

No Smoking Model Ordinance Kansas City Metro Area

This sample ordinance is a tool for use by local communities throughout the Kansas City metropolitan area. Officials from the cities of Kansas City, MO and Overland Park worked with other community representatives to draft the model ordinance, and attorneys from both cities reviewed the draft for legal form. The model ordinance is drawn from numerous examples of existing statutes, best practices and widely accepted public health standards.

This draft model ordinance would create Smokefree Air in public places and work places by prohibiting smoking in all such places including, but not limited to:

- Public/indoor workplaces
- Health care facilities
- Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- Facilities primarily used for exhibiting a motion picture, stage performance, drama, lecture, musical recital, or other similar performance.
- Shopping malls
- Sports arenas, including enclosed places in outdoor arenas.
- Bars
- Restaurants
- Casinos

Exemptions:

- Not more than 25% of Hotel/Motel rooms rented to guests may be designated as smoking rooms.
- Private residences.

Representatives from the area restaurant and hotel/motel association were contacted, and they suggested that broad adoption of consistent provisions across the metro area would minimize the impacts on individual businesses.

It has been suggested that local communities could include a “triggering” mechanism with the adoption of their ordinance. Possible triggering concepts that have been discussed include authorizing the ordinance to go into effect only after a number of cities representing a minimum population base pass a similar ordinance, or establishing an effective date for the ordinance that is 12 -18 months, which could give other jurisdictions time to pass the same ordinance with the same effective date. Such a triggering mechanism could be problematic if different versions of the model ordinance are adopted by area cities.

Model Ordinance

Smoking prohibited in public places.

Purpose

- (a) It is the purpose of this Regulation/Ordinance that the City promotes public health by decreasing citizen's exposure to secondhand smoke and creates Smokefree environments for workers and citizens through regulation in the work place and all public places.

Definitions

- (a) For the purposes of this Regulation/Ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

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 any agency there of, which utilizes the services of one (1) or more employees.

Enclosed: 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 halls.

Permanently Designated: A hotel or motel room may be designated as a smoking room only one time a year.

Place of Employment means any enclosed area under the control of 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 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, Laundromats, 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."

Service Line means any indoor 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.

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 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.

Prohibition of Smoking in Enclosed Places of Employment and all Enclosed Public Places

- (a) Smoking shall be prohibited in all enclosed places of employment within the City.
- (b) It shall be the responsibility of employers to provide a smoke-free workplace for all employees.

Each employer having any enclosed place of employment located within the City shall adopt, implement, make known and maintain, a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. 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.

- (c) The smoking policy shall be communicated to all employees within four (4) weeks of the adoption of this ordinance.
- (d) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.
- (e) Smoking shall be prohibited in all enclosed public places within the City, including, but not limited to, the following places:
 - i. Any vehicle of public transportation, including but not limited to buses, limousines for hire and taxicabs.
 - ii. Elevators.
 - iii. Restrooms.
 - iv. Libraries, educational facilities, childcare and adult day care facilities, museums, auditoriums, aquariums and art galleries.
 - v. Any health care facility, health clinics 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.

- vi. Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, betting establishments, bowling alleys, arenas and swimming pools.
- vii. Service Lines.
- viii. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- ix. Shopping malls.
- x. Sports arenas, including enclosed places in outdoor arenas.
- xi. Bars.
- xii. Restaurants.
- xiii. Convention facilities.
- xiv. All public areas and waiting rooms of public transportation facilities, including but not limited to bus and airport facilities.
- xv. Any other area used by the public or serving as a place of work, including open office landscaping.
- xvi. 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,
- xvii. All enclosed facilities owned by the City.
- xviii. Rooms in which meetings or hearings open to the public are held, except where such rooms are in a private residence.

Where Smoking is not Regulated:

Notwithstanding any other provision of this Regulation/Ordinance to the contrary, the following areas shall **not** be subject to the smoking restrictions of this Regulation/Ordinance:

- (a) Private residences, not serving as enclosed, places of employment or an enclosed public place.
- (b) Hotel and motel rooms that are rented to guests and are permanently designated as smoking rooms; provided, however, that not more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated.

Responsibilities of proprietors, owners and managers.

- (a) The person having control of a place shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this Regulation/Ordinance in that place.
- (b) The 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) at every entrance and every place where smoking is prohibited by this Regulation/Ordinance. Such signage shall consist of letters not less than one inch in height.

Penalty for violation of Regulation/Ordinance

- (a) A person who smokes in an area where smoking is prohibited by the provisions of this Regulation/Ordinance shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- (b) A person having control of a public place or place of employment and who fails to comply with the provisions of this Regulation/Ordinance shall be guilty of an infraction, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.
 - 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
 - 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- (c) Each day on which a violation of this Regulation/Ordinance occurs shall be considered a separate and distinct violation.
- (d) In addition to the fines established by this Section, violation of this Regulation/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 to the person for the premises on which the violation occurred.

Nonretaliation.

- (a) 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 Regulation/Ordinance or reports or attempts to prosecute a violation of this Regulation/Ordinance.

Other Applicable Laws.

- (a) This Regulation/Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Enforcement of Regulation/Ordinance.

- (a) The authority to administer the provisions of this Regulation/Ordinance is vested in the *(insert correct office here)* and his/her duly authorized representatives.
- (b) Whenever the need arises, the *(insert correct office here)* may call upon the fire and police departments and other departments of the city to aid in the enforcement of the provisions of this Regulation/Ordinance.
- (c) Notice of the provisions of this Regulation/Ordinance shall be given to all applicants for a business license in the City.
- (d) Any citizen who desires to register a complaint under this Regulation/Ordinance may initiate enforcement with the *(insert correct office here)*.