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MEMORANDUM

TO: Mayor and City Council

FROM: John M. Hessel

CC: Michael G. Brown
Betty Montaña
Chief Jack Plummer

DATE: November 5, 2009

RE: **Smoking Ban**

Since the Kirkwood Initiative Smoking Ban and the St. Louis County Smoking Ban were both approved by the voters, it is now necessary to compare and contrast the respective pieces of legislation for implementation within the City of Kirkwood. As we have discussed previously, the City of Kirkwood may have broader prohibitions against smoking than the prohibitions imposed within St. Louis County legislation. Therefore, the most restrictive regulations from the respective legislation should be enforced.

This memorandum will briefly discuss the similarities and differences between the Kirkwood Smoking Ban and the St. Louis County Smoking Ban:

1. **Effective Date:**

The Kirkwood Smoking Ban becomes effective within 60 days of its passage and therefore will become effective January 2, 2010. The St. Louis County Smoking Ban will not become effective until January 2, 2011.

2. **Regulated Areas:**

Both the Kirkwood Smoking Ban and the St. Louis County Smoking Ban prohibit smoking in all enclosed places of employment and in all enclosed public places. Both pieces of legislation then identify particular enclosed places, but the list is not all inclusive. The prohibition applies to the places on the list, but it is not limited to the delineated enclosed places. The only significant difference is that the St. Louis County Ordinance prohibits smoking on sidewalks, driveways and other open areas within 15 feet of the entry to any building owned or occupied by any governmental entity, and prohibits smoking within 15 feet of an entry to any building open to the public, but the entryway prohibition does not apply to outside dining areas where smoking is permitted or to entries that are located less than 50 feet from another public entry.

3. **Where Smoking is not Regulated:**

There are several differences between the Kirkwood Smoking Ban and the St. Louis County Smoking Ban with respect to the areas that are not regulated. They are as follows:

<u>St. Louis County</u>	<u>Kirkwood</u>
(a) Private residences, not serving as enclosed places of employment or enclosed public places.	(a) Private residences, except licensed child care facilities, adult day care facilities, health care facilities or enclosed places of employment.
(b) Private clubs which are defined to include paternal, social and congressionally chartered veterans organizations that restrict admissions to members of the club and their guests. However, the exemption from smoking does not apply when the private club is the sight of a meeting, event or activity that is open to the public.	(b) Membership associations that were in existence as of March 1, 2009 provided that all of the duties relating to the operation of the association are performed by members of the association or at least 18 years of age and do not receive compensation of any kind.
(c) Retail establishments in which food is not prepared and where more than 60 percent of the volume of trade or business is the sale of tobacco and tobacco-related products.	(c) Retail tobacco stores that derive more than 80 percent of their total gross revenues from the sale of tobacco or tobacco products.
(d) Cigar bars.	(d) No exemption.
(e) Drinking establishments which were licensed to sell intoxicating liquor whose on-sight sale of food for consumption of the premises comprises no more than 25 percent of the gross sales.	(e) No exemption.
(f) Outdoor dining areas for restaurants.	(f) Outdoor dining areas for restaurants.
(g) 20 percent of hotel and motel rooms permanently designated as smoking rooms.	(g) 20 percent of hotel and motel rooms permanently designated as smoking rooms.

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| (h) Private and semi-private rooms and nursing homes and long-term care facilities, the residents of which are all smokers and have all requested the management of the sale need to be placed in a room where smoking is permitted. | (h) No exemption. |
| (i) Casinos. | (i) Inapplicable. |
| (j) Airport. | (j) Inapplicable. |

4. **Responsibilities of Proprietors, Owners and Managers:**

The Kirkwood legislation and the St. Louis County legislation are consistent with respect to the obligations of the proprietors, owners and managers. In essence, it prohibits an owner, proprietor or manager from *knowingly* permitting a person to violate the prohibitions. However, they are not responsible if they have asked that the tobacco product be extinguished and asked the person to leave but they fail to do so. In addition, businesses must post “No Smoking” signs or the international “No Smoking” symbol near all entrances where smoking is prohibited.

The St. Louis County Smoking Ban requires all employers to supply a written copy of a smoking policy upon request to any existing or prospective employee. The Kirkwood legislation does not contain such a requirement.

I will continue to scrutinize the respective pieces of legislation as particular questions and issues arise with respect to specific businesses. In addition, as you can see from this summary, the only provision in the St. Louis County Ordinance that is more restrictive than the Kirkwood Ordinance is the prohibition against smoking on sidewalks near an entryway. I suggest that the City Council consider amending the Smoking Ban restrictions to incorporate this more restrictive provision from the St. Louis County Smoking Ban legislation into the Kirkwood Code of Ordinances. Obviously, this does not need to occur until January, 2011.

As always, if you have any questions, please do not hesitate to contact me.