

ORDINANCE NO. 1255

CITY OF LACEY

AN ORDINANCE RELATING TO SMOKING IN PUBLIC PLACES, AMENDING SECTIONS 9.46.010, 9.46.020, 9.46.040, 9.46.060 AND 9.46.070, REPEALING SECTIONS 9.46.030 AND 9.46.050, ADOPTING A NEW SECTION, 9.46.030, ALL OF THE LACEY MUNICIPAL CODE AND ADOPTING A SUMMARY FOR PUBLICATION.

WHEREAS, Chapter 9.46 of the Lacey Municipal Code contains regulations regarding smoking in public places in accordance with state law which existed prior to the passage of Initiative No. 901, and

WHEREAS, the voters of the state, on November 8, 2005, approved Initiative No. 901 which modifies the state regulations regarding such activity, and

WHEREAS, it is proper that the ordinances of the City of Lacey be consistent with the provisions of state statute,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, as follows:

Section 1. Section 9.46.010 of the Lacey Municipal Code is hereby amended to read as follows:

Definitions. As used in this chapter, the following terms have the meanings indicated, unless the context clearly indicates otherwise:

- A. "Smoke" or "smoking" means the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment.
- B. "Public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited.

"Public places" include, but are not limited to schools, elevators, public conveyances or transportation facilities, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, state legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies and reception areas, bars, taverns, bowling alleys, skating rinks, casinos, reception areas, and no less than 75 percent of the sleeping quarters within a hotel or motel that are

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rented to guests. A “public place” does not include a private residence. This chapter is not intended to restrict smoking in private facilities which are occasionally open to the public, except upon the occasions when the facility is open to the public. A public place does not include a private residence unless the private residence is used to provide licensed child care, foster care, adult care, or other similar social services care on the premises.

- C. ~~“Restaurant” means any building, structure or area used, maintained or advertised as, or held out to the public to be, an enclosure where meals are made available to be consumed on the premises, for consideration of payment. “Place of employment” means any area under the control of a public or private employer which employees are required to pass through during the course of employment, including, but not limited to: Entrances and exits to the places of employment, and including a presumptively reasonable minimum distance, as set forth in LMC Section 9.46.030, of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a place of employment.~~

Section 2. Section 9.46.020 of the Lacey Municipal Code is hereby amended to read as follows:

Prohibited. No person may smoke in a public place ~~as defined herein, except in designated smoking areas, or in any place of employment.~~

Section 3. Sections 9.46.030 and 9.46.050 of the Lacey Municipal Code are hereby repealed.

Section 4. There is hereby adopted a new Section 9.46.030 of the Lacey Municipal Code to read as follows:

Presumptively Reasonable Distance. Smoking is prohibited within a presumptively reasonable minimum distance of twenty-five 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. Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty-five feet is a reasonable minimum distance by making application to the director of the Thurston County Health Department. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment

and, therefore, the public health and safety will be adequately protected by a lesser distance.

Section 5. Section 9.46.040 of the Lacey Municipal Code is hereby amended to read as follows:

Areas to be posted. Owners, or in the case of a leased or rented space the lessee or other person in charge, of a place regulated under this chapter shall ~~make every reasonable effort to prohibit smoking in public places by posting and places of employment and shall post signs prohibiting or permitting smoking as appropriate under this chapter.~~ Signs shall be posted conspicuously at each building entrance. In the case of retail stores and retail service establishments, signs shall be posted conspicuously at each entrance and in prominent locations throughout the place. ~~The boundary between a nonsmoking area and a smoking permitted area shall be clearly designated so that persons may differentiate between the two areas.~~

Section 6. Section 9.46.060 of the Lacey Municipal Code is hereby amended to read as follows:

Violation--Penalty. Any person intentionally violating this chapter by smoking in a public place or place of employment, not designated as a smoking area, or any person removing, defacing or destroying a sign required by this chapter, is subject to a civil fine of up to \$100.00. City law enforcement personnel shall enforce this section by issuing a notice of infraction to be assessed in the same manner as traffic infractions. Said infractions shall be processed, and fines paid, in the manner set forth in Chapter 46.63 RCW for the disposition of traffic infractions, with fines assessed and recovered to be paid to the city. ~~Section 7(1) of Chapter 236, Laws of 1985, Regular Session, with fines assessed and recovered to be paid to the city.~~

Section 7. Section 9.46.070 of the Lacey Municipal Code is hereby amended to read as follows:

Violations Enforcement of Sections ~~9.46.030 and 9.46.040.~~ The provisions of Sections ~~9.46.030 and 9.46.040~~ shall be enforced by the Thurston County Health Department by one of the following actions:

(A) Serving notice requiring the correction of any violation.

(B) Filing and maintaining an action for an injunction to enforce the provisions of LMC Section 9.46.040 to correct a violation, and to assess and recover civil penalties for the violation.

(C) Referring the matter to the city to enforce pursuant to ~~treated and processed by the city pursuant to the civil penalty provisions of Chapter 14.40 of the Lacey Municipal Code.~~ Provided, however, that said actions shall not bar the city from maintaining an action for injunctive relief in order to correct a violation, and to assess and recover the penalties for such violation.

Section 8. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portions of this ordinance, or the validity of the application thereof to any person or circumstance shall not effect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

Section 9. The Summary attached hereto is hereby approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY,
WASHINGTON, at a regularly-called meeting thereof, held this 15th day of
December, 2005.

CITY COUNCIL

By: Kirk S. Carlson
Mayor

Approved as to form:

[Signature]
City Attorney

Attest:

[Signature]
City Clerk

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