

**An Ordinance Prohibiting Smoking in Workplaces and Public Places within the City of Tarkio, Missouri.**

**WHEREAS**, this Article shall be known as the City of Tarkio Smokefree Air Ordinance of 2024.

**WHEREAS**, the City Council of the City of Tarkio does hereby find that: \_

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006. U.S. Department of Health and Human Services. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010.)

**WHEREAS**, 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.)

**WHEREAS**, 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.*)

**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. (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.*)

**WHEREAS**, 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. (ANSI/ASHRAE Standard 62.1-2016 – Ventilation for Acceptable Indoor Air Quality. Atlanta, GA: American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. <https://www.ashrae.org/technical-resources/standards-and-guidelines/read-only-versions-of-ashrae-standards>)

**WHEREAS**, Secondhand smoke from combusted marijuana contains fine particulate matter that can be breathed deeply into the lungs, which can cause lung irritation and asthma attacks, thus making respiratory infections more likely. Exposure to fine particulate matter can exacerbate health problems especially for people with respiratory conditions like asthma, bronchitis, or COPD. ( "Air and Health: Particulate Matter." National Environmental Public Health Tracking Network, U. S. Environmental Protection Agency. Brook, R.D., Rajagopalan, S., Pope, C.A., 3rd, Brook, J.R., Bhatnagar, A., Diez-Roux, A.V., Holguin, F., Hong, Y., Luepker, R.V., Mittleman, M.A., Peters, A., Siscovick, D., Smith, S.C., Jr., Whitsel, L., and Kaufman, J.D. Particulate matter air pollution and cardiovascular disease: An update to the scientific statement from the American Heart Association. *Circulation*. 2010; 121: 2331-78. Secondhand smoke from marijuana also has many of the same chemicals as smoke from tobacco, including those linked to lung cancer.<sup>30, 31</sup> More research is needed, but the current body of science shows that both tobacco and marijuana smoke may have similar harmful cardiovascular effects. (Springer, M.L.; Glantz, S.A." Marijuana Use and Heart Disease: Potential Effects of Public Exposure to Smoke," University of California at San Francisco. April 13, 2015. Wang, X., Derakhshandeh, R., Liu, J., Narayan, S., Nabavizadeh, P., Le, S., Danforth, O.M., Pinnamaneni, K., Rodriguez, H.J., Luu, E., Sievers, R.E., Schick, S.F., Glantz, S.A., and Springer, M.L. One minute of marijuana secondhand smoke exposure substantially impairs vascular endothelial function. *Journal of the American Heart Association*. 2016; 5: e003858.) Thus, In the interest of public health, the use of combustible or aerosolized marijuana should be prohibited wherever tobacco smoking is prohibited.

**WHEREAS**, the smoking of tobacco, hookahs, or marijuana/cannabis and the use of ESDs are forms of air pollution and constitute both a danger to health and a material public nuisance.

**WHEREAS**, accordingly, the Board of Alderman for the City of Tarkio finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TARKIO, MISSOURI, AS FOLLOWS:**

### **Section 1. Definitions**

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

- A. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- B. "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;

and private clubs.

- C. "Electronic Smoking Device" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, dab rig or vape pen, or under any other product name or descriptor.
- D. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, or a person who volunteers his or her services for a non-profit entity.
- E. "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.
- F. "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.
- G. "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 therapists, 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.
- H. "Hookah" means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.
- I. "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.
- J. "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on [City or County] grounds.
- K. "Private 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 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.

- L. "Public Event" means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.
- M. "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, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and facilities, reception areas, restaurants, retail 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 child care, adult day care, or health care facility.
- N. "Recreational Area" means any public or private area open to the public for recreational purposes, regardless of any fee or age requirement, including but not limited to, amusement parks, playgrounds, athletic fields, beaches, fairgrounds, bike paths, walking paths, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.
- O. "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" includes the bar area within a restaurant.
- P. "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 concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- Q. "Shopping Mall" means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.
- R. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, including marijuana/cannabis, in any manner or in any form. "Smoking" includes the use of an electronic smoking device which creates an aerosol or 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 Article.
- S. "Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

## **Section 2. Prohibition of Smoking in Enclosed Public Places**

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

- A. Libraries, and museums.

- B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gambling facilities.
- J. Health care facilities.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Parking structures.
- N. Polling places.
- O. Public transportation vehicles, including buses and taxicabs, under the authority of the City of Tarkio, and public transportation facilities, including bus, train, and airport facilities.
- P. Restaurants.
- Q. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- R. Retail stores, including but not limited to tobacco retailers, marijuana establishments, and vape shops.
- S. 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 Tarkio, or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of Tarkio.
- T. Service lines.
- U. Shopping malls.
- V. Sports arenas, including enclosed places in outdoor arenas.
- W. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

### **Section 3. Prohibition of Smoking in Enclosed Places of Employment**

- A. Smoking shall be prohibited in all enclosed areas of places of employment. This includes, without limitation, 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.

### **Section 4. Prohibition of Smoking in Private Clubs**

Smoking shall be prohibited in all private clubs during such events or activities utilizing the services of compensated employees. This prohibition shall not apply to private clubs that operate strictly with uncompensated volunteers.

### **Section 5. Prohibition of Smoking in Enclosed Residential Facilities**

Smoking shall be prohibited in the following enclosed residential facilities:

- A. All private and semi-private rooms in nursing homes.
- B. All hotel and motel guest rooms.

### **Section 6. Prohibition of Smoking in Outdoor Public Places**

Smoking shall be prohibited in the following outdoor places:

- A. Within a reasonable distance of 10 feet of outside main entrance, where smoking is prohibited, so as to prevent tobacco smoke from entering that area.
- B. In outdoor shopping malls, including parking garages.
- C. In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within 20 feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- D. In outdoor recreational areas including city parks, pool and baseball fields, excluding parking lots and the Tarkio Golf Course, except smoking shall be prohibited at all golf courses during school sponsored events and extracurricular activities including school or MSHSAA golf matches, practices, and tournaments.
- E. In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas.

### **Section 7. Where Smoking Not Regulated**

Notwithstanding any other provision of this Article to the contrary, smoking shall not be prohibited in private residences, unless used as a childcare, adult day care, or health care facility.

### **Section 8. Declaration of Establishment or Outdoor Area 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 is a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 1012(A) is posted.

### **Section 9. Posting of Signs and Removal of Ashtrays**

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

- A. 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.
- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited or, in the case of outdoor places, clearly and conspicuously post "No Smoking" signs in appropriate locations as determined by the Atchison County Health Department, or an authorized designee.
- C. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Article at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- D. 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.

### **Section 10. Enforcement**

- A. This Article shall be enforced by the Tarkio Police Department.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Tarkio.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with City Administration or the Tarkio Police Department.
- D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. An owner, manager, operator, or employee of an area regulated by this Article shall direct a person who is smoking in violation of this Article to extinguish or turn off the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact the enforcing agency.
- F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- G. In addition to the remedies provided by the provisions of this Section, the City Administrator 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 those provisions in any court of competent jurisdiction.

### **Section 11. Violations and Penalties**

- A. A person who refuses to comply with a request to stop smoking in an area where smoking is prohibited by the provisions of this Article shall be civilly liable, subject to an infraction not exceeding fifty dollars (\$50).
- B. Except as otherwise provided in Section 1013(A), 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 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 the Tarkio Police Department by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City of Tarkio 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.
- F. The remedies provided in this article are cumulative and in addition to any other remedies available at law or in equity.

### **Section 12. Public Education**

The City of Tarkio and the Atchison County Health Department shall 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.

### **Section 13. Governmental Agency Cooperation**

The City Administrator shall periodically request other governmental and educational agencies having facilities within the City of Tarkio to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, City, and School District agencies to update their existing smoking control regulations to be consistent with the current



health findings regarding secondhand smoke.

**Section 14. Other Applicable Laws**

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

**Section 15. 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.

**Section 16. Effective Date**

This Article shall be effective thirty (30) days from and after the date of its adoption.

**First Reading**

Motion: Agnew Second Olson

Scott Walker N Blu Dow Y Jeff Olson Y Jeff Agnew Y

First Reading: pass

**Second Reading**

Motion: Agnew Second Dow

Scott Walker N Blu Dow Y Jeff Olson Y Jeff Agnew Y

Second Reading: pass

**PASSED AND APPROVED** this 14<sup>th</sup> day of February, 2024.

Mark E. Staten  
Mark Staten, Mayor

ATTEST: Danielle Madron  
Danielle Madron, City Clerk

Seal