



DATE: November 13, 1993 / CONTINUED TO DECEMBER 2, 1993

TO: Mayor Eagan & Council Members

FROM: Town Attorney Donald R. Haile

SUBJECT: Ordinance Adopting Chapter 9.01 to Regulate Smoking in Public Places and the Workplace

AGENDA ITEM: 9.5

APPROVED BY TOWN MANAGER 

RECOMMENDATION:

Move to introduce Ordinance.

DISCUSSION:

This proposed Ordinance is a codification of the existing County Smoking Pollution Control Ordinance, as codified in Article 23 (Section G-IV 23.1 et.seq.) of the Nevada County Code, as adopted April 29, 1991.

Since it has been implemented locally by public and private entities and persons, it is recommended that such smoking pollution control be continued without modification.

FINANCIAL IMPACT:

None

EXHIBITS & ATTACHMENTS:

Ordinance Adding Chapter 9.01 to Title 9 re: Smoking Pollution Control.

Town of Truckee

California

ORDINANCE NO. 93-_____

AN ORDINANCE OF THE TOWN OF TRUCKEE ADDING CHAPTER 9.01 TO TITLE 9 OF THE TRUCKEE MUNICIPAL CODE RE: SMOKING POLLUTION CONTROL

The Town Council of the Town of Truckee Does Ordain as Follows:

Section 1. Enactment. Title 13 is hereby added to the Truckee Municipal Code by adding Chapter 9.01 thereto to read as designated in Exhibit "A" attached hereto and incorporated herein by reference.

Section 2. Repeal. Any and all provisions of the County Code of the County of Nevada in conflict with Title 9 of the Truckee Municipal Code as herein enacted, is hereby repealed as incorporated by reference by the Town of Truckee.

Section 3. Posting. Within fifteen (15) days after final adoption of this Ordinance, the Town Clerk shall have it posted in the three (3) public places designated by Resolution of the Council.

* * * * *

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Truckee, held on the _____th day of _____, 1993, by Council Member _____, who moved its introduction, which motion was seconded by Council Member _____, was upon roll call carried by the following vote:

AYES: Council Members

NOES: None

ABSENT: None

Kathleen Eagan, Mayor

ATTEST:

Stephen L. Wright, Town Clerk

The foregoing Ordinance, having been introduced on the _____*th* day of _____, 1993, coming for final consideration by Council Member _____ who moved its adoption the _____ day of _____, 1993, which motion was duly seconded by Council Member _____, was upon roll call carried by the following vote:

AYES: Council Members

NOES: None

ABSENT: None

Kathleen Eagan, Mayor

ATTEST:

Stephen L. Wright, Town Clerk

EXHIBIT "A"

TITLE 9

SAFETY AND CONDUCT

CHAPTER 9.01 SMOKING POLLUTION CONTROL

9.01.010 Findings and Purpose. The Town Council of the Town of Truckee hereby finds that:

(a) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution; and

(b) Reliable studies have shown that breathing second-hand smoke is a significant health hazard for certain population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

(c) Health hazards induced by breathing second-hand smoke include lung cancer, heart disease, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstruction, and bronchospasm; and

(d) Nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing second-hand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same; and

(e) Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restrictions on smoking in public places of employment.

(f) Accordingly, the Town Council finds that the health, safety, and general welfare of the residents of, persons employed in, and persons who frequent this Town would be benefitted by the regulation of smoking in enclosed places, including places of employment.

9.01.020 Definitions. The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

- (a) **"Bar"** means an area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.
- (b) **"Bingo facility"** means any enclosed place in which and during such time as any bingo game, permitted under the provisions of this Code is being conducted.
- (c) **"Employee"** means any individual who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
- (d) **"Employer"** means any person that employs the services of one or more individuals.
- (e) **"Enclosed"** means closed in by roof and four walls with appropriate openings for ingress and egress.
- (f) **"Place of Employment"** means any enclosed area under the control of an employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, classrooms, cafeterias, and hallways. Notwithstanding the preceding sentence, none of the following is a place of employment:
 - 1. A private residence is not a place of employment unless it is used as a child-care or a health-care facility;
 - 2. A bingo facility.
- (g) **"Public Places"** means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to: banks, educational facilities, health facilities, public transportation facilities, reception areas, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms, unless such place is subject to another definition set forth in this Section.
- (h) **"Restaurant"** means any coffee shop, cafeteria, tavern, private or public school cafeteria, and any other eating establishment, which gives or offers food for sale to the public, guests, patrons, or employees,

except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in subsection (a) above.

- (i) "Service Line" means any indoor line at which one or more individuals is waiting for or receiving service of any kind, whether or not such services includes the exchange of money.
- (j) "Smoking" means the carrying or holding of a lighted pipe, cigar, or cigarette of any kind, or any other lighted smoking equipment or the lighting of or the emitting or inhaling the smoke of a pipe, cigar, or cigarette of any kind.
- (k) "Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

9.01.030 Regulation of Smoking in Town Owned Facilities. Smoking is prohibited in all buildings, vehicles, or other enclosed areas occupied by Town staff, owned or leased by the Town, or otherwise operated by the Town except in areas where the Town Manager may designate as smoking areas. The Town Manager may designate a smoking area only if the area involved:

- 1. Is not regularly open to the public; and
- 2. Does not require major room or building modification; and
- 3. Is not regularly occupied by non-smokers.

In any dispute arising out of the smoking area designations made by the Town Manager under this Chapter, the rights of the non-smoker shall be given precedence.

9.01.040 Smoking Prohibited – Elevators. Smoking is prohibited and is unlawful within elevators and buildings generally used by and open to the public, including elevators in office, hotel, and multi-family buildings.

9.01.050 Hospitals and Health Care Facilities.

- (a) Smoking is prohibited and is unlawful in public areas of health care facilities and hospitals, as defined in Section 1250 of the California Health and Safety Code, including waiting rooms, public hallways and lobbies, except in specially designated smoking areas, which may be all or part of a public area.
- (b) Every publicly or privately owned health care facility, including hospitals, shall make a reasonable effort to determine preference and to assign patients place in bed space utilized for two or more patients according to the patient's individual non-smoking or smoking preference.
- (c) In bed space areas utilized for two or more patients, smoking shall be prohibited for hospital staff, visitors, and the general public. "STAFF AND VISITOR SMOKING PROHIBITED" signs shall be conspicuously posted in such bed space areas.

9.01.060 **Smoking Prohibited – Public Meeting Rooms.** Smoking is prohibited and is unlawful in hearing rooms, conference rooms, chambers, places of public assembly in which public business is conducted, which requires or provides direct participation or observation by the general public.

9.01.070 **Smoking Prohibited – Theaters and Auditorium.** Smoking is prohibited and is unlawful in every publicly or privately owned building or enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event, or any other performance or event in all areas except either in that area commonly known as the lobby, or in areas not open to the public.

9.01.080 **Smoking Prohibited – Public Restrooms.** Smoking is prohibited and is unlawful in public restrooms.

9.01.090 **Smoking Prohibited – Indoor Service Lines.** Smoking is prohibited and is unlawful in indoor service lines in which more than one person is giving or receiving services of any kind.

9.01.100 **Restaurants.**

- (a) All restaurants shall provide a none-smoking area for eighty (80) percent of the restaurant's total seating capacity. In addition, each restaurant shall be required to post an 8 1/2" x 11" placard with a colored border one (1") inch in width to be prominently displaced at

the entrance to the restaurant, which placard shall be designed as follows:

1. For restaurants which prohibit smoking in 100% of the restaurant's total seating capacity, the 8 1/2" x 11" placard shall have a green border one (1") inch in width. The language within the boundaries of the placard's green border shall read: "This is a Nonsmoking Restaurant".
2. For restaurants which prohibit smoking in eighty (80%) percent of the restaurant's total seating capacity, the 8 1/2" x 11" placard shall have a red border one (1") inch in width. The language within the boundaries of the placard's red border shall read: "Smoking Allowed".

- (b) Smoking may be permitted in any room(s) used for private functions, but only which such room is used for such private functions.

9.01.110 Regulation of Smoking in the Office Workplace.

- (a) Within ninety (90) days of the effective date of this Chapter, each employer shall adopt, implement and maintain a written smoking policy which shall contain at a minimum the following:
1. Prohibition of smoking in employer conference and meeting rooms, classrooms, auditoriums, restrooms, medical facilities, hallways and elevators;
 2. Provision and maintenance of an exclusive no smoking area in cafeterias, lunchrooms, and employee lounges of less than 650 square feet in area. provision and maintenance of a contiguous no smoking area of not less than two-thirds (2/3) of the seating capacity and floor space in employee cafeterias, lunchrooms, and lounges of 650 or more square feet in area. Fifty (50%) percent of outdoor eating area seating shall be reserved and designated a non-smoking area; and provided that with respect to employee lounges where there is more than one such lounge in any building, an employer may comply with this section by designating not less than half the square footage of such lounges

as no smoking. The employer shall define the term "lounge" in its smoking policy.

3. Any employee in the office workplace shall be given the right to designate his or her immediate area as a non-smoking area and to post it with appropriate signs or sign. The policy adopted by the employer shall include a definition of the term "immediate work area" which gives preferential consideration to non-smokers.
 4. In any dispute arising under the smoking policy, the rights of the non-smoker shall be given precedence.
 5. Except where other signs are required, whenever smoking is prohibited, conspicuous signs shall be posted so stating, containing all capital lettering not less than one inch (1") in height, on a contrasting background. Signs of similar size containing 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) may be used in addition to or in lieu of any signs required hereunder.
- (b) The smoking policy shall be communicated to all employees within three weeks of its adoption.
- (c) Notwithstanding the provisions of subsection (a) of this section, every employer shall have the right to designate any office workplace as a non-smoking area.
- (d) This section is not intended to regulate smoking in the following places and under the following conditions:
1. A private home which may serve as an office workplace;
 2. Any property owned or leased by other governmental agencies;
 3. A private enclosed office workplace occupied exclusively by smokers, even though such an office workplace may be visited by non-smokers, excepting places in which smoking is prohibited by the fire marshal or by other law, ordinance or regulation.

9.01.120 Smoking Prohibited in Public Areas at Various Places. Smoking is prohibited and unlawful in all areas of the following establishments which are available and customarily open to the general public:

- (a) All enclosed areas available to and customarily used by the general public and all businesses patronized by the public including, but not limited to, retail stores, hotels and motels, pharmacies, banks, professional offices and other offices;
- (b) In public areas of museums and galleries;
- (c) Retail food marketing establishments, including grocery stores and supermarkets except those areas of such establishments set aside for the serving of food and drink, restrooms, offices, and areas thereto not open to the public, which may be otherwise regulated by this section;
- (d) Public schools and other public facilities under the control of a public agency other than the Town are available to and customarily used by the general public;
- (e) Sports arenas, except in any area designated as a smoking area by the owner, operator, manager, or other person who controls the facility;
- (f) Within any bingo facility provided, however, that this prohibition does not prevent (1) the designating of a contiguous area within the bingo facility that contains no more than fifty (50%) percent of the seating capacity of the bingo facility as a smoking area or (2) the providing of separate rooms designed as smoking rooms so long as said rooms do not contain more than fifty (50%) percent of the seating capacity of the bingo facility.
- (g) Notwithstanding any other provision of this Section, any owner, operator, manager, or other person who controls any establishment described in this Section may declare the entire establishment as a non-smoking establishment.

9.01.130 Cardroom Exception. Notwithstanding any other provision of this Chapter, smoking may be permitted in cardrooms licensed pursuant to this Code.

9.01.140 Posting of Signs Required. Except where other signs are required, whenever in this Code smoking is prohibited, conspicuous signs shall be posted

so stating, containing all capital lettering not less than one inch (1") in height, on a contrasting background. Such signs shall be placed by the owner, operator, manager, or other persons having control of such room, building or other place where smoking is prohibited.

9.01.150 Compliance.

- (a) **The Town Manager or designated representative shall be responsible for compliance with this Chapter as to facilities which are owned, operated or leased by the Town.**

- (b) **The owner, operator or manager of any facility, business or agency within the purview of this Chapter shall comply with the provisions of this Chapter. Such owner, operator or manager shall post or cause to be posted all no smoking signs required by this Chapter and shall not allow service to any person who violates this Chapter by smoking in a posted no smoking area.**

- (c) **Any place of employment conducted or operated without compliance with the provisions of Section 9.01.110 of this Chapter applicable thereto shall be and the same is declared to be a public nuisance. Whenever there is reason to believe such public nuisance exists, any affected employee or any resident of the Town, in his or her own name, may maintain an action in equity to abate and prevent such nuisance and to perpetually enjoin the employer from maintaining or permitting it. Upon the granting of equitable relief, in whole or in part, by a court of competent jurisdiction, an employee determined to be in violation of Section 9.01.110 of this Chapter shall be liable for the attorney's fees, as may be determined by the court, incurred by the party bringing the action.**

- (d) **The Town Manager or designee may enforce Section 9.01.110 of this Chapter by either of the following actions:**
 - 1. **Serving notice requiring the correction of any violation of that section; or**

 - 2. **Requesting the Code Enforcement Officer to maintain an action for injunction to enforce the provisions of Section 9.01.110 of**

this Chapter to cause the correction of any such violation, and for assessment and recovery of a civil penalty of such violation, including attorney's fees.

- (e) Any employer who violates Section 9.01.110 of this Chapter may be liable for a civil penalty, not to exceed One Thousand (\$1,000) Dollars, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the Town. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. Any penalty assessed and recovered in an action brought pursuant to this subsection shall be paid to the Town Treasurer.**
- (f) In undertaking the enforcement of Section 9.01.110 of this Chapter, the Town is assuming an undertaking only to promote the general welfare. It is not assuming any duty or obligation, nor is it imposing any duty or obligation on its officers and employees, nor is it liable in money damages or otherwise to any person who claims that (1) the Town or its officers or employees breached any such obligation, and (2) the breach proximately caused injury.**

9.01.160 Where Smoking is Not Regulated. Notwithstanding any other provision of this Chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this Chapter:

- (a) Private residences, except when used as a child care or health care facility.**
- (b) Hotel and motel rooms rented to guests, unless posted otherwise.**
- (c) Retail tobacco stores.**
- (d) A private enclosed office workplace occupied exclusively by smokers, even though such an office workplace may be visited by non-smokers.**
- (e) Any area exterior to the building in which the establishment or facility is located.**
- (f) Any enclosed rooms in an establishment or facility which are being used entirely for private functions.**

(g) Bars.

9.01.170 Penalty. Whenever any act is prohibited by this Chapter or is made or declared to be unlawful or an offense, or the doing of any act is required, or the failure to do any act is declared to be unlawful, the violation shall be deemed an infraction and punishable by a conviction thereof with a fine imposed as provided in Chapter 1.02 of this Code.

9.01.180 Nonretaliation. No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this Chapter.

9.01.190 Severability. In any provision, clause, 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 applications, and to this end the provisions of this Chapter are declared to be severable.