

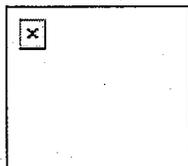
Mary Cone

From: Robin Crotty
Sent: Friday, February 12, 2010 8:35 AM
To: Mary Cone
Subject: FW: smokefree ordinance language
Attachments: sfhaileymodellanguage.doc

Another thing for council packets
Robin

From: Rick Davis [mailto:rdavis@sunvalleytitle.com]
Sent: Thursday, February 11, 2010 4:02 PM
To: Robin Crotty
Subject: FW: smokefree ordinance language

Please print and give cc to Council and Ned for deliberation on the 22nd.
r



Rick Davis

Client Relations

Sun Valley Title Company

208.727.7728

800.488.9341

208.726.9341

-----Original Message-----

From: Heidi.Low@cancer.org [mailto:Heidi.Low@cancer.org]
Sent: Thursday, February 11, 2010 11:29 AM
To: rick.davis@haileycityhall.org
Cc: Shauneen Grange
Subject: smokefree ordinance language

Mayor Davis,

Thank you for your time yesterday. We are encouraged to hear you think the time is right to move this forward. Please don't feel you need to rush this and put it on new business for the 22nd if you're not ready, taking a month or two to roll this out wouldn't be a problem at all. Just keep us looped in and we will provide all the support both at a policy and grassroots level that we can!

Because the attached language reaffirms all state statute it is somewhat verbose and cumbersome so we can certainly work with you to make it more simple.

(See attached file: sfihailymodellanguage.doc)

Heidi Low

Idaho Director of Government Relations

American Cancer Society Cancer Action Network

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Heidi.Low@cancer.org

Current Idaho state law prohibits smoking in publicly owned workplaces, in restaurants, including attached bars, and in public places. Small business owners, employing five or fewer employees, may establish separately enclosed breakrooms for smoking, as long as employees other than custodial or maintenance employees are not required to work there. See ID Statutes, §39-5501 et seq.

Hailey, Idaho

At present, some Hayden workers are protected from secondhand smoke under the Idaho State Law that took effect in 2004 (outlined above). However, many Hailey workplaces and public places are not yet smokefree, allowing for many Hayden workers, residents and visitors to be exposed unnecessarily to dangerous secondhand smoke.

Nationwide, thousands of cities across the country have considered the issue carefully and passed strong comprehensive laws to protect all workers from secondhand smoke. In addition, 26 states have passed 100% protect in restaurants, and 24 states have passed 100% smokefree bar laws. The mountain of scientific evidence demonstrating the dangers of secondhand smoke shows that there is no safe level of exposure to secondhand smoke. This evidence has convinced lawmakers from coast to coast to take on this issue by passing strong smokefree ordinances locally, leaving no one unprotected. Exemptions are no longer acceptable and the majority of local laws passing since 2004 have been comprehensive, covering all workplaces, including all restaurants and bars.

Idaho's current law does not protect:

- Bar workers, who encounter the heaviest most dangerous level of exposure.
- Workers in small businesses with 5 or fewer employees.
- Workers in Private Clubs, Theatrical Production sites, and tobacco retail establishments, and more.

Recommendation for Hayden Ordinance:

The following gaps exist under the state law and are outdated. They should be covered when Hailey considers passing a local ordinance. In order for the city to pass effective law to protect everyone fairly, we recommend the following:

- **Remove bar exemption.**
- **Remove exemption for workers in small businesses with 5 or fewer employees.** All workers deserve protection. This exemption allows smoking in break rooms and offers no protection to workers in these workplaces, since smoke from those break rooms can infiltrate into the rest of the building.
- **Remove exemption for "Theatrical Production sites".** It is unnecessary.
- **Define "Private Club"** to ensure that no workers in those establishments could be exposed to secondhand smoke. We recommend the following definition:
"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.

- Specify percentage under the current state **Hotel/Motel exemption, providing a minimum of 80% of hotel/motel guest rooms** as 100% smokefree. All common areas, hallways, and meeting areas, should also be 100% smokefree in hotels/motels.

Other considerations:

Reasonable Distance Provision

Smoking shall be prohibited within a reasonable distance of 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

Nonretaliation; Nonwaiver of Rights

A nonretaliation clause protects nonsmokers from retaliation by employers for exercising the right to a smokefree environment. The nonsmoking employee is protected from discharge, refusal to hire, or other retaliation. A nonwaiver of rights clause protects an employee who is required to work where smoking is allowed from waiving any legal rights he or she might have against the employer for damages suffered as a result of exposure to

Public Education

The purpose of this provision is to insure that the general public understands the purposes and scope of the ordinance. When people understand the health hazards of secondhand smoke and know just where smoking is prohibited, voluntary compliance with the law will be heightened.

Governmental Agency Cooperation

This provision will make it more likely that other governmental entities, even though not within the jurisdiction of the municipality enacting the ordinance, will nevertheless voluntarily extend the smoking prohibitions of the ordinance to their facilities.

Other Applicable Laws

This provision is designed to make it clear that even if certain places are not covered by the ordinance, smoking may nevertheless be prohibited in those places by other laws.

Liberal Construction

This is a standard clause that is used to direct the courts to interpret the law in such a way that the purpose of the law, to protect people from the health hazards of secondhand smoke, will be furthered. In effect, the clause requires the courts to resolve any ambiguities in the law in favor of that purpose.

Severability

This is a standard clause that preserves all other provisions of the ordinance even if one or more provisions are found to be invalid by a court.

Please find complete ordinance language below, which will close the remaining gaps in the state law and provide protection to all workers in Hailey. Thank you in advance for considering this model language.

We recommend passing a new ordinance using the following ordinance language. This model language has been used in many other communities across the country and has withstood legal challenges. The language is simple, fair, and protects all workers equally.

Model Language for Hailey, Idaho:

Sec. 1000. Title

This Article shall be known as the Hailey Smoke free Air Act of 2010.

Sec. 1001. Findings and Intent

The Hailey City Council does hereby find that:

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.)

Accordingly, the Hailey City Council finds and declares that the purposes of this ordinance 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 smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

Sec. 1002. Definitions

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

- A. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of

food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

- B. "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.
- C. "E-cigarette" means any electronic device composed of a mouthpiece, heating element, battery, and electronic circuits that provides a vapor of liquid nicotine and/or other substances mixed with propylene glycol to the user as he or she simulates smoking. The term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, or e-pipes, or under any other product name.
- D. "Employee" means a 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.
- E. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- F. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
- G. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- H. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, 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 used as a child care, adult day care, or health care facility.
- I. "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.

- J. "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, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and 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 is a "public place" when being used for a function to which the general public is invited. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
- K. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.
- L. "Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- M. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- N. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, e-cigarette or pipe in any manner or in any form.
- O. "Sports Arena" means sports pavilions, stadiums, 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.

Sec. 1003. Application of Article to City-Owned Facilities

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of Hailey, shall be subject to the provisions of this Article.

Sec. 1004. Prohibition of Smoking in Enclosed Public Places

Smoking shall be prohibited in all enclosed public places within the City of Hailey, including but not limited to, the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.

- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gaming facilities.
- J. Health care facilities.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Polling places.
- N. Private clubs when being used for a function to which the general public is invited.
- O. Public transportation vehicles, including buses and taxicabs, under the authority of the City, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
- P. Restaurants.
- Q. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- R. Retail stores.
- S. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.
- T. Service lines.
- U. Shopping malls.
- V. Sports arenas, including enclosed places in outdoor arenas.
- W. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Sec. 1005. Prohibition of Smoking in Places of Employment

- A. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms,

conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

- B. 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 for employment.

Sec. 1006. Prohibition of Smoking in Enclosed Residential Facilities

Smoking shall be prohibited in the following enclosed residential facilities:

- A. All private and semi-private rooms in nursing homes.
- B. At least 80% of hotel and motel rooms that are rented to guests.

Sec. 1007. Prohibition of Smoking in Outdoor Areas

Smoking shall be prohibited in the following outdoor places:

- A. Within a reasonable distance of 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.
- B. In outdoor seating or serving areas of restaurants and within _____ [*recommended 15-20*] feet thereof.
- C. In all outdoor arenas, stadiums, and amphitheaters, except in designated smoking areas, which may be established only in perimeter areas at least _____ [*recommended 15-20*] feet from any seating areas or concession stands. Smoking shall also be prohibited in, and within _____ [*recommended 15-20*] feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- D. In all public transportation stations, platforms, and shelters under the authority of the City.
- E. In all outdoor service lines.
- F. In outdoor common areas of nursing homes, except in designated smoking areas, which must be located at least _____ [*recommended 15-20*] feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

Sec. 1008. Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 1004 and 1005:

- A. Private residences, except when used as a childcare, adult day care, or health care facility, and except as provided in Section 1006.

- B. Not more than twenty percent (20%) of hotel and motel rooms rented to guests and designated as smoking rooms. 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.
- C. Private clubs that have no employees, except when being used for a function to which the general public is invited; provided that smoke from such clubs does not infiltrate into areas where smoking is prohibited under the provisions of this Article. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this Article.
- D. Outdoor areas of places of employment except those covered by the provisions of Section 1007.

Sec. 1009. Declaration of Establishment 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 1010(A) is posted.

Sec. 1010. 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 Article, by the owner, operator, manager, or other person in control of that place.
- B. 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. Every vehicle that constitutes a place of employment under this Article shall have at least one conspicuous sign, visible from the exterior of the vehicle, clearly stating that smoking is prohibited.
- C. 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.

Sec. 1011. Nonretaliation; Nonwaiver of Rights

- A. 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. Notwithstanding Section 1013, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed \$1000 for each violation.

- B. 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.

Sec. 1012. Enforcement

- A. This Article shall be enforced by the _____ [Department of Health or City Manager or County Administrator] or an authorized designee.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Hayden.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the _____ [Department of Health or City Manager or County Administrator].
- D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. An owner, manager, operator, or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.
- F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- G. In addition to the remedies provided by the provisions of this Section, the _____ [Department of Health or City Manager or County Administrator] 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.

Sec. 1013. Violations and Penalties

- A. 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).
- B. Except as otherwise provided in Section 1011(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.

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

Sec. 1014. Public Education

The _____ [Department of Health or City Manager or County Administrator] shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Sec. 1015. Governmental Agency Cooperation

The _____ [City Manager or County Administrator] shall annually request other governmental and educational agencies having facilities within the City 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.

Sec. 1016. Other Applicable Laws

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

Sec. 1017. Liberal Construction

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

Sec. 1018. 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.

Sec. 1019. Effective Date

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