 8.56.040 of the Laramie Municipal Code is amended as follows:

8.56.040. Distance to be Observed from All Entryways Where Smoking is Prohibited.

In order to prevent second hand smoke from entering a public place and place of employment where smoking is prohibited, every person who is smoking shall smoke a reasonable distance from all entranceways, passageways, operable windows or ventilation systems of any enclosed area where smoking is prohibited, so as to insure smoke does not enter the smoke free establishment or area. Any person who fails to comply with this provision after an oral request to cease smoking by the owner, operator, manager or other person having control of the smoke free establishment or enclosed area shall be in violation of this ordinance.

Section 8. Section 8.56.045 of the Laramie Municipal Code is hereby created as follows:

8.56.045. 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 place in which a sign conforming to the requirements of Section 8.56.080 is posted.

Section 9. Section 8.56.050 of the Laramie Municipal Code is amended as follows:

8.56.050. Where Smoking Not Regulated.

A. Notwithstanding any other provision of this Chapter to the contrary, the following areas shall be exempt from the provisions of Sections 8.56.030 and 8.56.035:

1. Private residences, except when used as a licensed child care, licensed adult day care or health care facility.
2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms.
3. Outdoor places of employment, except those covered by the provisions of Section 8.56.040.
4. Private offices, provided that the private office is not open to public, the public is not invited, and the office is not intended for occupancy by employees during the course of their employment.
5. Outside patios. If sliding or folding windows or doors or other windows or doors form any part of the border to the outdoor patio, the openings 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 area, the outdoor patio shall be considered an extension of the enclosed area and subject to the prohibitions of this Chapter.
6. Private or business vehicles, except those used for public transportation.

Section 10. Section 8.56.055 of the Laramie Municipal Code is hereby created as follows:

8.56.055. Public Education.

City Manager or an authorized designee shall engage in a continuing program to explain and clarify the purposes and requirements of this Chapter to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Section 11. Section 8.56.070 of the Laramie Municipal code is amended as follows:

8.56.070. Governmental Agency Cooperation.

The City Manager or an authorized designee shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this Chapter. This includes urging all Federal, State and County agencies and governmental offices to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Section 12. Section 8.56.080 of the Laramie Municipal Code is amended as follows:

8.56.080. 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 red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Chapter, by the owner, operator, manager or other person in control of that place.

B. The owner, operator, manager or other person having control of an enclosed area where smoking is prohibited shall remove all ashtrays or other smoking instruments if their intended use is for smoking in such enclosed area.

Section 13. Section 8.56.085 of the Laramie Municipal Code is hereby created as follows:

8.56.085. 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 14. Section 8.56.090 of the Laramie Municipal Code is amended as follows:

8.56.090. Violations and Penalties.

A. A person who smokes in an area where smoking is prohibited by the provisions of this Chapter shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50.00).

B. A person who owns, manages, operates or otherwise controls a public place or place of employment and who knowingly fails to comply with provisions of this Chapter after receiving oral or written notice by City Manager or authorized designee shall be guilty of an infraction, 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 with one (1) year from the date of the last violation.

C. In addition to the fines established by 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 permit or license issued to the person for the premises on which the violation occurred, pursuant to Sections 1.16.070 and 5.08.210 (L) and (M) of the Laramie Municipal Code. Further, a violation of this Chapter constitutes a public nuisance. Upon the request of the City Manager or designee, the City Attorney may initiate appropriate enforcement proceedings, including injunctive or other appropriate action to prevent or enjoin such violation.

D. Each separate occurrence of a violation of this Chapter shall be considered a separate and distinct violation.

Section 15. Section 8.56.095 of the Laramie Municipal Code is hereby created as follows:

8.56.095. Enforcement.

A. City Manager or an authorized designee shall enforce this Chapter. Any law enforcement officer may also initiate an action for violation of this Chapter including but not limited to the issuance of a criminal citation.

B. Notice of the provisions of this Chapter shall be given to all applicants for business, food or alcohol-related licenses and permits and distributed through other means, as determined by the City Manager or an authorized designee, to all individuals and entities affected by the provisions of this ordinance.

C. Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the City Manager or an authorized designee.

D. The City Environmental Health and Fire Department or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Chapter and the owner, manager, operator or employee of an establishment must show they are in compliance with all the requirements of this Chapter.

E. An owner, manager, operator or employee of an establishment regulated by this Chapter shall immediately inform persons violating this Chapter of the appropriate provisions thereof and to cease smoking. In the event persons violating this Chapter refuse to cease smoking after being informed by such owner, manager, operator or employee of an establishment, the person smoking, not the owner, manager, operator or employee of an establishment shall be subject to an action for violation of this Chapter.

F. 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 except as provided in Section 8.56.040 shall not constitute a defense for a violation of this Chapter.

G. The City Manager may promulgate such rules and regulations as he or she considers necessary to carry out the intent of this Chapter; provided, that such rules and regulations are not inconsistent with this Chapter.

Section 16. Section 8.56.100 of Laramie Municipal Code is hereby created as follows:

8.56.100. Other Applicable Laws.

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

Section 17. Section 8.56.110 of the Laramie Municipal Code is hereby created as follows:

8.56.110. Liberal Construction.

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

Section 18. Section 8.56.120 of the Laramie Municipal Code is hereby created as follows:

8.56.120. Severability.

If any provision, clause, sentence or paragraph of this Chapter of 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 19. Section 8.32.180 of the Laramie Municipal Code is hereby created as follows:

8.32.180. Secondhand Smoke Prohibited.

A person, owner, manager, operator or employee that otherwise controls a public place or place of employment who knowingly permits or causes smoking in an enclosed area of a public place or place of employment as prohibited under Sections 8.56.030 and 8.56.035 of the Laramie Municipal Code shall be deemed the author of the nuisance. Any secondhand smoke is offensive or injurious to the public health and shall be declared to be a nuisance.

Section 20. This ordinance shall be effective one hundred eighty (180) days from and after the date of its adoption.

Passed and approved this 07th day of September, 2004.

Fred Homer, Mayor and President of the
City Council

Attest: _____
Sue Morris-Jones, CMC
City Clerk

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Public Hearing: 08/10/04
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