

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF BELTON, MISSOURI, CHAPTER 11, HEALTH AND WELFARE, PROVIDING FOR CLEAN INDOOR AIR IN WORKPLACES AND PUBLIC PLACES IN THE CITY OF BELTON, MISSOURI, WITH CERTAIN EXCEPTIONS; REPEALING ARTICLE III OF CHAPTER 11 OF THE CITY CODE IN ITS ENTIRETY AND ENACTING IN LIEU THEREOF A NEW ARTICLE III OF CHAPTER 11 OF THE CITY CODE, SECTIONS 11-41 THROUGH 11-59, EFFECTIVE ONE HUNDRED TWENTY (120) DAYS FROM AND AFTER APPROVAL BY A MAJORITY OF THE VOTERS OF THE CITY, AUTHORIZING AND DIRECTING SUBMITTAL TO THE VOTERS IN THE CITY OF BELTON, MISSOURI, AT AN ELECTION TO BE HELD ON APRIL 7, 2009, AND PROVIDING THAT NOTICE OF SAID ELECTION BE GIVEN.

WHEREAS, 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 smokers and healthy nonsmokers alike, including heart disease, stroke, respiratory disease, and lung cancer, and the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of at least 65,000 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); and

WHEREAS, the Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a Class "A" (the deadliest) 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*); and

WHEREAS, 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, and children exposed to secondhand smoke have an increased risk of asthma, respiratory infection, sudden infant death syndrome, developmental abnormalities, and cancer (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke," *Tobacco Control 6(4): 346-353, Winter; 1997*); and

WHEREAS, 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*); and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce odors, but does not eliminate the exposure of nonsmokers to dangerous 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), and the Environmental

Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in any enclosed space by high rates of ventilation, and air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke (Environmental Protection Agency (EPA), "Indoor air facts no. 5: environmental tobacco smoke," *Washington, D.C.: Environmental Protection Agency (EPA)*, June 1989); and

WHEREAS, the US Surgeon General finds that secondhand smoke causes premature death and disease in children and in adults who do not smoke; and

WHEREAS, the US Surgeon General finds that exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes a 25 to 30 percent increase in the risk of coronary heart disease in nonsmokers; and

WHEREAS, the US Surgeon General finds that there is a causal relationship between secondhand smoke exposure and lung cancer among lifetime nonsmokers regardless of the location of secondhand smoke exposure; and

WHEREAS, the US Surgeon General finds that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to secondhand smoke (U.S. Department of Health and Human Services. "The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General" US Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006); and

WHEREAS, smoking is a potential cause of fires, and 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); and

WHEREAS, the City Council desires to submit to the voters at the April 7, 2009 election, a proposed amendment to Article III of Chapter 11, to repeal the existing Article III in its entirety and prohibiting smoking in all public places, in Belton, with certain exceptions, to be effective one hundred twenty (120) days from and after the date of approval by a majority of the voters of the city.

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

SECTION 1. That Article III of Chapter 11 of the Belton City Code be repealed in its entirety and a new Article III of Chapter 11 be hereby enacted in lieu thereof as follows:

Sec. 11- 41 Title

This Article shall be known as Smoking in Public Places and Places of Employment, which shall be shown in the Index to the Code of Ordinances as Smoking in Public Places and Places of Employment.

Sec. 11- 42 Inclusion in the Code of Ordinances

It is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances for the City of Belton, Missouri.

Sec. 11- 43 Definitions

The following words and phrases, whenever used in this Article, shall be as defined as follows:

A. "Bar" means any licensed establishment which serves liquor on the premises for which not more than ten percent of the gross sales receipts of the business are supplied by food purchases, whether for consumption on the premises or elsewhere.

B. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

C. "Employee" means any person who performs services for an employer, with or without compensation.

D. "Employer" means a person, partnership, association, corporation, trust, or other organized group of individuals, including the City or any agency thereof, which utilizes the services of one (1) or more employees.

E. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by walls or windows (exclusive of doorways).

F. "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 physicians, chiropractors, physical therapists, 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.

G. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including but not limited to work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a licensed child care, licensed adult day care, or licensed health care facility.

H. "Private club" shall mean 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 a 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. A private club is a "public place" when being used for a function to which the general public is invited.

I. "Public Place" means an enclosed 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, laundromats, public transportation facilities, reception areas, restaurants, casinos, food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a licensed child care, licensed adult day care, or licensed health care facility.

J. "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, 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.

K. "Retail tobacco store" means a retail store used primarily for the sale of smoking materials and smoking accessories in which the sale of other products is incidental and where smoking is permitted within the Public Place. "Retail tobacco store" does not include a tobacco department of a larger commercial establishment such as a department store, discount store, or bar or retail stores used primarily for the sale of smoking materials where no provisions for smoking within the Public Place are provided or permitted.

L. "Service Line" means an indoor 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.

M. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

N. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other tobacco product.

O. "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, 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.

Sec. 11- 44 Application of this Article to City-Owned Facilities

All enclosed facilities, including buildings owned, or operated by the City of Belton shall be subject to the provisions of this Article.

Sec. 11- 45 Prohibition of Smoking in Public Places

Smoking shall be prohibited in all enclosed public places within the City of Belton, 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 businesses and non-profit entities patronized by the public, including but not limited to professional offices, banks, laundromats, hotels, and motels.
- C. Bars.
- D. Bingo facilities.
- E. Convention 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. Licensed child care and adult day care facilities.
- J. Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- K. Polling places.
- L. Public transportation facilities, including buses and taxicabs under the authority of the City of Belton, and ticketing, boarding, and waiting areas of public transit depots.
- M. Restaurants.
- N. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- O. Retail stores.
- P. 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 Belton or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the City of Belton.
- Q. Service lines.
- R. Shopping malls.
- S. Sports arenas, including enclosed places in outdoor arenas.
- T. Pool Halls and Billiard Parlors.
- U. Subdivision Homeowners' Association facilities, manufactured home park or subdivision common area accessible to the public.
- V. Bowling Alleys.

Sec. 11- 46 Prohibition of Smoking in Places of Employment

Smoking shall be prohibited in all enclosed facilities within places of employment. 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. Smoking is not prohibited in vehicles if occupied exclusively by the driver, or if all passenger(s) are smokers who consent. Smoking is not prohibited in the place of employment of a sole proprietor with no other employee(s) or in a place of employment of any individual who is the sole employee at a facility to which the public is not invited nor in which the public is permitted, provided such place of employment is located in a freestanding structure occupied solely by the business or (i) is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above; (ii) complies with all applicable fire and building code requirements; and (iii) has a separate ventilation system whereby the air from such space is immediately exhausted to an outdoor area rather than being recirculated inside, and is negatively pressurized to prevent back streaming of second-hand smoke into adjoining areas located in a freestanding structure.

Sec. 11- 47 Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 11-45 and 11-46:

- A. Private residences, except when used as a licensed child care, licensed adult day care, or licensed health care facility.
- B. Private vehicles.
- C. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated.
- D. Private and semiprivate rooms 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 to the management thereof in writing to be placed in a room where smoking is permitted.
- E. Outdoor areas of places of employment.
- F. Retail tobacco stores as defined in Section 11-43 of this Article in operation prior to the effective date of this ordinance. Any new retail tobacco store or any existing retail tobacco store that relocates to another site may only qualify for this exemption if either (a) it is located in a freestanding structure occupied solely by the business or (b) it (i) is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above; (ii) complies with all applicable fire and building code requirements; and (iii) has a separate ventilation system whereby the air from such space is immediately exhausted to an outdoor area rather than being recirculated inside, and is negatively pressurized to prevent back streaming of second-hand smoke into adjoining areas located in a freestanding structure, and (c) it has posted at every entrance signage at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one inch in height clearly stating

“WARNING!

Secondhand smoke causes coronary heart disease, lung cancer and premature death, according to the Surgeon General of the United States.”

Retail tobacco stores as defined in Section 11-43 of this Article in operation prior to the effective date of this ordinance shall, however, also be required to post the foregoing-described signage at every entrance at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one inch in height in order to remain exempt under this section.

G. Private clubs as defined in Section 11-43 of this Article. A private club may only qualify for this exemption if either (a) it is located in a freestanding structure occupied solely by the private club and throughout which entire premises smoking is permitted or (b) it (i) is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above; (ii) complies with all applicable fire and building code requirements; and (iii) has a separate ventilation system whereby the air from such space is immediately exhausted to an outdoor area rather than being recirculated inside, and is negatively pressurized to prevent back streaming of second-hand smoke into adjoining areas located in a freestanding structure, and (c) it has posted at every entrance signage at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one inch in height clearly stating

“WARNING!

Secondhand smoke causes coronary heart disease, lung cancer and premature death, according to the Surgeon General of the United States.”

H. Restaurants as defined in Section 11-43 of this Article which have previously chosen to comply with the former Section 11-43 of the Belton City Code and designate smoking areas with physical barriers and functioning ventilation systems to minimize the irritating and toxic effects of smoke in adjacent nonsmoking areas, prior to the passage of this Article. This exemption shall sunset on the 7th anniversary of the effective date of this Article. A restaurant may only qualify for this exemption if it has posted at every entrance signage at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one inch in height clearly stating

“THIS IS A SMOKE-RESTRICTED ESTABLISHMENT.

Smoking is permitted only in certain separately ventilated and designated areas. Secondhand tobacco smoke is not circulated to nonsmoking areas.”

And only if it has posted at every entrance to the area where smoking is permitted signage at a height and location conspicuous to persons entering the area, with primary lettering of not less than one inch in height clearly stating

“WARNING!

Secondhand smoke causes coronary heart disease, lung cancer and premature death, according to the Surgeon General of the United States.”

I. A Business, Public Place or Place of Employment as defined in Section 11-43 of this Article and existing as of the passage of this Article. This exemption shall sunset on the 3rd anniversary of the effective date of this Article. A Business, Public Place or Place of Employment may only qualify for this exemption if they have posted at every entrance signage at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one inch in height clearly stating

“WARNING!

Secondhand smoke causes coronary heart disease, lung cancer and premature death, according to the Surgeon General of the United States.”

Sec. 11- 48 Declaration of Establishment 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 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 Section 11-49 is posted.

Sec. 11- 49 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 at every public place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.

B. 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.

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

Sec. 11- 50 Nonretaliation

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 files a complaint or reports a violation of this Article.

Sec. 11- 51 Enforcement

A. Any person who desires to register a complaint under this Article may do so with the City Manager or an authorized designee.

B. In addition to the remedies provided by the laws of the State of Missouri, and the provisions of this Section, the City Manager or an authorized designee or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of

employment to comply with the provisions of this Article may apply for injunctive relief to enforce the provisions of this Article in any court of competent jurisdiction.

Sec. 11- 52 Violations and Penalties

A. A person who violates this ordinance by smoking 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 fifty dollars (\$50) for each infraction.

B. 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 one hundred dollars (\$100) for a first violation.
2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

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 the business license issued to conduct business at the premises pursuant to Article 12 of the Belton Code of Ordinances.

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

Sec. 11- 53 Public Education

The City Manager or an authorized designee may engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Sec. 11- 54 Governmental Agency Cooperation

The City Manager or an authorized designee may request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, City, County and School District agencies to update their existing smoking control regulations to be consistent with this ordinance.

Section 11- 55 Other Applicable Laws

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

Sec. 11- 56 Liberal Construction

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

Sec. 11- 57 Severability

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Sec. 11- 59 Revocation of previous ordinance(s).

Upon the effective date of this Article, all prior ordinances in conflict herewith, specifically Article III of Chapter 11 of the Belton City Code, in its entirety, pertaining to smoking in public places and places of employment, shall be repealed.

SECTION 2: That this ordinance shall be referred to the people for approval and shall be effective one hundred twenty (120) days from and after the date of approval of this ordinance by the voters of the City.

SECTION 3. That an election shall be held on April 7, 2009, placing before the voters within the City of Belton the following question:

“Shall the City of Belton prohibit smoking in enclosed places of employment and enclosed public places, with certain exceptions for private residences, private vehicles, designated smoking hotel and motel rooms, private and semiprivate rooms in nursing homes and long-term facilities designated smoking, outdoor areas of places of employment, retail tobacco stores, and private clubs, for the purpose of promoting public health by decreasing citizen exposure to secondhand smoke and creating smoke free environments for workers and citizens through regulations in the work place and all public places, to be effective one hundred twenty (120) days from and after the date of approval by a majority of the voters of the city; provided that existing businesses shall have 3 (three) years from the effective date to comply with the smoking prohibition and existing restaurants with previously established physically separated and ventilated smoking areas shall have 7 (seven) years from the effective date to comply with the smoking prohibition?”

SECTION 4. That at said election the qualified registered voters of the City shall vote at the polling places within the City, as designated by the Election Authority of Cass County, Missouri.

SECTION 5. That the judges and clerks at said election shall be designated by the Election Authority of Cass County, Missouri.

SECTION 6. The City Clerk is hereby authorized and directed to notify the County Clerk of Cass County, Missouri, of the passage of this Ordinance no later than 5:00 P.M. on January 27, 2009, and to include in said notification all of the terms and provisions required by Chapter 115, RSMo, as amended.

SECTION 7. That this ordinance shall be in full force and effect from and after the date of its passage and approval.

PASSED THIS 20th DAY OF JANUARY, 2009, BY THE CITY COUNCIL OF THE CITY OF BELTON, MISSOURI.

Mayor Jimmy Odom

APPROVED this 20th day of January, 2009.

Mayor Jimmy Odom

ATTEST:

Patricia A. Ledford, City Clerk
of the City of Belton, Missouri

STATE OF MISSOURI)
CITY OF BELTON)SS
COUNTY OF CASS)

I, Patricia A. Ledford, City Clerk, do hereby certify that I have been duly appointed City Clerk of the City of Belton and that the foregoing ordinance was regularly introduced for first reading at a meeting of the City Council held on the 20th day of January, 2009, and thereafter adopted as Ordinance No. 2009-3516 of the City of Belton, Missouri, at a regular meeting of the City Council held on the 20th day of January, 2009, after the second reading thereof by the following vote, to-wit:

AYES: 8 COUNCILMEN: Loughridge, Davidson, Gough, Savage, Lathrop, Neff,
Davis, Mayor Odom

NOES: 0 COUNCILMEN:

ABSENT: 1 COUNCILMEN: Hoag

Patricia A. Ledford, City Clerk
of the City of Belton, Missouri