



October 20, 2006

TO: Mayor and City Council

FROM: Mari E. Macomber, City Manager *MEM*

SUBJECT: Study Session – **October 25, 2006**

The City Council will be hosting their bi-monthly Study Session on Wednesday, October 25, 2006 starting at 5:30 p.m. The Meeting will be held again in the City Council Chambers of City Hall.

1. CONTINUED DISCUSSION CONCERNING A SMOKING BAN

2. REVIEW NEWSLETTER - October 20, 2006

1. DISCUSSION CONCERNING A SMOKING BAN

At the last Study Session, the City Council reviewed the parameters of a smoking ban ordinance. Though there was not a consensus of the entire Council, there was at least a majority of the Council supporting various aspects of a smoking ban ordinance.

Draft Ordinance.

Based upon this discussion, I have drafted an ordinance that would ban smoking in the following places: restaurants, bars, city parks, city operated buildings, bowling alleys, skating rinks, billiard rooms, and banquet halls whose owner or the entity renting the facility requires the assistance of an employee for an event. This ordinance still requires the City Attorney's final review, which will be completed by Wednesday.

Since the last Study Session meeting, I had been asked by Council member McCord to include nursing homes in the ordinance. If the City Council wishes to add nursing homes or make any other changes, you will need to make that determination on Wednesday.

Placing the Item on the Ballot

When we concluded the meeting earlier in the month, the Council had also discussed the possibility of placing the ordinance on an upcoming ballot. The Council has heard

criticism for considering this option, but I want to remind you that there is nothing wrong with this option, if as a Council you believe it in the best interest of the community. Items are placed on the ballot all the time if they are deemed controversial or they have the potential of impacting a lot of people and the livelihood of individual business owners. When the City Council voted to sell the land at Hazel Creek, the 400 to 500 people attending this public meeting voiced concerns that the City Council should not vote on such an issue. Either way, you will receive criticism. The Missouri Statutes are full of issues such as the Hancock Amendment that requires local governments to place an item on the ballot for citizens to consider. Breathe Easy Kirksville has done an impressive job of organizing their effort and are very passionate about this topic. However, it doesn't mean that there are not others out there who may not be as active who are equally passionate. Again, as a Council you need to decide how you want to move forward with this issue. As directed, a copy of an ordinance placing the matter on the April 3, 2007 agenda is also attached.

Council Options.

The City Council still has several options that you can choose to exercise. Your options include placing the smoking ban ordinance on the agenda, placing the ordinance calling for an election on the agenda, or require the completion of an initiative petition for Kirksville citizens to decide. The final option is to do nothing.

Other Discussion Points

Several meetings ago, when the smoking ban was discussed, I raised the question about sending letters out to those business owners affected. No one seemed opposed to doing this, but it was determined that there was no need to send any letters out since the City Council had not even decided if they were going to consider an ordinance. Do you wish to send letters out at this time?

2. REVIEW NEWSLETTER – - October 20, 2006

Attachments

Ordinance Banning Smoking in Kirksville – pgs. 3 - 6

Ordinance Placing Issue on April Ballot – pgs. 7 - 8

Comments from Local Restaurant Owner – pgs. 9 - 12

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 18, ARTICLE V – OFFENSES AGAINST PUBLIC HEALTH AND SAFETY - OF THE CITY CODE OF THE CITY OF KIRKSVILLE, MISSOURI, BY ADDING A SECTION ENTITLED “SMOKING PROHIBITED IN CERTAIN PUBLIC PLACES”

WHEREAS, the smoking of tobacco is a form of air pollution, and considered to be a danger to health, and a material public nuisance; and

WHEREAS, the City of Kirksville wishes to promote the public health and welfare of its citizens and community visitors by decreasing exposure to secondhand smoke caused from tobacco; and

WHEREAS, the City Council of the City of Kirksville finds and declares that the purpose of this Ordinance is to protect the public health and welfare by prohibiting smoking in certain public places.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, ADAIR COUNTY, MISSOURI, AS FOLLOWS:

Section 1. That Chapter 18, Article V, of the Code of Ordinances of the City of Kirksville, Missouri, be amended to read as follows:

Division 3. SMOKING PROHIBITED IN PUBLIC PLACES.

Section 18-88. Definitions.

The following words, terms and phrases, when used in this Section, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

1. *Banquet Hall* means a stand alone building used for private gatherings or entertainment.
2. *Bar* means an establishment that serves 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.
3. *City Operated Facility* means any public building located within the territorial limits of the city, which is owned, leased or under control of the city for city services.

4. *Control* means to exercise authority or influence over; or direct.
5. *Employee* means any person who performs services for an employer for compensation.
6. *Employer* means a person, partnership, association, corporation, trust , or other organized group of individuals, which utilizes the services of one (1) or more employees.
7. *Membership Association* means a private organization and is organized primarily for the benefit of its members; who pay dues and is organized primarily as a recreational association; or a fraternal association; or an athletic association; or a military veterans association; or a religious association; or a kindred association; and is a not-for-profit organized; and is managed and operated by a board consisting entirely of its members.
8. *Owner* means a person, partnership, association, corporation, trust, or other organized group of individuals.
9. *Recreation Facilities* means any public park, playground, recreation center or recreation area, whether it be improved or unimproved real property located within the territorial limits of the city, which is owned, leased or under control of the city for recreational purposes.
10. *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 for sale food to the public. The term “restaurant” shall include an attached bar.
11. *Smoking* means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other tobacco product.
12. *Sports Arenas* means buildings used for billiards, bowling or roller skating and other similar places.

Section 18-89. Prohibition of smoking.

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, is prohibited in all bars, city operated facilities, recreation facilities, restaurants, sports arenas and banquet halls when employees are present.

Section 18-90. Responsibilities of proprietors, owners and managers.

- a. Any person(s) having control of a place listed above shall not permit, cause, suffer or allow any person to violate the provisions of this ordinance in that place. 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 cigarette, cigar, pipe or other tobacco product be extinguished, and has 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, and has notified City enforcement officers of the violation.
- b. 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 by this Ordinance. Such signage shall consist of letters not less than one inch, (1") in height.

Section 18-91. Penalty for violation of this Ordinance.

- a. A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an ordinance violation, punishable by a fine not exceeding fifty dollars (\$50.00) for the first violation.
- b. Any person(s) having control of a restaurant or bar and fails to comply with the provisions of this Ordinance shall be guilty of an ordinance violation, 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 a one (1) year period.
 3. A fine not exceeding five hundred dollars (\$500) for a third or subsequent violation within a one (1) year period.
- c. Each incident on which a violation of this Ordinance occurs shall be a separate and distinct violation.
- d. In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place as defined in Section 18-89 may result in the suspension or revocation of the business license issued to conduct business at the premises pursuant to Chapter 14 of the Kirksville Code of Ordinances.

Section 18-92. Other applicable laws.

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

Section 18-93. Effective dates.

- a. This Ordinance will become effective on January 31, 2007.

Section 18-94. Enforcement of Ordinance.

- a. The authority to administer the provisions of this Ordinance is vested with the City Manager and his duly authorized representatives.
- b. Whenever the need arises, the City Manager may call upon the police, fire and codes departments and other departments of the City to aid in the enforcement of the provisions of this Ordinance.
- c. Notice of the provisions of this Ordinance shall be given to all applicants where smoking is prohibited as outlined in Section 18-89 and who has applied for a business license in the City of Kirksville, Missouri.

Section 2. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Kirksville, Missouri, as an addition or amendments thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

This ordinance shall be in full force and effect from and after January 31, 2007.

Passed by the City Council, and signed by the Mayor this _____ day of _____, 2006.

Martha Rowe, Mayor

ATTEST:

Vickie Brumbaugh, City Clerk

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE TO PLACE ON THE GENERAL MUNICIPAL ELECTION BALLOT OF APRIL 3, 2007, A QUESTION TO BAN SMOKING IN CERTAIN BUSINESS ESTABLISHMENTS INCLUDING BARS, RESTAURANTS, CITY OWNED BUILDINGS AND PARKS, AND BANQUET ROOMS WHERE EMPLOYEES WORK, LOCATED WITHIN THE CITY LIMITS OF KIRKSVILLE, MISSOURI .

WHEREAS, a public hearing was held on August 30, 2006, concerning a request from a group, referred to as the Breathe Easy, to pass a Smoking Ban Ordinance in the City of Kirksville, Missouri; and

WHEREAS, the City Council has held Study Sessions to review and discuss a proposed Smoking Ban Ordinance that would cause a smoke free environment within public places of Kirksville; and

WHEREAS, the City Council has also held Study Sessions to review and discuss a proposed Smoking Ban Ordinance that would cause a smoke free environment within restaurants and bars only; and

WHEREAS, the City Council desires to submit to the voters at the April 3, 2007 election, a proposed question to ban smoking in restaurants and bars within the city limits of Kirksville, Missouri.

NOW, THEREFORE, BE ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI, AS FOLLOWS:

Section 1. A general election is hereby ordered to be held in the City of Kirksville, Missouri concurrently with the general municipal election, on Tuesday, April 3, 2007 on the following question:

Shall the City of Kirksville, Missouri cause to be a smoke free environment in certain business establishments including bars, restaurants, city owned buildings and parks and banquet rooms, where employees work, within the city limits of Kirksville, effective one hundred twenty (120) days from and after the date of approval by a majority of the voters of the city?

Section 2. The City Clerk is authorized and directed to notify the County Clerk of Adair County, Missouri of the passage of this Ordinance no later than 5:00 p.m. on January 23, 2007, and to include in said notification all of the terms and provisions required by Chapter 115, RsMO, as amended.

Section 3. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed by the City Council and signed by the Mayor this _____ day of _____, 2006.

Martha Rowe, Mayor

ATTEST:

Vickie Brumbaugh, City Clerk

City Wide Ban on Smoking - From Brenda Sewell

As an American I pay for my right to smoke, through cigarette taxes and higher health insurance. I avoid non-smoking establishments so I won't infringe on those that don't smoke. Business owners pay for their right to decide if their establishments are smoking or not, by paying property taxes, insurance, licensing and huge electric bills for ventilation for the comfort of their well established clientele.

The arguments anti smokers have concerning cigarette smoke in public places is unconstitutional, and unfair to business owners and their customers.

Reports are biased to benefit the non smokers' crusade to control others into what they think is good for everyone.

Those looking for employment and don't smoke should do their homework before applying at an establishment that allows smoking.

The American Cancer Society conducted air quality testing in several smoking venues in New York which have some interesting conclusions. According to one study a restaurant with an enclosed smoking area has actually 20 nanograms of exposure of smoke to other parts of the building. To get a prospective, 20 nanograms is 0.00000020 of a gram/cubic meter of second hand smoke concentration for this particular restaurant. This is 25,000 times safer than OSI-IA regulations, which destroys the theory separation and ventilation isn't a reasonable solution.

Steven Milloy has a bachelor's degree in natural sciences from Johns Hopkins University, where he also received a master of health sciences in biostatistics, a juris doctorate from the University of Baltimore and a master's degree in law from Georgetown University's law center. He has written several books and reports debunking scientific studies that he calls agenda-based. The Helena and Pueblo study are his pet peeves, Milloy said.

According to the study Dr. Mori Krantz, a cardiologist and the director of prevention programs at the Colorado Prevention Center, led the analysis of the Pueblo data. We already know that tobacco smoke does harm to nonsmokers, most notably to their cardiovascular systems, Krantz said. This study further validates the argument that limiting exposure to deadly tobacco smoke can save lives. Dr. Nick Alsever, an endocrinologist and vice president of medical affairs at Parkview Medical Center in Pueblo; Dr. Carl E. Bartecchi, clinical professor of medicine at the University of Colorado School of Medicine; and Dr. Christine Nevin-Woods, director of the Pueblo City-County Health Department, concurred with the findings. Nevin-Woods said there is definitely a relationship between smoking ordinances and public health outcomes.

Malloy states “The Helena study was all about cherry picking. There was no historical context, and it (the decrease in heart attack rates) appeared to be a part of a cyclical pattern. Milloy also said that one of the hospitals included in the Helena study lost its cardiologist, so fewer cardiac patients were sent there. It was a poor study design, he said. There were no patient histories considered, so there was no determination of individual cardiovascular risk profiles or the actual cause of observed heart attacks in individuals. There was not enough historical data to compare. No doubt heart attack rates vary through time. It’s a lousy analysis with no biological plausibility - a crude statistical study. It’s junk science, (Doehrman, Marylou)

Anti-smoking organizations insist that bans are somehow good for business. I beg to differ, “many New York City bar owners report business has declined as much as 40 percent.” (Spohr, George) “a study by PricewaterhouseCoopers that was financed by the Casino Association of New Jersey estimated that a smoking ban ...would cost the state (New Jersey) \$93 million in lost tax revenues and nearly 3,400 jobs in the first two years alone” (Goldstein, Scott). “Davis said most people in the restaurant and bar industry do smoke and want a place where they can come and enjoy their habit. But that wasn’t the reason the bar was founded, he said” (Porter, Steve).

The state of Maryland was under attack of putting a smoking ban in their state. “Melvin Thompson, a lobbyist for the Restaurant, Association of Maryland, applauded the outcome (of not issuing a smoking ban) as a sign that legislators had heard the message that “smoking bans are most damaging to smaller restaurants and bars.”(Freerepublic. com)

Certain businesses such as restaurants, pool halls, bowling alleys, hotels, and taverns are closing because their clientele are mostly smokers that usually frequent such places. “The Cornell University Center for Hospitality Research did a study in 1995, and it seemed to indicate that 47% of smokers said they avoid smoke-free restaurants, and 59% say they actively seek restaurants that allow it. About 35% of said they avoid restaurants with smoking (Silk). This shows that smokers are actively trying to accommodate non-smokers, while non-smokers don’t respect the choice of smokers.

If this ban materializes where will the tax money come from? If bars are closed because they are banned from allowing their patron’s to smoke what about the liquor tax that is generated each year. The same can be said about certain restaurants.

At this time Missouri’s cigarette tax is 17 cents per package. Missouri collected \$100 million in cigarette tax revenues and \$142 million from tobacco settlement revenues in 2001 (SmokingorHealth). Missouri wants to increase the tobacco tax November 2006. The proposed 80-cent tax

increase in Missouri would raise an estimated \$351 million a year, with \$61 million of that going to anti-smoking programs, \$100 million to treatment of chronic diseases and smoking-related illnesses among the poor and \$190 million to increase Medicaid fees to health-care providers. The Missouri Hospital Association and other health organizations are bankrolling the campaign (Hoover).

Most of the bars and restaurants in Kirksville have been around for several years and their clientele is built around smokers. I think that if non-smokers want a smoke free bar then let them get together and operate one. This way, non-smokers have a place to go that they can enjoy and not infringe on the smokers enjoyment.

Non-smokers claim that smoking is a public issue. Smokers are not just hurting themselves but all those around them.

I believe motor-cross sports are dangerous and encourage unsafe practices. It can also be dangerous to the spectators that go to these functions. Why do I say that? My brother was in motor-cross and broke his neck. He was paralyzed for over a year and had to go through extensive therapy to walk again. Not only was my brother injured, but the rider behind him was also severely injured. I have seen on television and in person several occasions when the motorcycle rider had lost control and the bike went into the spectators, injuring them as well, The argument is they chose to participate and are aware of all the risk. This can include sports such as baseball and football. I don't participate in a baseball team because it's dangerous and can lead to serious injuries. I AVOID situations I feel are harmful. What I'm trying to say is if you feel that cigarette smoke is dangerous then avoid it. Go to places that are smoke-free. If there isn't a smoke free place, then ban together and establish one. Don't destroy a business that already has a clientele of smokers established.

I can go further, with colognes, hairsprays, deodorants and other personal care products. I personally have allergies to some perfumes which cause severe headaches and upset stomach. I also have allergies that are triggered by such businesses that sell incense, and scented candles. I can hardly enter a bath & body store without my eyes watering and an instant headache. I know I am not alone in this either. But instead of beginning an anti scent campaign I avoid these places. I choose colognes that don't set off an allergy reaction and if someone is around that has such a scent that I am sensitive to I avoid them.

In conclusion, smokers pay for their right to smoke through cigarette taxes and high insurance. The bar business, along with the mom and pop restaurants that are already established are built on clientele that are smokers. Business owners pay for the right to decide whether they are a

smoking or a non-smoking establishment, through taxes, licensing and insurance. There are so many things in this world that are dangerous. Should we go around wearing bubble-wrap and oxygen bottles to stay safe? The dogooders of the world conduct studies that are biased and slanted for their own agenda. Last but not least a lot of state and local revenue would be lost.

Works Cited

By Doehrman, Marylou

By Porter, Steve

By Spohr, George

By Goldstein, Scott

Missouri Partnership on Smoking or Health

10/14/5 | Tim Hoover