

ORDINANCE NO. 2008-18

AN ORDINANCE PROHIBITING SMOKING
IN WORKPLACES AND PUBLIC PLACES

WHEREAS, the Town Council finds that the smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance; and

WHEREAS, the Town Council recognizes the need to protect the public health and welfare by prohibiting smoking in public places and places of employment; and

WHEREAS, the Town Council desires to guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF LOXLEY AS FOLLOWS:

Section 1. Definitions

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

1. "Bar" means a stand alone enclosed area in which the principal or sole purpose and business of the establishment is the serving of alcoholic beverages for consumption by guests on the premises. This term includes such establishments where the sale or service of food is made, but only if it is incidental to the service of alcoholic beverages. Bars must be posted off limits to minors and must not allow any minors inside.
2. "Business" means a sole proprietorship, partnership, joint venture corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered; and private clubs.
3. "Employee" means a person who is hired by another to perform a task or job in consideration for direct or indirect monetary wages, gain or profit, and a person who volunteers his or her services for a non-profit entity. This term includes independent contractors.
4. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that hires the services of three or more employees.

5. “Enclosed Area” means that area between a floor and ceiling that is enclosed, or is capable of being enclosed, on all sides by solid walls, windows, and or doorways and which is climate controlled by a HVAC or similar air handling system.
6. “Places of Employment” means an area under the control of an Employer where Employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a “Place of Employment” unless it is also used as a location of a business, child care, adult day care, or health care facility.
7. “Private Club” means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U. S. C. Section 501. A “private club” is not open to the general public. A private club established for the purpose of avoiding the prohibitions on smoking called for in this Article shall be deemed a Public Place, however.
8. “Public Place” means an enclosed area to which the general public is invited or in which the general public is permitted, including, but not limited to, banks, educational facilities, health care facilities, hotel and motel lobbies, Laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms, A “private club” facility is a “public place” when being used for a function to which the general public is invited or allowed to attend. A private residence is not a “public place” unless it is used as a business location, child care, adult day care, or health care facility.
9. “Smoking” means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

10. "Sports Arena" means sports pavilions, stadiums, ball fields, gymnasiums, health spas, boxing arenas, 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.

Section 2. Application of Article to Town-Owned Facilities

All Enclosed Areas, including buildings and vehicles, which are owned, leased, or operated by the Town of Loxley shall be subject to the provisions of this Article.

Section 3. Prohibition of Smoking in Enclosed Public Spaces

Smoking shall be prohibited in all enclosed Public Places, as well as the areas within a reasonable distance outside of the main entrance(s) of such Public Places, within the Town of Loxley.

Section 4. Prohibition of Smoking in Places of Employment

Smoking shall be prohibited in all enclosed areas which are a place of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed areas. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application of employment.

Section 5. Prohibition of Smoking in Outdoor Arenas and Stadiums

Smoking shall be prohibited in the seating areas of all outdoor sports arenas, stadiums, and amphitheaters, as well as in bleachers and grandstands for use by spectators at sporting and other public events.

Section 6. Reasonable Distance

Smoking shall be prohibited within a reasonable distance of 15 linear feet outside all main entrances/exits to enclosed areas where smoking is prohibited in this Article.

Section 7. Where Smoking Not Prohibited

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the prohibitions in this Article.

1. Private residences which are not also a place of employment, business or public place as defined herein.

2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
3. Private and semi-private rooms in nursing homes and long term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provision of this Article.
4. Private clubs when being used or occupied by its members only.
5. Places of employment that do not meet the definitions of an Enclosed Area.
6. Places of employment where the Employer hires the services of less than three (3) employees.
7. Bars

Section 8. Declaration of Establishing as Nonsmoking

Notwithstanding any other provision of this Article, 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 10(A) is posted.

Section 9. Posting of Signs

1. "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 Article, by the owner, operator, manager, or other person in control of that place.
2. Every public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
3. All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager or other person having control of the area.

Section 10. Non-retaliation; Non-waiver of Rights

1. 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 Article or reports or attempts to prosecute a violation of this Article.
2. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Section 11. Enforcement

1. This Article shall be enforced by the building inspector or an authorized designee.
2. Any citizen who desires to register a complaint under this Article may initiate enforcement with the building inspector.
3. The Health Department, Police Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
4. An owner, manager, operator, or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.
5. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
6. In addition to the remedies provided by the provisions of this Section, the building inspector or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section 12. Violations and Penalties.

A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).

A person who owns, manages, operate, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article 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.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public 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.

Violation of this Article is hereby declared to be a public nuisance, which may be abated by the Town Council by restraining order, preliminary and permanent injunction, or other means provided for by law, and the Town may take action to recover the costs of the nuisance abatement, including a reasonable attorney's fee.

Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Section 13. Other Applicable Laws

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

Section 14. Liberal Construction

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

Section 15. Severability

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Section 16. Effective Date

This Article shall be effective ninety(90) days from and after the date of its adoption and its publication as required by law.

This document was passed, adopted and approved on the 12th day of May, 2008 by Mayor Billy Middleton. It was attested by Town Clerk Carol P. Middleton and Certified at that time.

All signatures and original documents can be found at the Loxley Town Hall in the office of the Town Clerk.

Posted to the Internet: Friday, August 1, 2008

This Ordinance takes effect on August 6, 2008, ninety (90) days after its adoption and publication.