

ORDINANCE NO. 4646-07

AN ORDINANCE PROHIBITING THE SMOKING OF TOBACCO PRODUCTS IN DESIGNATED PUBLIC PLACES AND PLACES OF EMPLOYMENT IN THE CITY OF NEWTON, KANSAS; ESTABLISHING DUTIES AND RESPONSIBILITIES IN RELATION TO SUCH PROHIBITIONS; AND ESTABLISHING PENALTIES FOR VIOLATIONS OF SUCH PROHIBITIONS, DUTIES AND RESPONSIBILITIES.

WHEREAS, the governing body of the City of Newton, Kansas (the "City"), recognizes that smoking and secondhand smoke ("environmental tobacco smoke") pose serious public health hazards, that patrons and employees of businesses and industries, as well as persons frequenting public places, need protection from environmental tobacco smoke exposure, and that regulation of the smoking and burning of tobacco in public places and places of employment and business is imperative in order to protect the public health and welfare of the citizens of the City;

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

SECTION 1. DEFINITIONS. The following words and phrases, whenever used in this Ordinance, are defined and shall be construed as follows:

- (a) "Enclosed Public Places" means the portion or portions of any building, structure or other enclosure of any type to which the public is invited or permitted for the transaction of any business or the engagement in any activities, which building, structure or enclosure (or the public portion thereof) is enclosed by floor-to-ceiling walls and by roof or ceiling structures (exclusive of doors, windows and passageways), and includes the portions thereof provided as public entrances and exits, hallways and passageways, reception areas, lobbies, waiting rooms, elevators and restrooms. Examples of Enclosed Public Places include but are not limited to: retail stores, retail service establishments (including food and/or beverage service establishments and other commercial facilities of all types; professional offices; educational, healthcare, child care and adult day care facilities; indoor recreational and sports facilities; hotels, motels and other places of public accommodation; and convention, conference and meeting facilities).
- (b) "Enclosed Places of Employment" means the portion of any building, structure or other enclosure of any type which is under the possession or control of a public or private employer, which building, structure or enclosure (or the employee-access portion thereof) is enclosed by floor-to-ceiling walls and by roof or ceiling structures (exclusive of doors, windows and passageways), in which the employer's employees engage in employment-related and other necessary activities, including but not limited to: work areas; lounge, dining and rest areas; restrooms; meeting rooms; and hallways and other passageways.
- (c) "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette or other tobacco product, or any pipe or other vessel containing burning tobacco of any kind.

SECTION 2. PLACES WHERE SMOKING PROHIBITED. Smoking shall be prohibited in all of the following places within the City:

- (a) Enclosed Public Places (as defined herein).
- (b) Any other portion of a building, structure or enclosure in which one or more Enclosed Public Places is located unless such portion is completely separated from the Enclosed Public Places by solid, structural walls which extend from floor to ceiling, and is so maintained such that, except for brief intermittent incidents, any doors or windows between such portions and any Enclosed Public Places are maintained in a closed position so as to not allow the passage of air from such portions into the Enclosed Public Places.
- (c) Enclosed Places of Employment (as defined herein).

- (d) All enclosed facilities and vehicles owned by the City.
- (e) Areas near public entrances and exits, defined as any indoor or outdoor area which is within a radius of twenty (20) feet of a public entrance to or public exit from any building, structure or enclosure in which one or more Enclosed Public Places is located, or which is within a radius of twenty (20) feet of a ventilation system intake thereto.
- (f) Outdoor vendor areas, defined as any place which is within a radius of twenty (20) feet of any outdoor vendor where food or goods are being offered for sale to the public.

SECTION 3. RESPONSIBILITIES OF EMPLOYERS, PROPRIETORS, OWNERS AND MANAGERS.

- (a) No person having control of a place, business, office or other establishment or activity subject to this Ordinance shall 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. Such reasonable steps may include, but shall not be limited to, the following: posting no-smoking signs; 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. The owner, manager or other person having control of a building, structure or enclosure, or of any portion of a building, structure or enclosure, where smoking is prohibited under the terms of this Ordinance are encouraged to conspicuously post signs at each point of entrance thereto clearly stating that smoking is prohibited, which signs depict the words "No Smoking" in bold lettering of not less than one (1) inch in height or, in the alternative, depict 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.
- (b) 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 4. NOTICE; INSPECTIONS.

- (a) Notice of the provisions set forth in this Ordinance shall be given to each applicant for a City business license and for a cereal malt beverage or alcoholic liquor license.
- (b) The City Public Works Department, Fire/EMS Department and Police Department shall, when conducting any required inspection of an establishment, inspect for compliance of this Ordinance.

SECTION 5. VIOLATIONS AND PENALTIES. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Ordinance. It shall also 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. Each day that any violation of this Ordinance occurs shall constitute a separate offense. Violation of any of the provisions of the Ordinance shall be punishable as follows:

- (a) By a fine not exceeding One Hundred Dollars (\$100.00) for the first violation.
- (b) By a fine not exceeding Two Hundred Dollars (\$200.00) for a second violation occurring within one (1) year from the date of the first violation.

- (c) By a fine not exceeding Five Hundred Dollars (\$500.00) for a third or subsequent violation occurring within one (1) year from the first violation.
- (d) In addition to any applicable penalty above, a violation of this Ordinance by a person having control of an Enclosed Public Place or an Enclosed Place of Employment as defined herein 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 6. 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 7. EFFECTIVE DATE. This ordinance shall be effective from and after January 1, 2008, and its publication in the official city newspaper.

PASSED BY THE GOVERNING BODY this 13th day of November, 2007.

/s/ Willis Heck
Mayor

ATTEST:

/s/Ronald R. Ahsmuhs
City Clerk