

ORDINANCE NO. 09-10481

AN ORDINANCE PROHIBITING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT WITHIN THE CITY OF SALINA, KANSAS; AMENDING AND REPLACING ARTICLE I, CHAPTER 30.5 OF THE SALINA CODE IN ITS ENTIRETY.

BE IT ORDAINED by the Governing Body of the City of Salina, Kansas:

**Section 1.** That Article I, Chapter 30.5 of the Salina Code is hereby amended in its entirety to read as follows:

**ARTICLE I. SMOKING REGULATIONS**

**“Sec. 30.5-1. Public Policy.**

Numerous studies have determined that environmental tobacco smoke (ETS) is a source of exposure to toxic air indoor contaminants, causally associated with respiratory illnesses, including lung cancer, asthma and emphysema. The Governing Body recognizes that ETS poses a public health risk, that non-smokers need protection from ETS exposure and, therefore, that regulation of the burning of tobacco in public places and places of employment is needed to protect the public health and welfare of the citizens of the City of Salina. Accordingly, it shall be the public policy of this City to promote public health by decreasing citizens' exposure to secondhand smoke and to create smoke free environments for workers and citizens through regulation in the work place and public places.

**Sec. 30.5-2. Definitions.**

For the purpose of this article, the following words and terms as used herein are defined to mean the following:

*Business* means a sole proprietorship, partnership, joint venture, corporation, limited liability company or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are provided; including professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

*Employee* means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, or a person who volunteers his or her services for a non-profit entity.

*Employer* means any person, partnership, corporation, including a municipal corporation, trust, or not-for-profit entity that employs the services of one or more individual persons.

*Enclosed Area* means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of door or passage ways), which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, office landscaping, or similar structures.

*Food Service Establishment* means any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order café, luncheonette, grill, tea room, sandwich shop, soda fountain, roadside kitchen, commissary, caterer and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge. The term “restaurant” shall include a bar area within the restaurant.

*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 surgeons, chiropractors, physical therapists, physicians, 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.

*Licensed Premises* means any premises where alcoholic liquor or cereal malt beverage, or both, is served or provided for consumption or use on the premises with or without charge. Such term shall include, but is not limited to bars, cabarets, nightclubs, drinking establishments, taverns, Class A private clubs, Class B private clubs, and cereal malt beverage retailers, all as defined by K.S.A. Chapter 41, and amendments thereto, and Chapter 5 of this Code.

*Place of Employment* means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including but not limited to work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility, or used as a business in which one or more persons are employed.

*Private Club* means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

*Private Place* means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to personal residences or personal motor vehicles. A privately owned business, open to the public is not a private place.

*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, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility required to be licensed by the state.

*Service Line* means any indoor line during which one (1) or more persons are waiting for or receiving service of any kind, whether or not such 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, or other tobacco product, or any pipe or vessel containing burning tobacco of any kind.

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

**Sec. 30.5-3. Application of article to city facilities.**

All enclosed facilities and all vehicles owned, leased, or operated by the City of Salina shall be subject to the provisions of this article.

**Sec. 30.5-4. Prohibition of smoking in public places.**

Unless otherwise indicated herein, smoking shall be prohibited in all enclosed public places within the City of Salina including, but not limited to, the following places:

- (1) Elevators
- (2) Restrooms, lobbies, reception areas, hallways and any other common-use areas.

- (3) Public transportation and transportation facilities including but not limited to buses, bus terminals, taxicabs, train stations and airports, as well as ticket, boarding, and waiting areas of public transit depots.
- (4) Service lines.
- (5) Retail stores and retail service establishments.
- (6) All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including but not limited to offices, banks, laundromats, hotels and motels.
- (7) Food service establishments and licensed premises, excluding areas of a food service establishment or licensed premises that are not enclosed such as patios, outdoor dining areas, and courtyards.
- (8) Galleries, libraries and museums.
- (9) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except that performers may smoke when the smoking is a part of a stage production.
- (10) Sports arenas and convention halls; bowling facilities and billiard parlors.
- (11) Every room, chamber place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City of Salina or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is located within the City of Salina.
- (12) Waiting rooms, hallways, wards and patient rooms of health care facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
- (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, common areas in trailer parks (club houses, storm shelters), retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (14) Polling places.
- (15) Private clubs and fraternal organization facilities.
- (16) Licensed child care and adult day care facilities.
- (17) Bingo facilities.

**Sec. 30.5-5 Prohibition of smoking in places of employment**

- (1) Smoking shall be prohibited in all enclosed places of employment within the City of Salina.
- (2) Each employer having any enclosed place of employment located within the City of Salina shall adopt, implement, make known and maintain, a written smoking policy consistent with the requirements of this ordinance.

**Sec. 30.5-6. Reasonable distance.**

Smoking is prohibited within a distance of 10 feet outside the main entrance, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

**Sec. 30-5-7. Where smoking is not regulated.**

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

- (1) Private residences, except when used as a public place or place of employment.
- (2) Private places.

- (3) Areas of a food service establishment or licensed premises that are not enclosed such as patios, outdoor dining areas, and courtyards except as provided in Section 30.5-6 above.

**Sec. 30-5-8. 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 place of employment may declare that smoking is prohibited throughout the entire establishment, facility, or outdoor place of employment consistent with the provisions of this Article.

**Sec. 30.5-9. Responsibility of proprietors.**

The proprietor or other person having control of a place governed by this article shall:

- (1) not knowingly permit, cause, suffer or allow any person to violate the provisions of this Ordinance in that place and shall take all necessary steps to prevent or stop another person from smoking in violation of this Ordinance. "Necessary steps" means to take all reasonable actions to prevent smoking in violation of this Ordinance by employees, patrons and visitors in the place, business, office or establishment, including: verbally asking a person who is smoking to extinguish the smoking materials; refusing service to a person who is illegally smoking; verbally asking anyone illegally smoking to leave the premises; and applying standard business procedures in the same manner for violations of house rules or other local ordinances or state laws. If the employee, patron or visitor smoking in violation of this Ordinance is hard of hearing, the communications with that person may be written, in sign language or other effective means of communication.
- (2) post and maintain in areas where the public is allowed and areas where employees are allowed signs that clearly and conspicuously state that smoking is prohibited. 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 a red bar across it).
- (3) Remove all ashtrays and other smoking paraphernalia from any area in which smoking is prohibited by this article.
- (4) Comply with all physical separation and ventilation standards to prevent the drifting, permeation or re-circulation of smoke into non-smoking areas.
- (5) Communicate this prohibition on smoking to all existing employees by the effective date of this article and to all prospective employees upon their application for employment.

**Sec. 30.5-10. Enforcement, violations and penalties.**

- (1) A person who violates any provision of this Article shall be guilty of a misdemeanor, punishable by:
  - (a) A fine no less than fifty dollars (\$50.00) for a first violation.
  - (b) A fine of no less than one hundred dollars (\$100) for a second violation within a one (1) year period of the first violation.
  - (c) A fine of no less than two hundred dollars (\$200) for a third or subsequent violation within a one (1) year period of the first violation.
- (2) Each occurrence of a violation of this Ordinance shall be considered a separate and distinct violation.
- (3) In addition to the fines established by this Section, violation of this Ordinance by a person having control of a public place or place of employment may result in the suspension or revocation of any permit or license issued by the City to the person for the premises on which the violation occurred.

(4) Violation of this article is hereby declared to be a public nuisance, which may be abated by the city manager by restraining order, preliminary and permanent injunction, or other means provided for by law, against the proprietor of the public place or place of employment, and the city may take action to recover the costs of the nuisance abatement.

**Section 2.** That the existing Section 30.5 is hereby amended.

**Section 3.** That this ordinance shall be in full force and effect 90 days after its adoption and publication once in the official city newspaper

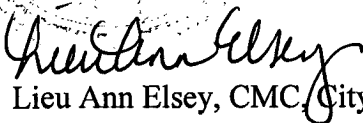
Introduced: January 12, 2009

Passed: January 26, 2009



John K. Vanier II, Mayor

[SEAL]  
ATTEST:



Lieu Ann Elsey, CMC, City Clerk