

**Ordinance # 1885**

**AN ORDINANCE PROHIBITING SMOKING IN PUBLIC PLACES IN THE CITY OF DERBY, SEDGWICK COUNTY, KANSAS.**

**WHEREAS**, secondhand smoke, which contains 4,000 chemicals, 63 of which cause cancer, is the third leading cause of preventable death in the United States, and the National Cancer Institute determined in 2000 (Monograph #10) that secondhand smoke is responsible for the early deaths of as many as 65,000 Americans annually; and

**WHEREAS**, (1) the Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen (U. S. DHHS, 2000, citing Cal. EPA, 1997), and (2) numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart, stroke, respiratory disease, and lung cancer; and

**WHEREAS**, the ills of smoking and secondhand smoke are well documented in all of the independent medical studies and secondhand smoke is particularly hazardous to elderly people, children, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

**WHEREAS**, (1) the U. S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke, (2) the Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation, (3) air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke, (4) American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smoke-free environments because it cannot determine a safe level of exposure to secondhand smoke, which contains cancer-causing chemicals, and ASHRAE acknowledges that the technology does not exist that can remove chemicals from the air that cause cancer; and

**WHEREAS**, (1) a recently promulgated ASHRAE Position Document on Environmental Tobacco Smoke concludes that at present, the only means of eliminating health risks associated with indoor exposure is to ban all smoking activity, and (2) ASHRAE further concludes that no current ventilation, air cleaning or other technologies have been demonstrated to control health risks from environmental tobacco smoke exposure in spaces where smoking occurs; and

**WHEREAS**, a significant amount of secondhand smoke exposure occurs in the workplace, and employees who work in smoking permitted businesses suffer a higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and a measurable decrease in lung function; and

**WHEREAS**, smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates and increased liability claims for diseases related to exposure to secondhand smoke; and

**WHEREAS**, the Derby City Council recognizes that environmental tobacco smoke poses a serious public health hazard; that nonsmokers need protection from environmental tobacco smoke exposure and that regulation of the burning of tobacco in public places and places of employment is imperative in order to protect the public health and welfare of the citizens of the City of Derby;

**NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS:**

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**Section 1. PURPOSE.** The purpose of this Ordinance is to (1) improve and protect the public's health by eliminating smoking in public places and places of employment; (2) guarantee the right of nonsmokers to breathe smoke-free air; and (3) recognize that the need to breathe smoke-free air shall have priority over the choice to smoke.

**Section 2. DEFINITIONS.** The following words and phrases, whenever used in this Ordinance, shall be construed as defined in this section:

- a. **"Business"** means any sole proprietorship, partnership, association, joint venture, corporation or other for-profit business entity, 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.
- b. **"Employee"** means any person, including but not limited to, independent contractors and volunteers, who is employed by an employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for a non-profit entity.
- c. **"Employer"** means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one (1) or more individual persons.
- d. **"Enclosed area"** means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.
- e. **"Food Service Establishment"** shall mean any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order café, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside kitchen, commissary and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.
- f. **"Health Care Facility"** means any institution, place, building, or agency required to be licensed under Kansas law, including, but not limited to, any hospital, nursing facility or nursing home, boarding home, assisted living facility, supervised living facility, or ambulatory medical and surgical center. A private residence being visited by a health care provider for the purposes of providing in-home health care shall not be deemed a health care facility.
- g. **"Licensed Premises"** shall mean any premises where alcoholic liquor or cereal malt beverages, or both, by the individual drink as defined by K.S.A. Chapter 41, and amendments thereto, is served or provided for consumption or use on the premises with or without charge. Such term shall include drinking establishments, Class A Private Clubs, Class B Private Clubs, and cereal malt beverage retailers, all as defined by K.S.A. Chapter 41, and amendments thereto, and this Code.
- h. **"Office Landscaping"** means indoor office areas without permanent walls, or walls that are not floor to ceiling; open space such as waiting area and atriums; cubicles and/or open desk seating areas.
- i. **"Permanently Designated"** means a hotel or motel room that has been identified as a smoking room. Hotels and motels may designate smoking rooms only once a year.
- j. **"Place of Employment"** means any enclosed area under the control of public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.

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- k. **“Private Place”** means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal residences or personal motor vehicles. A privately owned business, open to the public, is not a private place.
- l. **“Public Place”** means any enclosed area, other than those expressly exempted from operation of this ordinance, to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a public place.
- m. **“Retail Tobacco Store”** means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- n. **“Service Line”** means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- o. **“Smoking”** means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or weed.
- p. **“Sports Arena”** means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

**Section 3. SMOKING IN PUBLIC PLACES PROHIBITED.** Smoking shall be prohibited in all enclosed public places within the City of Derby, including, but not limited to, the following places:

- a. Elevators.
- b. Restrooms, lobbies, reception areas, hallways, and any other common-use areas.
- c. Buses, bus terminals, taxicabs, train stations, airports, and other facilities and means of public transit under the authority of the City of Derby, as well as ticket, boarding, and waiting areas of public transit depots.
- d. Service lines.
- e. Retail stores and shopping malls.
- f. Libraries, educational facilities, child care and adult day care facilities.
- g. All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including, but not limited to, attorneys’ offices, and other offices, banks, laundromats, hotels, and motels.
- h. Food service establishments and licensed premises, excluding areas of a food service establishment or licensed premises that are not enclosed such as patios, outdoor dining areas, and courtyards; provided, that licensed premises shall be exempt from the prohibitions of this ordinance until such time as the City of Wichita, Kansas, has adopted an ordinance prohibiting smoking upon or within such premises.
- i. Galleries, libraries, aquariums, museums, and grounds.
- j. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except that performers may smoke when the smoking is a part of a stage production.

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- k. Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, betting establishments, bowling facilities, arenas, and swimming pools.
- l. Sports arenas and convention halls, including enclosed places in outdoor arenas.
- m. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City of Derby or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City of Derby.
- n. Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
- o. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- p. Polling places.
- q. Outside of any of the above, within 20 (twenty) feet of all entrances, exits, and ventilation system air intake mechanisms.

**Section 4. SMOKING IN PLACES OF EMPLOYMENT PROHIBITED.** Except with respect to licensed premises when expressly exempted from the prohibitions of this ordinance, smoking shall be prohibited in all enclosed places of employment within the City Derby.

- a. It shall be the responsibility of employers to provide a smoke-free workplace for all employees.
- b. Each employer having any enclosed place of employment located within the City of Derby shall adopt, implement, make known and maintain, a written smoking policy which shall contain the following requirements:

*Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. 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.*

- c. The smoking policy shall be communicated to all employees within thirty (30) calendar days of the adoption of this ordinance.
- d. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

**Section 5. DECLARATION OF NON-SMOKING ESTABLISHMENT.** Nothing in this ordinance shall be construed to limit the right of any owner, operator, manager or other person in control of any establishment described in this ordinance to declare such establishment to be entirely a non-smoking establishment.

**Section 6. CITY-OWNED FACILITIES.** Notwithstanding other provisions of this ordinance, all enclosed facilities and vehicles owned by the City of Derby shall be non-smoking at all times notwithstanding other provisions of this Ordinance.

**Section 7. PUBLIC AND PRIVATE PLACES WHERE SMOKING IS NOT REGULATED.** Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall not be subject to the smoking restrictions of this Ordinance:

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- a. Private places, except when used as a childcare, adult day care or health care facility.
- b. Outdoor places of employment except those covered in Section 5 of this Ordinance.

**Section 8. POSTING OF SIGNS.** The owner, manager or other person having control of a building or other area where smoking is prohibited by this Ordinance shall conspicuously post signs clearly stating that smoking is prohibited at each entrance and within the building or other areas where smoking is prohibited. Such signs shall have bold lettering of not less than one (1) inch in height or, in the alternative, the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a diagonal red bar across it.

**Section 9. NOTICE, INSPECTIONS, AND PUBLIC HEALTH EDUCATION.** Notice of the provisions set forth in this Ordinance shall be given to each applicant for a City business license and drinking establishment or other liquor license.

- a. The Derby Fire & Rescue Department, the Derby Police Department, and the Codes Enforcement Division of the Community Development Department shall, when conducting any required inspection of an establishment, inspect for compliance of this Ordinance.
- b. The City of Derby may contract with Sedgwick County Health Department or any other public agency to promote the purposes and objectives of this ordinance to the public affected by it, and guide owners, operators and managers in their compliance with it. Such promotion may include publication of a brochure for affected businesses and individuals explaining the provisions of this Ordinance to affected businesses and individuals.

**Section 10. RESPONSIBILITY FOR ENFORCEMENT.** The City Manager or his or her designated agent shall be responsible for enforcing the provisions of this Ordinance.

- a. Any person may file a complaint with the City Manager or his or her designated agent to initiate enforcement of this ordinance.
- b. Any owner, manager, operator or employee of any establishment regulated by this Ordinance shall be responsible for informing persons violating this Ordinance of the provisions through appropriate signage.

**Section 11. RETALIATION PROHIBITED.** No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke free environment afforded by this Ordinance.

**Section 12. RESPONSIBILITIES OF PROPRIETORS, OWNERS, AND MANAGERS.** No person having control of a place, business, office or other establishment or activity subject to this Ordinance shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this Ordinance in that place. Such persons shall take all reasonable steps necessary to prevent or stop smoking in violation of this Ordinance by employees, patrons and visitors in the place, business, office or establishment, including, but not limited to posting no-smoking signs and removing all ashtrays; verbally asking a person who is smoking to extinguish the smoking materials; refusing service to a person who is illegally smoking; verbally asking anyone illegally smoking to leave the premises; and applying standard business procedures in the same manner for violations of house rules or other local ordinances or state laws. If the employee, patron or visitor smoking in violation of this Ordinance is hard of hearing, the communications with that person may be written, in sign language or other effective means of communication.

### **Section 13. VIOLATIONS AND PENALTIES.**

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- a. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Ordinance.
- b. It shall be unlawful for any person who owns, manages, operates or otherwise controls any premises subject to regulation hereunder to fail to comply with all provisions of this Ordinance.
- c. A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of a public offense, punishable by a fine not exceeding fifty dollars (\$50.00).
- d. A person having control of any premise subject to regulation hereunder and who fails to comply with the provisions of this Ordinance shall be guilty of a public offense, punishable by:
  - 1. A fine not exceeding One Hundred Dollars (\$100.00) for the first violation.
  - 2. A fine not exceeding Two Hundred Dollars (\$200.00) for a second violation within one (1) year after the first violation.
  - 3. A fine not exceeding Five Hundred Dollars (\$500.00) for a third or subsequent violation within one (1) year after the first violation.
- e. Each day that any violation of this Chapter occurs shall constitute a separate offense.
- f. In addition to the fines established by this Section, violation of this Ordinance by a person having control of 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.

**Section 14. OTHER APPLICABLE LAWS.** This Ordinance shall not be construed to permit smoking on any premises where it is otherwise restricted by law.

**Section 15. SEVERABILITY.** If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**Section 16. EFFECTIVE DATE.** This ordinance shall be effective from and after January 1, 2009 and its publication in the official city newspaper.

**PASSED BY THE GOVERNING BODY** this 10th day of April, 2007.

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Dion P. Avello, Mayor

ATTEST:

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Jean Epperson, City Clerk