

ORDINANCE NO: _____

AN ORDINANCE AMENDING CHAPTER 17 OF THE CODE OF ORDINANCES OF THE CITY OF MANHATTAN, KANSAS, BY ADDING NEW ARTICLE III; ELIMINATING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT WITHIN THE CITY OF MANHATTAN.

WHEREAS, 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; (5) establishing smoke free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smoke free policies and laws do not have an adverse economic impact on the hospitality industry (U.S. Department of Health and Human Services, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006); and,

WHEREAS, numerous studies have determined that secondhand smoke is a significant source of toxic air indoor contaminants, causally associated with respiratory illnesses, including lung cancer, asthma, and emphysema (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 9NCI*, August 1999); and,

WHEREAS, there is scientific research linking secondhand smoke with heart disease, responsible for an estimated 35,000 coronary heart disease deaths annually among adult nonsmokers in the United States as a result of secondhand smoke exposure (Steenland, K.: "Passive smoking and the risk of heart disease." *JAMA*. 1992;267:94-99; 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 9NCI*, August 1999); and,

WHEREAS, secondhand smoke carcinogens and poisons pose special risk to children, the elderly, food service employees, and individuals with cardiovascular disease and/or impaired respiratory function including asthmatics and those with obstructive airway disease (California Environmental Protection Agency (Cal EPA), "Health Effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997); and,

WHEREAS, secondhand smoke exposure has been causally associated with developmental, respiratory, carcinogenic, and cardiovascular effects including fatal outcomes

such as sudden infant death syndrome (California Air Resources Board, "Proposed identification of environmental tobacco smoke as a toxic air contaminant," *Sacramento: California Environmental Protection Agency (Cal-EPA), Air Resources Board, Stationary Source Division, Air Quality Measures Branch, Office of Environmental Health Hazard Assessment (OEHHA)*, September 29, 2005); and,

WHEREAS, the Center for Disease Control (CDC) reports that tobacco use is the single largest cause of preventable death in Kansas, and according to the CDC's Tobacco Control State Highlights 2002, tobacco use was responsible for an estimated 3,800 deaths in Kansas in 1999, or 16% of the total deaths in Kansas in 1999, and the CDC estimates that between 330 and 590 Kansans die every year from exposure to secondhand smoke; and,

WHEREAS, nearly one in five Kansans report they have no protection from exposure to secondhand smoke while at work, particularly in restaurant and bar venues (Kansas Adult Tobacco Survey 2002-2003, Kansas Department of Health and Environment, Office of Health Promotion); and,

WHEREAS, the Surgeon General has determined that the separation of smokers from nonsmokers within the same airspace does not eliminate the exposure of nonsmokers to secondhand smoke, given that no safe level of exposure to secondhand smoke has been found (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); and,

WHEREAS, the City recognizes that secondhand smoke poses a serious public health hazard, that nonsmokers need protection from secondhand smoke exposure, and that prohibiting the burning of tobacco in public places and places of employment is imperative to (1) improve and protect the public health and welfare of the citizens of the City of Manhattan; and (2) to guarantee the right of nonsmokers to breathe smoke free air, and (3) to recognize that the need to breathe smoke free air shall have priority over the desire or need of those to smoke.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS:

Section 1: That Chapter 17 of the Code of Ordinances of the City of Manhattan, Kansas, is hereby amended by adding new Article III, which reads as follows:

ARTICLE III

Sec. 17-17. Purpose

The purpose of this article is to (1) improve and protect the public's health by eliminating smoking in public places of employment; (2) guarantee the right of nonsmokers to breathe smoke-free air; and (3) recognize that the need to breath smoke-free air shall have priority over the choice to smoke.

Sec. 17-18. Definitions.

The following words and phrases, when used in this article, shall have the following meanings:

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 provided; including professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

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.

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.

Enclosed Area means all space in a business or place of employment between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of door or passage ways), which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling.

Food Service Establishment means any place required to have a Kansas Food Service License, or a license from the City or other governmental entity, and in which food is served or is prepared for sale or service on the premises or elsewhere required to have a license from the City. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order café, luncheonette, grill, tea room, sandwich shop, soda fountain, roadside kitchen, commissary, caterer and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge. The term "restaurant" shall include a bar area within the restaurant.

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, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, 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.

Licensed Premises means any premises where alcoholic liquor or cereal malt beverage, or both, is served or provided for consumption or use on the premises with or without charge. Such term shall include, but is not limited to bars, cabarets, nightclubs, drinking establishments, taverns, Class A private clubs, Class B private clubs, and cereal malt beverage retailers, all as defined by K.S.A. Chapter 41, and amendments thereto, and Chapter 4 of this Code.

Outdoor Public Event means an annual or regular celebration, display, performance, ceremony, concert, show, exhibition, play, presentation or similar activity to which the public is invited or in which the public is permitted involving a defined beginning and

ending time held on outdoor public property or in the case of parades, runs, fund-raising walks, or marches on City sidewalks or roadways.

Place of Employment means an enclosed area under the control of a public or private 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. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility required to be licensed by the state.

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.

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, health care facilities, hotel and motel lobbies, laundromats, public transportation 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 required to be licensed by the state.

Retail Tobacco Store means a free standing retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. The monthly sales revenue from tobacco products must be greater than 75% of total sales revenue for that retail tobacco store.

Service Line means any indoor or outdoor line during 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.

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

Smoke (smoking) means to inhale, exhale, burn, or possess any lighted or heated cigar, cigarette, pipe, bidi, hookah or other lighted tobacco product in any manner or in any form.

Sports Arena means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, billiard and bingo facilities 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.

Sporting Event means any organized athletic activity requiring skill or physical prowess and often of a competitive nature including but not limited to racing, baseball, softball, tennis, golf, bowling, fishing, etc. for members of the general public or a particular group.

Sec. 17-19. Application of article to city-owned facilities.

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

Sec. 17-20. Prohibition of smoking in public places and places of employment.

- (1) It shall be unlawful for any person to smoke in a public place or place of employment.
- (2) It shall be unlawful for any person who owns, manages, operates or otherwise controls any premises subject to regulation under this article to permit or allow smoking to occur in a public place or place of employment. There shall be a rebuttable presumption that any person smoking where prohibited has been permitted and allowed to do so by the owner, manager, operator or person otherwise in control of the public place or place of employment.
- (3) The provisions in this section prohibiting smoking in public places and places of employment, as defined by this article, shall apply but not be limited to the following public places and places of employment;
 - (a) Galleries, libraries, museums, and grounds.
 - (b) Food service establishments and licensed premises, including areas of a food service establishment or licensed premises that are not enclosed such as patios, outdoor dining areas, and courtyards.
 - (c) Convention facilities.
 - (d) Bingo Facilities.
 - (e) Educational facilities, both public and private.
 - (f) Elevators.
 - (g) Gaming facilities.
 - (h) Laundromats.
 - (i) Any facility which is primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
 - (j) Health care facilities, including but not limited to hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
 - (k) Hotels and motels.
 - (l) Licensed child care and adult day care facilities.
 - (m) Lobbies, hallways, and other common areas in hotels, motels, apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
 - (n) Polling places.
 - (o) Private clubs and fraternal organization facilities.
 - (p) Public and private means of transportation and transportation facilities including but not limited to buses, bus terminals, taxicabs, train stations, and airports, as well as ticket, boarding, and waiting areas of public transit depots.

- (q) Restrooms, lobbies, reception areas, waiting areas, hallways, and all areas available to and commonly used by the general public in public places and places of employment.
- (r) Retail stores and retail service establishments.
- (s) Every room, chamber, place of meeting or public assembly, including school buildings, under the control of any agency, board, council, commission, committee, including joint committee, or agencies of the City of Manhattan or a political subdivision of the State.
- (t) Service lines.
- (u) Shopping malls.
- (v) Retail tobacco stores.
- (w) Sports arenas, including enclosed places and seating areas of all outdoor arenas, stadiums, amphitheatres and convention halls, including billiard parlors and bowling facilities.

Sec. 17-21. Duties of proprietors.

- (1) The owner, operator, manager, or other person in control of a public place or place of employment shall clearly and conspicuously post and maintain in areas where the public is allowed and areas where employees are allowed signs that clearly and conspicuously state that smoking is prohibited. Such “no smoking” signs shall have bold lettering of not less than one (1) inch in height, and/or shall contain the international “No Smoking” symbol (a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it) at all entrances. Every vehicle that constitutes a place of employment under this article shall have at least one conspicuous sign, visible from the exterior of the vehicle, clearly stating that smoking is prohibited.
- (2) No owner, operator, manager, or other person in control of a public place or place of employment shall place or maintain any ashtrays in any area in which smoking is prohibited by this article.
- (3) The owner, manager, operator, or employee of an establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof.
- (4) 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. 17-22. Prohibition of smoking in seating areas at outdoor events.

Smoking shall be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheatres, as well as in bleachers, grandstands, picnic areas, playgrounds, and other seating areas for use by spectators at sporting and other outdoor public events.

Sec. 17-23. Reasonable Distance

Smoking is prohibited within a reasonable distance of 20 feet outside of an entrance to an enclosed area where smoking is prohibited, so as to ensure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means.

Sec. 17-24. Where smoking is not regulated.

Notwithstanding any other provision of this article, private residences, except those used as a licensed child care, adult day care, or health care facility shall not be subject to the smoking restrictions of this article.

Sec. 17-25. Declaration of establishment as nonsmoking.

Notwithstanding any other provision of this article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor place of employment may declare that smoking is prohibited throughout the entire establishment, facility, or outdoor place of employment consistent with Sec. 17-20(1) and shall be subject to the duties as described in Sec. 17-21(2), Sec. 17-21(3), and Sec. 17-21(4).

Sec. 17-26. 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 article or reports or attempts to prosecute a violation of this article.
- (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.

Sec. 17-27. Public health education: city-county health department.

The Manhattan-Riley County Health Department 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 article. How and when the Health Department conducts this program shall not in any way excuse, lessen, or otherwise qualify any person's duty to act in accordance with this article.

Sec. 17-28. Enforcement, violations and penalties.

- (1) The Manhattan Fire Department and Riley County Police Department shall enforce compliance with this article.
- (2) A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of a misdemeanor, punishable by:
 - (a) A fine of no less than fifty dollars (\$50.00) for a first violation.
 - (b) A fine of no less than one hundred dollars (\$100) for a second violation within a one (1) year period of the first violation.

- (c) A fine of no less than two hundred dollars (\$200) for a third or subsequent violation within a one (1) year period of the first violation.
- (3) 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 article shall be guilty of a misdemeanor, punishable by:
 - (a) A fine of no less than one hundred dollars (\$100) for a first violation.
 - (b) A fine of no less than two hundred dollars (\$200) for a second violation within a one (1) year period of the first violation.
 - (c) A fine of no less than five hundred dollars (\$500) for a third or subsequent violation within a one (1) year period of the first violation.
- (4) In addition to the fines established by this section, violation of this article 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.
- (5) Violation of this article is hereby declared to be a public nuisance, which may be abated by the city manager by restraining order, preliminary and permanent injunction, or other means provided for by law, against the proprietor of the public place or place of employment, and the city may take action to recover the costs of the nuisance abatement.
- (6) Each day on which a violation of this article occurs shall be considered a separate and distinct violation.

Sec. 17-29. Other applicable laws.

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

Sec. 17-30. Liberal construction.

This article shall be liberally construed so as to further its purpose of protecting public health.

Sec. 17-31. 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.

Section 2: This article shall be effective sixty (60) days from and after the date of its adoption.

**PASSED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS,
THIS ____ DAY OF _____, 2008.**

CITY OF MANHATTAN:

Mark Hatesohl, MAYOR

ATTEST:

GARY S. FEES, City Clerk