

SECOND COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 061293

Amending Chapter 34, Code of Ordinances, by repealing Article XII, Smoking prohibited in enclosed places of employment and public places, consisting of Sections 34-471 through 34-481, and enacting in lieu thereof a new article of like name and subject matter consisting of Sections 34-471 through 34-481, prohibiting smoking in enclosed places of employment and enclosed public places and establishing penalties for noncompliance.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 34, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Article XII, Smoking prohibited in enclosed places of employment and public places, Sections 34-471 through 34-481 and enacting in lieu thereof a new Article XII of like name and subject matter, consisting of Sections 34-471 through 34-481, to read as follows:

**ARTICLE XII. SMOKING PROHIBITED IN ENCLOSED PLACES OF  
EMPLOYMENT AND PUBLIC PLACES.**

**Sec. 34-471. Purpose**

It is the purpose of this article that the City promotes public health by decreasing citizen's exposure to secondhand smoke and creates smoke free environments for workers and citizens through regulation in the work place and all public places.

**Sec. 34-472. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Casino gaming area* means the area of a casino accessible only by those with a valid members card, players card, or its equivalent, that allows entrance into the restricted area and shall include the area or facilities immediately adjacent to and contiguous with the excursion gaming boat which is owned and operated by the casino.

*City Attorney* means the City Attorney for the City of Kansas City, Missouri or his or her designee.

*Director of Health* means the Director of Health of the City of Kansas City, Missouri or his or her designee.

*Employee* means any person who performs services for an employer, with or without compensation.

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*Employer* means a person, partnership, association, corporation, trust, or other organized group of individuals, including the City or any agency thereof, which utilizes the services of one (1) or more employees.

*Enclosed* means a space bound by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, offices, rooms, all space therein screened by partitions, which do not extend to the ceiling or are not solid, "office landscaping" or similar structures and halls.

*Permanently Designated* means a hotel or motel room may be designated as a smoking room only one time a year.

*Place of Employment* means any enclosed area under the control of public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.

*Public Place* means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to:

- (1) Any vehicle of public transportation, including but not limited to buses, limousines for hire and taxicabs;
- (2) Elevators;
- (3) Restrooms;
- (4) Libraries, educational facilities, childcare and adult day care facilities, museums, auditoriums, aquariums and art galleries;
- (5) Any health care facility, health clinics or ambulatory care facilities, including but not limited to laboratories associated with the rendition of health care treatment, hospitals, nursing homes, doctors' offices and dentists' offices;
- (6) Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, betting establishments, bowling alleys, arenas and swimming pools;
- (7) Private clubs;
- (8) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance;
- (9) Shopping malls and retail stores and service establishments;

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- (10) Sports arenas, including enclosed places in outdoor arenas;
- (11) Bars;
- (12) Restaurants;
- (13) Convention facilities;
- (14) All public areas and waiting rooms of public transportation facilities, including but not limited to bus and airport facilities;
- (15) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including, but not limited to joint committees, or agencies of the City or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City;
- (16) All enclosed facilities owned by the City;
- (17) Rooms in which meetings or hearings open to the public are held, except where such rooms are in a private residence; and
- (18) Service lines.

A private residence is not a "public place."

*Service Line* means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

*Smoking* means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other tobacco product.

**Sec. 34-473. Prohibition of smoking in enclosed places of employment and all enclosed public places.**

(a) The possession of lighted smoking materials in any form, including but not limited to, the possession of lighted cigarettes, cigars, pipes or other tobacco products, is prohibited in all enclosed places of employment and enclosed public places within the City.

(b) No one shall possess lighted smoking materials in any form, including but not limited to, lighted cigarettes, cigars, pipes or other tobacco products, in a manner that

impedes entrance to or exit from a building where smoking is prohibited pursuant to this article.

(c) It shall be unlawful for any person to violate the provisions of this article.

**Sec. 34-474. Responsibilities of proprietors, owners and managers.**

(a) A person having control of an enclosed place of employment or public place shall not knowingly permit, cause, suffer or allow any person to violate the provisions of section 34-473 in that place. It shall be an affirmative defense to an alleged violation of this subsection that the person having control of a place has asked that the lighted cigarette, cigar, pipe or other tobacco product be extinguished and asked the person to leave the establishment if that person has failed or refused to extinguish the lighted cigarette, cigar, pipe or other tobacco products.

(b) A person having control of an enclosed place of employment or public place shall clearly and conspicuously post "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) near all entrances where smoking is prohibited by this Article. Such signage shall consist of letters not less than one inch in height.

(c) It shall be the responsibility of employers to provide a smoke-free workplace for all employees.

(d) Each employer having any enclosed place of employment located within the City shall adopt, implement, make known and maintain, a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

(e) The smoking policy shall be communicated to all employees within four (4) weeks of the adoption of this ordinance.

(f) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

**Sec. 34-475. Where smoking is not regulated.**

Notwithstanding any other provision of this ordinance to the contrary, the following shall not be subject to the smoking restrictions of this ordinance:

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- (1) Private residences, not serving as enclosed places of employment or enclosed public places;
- (2) Twenty-five percent (25%) of hotel and motel rooms may be permanently designated as smoking rooms or a higher percentage adjusted by the hotel or motel when on a given date it has a seventy-five percent (75%) or greater occupancy rate due to the booking of guests for conventions or meetings and is needed to meet the demands of the convention or meeting, provided the hotel or motel cleans those added rooms in a manner sufficient to remove the odor and particulate residue of smoking from those rooms before they are again occupied as non-smoking rooms.
- (3) Business establishments where more than fifty percent (50%) percent of the volume of trade or business carried on is that of the blending of tobaccos, or sale of tobaccos, pipes, cigars or smokers' sundries provided that smoke from these places is enclosed and does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
- (4) Any location where this ordinance is not yet in effect pursuant to Section 34-480.

### **Sec. 34-476. Penalty for violation of this Article.**

(a) A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an ordinance violation, punishable by a fine not exceeding fifty dollars (\$50.00).

(b) A person having control of a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an ordinance violation, punishable by:

- (1) A fine not exceeding one hundred dollars (\$100) for a first violation.
- (2) A fine not exceeding two hundred dollars (\$200) for a second violation within a one (1) year period.
- (3) A fine not exceeding five hundred dollars (\$500) for a third or subsequent violations within a one (1) year period.

(c) Each day on which a violation of this Article occurs shall be a separate and distinct violation

### **Sec. 34-477. Public education.**

The Director of Health shall engage in a continuing program to inform and to educate the public regarding the health consequences of smoking, including the adverse

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health consequences of peoples' exposure to secondhand smoke, shall clarify the purpose of this article to citizens affected by it, and shall guide owners, operators and managers in their compliance.

### **Sec. 34-478. Other applicable laws.**

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

### **Sec. 34-479. Liberal construction.**

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

### **Sec. 34-480. Effective dates.**

(a) Except as provided below, this ordinance will become effective on January 2, 2008.

(b) *Casinos.* Casino gaming areas shall be exempt from this Article until the cities of Riverside, Missouri and North Kansas City, Missouri both pass and make effective an ordinance prohibiting smoking within casino gaming areas.

- (1) Determination of effective date. To determine when casino gaming areas are no longer exempt from this Article as described above:
  - a. The City Clerk with the advice of the Director of Health will maintain a library of smoking ordinances from the cities of Riverside, Missouri and North Kansas City, Missouri.
  - b. When both Riverside, Missouri and North Kansas City, Missouri pass and make effective an ordinance banning smoking within casino gaming areas, the City Clerk shall provide for public notice through the City's internet site, news releases and a communication to the City Council.
  - c. Such notice shall state that this Article will apply to casino gaming areas after sixty (60) days from the date of the notice.
  - d. Upon request from the City Clerk or the Director of Health, the City Attorney will assist and provide guidance.

### **Sec. 34-481. Enforcement of article.**

(a) The authority to administer the provisions of this article is vested in the Director of Health and his or her duly authorized representatives.

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(b) Whenever the need arises, the director of health may call upon the fire and police departments and other departments of the city to aid in the enforcement of the provisions of this article.

(c) Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Kansas City Missouri.

(d) Any citizen who desires to register a complaint under this Article may initiate enforcement with the health department.

**Sec. 34-482 - 34-510 reserved.**

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Approved as to form and legality:

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Joseph A. Guarino  
Assistant City Attorney