

Published 7-16-15

ORDINANCE NO. 0-35-15

**An ordinance** relating to smoking regulations in the City of Kansas City, Kansas and on property owned, controlled or leased by the Unified Government of Wyandotte County/Kansas City, Kansas; amending Sections 17-133, 17-135(a), 17-136(b), and 17-137 and repealing original Section 17-141.

**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS:**

**Section 1.** That Section 17-133 of the Code of the Unified Government of Wyandotte County/Kansas City, Kansas, be and is hereby amended to read as follows:

For purposes of this article, the following terms, phrases, words and their derivations shall have the following meaning:

*Ancillary lottery gaming facility operations* means that portion of a building where additional non-lottery facility game products and services not owned and operated by the State are included in the overall development associated with the lottery gaming facility. Such operations may include, but are not limited to, restaurants, hotels, motels, museums or entertainment facilities.

*City* shall mean the City of Kansas City, Kansas and the service territory of the Unified Government comprised of that territory within the borders of the City of Kansas City, Kansas.

*Drinking establishment* means a premise which may be open to the general public where alcoholic liquor by the individual drink is sold.

*Electronic cigarette or e-cigarette* means a device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, any electronic cigarette, cigar, pipe, or hookah, including any component, part, or accessory of such a device, whether or not sold separately. Electronic cigarette or e-cigarette shall not include any product(s) approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

*Employee* means any person, including but not limited to, independent contractors and volunteers, who performs services for an employer, with or without compensation.

*Employer* means a person, business, partnership, association, corporation, including a municipal corporation, trust or nonprofit entity, including the City or any agency thereof, which utilizes the services of one or more individual persons.

*Enclosed* means 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.

*Health care facility* means any institution, place, building, or agency required to be licensed under State law, including, but not limited to, any hospital, nursing facility or nursing home, boarding home, assisted living facility, supervised living facility, or ambulatory medical and surgical center. A private residence being visited by a health care provider for the purposes of providing in-home health care shall not be deemed a health care facility.

*Lottery gaming facility* means that portion of a building used for the purposes of operating, managing and maintaining electronic gaming machines and any other games which are authorized to be conducted or operated within the boundaries of this state.

*Office landscaping* means indoor office areas without permanent walls, or walls that are not floor to ceiling; open space such as waiting areas and atriums; cubicles and/or open desk seating areas.

*Open burning* means the burning of any materials in which contaminants resulting from combustion are emitted directly into the ambient air without passing through an enclosed chamber that meets all applicable state and federal air pollution regulations, but shall not include "smoking" as that term is defined below.

*Parimutuel licensee location* means a racetrack facility, as defined in K.S.A. 74-8802, and amendments thereto, owned or managed by the parimutuel licensee and may include any existing structure at such racetrack facility or any structure that may be constructed on real estate where such racetrack facility is located.

*Permanently designated* means a hotel or motel room that has been identified as either a smoking ~~on~~ or non smoking room. Hotels and motels may designate smoking rooms only once a year.

*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.

*Private club* means a class "A" club as defined by K.S.A. 41-2601(e) and/or a class "B" club as defined by K.S.A. 41-2601(f).

*Private residence* means enclosed personal living space, within any facility, not open to the general public without invitation.

*Proprietor* means any person who owns, leases, operates, manages, or otherwise has control of any establishment, building, or enclosed area. The term "proprietor" includes corporations, associations, nonprofit entities, or partnerships as well as individuals.

*Public transportation* means any air, land, or water vehicle used for the mass transportation of persons in intrastate travel for compensation, including, but not limited to, any airplane, train, bus, or boat that is not subject to federal smoking regulations.

*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 care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, production and marketing establishments, retail services establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. "Public place" shall include a private club when being used for a function to which the general public is invited; however, a private residence is not a "public place" unless being used as a licensed child care, licensed adult day care, or licensed health care facility.

*Racetrack gaming facility* means that portion of a parimutuel licensee location where electronic gaming machines are operated, managed and maintained.

*Recreational facility* means any enclosed indoor area used by the general public and used as a sports pavilion, health spa, boxing arena, bowling alley, swimming pool, stadium, arena, roller or ice skating rink, video game facility, senior citizen recreational facility or other similar place where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness a sporting event.

*Restaurant* means any building, structure, or area where food is available for eating on the premises, in consideration of payment.

*Service line* means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

*Smoke or smoking* means the lighting, inhaling, exhaling, burning, carrying or holding of any lighted, heated, or burning pipe, cigar, or cigarette of any kind, or use of an electronic cigarette, electronic or battery powered vaporizer, or other products derived from tobacco or other substances intended to be smoked, heated, absorbed, dissolved, inhaled, snorted, or sniffed. ~~or the lighting, inhaling, or exhaling of smoke from a pipe, cigar, or cigarette of any kind.~~

*Specialty tobacco store* means a retail store utilized primarily for the sale of tobacco products, electronic cigarettes or devices, and accessories, or any component thereof, and in which the sale of other product is merely incidental.

*Theater* means any indoor facility or auditorium, open to the public, which is primarily used or designed for the purpose of exhibiting any motion picture, stage production, musical recital, dance, lecture, or other similar performance.

*Tobacco products* means any product containing, made, or derived from tobacco or containing nicotine, whether synthetically produced or derived from other sources that is intended for human consumption (but not marketed for cessation). Tobacco products include, but are not limited to, any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah and any component, part, or accessory, whether or not sold separately (and not marketed for cessation).

*Unified Government* shall mean the consolidated government of the former Wyandotte County Board of Commissions and the former City Council of Kansas City, Kansas and shall include the Unified Government Board of Commissioners and all real property owned, controlled, leased or managed by the Board of Commissioners or any commission, agency or board subordinate to or controlled by said Unified Government under State or local law.

(Ord. No. O-91-08, § 3, 12-18-2008)

**Section 2.** That Section 17-135(a) of the Code of the Unified Government of Wyandotte County/Kansas City, Kansas, be and is hereby amended to read as follows:

**Sec. 17-135. - Prohibition of smoking in enclosed public places.**

(a) Smoking shall be prohibited in all enclosed public places within the City, including, but not limited to, the following places:

- (1) Any vehicle of public transportation, including, but not limited to, buses, limousines for hire and taxicabs;
- (2) All public areas and waiting rooms of public transportation facilities, including, but not limited to, ~~but~~ bus and airport facilities;
- (3) Libraries, educational facilities, child care and adult day care facilities, museums, auditoriums, aquariums, and art galleries;
- (4) Any health care facility, health clinic or ambulatory care facility, including, but not limited to, laboratories associated with rendition of health care treatment, hospitals, nursing homes, doctors' and dentists' offices;
- (5) Any indoor place of entertainment or any recreation facility, including, but not limited to, gymnasiums, theaters, concert halls, auditoriums, bingo halls, billiard or pool halls, bowling alleys, arenas and swimming pools;
- (6) Service lines;
- (7) Places licensed to be drinking establishments;
- (8) Restaurants;
- (9) Convention facilities;
- (10) Elevators;
- (11) Sports arenas, including, but not limited to, enclosed places in outdoor arenas;
- (12) Any other area used by the public or serving as a place of work, including open office landscaping;
- (13) 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 other 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;
- (14) All enclosed facilities owned by the Unified Government or any predecessor government and any subordinate agency, board or commission;

- (15) Rooms in which meetings or hearings open to the public are held, except where such rooms are in a private residence;
- (16) Licensed child day care facilities;
- (17) Common indoor areas in apartment buildings, condominiums, and other multiple-unit residential facilities including, but not limited to, exercise rooms, hallways, lobbies, meeting rooms, laundry rooms, and recreational facilities;
- (18) Common indoor areas and rooms permanently designated as a "non smoking" room that are offered for lease or rent to the public in hotels and motels. For the purposes of this article, common areas shall include, but not be limited to, exercise rooms, hallways, lobbies, meeting rooms, laundry rooms, and recreational facilities;
- (19) Educational facilities;
- (20) Grocery stores; other retail stores, convenience stores, and indoor shopping malls;
- (21) Public restrooms, lobbies, reception areas, hallways, and other common-use areas in any building;
- (22) Workplaces not exempted by this article.
- (23) Within 10 feet of any doorway, open window and air intake of establishments where smoking is prohibited; provided, however, that this prohibition shall not apply to the outdoor seating area of a restaurant or drinking establishment where smoking is allowed if reasonable efforts are made to minimize the chance of smoke affecting the inside occupants of the establishment.

(Ord. No. O-91-08, § 5, 12-18-2008)

**Section 3.** That Section 17-136(b) of the Code of the Unified Government of Wyandotte County/Kansas City, Kansas, be and is hereby amended to read as follows:

- (b) The person having control of a place, subject to this article, 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 article. Such signage shall consist of letters not less than one inch in height and clearly state that smoking is prohibited by state law.

(Ord. No. O-91-08, § 6, 12-18-2008)

**Section 4.** That Section 17-137 of the Code of the Unified Government of Wyandotte County/Kansas City, Kansas, be and is hereby amended to read as follows:

**Sec. 17-137. - Exceptions; discretion of employers and proprietors.**

- (a) Unless otherwise provided herein, this article shall not apply to:

- (1) Private homes, private residences, and private automobiles not serving as enclosed places of employment or an enclosed public place; including residences under the control, ownership or lease by the Unified Government and the City Housing Authority; nothing herein shall prohibit the Unified Government or the City Housing Authority from limiting, regulating or prohibiting smoking in such residences;
- (2) Private clubs which:
  - a. Had a valid City and State private club license as of November 1, 2008; and
  - b. Currently have a valid City and State private club license.
- (3) Any hotel or motel room permanently designated as a "smoking" room so long as such rooms do not exceed 2520 percent of the total accommodations within the establishment that are offered for lease or rent to the public;
- (4) Existing specialty tobacco and electronic cigarette stores and new specialty tobacco and electronic cigarette stores which are enclosed and separated from other structures and which do not share a common system of ventilation;
- (5) Outdoor, unenclosed areas of restaurants, drinking establishments, or private clubs including but not limited to decks and patios where smoking is allowed. With respect to said outdoor seating area, smoking may be allowed only if reasonable efforts are made to minimize the chance of smoke affecting the inside occupants of the establishment;
- (6) Lottery gaming facilities and race track gaming facilities until all lottery gaming and racetrack gaming facilities located in the Missouri counties of Jackson, Platte and Clay, and the Kansas counties of Johnson and Wyandotte (the "relevant counties"), but not including Native American lottery gaming facilities, are obligated by ordinance, statute or law to prohibit smoking within the areas where lottery gaming and racetrack gaming is allowed. To determine when lottery gaming and racetrack gaming facilities areas are no longer exempt from this article as described above:
  - a. The city clerk with the advice of the director of health will maintain a library of smoking ordinances from all cities located in the relevant counties.
  - b. When smoking within casino gaming areas has been banned in those jurisdictions in which casinos are located in the relevant counties, the city clerk shall provide for public notice through the city's internet site, news releases and a communication to the city council.
  - c. Such notice shall state that this article will apply to casino gaming areas after 60 days from the date of the notice.
- (7) Open burning which means the burning of any materials in which contaminants resulting from combustion are emitted directly into the ambient air without passing through an enclosed chamber that meets all applicable State and federal air pollution regulations, but shall not include "smoking" as that term is defined in Section 17-133 herein.
- ~~(8) Any other place of business, not otherwise included in this section, which clearly posts and identifies itself at each entrance as a smoker friendly facility where smoking is permitted until December 31, 2011, provided:~~
  - ~~a. The business either:~~
    - ~~1. Can establish that it has no legal ability to exclude customers and patrons under the age of 18 years of age; or~~

- ~~2. Has the legal ability to continuously exclude, and does continuously exclude, all customers and patrons under 18 years of age; or~~  
~~3. Restricts all smoking to a designated smoking room or area in which customers and patrons under the age of 18 are not allowed to enter and/or remain in; or~~  
~~4. Prohibits all smoking in the business until after 9:00 p.m.; and~~  
~~b. The business has obtained, and annually renews, a license from the unified government to operate the place of business as a smoker friendly facility. No further licenses will be issued or extend beyond December 31, 2011.~~

(b) This article shall not prevent or be construed to limit the right of any employer or proprietor from adopting smoking prohibitions that are more stringent than the requirements of this article.

(Ord. No. O-91-08, § 7, 12-18-2008; Ord. No. O-18-09, § 1, 2-19-2009)

**Section 5.** That original Section 17-141 relating to licenses, fees, and end date of license be and the same is hereby repealed.

**Section 6.** This ordinance shall take effect and be in full force from and after its passage, approval, and publication in the Wyandotte Echo.

**PASSED BY THE BOARD OF COMMISSIONERS OF THE UNIFIED GOVERNMENT  
OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS,**

THIS 9 DAY OF July, 2015.

  
\_\_\_\_\_  
Mark Holland, Mayor/CEO

Attest:

Carol Bodie  
Deputy Unified Government Clerk

Approved As To Form:

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Misty Brown, Assistant Counsel