

ORDINANCE NO. ----

AN ORDINANCE AMENDING SECTION 16-218 OF THE CODE OF THE CITY OF EMPORIA, KANSAS, 1983, PROHIBITING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT WITHIN THE CITY OF EMPORIA, KANSAS AND REPEALING SAID SECTION AS IT EXISTED PRIOR TO THE ADOPTION OF THIS ORDINANCE

Whereas, the City of Emporia adopted Ordinance 87-16 on July 1, 1987 regulating the smoking of tobacco products in public places and at public meetings;

Whereas, some studies show that smoke filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke.

Whereas, the City of Emporia City Commission recognizes that some studies show secondhand smoke exposure poses a serious public health hazard, and that regulation by the City of Emporia of second hand smoke exposure in public places and places of employment, is necessary in order to promote the public health, safety and welfare of the citizens of Emporia.

NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS:

Section 1. Purpose.

The purpose of this Ordinance is to promote, improve, and protect the public's health by eliminating exposure to secondhand smoke for workers and citizens through regulation in the work place and public places.

Section 2. Definitions.

The following words and phrases, whenever used in this Ordinance, shall be construed as defined in this section:

- a. **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.
- b. **City** means the City of Emporia, Kansas.
- c. **Employee(s)** means any person who is employed by an employer in consideration of direct or indirect monetary wages or profit, and any person who volunteers his or her services for a profit or non-profit entity. In the event of a sole ownership company or corporation, said owner shall not be considered an employee for the purposes of this ordinance.
- d. **Employer** means any person, partnership, corporation, professional corporation, municipal corporation, or nonprofit entity, which employs the services of one or more employees/individual persons.
- e. **Enclosed area** means all spaces between a floor and ceiling which are enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which

extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or that are not solid, “office landscaping” or similar structures and halls.

- f. **Food Service Establishment** shall mean any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order café, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside kitchen, commissary and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.
- g. **Health care facility** means an institution, place, building, or agency required to be licensed under Kansas law, including but not limited to a hospital, nursing facility or nursing home, boarding home, assisted living facility, supervised living facility, or ambulatory medical and surgical center, but excluding a private residence being visited by a health care agency representative for the purposes of providing in-home health care.
- h. **Main Entrance** means each entrance to a public place or place of employment available for regular use by the public and designated as a main entrance by the person in charge thereof; provided that at least one main entrance shall be designated for each public place or place of employment.
- i. **Place of Employment** means any enclosed area under the control of a public or private employer, except as provided for herein, and which employees normally frequent during the course of employment, including but not limited to work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, employee lounges, eating areas, stairs and restrooms; and any area outside of any such enclosed area and located within ten (10) feet of a main entrance or ventilation system air intake unit. A private residence is not a place of employment unless used as a childcare, adult day care or health facility.
- j. **Private Place** means any enclosed area to which the public is not normally invited or in which the public is not regularly permitted, including but not limited to, private offices in a place of employment, personal residences or personal motor vehicles. A privately owned business, open to the public, is not a “private place”.
- k. **Public Place** means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, offices, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a “public place”.
- l. **Retail Tobacco Store** means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- m. **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.

- n. **Smoking** means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or other tobacco product, or weed, or any pipe or vessel containing burning tobacco of any kind
- o. **Sports Arena** means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Section 3. PROHIBITION OF SMOKING IN PUBLIC PLACES.

Smoking shall be prohibited in all enclosed public places except as provided for herein within the City of Emporia, including, but not limited to, the following places:

- a. elevators
- b. restrooms, lobbies, reception areas, hallways, and any other common-use areas
- c. buses, bus terminals, taxicabs, train stations, and other facilities and means of public transit under the authority of the City of Emporia, as well as ticket, boarding, and waiting areas of public transit depots
- d. Service lines
- e. retail stores
- f. all areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including, but not limited to, offices (except private offices where the public is not normally invited or regularly enters), banks, laundromats, hotels, and motels
- g. food service establishments and licensed premises, excluding areas of a food service establishment or licensed premises that are not enclosed such as patios, outdoor dining areas, and courtyards
- h. galleries, libraries, museums, and grounds, aquariums, and education facilities
- i. any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except that performers may smoke when the smoking is a part of a stage production
- j. sports arenas and convention halls, including bowling facilities
- k. every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City of Emporia 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 of Emporia
- l. waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
- m. lobbies, hallways, and other common areas in apartment buildings, condominiums, common areas in trailer parks (club houses, storm shelters), retirement facilities, nursing homes, and other multiple-unit

residential facilities, but excluding outdoor common areas except as regulated herein

- n. polling places
- o. private clubs and fraternal organization facilities
- p. outside of any of the above within ten (10) feet of all main entrances used by the public (excluding employee-only entrances) and ventilation system air intake mechanisms
- q. any vehicle of public transportation including, but not limited to, buses and taxicabs

Section 4. PROHIBITION OF SMOKING IN OUTDOOR AREAS

Smoking shall be prohibited in the following outdoor places:

- a. Within a distance of ten (10) feet outside main entrances used by the public (excluding employee-only entrances), open windows, and ventilation systems of enclosed areas where smoking is prohibited, so as ensure that tobacco smoke does not enter those areas.
- b. Within a radius of ten (10) feet of any outdoor vendor where food or goods are being offered for sale to the public, also known as outdoor vendor areas.
- c. That the provisions of this Ordinance shall not apply to vehicles driving by or parking in front of any place of business or public space as defined herein. The provisions of this Ordinance also shall not apply to pedestrians walking past any place of business as defined herein.

Section 5. PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT

Smoking shall be prohibited in all enclosed places of employment within the City of Emporia It shall be the responsibility of employers to comply with the provisions of this ordinance.

Section 6. ADDITIONAL DECLARATION OF NON-SMOKING ESTABLISHMENT

Notwithstanding any other provision of this Article, any owner, operator, manager or other person who controls any establishment described in this Article may declare that entire establishment as a non-smoking establishment.

Section 7. APPLICATION OF ARTICLE TO CITY-OWNED FACILITIES

All enclosed facilities owned by the City of Emporia shall be non-smoking at all times notwithstanding other provisions of this Article. It shall be unlawful to smoke in any facility or in any equipment owned and/or operated by the City.

Section 8. WHERE SMOKING IS NOT REGULATED: PRIVATE AND PUBLIC PLACES

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

- a. Private offices where the public is not normally invited or regularly enters.
- b. Private residences, except when used as a childcare, adult day care, health care facility.
- c. An existing retail establishment whose primary business is the sale of tobacco products and new retail establishments whose primary business is

the sale of tobacco products which are located in a stand-alone building or which does not share an entrance nor is located in a building with public spaces as defined herein.

Section 9. POSTING OF SIGNS

- a. The owner, manager or other person having control of such building or other areas where smoking is prohibited by this Article shall have a conspicuously posted sign clearly stating that smoking is prohibited at all main entrances used by the public (excluding employee-only entrances).
- b. Such “No Smoking” signs shall have bold lettering of not less than one (1) inch in height. The international “No Smoking” symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).

Section 10. RESPONSIBILITIES OF PROPRIETORS, OWNERS AND MANAGERS

- a. No person having control of a public place or place of employment shall knowingly permit, cause, suffer or allow any person to violate the provisions of this ordinance in such place or on any private or public sidewalk immediately in front of said place of business except greater than ten (10) feet from a main entrance used by the public (excluding employee-only entrances). No person having control of a public place or place of employment shall be responsible for any other property or private or public sidewalk adjacent to said public place or place of employment.
- b. Such persons shall take all reasonable steps necessary to prevent or stop smoking in violation of this ordinance by employees, patrons, and visitors, including, but not limited to:
 - 1. posting no-smoking signs
 - 2. removing all ashtrays
 - 3. verbally asking a person who is illegally smoking to extinguish the smoking materials
 - 4. applying standard business procedures in the same manner as for violations of house rules or other local ordinances or state laws.
 - 5. such communications, if directed to an employee or patron who is hard of hearing, may be written, in sign language or via any other effective means of communication.
- c. Any person in violation of this ordinance may be cited by the City of Emporia. No person having control of a public place or place of employment shall be cited for a violation by an individual or individuals unless said person does not take reasonable steps as outlined in subsection (b) above to prevent or extinguish said smoking.

Section 11. PUBLIC HEALTH EDUCATION

- a. The City may contract with a public agency to promote the purposes and requirements of this ordinance to the public affected by it, and guide owners, operators and managers in their compliance with it. Such promotion may include publication of a brochure for affected businesses and individuals explaining the provisions of this Article.

Section 12. ENFORCEMENT

- a. Notice of the provisions of this ordinance shall be given to each applicant for a City license.
- b. Any person may file/register a complaint with the city manager or his or her designated agent, to initiate enforcement of this ordinance.
- c. The City designated agent/enforcement department shall be responsible for enforcing the provisions of this Article within the City.
- d. The city designated department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this Article

Section 13. NON-RETALIATION

No person or employer shall discharge, refuse to hire or in any manner retaliate against employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke free environment afforded by this Article. Further, no person or employer shall take disciplinary action against an employee who engages in smoking, as defined herein, who does so in compliance with this ordinance. This section is not intended to conflict with any employer rules and regulations regarding employee performance.

Section 14. VIOLATIONS AND PENALTIES

- a. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Article.
- b. Any person who violates any provision of this Article by smoking in an area where smoking is prohibited shall be guilty of a misdemeanor, punishable by a fine not exceeding fifty dollars (\$50.00)
- c. Any Person having control of any public place or place of employment who fails to comply with the provisions of this ordinance shall be guilty of a misdemeanor, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100.00) for the first violation.
 - 2. A fine not exceeding two hundred dollars (\$200.00) for a second violation within a one (1) year period of the first violation
 - 3. A fine not exceeding five hundred dollars (\$500.00) for a third or subsequent violation within a one (1) year period of the first violation.
- d. For the purpose of this subsection, the number of violations within a year shall be measured by the date the initial smoking violation occurred.

Section 15. OTHER APPLICABLE LAWS

This Article shall not be interpreted nor construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 16. SEVERABILITY

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

Section 17. REPEAL

That Section 16-218 of the Code of the City of Emporia, Kansas, 1983, as it existed prior to the adoption of this Ordinance is hereby repealed on the day and date upon which the amendatory section becomes effective.

Section 18. CODIFICATION

The provisions of this ordinance shall be included and incorporated into the Code of Ordinances of the City of Emporia, Kansas, 1983, as an addition or amendment thereto and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

Section 19. EFFECTIVE DATE

This ordinance shall be effective March 3, 2009, and upon publication in the official newspaper.

Passed by the governing body this 3rd day of December, 2008.

Bobbie L. Agler, Mayor

ATTEST:

Susan Mendoza, City Clerk