

Sample Ordinance

BILL NO. 2003-34

ORDINANCE NO. 6550

AN ORDINANCE TO AMEND TITLE TWO, PUBLIC HEALTH, SAFETY AND WELFARE OF THE MARYVILLE MUNICIPAL CODE BY ADOPTING A NEW CHAPTER 241: MARYVILLE CLEAN INDOOR AIR ACT

WHEREAS, conclusive evidence exists that tobacco smoke causes respiratory and cardiac diseases, negative birth outcomes, irritation to the eyes, nose and throat; and

WHEREAS, the harmful effects of smoke are not confined to the person who smokes, but also causes severe discomfort and illness to those in the area where the smoking occurs; and

WHEREAS, environmental tobacco smoke, which includes both exhaled smoke and the side stream smoke from burning cigarettes, causes the death of fifty-three thousand Americans each year (Mc Ginnis J.M., Foege W., Actual Causes of Death in the United States, JAMA 1993, 270-2207-2212); and

WHEREAS, in the year 2000 the Public Health Service's National Toxicology Program listed environmental smoke as a known human carcinogen (U.S. DHHS, 2000 citing Cal.Epa, 1997); and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution affecting employees as well as patrons; and

WHEREAS, numerous studies have shown that breathing second-hand smoke is a cause of disease, including lung cancer, in non-smokers, and that children, elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease are at special risk; and

WHEREAS, health hazards induced by breathing second-hand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function including bronchoconstriction and bronchospasm,

THEREFORE, the Council of the City of Maryville FINDS AND DECLARES that enactment of this ordinance is necessary in order to:

1. Protect the public's health and welfare by prohibiting smoking in restaurants because restaurants are frequented by the public and are places of employment; and,
2. Guarantee the right of patrons and employees to breathe in a smoke-free environment

THEREFORE, the City Council of the City of Maryville FURTHER FINDS AND DECLARES that upon enactment of this Ordinance, the City Manager or other designee shall engage in a continuing program to explain and clarify the purposes and requirements of this Chapter to citizens affected by it, and to guide owners, operators and managers in their compliance with these provisions. City staff shall also work in cooperation with other governmental agencies to establish procedures in cooperation and compliance with this Chapter.

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

SECTION 1: That Title Two, Public Health, Safety and Welfare, of the Municipal Code of the City of Maryville, be and is hereby amended by adopting Chapter 241: Maryville Clean Indoor Air Act, which shall read as attached hereto and which is made a part of this Ordinance by reference.

SECTION 2: If any provisions, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid

provisions or applications and to this end the provisions of this Ordinance are declared to be severable.

SECTION 3: This Ordinance shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this ____ day of _____.

MAYOR,

ATTEST:

CITY CLERK,

TITLE II

PUBLIC HEALTH, SAFETY & WELFARE

CHAPTER 241

MARYVILLE CLEAN INDOOR AIR ACT

SECTION 241.010: DEFINITIONS 1. ATTACHED BAR means bar area of a restaurant. An attached bar shall not include any area where full meals are served, but may include the service of appetizers and snacks. Although a restaurant may contain a bar, the term bar shall not include the restaurant dining area.

2. Bar means an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises, deriving at least 60 percent (60%) of their gross revenue from the sale of alcohol and in which the serving of food is only incidental to the consumption of such beverages. A bar, for the purpose of this definition, does not include any establishment where smoke can filter through a passageway, ventilation system, or any other means into any area where smoking is prohibited.

3. Enclosed Area: means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways, which extend from the floor to the ceiling).

4. Restaurant means any eating establishment, including coffee shops, cafeterias, sandwich shops 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 any attached bar. .

5. Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.

SECTION 241.020: SMOKING PROHIBITION DEFINED

A. Except as otherwise provided in this Chapter, the possession of lighted smoking materials in any form, including but not limited to, the possession of lighted cigarettes, cigars, pipes or other tobacco products shall be unlawful in the following places of business which are used or open to the public.

1. Restaurants, including restaurant with attached bars
2. Cafeterias
3. Kitchens and dining areas located or associated with an educational institution.
4. Conference rooms when meals are being catered.

B. A person commits an offense if the person:

1. Knowingly smokes in an area in which smoking is prohibited by this Chapter; or
2. Knowingly or by criminal negligence fails to post any signage required by this Chapter; or
3. Knowingly or by criminal negligence designates or maintains a smoking area in violation of the requirements of this Chapter; or
4. Knowingly or by criminal negligence violates any other provisions of this Chapter. .

SECTION 241.030: SMOKING PROHIBITION EXEMPTIONS A. The smoking prohibitions in this Chapter shall not be applicable to: 1. Private residences

2. Any bar, including any bar which exists under license by the Maryville Municipal Code, at the time of the enactment of this Chapter, which shall be deemed to be Burny's, Lucky's, Molly's, Murphy's, The Palms, The Pub, and The Outback.

SECTION 241.040: DECLARATION OF ESTABLISHMENT AS NON-SMOKING A. Notwithstanding any other provisions herein, an owner, operator, manager or other person in control of a restaurant or any other facility may declare that entire establishment, facility or area as a non-smoking place.

B. If such non-smoking designation is made, smoking shall be prohibited in any place in which signage conforming to the requires of this Chapter is posted. SECTION 241.050: POSTING OF SIGNS

A. The owner, operator, manager or other person in control of the building, facility or area shall clearly and conspicuously post in every building or other area where smoking is prohibited by this Chapter signs which read "No Smoking" which state that the facility is a smoke-free establishment or by posing the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette in a red circle with a red bar across it).

B. Signage shall be clearly and conspicuously posted in every restaurant or other facility where smoking is prohibited by this Chapter, by the owner, operator, manager or other person in control of said facility.

SECTION 241.060: RESPONSIBILITIES IN NON-SMOKING AREA

A. The owner, operator, manager or other person having control of the area in which smoking is prohibited shall remove all ashtrays and other smoking paraphernalia from any area where smoking is prohibited by this Chapter.

B. An owner, manager, operator or employee of an establishment regulated by this Chapter shall inform persons violating this Chapter of the appropriate provisions thereof.

C. The owner, manager, operator, or employee of an establishment regulated by the provisions hereof shall make reasonable efforts to prevent smoking upon observing a person smoking in violation of this Chapter shall request that the person stop smoking.

SECTION 241.070: NON RETALIATION

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 right afforded by this Chapter or reports or attempt to prosecute a violation of this Chapter.

SECTION 241.080 ENFORCEMENT

A. This Chapter may be enforced through the Municipal Court of the City of Maryville.

B. In addition to the remedies provided by the provisions of this Chapter, the City Attorney may apply to any court of competent jurisdiction for injunctive relief to enforce those provisions.

C. Notwithstanding any other provision of this Chapter, an employee or private citizen may bring private legal action to enforce rights under this Chapter. D. This Chapter shall not limit the authority of any governmental entity

to enforce similar smoke-free regulations applicable to any business or person discussed herein.

SECTION 241.090: OTHER APPLICABLE LAWS

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. SECTION 241.100: VIOLATIONS AND PENALTIES

A. It shall be unlawful for any person to violate any provision herein including smoking in an area where smoking is prohibited by the provisions of this Chapter.

B. It shall be unlawful for any person who owns, manages, operates or otherwise controls a restaurant or other place regulated by this Chapter to fail to comply with the provisions of this Chapter.

C. Any person who violates any provision of this Chapter shall be punished by a fine not exceeding three hundred dollars (\$300.00).

D. Each day on which a violation of this Chapter occurs shall be considered a separate and distinct offense.

E. Violation of this Chapter by a person who owns, manages, operates or otherwise controls a restaurant or other place regulated by this Chapter may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violations occurred.