

**ORDINANCE NO. 47-892
OCA#010009**

**AN ORDINANCE OF THE CITY OF WICHITA, KANSAS CONCERNING
SMOKING IN CERTAIN PLACES OF BUSINESS, AMENDING SECTIONS
7.56.010, 7.56.020, 7.56.030, 7.56.040 & 7.56.050 OF THE CODE OF THE
CITY OF WICHITA, KANSAS, REPEALING THE PRIOR VERSIONS OF SUCH
SECTIONS, AND ADDING NEW SECTIONS 7.56.021, 7.56.022, 7.56.060 AND
7.56.070 TO CHAPTER 7.56 OF THE CODE OF THE CITY OF WICHITA.**

Whereas, numerous studies have determined that environmental tobacco smoke (ETS) is a significant source of exposure to toxic indoor air contaminants, causally associated with respiratory illnesses, including lung cancer, asthma and emphysema; and

Whereas, there is scientific research linking ETS 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 ETS exposure; and

Whereas, ETS carcinogens and poisons pose special risks to children, the elderly, food and beverage service employees, and individuals with cardiovascular disease and/or impaired respiratory function, including asthmatics and those with obstructive airway disease; and

Whereas, ETS exposure has been causally associated with developmental, respiratory, carcinogenic and cardiovascular effects, including fatal outcomes such as sudden infant death syndrome; and

Whereas, accordingly, the Wichita City Council recognizes that ETS poses a serious public health hazard, that nonsmokers need protection from involuntary ETS exposure and that therefore, regulation by the City Council of the burning of tobacco in businesses open to the public and businesses employing minors is imperative in order to protect the public health and welfare;

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

Section 1. Section 7.56.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

7.56.010 DEFINITIONS.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this section:

- (A) Business means any 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.
- (B) Charitable fundraising event means for the purposes of this Chapter, an event conducted for solicitation or receipt by any person of any money, property or other benefit if, before or in the course of any such event, the person conducting the event represents: (1) that the purpose of that soliciting or receiving, or (2) that the purpose of an activity or enterprise of which that soliciting or receiving is a part, is or includes any charitable purpose deemed to be benevolent, philanthropic or patriotic . It does not matter whether the money or benefit concerned is solicited or received

in person or by other means (such as by mail, telephone or facsimile transmission), or as a direct donation at the event.

- (C) Employee means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
- (D) Employer means any business which employs the services of one or more individual persons.
- (E) Place of business means any premises under the control of an employer where activities in furtherance of its profit-making purposes are carried out, including, but not limited to, manufacturing activities, as well as the sale or delivery of goods or services to patrons or customers.
- (F) Smoking means possession of a cigarette, cigar, or pipe partially or wholly consisting of or containing burning vegetation, or possession of any other device containing burning vegetation that is used for the introduction of smoke from the burning vegetation into the human body. For the purposes of this definition, the term vegetation includes, but is not limited to, tobacco, but does not include any controlled substance listed in K.S.A. 65-4105 through K.S.A. 65-4113 inclusive, and amendments thereto.

Section 2. Section 7.56.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

7.56.020 PROHIBITION OF SMOKING IN CERTAIN PLACES.

It is unlawful for any person to engage in smoking, or (with respect to subsection (E)) for any business to permit smoking, in any of the following places within the city:

- (A) Chambers of the City Council;
- (B) Elevators, restrooms, hallways, stairways accessible to the general public located within any building owned or maintained by the city or any political subdivision of the city. This shall not include buildings owned by the city that are leased under the Industrial Revenue Bond Act and portions of buildings which are leased to tenants of the Wichita Airport Authority at Wichita Mid-Continent Airport;
- (C) Every room, chamber, place of meeting or political assembly under the control of the city, or any political subdivision of the city, during such time as a public meeting is in progress;
- (D) Within buses operating under the authority of the Metropolitan Transit Authority; and,
- (E) Any place of business, except as otherwise provided in Section 7.56.021.

Section 3. New Section 7.56.021 of the Code of the City of Wichita, Kansas, is hereby created, to read as follows:

7.56.021

CONDITIONS UNDER WHICH SMOKING AT A PLACE OF BUSINESS IS PERMITTED. Notwithstanding the general prohibition in Section 7.56.020(E), a business may elect to permit smoking (and if it so elects, persons eighteen (18) years of age or older may lawfully engage in smoking) at its place of business or designated portion thereof as follows:

- (A) In any, unenclosed, outdoor smoking area, provided such smoking area is located more than ten (10) feet from any building entrance;
- (B) In any clearly posted, designated smoking room which is subject to inspection by the City of Wichita's Office of Central Inspection during the Office's regular operating hours, and which meets all of the following requirements:
 - (1) The smoking room is enclosed on all sides by solid, impermeable walls or windows extending from the floor to ceiling with self-closing doors; and
 - (2) Access to the smoking room is restricted to the employees, customers and vendors of the facility; and
 - (3) The smoking room maintains a negative air pressure (meaning more air is exhausted from the room than is directly supplied by the heating, ventilation, and air conditioning (HVAC) system); and
 - (4) The smoking room's smoke-contaminated air is exhausted directly to the outdoors and is not returned to the HVAC system; and
 - (5) The smoking room and any equipment contained therein are maintained and serviced when the room is not occupied by smokers; and
 - (6) There is no need for employees, customers or vendors to pass through the smoking room to access restrooms, break areas, or any other portion of the place of business which they might need to access, and the business does not require employees, customers or vendors to enter the smoking room when it is occupied by smokers; and
 - (7) Non-smoking employees and vendors of the business have access to a separate, enclosed, non-smoking break room accessible only to the employees and vendors of the business which is of equal or larger size and has amenities comparable to the smoking room; and
 - (8) The business has obtained, and annually renews, a permit for the smoking room from the City of Wichita and the City of Wichita's Office of Central Inspection has verified compliance with the provisions of this ordinance;
- (C) In all or a designated portion of the individual guest rooms, apartments or other residential units rented by hotels, motels, apartment buildings or residential landlords.
- (D) At any place of business clearly posted at each entrance as a smoker-friendly facility where smoking is permitted, provided:
 - (1) The business either, a) can establish that it has no legal ability to exclude customers and patrons under eighteen (18) years of age, or, b) has the legal

ability to continuously exclude, and does continuously exclude, all customers and patrons under eighteen (18) years of age; and

(2) The business has no employees at the place of business who are under eighteen (18) years of age, except for any such employees who were already employed at that place of business on the effective date of this ordinance; and

(3) The employer has obtained, and has on file, from each employee working at such place of business, a signed acknowledgment that such employee has been advised of the causal links between environmental tobacco smoke and health conditions such as cardiovascular disease, lung cancer, asthma and emphysema, and also that no level of environmental tobacco smoke has been identified as safe; and

(4) The place of business and its records reflecting the age of current employees, as well as the signed employee acknowledgments of the dangers of environmental tobacco smoke, are available for and subject to inspection by the City of Wichita's Office of Central Inspection during the regular operating hours of such Department; and

(5) The business has obtained, and annually renews, a permit from the City of Wichita to operate the place of business as a smoker-friendly facility;

(E) The place of business, or a portion thereof has been rented to or reserved by the sponsor of a charitable fundraising event that incorporates tobacco products, provided:

(1) The place of business, or portion thereof so reserved, is clearly posted at all entrances, at least two hours prior to the fundraising event, with signs warning customers and patrons that smoking is being permitted on the premises during the fundraising event; and

(2) The business has the legal ability to continuously exclude, and does continuously exclude, all customers and patrons under eighteen (18) years of age, from the place of business, or the portion thereof reserved for the fundraising event, for the duration of the fundraising event; and

(3) The business has no employees at the place of business, or in that portion of the place of business reserved for the fundraising event, during the fundraising event, who are under eighteen (18) years of age; and

(4) The employer has obtained, and has on file, from each employee working at such place of business, or in that portion of the place of business reserved for the fundraising event, during the fundraising event, a signed acknowledgment that such employee has been advised of the causal links between environmental tobacco smoke and health conditions such as cardiovascular disease, lung cancer, asthma and emphysema, and also that no level of environmental tobacco smoke has been identified as safe; and

(5) The business has put in place reasonable steps to prevent smoke from intruding into any portions of the place of business occupied or in use by customers or patrons not participating in the fundraising event; and

(6) The business has obtained from the City of Wichita a permit to allow smoking at the place of business for the duration of the specific fundraising event.

Section 4. New Section 7.56.022 of the Code of the City of Wichita, Kansas, is hereby created, to read as follows:

7.56.022 PROMOTION OF OCCASIONAL SMOKE-FREE EVENTS AT SMOKER-FRIENDLY PLACES OF BUSINESS. An operator of a place of business that desires to schedule and promote an occasional smoke-free event on premises normally operated as a smoker-friendly place of business shall ensure that all indoor smoking on the premises is discontinued at least twelve hours prior to the scheduled commencement of the smoke-free event, and, during the smoke-free event, shall replace or cover its smoker-friendly signage with signage advising that smoking is prohibited.

Section 5. Section 7.56.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

7.56.030 POSTING OF SIGNS.

- (A) The owner, manager or other person having control of buildings or businesses where smoking is prohibited by this Chapter shall have a conspicuously posted sign clearly stating that smoking is prohibited at each entrance and within the building or other areas where smoking is prohibited.
- (B) Such "No Smoking" signs shall have bold lettering of not less than one (1) inch in height. The international "No Smoking" symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).
- (C) The owner, manager or other person having control of places of business which elect to permit smoking under one or more subsections of Section 7.56.021 shall have a conspicuously posted sign clearly stating the places at and conditions under which smoking is permitted:
 - (1) At each designated outdoor smoking area established pursuant to Section 7.56.021(A);
 - (2) Immediately outside or on the outer surface of each door into each smoking room established pursuant to Section 7.56.021(B);
 - (3) Immediately outside or on the outer surface of each door at each entrance to a place of business operated as a smoker-friendly facility pursuant to Section 7.56.021(D)(which sign shall also contain the universal symbol for a smoker-friendly facility, consisting of a depiction of a burning cigarette on a green background); and
 - (4) During and for two hours prior to charitable fundraising events held under 7.56.021(E), immediately outside or on the outer surface of each door at each entrance to the place of business or portion thereof where the fundraising event is being conducted (which sign shall also contain the universal symbol for a smoker-friendly facility, consisting of a depiction of a burning cigarette on a green background).Such signs shall also advise persons under eighteen (18) years of age not to seek entry to such posted areas.

Section 6. Section 7.56.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

7.56.040 PERMITS AND FEES. For each place of business which an operator elects to operate as a smoker-friendly facility, pursuant to Section 7.56.021(D), or at which the operator elects to maintain a smoking room pursuant to Section 7.56.021(B), the operator shall be required to obtain from the City of Wichita an annual permit, and to undergo an inspection of the permitted place of business by the City of Wichita's Office of Central Inspection. For each charitable fundraising event at which the operator of a place of business desires to permit smoking pursuant to Section 7.56.021(E), the operator shall be required to obtain from the City of Wichita a permit for the event, and to undergo an inspection of the permitted place of business by the City of Wichita's Office of Central Inspection. A non-refundable fee of \$250 shall be required for each permit application hereunder (unless the place of business is applying under 7.56.021(D), and is already restricted by law from admitting persons under age 18, or has demonstrated that it cannot exclude persons under age 18), which fee shall be used exclusively to defray a portion of the costs of enforcement, inspection, and education relating to the hazards of tobacco products. Permits may be denied, and once issued, may be revoked, if inspection of the place of business permitted or proposed to be permitted reveals that the facility design or the smoking activities there conducted or proposed to be conducted are not in conformity with the requirements of this Chapter. All permits issued hereunder shall be conspicuously posted by the applicant on the premises of the permitted place of business.

Section 7. Section 7.56.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

7.56.050 VIOLATIONS AND PENALTIES.

- (A) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Chapter to fail to comply with all of its provisions.
- (B) It shall be unlawful for any person who owns, manages, operates or otherwise controls any premises subject to regulation under this Chapter to allow smoking to occur where prohibited by this Chapter. Any such person allows smoking to occur under this section if he or she:
 - (1) has knowledge that smoking is occurring, and;
 - (2) acquiesces to the smoking under the totality of the circumstances.
- (C) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Chapter.
- (D) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any place of business to allow a person under eighteen (18) years of age to enter:
 - (1) any smoking room maintained under Section 7.56.021(B) while smoking is occurring; or

(2) the premises of the place of business or portion thereof in use for a charitable fundraising event wherein smoking is permitted pursuant to Section 7.56.021(E), while smoking is being permitted at such event; or

(3) any place of business operated as a smoker-friendly facility pursuant to Section 7.56.021(D), unless such person under eighteen (18) years of age was already employed at that facility on the effective date of this Ordinance.

Each person under eighteen (18) years of age who is allowed entry in violation of this section will give rise to a separate violation, and each instance in which a given individual under eighteen years of age is allowed entry in violation of this section will give rise to a separate violation.

(E) It shall be unlawful for any person under eighteen (18) years of age to enter:

(1) any smoking room maintained under Section 7.56.021(B) while smoking is occurring; or

(2) any place of business or portion thereof which is in use for a charitable fundraising event wherein smoking is permitted pursuant to Section 7.56.021(E), while smoking is being permitted; or

(3) any place of business operated as a smoker-friendly facility pursuant to Section 7.56.021(D), unless such person under eighteen (18) years of age was already employed at that facility on the effective date of this Ordinance.

Each instance in which a person under eighteen (18) years of age gains entry in violation of this section will give rise to a separate violation.

(F) Any person who violates any provision of this Chapter shall be guilty of a misdemeanor, punishable by:

(1) A fine not exceeding One Hundred Dollars (\$100.00) for the first violation.

(2) A fine not exceeding Two Hundred Dollars (\$200.00) for a second violation within a one (1) year period of the first violation.

(3) A fine not exceeding Five Hundred Dollars (\$500.00) for a third or subsequent violation within a one (1) year period of the first violation.

(4) For the purposes of this subsection, the number of violations within a year shall be measured by the date the smoking violations occur.

(G) In addition to the fines established by this Section, violation of this Chapter by a person having control of a place of business may result in the suspension or revocation of any permit or license issued for the premises on which the violation occurred.

Section 8. New Section 7.56.060 of the Code of the City of Wichita, Kansas, is hereby created, to read as follows:

7.56.060 ENFORCEMENT.

(A) The authority to administer the provisions of this article is vested in the Office of Central Inspection and Environmental Services and his or her

duly authorized representative(s), and whenever the need arises, the Superintendent of the Office of Central Inspection and the Director of Environmental Services may call upon the Wichita Police Department, and other departments of the City to aid in the enforcement of this Chapter.

- (B) Notice of the provisions set forth in this Chapter shall be given to all applicants for a City business license.
- (C) Any person may register a complaint under this Chapter to initiate enforcement with the Police Department.
- (D) The Wichita Police Department, the Office of Central Inspection and the Office of Environmental Services shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this Chapter, and each such department may also enforce the provisions of this Chapter through investigation of complaints filed and unannounced inspections of the premises and records regarding compliance with this Chapter.
- (E) Any owner, manager, operator or employee of any premises regulated by this Chapter shall be responsible for informing persons violating this Chapter of the provisions through appropriate signage.

Section 9. New Section 7.56.070 of the Code of the City of Wichita, Kansas, is hereby created, to read as follows:

7.56.070 SEVERABILITY.

If any provision, clause, sentence or paragraph of this Chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

Section 10. EFFECTIVE DATE. This ordinance shall be effective as of the ninetieth (90th) day following its date of publication.

Passed by the governing body this 3rd day of June, 2008.

Signed by the Mayor:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, City Attorney and
Director of Law