

Ordinance No. 00043

[Council Minutes 96/01/22](#)

ORDINANCE NO. 43

AN ORDINANCE of the City Council of the City of Lakewood, Washington, creating and establishing a new Chapter 8.44 of the Lakewood Municipal Code relating to smoking in public places

WHEREAS, Chapter 70.160 of the Revised Code of Washington sets forth regulations intended on regulating smoking and prohibiting smoking in certain public places; and,

WHEREAS, among the provisions of Chapter 70.160 RCW are requirements for local enforcement; and,

WHEREAS, in connection with the local enforcement responsibility which would fall upon the City of Lakewood, it is appropriate that an Ordinance be adopted to empower City law enforcement officials to enforce the Washington Clean Indoor Air Act.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN as Follows:

Section 1. That a new Chapter 8.44 of the Lakewood Municipal Code is adopted to read as follows:

Chapter 8.44

Smoking in Public Places

Sections:

8.44.010 Definitions.

8.44.020 Prohibitions - Public Places.

8.44.030 Prohibitions - Restaurants.

8.44.040 Designation of Smoking Areas.

8.44.050 Criteria in Determining Smoking Areas.

8.44.060 Single Room Public Place.

8.44.070 Duties of Proprietors, Employers, and Other Persons Having Control.

8.44.080 City Workplaces and Non-City Office Workplaces to Adopt Smoking Policies.

8.44.090 Unlawful to Remove Signs.

8.44.100 Applicable Health Board and Regulations.

8.44.110 Penalties and Enforcement.

8.44.120 Private Actions.

8.44.130 Retaliation Prohibited.

8.44.140 Violation - Retaliation.

8.44.010 Definitions.

As used in this Ordinance, the following terms have the meanings indicated unless the context clearly requires otherwise:

A. ACocktail lounge@ means that portion of an establishment holding a current and valid Class H license issued by the State of Washington Liquor Control Board which is specifically set aside for the sale and consumption of liquor by the glass and separated by a divider from that portion of the establishment principally serving meals on a regular basis to the public.

B. ACity workplace@ means a workplace lawfully occupied by City employees for the conduct of the business of City elected or appointed officials and under the authority of such official.

C. AEmployee@ means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

D. AEmployer@ means any person who pays another person direct or indirect monetary wages or profit in consideration for such other person providing services on the premises of the employer.

E. AOffice workplace@ means any enclosed area of a structure or portion thereof intended for occupancy by business or governmental entities which provide primarily clerical, professional, or business services of the business entity, or which provide primarily clerical, professional or business services to other business entities or to the public, at that location. AOffice workplace@ includes, but is not limited to, office spaces in office buildings, medical offices, libraries, museums, hospitals, and nursing homes and other entities included in definitions E and F of this Section, but excluding:

1. Private, enclosed offices occupied exclusively by smokers even though such offices may be visited by nonsmokers;
2. A private home which may serve as an office workplace;
3. Any property owned or leased by state or federal entities.

F. APublic meeting@ includes all meetings open to the public pursuant to RCW 42.30.010 et seq.

G. APublic place@ means any enclosed indoor area or vehicle used by and open to the public regardless of whether such building or vehicle is owned in whole or in part by a private person or entities or by the City or other public entity, and regardless of whether a fee is charged for admission to the place. It includes, but is not limited to: elevators, public conveyances, museums, concert halls, theaters, hallways, auditoriums, exhibition halls, indoor sports arenas, bowling centers,

hospitals, nursing homes, medical, dental, or health care facilities, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, public meetings or hearings, public transportation facilities, ticket areas, public restrooms, libraries, restaurants, waiting areas, lobbies, and reception areas.

H. ARestaurant@ means any building, structure, or area used as, maintained as, or advertised as, or held out to the public to be an enclosure where meals, for consideration of payment, are made available to be consumed on the premises.

I. ASmoke@ or Asmoking@ includes the carrying or smoking of a lighted pipe, cigar, cigarette, or any other lighted smoking equipment.

J. ATavern@ means any establishment or portion of an establishment where one can purchase and consume alcoholic beverages, but excluding any such establishment or portion of the establishment having tables and seating facilities for serving meals and where, in consideration of payment, meals are served on a regular basis to the public.

8.44.020 Prohibitions - Public Places.

No person shall smoke in a public place, City workplace, or at a public meeting except in designated smoking areas. This prohibition does not apply in the following cases:

A. Where an entire room or hall is used for a private social function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of the place;

B. Chartered buses for private hire and taxicabs which are clearly designated by the operator to permit smoking.

8.44.030 Prohibitions - Restaurants.

Restaurants shall provide food service seating areas where smoking will not be permitted. No person shall smoke in restaurants in a non-smoking designated area.@

8.44.040 Designation of Smoking Areas.

Smoking areas may be designated in public places, and City workplaces, by the proprietor or other person in charge of the place except that designated smoking areas shall not be allowed in:

A. Elevators, public conveyances, health care clinics, public meetings or libraries that are open to the public; or

B. Other places already prohibited by other rule, ordinance or regulation.

8.44.050 Criteria in Determining Smoking Areas.

Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas. The size of the designated smoking area shall not be more than proportionate to the preference of the users specifically requesting the smoking area, as can be demonstrated by the proprietor or other person in charge.

8.44.060 Single Room Public Place.

In the case of public places consisting of a single room, the provisions of this Ordinance shall be considered met if a portion of the room is reserved and posted as a Designated Smoking Area. No public place, restaurant or City workplace, other than a cocktail lounge, tavern, or bowling center, shall be designated as a smoking area in its entirety. If a cocktail lounge, tavern, or bowling center is designated as a smoking area in its entirety, this designation shall be posted conspicuously on all entrances normally used by the public.

8.44.070 Duties of Proprietors, Employers, and Other Persons Having Control.

Proprietors, employers, or other persons having control of a place regulated under this Ordinance shall make every reasonable effort to prohibit smoking in public places, City workplaces, public meetings and no smoking areas in restaurants by:

A. Posting signs prohibiting or permitting smoking as appropriate under this Ordinance. Signs shall be posted conspicuously at each entrance and in prominent locations throughout the place. The boundary between a regular and Smoking Designated Area shall be clearly designated so that persons may differentiate between the two areas;

B. Proprietors and employees of restaurants shall make every reasonable effort to inform patrons that designated nonsmoking areas are available for their preference, including but not limited to posting signs not less than three inches by eight inches in a conspicuous place in the reception area informing patrons of dining areas available for nonsmokers;

C. Requesting that persons smoke only in Smoking Designated Areas;

D. Asking smokers to refrain from smoking upon request of a client, patron, or employee suffering discomfort from the smoke;

E. Informing the public and/or employees orally that separate smoking and nonsmoking sections are available; or

F. Any other means which may be appropriate.

8.44.080 City Workplaces and Non-City Office Workplaces to Adopt Smoking Policies.

A. Each non-City employer who operates a workplace in the City and the City shall, within three months of adoption of this Ordinance, adopt, implement and maintain a written smoking policy which shall be conspicuously posted in all workplaces under the employer=s jurisdiction and which shall contain, at a minimum, the following provisions and requirements:

1. Any nonsmoking employee may object to his or her employer about smoke in his or her workplace. The employer shall attempt to reach reasonable accommodation, insofar as possible, between the preferences of nonsmoking and smoking employees. However, an employer is not required by this ordinance to make any expenditures or structural changes to accommodate the preferences of nonsmoking and smoking employees.

2. If an accommodation which is satisfactory to all affected nonsmoking employees cannot be reached in any given office workplace, the preferences of nonsmoking employees shall prevail and the employer shall prohibit smoking in the workplace of the affected nonsmoking employees to the end that those employees may work in a smoke-free environment. Where the employer prohibits smoking in a non-City office workplace, the area in which smoking is prohibited shall be clearly marked with signs.

B. The smoking policy shall be announced within three weeks of adoption to all employees working in non-City office workplaces in the City workplaces as defined in Section 8.44.010 B. of this Ordinance. The policy shall be posted conspicuously in all workplaces under the employer=s or official=s jurisdiction.

8.44.090 Unlawful to Remove Signs.

It is unlawful for any person to remove, deface, or destroy any sign posted in compliance with this Ordinance.

8.44.100 Applicable Health Board Rules and Regulations.

The Tacoma/Pierce County Board of Health is authorized as a part of its health district duties to enforce the provisions of this Ordinance, the rules and regulations of the Tacoma/Pierce County Board of Health shall apply to such enforcement to the extent that the rules and regulations are not in conflict with the provisions of this Ordinance.

8.44.110 Penalties and Enforcement.

A. Warnings and Civil Fines. When violations of this Ordinance occur, a warning shall first be given to the person or persons violating this Ordinance. Any subsequent violation shall subject the offender to a civil fine as provided for in this Section.

Any person violating this Ordinance by smoking in a place in which smoking is prohibited herein or by removing, defacing or destroying any sign posted in compliance with this Ordinance is subject to a civil fine of up to one hundred dollars. The law enforcement agency of the City shall enforce this Section by issuing a notice of infraction to be assessed in the same manner as traffic infractions.

1. The provisions contained in RCW Chapter 46.63 for the disposition of traffic infractions apply to disposition of infractions for violations of this Subsection except as follows:

a. The provisions in RCW Chapter 46.63 relating to the provision of records to the Department of Licensing in accordance with RCW 46.20.270 are not applicable to this Ordinance; and

b. The provisions in RCW Chapter 46.63 relating to the imposition of sanctions against a person's driver's license or vehicle license are not applicable to this Ordinance;

c. The form for the notice of infraction for a violation of this Subsection shall be prescribed by rule of the Supreme Court.

2. Any proprietor, employer, or other person intentionally violating this act by not complying its Section may be subject to a civil fine of up to five hundred dollars, which penalty shall be assessed and recovered in a civil action brought in the name of the City of Lakewood in any court of competent jurisdiction. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation. The City Manager or designee shall enforce this Ordinance either separately or together with the Tacoma/Pierce County Health Department by either of the following actions:

a. Serving notice requiring the correction of any violation;

b. Calling upon the City Attorney to maintain an action to assess and recover a civil penalty for the violation.

B. In undertaking the enforcement of this Ordinance, the City is assuming and undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

8.44.120 Private Actions.

Nothing in this Chapter shall be construed as prohibiting a private person or organization from bringing an action to enjoin violations of this Chapter.

8.44.130 Retaliation Prohibited.

It shall be unlawful for an employer, proprietor, agency or other person having control of a place regulated under this Ordinance to retaliate against any member of the general public or an employee or applicant for employment of the employer, proprietor, agency or other person having control because such person seeks enforcement of the provisions of this Ordinance.

8.44.140 Violation - Retaliation.

Violation of any of the provisions of this Ordinance shall be remedied through appropriate private civil action filed in a court of competent jurisdiction against persons who commit the violations for injunctive or other appropriate relief.

Section 2. Severability.

If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 3. Effective Date.

That this Ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary and on February 28, 1996.

ADOPTED by the City Council this 22nd day of January, 1996.

CITY OF LAKEWOOD

/S/

Attest: Bill Harrison, Mayor

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Alice M. Bush, City Clerk

Approved as to Form:

/S/

Daniel B. Heid, City Attorney

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