

BILL NO. 5558

ORDINANCE NO. _____

INTRODUCED BY: ALDERWOMAN CLEMENTS
ALDERWOMAN KREWSON
ALDERMAN ROBERTSON
ALDERMAN HARPER

AN ORDINANCE AMENDING CHAPTER 13 OF THE REVISED CODE OF ORDINANCES OF THE CITY OF BRENTWOOD MISSOURI BY DELETING SECTIONS 13-250 - 13-255 OF ARTICLE XII, AS IT RELATES TO REGULATION OF SMOKING IN PUBLIC AND WORK PLACES, AND ENACTING IN LIEU THEREOF NEW SECTIONS 13-250 – 13-260 TO ARTICLE XII; PROVIDING FOR THE CURRENT MAINTENANCE OF THIS CODE; PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE; AND, PROVIDING FOR THE REPEAL OF ALL CONFLICTING ORDINANCES.

NOW THEREFORE, BE IT ORDAINED, by the Board of Alderman of the City of Brentwood, Missouri as follows:

SECTION 1. Sections 13-250 - 13-255 of Article XII of Chapter 13 of the Revised Code of Ordinances of the City of Brentwood are hereby repealed.

SECTION 2. Chapter 13, Article XII of the Revised Code of Ordinances of the City of Brentwood, Missouri is hereby amended by adding new Sections 13-250 – 13-260 to read in words and figures as follows:

ARTICLE XII CLEAN AIR ACT-SMOKING PROHIBITED

Sec. 13-250. Purpose

The purposes of this Article are (1) to promote public health by creating environments which reduce citizens' and workers' exposure to secondhand tobacco smoke and (2) to create tobacco smoke free environments for citizens and workers through regulation in public places and the workplace.

Sec. 13-251. Definitions.

- (a) The following words, terms and phrases, when used in this Article, shall be construed as defined in this Section:
 - (1) "*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.

- (2) "*Code Enforcement Officer*" means the fire marshal or his or her designee.
- (3) "*Employee*" means any person who performs services for an employer, with or without compensation.
- (4) "*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 (1) or more employees.
- (5) "*Enclosed*" means a space bound on all sides by walls or windows continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, lobbies, offices, rooms, all space therein screened by partitions, which do not extend to the ceiling or are not solid, "office landscaping" or similar structures, and hallways.
- (6) "*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 daycare or health care facility.
- (7) "*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.
- (8) "*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.
- (9) "*Smoking*" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other tobacco product.

Sec. 13-252. Prohibition of smoking in all enclosed places of employment and all enclosed public places.

- (a) Smoking shall be prohibited in all enclosed places of employment within the City of Brentwood.
- (b) Smoking shall be prohibited in all enclosed public places within the City of Brentwood, including but not limited to the following enclosed places:
 - (2) Elevators;
 - (3) Restrooms;
 - (4) Libraries, educational facilities, child care and adult daycare 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 place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, bowling alleys, arenas, health spas, swimming pools and roller and ice skating rinks;
 - (7) Any place used for exhibiting a motion picture, stage drama, lecture, musical recital, or other similar performance;
 - (8) Shopping malls;
 - (9) Bars;
 - (10) Restaurants;
 - (11) Convenience facilities;
 - (12) All public areas and waiting rooms of public transportation facilities, including but not limited to bus and train facilities;
 - (13) All facilities, buildings, and all vehicles owned, leased or operated by the City of Brentwood; and

- (14) Rooms in which meetings or hearings open to the public are held, except where such meetings or hearings are in a private residence.
- (15) Any vehicle of public transportation, including, but not limited to, buses, limousines for hire and taxicabs;

Sec. 13-253 Responsibilities of proprietors, owners and managers.

- (a) A person who owns, manages, operates, or otherwise controls a place listed in Section 13-252 shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this Article in such place. It shall be an affirmative defense to an alleged violation of this Article that a person who owns, manages, operates or otherwise controls a place listed in Section 13-252 has asked that the lighted cigarette, cigar, pipe or other tobacco product be extinguished or 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 who owns, manages, operates or otherwise controls a place listed in Section 13-252 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.

Sec. 13-254. Where smoking is not regulated.

Notwithstanding any other provision of this Article to the contrary, smoking shall be permitted in any and all places not specified in Section 13-252. In particular, but not by limitation, the following shall not be subject to this Article.

- (a) Private residences, except when used as licensed child care facilities, adult daycare facilities, health care facilities or enclosed places of employment.
- (b) Private vehicles.
- (c) Twenty-five percent (25%) of hotel and motel rooms may be permanently designated as smoking rooms.
- (d) Retail tobacco stores that derive more than eighty percent (80%) of their total gross revenue from the sale of loose tobacco, cigarettes, cigars, pipes or other tobacco-related products, and which are not merely a department or subsection of a larger commercial establishment.

Sec. 13-255. Penalty for violation of this article.

- (a) A person who smokes in an area where smoking is prohibited by this Article shall be guilty of an Article violation, punishable by a fine of twenty-five dollars (\$25.00) for the first violation and fifty dollars (\$50.00) for each subsequent violation.
- (b) A person who owns, manages, operates or otherwise controls a public place or place of employment and who fails to comply with this Article shall be guilty of an Article violation, punishable by:
 - (1) A fine of fifty dollars (\$50.00) for the first violation;
 - (2) A fine of one hundred dollars (\$100.00) for a second violation within a one (1) year period; and
 - (3) A fine of two hundred dollars (\$200.00) for a third or subsequent violation within a one (1) year period.
- (c) Each day on which a violation of this Article occurs shall be a separate and distinct violation.

Sec. 13-256. Other applicable laws.

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

Sec. 13-257. Construction.

This Article shall be strictly construed in any interpretation of its meaning. 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.

Sec. 13-258. Enforcement of Article.

- (a) The authority to administer the provisions of this Article is vested in the fire marshal.
- (b) The Code Enforcement Officer may call upon the fire and police departments 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 of Brentwood, Missouri.
- (d) Any person who desires to register a complaint under this Article may initiate enforcement with the fire marshal.

Sec. 13-259. Prohibition of smoking by fire marshal or Ordinance.

Nothing in this Article shall be construed to limit the authority of the fire marshal to designate locations in which smoking may be prohibited nor to repeal any order by the fire marshal prohibiting smoking in any location, nor to repeal any ordinance prohibiting smoking in any location.

Sec. 13-260. Effective Date

This Article shall become effective on January 1, 2011.

SECTION 2. In conformity with the provisions of said Code, the City Clerk/Administrator shall cause appropriate copies to be made hereof and shall insert such copies in each edition of said Code.

SECTION 3. This ordinance shall be in full force and effect from and after January 1, 2011.

SECTION 4. All ordinances and parts of ordinances in conflict with this ordinance are, to the extent of such conflict hereby repealed.

PASSED BY THE BOARD OF ALDERMEN THIS _____ DAY OF _____, 2010.

APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2010.

Pat Kelly, Mayor

Attest:

Chris Seemayer, City Clerk

1st Reading: _____

2nd Reading: _____