

BILL 9992
ORDINANCE

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| Failed on 7/16/09 0 In Favor 6 Opposed Approved by Voters on 11/3/09 |
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AN ORDINANCE AMENDING CHAPTER 17, OF THE KIRKWOOD CODE OF ORDINANCES BY ADDING A NEW ARTICLE X. "CLEAN AIR ACT - SMOKING PROHIBITED" TO PROHIBIT SMOKING IN INDOOR WORKPLACES AND PUBLIC PLACES.

WHEREAS, pursuant to Section 8.2 of the City Charter, a group of registered voters commenced an initiative proceeding by forming a petitioner's committee and submitting initiative petitions signed by the appropriate number of registered voters within the City of Kirkwood; and

WHEREAS, the City Clerk has certified the appropriate number of required signatures; and

WHEREAS, pursuant to Section 8.6 of the City Charter, the City Council shall consider the proposed Initiative Ordinance and adopt such proposed Ordinance without any change in substance within sixty (60) days or shall submit the proposed Ordinance to a vote.

NOW, THEREFORE, BE IT ORDAINED BY THE PEOPLE OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. Chapter 17 of the Municipal Code of Ordinances is hereby amended by adding a new Article X. as follows:

ARTICLE X. - CLEAN AIR ACT - SMOKING PROHIBITED

Section 17-200 - Purpose

The purposes of this Article are (1) to promote public health by creating environments which reduce citizens' and workers' exposure to secondhand tobacco smoke and (2) to create tobacco smoke free environments for citizens and workers through regulation in public places and the workplace.

Section 17-201 - Definitions

A. The following words, terms and phrases, when used in this Article, shall be construed as defined in this Section:

1. "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.

2. "Code Enforcement Officer" means the Code Enforcement Officer of the City of Kirkwood, Missouri or his or her designee.

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

4. “*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.

5. “*Enclosed*” means a space bound on all sides by walls or windows continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, lobbies, 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 hallways.

6. “*Place of Employment*” means any enclosed area under the control of a 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 rooms 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.

7. “*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, laundering facilities, public transportation facilities, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms.

8. “*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 at no cost or 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. The term “restaurant” shall include an attached bar.

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

Section 17-202. Prohibition of Smoking in all Enclosed Places of Employment and all Enclosed public places.

A. Smoking shall be prohibited in all enclosed places of employment within the City of Kirkwood.

B. Smoking shall be prohibited in all enclosed public places within the City of Kirkwood, including but not limited to the following enclosed places:

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, child care and adult day care facilities, museums, auditoriums, aquariums and art galleries;
5. Any health care facility, health clinic 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 place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, bowling alley, arenas, health spas, swimming pools, and roller and ice skating rinks;
7. Any place used for exhibiting a motion picture, stage drama, lecture, musical recital, or other similar performance;
8. Shopping malls;
9. Bars;
10. Restaurants;
11. Convenience facilities;
12. All public areas and waiting rooms of public transportation facilities, including but not limited to bus and train facilities;
13. All facilities, buildings, and all vehicles owned, leased, or operated by the City of Kirkwood; and
14. Rooms in which meetings or hearings open to the public are held, except where such meetings or hearings are in a private residence.

Section 17-203 – Responsibilities of Proprietors, Owners and Managers.

A. A person who owns, manages, operates, or otherwise controls a place listed in Section 17-202 shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this Article in such place. It shall be an affirmative defense to an alleged violation of this Article that a person who owns, manages, operates, or otherwise controls a place listed in Section 17-202 has asked that the lighted cigarette, cigar, pipe or other tobacco product be extinguished or 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 who owns, manages, operates, or otherwise controls a place listed in Section 17-202 shall clearly and conspicuously post "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representations or a burning cigarette enclosed in a red circle with a red bar across it) near all entrances where smoking is prohibited by this Article.

Section 17-204 – Where Smoking is Not Regulated.

Notwithstanding any other provision of this Article to the contrary, smoking shall be permitted in any and all places not specified in Section 17-202. In particular, but not by limitation, the following shall not be subject to this Article.

A. Private residences, except when used as licensed child care facilities, adult day care facilities, health care facilities, or enclosed places of employment.

B. Private vehicles

C. Twenty percent (20%) of hotel and motel rooms may be permanently designated as smoking rooms.

D. Membership associations that were in existence as of March 1, 2009, provided, however, that smoking shall only be allowed in such associations wherein all duties related to the operation of such association, including, but not limited to, the preparation of food and beverages, the service of food and beverages, reception and secretarial work are performed by members of such association who are at least 18 years of age and who do not receive compensation of any kind for the performance of such duties.

E. Retail tobacco stores that derive more than eighty percent (80%) of their total gross revenue from the sale of loose tobacco, cigarettes, cigars, pipes, or other tobacco-related products, and which are not merely a department or subsection of a larger commercial establishment.

Section 17-205 – Penalty for Violation of this Article.

A. A person who smokes in an area where smoking is prohibited by this Article shall be guilty of an Article violation, punishable by a fine of twenty-five dollars (\$25.00) for the first violation, and fifty dollars (\$50.00) for each subsequent violation.

B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with this Article shall be guilty of an Article violation, punishable by:

1. A fine of fifty dollars (\$50.00) for the first violation;
2. A fine of one hundred dollars (\$100.00) for a second violation within a one (1) year period; and
3. A fine of two hundred dollars (\$200.00) for a third or subsequent violation within a one (1) year period.

C. Each day on which a violation of this Article occurs shall be a separate and distinct violation.

Section 17-206 – Other Applicable Laws.

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

Section 17-207 - Construction

This Article shall be strictly construed in any interpretation of its meaning. The provisions of this Article are severable. If any provision or its application to any person or circumstance is held invalid by a court of competent jurisdiction the remaining provisions shall continue in full force and effect.

Section 17-208 – Enforcement of Article.

A. The authority to administer the provisions of this Article is vested in the Code Enforcement Officer.

B. The Code Enforcement Officer 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 Kirkwood, Missouri.

D. Any person who desires to register a complaint under this Article may initiate enforcement with the Code Enforcement Officer.

SECTION 2. This Ordinance shall become effective sixty (60) days from and after the date of its passage and approval or 60 days after passage by a majority of the voters of Kirkwood.

PASSED AND APPROVED THIS

Mayor

ATTEST:

City Clerk
1st Reading:
2nd Reading: