

Americans for Nonsmokers' Rights

Helping you breathe a little easier

MODEL ORDINANCE ELIMINATING SMOKING IN ALL MUNICIPAL FACILITIES (100% SMOKEFREE)

Revised May 2004

Sec. 1000. Title

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

Sec. 1001. Findings and Intent

The _____ [City Council *or* Board of Supervisors] does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and 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 up to 65,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI)*, August 1999.)

The Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS), "Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens," *U.S. Department of Health and Human Services (DHHS), Public Health Service, National Toxicology Program*, 2000.)

A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smokefree workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sargent, Richard P.; Shepard, Robert M.; Glantz, Stanton A., "Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study," *British Medical Journal* 328: 977-980, April 24, 2004.)

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. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer. (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.)

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. (Daynard, R.A., "Environmental tobacco smoke and the Americans with Disabilities Act," *Nonsmokers' Voice* 15(1): 8-9.)

The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services. *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General*. Public Health Service, Centers for Disease Control, 1986.) The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke. (Environmental Protection Agency (EPA), "Indoor air facts no. 5: environmental tobacco smoke," *Washington, D.C.: Environmental Protection Agency (EPA)*, June 1989.)

The 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. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" *British Medical Journal* 328: 980-983, April 24, 2004.)

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled offices suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysoshoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

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. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)

Accordingly, the _____ [City Council *or* Board of Supervisors] finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in all public facilities in the _____ [City *or* County] of _____; 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:

1. "Dining Area" means any enclosed area containing a counter or tables upon which food or snacks are served.

2. “Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
3. “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.
4. “Enclosed” means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
5. “Health Care Facility” means an institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, nursing homes, homes for the aging or chronically ill, and laboratories. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
6. “Place of Employment” means an area under the control of a public employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles.
7. “Public Facility” means a building, including a part of a building, or vehicle owned, leased, or operated by the _____ [City or County] of _____.
8. “Service Line” means an indoor 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.
9. “Smoking” means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.
10. “Sports Arena” means sports pavilions, stadiums, 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 or other events.

Sec. 1003. Prohibition on Smoking in Public Facilities

Smoking shall be prohibited in all enclosed public facilities in the _____ [City or County] of _____. This prohibition shall apply to all areas in those facilities, whether used as a place of employment or as a place for the conduct of public business, and shall include, without limitation, the following places:

1. Aquariums, galleries, libraries, and museums.
2. Child care and adult day care facilities.

3. Convention facilities.
4. Dining areas.
5. Educational facilities.
6. Elevators.
7. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
8. Health care facilities.
9. Polling places.
10. Public transportation facilities, including buses and taxicabs, under the authority of the _____ [City *or* County] of _____, and ticket, boarding, and waiting areas of public transit depots.
11. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
12. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the _____ [City *or* County] or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the _____ [City *or* County].
13. Service lines.
14. Sports arenas, including enclosed places in outdoor arenas.

Sec. 1004. Reasonable Distance

Smoking is prohibited within a reasonable distance of 25 feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means.

Sec. 1005. Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Section 1003:

1. Private residences.
2. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.

Sec. 1006. Posting of Signs

- A. “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) shall be clearly and conspicuously posted in every public facility where smoking is prohibited by this Article, by the owner, operator, manager or other person in control of that facility.
- B. Every public facility where smoking is prohibited by this Article, including every dining area within such a facility, shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- C. All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager or other person having control of the area.

Sec. 1007. Nonretaliation

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.

Sec. 1008. Enforcement

- A. This Article shall be enforced by the _____ [Department of Health *or* City Manager *or* County Administrator] or an authorized designee.
- B. 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].
- C. An owner, manager, operator, or employee of a public facility regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.
- D. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.

Sec. 1009. 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. A person who owns, manages, operates, or otherwise controls a public facility 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. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 1010. 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 explaining the provisions of this ordinance.

Sec. 1011. Governmental Agency Cooperation

The _____ [City Manager *or* County Administrator] shall annually request other governmental and educational agencies having facilities 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. 1012. Other Applicable Laws

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

Sec. 1013. Liberal Construction

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

Sec. 1014. 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. 1015. Effective Date

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

[MO-03]

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