



October 6, 2006

TO: Mayor and City Council

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

SUBJECT: Study Session – **October 9, 2006**

The City Council will be hosting their bi-monthly Study Session on Monday afternoon, October 9, 2006 starting at 3:00 p.m. The Meeting originally was scheduled to be held in the second floor conference room of City Hall. It will be held in the City Council Chambers and will include the following:

1. DISCUSSION CONCERNING A SMOKING BAN

2. REVIEW NEWSLETTER - No Newsletter

1. DISCUSSION CONCERNING A SMOKING BAN

In June of this year, the City Council received a letter and materials from a Truman State University graduate regarding her research on the assessed attitudes and knowledge of secondhand smoke and a perceived impact of smoke-free policies amount Kirksville's restaurant and bar owners. Because notice of this report was included in a subsequent Newsletter, Councilmember Blesz introduced the study as a topic of general discussion at the June 14 Study Session. Mr. Blesz invited members of a group called Kirksville Breathe Easy. The City Council discussed the idea briefly and agreed that they wanted to receive input from the community. A date and time for a public forum was established and approved for August 30 by the City Council. The initial meeting of the City Council focused on the above referenced study, which focused on the before mentioned businesses.

On September 13, the City Council was slated to discuss two items in relation to this issue. The first was to hear a presentation from Breathe Easy Kirksville on a grant this organization had qualified to receive and ways that Breathe Easy intended to spend the funds from this grant. The second item was to review a sample ordinance that was given to the City by this same group. During this meeting, the Council did hear details

on the grant. There was limited discussion concerning the sample ordinance that was provided. The most significant comments concerned the overall intent of the ordinance. The initial discussions of the City Council were based on a study regarding restaurants and bars, but the sample ordinance included many more establishments focusing on places of employment and public places. The City Council also discussed their desire to send out correspondence to those businesses potentially affected by the sample ordinance. The City Manager was to prepare a letter for delivery. Several members of the Council expressed their support or objections for the sample ordinance. Councilmember McCord expressed her desire to not rush the matter and to allow for more education. It was agreed that the City Council would revisit the matter at the next Study Session following an upcoming Missouri Municipal League meeting. Council member Blesz requested that the City Manager and City Attorney review the sample ordinance and have something prepared for the September 9 Study Session. No other member of the Council objected to this request.

At a subsequent City Council meeting, Councilmember Crist raised the issue of the sample ordinance and his objections, noting that the City Council should consider placing the matter before the citizens of the community. Council members Newton and McCord expressed interest in this approach. Council member Newton further stated that he would be willing to vote on the sample ordinance presented by Breathe Easy Kirksville. Council member Blesz encouraged the Council to not place the issue on the April ballot, but for the City Council to take responsibility for determining the action.

Efforts have been made by City staff, including multiple reviews by both the City Manager and City Attorney, to review the sample ordinance that was provided to the City. Since the City Council has not discussed this ordinance it is difficult for the City Manager to make a complete attempt at developing a final document. As previously noted the original discussions focused on a very limited type of business and the sample covers a much broader area.

State Law

Included for your review are the current Missouri State Statutes on smoking restrictions. State Law restricts smoking in public places. The law also defines what is not considered a public place. The law restricts other places such as schools and daycares. It also allows provisions for further restrictions on the part of communities.

Staff Review

The sample ordinance that was given to the City Council by Breathe Easy Kirksville is found starting on page 11 of this document. I encourage each member of the City Council to review the changes made to this document and review the comments attached throughout. Because the City Council has not discussed their goals for this issue, the document review provides information to clarify, repair, and allow the City to enforce the ordinance if the restrictions found in this sample are what the City Council wishes to implement.

Other Communities

The City Council is going to have to discuss whether or not you want to impose smoking restrictions and if you do, to what level. The City of Maryville was recognized by Breathe Easy for the Ordinance this City adopted. A copy of this Ordinance is enclosed, and is not as restrictive as the sample ordinance given to the City of Kirksville. The City of Columbia is considering further restrictions on an existing city ordinance. This community's draft document is also enclosed for City Council review. Columbia will be holding a public hearing on their ordinance on Monday. The City of Lee Summit has voted to place the matter on the November ballot. This was a result of receiving an initiative petition from qualified voters of the community. The current Lee Summit Ordinance has provisions that allow for smoking in restaurants and bars. The matter before the citizens concerns whether or not to continue these provisions or establish these places as non smoking. Again, the ordinance they are considering is also enclosed. Finally, the smoking ordinance that was adopted by the City of Kansas City, Missouri is enclosed. This ordinance is also restrictive, but is written much better than the sample ordinance provided. The City of Kansas City adopted their ordinance in November 2004.

Study Session Purpose

The City Council needs to focus on a comprehensive discussion with City Council members. I would encourage you to refrain from soliciting comments and opinions from citizens, as you have allowed this already. Once you conclude your discussion as a Council, you are not restricted from seeking additional community input. But since you are the elected officials, you need to be given the opportunity to share your thoughts and ideas. I would encourage you to listen to all comments from your fellow Council members.

RECOMMENDATION:

The City Council is going to have to decide whether or not you want to consider any ordinance banning smoking. If you wish to pursue an ordinance then discussions need to take place to determine how restrictive the ordinance should be. If the City Council is interested in exploring the adoption of an ordinance one final question is whether you wish to consider the matter as a City Council action or would want to place the matter on a future ballot for the citizens to decide.

2. REVIEW NEWSLETTER – - No Newsletter for this week

Attachments

Missouri State Statutes – pgs. 5 - 9

Marked up Sample Ordinance – pgs. 11 - 18

Sample Ordinance from Breathe Easy Kirksville – pgs. 19 - 30

Missouri Revised Statutes

Chapter 191 Health and Welfare Section 191.767

August 28, 2005

Persons not to smoke in public places or meetings, except in designated smoking areas--designation of space for smoking area, requirements.

191.767. 1. A person shall not smoke in a public place or in a public meeting except in a designated smoking area.

2. A smoking area may be designated by persons having custody or control of public places, except in places in which smoking is prohibited by the fire marshal or by other law, ordinance or regulation.

3. No public place shall have more than thirty percent of its entire space designated as a smoking area.

4. A designated smoking area where state employees may smoke during the work day shall be provided by each state executive department and institution of higher education, provided such area can be adequately ventilated at minimum cost, within the physical confines of each facility.

5. A proprietor or other person in charge of a restaurant shall designate an area of sufficient size to accommodate usual and customary demand for nonsmoking areas by customers or patrons.

(L. 1992 S.B. 509, et al. § 2)

Missouri Revised Statutes

Chapter 191 Health and Welfare Section 191.769

August 28, 2005

Areas not considered public places.

191.769. The following areas are not considered a public place:

- (1) An entire room or hall which is used for private social functions, provided that the seating arrangements are under the control of the sponsor of the function and not of the proprietor or other person in charge;
- (2) Limousines for hire and taxicabs, where the driver and all passengers agree to smoking in such vehicle;
- (3) Performers on the stage, provided that the smoking is part of the production;
- (4) A place where more than fifty percent of the volume of trade or business carried on is that of the blending of tobaccos or sale of tobaccos, cigarettes, pipes, cigars or smoking sundries;
- (5) Bars, taverns, restaurants that seat less than fifty people, bowling alleys and billiard parlors, which conspicuously post signs stating that "Nonsmoking Areas are Unavailable";
- (6) Private residences; and
- (7) Any enclosed indoor arena, stadium or other facility which may be used for sporting events and which has a seating capacity of more than fifteen thousand persons.

(L. 1992 S.B. 509, et al. § 3)

Missouri Revised Statutes

Chapter 191 Health and Welfare Section 191.775

August 28, 2005

Public schools and school buses, smoking or tobacco use prohibited, penalty, permissible use of tobacco, where.

191.775. No person shall smoke or otherwise use tobacco or tobacco products in any indoor area of a public elementary or secondary school building or educational facility, excluding institutions of higher education, or on buses used solely to transport students to or from school or to transport students to or from any place for educational purposes. Any school board of any school district may set policy on the permissible uses of tobacco products in any other nonclassroom or nonstudent occupant facility, and on the school grounds or outdoor facility areas as the school board deems proper. Any person who violates the provisions of this section shall be guilty of an infraction.

(L. 1993 H.B. 348 § 1)

Missouri Revised Statutes

Chapter 191 Health and Welfare Section 191.776

August 28, 2005

Child day care facilities, smoking or tobacco use when children are present, prohibited, penalty.

191.776. No person shall smoke or otherwise use tobacco products in any area of a child care facility licensed by the department of health and senior services pursuant to the provisions of sections 210.201 to 210.245, RSMo, during the period of time when the children cared for under that license are present. Any person who violates the provisions of this section shall be guilty of an infraction.

(L. 1993 H.B. 348 § 2)

Missouri Revised Statutes

Chapter 191 Health and Welfare Section 191.777

August 28, 2005

More stringent ordinances or rules may be adopted by governing bodies or school boards.

191.777. Nothing in sections 191.775 and 191.776 shall prohibit local political subdivisions or local boards of education from enacting more stringent ordinances or rules.

(L. 1993 H.B. 348 § 3)

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 PUBLIC AND WORK PLACES”

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

The smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance.

Accordingly, the Kirksville City Council finds and declares that the purposes of this ordinance are to protect the public health and welfare by prohibiting smoking in public places and places of employment.

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

Definitions.

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

Amusement place. An establishment where games of skill commonly known as billiards, volleyball, indoor golf, bowling or soccer are held or has a dance floor of at least two thousand five hundred (2,500) square feet, or any outdoor golf course.

Bar. An establishment that is licensed to serve alcoholic beverages for consumption by-the-drink, including an establishment that may also be considered a restaurant and/or a food service establishment that serves food and serves alcoholic beverages for consumption by-the-drink, and or any establishment where alcohol is served on a temporary basis where the public is invited.

Employee. A person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her service for a non-profit entity.

Employer. A person, business, partnership, association, limited liability company, corporation, or other business entity, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

Enclosed Area and/or Indoor Area. All space between floor and ceiling that is enclosed on all sides by walls that extend from the floor to the ceiling, and/or windows and doorways.

Food Service Establishment. An area of restaurants, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, that 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.

Health Care Facility. An office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semi-private rooms, and wards within health care facilities.

Membership Association and Private Clubs. A private organization in existence prior to the adoption of this Ordinance, and where all of the duties with respect to the operation of such association, including, but not limited to the preparation of food and beverages, and service of food and beverages, reception and secretarial work, and the security services of the Membership Association are performed by members of such Membership Association who do not receive compensation of any kind from the Membership Association or any other entity for the performance of such duties; and:

- (1) Is organized primarily for the benefit of its members; and
- (2) Its members are required to pay dues; and
- (3) Is organized primarily as:
 - (a) a recreational association; or
 - (b) a fraternal association; or

- (c) an athletic association; or
 - (d) a military veterans association; or
 - (e) a religious association; or
 - (f) a kindred association; and
- (4) Is a not-for-profit organization; and
- (5) Is managed and operated by a board consisting entirely of its members; and
- (6) Whose primary purpose is not to be engaged in the preparation and serving of alcoholic beverages by-the-drink and/or food.

Place of Employment. An area under the control of a public or private employer in which employees of the employer perform services, and shall include, but not be limited to offices, classrooms and school grounds, retail stores, banquet facilities, theaters, food stores, banks, financial institutions, factories, warehouses, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, , employee medical facilities, rooms or areas containing photocopying equipment, other office equipment used in common, and company vehicles. A private residence is not a “place of employment” unless used as a childcare, adult day care, or health care facility.

Secondhand Smoke (Passive or Involuntary Smoking). “Environmental Tobacco Smoke” (ETS) or “secondhand smoke” means the complex mixture formed from escaping smoke of a burning tobacco product (termed as “side-stream smoke”) and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as “passive smoking” or “involuntary smoking”.

Smoking. Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant, or lighted tobacco product or possession of any lighted cigar, cigarette or pipe containing a combustible and burning substance other than tobacco.

Sports Arenas. Any indoor or outdoor athletic fields including bleachers, sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, amphitheaters, grand stands, swimming pools, roller and ice rinks, bowling alleys, billiards and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Section 2. Smoking Restrictions.

Smoking shall be prohibited in all enclosed and/or indoor areas and sports arenas within the City of Kirksville, including, but not limited to the following places:

- A. Aquariums, galleries, libraries, and museums;
- B. Areas available to and customarily used by the general public in business and non-profit entities patronized by the public, including but not limited to professional offices, banks, barber shops, beauty parlors, retail service establishments and laundromats;
- C. Bars;
- D. Bingo facilities and other gaming facilities;
- E. All private colleges, universities, and other educational and vocational institutions, including all rental facilities;
- F. Elevators;
- G. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance;
- H. Health care facilities,;
- I. Child care and adult day care facilities;
- J. Polling places;
- K. All enclosed facilities, including buildings and vehicles owned, leased or operated by the City of Kirksville, shall be subject to the provisions of this Article;
- L. Restaurants and food service establishments;
- M. Restrooms, lobbies, reception areas, hallways, and other common use areas;
- N. Retail stores and shopping malls;
- O. Rooms, chambers, places of meeting or public assembly under the control of the agency, board, commission, committee or council of the City of Kirksville when a public meeting is in progress;
- P. Sports arenas;

- Q. Public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots.
- R. Membership Associations and/or Private clubs when being used for a function to which the general public is invited;
- S. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple family residential facilities;
- T. Hotels and motels, except as allowed in other sections of this Ordinance.
- U. Those Membership Associations and Private Clubs not in existence prior to adoption of this Ordinance.

Section 3. Prohibition of Smoking in Place of Employment.

Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, bars, restaurants, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles and all other enclosed facilities.

It shall be the responsibility of the employer to communicate the provisions of this Ordinance as it affects employment the employment of all current and future employees said business.

Section 4. Reasonable Distance.

This section shall apply to all areas outlined in Sections 2 and 3 above. Smoking is prohibited within a distance of 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter these areas. This shall not apply to smokers who are actively passing by an entrance or other opening into an enclosed area; but shall prohibit smokers from staying within the prescribed distance with lighted tobacco products.

Section 6. Where Smoking is Not Restricted.

The following areas shall be exempt from the provisions of the Kirksville Clean Indoor Air Act:

A. Private homes, private residences and private vehicles, except when used as a childcare, adult day care, healthcare facility, or other public place of business where employees are found.

B. (1) Membership Associations provided, however, that smoking shall only be allowed in Membership Associations in which all of the duties with respect to the operation of such association, including, but not limited to the preparation of food and beverages, the service of food and beverages, reception and secretarial work of the Membership Association are performed by members of such Membership Association who are at least eighteen years of age and who do not receive compensation of any kind from the Membership Association or any other entity for the performance of such duties. In addition, the Membership Association shall not allow any person under the age of eighteen years of age to be present on the Membership Association premises at any time when smoking is permitted.

(2) Membership Associations may retain and utilize non-members for professional services such as accounting and legal services and other services that are not generally within the scope of the day-to-day operation of the Membership Associations.

C. Hotels and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that there are not more than 30 percent of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this article. The status of a room as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

D. Private and Semiprivate rooms, or other established room in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers, and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.

E. Theatrical performances where the script of such play requires the performers to participate in the activity of smoking.

Section 7. **Declaration of Establishments as Nonsmoking.**

Notwithstanding any other provision of this Ordinance, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare an entire establishment, facility, or outdoor area as a nonsmoking place. Nothing in this Ordinance would prohibit someone from enacting more stringent restrictions.

Section 8. **Posting of Signs.**



A. “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) shall be clearly and conspicuously posted in every enclosed and/or indoor area or place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.

C. All ashtrays and other smoking paraphernalia shall be removed from any premises where smoking is prohibited by this Ordinance by the owner, operator, manager, or other person having control of the area.

Section 9. **Nonretaliation; Nonwaiver of Rights.**

Section 10. **Enforcement.**

A. This Article shall be enforced by any authorized designee of the City Manager, and shall henceforth be referred to as the “enforcement officer”.

B. .Any enforcement officer shall have the right to inspect for compliance of this Ordinance.

C. Notice of the provisions of this Ordinance shall be given to all applicants for a Business License in the City of Kirksville.

D. Any citizen may file a complaint by notice to an enforcement officer.

E. Any employee who desires to register a complaint under this Ordinance may file a complaint with the enforcement officer.

F. An owner of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.

Section 11. **Violation and Penalties.**

A. A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction, punishable by a penalty of fifty dollars (\$50) for a first violation, and one hundred dollars (\$100) for each subsequent violation.

B. A person who owns, manages, operates, or otherwise controls an enclosed and/or indoor place, sports arena or place of employment who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by a penalty of one hundred dollars (\$100) for a first violation; and a penalty of two hundred dollars (\$200) for each additional violation.

C. Each incident in which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

D.

Section 12. **Effective Date.**

This Ordinance shall become effective, thirty (30) days from and after the date of its passage and approval, and smoking will not be permitted for all places of employment as outlined above.

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

Martha Rowe, Mayor

ATTEST:

Vickie Brumbaugh, City Clerk

Kirksville No Smoking Ordinance Information

CITY OF KIRKSVILLE, ADAIR COUNTY, MISSOURI

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING ENTITLED “DEFINITIONS” BY THE ADDITION OF CERTAIN DEFINITIONS FOR REGULATION OF SMOKING IN PUBLIC AND WORK PLACES, AND BY THE ADDITION OF A NEW SECTION ENTITLED “KIRKSVILLE CLEAN AIR ACT”.

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

Findings and Intent

The Kirksville City Council does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI)*, August 1999.)

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS), "Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens," *U.S. Department of Health and Human Services (DHHS), Public Health Service, NTP*, 2000; reaffirmed by the NTP in subsequent reports on carcinogens, 2003, 2005.)

Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome

(SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death. (Appendix II Findings of the Scientific Review Panel: Findings of the Scientific Review Panel on Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant as adopted at the Panel's June 24, 2005 Meeting," *California Air Resources Board (ARB)*, September 12, 2005.)

There is no safe level of exposure to secondhand smoke. (Environmental Protection Agency (EPA), "Respiratory health effects of passive smoking: lung cancer and other disorders, the report of the U.S. Environmental Protection Agency. Smoking and Tobacco Control Monograph 4," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI); Environmental Protection Agency (EPA)*, August 1993; California Environmental Protection Agency, "Health Effects of Exposure to Environmental Tobacco Smoke," 1997; California Air Resources Board, "Proposed identification of environmental tobacco smoke as a toxic air contaminant," *Sacramento: California Environmental Protection Agency (Cal-EPA), Air Resources Board, Stationary Source Division, Air Quality Measures Branch, Office of Environmental Health Hazard Assessment (OEHHA)*, September 29, 2005.)

A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smokefree workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sargent, Richard P.; Shepard, Robert M.; Glantz, Stanton A., "Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study," *British Medical Journal* 328: 977-980, April 24, 2004.)

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.) The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability. (Daynard, R.A., "Environmental tobacco smoke and the Americans with Disabilities Act," *Nonsmokers' Voice* 15(1): 8-9.)

The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services. *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General*. Public Health Service, Centers for Disease Control, 1986.)

The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" *British Medical Journal* 328: 980-983, April 24, 2004.)

Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smokefree environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entirety. (Samet, J.; Bohanon, Jr., H.R.; Coultas, D.B.; Houston, T.P.; Persily, A.K.; Schoen, L.J.; Spengler, J.; Callaway, C.A., "ASHRAE position document on environmental tobacco smoke," *American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)*, 2005.)

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure, and \$4.6 billion in lost productivity. (Behan, D.F.; Eriksen, M.P.; Lin, Y., "Economic Effects of Environmental Tobacco Smoke," *Society of Actuaries*, March 31, 2005.)

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L. The effect of ordinances requiring smokefree restaurants on restaurant sales in the United States. *American Journal of Public Health*, 87:1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," *GPI Atlantic*, September 2001.)

Hundreds of communities in the U.S., plus numerous states, including California, Delaware, Florida, Massachusetts, Montana, New Jersey, New York, and Washington, have enacted laws requiring workplaces, restaurants, bars, and other public places to be smokefree, as have numerous countries, including Ireland, New Zealand, Norway, Scotland, Sweden, Uganda, and Uruguay.

There is no legal or constitutional "right to smoke." Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous.

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)

The smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance.

Accordingly, the Kirksville City Council finds and declares that the purposes of this ordinance are to protect the public health and welfare by prohibiting smoking in public places and places of employment.

“Definitions” is amended by adding the following:

- A. As applied to the Kirksville Clean Air Act, “Bar” means an establishment that is licensed to serve alcoholic beverages for consumption by-the-drink, including an establishment that may also be considered a restaurant and/or a Food Service Establishment that serves food and serves alcoholic beverages for consumption by-the-drink.
- B. As applied to the Kirksville Clean Air Act, “Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her service for a non-profit entity.
- C. “Employer” means a person, business, partnership, association, limited liability company, corporation, or other business entity, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- D. As applied to the Kirksville Clean Air Act, “Enclosed Area” means all space between floor and ceiling that is enclosed on all sides by walls that extend from the floor to the ceiling, and/or windows and doorways.
- E. “Environmental Tobacco Smoke” (ETS) or “secondhand smoke” means the complex mixture formed from escaping smoke of a burning tobacco product (termed as “side-stream smoke”) and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as “passive smoking” or “involuntary smoking”.
- F. As applied to the Kirksville Clean Air Act, “Food Service Establishment” means an area of restaurants, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, that 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 “food establishment” shall include an establishment that 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 and is also licensed to serve alcoholic beverages for consumption by-the-drink.

G. As applied to the Kirksville Clean Air Act, "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semi-private rooms, and wards within health care facilities.

H. As applied to the Kirksville Clean Air Act, "Membership Association" means a private organization in existence prior to August 30, 2006, and where all of the duties with respect to the operation of such association, including, but not limited to the preparation of food and beverages, and service of food and beverages, reception and secretarial work, and the security services of the Membership Association are performed by members of such Membership Association who do not receive compensation of any kind from the Membership Association or any other entity for the performance of such duties; and:

- (1) Is organized primarily for the benefit of its members;
and
- (2) Its members are required to pay dues; and
- (3) Is organized primarily as:
 - (a) a recreational association; or
 - (b) a fraternal association; or
 - (c) an athletic association; or
 - (d) a military veterans association; or
 - (e) a religious association; or
 - (f) a kindred association; and
- (4) Is a not-for-profit organization; and
- (5) Is managed and operated by a board consisting entirely of its members; and

- (6) Is not primarily engaged in the preparation and serving of alcoholic beverages by-the-drink and/or food.

- I. As applied to the Kirksville Clean Air Act, “Place of Employment” means an area under the control of a public or private employer in which employees of the employer perform services, and shall include, but not be limited to offices, classrooms and school grounds, retail stores, banquet facilities, theaters, food stores, banks, financial institutions, factories, warehouses, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, rooms or areas containing photocopying equipment, other office equipment used in common, and company vehicles. A private residence is not a “place of employment” unless used as a childcare, adult day care, or health care facility.

- J. As applied to the Kirksville Clean Air Act, “Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant, or lighted tobacco product or possession of any lighted cigar, cigarette or pipe containing a combustible and burning substance other than tobacco.

- K. As applied to the Kirksville Clean Air Act, “Sports Arenas” means any indoor or outdoor athletic fields, sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Clean Air Ordinance Smoking Restrictions

- A. *Smoking shall be prohibited in all indoor areas and sports arenas within the City of Kirksville, including, but not limited to the following places:***
 - 1. Aquariums, galleries, libraries, and museums;
 - 2. Areas available to and customarily used by the general public in business and non-profit entities patronized by the public, including but not limited to professional offices, banks, retail service establishments and laundromats;
 - 3. Bars;

4. Bingo facilities and other gaming facilities;
5. All public and private colleges, universities, and other educational and vocational institutions;
6. Elevators;
7. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance;
8. Health care facilities, including health care clinics, doctor's offices or other health care related facilities, except as allowed in section E.4.;
9. Child care and adult day care facilities;
10. Polling places;
11. All enclosed facilities, including buildings and vehicles owned, leased or operated by the City of Kirksville, shall be subject to the provisions of this Article;
12. Restaurants and food service establishments;
13. Restrooms, lobbies, reception areas, hallways, and other common use areas;
14. Retail stores and shopping malls;
15. Rooms, chambers, places of meeting or public assembly under the control of the agency, board, commission, committee or council of the City of Kirksville when a public meeting is in progress.
16. Sports arenas
17. Public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots.
18. Private clubs when being used for a function to which the general public is invited.

19. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

20. Hotels and motels, except as allowed in section E.3.

B. Prohibition of Smoking in Place of Employment

Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, bars, restaurants, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles and all other enclosed facilities.

This prohibition on smoking shall be communicated to all existing employees by the effective date of this Section and to all prospective employees upon their application for employment.

C. Prohibition of Smoking in Seating Areas at Outdoor Events

Smoking shall be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheaters, as well as in bleachers and grandstands for use by spectators at sporting or other public events.

D. Reasonable Distance

Smoking is prohibited within a distance of 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter these areas. This shall not apply to smokers who are actively passing by an entrance or other opening into an enclosed area; but shall prohibit smokers from staying within the prescribed distance with lighted tobacco products.

E. Where Smoking is Not Restricted

The following areas shall be exempt from the provisions of the Kirksville Clean Air Act:

1. Private homes, private residences and private vehicles, except when used as a childcare, adult day care, healthcare facility, or other public place of business where employees are found,
2. **a.** Membership Associations that were in existence and in operation on August 30, 2006; provided, however, that smoking

shall only be allowed in Membership Associations in which all of the duties with respect to the operation of such association, including, but not limited to the preparation of food and beverages, the service of food and beverages, reception and secretarial work of the Membership Association are performed by members of such Membership Association who are at least eighteen years of age and who do not receive compensation of any kind from the Membership Association or any other entity for the performance of such duties. In addition, the Membership Association shall not allow any person under the age of eighteen years of age to be present on the Membership Association premises at any time when smoking is permitted.

b. Membership Associations may retain and utilize non-members for professional services such as accounting and legal services and other services that are not generally within the scope of the day-to-day operation of the Membership Associations.

3. Hotels and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that there are not more than 30 percent of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this article. The status of a room as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
4. Private and Semiprivate rooms, or other established room in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers, and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.

F. Declaration of Establishments 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 an entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this Section is posted.

G. Posting of Signs



1. “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) shall be clearly and conspicuously posted in every public place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.
2. Every public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
3. All ashtrays and other smoking paraphernalia shall be removed from any premises where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.

H. Nonretaliation; Nonwaiver of Rights

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 Article, or reports or attempts to prosecute a violation of this Article.

Any employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

I. Enforcement

1. This Article shall be enforced by an authorized designee of the City Administrator, and shall henceforth be referred to as the “enforcement officer”.
2. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
3. Notice of the provisions of this Ordinance shall be given to all applicants for a Business License in the City of Kirksville.
4. Any citizen may initiate a complaint by notice to an enforcement officer.

5. Any employee who desires to register a complaint under this Ordinance may initiate enforcement with the enforcement officer without fear of retaliation.
6. An owner, manager, operator, or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.

J. Violation and Penalties

1. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a penalty of fifty dollars (\$50) for a first violation, and one hundred dollars (\$100) for each subsequent violation.
2. A person who owns, manages, operates, or otherwise controls a public place or place of employment who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:
 - a. A penalty of one hundred dollars (\$100) for a first violation;
 - b. A penalty of two hundred dollars (\$200) for each additional violation.
3. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Section 2. Effective Date

- A. This Ordinance shall become effective, ninety (90) days from and after the date of its passage and approval, and smoking will not be permitted for all places of employment as outlined above.