

Substitute Bill No. 4631

Ordinance No. 18-070

Requested by: Mike Klinghammer

Sponsored by: Joe Brazil, Mike Elam, Dave Hammond, Mike Klinghammer

AN ORDINANCE CALLING FOR THE AMENDMENT OF THE CHARTER IN THE FORM OF A PROPOSITION CONCERNING A COUNTYWIDE BAN ON SMOKING IN ENCLOSED PUBLIC PLACES AND ENCLOSED PLACES OF EMPLOYMENT, WITH EXCEPTIONS TO THE BAN REGARDING SMOKING IN PLACES IN WHICH ONLY PERSONS 21 AND OVER ARE PRESENT, AND REGARDING PRIVATE CLUBS, TOBACCO-RELATED BUSINESSES AND CASINOS, PLACING THE PROPOSED CHARTER AMENDMENTS ON THE NOVEMBER 6, 2018, BALLOT

WHEREAS, 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; and (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer. *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); and

WHEREAS, the St. Charles County Council finds and declares that the purpose of this ordinance is to protect the public health and welfare by prohibiting smoking in public places and places of employment; and

WHEREAS, two municipalities in St. Charles County have enacted bans on smoking in enclosed public places with certain exceptions; and

WHEREAS, should the voters approve the Charter amendment provision to ban smoking throughout the County as placed before them at the November 2018 election, then pursuant to Article VI, Section 18(c) of the Constitution of Missouri, smoking shall be prohibited in all unincorporated and incorporated enclosed areas of St. Charles County as set forth in the amended charter of St. Charles County; and

WHEREAS, the St. Charles County Charter, Article II, Section 2.509 (2006) authorizes the County to call elections for any lawful purpose; and

WHEREAS, Article IX, § 9.100 and § 9.102 of the Charter of St. Charles County provide that the Charter may be amended by ordinance adopted by the County Council and submitted to the voters at a regular or special election and approved by a majority of those voting on the proposition;

WHEREAS, pursuant to *Padberg v. Roos*, 404 S.W.2d 161 (Mo. banc 1966), a Council-initiated Charter amendment proposal bill need not be presented to the County Executive for approval or veto, and need be read only once; and

WHEREAS, having so found and declared as set forth above, the Council has determined to place this matter on the November 6, 2018, ballot and should this amendment to the St. Charles County Charter to ban smoking in public places, by at least a simple majority of ballots cast by the voters of St. Charles County, be approved by those voters, then the County Charter shall be amended as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF ST. CHARLES COUNTY, MISSOURI, AS FOLLOWS:

Section 1. Should the voters of St. Charles County enact the amendment to the Charter of St. Charles County as set forth herein, then the following shall be enacted as a new Section of the Charter of St. Charles County, Missouri:

A. TITLE

This Section shall be known as the St. Charles County Smoke-Free Air Act of 2018.

B. DEFINITIONS

The following words and phrases, whenever used in this Section, shall have the meanings ascribed to them in this subsection:

(1) "Bar", an establishment 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.

(2) "Business", a sole proprietorship, partnership, joint venture, corporation, limited liability company (LLC), 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", means an excursion gambling boat licensed or regulated by the Missouri Gaming Commission under provisions of Sections 313.800 to 313.850 of the Revised Statutes of the State of Missouri, as amended.

(4) "Cigar Bar", means a business with a permit to sell alcoholic beverages that generates twenty-five percent (25%) or more of its quarterly gross revenue from the sale of cigars, pipes, pipe tobacco, humidors and/or the rental of humidor space, has a humidor on the premises, and does not allow any individuals under eighteen (18) years of age to enter the establishment.

(5) “Electronic smoking device”, 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 shall include any such device, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

(6) "Employee", 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.

(7) “Employer”, 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.

(8) "Enclosed", encompassing all space between a floor and a ceiling that is bounded on more than 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.

(9) "Gambling facility" means any establishment where individuals may

participate in bingo, gambling games of skill or chance on an excursion gambling boat, pari-mutuel wagering or any other form of gambling approved by amendment to the Missouri Constitution, including sports gambling.

(10) "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, 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.

(11) "Hookah", 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.

(12) "Membership club" means the facilities owned, operated, or leased by any organization, whether incorporated or not, which:

(a) is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times;

(b) is operated solely for a congressionally chartered veterans organization or for a recreational, fraternal, social, patriotic, political, benevolent, charitable, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation;

(c) 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;

(d) has established bylaws and/or a constitution to govern its activities; and

(e) has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

(13) "Place of employment", an area under the control of a public employer or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, temporary offices, and vehicles leased, owned, or operated by the employer. Any child care,

adult day care, group home or health care facility shall be considered a place of employment, whether located in a public place or private residence.

(14) "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, membership clubs, 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.

(15) "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.

(16) "Retail Tobacco Store", means a retail store that generates twenty-five percent (25%) or more of its gross annual revenue from the sale of tobaccos, including but not limited to snuff tobacco, chewing

tobacco, or dipping tobacco, pipes, cigars, cigarettes, smoking sundries, electronic smoking devices, or vapor cartridges or other containers of liquid that are intended to be used with or in an electronic smoking device, and in which the sale of other products is incidental.

(17) "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" shall not include the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or smokeless tobacco, non-tobacco and non-plant products.

(18) "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.

C. SMOKING PROHIBITED

(1) Smoking shall be prohibited in all enclosed areas controlled by the County of St. Charles, including buildings and vehicles owned, leased, or operated by the County; and outdoor space within a

distance of fifteen (15) feet outside entrances, operable windows, and ventilation systems of such enclosed areas where smoking is prohibited.

(2) Smoking shall be prohibited in all enclosed public places within the County of St. Charles, including but not limited to, any bar, gambling facility, health care facility, hotel or motel, membership club, restaurant, retail store, or sports arena.

(3) Smoking shall be prohibited in all enclosed places of employment. This includes, but is not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles owned, leased, or operated by the employer, 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.

(4) Smoking shall be prohibited in outdoor space within a distance of fifteen (15) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited. "Entrance" shall mean an entryway primarily used by the public as a means to enter or exit a public place from a public street or public sidewalk.

(5) Subsections 1 through 4 above shall be in effect in the unincorporated area and within an incorporated municipality within St. Charles County. Pursuant to Article VI, Section 18(c), of the Constitution of Missouri, any municipality shall have the authority to prohibit smoking in additional places not herein enumerated pursuant to independent powers the municipality may have by law, but no municipality shall have the power to grant exceptions or exemptions from the prohibition on smoking unless approved by voters as an amendment to the Charter of St. Charles County.

D. EXCEPTIONS TO SMOKING PROHIBITIONS

Notwithstanding any other provision of the Charter to the contrary, the use of an electronic smoking device shall not be prohibited by this Section, and smoking in enclosed public places or places of employment shall not be prohibited within the following:

(1) Any bar or restaurant that restricts access to its buildings or facilities at all times to persons who are twenty-one (21) years of age or older, provided the bar or restaurant also posts a clear and conspicuous sign at all entrances identifying the bar or restaurant as a smoking establishment;

(2) An area within a business, bar, or restaurant that is separately ventilated and physically separated from the area designated as non-smoking, provided that such smoking area is restricted at all

times to persons who are twenty-one (21) years of age or older and the business, bar, or restaurant also posts a clear and conspicuous sign at all entrances stating that smoking is allowed only in the physically separately area;

(3) Membership clubs, provided such membership club posts a clear and conspicuous sign at all entrances to its building or facility stating that smoking is allowed;

(4) Cigar bars, provided that smoke from such bars does not infiltrate into areas where smoking is otherwise prohibited;

(5) Retail tobacco stores that prohibit any individuals under eighteen (18) years of age from entering their premises, provided that smoke from such stores does not infiltrate into areas where smoking is otherwise prohibited;

(6) Non-enclosed areas of public places, including open-air patios, porches, or decks provided that smoke from such areas does not infiltrate into areas where smoking is otherwise prohibited. "Open air-patios, porches, or decks" have no more than two (2) solid walls. A solid wall extends from the floor to the ceiling and may include windows and doorways. A solid wall includes a retractable divider, garage door, or other solid physical barrier, but only when closed. A solid wall does not include a security barrier or retractable security door that is closed only when

the business is closed for security purposes, nor does it include a ceiling;

(7) Any casino, provided such casino prohibits smoking on at least fifty percent (50%) of the floor area on which gambling games are permitted within the casino;

(8) Private homes, private residences and private motor vehicles, unless such homes, residences or motor vehicles are being used for child care, adult day care, group home, or health care facility, or unless the private vehicle is being used for public transportation;

(9) Commercial vehicles when such vehicle is occupied solely by the owner/operator; and

(10) Federal Food and Drug Administration licensed medical research facilities where smoking is a factor being studied in the effects of medicine or medical treatment.

Nothing in this Section shall prohibit an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area from declaring that smoking is prohibited in the entire establishment, facility, or outdoor area. Such owner, operator, manager, or other person in control of the establishment, facility, or outdoor area shall post a sign conforming to the requirements of subdivision (1) of subsection E of this Section.

E. OWNER AND OPERATOR DUTIES

The owner, operator, manager, or other person in control of a place of employment or public place where smoking is prohibited by this Section 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 such place of employment or public space.

(2) Clearly and conspicuously post at every entrance to such 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 St. Charles County Department of Public Health or an authorized designee.

(3) Clearly and conspicuously post on every vehicle owned, operated or leased by an employer under this Section at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.

(4) Remove all ashtrays from any area where smoking is prohibited by this Section, except for ashtrays displayed for sale and not for use on the premises.

F. RETALIATION

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 Section or reports or attempts to prosecute a violation of this Section. Notwithstanding subsection H of this Section, violation of this Section shall be a misdemeanor, punishable by a fine not to exceed \$1000 for each violation.

G. ENFORCEMENT

(1) This Section shall be enforced by the St. Charles County Department of Public Health or an authorized designee.

(2) Notice of the provisions of this Section shall be given to all applicants for a business license in the County of St. Charles.

(3) Any citizen who desires to register a complaint under this Section may initiate enforcement with the St. Charles County Department of Public Health.

(4) The St. Charles County Department of Public Health, Fire Department, or their designees shall, while an establishment is undergoing otherwise

mandated inspections, inspect for compliance with this Section.

(5) An owner, manager, operator, or employee of an area regulated by this Section shall direct a person who is smoking in violation of this Section to extinguish or turn off the product being smoked. If the person fails to comply with such direction, 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 may contact a law enforcement agency.

(6) Notwithstanding any other provision of this Section, an employee or private citizen may bring legal action to enforce this Section.

(7) In addition to the remedies provided by the provisions of this Section, the St. Charles County Department of Public Health 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 Section may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

H. PENALTIES

(1) A person who smokes in an area where smoking is prohibited by the provisions of this Section shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).

(2) Except as otherwise provided in subdivision one of this subsection, 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 Section shall be guilty of an infraction, punishable by:

(a) A fine not exceeding one hundred dollars (\$100) for a first violation;

(b) A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year; and

(c) A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

(3) In addition to the fines established by this Section, violation of this Section 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 county permit or license issued to the person for the premises on which the violation occurred.

(4) Violation of this Section is hereby declared to be a public nuisance, which may be abated by the St.

Charles County Department of Public Health by restraining order, preliminary and permanent injunction, or other means provided for by law, and the St. Charles County may take action to recover the costs of the nuisance abatement, as allowed by law.

(5) Each day on which a violation of this Section occurs shall be considered a separate and distinct violation.

I. FINANCING

Enforcement of this Section shall be financed through the general revenues of St. Charles County.

J. SEVERABILITY

If any provision of this Section or the application thereof to anyone or to any circumstance shall be held invalid, the remainder of the provisions of this Section and the application of such provisions to others or other circumstances shall not be affected thereby.

K. EFFECTIVE DATE

The provisions of this Section shall be effective on the date of election certification as provided for by this Charter.

Section 2. The proposition shall be submitted in substantially the following form:

PROPOSITION SMOKE FREE WITH EXCEPTIONS

Shall the Charter of St. Charles County be amended to add a new Section which prohibits smoking in enclosed public places or enclosed places of employment throughout St. Charles County, whether in the unincorporated area or within an incorporated municipality, with exceptions regarding smoking in places in which only persons 21 and over are present, and private clubs, tobacco-related businesses and casinos?

Any municipality shall have the authority to ban smoking in additional places not herein enumerated pursuant to independent powers they may have by law. Enforcement of the prohibition shall be financed through the general revenues of St. Charles County.

YES _____

NO _____

INSTRUCTIONS TO VOTERS: If you are in favor of the question, place an “X” in the box opposite “Yes”. If you are opposed to the question, place an “X” in the box opposite “No”.

Section 3. It is hereby directed that this ordinance be forwarded to the St. Charles County Election Authority and that the

question of whether the Charter shall be amended as set forth in Section 1 be placed before the qualified voters of St. Charles County at the November 6, 2018, election. The Executive Assistant to the County Council is authorized to transmit a certified copy of this ordinance to the St. Charles County Election Authority for his information and guidance and to direct him to place the proposition set out in Section 2 on the November 6, 2018, ballot.

- Section 4. The Election Authority is authorized and directed to take all necessary steps and execute all necessary documents to implement this ordinance.
- Section 5. Prosecution of this ordinance, should the voters approve it at the November 6, 2018, election, shall be the responsibility of the County Counselor's Office
- Section 6. Following passage and approval, and the approval of at least a majority of the voters of St. Charles County on the November 6, 2018, ballot, the regulatory provisions of this ordinance shall be published at least once in a legal publication or in a newspaper of general circulation in St. Charles County and posted in six public places within St. Charles County, and this ordinance shall be printed and available for distribution to the public in the office of the County Registrar.
- Section 7. The County Registrar's Office shall be responsible for publishing this ordinance in accordance with Section 6 of this ordinance. Payment to any publication or newspaper publishing this ordinance shall be from the appropriate line item.

Section 8. This ordinance shall be effective upon passage and approval except that any provisions of the ordinance legislating a smoke free environment or containing a penalty provision for its violation shall be effective sixty days after its publication in a legal publication or a newspaper of general circulation in St. Charles County and its posting in six public places.

DATE OF PASSAGE

COUNCIL CHAIR