

Model Ordinance Prohibiting Smoking in Outdoor Places of Employment and Public Places

Sec. 1000. Title

This Article shall be known as the _____ [name of City or County] Smokefree Outdoor Air Ordinance of _____ [year].

Sec. 1001. Findings and Intent

The _____ [City or County Governing Body] does hereby find that:

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke.¹ According to the 2010 U.S. Surgeon General's Report, *How Tobacco Smoke Causes Disease*, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke.² According to the 2014 U.S. Surgeon General's Report, *The Health Consequences of Smoking—50 Years of Progress*, secondhand smoke exposure causes stroke in nonsmokers. The report also found that since the 1964 Surgeon General's Report on Smoking and Health, 2.5 million nonsmokers have died from diseases caused by tobacco smoke.³

Numerous studies have found that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually.⁴

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen.⁵

Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death.⁶

There is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke.⁷

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.⁸ The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability.⁹

The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking.¹⁰

During periods of active smoking, peak and average outdoor tobacco smoke (OTS) levels measured in outdoor cafes and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations.¹¹ Nonsmokers who spend six-hour periods in outdoor smoking sections of bars and restaurants experience a significant increase in levels of cotinine when compared to the cotinine levels in a smokefree outdoor area.¹²

Electronic 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 that typically contains nicotine, heated through an electronic ignition system. ESD emissions are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke.¹³ The January 2018 National Academies of Sciences, Engineering, and Medicine publication states that there is conclusive evidence that in addition to nicotine, most ESDs contain and emit numerous potentially toxic substances and increase airborne concentrations of particulate matter and nicotine in indoor environments. Studies show that people exposed to ESD aerosol absorb nicotine (measured as cotinine) at levels comparable to passive smokers. Many of the elements identified in the aerosol are known to cause respiratory distress and disease. ESD exposure damages lung tissues. Human lung cells that are exposed to ESD aerosol and flavorings — especially cinnamon — show increased oxidative stress and inflammatory responses.¹⁴ 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. The World Health Organization (WHO), the National Institute for Occupational Safety and Health (NIOSH), and the American Industrial Hygiene Association (AIHA) recommend that ESDs not be used in smokefree environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smokefree laws.¹⁵

Secondhand smoke from combusted marijuana contains fine particulate matter that can be breathed deeply into the lungs, which can cause lung irritation and asthma attacks, thus making respiratory infections more likely. Exposure to fine particulate matter can exacerbate health problems especially for people with respiratory conditions like asthma, bronchitis, or COPD.^{16, 17} Secondhand smoke from marijuana also has many of the same chemicals as smoke from tobacco, including those linked to lung cancer.^{18, 19} More research is needed, but the current body of science shows that both tobacco and marijuana smoke may have similar harmful

cardiovascular effects.^{20, 21} Thus, In the interest of public health, the use of combustible or aerosolized marijuana should be prohibited wherever tobacco smoking is prohibited.

The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion in lost productivity.²²

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety.²³

There is no legal or constitutional “right to smoke.”²⁴ Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous.²⁵

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses.²⁶

The smoking of tobacco, hookahs, or marijuana and the use of ESDs are forms of air pollution and constitute both a danger to health and a material public nuisance.

Accordingly, the _____ [*City or County Governing Body*] finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in outdoor places of employment and outdoor public places where nonsmokers are likely to be exposed to secondhand smoke; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

Sec. 1002. Definitions

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

- A. “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 those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- B. “Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- C. “Electronic Smoking Device” means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes

any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

- D. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, or a person who volunteers his or her services for a non-profit entity.
- E. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- F. "Hookah" means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.
- G. "Partially Enclosed" means an area closed in by a roof or overhang or by permanent or temporary walls or windows (exclusive of doorways), on at least two sides, including but not limited to, courtyards, patios, and covered walkways.
- H. "Place of Employment" means an area under the control of a public or private employer, including, but not limited to, work areas, construction sites, temporary offices, restroom facilities, and vehicles.
- I. "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on [City or County] grounds.
- J. "Public Event" means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.
- K. "Public Place" means an area to which the public is invited or in which the public is permitted.
- L. "Recreational Area" means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, amusement parks, athletic fields, beaches, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.
- M. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public 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 for serving elsewhere.
- N. "Service Line" means an outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

- O. "Shopping Mall" means any parcel of land zoned and used for retail sales by more than one retailer that is jointly operated or which includes shared parking facilities.
- P. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

Sec. 1003. Prohibition of Smoking on [City-Owned or County-Owned] Outdoor Property

Smoking shall be prohibited on all outdoor property owned, leased, or operated by the _____ [City or County] of _____.

Sec. 1004. Prohibition of Smoking in Outdoor Places of Employment

- A. Smoking shall be prohibited in all outdoor places of employment where two or more employees are required to be in the course of their employment. This includes, without limitation, work areas, construction sites, temporary offices such as trailers, restroom facilities, and vehicles.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Sec. 1005. Prohibition of Smoking in Outdoor Public Places

Smoking shall be prohibited in the following outdoor public places:

- A. Within a reasonable distance of _____ [*recommended 15-25*] feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- B. In, and within _____ [*recommended 15-25*] feet of, outdoor seating or serving areas of restaurants and bars.
- C. In outdoor shopping malls, including parking structures.
- D. In outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within _____ [*recommended 15-25*] feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- E. In outdoor recreational areas, including parking lots.
- F. In, and within _____ [*recommended 15-25*] feet of, all outdoor playgrounds.

- G. In, and within _____ [*recommended 15-25*] feet of, all outdoor public events.
- H. In, and within _____ [*recommended 15-25*] feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the _____ [*City or County*].
- I. In outdoor service lines, including lines in which service is obtained by persons in vehicles, such as service that is provided by bank tellers, parking lot attendants, and toll takers. In lines in which service is obtained by persons in vehicles, smoking is prohibited by both pedestrians and persons in vehicles, but only within _____ [*recommended 15-25*] feet of the point of service.
- J. In partially enclosed areas.

Sec. 1006. Prohibition of Smoking in Outdoor Residential Facilities

Smoking shall be prohibited in outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least _____ [*recommended 15-25*] feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

Sec. 1007. Declaration of Outdoor Public Place as Nonsmoking

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an outdoor public place or place of employment may declare that entire outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 1008(A) is posted.

Sec. 1008. Posting of Signs

The owner, operator, manager, or other person in control of an outdoor public place, place of employment, or residential facility where smoking is prohibited by this Article shall:

- A. 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) in appropriate locations as determined by the _____ [*Department of Health or City Manager or County Administrator*] or an authorized designee.
- B. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Article at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- C. Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

Sec. 1009. Nonretaliation; Nonwaiver of Rights

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 1011, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed \$1000 for each violation.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 1010. Enforcement

- A. This Article shall be enforced by the _____ [Department of Health or City Manager or County Administrator] or an authorized designee.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the _____ [City or County] of _____.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the _____ [Department of Health or City Manager or County Administrator].
- D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. An owner, manager, operator, or employee of an area regulated by this Article shall direct a person who is smoking in violation of this Article to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
- F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- G. In addition to the remedies provided by the provisions of this Section, the _____ [Department of Health or City Manager or County Administrator] or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 1011. Violations and Penalties

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. Except as otherwise provided in Section 1009(A), a person who owns, manages, operates, or otherwise controls a place of employment of public place and who fails to comply with the provisions of this Article shall be guilty of an infraction, 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 one (1) year.
 - 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a place of employment or public place may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- D. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the _____ [Department of Health or City Manager or County Administrator] by restraining order, preliminary and permanent injunction, or other means provided for by law, and the _____ [City or County] may take action to recover the costs of the nuisance abatement.
- E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 1012. Public Education

The _____ [Department of Health or City Manager or County Administrator] shall engage in a continuing program to explain and clarify the purposes and requirements of this Article 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 ordinance.

Sec. 1013. Governmental Agency Cooperation

The _____ [City Manager or County Administrator] shall annually request other governmental and educational agencies having property within the _____ [City or County] to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, _____ [County or City], and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Sec. 1014. Other Applicable Laws

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

Sec. 1015. Liberal Construction

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

Sec. 1016. Severability

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that 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.

Sec. 1017. Effective Date

This Article shall be effective thirty (30) days from and after the date of its adoption.

0618 [MO-05]

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