

*Comments are discussion and decision points for the City Commission about differences between existing ordinances, state laws, and enforcement clarifications

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE III AND REPEALING ARTICLE IV OF CHAPTER 17 OF THE CODE OF ORDINANCES OF THE CITY OF MANHATTAN, KANSAS, BY PROHIBITING SMOKING AND THE USE OF ELECTRONIC CIGARETTES IN PUBLIC PLACES AND PLACES OF EMPLOYMENT WITHIN THE CITY OF MANHATTAN.

WHEREAS, the Kansas Indoor Clean Air Act, K.S.A. 21-6109, *et seq.*, prohibits smoking within enclosed areas or public meetings as set forth in the Act; and,

WHEREAS, Article III of Chapter 17 of the Code of Ordinances of the City of Manhattan prohibits smoking in public places and places of employment; and,

WHEREAS, Article IV of Chapter 17 of the Code of Ordinances of the City of Manhattan prohibits use of E-cigarettes in public places and places of employment; and,

WHEREAS, the governing body desires to have a comprehensive and consistent code of ordinances prohibiting smoking and the use of E-cigarettes in public places and places of employment, as described in this ordinance.

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

Section 1. That the title of Article III of Chapter 17 of the Code of Ordinances of the City of Manhattan, Kansas, is hereby amended to read as follows:

ARTICLE III. Smoking And Electronic Cigarettes

Section 2: Sections 17-17 to 17-22 of the Code of Ordinances of the City of Manhattan, Kansas, are hereby amended to read as follows:

Sec. 17-17. Purposes.

The purposes of this article are to:

- (1) Improve and protect the public's health by eliminating smoking and the use of E-cigarettes in enclosed public places, places of employment and certain outdoor areas;
- (2) Protect the right of nonsmokers and nonusers of E-cigarettes to breathe smoke-free and vapor-free air; and
- (3) Recognize that the need to breathe smoke-free and vapor-free air shall have priority over the choice to smoke or use E-cigarettes in a manner that impacts public health.

Sec. 17-18. Definitions.

The following words and phrases, when used in this article, shall have the following meanings:

Commented [KJ1]: Most of the definitions are now based upon the state law, except we have added the definitions for Manhattan's stricter regulations.

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- (a) *Access point* means the area within a twenty (20) foot radius outside of any doorway, open window, or air intake leading into a building or facility.
- (b) *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 provided; including professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
- (c) *Electronic cigarette* (E-cigarette) means an electronic or battery-operated device, whether or not such device is shaped like a cigarette, that uses an atomizer, aerosol, or similar device that allows users to inhale nicotine vapor or flavored vapor, without fire, smoke, or ash. An electronic cigarette includes but is not limited to: any electronic nicotine delivery system, electronic vaping device, personal vaporizer, electronic pipe, electronic hookah, or vapor pen.
- (d) *Employee* means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit and any person who volunteers their services for a nonprofit entity.
- (e) *Employer* means any person, business, partnership, corporation, association, trust, or organization, including municipal or nonprofit entities, that employs one or more individual persons.
- (f) *Enclosed area* means all space between a floor and ceiling that is enclosed on all sides by solid walls, windows, or doorways that extend from the floor to the ceiling, including all space therein screened by partitions that do not extend to the ceiling or are not solid or similar structures. For purposes of this section, the following shall not be considered an "enclosed area": (1) Rooms or areas, enclosed by walls, windows or doorways, having neither a ceiling nor a roof and that are completely open to the elements and weather at all times; and (2) rooms or areas, enclosed by walls, fences, windows or doorways and a roof or ceiling, having openings that are permanently open to the elements and weather and that comprise an area that is at least 30% of the total perimeter wall area of such room or area.
- (g) *Food service establishment* means any place in which food is served or is prepared for sale or service on the premises. Such term shall include, but not be limited to: fixed or mobile restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich shops, soda fountains, taverns, private clubs, roadside kitchens, commissaries, 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.
- (h) *Licensed premises* means any premises where alcoholic liquor or cereal malt beverage, or both, is served or provided for consumption or use on the premises with or without charge. Such term shall include, but is not limited to: bars, cabarets, nightclubs, drinking establishments, taverns, 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 chapter 4 of this Code.

Commented [KJ2]: State law prescribes a 10-foot radius; current City ordinances prescribe 20-foot radius. This proposed ordinance continues the existing approach.

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- (i) *Outdoor parks and recreation area* means any tract, parcel or piece of land designated or used by the City as a park or recreation area or facility that is not enclosed, including but not limited to city parks, trails, natural areas, Sunset Zoo, pools, cemeteries, parking garages, and the City-owned or operated outdoor areas and parking lots of enclosed parks and recreation public buildings that are open to the public or used by the public.
- (j) *Place of employment* means any enclosed area under the control of a public or private employer which employees use during the course of employment, including, but not limited to: work areas, auditoriums, elevators, private offices, employee lounges and restrooms, conference and meeting rooms, classrooms, employee cafeterias, stairwells and hallways. A private residence shall not be considered a "place of employment" unless is used as a child care, adult day care, day care home or health care facility required to be licensed by the state.
- (k) *Public building* means any building owned or operated by: (1) The state, including any branch, department, agency, bureau, commission, authority, or other instrumentality thereof; (2) any county, city, township, other political subdivision, including any commission, authority, agency, or instrumentality thereof; or (3) any other separate corporate instrumentality or unit of the state, county, or any municipality.
- (l) *Public meeting* means any meeting open to the public pursuant to K.S.A. 75-4317 et seq. and amendments thereto, or any other law of the State of Kansas.
- (m) *Public place* means any enclosed areas open to the public or used by the general public including, but not limited to: banks, bars, food service establishments, retail service establishments, retail stores, public means of mass transportation, , hotels, motels, waiting areas, lobbies, passenger elevators, health care institutions or any other place where health care services are provided to the public, medical care facilities, educational facilities, libraries, courtrooms, public buildings, restrooms, receptions areas, shopping malls, grocery stores, school buses, museums, theaters, auditoriums, arenas, and recreational facilities. A private residence shall not be considered a "public place" unless is used as a child care, adult day care, or health care facility required to be licensed by the state.
- (n) *Service line* means any indoor or outdoor line during which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- (o) *Smoke or smoking* means possession of a lighted cigarette, cigar, pipe, or burning tobacco in any other form or device designed for the use of tobacco.

Sec. 17-19. Prohibition of smoking or use of E-cigarettes.

- a. It shall be unlawful, with no requirement of a culpable mental state, for any person to smoke or use an E-cigarette in an enclosed area or at a public meeting including, but not limited to:
 - i. public places,
 - ii. taxicabs, limousines, and transportation network vehicles;

Commented [JWG3]: Based upon recommendations from the Parks & Recreation Advisory Board and the Flint Hills Wellness Coalition, the existing ordinance was expanded to add parks and recreation areas that were not included in the previous ordinance, but that the previous ordinance intended to address through its "public event" and "outdoor seating area" provisions.

The proposed ordinance prohibits smoking/e-cigs in MPRD outdoor areas, such as the band shell, playgrounds, pools, shelter houses, Zoo, ball fields, and parking lots for enclosed MPRD facilities.

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- iii. restrooms, lobbies, hallways, and other common areas in public or private buildings, condominiums, and other multiple residential facilities;
 - iv. access points of all buildings and facilities not exempted under Section 17-20;
 - v. any place of employment;
 - vi. areas of a food service establishment or licensed premises that are not enclosed but are open to the public or used by the public, such as patios, outdoor dining areas, and courtyards; and
 - vii. service lines.
- b. It shall be unlawful, with no requirement of a culpable mental state, for any person to smoke or use an E-cigarette upon or within the parcel boundaries of any outdoor parks and recreation area.

Commented [JWG4]: The current smoking ordinance was intended to include dining patios, but it was not written in an enforceable manner. The current ordinance only prohibits smoking within the first 20 feet of the patio from the entrance.

This proposed ordinance continues the original intent by expressly prohibiting smoking on the entire patio.

Sec. 17-20. Exemptions to this article.

This article shall not apply to the following:

- (1) Private homes or residences, except when such home or residence is used as a child care, adult day care, day care home or health care facility as defined by state law;
- (2) That portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated; or
- (3) That portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;

Commented [JWG5]: The current ordinances prohibit smoking in retail tobacco shops but allow smoking in e-cigarette shops.

Consistent treatment is recommended; this proposed draft prohibits smoking in both types of shops for City Commission consideration.

Sec. 17-21. Posting “smoking prohibited” signs.

The proprietor or other person in charge of the premises of a public place, or other area where smoking or the use of an E-cigarette is prohibited, shall post or cause to be posted in a conspicuous place signs displaying the international no smoking symbol and clearly stating that smoking or the use of an E-cigarette is prohibited. Provided that, the director of parks and recreation shall have the authority to determine the number and location of signage at outdoor parks and recreation areas, based upon the nature and character of the outdoor parks and recreation areas.

Commented [KJ6]: This revised section is modeled after the state law, but adds language for signage in outdoor MPRD areas.

Sec. 17-22. Unlawful acts; penalties; retaliatory discharge prohibited.

- (1) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking or the use of an E-cigarette is prohibited, to fail to comply with all or any of the provisions of this article, and amendments thereto.
- (2) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking or the use of an E-cigarette is prohibited, to allow smoking or the use of an E-cigarette to occur where

Commented [KJ7]: This section was updated to reflect the state law unlawful acts and penalties.

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prohibited. Any such person shall be deemed to allow smoking or the use of an E-cigarette to occur under this subsection if such person: (a) Has knowledge that smoking or the use of an E-cigarette is occurring; and (b) recklessly permits smoking or the use of an E-cigarette under the totality of the circumstances.

- (3) Any person who violates any provision of this article, and amendments thereto, shall be guilty of a misdemeanor punishable by a fine:
- a) Not exceeding \$100 for the first violation;
 - b) not exceeding \$200 for a second violation within a one year period after the first violation; or
 - c) not exceeding \$500 for a third or subsequent violation within a one year period after the first violation.
- (4) For purposes of this subsection, the number of violations within a year shall be measured by the date the smoking violations occur.
- (5) Each individual allowed to smoke or use an E-cigarette by a person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking or the use of an E-cigarette is prohibited, in violation of subsection (2) shall be considered a separate violation for purposes of determining the number of violations under subsection (3).
- (6) No employer shall discharge, refuse to hire or take any other adverse action against an employee, applicant for employment, or customer with the intent to retaliate against that employee, applicant, or customer for reporting or attempting to prosecute a violation of any of the provisions of this article, and amendments thereto.

Commented [JWG8]: Current ordinance has separate range of penalties for users in violation and owner/managers in violation. State statute has one range for any violators.

Commented [JWG9]: Current ordinance has penalty range of *no less than* \$50, \$100, \$200 for users and *no less than* \$100, \$200, \$500 for owner/managers.

The State has penalties *up to* \$100, \$200, and \$500. The State's fines have been included, but higher/stricter fines can be imposed by the City Commission.

Section 3. That Sections 17-23 to 17-31 are hereby repealed and amended to read as follows:

Secs. 17-23—17.31. Reserved.

Section 4. That Article IV of Chapter 17 of the Code of Ordinances of the City of Manhattan, including Sections 17-40 through 17-44, are hereby repealed and amended to read as follows:

ARTICLE IV. RESERVED.

Secs. 17-40—17.44. Reserved.

Section 5. That Section 22-5 of the Code of Ordinances of the City of Manhattan is hereby repealed and amended to read as follows:

Sec. 22-5. Reserved.

Section 6: This ordinance shall take effect upon publication in the official city newspaper.

**PASSED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS,
THIS _____ DAY OF _____, 20__.**

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Michael L. Dodson, Mayor

ATTEST:

GARY S. FEES, MMC, City Clerk

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