

ORDINANCE NO. 13-05-01

AN ORDINANCE REPEALING CHAPTER 230, ARTICLE IX, SECTIONS 230.840 THROUGH 230.900 OF THE MUNICIPAL CODE IN ITS ENTIRETY AND ADOPTING NEW SECTIONS 230.840 THROUGH 230.900 IN LIEU THEREOF

WHEREAS, Article IX, Chapter 230 of the Excelsior Springs Municipal Code provides restrictions on smoking in certain locations within the City, and provides for penalties for violation of these restrictions; and

WHEREAS, by Ordinance 12-12-05 adopted December 17, 2012 the City Council directed that the question whether the City of Excelsior Springs, Missouri should repeal Chapter 230, Article IX, "Smoking," consisting of Sections 230.840 through 230.900, and enact in lieu thereof a new Chapter 230, Article IX entitled "Prohibitions on Smoking in Enclosed Places of Employment and Public Places," prohibiting smoking in enclosed places of employment, enclosed public places, and establishing penalties for non-compliance should be submitted to all registered voters residing within the City at an election to be held April 2, 2013;

WHEREAS, at the election duly held on April 2, 2013 the proposition was approved by a majority of the voters; and

WHEREAS, the City Council of the City of Excelsior Springs, Missouri finds that the Municipal Code of the City should be revised to prohibit smoking in enclosed places of employment, enclosed public places, and establish penalties for non-compliance.

NOW, THEREFORE, be it ordained by the City Council of the City of Excelsior Springs, Missouri, as follows:

Section 1. Chapter 230, Article IX, Sections 230.840 through 230.900 of the Municipal Code are hereby repealed in their entirety and the following sections are hereby adopted in lieu thereof:

ARTICLE IX. SMOKING

SECTION 230.840: 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 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.

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 means a space bound by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, offices, rooms, and all space therein including areas screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures and hallways.

Permanently designated means a hotel or motel room may be designated as a smoking room for a period of no less than 12 months.

Place of employment means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference rooms and classrooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.

Public place means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundering facilities, public transportation facilities, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place."

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 at no cost or 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 an attached bar.

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

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

Sports arena means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

SECTION 230.850: PROHIBITION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT AND ALL ENCLOSED PUBLIC PLACES.

(a) The possession of lighted smoking materials in any form, including but not limited to, the

possession of lighted cigarettes, cigars, pipes or other tobacco products, shall be prohibited in all enclosed places of employment within the city.

(b) The possession of lighted smoking materials in any form, including but not limited to, the possession of lighted cigarettes, cigars, pipes or other tobacco products, shall be prohibited in all enclosed public places within the city, including but not limited to the following places:

- (1) Any vehicle of public transportation, including but not limited to buses, limousines for hire and taxicabs;
- (2) Elevators;
- (3) Restrooms;
- (4) Libraries, educational facilities, childcare and adult day care facilities, museums, auditoriums, aquariums and art galleries;
- (5) Any health care facility, health clinic or ambulatory care facilities, including but not limited to laboratories associated with the rendition of health care treatment, hospitals, nursing homes, doctors' offices and dentists' offices;
- (6) Any indoor place of entertainment or recreation, including but not limited to public or private club facilities, gymnasiums, theaters, concert halls, bingo halls, billiard halls, betting establishments, bowling alleys, arenas and swimming pools;
- (7) Service lines;
- (8) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance;
- (9) Shopping malls;
- (10) Sports arenas, including enclosed places in outdoor arenas;
- (11) Bars;
- (12) Restaurants;
- (13) Convention facilities;
- (14) All public areas and waiting rooms of public transportation facilities, including but not limited to bus and airport facilities;
- (15) Any other area used by the public or serving as a place of work;
- (16) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including, but not limited to joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city;

(17) All enclosed facilities owned by the city; and

(18) Rooms in which meetings or hearings open to the public are held, except where such rooms are in a private residence.

(c) No one shall possess lighted smoking materials in any form, including but not limited to lighted cigarettes, cigars, pipes or other tobacco products within 10 feet of the primary entrance to or exit from a building where smoking is prohibited pursuant to this section.

(d) It shall be unlawful for any person to violate the provisions of this section.

SECTION 230.860: RESPONSIBILITIES OF PROPRIETORS, OWNERS AND MANAGERS.

(a) A person having control of a place listed in section 230.850 shall not knowingly permit, cause, suffer or allow any person to violate the provisions of section 230.850 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 lighted cigarette, cigar, pipe or other tobacco product be extinguished and asked the person to leave the establishment if that person has failed or refused to extinguish the lighted cigarette, cigar, pipe or other tobacco products.

(b) A person having control of a place listed in section 230.850 shall clearly and conspicuously post "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) near all entrances where smoking is prohibited by this Article. Such signage shall consist of letters not less than one inch in height.

(c) It shall be the responsibility of employers having any enclosed place of employment located within the City to provide smoke-free workplaces for all employees.

(d) Each employer having any enclosed place of employment located within the City shall communicate the smoke restrictions of this article to all employees within 30 days of the adoption of this Ordinance by the City Council, and shall supply a written copy of these smoking restrictions upon request to any existing or prospective employee.

SECTION 230.870: WHERE SMOKING IS NOT REGULATED.

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

(a) Private residences, not serving as enclosed places of employment or enclosed public places;

(b) Twenty-five percent of hotel and motel rooms may be permanently designated as smoking.

(c) Business establishment where more than 80 percent of the gross receipts of trade or business carried on is from the blending of tobaccos, or the sale of tobaccos, pipes, 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) Has separate heating, ventilation and air conditioning equipment that vents or exchanges air outside of the building or structure in which the business establishment is situated which prevents the mixing of air from the establishment with air from the other portions of the premises where smoking is prohibited under the provisions of this article; and

(3) Does not allow those under the age of 18 years old into the areas where the possession of lighted smoking materials occurs.

This subsection (c) shall not apply to a business that sells or serves foods or alcoholic beverages.

SECTION 230.880: PENALTY FOR VIOLATION OF THIS ARTICLE.

(a) A person who smokes in an area where smoking is prohibited by the provisions of this article shall be guilty of an ordinance violation, punishable by a fine not exceeding \$50.00.

(b) A person having control of a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an ordinance violation, punishable by:

(1) A fine not exceeding \$100.00 for a first violation.

(2) A fine not exceeding \$200.00 for a second violation within a one-year period.

(3) A fine not exceeding \$500.00 for a third or subsequent violations within a one-year period.

(4) Each day on which a violation of this article occurs shall be a separate and distinct violation

SECTION 230.890: CONSTRUCTION.

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

SECTION 230.900: ENFORCEMENT OF ARTICLE.

(a) The authority to administer the provisions of this article is vested in the Chief of Police and his or her duly authorized representative(s).

(b) Whenever the need arises, the Chief of Police may call upon the Fire Department and other departments of the city to aid in the enforcement of the provisions of this article.

(c) Notice of the provisions of this article shall be given to all applicants for a business license in the city.

(d) Any citizen who desires to register a complaint under this article may initiate enforcement with the Police Department.

Section 2. Should any provision hereof for any reason be deemed or ruled illegal, invalid or unconstitutional by any court of competent jurisdiction, no other provision of this Ordinance shall be affected; and this Ordinance shall then be construed and enforced as if such illegal or invalid or unconstitutional provision had not been contained herein.

Section 3. The Mayor, the City Manager, the City Clerk and other appropriate City officials are hereby authorized to take any and all actions as may be deemed necessary or convenient to carry out and comply with the intent of this Ordinance and to execute and deliver for and on behalf of the City all certificates, instruments, agreements and other documents, as may be necessary or convenient to perform all matters herein authorized.

Section 4. This Ordinance shall be in full force and effect 30 days after its passage and approval.

INTRODUCED IN WRITING, read by title two times, passed and approved this 3rd day of June, 2013.



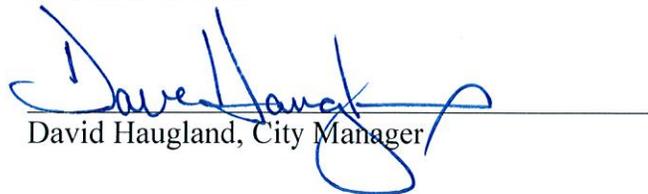
Ambrose Buckman, Mayor

ATTEST:



Shannon Stroud, City Clerk

REVIEWED BY:



David Haugland, City Manager