

Ordinance 08-2

BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF BURLINGTON, WYOMING:

Section 1. The Chapter 8.64, Smoking of Title 8, Health and Safety, of the Code of the Town of Burlington, Wyoming, is hereby repealed in its entirety.

Section 2. That Chapter 8.64, Smoking in Public Places, of the Title 8, Health and Safety, of the Code of the Town of Burlington, Wyoming, is hereby re-created as follows:

Chapter 8.64

8.64.10 Purpose – Findings

- A. The Governing Body of the Town of Burlington 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.
 3. A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a twenty-five (25) to fifty (50) percent higher risk of heart attack and a higher rate of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.
- B. Accordingly, the Governing Body finds and declares that the purposes of the ordinance codified in this chapter 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 smoke-free air and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

8.64.20

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:

“Business” means any legal entity including, but not limited to, sole proprietorship, partnership, joint venture, corporation, or other business entity whether formed for profit-making or non-profit 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.

“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.

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

“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.

“Fire Department” means the Big Horn Fire District #4.

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

“Place of Employment” means an area under the control of an 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, health care or pre-school facility, or one other aforementioned business.

“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, recreation facilities, taverns, lounges, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments including grocery stores, supermarkets and stores where food items are sold for on-premises or off-premises consumption, retail service establishments, retail stores, shopping malls, sports arena, 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, health care or pre-school facility.

"Restaurant" means an eating establishment including, but not limited to, coffee shops, cafeterias, and public and private school cafeterias, which gives or offers sale food to the public, guest, 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 any tavern, lounge or bar area within the restaurant.

"Smoke" or "smoking" means the inhaling, exhaling, burning or carrying of any lighted or heated tobacco products, cigarette, cigar, pipe, in a smoking instrument or in placement of smoking instruments containing lighted tobacco product any manner or in any form. This definition does not include incense.

"Smoking instrument" means any cigar, cigarette, pipe, hookah, or water pipe, or any other smoking device.

"Tavern, lounge, or bar" means any establishment open to the public whose primary source of revenue is from the sale of alcoholic liquor and malt 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.

"City Owned Youth Athletic Facilities" includes, but is not limited to, facilities where youth soccer, basketball, skateboarding and any other youth activities occur, whether the facility is enclosed or not.

"Youth" means any person who has not attained 18 years of age.

"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.

8.64.30 Application of chapter to town owned facilities.

All areas, including parks, buildings and vehicles owned, leased or operated by the Town of Burlington, shall be subject to the provisions of this chapter.

8.64.40 Prohibition of smoking in public places.

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

1. Galleries, libraries and museums
2. Areas available to and customarily used by the general public in businesses and for-profit and non-profit entities patronized by the public including, but not limited to, professional offices, banks, laundromats, hotels and motels;
3. Convention facilities;
4. Taverns, lounges or bar;
5. Licensed child care, adult day care and pre-school facilities
6. Performance halls;
7. Election polling places;
8. Private clubs;
9. Restaurants
10. Restrooms, lobbies, reception area, hallways, and other common-use areas;
11. Retail stores;
12. Rooms, chambers, places of meeting of public assembly, including school buildings, under the control of an agency board, commission, or committee or governing body of the Town of Burlington, to the extent the place is subject to the jurisdiction of the Town of Burlington;
13. Town owned Youth Athletic Facilities.

8.64.50 Prohibition of smoking in places of employment

A. Smoking shall be prohibited in all enclosed areas within places of employment including, but not limited to, common work areas,

auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, public transportation vehicles and all enclosed facilities.

- B. Employee affected by this chapter shall communicate the provisions of this chapter to all exiting employees by the effective date of the ordinance and to all prospective employees on their application for employment.

8.64.60 Distance to be observed from all entryways where smoking is prohibited.

In order to prevent secondhand smoke from entering a public place or place of employment where smoking is prohibited, every person who is smoking shall smoke a distance of at least ten (10) feet from all public entranceways, passageways, operable windows or ventilation systems of any enclosed area where smoking is prohibited. 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 the provisions of this chapter.

8.64.70 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 areas as nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 8.64.120 of this chapter is posted.

8.64.80 Where smoking is not regulated.

- A. Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of Section 8.64.040 and 8.64.050 of this chapter:
1. Private residences, except when used as a licensed child care, licensed adult day care, pre-school or health care facilities;
 2. Hotel and motel rooms that are rented to guest and are designated as smoking rooms; "Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (25%) 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

Article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.”

3. Outdoor places of employment, except those expressly exempt from the provisions of Section 8.64.060 of this chapter;
4. Smoking is prohibited in the place of employment of a sole proprietor with no other employee(s), or in a place of employment of any individual who is the sole employee at a facility to which the public is not invited nor in which the public is permitted, provided such a place of employment is located freestanding structure occupied solely by the business;
5. Outside Patios. The opening of any sliding or folding windows or doors or other windows or doors from any part of the border to an outdoor patio 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 building area, the outdoor patio shall be considered an extension of the enclosed are and subject to the prohibitions of this chapter;
6. Private or business vehicles, except those used for public transportation
7. Retail tobacco shops, which mean any enclosed freestanding indoor workplace dedicated to or predominantly for the retail sale of tobacco products, and accessories for such product, in which the sale of other products or services is incidental. To enter or be employed in a retail tobacco shop a person must be at least the age of a 18.

8.64.90 Public Education

The town will disseminate public information to explain and clarify the purposes and requirements of this chapter. Information may include the availability of a brochure for affected businesses and individuals.

8.64.100 Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted or prohibited.

8.64.110 Citizen complaints; procedures.

- A. Violations of this chapter may be reported to the Big Horn County Sheriff’s Department at the time of the violation by telephoning non-emergency dispatch. In addition:
 1. The Big Horn County Sheriff’s Department shall respond to complaints made for violations occurring at the time of the complaint. The Big Horn County

Sheriff's Department may issue citations or warning tickets at the discretion of the responding officer.

2. Violators will be provided a copy of any warning ticket or citations issued.

8.64.120 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.
- B. The owner, operator, manager or other person having control of an area where smoking is prohibited shall remove all ashtrays or other smoking instruments if their intended use is for smoking in such an enclosed area.

8.64.130 Non-retaliation

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.

8.64.140 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. A person who owns, manages, operates, 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) for a first violation.
 2. A fine not exceeding two hundred dollars (\$200) 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.
- B. 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 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.

- C. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the Town of Burlington by restraining order, preliminary and permanent injunction, or other means provided for by law, and the Town of Burlington may take action to recover the costs of the nuisance abatement.
- D. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

8.64.150 Enforcement.

- A. Any Big Horn Sheriff's Department law enforcement officer shall be authorized to enforce the provisions of this chapter.
- B. Notice of the provisions of this chapter shall be given to all applicants for town business, food or alcohol-related licenses and permits and distributed through other means, as determined by the city.
- C. Any citizen who desires to register a complaint under this chapter may initiate enforcement action under the procedures set forth in 8.64.010.
- D. 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 shall not constitute a defense.

8.64.160 Liberal construction.

This chapter shall be liberally constructed so as to further its purposes.

8.64.170 Governmental Agency Cooperation

The City Manager shall annually request other governmental and educational agencies having facilities within the Town of Burlington to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, City and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

8.64.180 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.

8.64.190 Effective Date

This Article shall be effective thirty (30) days from and after the date of its adoption.

Kenneth Hockely, Mayor

Melissa Chatwin, Town Clerk

First Reading: June 10, 2008

Second Reading July 8, 2008

Third Reading: September 9, 2008