

SPECIAL **ORDINANCE No.**

AN ORDINANCE SUBMITTING A PROPOSITION TO THE VOTERS OF THE CITY OF ST. JOSEPH, MISSOURI, PROVIDING FOR AN AMENDMENT TO CHAPTER 17 OF THE CODE OF ORDINANCES ENTITLED "HEALTH AND SANITATION" TO ADD A NEW ARTICLE XI ENTITLED "SMOKE-FREE INDOOR AIR WORKPLACES AND PUBLIC PLACES" FOR PURPOSES OF PROVIDING FOR THE ADOPTION OF PROVISIONS TO PROHIBIT SMOKING IN INDOOR WORKPLACES AND PUBLIC PLACES AT AN ELECTION TO BE HELD APRIL 8, 2014.

WHEREAS, An Initiative Petition was filed on November 21, 2013 for purposes of initiating an amendment to the "Health and Sanitation" Chapter (17) of the City of St. Joseph Code of Ordinances to add a new Article (XI) entitled "Smoke-Free Indoor Air Workplaces and Public Places."

WHEREAS, City Charter Section 11.4 states that the City Clerk has twenty (20) days to complete a certificate as to the sufficiency of the Petition and send said certificate to the Petitioners' Committee by certified mail.

WHEREAS, Before this certification can occur, the County Clerk must verify that a requisite number of individuals signing the Petition are registered voters of the City. The County Clerk completed this task on Monday, November 25, 2013, verifying that a sufficient number of registered voters did, in fact, sign the Petition.

WHEREAS, The City Clerk thereafter certified the Petition as being sufficient by promptly providing a copy of the certificate to the Petitioners' Committee by certified mail and presenting a copy of the certificate to the City Council. Section 11.4(a) of the Charter states that this certification "shall then be a final determination as to the sufficiency of the petition....No amendment may be made which shall result in a substantive change in the meaning of the ordinance." The City Council is thereafter required to promptly consider the proposed initiative ordinance in accordance with its normal legislative procedures, as set out in City Charter Section 3.9.

WHEREAS, If the City Council *chooses to adopt* the proposed initiative ordinance (without any changes in substance), this action must be taken within Sixty (60) days of November 25, 2013, the date upon which the Petition was certified by the City Clerk, or by January 24, 2014.

WHEREAS, If the City Council *fails to adopt* the proposed initiative ordinance (without any changes in substance) within Sixty (60) days of the date upon which the Petition was certified by the City Clerk, or by January 24, 2014, the City Council must thereafter proceed to submit the ordinance to the voters and follow the mandates of City Charter Section 11.6(b).

WHEREAS, If the proposed amendment is approved by a majority of the qualified voters voting thereon, it shall be in full force and effect and become a part of the Code of Ordinances of the City of St. Joseph, Missouri, sixty (60) days thereafter, or on June 7, 2014.

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

SECTION 1. That there shall be submitted to the qualified voters of the City of St. Joseph, Missouri at the General Election to be held in the City on the 8th day of April, 2014, the following Proposition:

Shall the City of St. Joseph, Missouri, Code of Ordinances, Chapter 17, entitled "Health and sanitation" be amended by adding a new article to be numbered, entitled and read as follows:

ARTICLE XI. SMOKE-FREE INDOOR AIR
WORKPLACES AND PUBLIC PLACES

Sec. 17-325. Title.

This article shall be known as the St. Joseph Smoke-Free Indoor Air Ordinance of 2014.

Sec. 17-326. Definitions.

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

- (1) *Bar* means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- (2) *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.
- (3) *Casino gaming areas* means the areas of a state-licensed gambling facility where gaming is allowed for those 21 years of age or older, including any VIP lounge, accessible only through the gaming floor, whether or not gaming is allowed in the VIP lounge.
- (4) *E-cigarette* means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or any other product name or descriptor.
- (5) *Employee* means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit.
- (6) *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.

- (7) *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.
- (8) *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.
- (9) *Membership 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.
- (10) *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.
- (11) *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, 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 child care, adult day care, or health care facility.
- (12) *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.
- (13) *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, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

- (14) *Shopping mall* means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- (15) *Smoking* means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or other tobacco or plant product intended for inhalation. "Smoking" also includes the use of an e-cigarette which creates a 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 ordinance.
- (16) *Sports arena* means a place where people assemble to engage in physical exercise, participate in athletic competitions, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

Sec. 17-327. Application of article to City-Owned Facilities and Property.

All enclosed areas, including buildings and vehicles owned, leased, or operated by the City of St. Joseph shall be subject to the provisions of this article.

Sec. 17-328. Prohibition of smoking in enclosed public places.

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

- (1) Aquariums, galleries, libraries, and museums.
- (2) 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.
- (3) Bars.
- (4) Child care and adult day care facilities.
- (5) Convention facilities.
- (6) Educational facilities, both public and private.
- (7) Elevators.
- (8) Health care facilities.
- (9) Hotels and motels, except in designated private sleeping rooms allowed for smoking and rented to guests, in accordance with the restrictions contained in Section 17-332 of this article.

- (10) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (11) Polling places.
- (12) Public transportation vehicles, including buses and taxicabs, under the authority of the City of St. Joseph, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
- (13) Restaurants.
- (14) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- (15) Retail stores.
- (16) 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 St. Joseph or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of St. Joseph.
- (17) Service lines.
- (18) Shopping malls.
- (19) Sports arenas.
- (20) Theaters and other facilities primarily used for exhibiting motion pictures, stage performances, lectures, musical recitals, or other similar performances.

Sec. 17-329. Prohibition of smoking in enclosed places of employment

(a) Smoking shall be prohibited in all enclosed places of employment, except as may be otherwise provided in Section 17-332 of this article. 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.

(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.

Sec. 17-330. Prohibition of smoking in enclosed residential facilities.

Smoking shall be prohibited in the following enclosed residential facilities:

- (1) All private and semiprivate rooms in nursing homes.

- (2) At least 90% of hotel and motel sleeping rooms that are rented to guests. Designated non-smoking hotel and motel rooms shall have signage outside the hotel room saying the room is a non-smoking room.

Sec. 17-331. Prohibition of smoking in outdoor public places

Smoking shall be prohibited within a reasonable distance of 15 feet from outside entrances, operable windows, and air intake ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.

Sec. 17-332. Where smoking not regulated.

Notwithstanding any other provision of this article to the contrary, smoking shall not be prohibited in the following areas:

- (1) Private vehicles or private residences, unless they are used as a childcare, adult day care, or health care facility.
- (2) Not more than 10% of hotel and motel sleeping 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 article. The status of rooms as smoking or non-smoking may not be changed, except to add additional non-smoking rooms.
- (3) Membership clubs that have no employees present, 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) Casino gaming areas as defined by this ordinance.

Sec. 17-333. Elimination of exemption.

Casino gaming areas shall be exempt from this article until smoking within the casino areas where gambling games are allowed is prohibited by ordinance, statute or law in all non-Native American casinos located in the Missouri counties of Jackson, Platte and Clay, and the Kansas counties of Johnson and Wyandotte (the relevant counties). To determine when casino gaming areas are no longer exempt from this article as described above:

- (1) The city clerk with the advice of the city manager will maintain a library of smoking ordinances from all cities that have casinos located within their corporate limits in the relevant counties.
- (2) When smoking within casino gaming areas has been banned in those jurisdictions in which casinos are located in the relevant counties, the city clerk shall provide for public notice through the city's internet site, news releases and a

communication to the city council.

- (3) Such notice shall state that smoking shall be prohibited in casino gaming areas 60 days from the date of the public notice.
- (4) The provisions of this section shall not become effective until 60 days from the date of the public notice.

Sec. 17-334. 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 entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 335(1) is posted.

Sec. 17-335. Posting of Signs and Removal of Ashtrays.

The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this article 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 that place.
- (2) Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
- (3) 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.

Sec. 17-336. 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, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this article or reports or attempts to prosecute a violation of this article. Notwithstanding Section 17-338, violation of this subsection shall be a misdemeanor, punishable by a fine not to exceed \$1,000 for each violation.

(b) Any 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.

Sec. 17-337. Enforcement.

(a) This article shall be enforced by the city manager, department of health, or another authorized designee.

(b) Notice of the provisions of this article shall be given to all applicants for a business license in the City of St. Joseph.

(c) Any citizen who desires to register a complaint under this article may initiate enforcement with the department of health or an authorized designee.

(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 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 first contact the health department, and, if deemed necessary, the appropriate law enforcement agency.

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

Sec. 17-338. Violations and penalties.

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

(b) Except as otherwise provided in subsection (a) above, 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 \$100.00 for a first violation.

(2) A fine not exceeding \$200.00 for a second violation within one year of the previous violation.

(3) A fine not exceeding \$500.00 for each additional violation within one year of the previous violation.

(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 department of health by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City of St. Joseph 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.

Sec. 17-339. Other applicable laws.

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

Sec. 17-340. Liberal construction.

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

Sec. 17-341. 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.

Sec. 17-342. Effective date.

This article shall be effective 60 days from the date of its passage or adoption.

SECTION 2. That the City Clerk is hereby authorized and directed to notify the County Clerk/Election Authority of Buchanan County, Missouri of the adoption of this Ordinance no later than 5:00 p.m. on January 28, 2014, and to include in said notification all of the terms and provisions required by Article VI, Sections 19 and 20, of the Missouri State Constitution and the pertinent provisions required by Chapter 115 RSMo, as amended.

SECTION 3. That the Notice of the proposed Election and Official Ballot to be used for said election shall be in substantially the following form ("PRECINCT" and "POLLING PLACE" will be supplied on the actual Notice when published in accordance with Article VI, Section 19, of the Missouri State Constitution, by the County Clerk/Election Authority of Buchanan County, Missouri):

{The following Notice must be published in compliance with Article VI, Section 19, of the Missouri State Constitution}

NOTICE OF CITY ELECTION

CITY OF ST. JOSEPH, MISSOURI

Notice is hereby given to the qualified voters of the City of St. Joseph, Missouri, that the City Council of said City has called a City Election to consider a proposed amendment to Chapter 17 of the Code of Ordinances. Said election shall be held in said City on Tuesday, April 8, 2014, beginning at 6:00 o'clock a.m. and ending at 7:00 o'clock p.m., on the question contained in the following sample ballot:

OFFICIAL BALLOT
CITY ELECTION FOR PROPOSED AMENDMENT TO CHAPTER 17
OF THE CITY OF ST. JOSEPH, MISSOURI CODE OF ORDINANCES

TUESDAY, APRIL 8, 2014

PROPOSITION

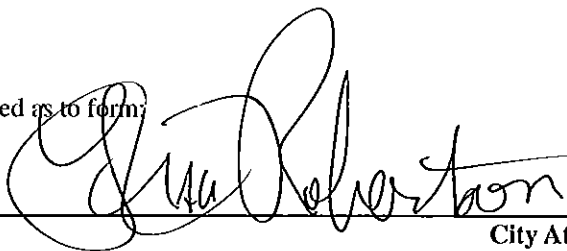
Shall the City of St. Joseph, Missouri, Code of Ordinances, Chapter 17, entitled "Health and Sanitation," be amended for the main purpose of adding a new Article XI entitled "Smoke-Free Indoor Air Workplaces and Public Places"? [The full text of the amendment is posted in each polling place] YES NO

INSTRUCTIONS TO VOTERS: If you are in favor of this Proposition, place an "X" in the box opposite "YES." If you are opposed to the Proposition, place an "X" in the box opposite "NO."

All persons residing in the City of St. Joseph, Missouri, and who are legal voters therein, are entitled to vote at said election.

- SECTION 4. That said election shall be held and conducted and results thereof canvassed and notice shall be given in all respects in conformity with the Constitution and laws of the State of Missouri.
- SECTION 5. That if the proposed amendment is approved by a majority of the qualified voters voting thereon, it shall be in full force and effect and become a part of the Code of Ordinances of the City of St. Joseph, Missouri, on June 7, 2014.
- SECTION 6. That this ordinance shall be in full force and effect from and after the date of passage.

Approved as to form:



City Attorney

Passed _____, 20____

Attest: _____ 10 _____
City Clerk Mayor

Date: January 15, 2014
Type of Ordinance: Special

CITY CLERK
2014 JAN 16 AM 11:25

EXPLANATION TO COUNCIL BILL

ORIGINATING DEPARTMENT: City Clerk

PURPOSE: To submit a proposed Amendment to the Code of Ordinances of the City of St. Joseph, Missouri, Chapter 17, entitled "Health and sanitation" to the voters of the City of St. Joseph, at an election to be held April 8, 2014.

REMARKS: An Initiative Petition was filed on November 21, 2013 for purposes of initiating an amendment to the "Health and Sanitation" Chapter (17) of the City of St. Joseph Code of Ordinances to add a new Article (XI) entitled "Smoke-Free Indoor Air Workplaces and Public Places." Because the City Council failed to adopt the proposed initiative ordinance (without any changes in substance) within Sixty (60) days of the date upon which the Petition was certified by the City Clerk, or by January 24, 2014, the City Council is now required to submit the ordinance to the voters and follow the mandates of City Charter Section 11.6(b).

Since January 6, 2014, the date on which the City Council failed to adopt the proposed initiative ordinance, members of the Petitioners' Committee met with representatives of Affinity Gaming to discuss proposed revisions to the language contained in the initiative ordinance filed with the Initiative Petition on November 21, 2013. More specifically, Affinity Gaming requested that the Petitioners' Committee amend Section 17-333 of the originally proposed ordinance to read as follows:

Casino gaming areas shall be exempt from this article until smoking within the casino areas where gambling games are allowed is prohibited by ordinance, statute or law in all non-Native American casinos located in the Missouri counties of Jackson, Platte and Clay, and the Kansas counties of Johnson and Wyandotte (the relevant counties). To determine when casino gaming areas are no longer exempt from this article as described above:

- (1) The city clerk with the advice of the city manager will maintain a library of smoking ordinances from all cities that have casinos located within their corporate limits in the relevant counties.
- (2) When smoking within casino gaming areas has been banned in those jurisdictions in which casinos are located in the relevant counties, the city clerk shall provide for public notice through the city's internet site, news releases and a communication to the city council.
- (3) Such notice shall state that smoking shall be prohibited in casino gaming areas 60 days from the date of the public notice.
- (4) The provisions of this section shall not become effective until 60 days from the date of the public notice.

The organizer of the Petitioners' Committee has indicated that at least twenty of its twenty-five members have agreed to this revision and have also agreed to the withdrawal of the Initiative Petition; *provided* the City Council approves a substitute attachment to the ordinance, which will submit the above-referenced revised language to the voters. Approval of this substitute ordinance is requested by the Petitioners'

Committee and Affinity Gaming and significantly reduces the risk of future litigation. If the City Council approves the substitute attachment to the ordinance, a Resolution will be submitted immediately thereafter through which the City Council will recognize the official withdrawal of the Initiative Petition in accordance with City Charter Section 11.6(c).

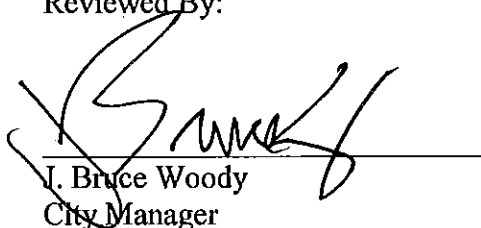
If the proposed amendment, as reflected in the substitute attachment to the ordinance, is approved by a majority of the qualified voters voting thereon, it shall be in full force and effect and become a part of the Code of Ordinances of the City of St. Joseph, Missouri, on June 7, 2014.

Submitted By:

Reviewed By:



Paula Heyde, CMC
City Clerk



J. Bruce Woody
City Manager

CITY CLERK

2014 JAN 16 AM 11:25