



City of Grand Island

Tuesday, February 26, 2008

Council Session

Item I6

#2008-79 - Consideration of Model Ordinance for Smoking Ban

Staff Contact: Dale Shotkoski

Council Agenda Memo

From: Dale M. Shotkoski, City Attorney

Meeting: February 26, 2008

Subject: Proposed Smoking Ban Ordinance

Item #'s: I-6

Presenter(s): Dale M. Shotkoski, City Attorney

Background

On February 12, 2008, the City Council for the City of Grand Island voted in Resolution 2008-55 to put on the ballot at the next general election, the issue of a smoking ban. Resolution 2008-55 during its discussion before council, had considerations for a model ordinance that had been prepared and placed on file with the Grand Island City Clerk, which model ordinance served as the basis of discussion, and has considered the model for a smoking ban if one was to be adopted in the City of Grand Island. The model ordinance that had been prepared was based upon the Lincoln Smoking Ban Ordinance that had been adopted and put into place. One addition to the Lincoln ordinance was language containing a ten foot arc around entrances and exits to all places in which smoking would be prohibited. The Nebraska State Legislature has been considering Legislative Bill 395 for a state wide smoking ban. LB 395 contains in it some definitional sections that add clarification to the model ordinance.

Discussion

Since the meeting of February 12, 2008, the Nebraska Legislature has yet to take final action on LB 395, however, the definitional sections contained in that bill have not as of present been amended in the following particulars. The sections of concern to the City of Grand Island council members expressing their desire to amend the model ordinance have centered on the definition of "indoor area" and the inclusion of the private residence that provides daycare as defined in LB 395. The model ordinance that had been placed on file with the City Clerk prior to the meeting of February 12, 2008, has been amended to include the definitional sections contained in LB 395 and is attached to this memo. The item before council for consideration is not a reconsideration of placing the question on the ballot as has been previously approved, but only the consideration of the language that the City Council wishes to include in the model ordinance to provide voters the clarification needed to assist them in understanding what they are voting on at the election.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve the model ordinance with the amendments included.
2. Move to deny the model ordinance with the amendments included.
3. Move to amend the model ordinance as council desires.
4. Postpone the issue to a future date.

Recommendation

It is recommended that council approve the model ordinance with the amendments included.

Sample Motion

Move to approve the Resolution to adopt the model ordinance as the language for a Grand Island smoking ban should the ballot measure approved in Resolution No. 2008-55 be approved by a majority of voters at the next general primary election.

ORDINANCE NO. ____

An ordinance to create Chapter 39 of the Grand Island City Code to ban smoking in all businesses, bars, restaurants and public places in the City of Grand Island; to repeal any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. That Chapter 39 of the Grand Island City Code shall read as follows:

§39.1 Title

This section shall be known as the Grand Island Smoking Regulation Act.

§39.2 Purpose

The City Council does hereby declare it to be the public policy of this City to encourage places of employment and public places to reduce the health and safety risks posed by smoking in places of employment and public places. The City Council authorizes the Health Director of the Central District Health Department and law enforcement to administer and enforce this Section within the City of Grand Island.

§39.3 Definitions; General Provisions.

For the purposes of this Section, the following words and phrases shall have the meaning ascribed to them by this Section.

Employed. Employed shall mean hired, contracted, subcontracted, or otherwise engaged to furnish goods or services.

Employee. Employee shall mean a person who is employed by an employer in consideration for direct or indirect monetary wage(s), profit, or other remuneration.

Employer. Employer shall mean a person, nonprofit entity, sole proprietorship, partnership, joint venture, corporation, limited partnership, limited liability company, co-op, firm, trust, association, organization, or other business entity formed for profit-making purposes, including retail establishments, where goods or services are sold, who employs one or more employees.

Guestroom or Suite. Guestroom or suite shall mean sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if any, rented to the public for their exclusive transient occupancy including, but not limited to, guestrooms or suites in hotels, motels, inns, lodges, or other such establishments.

Health Director. Health Director shall mean the Director of the Central District Health Department or authorized representative(s).

Indoor Area. Indoor area means an area enclosed by a floor, a ceiling, and walls on all sides that are continuous and solid except for closeable entry and exit doors and windows and in which less than twenty percent of the total wall area is permanently open to the outdoors. For walls in excess of eight feet in height, only the first eight feet shall be used in determining such percentage.

International No-Smoking Symbol. International no-smoking symbol shall mean a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.

Place of Employment. Place of employment means an indoor area under the control of a proprietor that an employee accesses as part of his or her employment without regard to whether the employee is present or work

ORDINANCE NO. _____ (Cont.)

is occurring at any given time. The indoor area includes, but is not limited to, any work area, employee breakroom, restroom, conference room, meeting room, classroom, employee cafeteria, and hallway. A private residence is a place of employment when such residence is being used as a licensed child care program and one or more children who are not occupants of such residence are present.

Proprietor. Proprietor shall mean any employer, owner, operator, supervisor, manager or any other person who controls, governs, or directs the activities in a place of employment or public place.

Public Place. Public place shall mean an indoor area to which the public is invited or in which the public is permitted, whether or not the public is always invited or permitted and shall also include a ten (10) foot arc by every entrance and exit from a public place. A private residence shall not be considered a "public place."

Smoke or Smoking. Smoke or smoking shall mean the lighting of any cigarette, cigar, or pipe; or the possession of any lighted cigarette, cigar, or pipe, regardless of its composition.

§39.4 Smoking Prohibited; Exceptions

It shall be unlawful for any person to smoke in a place of employment or a public place, except as designated by a proprietor pursuant to this Section.

§39.5 Proprietor to Prohibit Smoking; Exceptions

(a) It shall be unlawful for any proprietor of any place of employment or public place to allow smoking except as follows:

(1) Guestrooms or suites, provided the following requirements are met:

(i) The number of rooms or suites designated for smoking shall be no greater than 20% of the total number of guestrooms or suites.

(ii) Each guestroom or suite where smoking is allowed shall have a permanent sign posted containing the words "smoking allowed" on each entrance.

(2) As part of a study conducting research into the health effects of smoking in a scientific or analytical laboratory either governed by state or federal law or at a college or university approved by the Nebraska Coordinating Commission for Post Secondary Education. The proprietor shall post a temporary sign on all entrances to the laboratory indicating that smoking is being allowed for the purposes of research.

(b) Proprietors shall conspicuously post or display required signs so that the signs are readily viewable by employees and the public.

(c) This section shall not be interpreted or construed to permit smoking where smoking is otherwise restricted by other applicable laws.

§39.6 Enforcement

The Health Director and law enforcement agencies are hereby authorized to inspect a place of employment or public place at any reasonable time to determine compliance with this Section.

§39.7 Violations and Penalties

(a) A person who smokes in a place of employment or a public place in violation of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a minimum fine of:

(1) One hundred dollars (\$100) and costs for the first offense;

(2) Two hundred dollars (\$200) and costs for the second offense;

(3) Five hundred dollars (500) and costs for the third and subsequent offenses.

(b) A proprietor of a place of employment or public place upon whom a duty is placed by the provisions of this section, who shall fail, neglect, or refuse to perform such duty, or who shall knowingly violate any of the provisions hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a minimum fine of:

(1) One hundred dollars (\$100) and costs for the first offense;

(2) Two hundred dollars (\$200) and costs for the second offense;

(3) Five hundred dollars (500) and costs for the third and subsequent offenses.

(c) Each day that a violation continues to exist shall constitute a separate and distinct offense and shall be punishable as such.

ORDINANCE NO. _____ (Cont.)

(d) Every act or omission of whatever nature constituting a violation of any of the provisions of this section by an officer, manager, supervisor, agent or employee of any proprietor, if said act or omission is made with the authorization, knowledge, or approval of the proprietor, shall be deemed and held to be the act or omission of such proprietor, and said proprietor shall be punishable in the same manner as if said act or omission had been committed by such proprietor personally.

§39.8 Severability

Each section and subsection is hereby declared to be independent of every other section or subsection herein and invalidity of any section or subsection herein shall not invalidate any other section or subsection there.

SECTION 2. Any ordinances or parts of ordinances in conflict herewith be, and hereby are, repealed.

SECTION 3. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the Grand Island Independent as provided by law.

Enacted: _____, 2008.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

RESOLUTION 2008-79

WHEREAS, the City Council for the City of Grand Island, on February 12, 2008, adopted Resolution No. 2008-55, which resolution places upon the May primary ballot, a smoking ban proposal; and

WHEREAS, in consideration of Resolution No. 2008-55, a model ordinance had been prepared, which model ordinance could be adopted if the majority of voters at the next general election approve the ballot measure and said model ordinance was available for public inspection at the office of the Grand Island City Clerk; and

WHEREAS, the Nebraska State Legislature has been considering Legislative Bill 395, which contains language for a statewide smoking ban, some of which language clarifies the definitions of the previously proposed model ordinance; and

WHEREAS, it is recommended that the definition of the section pertaining to “inside area” and that the additional definition concerning residence as used as daycare be included in the model ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA that the model ordinance previously on file with the office of the Grand Island City Clerk, with the addition of the LB 395 definitions for “inside area” and “place of employment” be included in the model ordinance and that the model ordinance, with the amendments, is hereby resolved to be the proposed language of the smoking ban for the City of Grand Island if the ballot measure approved in Resolution No. 2008-55 is approved by a majority of the voters.

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Adopted by the City Council of the City of Grand Island, Nebraska, February 26, 2008.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
February 22, 2008	☐ City Attorney