

ORDINANCE #68481
Board Bill No. 46
Floor Substitute

An ordinance relating to smoking; defining, applicability to city-owned facilities, prohibiting, regulating the act of smoking, where not regulating smoking, declaration of establishment as nonsmoking, posting of signs, nonretaliation and enforcement; and containing a penalty clause, severability clause, effective date and an elimination of exception..

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

WHEREAS, the St. Louis Board of Aldermen does hereby find that the protection of the public health in the City of St. Louis will be greatly enhanced by promoting a smoke free city through the elimination of the presence of secondhand smoke in public places and in the workplace; and

SECTION ONE. Title

This ordinance shall be known as the St. Louis City Smoke Free Air Act of 2009.

SECTION TWO. Definitions.

The following words and phrases, whenever used in this Ordinance, 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. "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 located in the City of St. Louis.
3. "Casino gaming area" means the area of a state-licensed gambling facility where gaming is allowed for those 21 years of age or older, including any VIP lounge, accessible only through the game floor, whether or not gaming is allowed in the VIP lounge.
3. "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.
4. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity located in the City of St. Louis that employs the services of one or more individual persons.
5. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
6. "Health Care Facility" means an office or 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, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
7. "Place of Employment" means an area under the control of a public or private employer in the City of St. Louis that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
8. "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic,

political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

9. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private club is a "public place" when being used for a function to which the general public is invited. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

10. "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. The term "restaurant" shall include a bar area within the restaurant.

11. "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.

12. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

13. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe in any manner or in any form.

14. "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 to engage in physical exercise, participate in athletic competition, or witness sports or other events.

15. "Retail Tobacco Store" means a retail store used primarily for the sale of smoking materials and where more than fifty percent (50%) of the volume of trade or business carried on is that of the blending of tobaccos or sales of tobaccos, cigarettes, pipes, cigars or smoking sundries and in which the sale of other products is incidental and where smoking is permitted within the public place.

SECTION THREE. Application of Ordinance to City-Owned Facilities.

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of St. Louis, shall be subject to the provisions of this Ordinance.

SECTION FOUR. Prohibitions of Smoking in Enclosed Public Places.

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

1. Aquariums, galleries, libraries, and museums.
2. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
3. Bars, except where smoking is not regulated as defined in Section Seven.
4. Bingo facilities.
5. Child care and adult day care facilities.
6. Convention facilities.

7. Educational facilities, both public and private.
8. Elevators.
9. Gaming facilities, except casino gaming areas as outlined in Section Seven.
10. Health care facilities.
11. Hotels and motels.
12. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
13. Polling places.
14. Private clubs when being used for a function to which the general public is invited.
15. Public transportation vehicles, including buses and taxicabs, under the authority of the City of St. Louis, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
16. Restaurants.
17. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
18. Retail stores.
19. 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 of St. Louis or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of St. Louis.
20. Service lines.
21. Shopping malls.
22. Sports arenas, including enclosed places in outdoor arenas.
23. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

SECTION FIVE. Prohibition of Smoking in Places of Employment

1. Smoking shall be prohibited in all enclosed facilities within places of employment in the City of St. Louis except where smoking is not regulated as defined in Section Seven. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
2. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Ordinance and to all prospective employees upon their application for employment.

SECTION SIX. Prohibition of Smoking in Enclosed Residential Facilities

Smoking shall be prohibited in the following enclosed residential facilities:

1. All private and semi-private rooms in nursing homes.
2. At least eighty percent (80%) of hotel and motel rooms that are rented to guests.

SECTION SEVEN. Where Smoking Not Regulated

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Sections Four and Five:

1. Private residences, except when used as a licensed childcare, licensed adult day care, or licensed health care facility.
2. Not more than twenty percent (20%) of hotel and motel rooms rented to guests and designated as smoking rooms. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
3. Private clubs that have no employees, except when being used for a function to which the general public is invited; provided that smoke from such clubs does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this Ordinance.
4. Outdoor areas of places of employment.
5. Tobacco retail stores as defined by this Ordinance.
6. Casino gaming areas as defined by this Ordinance.
7. Bars in existence on the effective date of this ordinance in which only persons aged twenty one (21) years old or older are permitted to enter the premises, the square footage of the entire floor area of the level of the building on which the bar establishment is located is two thousand (2000) square feet or less. The square footage shall not include kitchen areas, storage areas and bathrooms. The bar shall prominently displays outside of the premises at each entrance and above the bar the following sign in lettering that is black bold Arial font at (ninety-eight) 98 point size: "WARNING : SMOKING ALLOWED HERE". This exemption for bars shall expire five (5) years after the effective date of this ordinance.

SECTION EIGHT. Declaration of Establishment as Nonsmoking

Notwithstanding any other provision of this Ordinance, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section Nine is posted.

SECTION NINE. Posting of Signs

1. "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 place and place of employment where smoking is prohibited by this Ordinance, by the owner, operator, manager, or other person in control of that place.
2. Every public place and place of employment where smoking is prohibited by this Ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. Every vehicle that constitutes a place of employment under this Ordinance shall have at least one conspicuous sign, visible from the exterior of the vehicle, clearly stating that smoking is prohibited.
3. All ashtrays shall be removed from any area where smoking is prohibited by this Ordinance by the owner, operator, manager, or other person having control of the area.

SECTION TEN. Nonretaliation; Nonwaiver of Rights

1. 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 Ordinance or reports or attempts to prosecute a violation of this Ordinance. Violation of this Section shall be a misdemeanor, punishable by a fine not to exceed \$500 for each violation.

2. 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.

SECTION ELEVEN. Enforcement

1. This Ordinance shall be enforced by the Department of Health or an authorized designee.
2. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City of St. Louis.
3. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the Department of Health.
4. The Health Department, Fire Department, or Building Division or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.
5. An owner, manager, operator, or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.
6. Notwithstanding any other provision of this Ordinance, an employee or private citizen may bring legal action to enforce this Ordinance.
7. In addition to the remedies provided by the provisions of this Section, the Department of Health 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 Ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

SECTION TWELVE. Penalty for Violation.

1. A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
2. Except as otherwise provided in Section Ten (1), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Ordinance shall be guilty of an infraction, punishable by:
 - A. A fine not exceeding one hundred dollars (\$100) for a first violation.
 - B. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
 - C. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
3. In addition to the fines established by this Ordinance, violation of this Ordinance by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
4. Violation of this Ordinance is hereby declared to be a public nuisance, which may be abated by the Department of Health by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.
5. Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

SECTION THIRTEEN. Other Applicable Laws

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

SECTION FOURTEEN. Severability Clause.

The sections, conditions, and provisions of this Ordinance or portions thereof shall be severable. If any section, condition, or

provision of this Ordinance or portion thereof contained herein is held invalid by the court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions of this Ordinance.

SECTION FIFTEEN. Effective Date

This Ordinance shall be effective on such date that the Saint Louis County enacts Smoke Free Air legislation, or on January 1, 2011, whichever date is later.

SECTION SIXTEEN. Elimination of Exemption.

In the event that St. Louis County, and St. Charles County or the City of St. Charles, or the State of Missouri pass ordinances prohibiting smoking in casino gaming areas, the exemption to the smoking regulation contained in Section Seven herein shall be rescinded. Provided, however, that if and when smoking is allowed in casino gaming areas in either Madison or St. Clair Counties, in Illinois, the exemption to the smoking regulation contained in Section Seven herein shall be allowed.

Approved: November 9, 2009