

Memorandum

TO: Mayor Bob Murphy
Lakewood City Council

FROM: Janet Young, Deputy City Attorney
Office of the City Attorney

DATE: July 20, 2009

SUBJECT: Chapter 9.38 Pertaining to Smoking in Public Places

Background Information

During the 2006 legislative session, House Bill 06-1175, the Colorado Clean Indoor Air Act, was passed and became effective on July 1, 2006. This comprehensive statewide law prohibits smoking in most public places and workplaces, including restaurants, bars, bowling alleys, and bingo parlors. Restaurants and bars can no longer have designated smoking sections, and must be totally smoke-free. The Lakewood Municipal Code provisions found in Chapter 9.38, Smoking in Public Places, are in conflict with this state law and are no longer being enforced by the Police Department or Code Enforcement. The proposed Ordinance would repeal and reenact Chapter 9.38 and adopt smoking restrictions that are in line with those found in the Colorado Clean Indoor Air Act.

Proposed Provisions of the Ordinance

In accordance with state law, the proposed Ordinance would:

1. Prohibit smoking in the following indoor areas:
 - A. Public places and buildings such as:
 - Retail and commercial establishments, theaters, museums, and libraries.
 - Restaurants, bars, billiard or pool halls, and bowling alleys.
 - Grocery stores and any food service establishment, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.

- Schools, educational institutions, including both public and private schools.
- Indoor sports arenas, gymnasiums and auditoriums.
- Health care facilities, hospitals, health care clinics, doctors' offices and child daycare facilities.
- No less than 75 percent of hotel or motel sleeping quarters rented to guests.
- Jury waiting and deliberation rooms and courtrooms.
- Public transportation of any kind, including buses, trains, trams, and taxi cabs.

B. Workplaces

Any workplace that is not open to the public with four or more employees, including volunteers.

C. Common Use Areas

Lobbies, reception areas, hallways, elevators, restrooms, and any other common-use area, in both public and private buildings. This includes condominiums, other multiple unit residential facilities, retirement facilities and nursing homes, but does not include the private residential quarters of any resident.

D. Entryways

Defined as the fifteen-foot radius outside of the front or main doorway leading into a building or facility that is not exempted from the smoking restrictions. Smoking is not permitted on any outdoor patio that is within fifteen feet of the front or main doorway, but is permitted on a side patio that is more than fifteen feet from the main doorway to the business.

2. Allow for the following exceptions where smoking is permitted

If not specifically listed under "Exceptions," smoking is not permitted in any indoor area.

- Employers with three or fewer employees, including volunteers, where the place of employment is not open to the public.
 - A "cigar-tobacco bar," that was in business as of December 31, 2005. (Lakewood has two bars that arguably fall under this exception: "Ms. T's" located at 8529 W. Colfax Ave. and "Cleopatra's" located at 6045 W. Alameda Ave.) To qualify as a cigar bar, the bar must generate at least five percent or more of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, Section 24-14-203 (4), C.R.S.
 - Retail tobacco businesses, where the sale of other products is incidental such as "Smoker Friendly" stores and "hookah bars." The City has two hookah bars, "Ishtar Babylon Hookah" located at 11504 West Colfax Avenue and "Exhale Hookah" located at 7575 West Florida Avenue.
 - Up to 25% of rented hotel or motel rooms.
 - Private homes, residences and automobiles unless being used for childcare or daycare. (The private residential quarters of residents of nursing home or retirement facilities are also exceptions to the smoking ban.)
 - The outdoor area of any business, excluding entryways as listed above.
 - Limousines under private hire.
3. Provide for optional restrictions imposed by owner/management to prohibit smoking in additional areas

The owner or manager of any place where smoking is legally permissible may voluntarily post signs banning smoking or providing designated smoking and nonsmoking areas. For example, a restaurant owner or manager may post signs prohibiting smoking on an outdoor patio that is more than fifteen feet from the main entrance to the restaurant. A patron who smokes in such a location could be cited.

4. Provide for Citations for Violations

- Make it unlawful for a person to smoke in an area where smoking is prohibited.

- Make it unlawful for a person who owns, manages, operates, or otherwise controls the use of any establishment subject to this law to violate any provisions of the Ordinance.
- Impose the following fine schedule: First violation within a calendar year- \$200 fine; second violation within a calendar year- \$300 fine; third violation within a calendar year- \$500 fine. Each day of a continuing violation constitutes a separate offense.

Conclusion

Lakewood's current ordinance regulating smoking in public places is out of date and unenforceable. Adoption of this Ordinance would allow police agents and code enforcement officers to issue citations in municipal court for the same conduct that violates the state Clean Indoor Air Act, but would not impose any stricter limitations than those found in the state law.