

.....
Date June 23, 2008

RECEIVE AND FILE COMMUNICATIONS ON IOWA SMOKEFREE AIR ACT AND
AUTHORIZE CITY MANAGER TO DESIGNATE GROUNDS OF ENCLOSED CITY
BUILDINGS

WHEREAS, the Iowa Smokefree Air Act (“the Act”) goes into effect on July 1, 2008; and

WHEREAS, the Act regulates smoking in public places, enclosed places of employment and certain outdoor areas, and has requirements relating to signage, enforcement, information, and removal of ashtrays; and

WHEREAS, the Iowa Department of Public Health (“IDPH”) is charged with developing administrative rules for the Act to provide guidance on enforcement, including designation of a toll free IDPH telephone number and website to be included on all signage; and

WHEREAS, IDPH emergency administrative rules (“IDPH rules”) became available on May 29 and the IDPH telephone number needed for signage was published on June 16; and

WHEREAS, the Act prohibits smoking on the grounds of public buildings, which are broadly defined in the emergency administrative rules as an outdoor area of a public building used in connection with the building, including walkways, patios, courtyards, swimming pools and beaches, and any other areas designated areas; and

WHEREAS, the IDPH rules provide that certain outdoor areas may be excluded from the grounds of a public building, such as parking lots, golf course areas of play, and hiking trails; and

WHEREAS, in order to clarify what outdoor areas adjacent to public buildings will be the “grounds of a public building” in which smoking is prohibited, the Legal Department recommends that the City take action to designate the area of the “grounds” adjacent to all enclosed City buildings; and

WHEREAS, City departments have provided specific questions relating to implementation of the Act in connection with their facilities and operations and the Legal Department has developed written responses.

June 23, 2008
Date

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the "Questions Submitted By Des Moines Department Directors" and the letter to Council from the City Attorney regarding the Iowa Smokefree Act, on file in the City Clerk's Office, be and is hereby filed and received.

BE IT FURTHER RESOLVED that City Manager be and is hereby authorized to designate the extent of the "grounds" adjacent to enclosed City buildings so that the City may be in compliance with the terms of the Act.

MOVED by _____ to approve.

APPROVED AS TO FORM:

Ann DiDonato
Ann DiDonato
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

.....
Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

June 23, 2008

HONORABLE MAYOR AND MEMBERS
OF THE DES MOINES CITY COUNCIL

Re: Iowa Smokefree Air Act


In April 2008, the Iowa Legislature enacted HF 2212, the Iowa Smokefree Air Act. The Act will become effective July 1, 2008. In brief, the Act prohibits smoking in public places, vehicles owned by the City, enclosed places of employment, and "...the grounds of any public buildings owned, leased, or operated by or under the control of the state government or its political subdivisions..." The extent of grounds around each public building must be determined by the City.

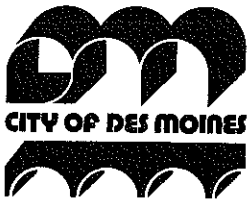
The Iowa Department of Public Health has the task of enforcement of the Act and it recently released a draft of proposed emergency rules to implement the Act. While still draft rules, they are probably the best guidance offered at this point regarding the practical operation of the Act. The draft emergency rules define "grounds of any public building" to mean the outdoor area of a public building that is used in connection with the building such as sidewalks adjacent to the building, seating or standing areas adjacent to the building, *or any outdoor area designated by the City.*

The Legal Department recommends that the City begin to define the extent of these grounds. Iowa Code Section 372.8 (f) mandates that the City Manager shall supervise the management of all city property and thus he would be authorized to make that designation.

Further details of the Act are attached in the form of a chart and answers to questions posed by City staff members.

Respectfully submitted,


Carol J. Moser
Assistant City Attorney



LEGAL DEPARTMENT
CITY HALL
400 ROBERT D. RAY DRIVE
DES MOINES, IA 50309-1891
(515) 283-4130 Administration
(515) 283-4564 Litigation
FAX (515) 237-1643 Administration
(515) 237-1748 Litigation

ALL-AMERICA CITY
1949, 1976, 1981
2003

CITY ATTORNEY

BRUCE E. BERGMAN

DEPUTY CITY ATTORNEYS

MARK GODWIN

LAWRENCE R. McDOWELL

KATHLEEN VANDERPOOL

ASSISTANT CITY ATTORNEYS

ANGELA T. ALTHOFF

ROGER K. BROWN

ANN M. DIDONATO

DAVID A. FERREE

GLENNA K. FRANK

GARY D. GOUDELOCK, Jr.

MICHAEL F. KELLEY

MARY A. LAUGHLIN

VICKY L. LONG HILL

STEVEN C. LUSSIER

KATHARINE J. MASSIER

CAROL J. MOSER

DOUGLAS P. PHILIP

PROVISIONS OF THE IOWA SMOKE FREE AIR ACT

SMOKING PROHIBITED

<u>LOCATION</u>	<u>YES</u>	<u>NO</u>
Enclosed City Buildings	X ¹	
City Vehicles	X	
Grounds of City Buildings	X ²	
Enclosed Places of Employment	X	
Certain Outdoor Areas	X	
Amphitheatres	X	
Seating Areas of Sports Arenas/Stadiums	X	
Restaurant Outdoor Eating Areas	X	
Beer Gardens		X
Swimming Pools	X	
Ice Rinks	X	
Private Vehicles		X
Public Transit Stations and Shelters	X	
Recreational Trails		X
Tennis Courts		X ³

¹ Includes buildings owned, leased and controlled by the City.

² Smoking is prohibited on the "grounds" of public buildings, which are those areas "used in connection with the building."

³ Unless within the grounds of a public building.

Duties of City

1. Place clear and conspicuous signs:
 - a. At every entrance to areas where smoking is prohibited
 - b. In City vehicles, except certain vehicles used for law enforcement purposes.
2. Remove ash trays from places where smoking is prohibited.
3. Notify employees and applicants for employment of the provisions of the law.
4. Enforce:
 - a. Police are designated by Department of Public Health to assist in enforcement.
 - b. Regulatory City Inspectors (except when conducting federal inspections) must report violations to Department of Public Health.
5. Include in all leases that tenants must comply with the provisions of the law.
6. Inform violators of the law.

Penalties

1. Smoker: \$50.00.
2. Owner/Operator of area where smoking is prohibited:
 - a. First offense: \$100.00.
 - b. Second offense within one year: \$200.00.
 - c. Third and subsequent offenses within one year: \$500.00.

Sign Design

1. 24 square inches.
2. Legible print.
3. Contain the words "no smoking" or the international no smoking symbol.
4. Telephone number of Department of Public Health for reporting violations – 1-888-944-2247.
5. www.IowaSmokeFreeAir.gov.

IOWA SMOKEFREE AIR ACT
(Iowa Code Chapter 142D)

QUESTIONS SUBMITTED BY DES MOINES DEPARTMENT
DIRECTORS

1. The Act prohibits smoking in vehicles unless otherwise provided in the chapter. It further states that smoking is not regulated in cabs of motor vehicles or truck tractors and no nonsmoking employee is present. Does this mean that a city employee can not smoke in a car, but could smoke in a dump truck or a bucket truck? Is a pickup a truck where smoking may not be regulated, or a vehicle where smoking is not permitted?

There is no smoking permitted in any vehicle owned or leased by the City. The exception to which you refer applies only to privately owned vehicles.

2. Smoking is prohibited in public places which by definition includes public buildings and is also prohibited on the grounds of any public building . The law does not say anything about smoking on public rights-of-way. Can people smoke in their private car on a public street, or as they walk on a public sidewalk? People are prohibited from smoking in public buildings and on the grounds of public buildings (say City Hall), and if the law is silent on the public rights-of-way (public sidewalk around City Hall), can anyone smoke on the sidewalk abutting the grounds of City Hall? An employee or the public would not be allowed to smoke between the public sidewalk? Would smoking be prohibited on the City Hall parking lot? There is public ROW (Robert D. Ray Drive) between the City Hall building and the parking lot, so is the parking lot still considered part of the grounds of the public building? A parking lot is not an enclosed area and , so is it a public place? Does the same apply to ROW?

Smoking is not prohibited on the public right-of-way ("ROW") (with the exception of enclosed right-of-way such as the skywalk system).

Smoking would be prohibited on parking lots if the lot is included as the "grounds of the public building". The City may exclude the parking lot across the street from City Hall from the "grounds" of City Hall thereby allowing smoking on the parking lot. See answer No. 25 for detail about the definition of "grounds".

3. We currently have designated smoking areas in parking garages. Is a parking garage a public place? It is not enclosed, but is it considered a public transit station, platform, and shelter? Is smoking prohibited in parking garages the same as other public buildings?

As parking garages are not enclosed, we don't believe that the Act applies unless they are designated as public transit stations such as the garages designated as Modal Transit Stations. See number 26 below.

4. How are leased areas in public buildings handled? We lease commercial space in some of the parking garages. Is the lessee responsible as the person who operate and has custody or control of a public place?

Smoking is prohibited in a public building regardless of whether it is leased to a private entity.

The draft emergency rules of the Iowa Department of Public Health ("IDPH draft rules") state that the enforcement responsibility is that of the tenant. The draft emergency rules require that leases for City owned buildings contain a clause that the tenant is responsible for compliance with the Act.

5. How does the law apply to the construction of public improvements and the contractors who build them? If the law is silent on ROW, then can we assume that if construction is within the ROW, or easement areas, then we, as the owner of the public improvement, do not have any responsibility? If the construction is within a public building, then the contractor would be prohibited from smoking. Who is responsible the City Engineer, or the Mayor who signed the contract on behalf of the City of Des Moines? What responsibility do our construction inspectors have in enforcement on the public improvement ?

The construction site is a place of employment. If the construction site becomes an enclosed area (enclosed areas are defined as including floor, ceiling and solid walls), smoking will be prohibited.

Smoking is not prohibited in a ROW—see answers to no. 1 and 4 above.

Both the City and the Contractor have responsibilities. The City's responsibilities stem from its role as a public entity as well as an employer. The Contractor is an employer. Both the City and the Contractor are responsible for complying with the Act.

Construction Inspectors (as well many other City Inspectors- see No. 35 below) must report violations of the Act to the Iowa Department of Public Health.

6. What is the supervisor's personal responsibility in enforcement? The Act states " a person who owns, manages, or otherwise has custody or control of a public place...and who fails to comply with this chapter shall pay a civil penalty. Who is responsible for the work areas in City Hall? If a contractor who is smoking comes to the Eng. counter to get plans, is the dept. director/ supervisor responsible? If someone smoking comes to the City Clerk's Office to pay a parking ticket, is the City Clerk personally responsible?

The City as an entity is responsible for enforcing the Act on City property. The personnel assigned to the task is a matter for the City Manager to determine.

7. Would smoking be banned in police cars?

Yes.

8. Would smoking be banned in the city ROW?

No, see No. 1 above.

9. Would smoking be permitted or banned on city golf courses?

Smoking is prohibited in the clubhouses and outdoor eating areas. Smoking is also prohibited on the clubhouses' grounds. The IDPH draft rules allow the City to permit smoking on the playing areas of the golf course itself. To do this, the City needs to determine the "grounds" where smoking is prohibited by identifying those outdoor areas used in connection with park enclosed buildings.

10. What about the police department furnishing cigarettes to a prisoner they are interrogating in the police department, in a city building?

As the Act is written, it is a violation. There is no exclusion for this under the Act or the IDPH draft rules.

11. Will City employee smokers have to leave and travel a half block away to smoke?

To the nearest area where smoking is permitted, see No. 1 above.

12. Would the smoking ban apply to private vehicles in City parking lots?

No unless the vehicle is a place of employment.

13. Would smoking be banned from anywhere on a Landfill Agency's property?

Smoking is prohibited in enclosed facilities but permitted on outdoor areas not determined to be "grounds" unless otherwise prohibited under Iowa Code Section 142D.3.

14. Is smoking banned from City vehicles, no matter where located?

Yes.

15. How can we provide relief to fire employees who are assigned to a 24 hour shift at a fire station?

Smoking is not prohibited in the ROW or outdoor areas which have not been designated as "grounds" as described in No. 25 below.

16. What will the role of police be in the enforcement of the law be?

The IDPH via its draft rules has designated the Des Moines Police Department to assist in enforcement of the Act. The penalties collected in enforcement will be deposited in the City's general fund.

17. How will the law be enforced at the airport?

All of the roads within the airport are internal roads and they are not considered ROW. Smoking is prohibited at all enclosed buildings on the airport because they are either public places or places of employment and on the "grounds" of the public buildings. See answer to No. 25 below.

18. Can the airport adopt regulations for designated smoking areas (passengers and employees)?

No, the Act does not provide for authorizing local regulations permitting smoking in areas where the Act prohibits smoking.

19. What is the role of airport management personnel on enforcement?

There are dual enforcement roles, one as a manager of a public building and another as an employer. As an owner, there must be signage conforming to the Act and IDPH draft rules at all entrances to public places and places of employment where smoking is prohibited, ashtrays must be removed from all places where smoking is prohibited, and violators must be informed of the Act's requirements. See answer to No. 4 for leased premises. See answer No. 22 for treatment of ashtrays.

As an employer, there must be notices advising employees of the smoking prohibitions and employment applications must include such notices. Employers may not retaliate against any person who has reported a violation of this Act.

20. How is HR going to handle complaints from other employees?

This is a policy matter for the HR Director to determine.

21. Will the law apply to leased property?

Yes, if the property is publicly owned or is leased by a public entity. See the answer to No. 4 above.

22. Do we have to remove all the ashtrays from outside public areas?

Ashtrays will have to be moved from areas where smoking is prohibited but can be placed on the perimeter of any public place, grounds of any public building, or outdoor space where smoking is prohibited (e.g. on the edge of seating areas, of outdoor eating areas of restaurants, or seating areas of sports arenas).

23. Does the ban only apply to smoking or would it include the act of rolling a cigarette? (May need clarification: "Is the ban only on tobacco products being smoked or is it on all smoking in public places?)

The Act applies to tobacco smoke; it does not address rolling a cigarette (you may apply littering provisions to your situation).

24. Is a public building one that is open to the public or owned by the public (e.g. some of the buildings in the PW complex are not open to anyone other than employees. If not a public building, then would smoking be permissible on the grounds outside those buildings?) How about the pump stations on the sanitary and storm water utility and parks department maintenance sheds?

Smoking is prohibited in all enclosed City buildings. Smoking is prohibited under the Act in all public places (and prohibited by virtue of being a place of employment). A public place is an enclosed area to which the public is invited or permitted. Public buildings are included in the Act as public places. A public building is defined under the Act as one owned, leased or operated by or under the control of the City.

25. Can the City declare what portion of a tract of land is considered part of the grounds of a public building? (e.g. 50 feet adjacent to a public building?)

The Act prohibits smoking on the grounds of any public building. "Grounds of any public building" is defined in the recently issued IDPH draft rules interpreting the Act as "...an outdoor area of a public building that is used in connection with the building..." The rule specifically requires that the following be included in the "grounds" where smoking is prohibited: a sidewalk (walkway) and a sitting or standing area immediately adjacent to the building; a patio, a deck, a courtyard, a swimming or wading pool, and beaches. The City may identify additional outdoor areas as "grounds".

The IDPH draft rules allow the City to exclude from "grounds" parking lots, the course of play at a golf course, hiking trails, individual campsites or campfires, or a lake, river or other body of water.

The Act does not prohibit smoking in parks except in those areas considered "grounds" of a public building located in a park. The City needs to determine the "grounds" where smoking is prohibited by identifying those outdoor areas used in connection with City buildings.

26. Is smoking prohibited at waiting kiosks for buses?

Yes, smoking is prohibited at public transportation facilities and conveyances under the Act. See number 3 above.

27. Will the definition of grounds change for City buildings compared to for example, a federal courthouse?

The Act only applies to the state and its political subdivisions, not federal entities.

28. Will firefighters be able to smoke in their own vehicle parked behind a fire station?

Yes.

29. How about smoking in cars, motorcycles, bicycles while driving/riding through Gray's Lake, Grandview Park, MacRae Park? Does the answer change in that the entrance to Grandview Park off of Easton Blvd. is actually a public street and not a park road?

Smoking is not prohibited in the ROW, so smoking in cars, motorcycles and bicycles is not prohibited in the ROW. Also, smoking is not prohibited in private vehicles. Since cars and motorcycles are included within the definition of "vehicles" under the Iowa Code, smoking in cars and motorcycles would not be prohibited in other areas of the park. We

believe that, because bicycles are not defined as vehicles under the Iowa Code, smoking on bicycles in other areas of the park where smoking is prohibited would not be allowed..

30. Is smoking entirely banned on any public property (levees, WRF, PW grounds, pump stations?)

No, see the answer to No. 25 above.

31. What is the sanction for violations?

Violators who are in control of public places or employers will be assessed civil penalties which range from \$100.00 for the first violation within a year to \$500.00 for third and more violations within a year. Violations occur daily as distinct and separate charges.

Individuals who smoke in places in violation of this Act may be subject to a civil penalty of \$50.00.

32. Does the prohibition include property other than real property? What about boats, vehicles?

Yes, vehicles are covered. See answer to No. 1 and 29 above. Smoking would be prohibited in a boat if the boat is a public place or place of employment.

33. Will there be a tie into City sponsored cessation plans?

The answer is a matter of policy to be determined by the the City Manager and the HR Director.

34. How do these prohibitions tie into disciplinary programs?

The answer is a matter of policy to be determined by the City.

35. Do city inspectors have any responsibilities under this Act?

Inspectors (e.g. housing, electrical, mechanical, liquor licenses) inspecting places where smoking is prohibited MUST assess compliance with the Act and report violations to the IDPH, except when conducting federal inspections.

**We are interested in knowing what issues have arisen for which we may suggest legislative amendment.; please send these to crnoah@dmgov.org