

AN ORDINANCE REPEALING SECTION 215.270 OF THE MUNICIPAL CODE CITY OF RICHMOND HEIGHTS, MISSOURI, AND ENACTING IN LIEU THEREOF NEW SECTIONS CONSISTENT WITH THE SMOKING REGULATIONS IMPOSED BY ST. LOUIS COUNTY.

WHEREAS, St. Louis County has enacted its Indoor Clear Air Code which has been effective in all areas of St. Louis County as of January 1, 2011; and

WHEREAS, the City Council of the City of Richmond Heights wishes to conform local smoking regulations with the St. Louis County Indoor Clean Air Code to avoid confusion as to the standards of conduct expected of persons in the City and to enable alleged violations to be addressed in the Richmond Heights Municipal Division of the Circuit Court;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RICHMOND HEIGHTS, MISSOURI AS FOLLOWS:

SECTION 1. Section 215.270 of the Municipal Code of the City of Richmond Heights, Missouri, regulating smoking regulations, is hereby repealed.

SECTION 2. The Municipal Code of the City of Richmond Heights, Missouri, is hereby amended by the addition of ten (10) new sections to read as follows:

TITLE II PUBLIC HEALTH, SAFETY AND WELFARE

CHAPTER 215 OFFENSES

ARTICLE IV OFFENSES CONCERNING PUBLIC SAFETY

SECTION 215.270 DEFINITIONS

Definitions. As used in this Ordinance the following terms shall mean as follows:

Business: A sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered, and private clubs.

City: The City of Richmond Heights, Missouri.

Cigar bar: A business with a permit to sell alcoholic beverages that generates 25 percent or more of its quarterly gross revenue from the sale of cigars and/or rental of

humidor space, has a humidor on the premises and does not allow minors to enter the premises.

Director of Revenue: The Director of Revenue of St. Louis County.

Drinking establishment: Any business with a valid license issued by City to sell intoxicating liquor by the drink or to sell beer and light wine by the drink whose on-site sales of food for consumption on the premises comprises no more than 25% of gross sales of food and both alcoholic and non-alcoholic beverages on an annual basis.

Employee: Any person who performs services for an employer, with or without compensation.

Employer: A person, partnership, association, corporation, trust or other organized group of individuals, including the City or County or any agency thereof, which utilizes the services of at least one employee.

Enclosed area: 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, all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures and hallways.

Permanently designated smoking room: A hotel or motel room that may be designated as a smoking room, with such designation being changeable only one time a year.

Place of employment: 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.

Private club: A not-for-profit organization incorporated 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. Private club shall not include an establishment that is generally open to members of the general public upon payment of a fee. A private club shall not be considered a "public place" except when it is the site of a meeting, event or activity that is open to the public.

Public place: Any enclosed or other area to which the public is invited or in which the public is permitted, including, but not limited to banks, educational facilities, reception areas, health facilities, laundering facilities, public transportation facilities, production and marketing establishments, retail service establishments, retail stores, 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.

Restaurant: An eating establishment including, but not limited to coffee shops, cafeterias, sandwich stands and private and public school cafeterias, which provides 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 and lounge area within the restaurant.

Service line: Any indoor or outdoor line at 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: An enclosed public walkway or hall area that serves to connect retail or professional establishments.

Smoking: Inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe or other tobacco product.

Sports Arena: Sports pavilions, gymnasiums, health spas, boxing arenas, outdoor and indoor swimming pools, outdoor athletic fields, outdoor and indoor 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 215.271 PROHIBITION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT AND OTHER PUBLIC PLACES

1. It shall be unlawful for any person within an enclosed place of employment to possess lighted or heated smoking materials in any form, including but not limited to the possession of lighted or heated cigarettes, cigars, pipes or other tobacco products.

2. It shall be unlawful for any person within an enclosed public place, or within any other places hereinafter specified, to possess lighted or heated smoking materials in any form, including but not limited to the possession of lighted or heated cigarettes, cigars, pipes or other tobacco products, including but not limited to the following places:

- a. In any public building or vehicle owned or operated by the City;
- b. Elevators in public buildings;
- c. Restrooms in public buildings;

- d. Libraries, educational facilities, childcare and adult day care facilities, museums, auditoriums, aquariums and art galleries;
 - e. 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;
 - f. Any indoor place of entertainment or recreation, including, but not limited to gymsnasiums, theaters, concert halls, bingo halls, arenas and swimming pools;
 - g. Service lines;
 - h. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital or other similar performance;
 - i. Shopping malls or retail establishments;
 - j. Indoor and outdoor sports arenas;
 - k. Restaurants, including lounge and bar areas, except outdoor dining areas;
 - l. Convention facilities;
 - m. All indoor public areas and waiting rooms of public transportation facilities, including, but not limited to bus and mass transportation facilities;
 - n. Any work area used by the public or serving as a place of work;
 - o. 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 County during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City;
 - p. Rooms in which meetings or hearings open to the public are held, except where such rooms are in a private residence;
 - q. Sidewalks, driveways and other open areas within fifteen (15) feet of the entry to any building owned or occupied by any governmental entity, or within fifteen (15) feet of the entry to any building open to the public; provided, however, that this entryway prohibition shall not apply within outside dining areas where smoking is permitted or to entries that are located less than fifty (50) feet from another public entry.
3. It shall be unlawful to dispose of smoking waste, or to place or maintain a receptacle for smoking waste, in an area in which smoking is prohibited under this chapter.

**SECTION 215.272 RESPONSIBILITIES OF PROPRIETORS,
OWNERS AND MANAGERS**

1. It shall be unlawful for any person having control of a place listed in this chapter knowingly to permit, cause, suffer or allow any person to violate the provisions of this chapter. 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 or heated 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 or heated cigarette, cigar, pipe or other tobacco product.
2. A person having control of a place 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 pursuant to this chapter. Such signage shall consist of letters not less than one inch in height.
3. It shall be the responsibility of employers to provide smoke-free workplaces for all employees.
4. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

**SECTION 272.273 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 the entire establishment, facility, or outdoor area as a nonsmoking place. No person shall smoke in places so declared and posted with signs pursuant to this Section.

SECTION 272.274 EXCEPTIONS

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

- a. Private residences, not serving as enclosed places of employment or enclosed public places;
- b. Private clubs;
- c. Performers on stage in a theatrical production, where smoking is required as part of the production;

- d. Private and semi-private rooms in nursing homes and long-term care facilities, the residents of which are all smokers and have all requested the management of the facility to be placed in a room where smoking is permitted;
- e. Retail establishments in which food is not prepared on the premises and where more than 60% of the volume of trade or business carried on is the sale of tobacco and tobacco-related products;
- f. Permanently designated smoking rooms, not to exceed twenty percent of the guest rooms;
- g. Cigar bars, provided such entity is in operation on or before the effective date of this chapter and provided that smoke does not infiltrate into areas where smoking is otherwise prohibited;
- h. Drinking establishments which are in operation on or before the effective date of this Ordinance; provided, however, that no smoke infiltrates into areas where smoking is otherwise prohibited, and further provided that each such drinking establishment has posted in a place visible to the public from its exterior a certificate of exemption issued by the St. Louis County Department of Revenue pursuant to the County Indoor Clean Air Act. A copy of such exemption shall also be provided to the City Clerk.

**SECTION 215.275 NOT TO PRECLUDE MORE
EXTENSIVE PROHIBITIONS**

Nothing in this Ordinance shall be construed or applied in such a manner as to interfere with or prohibit a property owner, business operator or public entity, including the City, from more broadly prohibiting smoking on or about their property or from prohibiting smoking in areas, at times, or under conditions which do not fall within the prohibitions established by this Ordinance or the County Indoor Clean Air Act.

SECTION 215.276 NOTICE TO LICENSE APPLICANTS

Notice of the provisions of this Ordinance shall be given to all applicants for licenses issued by the City pertaining to use of property for business or commercial purposes to which the public will be invited or permitted.

**SECTION 215.277 CERTIFICATES OF EXEMPTION TO QUALIFIED
DRINKING ESTABLISHMENTS**

- 1. The owner or operator of a drinking establishment which seeks a smoking exemption certificate shall obtain such by the County Director of Revenue attesting that the establishment satisfies the criteria for such exemption. No exemption shall be granted by the City.

SECTION 215.278 ENFORCEMENT

The Police Department and its authorized representatives shall enforce this Ordinance. Nothing herein shall be construed to limit the authority of the Fire Marshall either to designate additional locations in which smoking shall be prohibited or to repeal any order of the Fire Marshal prohibiting smoking in any location.

SECTION 215.279 PENALTIES

Every person who shall be convicted of a violation of this Ordinance shall be subject to a fine in accordance with the general penalties prescribed in Section 105.150 of the Municipal Code of the City of Richmond Heights, Missouri.

SECTION 3. It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect.

SECTION 4. The Chapter, Article, Division and/or Section assignments designated in this Ordinance may be revised and altered in the process of recodifying or servicing the City's Code of Ordinances upon supplementation of such code if, in the discretion of the editor, an alternative designation would be more reasonable. In adjusting such designations the editor may also change other designations and numerical assignment of code sections to accommodate such changes.

SECTION 5. This Ordinance shall be in full force and effect from and thirty-one (31) days after its passage.

PASSED and APPROVED this 8th day of February, 2011.

JAMES J. BECK
MAYOR

ATTEST:

PATRICIA S. VILLMER
DEPUTY CITY CLERK

APPROVED AS TO FORM:

KENNETH J. HEINZ
CITY ATTORNEY

First reading: January 18, 2011
Second reading: February 8, 2011