

BILL NO. 8695

ORDINANCE NO. 8695

AN ORDINANCE PROHIBITING SMOKING AND THE USE OF ELECTRONIC CIGARETTES (E-CIGARETTES) IN INDOOR WORKPLACES AND PUBLIC PLACES IN MONETT, MISSOURI

WHEREAS, according to the Centers for Disease Control and Prevention, studies have shown that exposure to secondhand smoke from burning tobacco products causes disease and premature death among nonsmokers; and

WHEREAS, these same studies have shown that there is no risk-free level of secondhand smoke, and even brief exposure can cause immediate harm; and

WHEREAS, studies have also shown that smoke-free laws that prohibit smoking in public places like bars and restaurants help improve the health of workers and the general population; and

WHEREAS, a study published in 2012 relating to the economic effect of smoke-free ordinances on 11 Missouri cities has shown that eight of the eleven cities had increased sales for eating and drinking establishments following adoption of a local smoke-free ordinance and the remaining three cities experienced no change; and

WHEREAS, numerous other scientific studies and economic analyses show that smoke-free laws do not adversely impact restaurant and bar patronage, employment, sales, or profits and sometimes produce slightly positive trends according to the *Journal of Public Health Management and Practice*; and

WHEREAS, there are over 1,500 municipalities in the U.S. with local 100% smoke-free laws according to the American Nonsmoker's Rights Foundation which includes 48 municipalities in Missouri; and

WHEREAS, the Revised Statutes of Missouri addresses smoking in public places in Sections 191.765 – 191.777 RSMo, commonly known as the Missouri Clean Indoor Air Law, by prohibiting smoking in indoor public places, but the proprietor of the public place can determine whether smoking is to be allowed within the facility in designated areas; and

WHEREAS, the Missouri Clean Indoor Air Law provides exemptions and lists a number of examples that are not considered a "public place" according to the law's definitions, and these exemptions do not protect other patrons from being exposed to secondhand smoke; and

WHEREAS, the Missouri Clean Indoor Air Law specifically allows local political subdivisions to enact more stringent ordinances.

THEREFORE, the City Council of Monett, Missouri finds and declares that enactment of this Ordinance is necessary in order to protect the public's health and welfare by prohibiting smoking in certain areas and will guarantee the right of patrons and employees to breathe in a smoke-free environment;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Monett, Missouri as follows:

SECTION 1. That Title Two, Public Health, Safety and Welfare of the Monett Municipal Code be amended by adopting Chapter 221 titled: "Monett Clean Indoor Air Ordinance", 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 sixty (60) days from the date of its passage or adoption.

Following two readings, a motion was made by Dohmen, seconded by Dierker to approve Bill No. 8695 as Ordinance No. 8695.

ROLL CALL VOTE:

AYES: Brownberger, Dierker, Dohmen

NAYS: NONE

PASSED AND APPROVED THIS 20 DAY OF September, 2019.

Mike Brownberger
MAYOR

ATTEST:

Lea Dreyfus
CITY CLERK



MONETT CLEAN INDOOR AIR ORDINANCE

Sec. 221.010. Title.

This article shall be known as the Monett Clean Indoor Air Ordinance.

Sec. 221-020. Definitions.

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

- (1) *Bar* means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- (2) *Business* means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
- (3) *Casino gaming areas* means the areas of a state-licensed gambling facility where gaming is allowed for those 21 years of age or older, including any VIP lounge, accessible only through the gaming floor, whether or not gaming is allowed in the VIP lounge.
- (4) *E-cigarette* means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or any other product name or descriptor.
- (5) *Employee* means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit.
- (6) *Employer* means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- (7) *Enclosed area* means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind. Enclosed area shall not include any building, shelter, or similar area that is a separate, outdoor designated smoking area that is physically removed from facilities that are accessible to the public.
- (8) *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, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapist, physicians, psychiatrists, dentists, and all specialists within these professions. This definition

shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

- (9) *Membership club* means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
- (10) *Place of employment* means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.
- (11) *Public place* means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theatres, and waiting rooms. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.
- (12) *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 for 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 a bar area within the restaurant.
- (13) *Service line* means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- (14) *Shopping mall* means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- (15) *Smoking* means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or other tobacco or plant product intended for inhalation. “Smoking” also includes the use of an e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this ordinance.
- (16) *Sports arena* means a place where people assemble to engage in physical exercise, participate in athletic competitions or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

Sec. 221-030. Application of article to City-Owned Facilities and Property.

All enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Monett shall be subject to the provisions of this article.

Sec. 221-040. Prohibition of smoking in enclosed public places.

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

- (1) Aquariums, galleries, libraries, and museums.
- (2) Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional office, and retail service establishments.
- (3) Bars.
- (4) Child care and adult day care facilities.
- (5) Convention facilities.
- (6) Educational facilities, both public and private.
- (7) Elevators.
- (8) Health care facilities.
- (9) Hotels and motels, except in designated private sleeping rooms allowed for smoking and rented to guests, in accordance with the restrictions contained in Section 221-070 of this article.
- (10) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (11) Polling places.
- (12) Public transportation vehicles, including buses and taxicabs, under the authority of the City of Monett, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
- (13) Restaurants.
- (14) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- (15) Retail stores.
- (16) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City of Monett or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of Monett.
- (17) Service lines.
- (18) Shopping malls.
- (19) Sports arenas.
- (20) Theaters and other facilities primarily used for exhibiting motion pictures, state performances, lectures, musical recitals or other similar performance.

Sec. 221-050. Prohibition of smoking in enclosed places of employment.

- (a) Smoking shall be prohibited in all enclosed places of employment, except as may be otherwise provided in Section 221-070 of this article. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices,

elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

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

Sec. 221-050. Prohibition of smoking in enclosed residential facilities.

Smoking shall be prohibited in the following enclosed residential facilities:

- (1) All private and semiprivate rooms in nursing homes.
- (2) At least 75% of hotel and motel sleeping rooms that are rented to guests. Designated non-smoking hotel and motel rooms shall have signage outside the hotel room saying the room is a non-smoking room.

Sec. 221-060. Prohibition of smoking in outdoor public places.

Smoking shall be prohibited within a reasonable distance of 15 feet from outside entrances, operable windows, and air intake ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas EXCEPT that if the entrances have an operational positive airflow system or similar air curtain device, it shall be exempt from this section of the ordinance.

Sec. 221-070. Where smoking not regulated.

Notwithstanding any other provision of this article to the contrary, smoking shall not be prohibited in the following areas:

- (1) Private vehicles or private residences, unless they are used as a childcare, adult day care, or health care facility.
- (2) Not more than 25% of hotel and motel sleeping rooms rented to guests and designated as smoking rooms. 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 rooms as smoking or non-smoking may not be changed, except to add additional non-smoking rooms.
- (3) Membership clubs that have no employees present, except when being used for a function to which the general public is invited; provided that smoke from such clubs does not infiltrate into areas where smoking is prohibited under the provisions of this ordinance. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this ordinance.
- (4) Casino gaming areas as defined by this ordinance.

Sec. 221-080. Declaration of establishment or outdoor area as non-smoking.

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 entire

establishment, facility, or outdoor area as a non-smoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 221-090 (1) is posted.

Sec. 221-090. Posting of Signs and Removal of Ashtrays.

The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Article shall:

- (1) 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) in that place.
- (2) Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited in letters no less than one (1) inch in height.
- (3) Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

Sec. 221-100. Non-retaliation; non-waiver of rights.

- (a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this article or reports or attempts to prosecute a violation of this article. Notwithstanding Section 221-120, violation of this subsection shall be a misdemeanor, punishable by a fine not to exceed \$1,000.00 for each violation.
- (b) 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.

Sec. 221-110. Enforcement.

- (a) Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Monett.
- (b) The proprietor or other person having control of a place governed by this Article upon observing a person smoking or using e-cigarettes shall immediately request that person to cease that action.
- (c) If that person smoking or using e-cigarettes fails to immediately comply with the request, the proprietor or other person in control shall refuse service to the user and request that they leave the premises.
- (d) If that person smoking or using e-cigarettes fails to peaceably leave the premises, the proprietor or other person having control shall request assistance from the police department.
- (e) The fire department, building development department, health department or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

- (f) Notwithstanding any other provision of this article, an employee or private citizen may bring legal action to enforce this Article.

Sec. 221-120. Violations and penalties.

- (a) 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 fine not exceeding \$50.00.
- (b) Except as otherwise provided in subsection (a) above, a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction punishable by:
 - (1) A fine not exceeding \$100.00 for a first violation.
 - (2) A fine not exceeding \$200.00 for a second violation within one year of the previous violation.
 - (3) A fine not exceeding \$500.00 for each additional violation within one year of the previous violation.
- (c) 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 or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- (d) Violation of this Article is hereby declared to be a public nuisance, which may be abated by a restraining order, preliminary and permanent injunction, or other means provided for by law, and the City of Monett may take action to recover the costs of the nuisance abatement.
- (e) Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 221-130. Liberal construction.

This Article shall be liberally construed so as to further its purposes.