

AN ORDINANCE AMENDING CHAPTER 17, OFFENSES, OF THE CODE OF ORDINANCES OF THE CITY OF LEE'S SUMMIT, MISSOURI, PROVIDING FOR CLEAN INDOOR AIR IN WORKPLACES AND PUBLIC PLACES IN THE CITY OF LEE'S SUMMIT, MISSOURI, WITH CERTAIN EXCEPTIONS; REPEALING SECTIONS 17-5 AND 17-6 OF ARTICLE I OF CHAPTER 17 OF THE CITY CODE, AND ENACTING IN LIEU THEREOF A NEW ARTICLE X OF CHAPTER 17 OF THE CITY CODE, SECTIONS 17-301 THROUGH 17-319

WHEREAS, 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, and 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); and,

WHEREAS, the Public Health Service's National Toxicology Program (NTP) 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, NTP, 2000); and,

WHEREAS, 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, and 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); and,

WHEREAS, 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); and,

WHEREAS, 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), and the Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in any enclosed space by high rates of ventilation, and 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); and,

WHEREAS, the US Surgeon General finds that secondhand smoke causes premature death and disease in children and in adults who do not smoke; and,

WHEREAS, the US Surgeon General finds that exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes a 25 to 30 percent increase in the risk of coronary heart disease in nonsmokers; and,

WHEREAS, the US Surgeon General finds that there is a causal relationship between secondhand smoke exposure and lung cancer among lifetime nonsmokers regardless of the location of secondhand smoke exposure; and,

WHEREAS, the US Surgeon General finds that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to secondhand smoke (U.S. Department of Health and Human Services. "The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General" US Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006); and,

WHEREAS, smoking is a potential cause of fires, and 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).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows.

Section 1. That Sections 17-5 and 17-6 of Article I of Chapter 17 of the City Code be repealed and a new Article X of Chapter 17 be hereby enacted in lieu thereof as follows:

Sec. 17-301 Title

This Article shall be known as the Clean Indoor Air Act of 2006, which shall be shown in the Index to the Code of Ordinances as CLEAN INDOOR AIR.

Sec. 17-302 Inclusion in the Code of Ordinances

It is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances for the City of Lee's Summit, Missouri.

Sec. 17-303 Definitions

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

A. "Bar" means any licensed establishment which serves liquor on the premises for which not more than ten percent of the gross sales receipts of the business are supplied by food purchases, whether for consumption on the premises or elsewhere.

B. "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.

C. "Employee" means any person who performs services for an employer, with or without compensation.

D. "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.

E. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by walls or windows (exclusive of doorways).

F. "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.

G. "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 licensed child care, licensed adult day care, or licensed health care facility.

H. "*Private club*" shall mean a not-for-profit organization incorporated under the laws of the State of Missouri for fraternal or social purposes or for a congressionally chartered veterans' organization, which has a defined membership and restricts admission to members of the club and their guests. Private club shall not include an establishment that is open to members of the general public upon payment of a nominal fee. A private club shall not be considered a "public place" except when it is the site of a meeting, event or activity that is open to the public. In addition, a "private club" must meet the following requirements:

1. The establishment must have a defined membership. This means:

a. it must have a written definition and description of its membership policies, including a description of eligibility for membership, and must administer its membership system consistent with those policies;

b. it must structure its memberships so as to provide for membership status to be ongoing for a period of no less than one year, as opposed to onetime, weekly or incidental memberships; and

c. it must maintain a written list of current members.

2. The establishment must charge a fee for membership in an amount intended to defray the ongoing cost of providing services to members (not a "cover charge")

intended to pay for a single night or week's entertainment). Continued and ongoing payment of the membership fee must be required in order to maintain membership.

3. The establishment must restrict admission to its premises to only members and a limited number of invited guests who are accompanied by members. The establishment must not be open to the general public, although infrequent, occasional public functions may be permissible so long as they constitute an insignificant proportion of the establishment's operation and so long as smoking is prohibited during any such public function.

4. The organization cannot restrict its membership on the basis of race, color, creed, religion or national origin. Any private club's exemption from the smoke-free provisions of this Article does not apply when such organization is established to avoid compliance with this Article.

5. The organization is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose. No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wage fixed and voted upon each year by the governing body.

I. "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 licensed child care, licensed adult day care, or licensed health care facility.

J. "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.

K. "Retail tobacco store" means a retail store used primarily for the sale of smoking materials and smoking accessories in which the sale of other products is incidental and where smoking is permitted within the Public Place. "Retail tobacco store" does not include a tobacco department of a larger commercial establishment such as a department store, discount store, or bar or retail stores used primarily for the sale of smoking materials where no provisions for smoking within the Public Place are provided or permitted.

L. "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.

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

N. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other tobacco product.

O. "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. 17-304 Application of this Article to City-Owned Facilities

All enclosed facilities, including buildings owned, or operated by the City of Lee's Summit shall be subject to the provisions of this Article.

Sec. 17-305 Prohibition of Smoking in Public Places

Smoking shall be prohibited in all enclosed public places within the City of Lee's Summit, including but not limited to the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. 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.
- C. Bars.
- D. Bingo facilities.
- E. Convention facilities.
- F. Elevators.
- G. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- H. Health care facilities.
- I. Licensed child care and adult day care facilities.
- J. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- K. Polling places.
- L. Public transportation facilities, including buses and taxicabs under the authority of the City of Lee's Summit, and ticketing, boarding, and waiting areas of public transit depots.
- M. Restaurants.
- N. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- O. Retail stores.

P. 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 Lee's Summit 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 Lee's Summit.

Q. Service lines.

R. Shopping malls.

S. Sports arenas, including enclosed places in outdoor arenas.

T. Pool Halls and Billiard Parlors

U. Subdivision Homeowners' Association facilities

Sec. 17-306 Prohibition of Smoking in Places of Employment

Smoking shall be prohibited in all enclosed facilities within places of employment. 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. Smoking is not prohibited in vehicles if occupied exclusively by the driver, or if all passenger(s) are smokers who consent. Smoking is not prohibited in the place of employment of a sole proprietor with no other employee(s) or in a place of employment of any individual who is the sole employee at a facility to which the public is not invited nor in which the public is permitted, provided such place of employment is located in a freestanding structure occupied solely by the business or (i) is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above, (ii) complies with all applicable fire and building code requirements; and (iii) has a separate ventilation system whereby the air from such space is immediately exhausted to an outdoor area rather than being recirculated inside, and is negatively pressurized to prevent back streaming of second-hand smoke into adjoining areas located in a freestanding structure.

Sec. 17-307 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 17-305 and 17-306:

A. Private residences, except when used as a licensed child care, licensed adult day care, or licensed health care facility.

B. Private vehicles.

C. 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.

D. 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.

E. Outdoor areas of places of employment.

F. Retail tobacco stores as defined in Section 17-303 of this Article in operation prior to the effective date of this ordinance. Any new retail tobacco store or any existing retail tobacco store that relocates to another site may only qualify for this exemption if either (a) it is located in a freestanding structure occupied solely by the business or (b) it (i) is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above; (ii) complies with all applicable fire and building code requirements; and (iii) has a separate ventilation system whereby the air from such space is immediately exhausted to an outdoor area rather than being recirculated inside, and is negatively pressurized to prevent back streaming of second-hand smoke into adjoining areas located in a freestanding structure, and (c) it has posted at every entrance signage at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one inch in height clearly stating

"WARNING!

Secondhand smoke causes coronary heart disease, lung cancer and premature death, according to the Surgeon General of the United States."

Retail tobacco stores as defined in Section 17-303 of this Article in operation prior to the effective date of this ordinance shall, however, also be required to post the foregoing-described signage at every entrance at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one inch in height in order to remain exempt under this section.

G. Private clubs as defined in Section 17-303 of this Article. A private club may only qualify for this exemption if either (a) it is located in a freestanding structure occupied solely by the private club and throughout which entire premises smoking is permitted or (b) it (i) is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above; (ii) complies with all applicable fire and building code requirements; and (iii) has a separate ventilation system whereby the air from such space is immediately exhausted to an outdoor area rather than being recirculated inside, and is negatively pressurized to prevent back streaming of second-hand smoke into adjoining areas located in a freestanding structure, and (c) it has posted at every entrance signage at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one inch in height clearly stating

"WARNING!

Secondhand smoke causes coronary heart disease, lung cancer and premature death, according to the Surgeon General of the United States."

H. Restaurants as defined in Section 17-303 of this Article which have been previously qualified and designated as Smoking Restricted Establishments pursuant to Section 17.6 of the City Code, prior to the passage of this Article. This exemption shall sunset on the 7th anniversary of the effective date of this Article. A restaurant may only qualify for this exemption if it has posted at every entrance signage at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one inch in height clearly stating

"THIS IS A SMOKE-RESTRICTED ESTABLISHMENT.

Smoking is permitted only in certain separately ventilated and designated areas. Secondhand tobacco smoke is not circulated to nonsmoking areas. (Pursuant to LSCO Section 17-307)."

And only if it has posted at every entrance to the area where smoking is permitted signage at a height and location conspicuous to persons entering the area, with primary lettering of not less than one inch in height clearly stating

"WARNING!

Secondhand smoke causes coronary heart disease, lung cancer and premature death, according to the Surgeon General of the United States."

I. Bars as defined in Section 17-303 of this Article. A bar may only qualify for this exemption if it does not allow admission to any person under the age of 21 and either (a) it is located in a freestanding structure occupied solely by the business or (b) (i) is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above; (ii) complies with all applicable fire and building code requirements; and (iii) has a separate ventilation system whereby the air from such space is immediately exhausted to an outdoor area rather than being recirculated inside, and is negatively pressurized to prevent back streaming of second-hand smoke into adjoining areas located in a freestanding structure, and (c) it has posted at every entrance signage at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one inch in height clearly stating

"WARNING!

Secondhand smoke causes coronary heart disease, lung cancer and premature death, according to the Surgeon General of the United States."

Sec. 17-308 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 17-309 is posted.

Sec. 17-309 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 at 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 receptacles 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. 17-310 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 files a complaint or reports a violation of this Article.

Sec. 17-311 Enforcement

A. Any person who desires to register a complaint under this Article may do so with the City Administrator or an authorized designee.

B. In addition to the remedies provided by the laws of the State of Missouri, and the provisions of this Section, the City Administrator 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 the provisions of this Article in any court of competent jurisdiction.

Sec. 17-312 Violations and Penalties

A. A person who violates this ordinance by smoking 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) 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 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. 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 the business license issued to conduct business at the premises pursuant to Section 28-41 of the Lee's Summit Code of Ordinances.

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

Sec. 17-313 Public Education

The City Administrator or an authorized designee may 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 ordinance.

Sec. 17-314 Governmental Agency Cooperation

The City Administrator or an authorized designee may 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 17-315 Other Applicable Laws

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

Sec. 17-316 Liberal Construction

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

Sec. 17-317 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. 17-318 Effective Date

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

Sec. 17-319 Revocation of previous ordinance(s).

Upon the effective date of this Article as defined in Sec. 17-318, above, all prior ordinances in conflict herewith, specifically Sec. 17-5 and Sec. 17-6 of the City Code, pertaining to smoking in public places shall be repealed.

PASSED THIS 10th DAY OF August, 2006, BY THE CITY COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI.

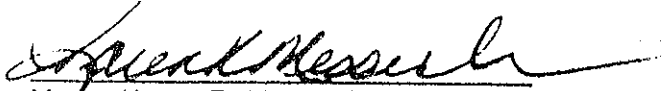
ATTEST:

Denise R. Chisum
City Clerk Denise R. Chisum

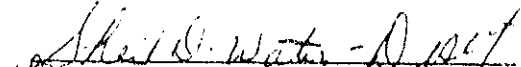
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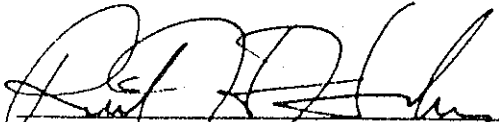
APPROVED by the Mayor of said city this 10th day of August, 2006.


Mayor Karen R. Messerli

ATTEST:


City Clerk Denise R. Chisum

APPROVED AS TO FORM:


City Attorney Robert H. Handley