

ORDINANCE NO. 16526

**AN ORDINANCE REGULATING INDOOR AIR IN ALL
WORKPLACES AND PUBLIC PLACES IN THE CITY OF
INDEPENDENCE, MISSOURI; REPEALING ARTICLE 2 OF
CHAPTER 11 OF THE CITY CODE, AND ENACTING IN
LIEU THEREOF A NEW ARTICLE 2 OF CHAPTER 11 OF
THE CITY CODE, SECTIONS 11.02.001 THROUGH 11.02.020,
TO BE DESIGNATED THE
INDEPENDENCE CLEAN INDOOR AIR ACT OF 2006**

WHEREAS, an Initiative Petition has been filed with the City Clerk and duly certified as sufficient by the Jackson County Board of Election Commissioners, petitioning the City Council to submit to the registered qualified voters of the City of Independence, Missouri, the ordinance providing clean indoor air in all workplaces and public places in the City of Independence, Missouri.

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

Section 1. That Article 2 of Chapter 11 of the City Code be repealed in its entirety and a new Article 2 of Chapter 11 be hereby enacted in lieu thereof as follows:

Sec. 11.02.001 Title

This Article shall be known as the Independence Clean Indoor Air Act of 2006.

Sec. 11.02.002 Findings and Intent

Upon study and noting the recommendation of local physicians, dentists and health care professionals, it is hereby found 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 smokers and healthy nonsmokers alike, 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 at least 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 Class "A" (the deadliest) 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.*)

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 infection, 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 odors, but does not eliminate the exposure of nonsmokers to dangerous 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 in any enclosed space 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.

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in businesses where smoking is permitted 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.; Chrysohoou, 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.)

Workplaces where smoking is permitted incur higher rates of 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.)

Anecdotal reports notwithstanding, numerous economic statistical analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke free. Creation of clean indoor air workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L. The effect of ordinances requiring smoke free restaurants on restaurant sales in the United States. *American Journal of Public Health*, 87:1687-1693,1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," *GPI Atlantic*, September 2001.)

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. ("The high price of cigarette smoking," *Business & Health* 15(8), *Supplement A*: 6-9, August 1997.)

Accordingly, it is declared that the intent and purposes of this ordinance are (1) to protect the public health and welfare by ensuring clean air in public places and places of employment; and (2) to guarantee the right of nonsmokers and all of its citizens to breathe clean indoor air and to recognize that such need shall have priority over the desire of others to smoke.

Sec. 11.02.003 Definitions

The following words and phrases, whenever used in this Article, shall be as defined as follows:

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, and which hold one of the following liquor licenses: (i) retailer of non-intoxicating beer by the drink; (ii) retailer of malt liquor and light wine by the drink; or (iii) retailer of intoxicating liquor by the drink.
2. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
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 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 walls or windows (exclusive of doorways).
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, homes for the aging or chronically ill, laboratories, and offices of physicians, chiropractors, physical therapists, 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 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.

8. "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, laundromats, public transportation facilities, reception areas, restaurants, casinos, food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

9. "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.

10. "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.

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

12. "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.

13. "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.

Sec. 11.02.004 Application of this Article to City-Owned Facilities

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of Independence shall be subject to the provisions of this Article, except for certain areas of fire stations as defined by City written policy.

Sec. 11.02.005 Prohibition of Smoking in Public Places

Smoking shall be prohibited in all enclosed public places within the City of Independence, 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, professional offices, banks, laundromats, hotels, and motels.
3. Bars.
4. Bingo facilities.
5. Convention 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. Licensed child care and adult day care facilities.
10. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
11. Polling places.
12. Public transportation facilities, including buses and taxicabs, under the authority of the City of Independence and ticketing, boarding, and waiting areas of public transit depots.
13. Restaurants.
14. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
15. Retail stores.
16. 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 Independence or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the City of Independence.
17. Service lines.
18. Shopping malls.
19. Sports arenas, including enclosed places in outdoor arenas.
20. Private clubs
21. Pool Halls and Billiard Parlors

Sec. 11.02.006 Prohibition of Smoking in Places of Employment

A. Smoking shall be prohibited in all enclosed facilities within places of employment without exception.

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.

B. 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. 11.02.007 Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 11.02.005 and 11.02.006:

1. Private residences, except when used as a licensed child care, adult day care, or health care facility.
2. Private vehicles.
3. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated.
4. 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 to the management thereof in writing to be placed in a room where smoking is permitted.
5. Outdoor areas of places of employment.

Sec. 11.02.008 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 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 11.02.010 is posted.

Sec. 11.02.09 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 place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.
- B. Every public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- C. All ashtrays and other smoking paraphernalia 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. 11.02.010 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. 11.02.011 Enforcement

- A. This Article shall be enforced by the City Manager or an authorized designee.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in this City.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the City Manager or an authorized designee.
- D. While an establishment is undergoing otherwise mandated inspections, the City Manager or an authorized designee shall inspect the premises for compliance with this Article.
- E. An owner, manager, operator, or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.
- F. In addition to the remedies provided by the provisions of this Section, the City Manager or an authorized designee 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 Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 11.02.012 Violations and Penalties

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article, upon being advised that smoking is prohibited and refuses to comply, shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50) for each infraction.
- B. 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 or fails to notify any person or persons who are in violation of this ordinance 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 a third violation within one (1) year and for any additional violations during the year.
- C. 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 by the City for the premises on which the violation occurred.
- D. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 11.02.013 Public Education

The City Manager or an authorized designee shall establish a 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 ordinance.

Sec. 11.02.014 Governmental Agency Cooperation

The City Manager shall request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, City, County and School District agencies to update their existing smoking control regulations to be consistent with this ordinance.

Section 11.02.015 Other Applicable Laws

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

Sec. 11.02.016 Liberal Construction

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

Sec. 11.02.017 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. 11.02.018 Effective Date

This Article shall be effective one hundred and twenty (120) days from and after the date of its adoption.

THE VOTERS AT THE ELECTION OF NOVEMBER 7, 2006, APPROVED THIS ORDINANCE THAT HAD BEEN PRESENTED AS AN INITIATIVE PETITION AND WAS PRESENTED, AS REQUIRED, TO THE VOTERS AS EXHIBIT A TO ORDINANCE NO. 16400.

THE RESULTS OF THE ELECTION (25,152 YES AND 14,196 NO) WERE CERTIFIED BY THE JACKSON COUNTY BOARD OF ELECTION COMMISSIONERS ON NOVEMBER 17, 2006. THE CITY CLERK LIKEWISE CERTIFIED THESE RESULTS ON NOVEMBER 17, 2006.

THE EFFECTIVE DATE OF THIS ORDINANCE WILL BE MARCH 17, 2007.

/s/ Bruce Lowrey
City Clerk