

## **BILL NO. 23-019**

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AN ORDINANCE AMENDING ARTICLE X. CLEAN INDOOR AIR AND ARTICLE XI. VAPOR PRODUCTS BOTH OF CHAPTER 17. OFFENSES. OF THE CODE OF ORDINANCES OF THE CITY OF LEE'S SUMMIT, MISSOURI DEALING GENERALLY WITH MODIFYING THE CODE OF ORDINANCES TO PROVIDE FOR ADULT USE MARIJUANA REGULATION.

NOW, THEREFORE, be it ordained by the City Council of the City of Lee's Summit, Missouri, as follows:

SECTION 1. That Article X. Clean Indoor Air of Chapter 17. Offenses of the Code of Ordinances of the City of Lee's Summit, Missouri be and hereby is amended to read as follows:

"Sec. 17-301. Title.

This article shall be known as the Clean Indoor Air Act of 2006, as amended 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 article 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:

*Bar* means any licensed establishment which serves liquor on the premises for which not more than ten (10) percent of the gross sales receipts of the business are supplied by food purchases, whether for consumption on the premises or elsewhere.

*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.

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

*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 or more employees.

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

*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.

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*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.

*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.

- A. Private club shall not include an establishment that is open to members of the general public upon payment of a nominal fee.
- B. 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.
- C. 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 sex, disability, age, 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.

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*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.

*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.

*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. "Retail tobacco store" does not include the sale of any marijuana or any marijuana accessories

*Service line* means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

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

*Smoking* means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other tobacco product, marijuana or other marijuana product including but not limited to any heat-not-burn (HNB), tobacco heating products (THP) or marijuana heating products (MHP) or IQOS device designed to heat certain types of heated tobacco or marijuana units to produce a vapor or aerosol but without combustion, fire, ash or smoke.

*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 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, 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.

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- 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, 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 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.
- 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.**

- A. 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 of marijuana is always prohibited within a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while it is being operated.
- B. 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:

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1. Is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above;
2. Complies with all applicable fire and building code requirements; and
3. 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 or as prohibited in Article XIV of the Missouri Constitution, as amended.
- B. Private vehicles, except as prohibited in Article XIV of the Missouri Constitution, as amended.
- C. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty (20) percent of rooms rented to guests in a hotel or motel may be so designated, except as prohibited in Article XIV of the Missouri Constitution, as amended.
- 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, except as prohibited in Article XIV of the Missouri Constitution, as amended.
- E. Outdoor areas of places of employment, except as prohibited in Article XIV of the Missouri Constitution, as amended.
- F. Retail tobacco stores as defined in Section 17-303 of this article in operation prior to the effective date of this article, except as to the smoking of marijuana. Any new retail tobacco store or any existing retail tobacco store that relocates to another site may only qualify for this exemption if either:
  1. It is located in a freestanding structure occupied solely by the business; or
  2. It:
    - a. Is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above,
    - b. Complies with all applicable fire and building code requirements, and
    - c. 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;
  3. Does not allow those under the age of twenty-one (21) years old into the areas where the possession of lighted smoking materials occurs or where the

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possession of marijuana, lighted marijuana materials or marijuana accessories occurs;

4. 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 (1) 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 article is derived 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 (1) 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:
  1. It is located in a freestanding structure occupied solely by the private club and throughout which entire premises smoking is permitted; or
  2. It:
    - a. Is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above,
    - b. Complies with all applicable fire and building code requirements, and
    - c. 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;
  3. Does not allow those under the age of twenty-one (21) years old into the areas where the possession of lighted smoking materials occurs or where the possession of marijuana, lighted marijuana materials or marijuana accessories occurs; and
  4. 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 (1) 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.

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### 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 Manager 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 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 the provisions of this article in any court of competent jurisdiction.

### Sec. 17-312. Violations and penalties.

- A. A person who violates this article by smoking in an area where smoking is prohibited by the provisions of this article shall be guilty of a violation of this article, punishable by a fine not exceeding fifty dollars (\$50.00) for each violation.
- 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 a violation of this article, punishable by:
  - 1. A fine not exceeding one hundred dollars (\$100.00) for a first violation.
  - 2. A fine not exceeding two hundred dollars (\$200.00) for a second violation within one (1) year.
  - 3. A fine not exceeding five hundred dollars (\$500.00) 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

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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 Manager 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 article.

### Sec. 17-314. Governmental agency cooperation.

The City Manager 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 article.

### Sec. 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."

SECTION 2. That Article XI. Vapor Products. of Chapter 17. Offenses of the Code of Ordinances of the City of Lee's Summit, Missouri be and hereby is amended to read as follows:

"Article XI. Vapor Products

### Sec. 17-500. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Bar* shall be defined as provided in Section 17-303 of this Code.

*Distribute* shall be defined as provided in Section 17-4.

*Employee* shall be defined as provided in Section 17-303 of this Code.

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*Employer* shall be defined as provided in Section 17-303 of this Code.

*Enclosed area* shall be defined as provided in Section 17-303 of this Code.

*Permanently designated* means a hotel or motel room designated as a smoking room one (1) time or more per year.

*Place of employment* shall be defined as provided in Section 17-303 of this Code.

*Proof of age* means a driver's license or other generally accepted means of identification that contains a picture of the individual and appears on its face to be valid.

*Public place* shall be defined as provided in Section 17-303 of this Code.

*Restaurant* shall be defined as provided in Section 17-303 of this Code.

*Sample* means a product distributed to members of the general public at no cost for product promotional purposes.

*Under direct supervision* means in the plain vision of an employee or owner of a retail business during regular business hours.

*Vapor product* shall be defined as provided in Section 17-4 of this Code.

*Vending machine* means any mechanical electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses products.

Sec. 17-501. Vapor use prohibited; where.

- A. No person shall use vapor products in an enclosed place of employment within the City.
- B. No person shall use vapor products in an enclosed public place within the City.

Sec. 17-502. Responsibilities of proprietors, owners and managers.

No person having control of a place listed in this article shall knowingly permit, cause, suffer or allow any person to violate the provisions of this article in that place. It shall be an affirmative defense to an alleged violation of this subsection that the person having control of a place has asked that the use of vapor products be stopped and has asked the person to leave the establishment if that person has failed or refused to stop the use of vapor products.

Sec. 17-503. Exceptions.

Notwithstanding any other provision of this article to the contrary, the following shall not be subject to the restrictions of this article:

- A. Private residences, not serving as enclosed places of employment or enclosed public places.
- B. Hotel and motel rooms that have been designated as a permanently designated smoking rooms.
- C. Any 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 or any business establishment in operation prior to the effective date of this article that does not sell or serve food or alcoholic beverages where more than eighty (80) percent of the volume of trade or

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business carried on is that of the blending of tobaccos, or the sale of tobaccos, pipes, vapor products, cigars or smokers' sundries and smoking-related paraphernalia.

- D. Any business establishment that begins operation or relocates to a new location after the effective date of this article that does not sell or serve food or alcoholic beverages where more than eighty (80) percent of the volume of trade or business carried on is that of the blending of tobaccos, or the sale of tobaccos, pipes, vapor products, cigars or smokers' sundries and smoking-related paraphernalia provided that:
1. The establishment is the sole occupant of a building that stands alone from other buildings; or
  2. Is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above; complies with all applicable fire and building code requirements; and 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
  3. Does not allow those under the age of twenty-one (21) years old into the areas where the possession of lighted smoking materials occurs or where the possession of marijuana, lighted marijuana materials or marijuana accessories occurs.

### **Sec. 17-504. Penalty for violation.**

Any person having been found guilty of violating this article shall be punished as provided by Section 1-13 of the Code of Ordinances of the City of Lee's Summit, Missouri.

### **Sec. 17-505. Construction.**

This article shall be liberally construed so as to further its purposes. The provisions of this article are severable. If any provision or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect. This article shall not be interpreted or construed to permit smoking or the use of vapor products where it is otherwise restricted by other applicable laws.”

SECTION 3. That the Council of the City of Lee’s Summit, Missouri does take notices of the evidence introduced and accepted during public hearings conducted on July 7, 2016 in relation to Ordinance number 7948 passed on August 18, 2016, and December 17, 2019 in relation to Ordinance number 8788 passed on January 7, 2020, related generally to smoking, sale of tobacco and vapor products and use of vapor products. respectively to Indoor Clean Air and Vapor Products and does incorporate in this ordinance by reference all testimony and materials introduced and accepted into evidence during such hearings.

SECTION 4. That this Ordinance shall be in full force and effect from and after its passage, adoption, and approval by the Mayor.

SECTION 5. Should any section, sentence, or clause of this Ordinance be declared invalid or unconstitutional, such declaration shall not affect the validity of the remaining sections, sentences or clauses.

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PASSED by the City Council of the City of Lee's Summit, Missouri, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Mayor *William A. Baird*

ATTEST:

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Mayor *William A. Baird*

ATTEST:

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney *Brian W. Head*