

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE ADDING ARTICLE V, SECTIONS 12-401 TO 12-418, TO CHAPTER 12 OF THE CODE OF ORDINANCES FOR THE CITY OF SEDALIA, MISSOURI, KNOWN AS THE SEDALIA CLEAN AIR INDOOR ACT OF 2013.

WHEREAS, the State of Missouri enacted the Indoor Clean Air Act in 1992, found at Sections 191.765, et seq. RSMo, which allows cities, including the City of Sedalia to enact similar or more stringent ordinances that the Act provides for; and

WHEREAS, the purpose of this ordinance to reduce the effects of secondhand smoke exposure upon employees, children and citizens in our communities' businesses and public places.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SEDALIA, MISSOURI, as follows:

Section 1. New Article V of Chapter 12 of the Code of Ordinances of the City of Sedalia, Missouri, which reads as follows:

“ARTICLE V. CLEAN INDOOR AIR ACT

Sec. 12-401. - Title.

This article shall be known as the Clean Indoor Air Act of 2013, which shall be shown in the Index to the Code of Ordinances as the Clean Indoor Air Act.

Sec. 12-402. - 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 Sedalia, Missouri.

Sec. 12-403. - 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 and which the serving of food is only incidental to the consumption of those beverages.

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.

E-cigarette means any electric oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or any other product name or descriptor.

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.

Other person in charge means the agent of the proprietor authorized to give administrative directions to and general supervision of the activities within the public place, work place or public meeting at any given time.

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.

Proprietor means the party who ultimately controls, governs or directs the activities within the public place, work place or public meeting, regardless of whether he is the owner or lessor of such place or site. The term does not mean the owner of the property unless he ultimately controls, governs or directs the activities within the public place or public meeting. The term "proprietor" shall apply to a corporation as well as an individual.

Private club shall mean a not-for-profit organization whether incorporated or not, 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. 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.
 6. A private club shall be considered a "public place" when it is the site of a meeting, event or activity that is open to the public, including but not limited to operating a bingo facility.

Public meeting means a gathering in person of members or a governmental body, whether an open or closed session, as defined in Chapter 610 RSMO.

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, food production and marketing establishments, retail service establishments, retail stores, commercial establishments, private clubs, 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.

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. "Smoking" does not include the use of an e-cigarette.

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. 12-404. - Application of this article to City-owned facilities, parks and vehicles.

Smoking shall be prohibited in all enclosed facilities, including buildings owned or operated by the City, all city parks and all city vehicles and shall be enforced according to the provisions of this article.

Sec. 12-405. - Prohibition of smoking in enclosed 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.
- 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. 12-406. - 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.
- 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:
 - 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. 12-407. – Prohibition of Smoking in Outdoor Public Places

Smoking shall be prohibited in the following outdoor public places:

- A. Within a reasonable distance of 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent smoke from entering those areas.
- B. In, and within 20 feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- C. In, and within 20 feet of, all outdoor playgrounds.
- D. In and within all City parks [except within any vehicle parked in the parks' parking lot].

Sec. 12-408. - 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 12-404 to 12-408:

- 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 (20) percent 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 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 not otherwise prohibited by this ordinance.
- F. Retail tobacco stores as defined in Section 12-403 of this article in operation prior to the effective date of this article. 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 12-403 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. Patio areas of any restaurant, bar or other commercial establishment designated by the owner or operator of the business as a smoking area; provided that no more than 50% of the patio area shall be designated as a smoking area and no area shall be designated as a smoking area if it must be crossed to obtain access to a nonsmoking area or a restroom.
- H. Private clubs except when private club is being used for as the site of a meeting, event or activity that is open to the public, including but not limited to operating a bingo facility.

Sec. 12-409. - 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 12-411 is posted.

Sec. 12-410. - 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. 12-411. - 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. 12-412. - Enforcement.

- A. Any person who desires to register a complaint under this article may initiate enforcement with the Sedalia Police Department.
- 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.
- C. The City Administrator, the Community Development Department or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this ordinance.
- D. An owner, manager, operator or employee of an area regulated by this ordinance shall direct a person who is smoking in violation of this ordinance to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact the Sedalia Police Department.

Sec. 12-413. - Violations and penalties.

- A. Any person who violates this article shall first be given a written warning. If the same person violates this article a second or subsequent time, then the fine schedule as applicable, shall then be applied.
- B. 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 an infraction, punishable by a fine not exceeding fifty dollars (\$50.00) for each infraction.
- C. 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 (\$100.00) 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.

- D. 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 12-31 of the Sedalia Code of Ordinances.
- E. Each day on which a violation of this article occurs shall be considered a separate and distinct violation, pursuant to Section 1-14 of the Sedalia Code of Ordinances.

Sec. 12-414. - 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 article.

Sec. 12-415. - 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 article.

Sec. 12-416. - Other applicable laws.

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

Sec. 12-417. - Liberal construction.

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

Sec. 12-418. - 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. This ordinance shall be in full force and effect after its passage and approval and as of September 1, 2013.

Read two times by title, copies of the proposed ordinance having been made available for public inspection prior to the time the bill is under consideration by the Council and passed by the Council of the City of Sedalia, Missouri this 17th day of June, 2013.

Presiding Officer of the Council

Approved by the Mayor of said City 17th day of June, 2013.

Mary Elaine Horn, Mayor

ATTEST:

Arlene Silvey, MRCC
City Clerk

2nd Draft - 060313