

ORDINANCE 2956

AN ORDINANCE REPEALING TITLE 8.07 PERTAINING TO SMOKING IN INDOOR PLACES OF EMPLOYMENT AND PUBLIC PLACES

Whereas, the citizens of the State of Montana incorporated a statewide law pertaining to smoking in indoor places of employment and public places; and

Whereas, some language in the State statute conflicts with the existing City ordinance and otherwise supersedes City ordinances; and

Whereas, in order to streamline enforcement and education regarding smoking in public places and indoor places of employment it became necessary to repeal the City ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

Section 1. That the language contained within OCCGF Title 8 Chapter 7 pertaining to Smoking in Indoor Places of Employment and Public Places as depicted in Exhibit A with a strike-out format is hereby repealed and that any language depicted with a bold font is hereby adopted.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, this 8th day of November, 2006.

Dona R. Stebbins, Mayor

ATTEST:

Peggy J. Bourne, City Clerk

(SEAL OF THE CITY)

APPROVED FOR LEGAL CONTENT:

David V. Gliko, City Attorney

State of Montana)
County of Cascade : ss
City of Great Falls)

I, Peggy J. Bourne, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Ordinance 2956 was placed on its final passage and passed by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 8th day of November, 2006, and approved by the Mayor of said City on the 8th day of November, 2006.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 8th day of November, 2006.

Peggy J. Bourne, City Clerk

(SEAL OF CITY)

State of Montana)
County of Cascade : ss
City of Great Falls)

Peggy J. Bourne, being first duly sworn, deposes and says: That on the 8th day of November, 2006, and prior thereto, she was the City Clerk of the City of Great Falls, Montana; that as said City Clerk she did post as required by law and as prescribed and directed by the Commission, Ordinance 2956 of the City of Great Falls, in three conspicuous places within the limits of said City to-wit:

On the Bulletin Board, first floor, Civic Center Building;
On the Bulletin Board, first floor, Cascade County Court House;
On the Bulletin Board, Great Falls Public Library

Peggy J. Bourne, City Clerk

(SEAL OF CITY)

Exhibit A
Language to be Repealed

Chapter 8.07

SMOKING IN INDOOR PLACES OF EMPLOYMENT AND PUBLIC PLACES

Sections:

- 8.07.010 — Findings and purpose.
- 8.07.020 **8.7.010** Definition.
- 8.07.030 — Prohibition of smoking in public places.
- 8.07.040 — Regulation of smoking in place of employment.
- 8.07.050 **8.7.020** Reasonable Distance.
- 8.07.060 — Where smoking is not regulated.
- 8.07.070 — Posting of signs.
- 8.07.080 — Enforcement.
- 8.07.090 — Violation and penalties.
- 8.07.100 — Non-retaliation.
- 8.07.120 — Public education.
- 8.07.150 — Other applicable laws.
- 8.07.180 — Severability.

~~**8.07.010 Findings and Purpose.** An ordinance prohibiting tobacco smoking in public places and places of employment. (Ord. 2763, 1999)~~

~~A. Pursuant to Article II, Section 3 of Montana's Constitution, all persons have certain inalienable rights that include a constitutional right to a clean and healthful environment.~~

~~B. The Americans with Disability Act which requires access of handicapped persons in public places and work places deems impaired respiratory functions a disability.~~

~~C. The National Institute for Occupational Safety and Health has recommended that all preventable measures should be used to minimize occupational exposure to environmental tobacco smoke.~~

~~D. Numerous studies have found that tobacco smoke is a major contributor to indoor pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer in nonsmokers.~~

~~E. People at special risk to secondhand smoke are children, elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.~~

~~F. Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function, and broncho-spasm.~~

~~G. The City Commission and the City/County Health Department finds and declares that the purposes of this chapter are: (1) to protect public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breath smoke free air, and to recognize that the need to breath smoke free air shall have priority over the desire to smoke. (Ord. 2763, 1999; Ord. 2753,~~

1999)

~~8.07.020~~ 8.7.010 Definition. As used in this chapter, the following terms have the meanings indicated unless the content clearly requires otherwise:

A. ~~“Bar” means an area which is devoted to the serving of alcoholic beverages for the consumption by patrons on the premises and in which food is only incidental to the consumption of such beverages.~~

B. ~~“Bar Restaurant” means any place devoted to serving alcoholic beverages for the consumption by patrons on the premises in which food is also served to the patrons.~~

C. ~~“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.~~

D. ~~“Cabaret License” is a license issued by the State Liquor Control Authority to be used for the purpose of beer and wine sales. There is no gambling allowed with this type of license. (Ord. 2763, 1999).~~

E. ~~“Casino” means an establishment where gaming machines are available for public use.~~

F. ~~“Dining area” means any area containing a counter or tables upon which meals are served.~~

G. ~~“Employee” means any person who is employed by an employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her service for a non-profit entity.~~

H. ~~“Employer” means any person, partnership, corporation, including a municipal corporation, or non profit entity, who employs the services of one or more individual persons.~~

I. ~~“Enclosed area” means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, “office landscaping” or similar structures.~~

J. ~~“Independently Ventilated” shall mean that the ventilation system for the area in which smoking is permitted and the ventilation system for any non-smoking area do not have a connection which allows the mixing of air into the smoking and non-smoking areas. (Ord. 2763, 1999).~~

K. ~~“Licensed all beverage establishment” means a business licensed by the State of Montana to serve alcoholic beverages.~~

L. ~~“No Smoking” means no lighting, smoking, exhaling or carrying a lighted cigar, cigarette, or pipe is allowed within an enclosed building.~~

M. ~~“Place of employment” means any enclosed area under control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a “place of employment” unless it is used as a child care, adult day care or health facility. Family-owned and operated businesses with only related employees, and offices of self-employed persons with only related employees shall not be considered an “indoor public~~

place or place of employment” when the indoor space that they occupy is not in the same building with other public places subject to this regulation. A private residence remains exempt from this provision when an employee of another business is providing services in the private residence, such as, but not limited to, housecleaning and home maintenance services.

N. ~~“Physically Separated” means that there are physical barriers such as walls and doors extending from floor to ceiling that prohibit smoke from entering a non-smoking area. (Ord. 2763, 1999)~~

O. ~~“Public place” means any enclosed area to which the public is invited or in which the public is permitted or generally that is open to the public regardless of whether such building is owned in whole or in part by a private person or entities or by the City of Great Falls or other public entity, and regardless whether a fee is charged for admission to the place. (Ord. 2763, 1999)~~

P. ~~“Restaurant” means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria and dining area which gives or offers for sale, food to the public.~~

Q. ~~“Service Line” means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money. (Ord. 2753, 1999)~~

8.070.030 Prohibition of Smoking in Public Places. A. ~~Smoking shall be prohibited in all enclosed public places within the City including, but not limited to, the following places:~~

- ~~1. Elevators.~~
- ~~2. Buses, taxicabs, and other means of public transit.~~
- ~~3. Restrooms.~~
- ~~4. Service lines.~~
- ~~5. Retail stores.~~
- ~~6. All areas available to the general public without express invitation or permission in all businesses and non-profit entities.~~
- ~~7. Museums, galleries and libraries when open to the public.~~
- ~~8. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital, or other similar performance, except when smoking is part of a stage production.~~
- ~~9. Sports arenas and convention halls.~~
- ~~10. Every room, chamber, place of meeting or public assembly, including school buildings, under control of any board, council, commission, committee, including joint committees, or agencies of the City or any political subdivision of the State.~~
- ~~11. Waiting rooms, hallways, wards and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors’ offices, chiropractors’ offices and dentists offices.~~
- ~~12. Lobbies, hallways and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple unit residential facilities.~~
- ~~13. Lobbies, hallways, and other common areas in multiple unit commercial facilities.~~
- ~~14. Polling places.~~

——— 15. Laundromats. (Ord. 2763, 1999; Ord. 2753, 1999)

~~B. Restaurants must declare their intent to become a smoking or non smoking establishment. If a restaurant has a physically separated independently ventilated bar or smoking area, the remaining portion shall be designated Non Smoking.~~

~~1. When restaurants are sold and continue in the same location, new owners will have a choice to be smoking or non smoking; however, non smoking establishments cannot revert to allow smoking.~~

~~2. New established restaurants must be non smoking establishments. (Ord. 2763, 1999).~~———

~~**8.07.040 Regulation of Smoking in Place of Employment.** It shall be the responsibility of employers to provide a smoke free workplace for employees as follows:~~

~~A. Smoking shall be prohibited in all enclosed areas within a place of employment including common work areas, auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed areas including work and office spaces.~~

~~B. All employers shall offer employees in restaurants with designated smoking areas, the option to work in non smoking areas to the extent practicable (Ord. 2763, 1999; 2753, 1999)~~

~~**8.07.050 8.7.020 Reasonable Distance.** Smoking shall occur outside any enclosed area where smoking is prohibited to insure that tobacco smoke does not enter through the entrances, windows, ventilation system or other means with no re-circulation to other non smoking areas. The Montana Smoking In Public Places statute (MCA 50-40) requires all public places to be smoke-free. It does not specify the distance designated smoking areas should be from a public place. This section is meant to augment state law by prohibiting smoking within presumptively reasonable minimum distance of twenty feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited so as to ensure that tobacco smoke does not enter the area through entrances, exits, open windows, or other means. (Ord. 2753, 1999)~~

~~**8.07.060 Where Smoking is Not Regulated.** A. Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restriction of this chapter.~~

~~1. Private functions, parties, or gatherings not advertised or accessible to the general public. (Ord. 2758, 1999)~~

~~2. Private residences, except when used as child care or health care facilities.~~

~~3. Commercial motor vehicles, not engaged in the public transportation of passengers.~~

~~4. Retail tobacco shops.~~

~~5. All hotel and motel guest rooms or suites.~~

~~6. Any establishment with a cabaret, beer, wine, or all beverage license that have their license for the consumption of alcohol on the premises. (Ord. 2763, 1999)~~

~~7. Any restaurant or bar restaurant that have designated and non-~~

~~designated areas for smoking will be considered smoking establishments. (Ord. 2763, 1999)~~

~~8. Bingo halls.~~

~~9. A designated smoking room or other enclosed area within a public place otherwise regulated and subject to this non-smoking ban provided that such area is completely enclosed and separate from the remainder of the smoke free enclosed areas of the facility, by solid floor to ceiling walls and doors and/or windows which must remain closed except for entry and exit of persons to and from the room or where a window or door ventilates to the outside of the building. No public place covered by this chapter shall be designated a smoking area in its entirety.~~

~~10. Bowling centers are exempt from this chapter during bowling activities specifically organized for juvenile bowlers. (Ord. 2763, 1999)~~

~~B. Notwithstanding any other provision of this section, any owners, operator, manager, or other person who controls any establishment described in this section may declare a portion of, or the entire establishment, as a non-smoking establishment. (Ord. 2763, 1999; Ord. 2753, 1999)~~

~~**8.07.070 Posting of Signs.** A. “No Smoking” signs or the international “No Smoking” symbol shall be clearly, sufficiently, and conspicuously posted in every building, and at every entrance, or other place where Smoking is regulated by this chapter, by the owner, operator, manager or other person having control of such building or other place. (Ord. 2763, 1999) —~~

~~B. In public places, enclosed areas or other facilities affected by this chapter, where certain areas are designated as smoking areas pursuant to OCCGF 8.07.060(A)(9), the statement “No Smoking Except in Designated Areas,” shall be conspicuously posted on all public entrances or in a position clearly on entry into the establishment. (Ord. 2763, 1999)~~

~~C. Restaurants which provide for smokers and non-smokers, and do not have two separate ventilation systems must be posted as smoking establishments. (Ord. 2763, 1999)~~

~~D. All ashtrays shall be removed from any area where smoking is prohibited by this chapter, by the owner, operator, manager or other person having control of such area.~~

~~E. The Great Falls Fire Department will inspect for signage as they do their annual inspections. (Ord. 2753, 1999).~~

~~**8.07.080 Enforcement.** A. Enforcement of this chapter shall be implemented by the City/County Health Department. This chapter is intended to be self enforcing however, owners, operators, managers or other persons having control over a public place, enclosed area or other area where smoking is prohibited hereunder and any citizen who desires to register a complaint under this chapter may initiate enforcement by calling the City/County Health Department. A representative of the Health Department will first attempt to resolve the complaint through education but will also have the discretionary authority to issue a citation when educational efforts are insufficient to resolve the complaint. The Great Falls Police Department will assist in the enforcement of this chapter when requested by the City/County Health Department.~~

~~B. The owner, operator or manager of a business shall not be responsible for~~

violations of this chapter within their premises by patrons or citizens, provided that such patrons or citizens have been adequately informed that their actions may be in violation of the chapter. Any owner, operator, or manager of a business shall have adequately informed patrons or citizens if he or she has posted signs on the premises in accordance with this chapter.

C. Enforcement of this chapter will be further governed by a written policy on file at the City/County Health Department. (Ord. 2753, 1999).

8.07.090 Violations and Penalties. A. It shall be unlawful for any person who owns, operates, manages or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions.

B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.

C. Any person who violates any provision of this chapter 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 of this chapter within one (1) year.

3. A fine not exceeding Five Hundred Dollars (\$500.00) for each additional violation of this chapter within one (1) year. (Ord. 2753, 1999).

8.07.100 Non-Retaliation. No person or employers shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant, or customer exercises any right to a smoke free environment afforded by this chapter. (Ord. 2753, 1999).

8.07.120 Public Education. The City/County Health Department shall explain and clarify the purposes and requirements of this chapter to citizens affected by it, and shall provide guidance to owners, operators, and managers in their compliance with it, upon request of such explanation or guidance. Such explanation may include publication of a brochure for affected businesses and individuals explaining the provisions of this chapter. (Ord. 2753, 1999).

8.07.150 Other Applicable Laws. This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Ord. 2753, 1999).

8.07.180 Severability. If any provisions, clauses, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such 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. (Ord. 2753, 1999).