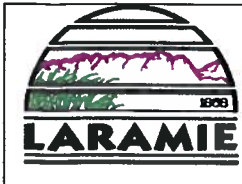


CITY OF LARAMIE COUNCIL REGULAR MEETING **September 2, 2014**



Agenda Item: Original Ordinance - 1st Reading

Title: Ordinance amendments; 8.56 Smoking in Public Places, 9.24.040 Tobacco – Sale of, 9.24.050 Possession of tobacco products by minors, to include Electronic Cigarettes and the local regulation thereof.

Recommended Council MOTION:

1. I move to approve on first reading Original Ordinance No. 1901 to LMC Chapter 8.56, Smoking in Public Places to include references to electronic cigarettes, and set a public hearing on Tuesday, September 16th, 2014; 6:30 p.m.
2. I move to approve on first reading Original Ordinance No. 1902 amending Chapter 9.24, LMC, Offenses by or Against Minors, to include references to electronic cigarettes.

Administrative or Policy Goal:

To promote and maintain public health and safety through regulation of new tobacco, nicotine, and other smoking or vaporization technology.

Background:

Amendment(s) to City of Laramie ordinances 8.56, 9.24.040, and 9.24.050 were discussed at the July 8th Council Work Session. Following the work session staff met with local business owners to gather their input regarding possible revisions to ordinance; information provided by those vendors of e-cigarettes and associated products was considered by staff when making this recommendation for Amendment to Laramie Municipal Code.

The following information was provided to Council in the July 8th Work Session:

An electronic cigarette (e-cig or e-cigarette), personal vaporizer (PV) or electronic nicotine delivery system (ENDS) is a battery-powered vaporizer which simulates tobacco smoking by producing an aerosol that resembles smoke. It generally uses a heating element known as an atomizer, that vaporizes a liquid solution known as e-liquid. E-liquids usually contain a mixture of propylene glycol, vegetable glycerin, nicotine, and flavorings, while others release a flavored vapor without nicotine.

As of July, 2014 there are 188 local municipalities that restrict e-cigarette use in 100% of smoke free venues, 144 other municipalities have local laws restricting e-cigarette use in other venues (meaning that there may be places where e-cigarette use is not specifically restricted). There are 39 states (including Wyoming) that have passed legislation to prohibit the sale of electronic cigarettes or vaping/alternative tobacco products to minors.

Current Status of Federal Review of E-Cigarette Regulation(s):

On April 24, 2014, the FDA issued a proposal to extend its tobacco authority to additional tobacco products, including e-cigarettes. Products that would be “deemed” to be subject to FDA regulation are those that meet the statutory definition of a tobacco product, including currently unregulated marketed products, such as electronic cigarettes (e-cigarettes), cigars, pipe tobacco, nicotine gels, waterpipe (or hookah) tobacco, and dissolvables not already under the FDA’s authority. The FDA currently regulates cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. The proposal was published for a 75-day public comment period ending on July 9, 2014. In response to multiple requests, FDA chose to extend the public comment period by 30 days to August 8, 2014. FDA has since received additional requests to extend the comment period a second time. After careful consideration, FDA has made the decision not to extend the comment period any further.

No public statement or changes to the proposed rule have been made by the FDA since the close of the public comment period on Aug. 8th.

Information from the FDA Docket:

"We do not currently have sufficient data about e-cigarettes to determine what effects they have on the public health. Some studies have revealed the existence of toxicants in both the e-cigarette liquid and the exhaled aerosol of some e-cigarettes. For example, FDA previously noted the presence in a certain e-cigarette cartridge of contaminants such as diethylene glycol (DEG)—a chemical that has caused poisonings in other consumer products such as acetaminophen and cough syrup and which FDA has stated "is toxic to humans". While the presence of DEG in any product is of great concern, we note that it was found in only 1 of 18 cartridges studied and it was not found at all in another 16 studies.

Further, one study found that toxic chemicals such as formaldehyde and acetaldehyde were detected in the cartridges as well as the aerosol from certain e-cigarette nicotine solutions. Acrolein, which can cause irritation to the nasal cavity and damage to the lining of the lungs and may contribute to cardiovascular disease in cigarette smokers, was also found in the aerosol. While the level of carcinogenic formaldehyde from the e-cigarette aerosol was somewhat comparable to the amount received from cigarette smoking, the overall levels of the toxicants tested in this study were 9 to 450 times lower than those in cigarette smoke. In another study, a total of 22 chemical elements, some of which can cause adverse health effects in the respiratory and nervous systems, were identified in e-cigarette aerosol. Among those elements were lead, nickel, and chromium, which are included on the Agency's harmful and potentially harmful constituents list. Research published in 2013 reported that under near real-use conditions, e-cigarettes increased indoor air levels of polycyclic aromatic hydrocarbons, 1,2-propanediol, 1,2,3-propanetriol, glycerine, nicotine, fine particles, ultrafine particles, particle number concentrations, and aluminum.

E-cigarettes carry a risk of addiction in those who do not already smoke, and may promote continuation of addiction in those who already smoke. Once again, there is not adequate evidence that e-cigarette use is a safe alternative to conventional cigarette smoking. Notably, many consumers have strong, but to date unsubstantiated, beliefs that e-cigarettes are a safe and effective way for quitting cigarette use, and many consumers start consuming e-cigarettes because of those unsubstantiated beliefs." (end of FDA docket information)

Legal/Statutory Authority:

City of Laramie Code of Ordinances, Chapter 1.12.

BUDGET/FISCAL INFORMATION:

N/A



Responsible Staff:

Sam Farstad 721-5361
Dave Clark 721-5319

Future dates are subject to change

Work Session	July 8, 2014
Advertised	
Public Hearing (PH) Held	September 16, 2014
PH Advertised	
Introduction/1 st Reading	September 2, 2014
2 nd Reading	September 16, 2014
3 rd Reading	October 7, 2014

Attachments: Proposed Ordinance Amendments

 City Manager  City Attorney _____

ENROLLED ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 8.56 LMC, SMOKING IN PUBLIC PLACES, TO INCLUDE REFERENCES TO ELECTRONIC CIGARETTES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LARAMIE, WYOMING that Chapter 8.56 Laramie Municipal Code be amended to read as follows:

Section 1. Chapter 8.56 SMOKING IN PUBLIC PLACES

8.56.010 Findings.

A. The Laramie City Council 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. Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of electronic cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent." According to a more recent study, electronic cigarette emissions are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke. Electronic cigarettes produce an aerosol or vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.
3. Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and broncho-spasm.
4. A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a twenty-five to fifty percent higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.

B. Accordingly, the Laramie city council 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.

(Ord. 879 § 1, 1986; Ord. 1439 § 2, 2004)

8.56.020 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 sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making 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.

"Electronic Cigarette" means a product that employs any mechanical heating element, battery or electronic circuit, regardless of its shape or size, that can be used to deliver doses of vapor with nicotine or other substances by means of heating a liquid solution contained in a cartridge or other delivery system.

"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 nonprofit entity.

"Employer" means a person, business, partnership, association, corporation, including a municipal corporation or other political subdivision of the state, trust, or nonprofit entity 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 city of Laramie, Wyoming department of fire.

"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, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists with these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards with health care facilities.

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

"Performance hall" means any area or facility that is primarily used for the exhibition of any motion picture, stage, drama, lecture, musical recital or other similar performances, including but not limited to, concert halls and theaters.

"Place of employment" means an area under the control of a public or private 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, or health care facility, or any other aforementioned business.

"Private club" means those organizations or entities defined as a "club" in Section 5.08.010 of this code.

"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, recreational facilities, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments including grocery stores, supermarket and stores where food items are sold for on-premises or off-premises consumption, retail service establishments, retail stores, shopping malls, sports arenas, 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, or health care facility.

"Public transportation" means a vehicle used in mass public transportation or in the transportation of the public, including a train, passenger bus, school bus or other vehicle used to transport pupils, and taxi; or a vehicle that is owned by, or operated by a business and is open to the public, including tour vehicles, passenger buses or vans regularly used to transport customers. Notwithstanding the foregoing, a private vehicle not open to the public or not used for the transportation of the public during the times of use, including a private passenger vehicle, a private charter or rental of a limousine, bus or van, shall not be considered public transportation.

"Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, and public and private 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 and served elsewhere. The term "restaurant" shall include a bar area within the restaurant.

"Retail sales" mean establishments engaged in the sale of goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. A retail sales establishment is usually a place of business and is engaged in activity to attract the general public to make purchases.

"Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

"Smoke" or "smoking" means the inhaling, exhaling, burning or carrying of any lighted or vaporized tobacco product, weed, plant or other combustible product in a smoking instrument or the placement of smoking instrument containing a lighted or vaporized tobacco product, weed, plant or other combustible product in an ashtray or other receptacle and allowing smoke or vapor to diffuse into the air. This definition does not include incense.

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

"Sports arena" means sports pavilions, stadiums, gymnasiums, health spas, 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.

"Tavern (or 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 such beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(Ord. 1439 § 3, 2004; Ord. 879 § 2, 1986)

8.56.025 Application of chapter to city-owned facilities.

All enclosed areas, including buildings and vehicles owned, leased or operated by the city of Laramie, shall be subject to the provisions of this chapter.

(Ord. 1439 § 4, 2004)

8.56.030 Prohibition of smoking in public places.

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

1. Galleries, libraries and museums;
2. Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels and motels;
3. Bingo facilities;
4. Convention facilities;
5. Elevators;
6. Taverns (or bars);
7. Health care facilities;
8. Licensed child care and adult day care facilities;
9. Lobbies, hallways and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
10. Performance halls;
11. Polling places;
12. Private clubs;
13. Restaurants;
14. Restrooms, lobbies, reception areas, hallways, and other common-use areas;
15. Retail stores;
16. 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 of Laramie or a political subdivision of the state, to the extent the place is subject to the jurisdiction of the city of Laramie;
17. Shopping malls;
18. Sports arenas and convention halls, including bowling facilities;
19. Public transportation.

(Ord. 879 § 3(A), (B), 1986; Ord. 1439 § 5, 2004)

8.56.035 Prohibition of smoking in places of employment.

A. Smoking shall be prohibited in all enclosed areas within places of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, elevators, hallways,

medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles and all other enclosed facilities.

B. All employers subject to this chapter shall communicate this prohibition on smoking to all existing employees by the effective date of the ordinance codified in this chapter and to all prospective employees on their application for employment.

(Ord. 1439 § 6, 2004)

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

In order to prevent secondhand smoke from entering a public place and place of employment where smoking is prohibited, every person who is smoking shall smoke a reasonable distance from all entranceways, passageways, operable windows or ventilation systems of any enclosed area where smoking is prohibited, so as to insure smoke does not enter the smoke-free establishment or area. 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 ordinance codified in this chapter.

(Ord. 879 § 5, 1986; Ord. 1439 § 7, 2004)

8.56.045 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 area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of [Section 8.56.080](#) of this chapter is posted.

(Ord. 1439 § 8, 2004)

8.56.050 Where smoking not regulated.

A. Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of [Sections 8.56.030](#) and [8.56.035](#) of this chapter:

1. Private residences, except when used as a licensed child care, licensed adult day care or health care facility;
2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms;
3. Outdoor places of employment, except those covered by the provisions of [Section 8.56.040](#) of this chapter;
4. Private offices, provided that the private office is not open to public, the public is not invited, and the office is not intended for occupancy by employees during the course of their employment;
5. Outside Patios. If sliding or folding windows or doors or other windows or doors from any part of the border to the outdoor patio, the openings 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 area, the outdoor patio shall be considered an extension of the enclosed area and subject to the prohibitions of this chapter;
6. Private or business vehicles, except those used for public transportation.

(Ord. 879 § 4, 1986; Ord. 1439 § 9, 2004)

8.56.055 Public education.

City manager or an authorized designee shall engage in a continuing program to explain and clarify the purposes and requirements of this chapter 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 chapter.

(Ord. 1439 § 10, 2004)

8.56.060 Smoking prohibited—Other restrictions applicable.

Smoking shall not be permitted, and smoking areas shall not be designated, in those areas where smoking is prohibited by the fire chief, state statute, ordinances or regulations of the city or other applicable laws. Nothing in this chapter shall be interpreted so as to permit smoking where it is otherwise restricted by law.

(Ord. 879 § 7, 1986)

8.56.070 Governmental agency cooperation.

The city manager or an authorized designee shall annually request other governmental and educational agencies having facilities within the city to establish local operating procedures in cooperation and compliance with this chapter. This includes urging all federal, state and county agencies and governmental offices to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

(Ord. 879 § 8, 1986; Ord. 1439 § 11, 2004)

8.56.080 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, by the owner, operator, manager or other person in control of that place.

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

(Ord. 879 § 6, 1986; Ord. 1439 § 12, 2004)

8.56.085 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.

(Ord. 1439 § 13, 2004)

8.56.090 Violations and penalties.

A. A person who smokes in an area where smoking is prohibited by the provisions of this chapter shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars.

B. A person who owns, manages, operates or otherwise controls a public place or place of employment and who knowingly fails to comply with the provisions of this chapter after receiving oral or written notice by the city manager or authorized designee shall be guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars for a first violation;
2. A fine not exceeding two hundred dollars for a second violation within one year from the date of the last violation;
3. A fine not exceeding five hundred dollars for each additional violation within one year from the date of the last violation.

C. In addition to the fines established by this section, violation of this chapter 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, pursuant to [Section 1.16.070](#) of this code. Further, a violation of this chapter constitutes a public nuisance. Upon the request of the city manager or designee, the city attorney may initiate appropriate enforcement proceedings, including injunctive or other appropriate action to prevent or enjoin such violation.

D. Each separate occurrence of a violation of this chapter shall be considered a separate and distinct violation.

E. A licensee who violates this chapter and section is declared to be in violation of law.

(Ord. 879 §§ 3(C), 9, 1986; Ord. 1439 § 14, 2004; Ord. 1511 § 69, 2007)

8.56.095 Enforcement.

A. The city manager or an authorized designee shall enforce this chapter. Any law enforcement officer may also initiate an action for violation of this chapter including but not limited to the issuance of a criminal citation.

B. Notice of the provisions of this chapter shall be given to all applicants for business, food or alcohol-related licenses and permits and distributed through other means, as determined by the city manager or an authorized designee, to all individuals and entities affected by the provisions of this chapter.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the city manager or an authorized designee.

D. The city environmental health and fire department or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this chapter and the owner, manager, operator or employee of an establishment must show they are in compliance with all the requirements of this chapter.

E. An owner, manager, operator or employee of an establishment regulated by this chapter shall immediately inform persons violating this chapter of the appropriate provisions thereof and to cease smoking. In the event persons violating this chapter refuse to cease smoking after being informed by such owner, manager, operator or employee of an establishment, the person smoking, not the owner, manager, operator or employee of an establishment shall be subject to an action for violation of this chapter.

F. 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 except as provided in [Section 8.56.040](#) of this chapter shall not constitute a defense for a violation of this chapter.

G. The city manager may promulgate such rules and regulations as he or she considers necessary to carry out the intent of this chapter; provided, that such rules and regulations are not inconsistent with this chapter.

(Ord. 1439 § 15, 2004)

8.56.100 Other applicable laws.

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

(Ord. 1439 § 16, 2004)

8.56.110 Liberal construction.

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

(Ord. 1439 § 17, 2004)

8.56.120 Severability.

If any provision, clause, sentence or paragraph of this chapter of the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

(Ord. 1439 § 18, 2004)

Section 2. This ordinance shall become effective after passage, approval and publication.

PASSED AND APPROVED THIS _____ day of October, 2014.

David A. Paulekas, Mayor and President
of the City Council of the City of
Laramie, Wyoming

ATTEST:

Sue Morris-Jones, MMC
City Clerk

First Reading	September 2, 2014
Public Hearing	September 16, 2014
Second Reading	September 16, 2014
Third Reading	October 7, 2014

Duly published in the Laramie Daily Boomerang this _____ day of October, 2014.