

TO: Mayor and Council, City of O'Fallon

FROM: Pamela L. Clement, City Clerk

DATE: April 19, 2011

REPORT OF THE CITY CLERK REGARDING INITIATIVE PROPOSITION

On December 9, 2010, it was determined and certified that an Initiative Petition for adoption of a proposed Initiative Ordinance to prohibit smoking in indoor workplaces and public places and known as the "O'Fallon Smoke-Free Air Act" was sufficient and satisfied the requirements of Sec. 9.7 of the O'Fallon City Charter.

After a public hearing with due notice as required by law the proposed ordinance was not adopted by the City Council without any change in substance. The proposed ordinance was, therefore, duly certified to the Election Authority of St. Charles County and was submitted to the qualified voters of the City of O'Fallon at the general municipal election held on April 5, 2011.

On April 18th, 2011 I received a certification from the Election Authority of St. Charles County that 7217 votes, 72.58% of the votes, were cast in favor of the proposed ordinance and 2726 votes, 27.42% of the votes, were cast against. As a result, I hereby report to you that a majority of the qualified voters voting on the proposed Initiative Ordinance voted in favor of the "O'Fallon Smoke-Free Air Act" as proposed by initiative as aforesaid.

Section 9.10(A) of the O'Fallon Charter provides that in such circumstances the Initiative Ordinance shall be considered adopted upon certification of the election results, and that such Ordinance shall be treated in all respects in the same manner as Ordinances of the same kind adopted by the City Council.

Therefore, in accord with the Charter and Ordinances of the City of O'Fallon I hereby attest and certify that the O'Fallon Smoke Free Air Act as proposed by initiative and approved by the voters as aforesaid, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, has been ADOPTED as an Ordinance of the City of O'Fallon and has been assigned Ordinance Number 5701.

You are further advised that the said Ordinance provided by its terms that it was to be effective sixty (60) days after passage. Accordingly, the provision of the said Ordinance shall be effective at 12:01 AM on June 16th, 2011.

AN ORDINANCE ADOPTING PROVISIONS TO PROHIBIT SMOKING IN INDOOR WORKPLACES AND PUBLIC PLACES, HEREBY KNOWN AS THE O'FALLON SMOKE-FREE AIR ACT.

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; (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 smoke-free 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 non-smokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry.

WHEREAS, scientific evidence has firmly established that there is no safe level of exposure to second-hand tobacco smoke, a pollutant that causes serious illness in adults and children. There is also indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke.

NOW, THEREFORE, be it ordained by the people of the City of O'Fallon as follows:

SECTION 1: DEFINITIONS

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

BAR: 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.

BUSINESS: 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.

CIGAR: Any individual roll of tobacco that has a wrapper or cover consisting only of tobacco, that measures a number forty (40) ring size or larger, and that is sold without a filter.

CIGAR BAR: An establishment with a permit to sell alcoholic beverages that:

1. Generates sixty percent (60%) or more of its quarterly gross revenue from the sale of alcoholic beverages and twenty-five percent (25%) or more of its quarterly gross revenue from the sale of cigars;
2. Has a humidor on the premises;
3. Is located in a freestanding structure occupied solely by the cigar bar and does not open into any enclosed area where smoking is prohibited by this Ordinance; and
4. Does not allow minors to enter the premises.

Revenue generated from other tobacco sales, including cigarette vending machine sales, shall not be used to determine whether an establishment satisfies the definition of a cigar bar.

EMPLOYEE: A person who is employed by an employer in consideration for direct or indirect monetary wages or profit and a person who volunteers his or her services for a non-profit entity.

EMPLOYER: A person, business, partnership, association, corporation, including a municipal corporation, trust or non-profit entity, that employs the services of one (1) or more individual persons.

ENCLOSED AREA: All space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

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, semi-private rooms and wards within health care facilities.

PLACE OF EMPLOYMENT: 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, private offices, 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.

PRIVATE CLUB: means a not-for-profit organization incorporated under the laws of the State of Missouri for fraternal or social purposes or for a congressionally chartered veterans' organization, which has a defined membership and restricts admission to members of the club and their guests and 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 organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501. Private club shall not include an establishment that is generally open to members of the general public upon payment of a fee. A private club shall be considered a "public place" when it is the site of a meeting, event or activity that is open to the public.

PUBLIC PLACE: 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, gaming facilities, health care facilities, hotels and motels, laundromats, 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 licensed child care, licensed adult day care or licensed health care facility.

RESTAURANT: 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.

RETAIL TOBACCO STORE: A retail store used primarily for the sale of tobacco products and accessories and where more than seventy percent (70%) of the volume of trade or business carried on there is that of the blending of tobaccos or sales of tobaccos, cigarettes, pipes, cigars or smoking sundries and in which the sale of other products is incidental. 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.

SERVICE LINE: 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, including, but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines and sporting event lines.

SMOKING: Inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette or pipe in any manner or in any form.

SPORTS ARENA: Sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys 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.

SECTION 2: APPLICATION OF ORDINANCE TO O'FALLON FACILITIES

All enclosed facilities, including buildings leased or operated by the City of O'Fallon shall be subject to the provisions of this Ordinance. Smoking is prohibited in City vehicles.

SECTION 3: PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES

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

1. Aquariums, galleries, libraries and museums.
2. 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, banks, laundromats, professional offices and retail service establishments.
3. Bars.
4. Bingo facilities.
5. Licensed child care and licensed adult day care facilities.
6. Convention facilities.
7. Educational facilities, both public and private.
8. Elevators.
9. Gaming facilities.
10. Health care facilities.
11. Hotels and motels except in designated private rooms allowed for smoking and rented to guests.
12. Lobbies, hallways and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple-unit residential facilities.

13. Polling places.

14. Public transportation vehicles, including buses and taxicabs, under the authority of the City of O'Fallon and ticket, boarding and waiting areas of public transportation facilities, including bus, train and airport facilities.

15. Restaurants.

16. Restrooms, lobbies, reception areas, hallways and other common-use areas.

17. Retail stores.

18. 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 O'Fallon or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of O'Fallon.

19. Service lines.

20. Sports arenas, including enclosed places in outdoor arenas.

21. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals or other similar performances.

SECTION 4: PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT

A. Smoking shall be prohibited in all enclosed facilities within places of employment in the following areas. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms and all other enclosed facilities.

B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Ordinance and to all prospective employees upon their application for employment.

SECTION 5: PROHIBITION OF SMOKING IN ENCLOSED RESIDENTIAL FACILITIES

Smoking shall be prohibited in the following enclosed residential facilities:

1. All private and semi-private rooms in nursing homes.
2. At least eighty percent (80%) of hotel and motel rooms that are rented to guests. Designated non-smoking hotel rooms shall have signage outside the hotel room saying the room is a non-smoking room.

SECTION 6: PROHIBITION OF SMOKING IN OUTDOOR AREAS

Smoking shall be prohibited in the following outdoor places:

Within a reasonable distance of three (3) feet outside entrances, operable windows and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

SECTION 7: WHERE SMOKING NOT REGULATED

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Sections 3 and 4:

1. Private residences, except when used as a licensed childcare, licensed adult day care or licensed health care facility and except as provided in Section 5.
2. Not more than twenty percent (20%) of hotel and motel rooms rented to guests and designated as smoking rooms. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. The status of rooms as smoking or non-smoking may not be changed, except to add additional non-smoking rooms.
3. Private clubs that have no employees, except when being used for a function to which the general public is invited; provided that

smoke from such clubs does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this Ordinance.

4. Outdoor areas of places of employment except those covered by the provisions of Section 6.

5. A cigar bar provided that smoke does not infiltrate into areas where smoking is otherwise prohibited under this Ordinance To qualify for this exemption, a cigar bar must satisfactorily report on a quarterly basis to the City of O'Fallon on a form prescribed by the City of O'Fallon, the revenue generated from the sale of alcoholic beverages and cigars as a percentage of quarterly gross revenue. This exemption shall not apply to any business that is established for the purpose of avoiding compliance with this Ordinance.

6. Retail tobacco stores as defined by this Ordinance and provided that smoke does not infiltrate into areas where smoking is otherwise prohibited. This exemption shall not apply to any business that is established for the purpose of avoiding compliance with this Ordinance.

SECTION 8: DECLARATION OF ESTABLISHMENT AS NON-SMOKING

Notwithstanding any other provision of this Ordinance, 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 non-smoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 9A is posted.

SECTION 9: 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 entrance in every public place and place of employment where smoking is prohibited by this Ordinance by the owner, operator, manager or other person in control of that place.

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

SECTION 10: NON-RETALIATION -- NON-WAIVER OF RIGHTS

A. 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 Ordinance or reports or attempts to prosecute a violation of this Ordinance.

B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

SECTION 11: ENFORCEMENT

A. This Ordinance shall be enforced by the City Administrator or an authorized designee.

B. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City of O'Fallon.

C. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the City Administrator or an authorized designee.

D. The Code Enforcement Officer or his/her designee shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.

E. An owner, manager, operator or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.

F. In addition to the remedies provided by the provisions of this Section, the City Administrator with the Mayor/City Council authorization 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 Ordinance

may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

SECTION 12: VIOLATIONS, CONVICTIONS AND PENALTIES

A. A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction punishable by a fine not exceeding fifty dollars (\$50.00).

Except as otherwise provided in Section 10, 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 Ordinance shall be guilty of an infraction punishable by a fine not to exceed five hundred dollars (\$500.00).

B. In addition to the fines established by this Section, violation of this Ordinance 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 by the Mayor/City Council issued to the person for the premises on which the violation occurred.

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

SECTION 13: OTHER APPLICABLE LAWS

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

SECTION 14: LIBERAL CONSTRUCTION

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

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, that 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 17: EFFECTIVE DATE

This Ordinance shall be effective sixty (60) days from and after the date of its passage by a majority of voters.

APPROVED BY THE VOTERS AND CERTIFIED BY THE ELECTION AUTHORITY FOR THE CITY OF O'FALLON, MISSOURI, THIS 19TH DAY OF APRIL, 2011.

STATE OF MISSOURI)

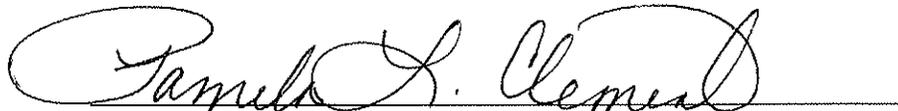
COUNTY OF ST. CHARLES)

I, Pamela L. Clement, City Clerk within and for the City of O'Fallon, Missouri, do hereby certify that the foregoing document constitute full, true and correct copy of the following as fully as the same appears and remains on record in my office in City Hall.

Ordinance 5701, An Ordinance adopting provisions to prohibit smoking in indoor workplaces and public places, hereby known as the O'Fallon Smoke Free Air Act.

IN WITNESS THEREOF, I have hereunto set my hand and affixed the seal of the City of O'Fallon, Missouri, at my office in said City as certified by the Election Authority of St. Charles County this 19th day of April, 2011.

ATTEST:



Pamela L. Clement, City Clerk
City of O'Fallon, Missouri

