

**AN ORDINANCE AMENDING CHAPTER 58 OF THE BRANSON MUNICIPAL CODE PERTAINING TO SMOKE-FREE.**

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**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 nonsmokers 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; and

**WHEREAS**, 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 disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually; and

**WHEREAS**, there is compelling evidence that implementing 100% smoke-free environments is the most effective way to protect the population from the harmful effects of exposure to secondhand smoke; and

**WHEREAS**, the unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent"; and

**WHEREAS**, E-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions; and

**WHEREAS**, since 2010, the Branson Convention and Visitor's Bureau has determined 87.8% of convention visitors believe it is important that hotels and restaurants are smoke-free; and

**WHEREAS**, the 2012 City of Branson Community Survey submitted by the ETC Institute showed 72.8% of Branson residents stated a Citywide smoke free environment was important to extremely important; and

**WHEREAS**, the Missouri Department of Health and Senior Services has found 88.6% of Taney County residents agree that secondhand smoke is very or somewhat harmful to one's health; and

**WHEREAS**, the Taney County Health Department Tobacco Impact Assessment completed in 2013 stated 88.3% of Taney County residents would support a comprehensive smoke free policy; and

**WHEREAS**, the Taney County Board of Health approved a Resolution on June 6, 2014 supporting adoption of an ordinance for smoke-free public places and workplaces in the City of Branson; and

**WHEREAS**, the Missouri Foundation for Health has documented that over the past ten years the number of Missouri communities and counties who have implemented a smoke free policy has grown from two to thirty-five; and

**WHEREAS**, the City shall provide notice of the provisions of this ordinance to all applicants for a business license in the City; and

**WHEREAS**, the City shall engage in a continuing program to explain and clarify the purposes and requirements of this ordinance to citizens affected by it, and to guide owners, operators and managers in their compliance with it; and

**WHEREAS**, the City shall request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this ordinance, including urging all Federal, State, County and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke; and

**WHEREAS**, accordingly, the City finds and declares the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in enclosed public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, THE FOLLOWING:**

Section 1: It is the intention of the Board of Aldermen, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Branson Municipal Code, and the sections of this ordinance may be renumbered to accomplish such intention.

Section 2: That Chapter 58 – *Offenses and Miscellaneous Provisions* – Article IV – *Offenses Against Public Health and Safety* of the Branson Municipal Code is hereby amended to read as follows:

### Division 3. Smoke-Free

#### Sec. 58-126. Definitions

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this division, except where the context clearly indicates a different meaning:

*City park* means all grounds, recreational facilities, undeveloped properties and other property placed under the control, management and direction of the Parks and Recreation Department of the City, with the exception of the Branson Lakeside RV Park.

*E-cigarette* means any electronic oral device, such as one composed of a heating element, battery, 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 under any other product name or descriptor.

*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, when not fully open, whether temporary or permanent.

*Open space* means any piece of land that is undeveloped and is accessible to the public.

*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, auditoriums, meeting rooms, classrooms, employee cafeterias, hallways, elevators, temporary offices, and vehicles to which the public is invited. A private residence is a “place of employment” when used as a child care, adult day care, or health care facility.

*Private residence* means a building or portion thereof including, but not limited to, single family homes, duplex units, apartments, hotels, motels, timeshare units, or condominium units in which a person resides for 30 consecutive days or more.

*Public place, enclosed* means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, convention facilities, enclosed common areas, enclosed shopping malls, health care facilities, hotels and motels, laundromats, museums, public transportation vehicles and facilities, reception areas, restaurants, retail establishments, retail stores, schools, spas, sports arenas, theaters, and waiting rooms. A private residence is a “public place” when used as a child care, adult day care, or health care facility.

*Public place, outdoor* means an area to which the public is invited or in which the public is permitted, including but not limited to, bleachers, golf courses, grandstands, open spaces, outdoor seating and serving areas, playgrounds, pools, recreational areas, serving areas, shelters, and outdoor shopping malls.

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, in any manner or in any form. 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 division.

Smoking lounge means a retail business 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, e-cigarettes, pipes, cigars or smoking sundries and in which the sale of other products is incidental. Does not include a tobacco department within a larger commercial establishment such as a department store, discount store or retail stores used primarily for the sale of smoking materials. A smoking lounge shall satisfactorily report on an annual basis to the city on a form prescribed by the city, the revenue generated from the sale of tobacco as a percentage of annual gross revenue.

Tobacco products means any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, snuff, snus or an e-cigarette.

#### Sec. 58-127. Where Smoking Shall Not be Regulated

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

- A. Private residences.
- B. Not more than twenty percent (20%) of hotel and motel rooms as defined by Appendix A 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 this division.
- C. Smoking lounges as defined by this division 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 division.
- D. Outdoor places of employment except those areas covered by the provisions of the division.
- E. Outdoor patio spaces of restaurants.
- F. Outside entrances from patios, balconies and decks to rooms of hotels, motels, timeshare units or condominium units in which a person resides for twenty-nine (29) consecutive days or less.
- G. Golf courses.

**Sec. 58-128. Prohibition of Smoking in Enclosed Public Places**

**Smoking shall be prohibited in all enclosed public places within the City.**

**Sec. 58-129. Prohibition of Smoking in Outdoor Public Places**

**Smoking shall be prohibited in the following outdoor public places within the City:**

- A. **Within 6 feet (6') of outside entrances, operable windows and ventilation systems of enclosed areas where smoking is prohibited, and public transportation stops.**
  - 1. **Exception: In D Downtown Commercial District, within 4 feet (4') of outside entrances, operable windows and ventilation systems of enclosed areas where smoking is prohibited, and public transportation stops.**
- B. **In City Parks, except in designated areas.**

**Sec. 58-130. Prohibition of Smoking in Enclosed Places of Employment**

**Smoking shall be prohibited in all enclosed places of employment within the City. This prohibition shall be communicated to all prospective employees upon their application for employment.**

**Sec. 58-131. Declaration of a Nonsmoking Area**

- A. **Notwithstanding any other provision of this division, 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 area. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this division is posted.**
- B. **All vehicles, facilities, buildings and offices owned and operated by the City are declared nonsmoking places. Smoking usage of any kind within these vehicles and facilities is strictly prohibited.**

**Sec. 58-132. 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 Division shall:**

- A. **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 area.**
- B. **Clearly and conspicuously post on every vehicle that constitutes a place of employment under this division at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.**

- C. Remove all ashtrays from any area where smoking is prohibited by this division, except for ashtrays displayed for sale and not for use on the premises.

Sec. 58-133. Nonretaliation; Nonwaiver 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 division or reports or attempts to prosecute a violation of this division.
- 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.

Sec. 58-134. Enforcement

- A. This division shall be enforced by the City.
- B. An owner, manager, operator, or employee of an enclosed area regulated by this division shall inform a person who is smoking in violation of this division of the appropriate provisions thereof and direct them 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 contact a law enforcement agency.
- C. Any citizen who desires to register a complaint under this division may initiate enforcement with the City.

Sec. 58-135. Violations and Penalties

- A. A person who smokes in an area where smoking is prohibited by the provisions of this division and found guilty of a violation, may be punishable by a fine not exceeding \$25.00. Notwithstanding all other provisions of law and court rules to the contrary, court costs shall be imposed upon any person found guilty of such violation.
- B. Except as otherwise provided in this division, a person who owns, manages, operates, or otherwise controls an enclosed public place, or enclosed place of employment inside of which violations of this division take place and whom are found, or plead guilty of said violation, may be punishable by a fine not exceeding \$25.00. Notwithstanding all other provisions of laws and court rules to the contrary, court costs shall be imposed upon any person found guilty of such violation. Violations taking place in a public place, outdoor is the responsibility of the smoker.
- C. Except as otherwise provided, every day any such violation shall constitute a separate offense.

Sec. 58-136. Other Applicable Laws

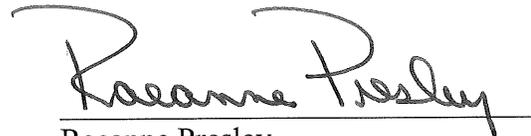
This division shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

NOTE: LANGUAGE WHICH IS **BOLD, UNDERLINED** HAS BEEN ADDED; LANGUAGE WHICH IS [~~BRACKETED, STRICKEN~~] HAS BEEN REMOVED.

Section 3: This ordinance shall be in full force and effective July 1, 2015.

Read, this first time on this 14<sup>th</sup> day of October, 2014.

Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson, Missouri on this 28<sup>th</sup> day of October, 2014.



Raeanne Presley  
Mayor

ATTEST:

APPROVED AS TO FORM:



Lisa K. Westfall  
City Clerk



William T. Duston  
City Attorney