

BILL NO. 228, 2009

ORDINANCE NO. 24,105, 2009

Introduced by Councilmember Fraser

**AN ORDINANCE**

CALLING AND PROVIDING FOR THE HOLDING OF AN ELECTION IN ST. LOUIS COUNTY ON THE THIRD DAY OF NOVEMBER, 2009, FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED VOTERS OF SAID COUNTY A PROPOSITION TO PROHIBIT SMOKING IN ENCLOSED PUBLIC PLACES.

BE IT ORDAINED BY THE COUNTY COUNCIL OF ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

SECTION 1. An election shall be and the same is hereby called and ordered to be held in the County of St. Louis on the third day of November, 2009, for the purpose of submitting to the qualified voters of the said county for adoption or rejection a proposition to amend the Revised Ordinances of St. Louis County by enacting and adding thereto a prohibition of smoking in enclosed public places in St. Louis County, said prohibition being attached hereto as Exhibit A.

SECTION 2. The following question is hereby submitted to the qualified voters of the County of St. Louis and shall be voted upon at an election to be held as hereinbefore provided. The question shall be in substantially the following form:

PROPOSITION

Shall the Revised Ordinances of St. Louis County be amended by enacting and adding thereto a prohibition of smoking in enclosed public places in St. Louis County, all as set forth in Exhibit A of Ordinance No. 24,105 on file with the St. Louis County Administrative Director and the St. Louis County Board of Election Commissioners?

YES

NO

SECTION 3. The Administrative Director shall certify the enactment of this ordinance to the Board of Election Commissioners of St. Louis County.

ADOPTED: AUGUST 25, 2009

HAZEL M. ERBY  
CHAIR, COUNTY COUNCIL

APPROVED: AUGUST 28, 2009

CHARLIE A. DOOLEY  
COUNTY EXECUTIVE

ATTEST: GENEVIEVE M. FRANK  
ADMINISTRATIVE DIRECTOR

APPROVED AS TO LEGAL FORM:  
Patricia Redington  
COUNTY COUNSELOR

**AN ORDINANCE**

AMENDING TITLE VI SLCRO 1974 AS AMENDED,  
"PUBLIC HEALTH AND WELFARE," BY ENACTING AND  
ADDING THERETO ONE NEW CHAPTER TO BE KNOWN  
AS CHAPTER 605, "INDOOR CLEAN AIR CODE."

BE IT ENACTED BY THE PEOPLE OF ST. LOUIS COUNTY, MISSOURI, AS  
FOLLOWS:

SECTION 1. Title VI SLCRO 1974 as amended, "Public Health  
and Welfare," is amended by enacting and adding thereto one new  
chapter which shall be known as Chapter 605, "Indoor Clean Air  
Code," and shall read as follows:

**605.010 Scope.** - In order to enhance the public health and  
prevent the entrance of disease in St. Louis County, the  
provisions of this chapter shall apply in all unincorporated  
parts of St. Louis County and in all incorporated areas except  
any municipality having a population of 75,000 or more people  
and which maintains an organized health department.

**605.020 Purpose.** - It is the purpose of this chapter to  
promote the health, safety and welfare of the residents of St.  
Louis County by decreasing exposure to secondhand smoke; and to  
create smoke-free environments for workers, patrons and visitors  
to places of employment and all other public places within the  
County.

**605.030 Definitions.** - The following words, terms and  
phrases, when used in this chapter, shall have the meanings  
ascribed to them in this section, except where the context clearly  
indicates a different meaning:

*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 professionals services are delivered,  
and private clubs.

*Casino gaming area:* the area 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 game floor, whether or not gaming is allowed in the VIP  
lounge.

*Cigar bar:* A business with a permit to sell alcoholic  
beverages that generates 25 percent or more of its quarterly  
gross revenue from the sale of cigars and/or rental of  
humidor space, has a humidor on the premises and does not  
allow minors to enter the premises.

*Drinking establishment:* Any business with a valid license

issued by the St. Louis County Department of Revenue (pursuant to Chapter 801, Title VIII SLCRO 1974 as amended, "Alcoholic Beverages") to sell intoxicating liquor by the drink or to sell beer and light wine by the drink whose on-site sales of food for consumption on the premises comprises no more than 25% of gross sales of food and both alcoholic and non-alcoholic beverages on an annual basis.

*Employee:* Any person who performs services for an employer, with or without compensation.

*Employer:* A person, partnership, association, corporation, trust or other organized group of individuals, including the County or any agency thereof, which utilizes the services of at least one employee.

*Enclosed area:* A space bound by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to offices, rooms, all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures and hallways.

*Permanently designated smoking room:* A hotel or motel room that may be designated as a smoking room, with such designation being changeable only one time a year.

*Place of employment:* Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to work areas, employee lounges and restrooms, conference rooms and classrooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.

*Private club:* 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. 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 not be considered a "public place" except when it is the site of a meeting, event or activity that is open to the public.

*Public place:* Any enclosed or other area to which the public is invited or in which the public is permitted, including, but not limited to banks, educational facilities, reception areas, health facilities, laundering facilities, public transportation facilities, production and marketing establishments, retail service establishments, retail stores, 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.

*Restaurant:* An eating establishment including, but not limited to coffee shops, cafeterias, sandwich stands and private and public school cafeterias, which provides 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 and lounge area within the restaurant.

*Service line:* Any indoor or outdoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

*Shopping mall:* an enclosed public walkway or hall area that serves to connect retail or professional establishments.

*Smoking:* Inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe or other tobacco product.

*Sports Arena:* Sports pavilions, gymnasiums, health spas, boxing arenas, outdoor and indoor swimming pools, outdoor athletic fields, outdoor and indoor roller and ice skating rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events.

**605.040 Prohibition of smoking in enclosed places of employment and other public places.** - 1. It shall be unlawful for any person within an enclosed place of employment to possess lighted or heated smoking materials in any form, including but not limited to the possession of lighted or heated cigarettes, cigars, pipes or other tobacco products.

2. It shall be unlawful for any person within an enclosed public place, or within any other places hereinafter specified, to possess lighted or heated smoking materials in any form, including but not limited to the possession of lighted or heated cigarettes, cigars, pipes or other tobacco products, including but not limited to the following places:

- a. Elevators in public buildings;
- b. Restrooms in public buildings;
- c. Libraries, educational facilities, childcare and adult day care facilities, museums, auditoriums, aquariums and art galleries;
- d. Any health care facility, health clinic or ambulatory care facilities, including, but not limited to: laboratories associated with the rendition of health care treatment, hospitals, nursing homes, doctors' offices and dentists' offices;
- e. Any indoor place of entertainment or recreation, including, but not limited to gymnasiums, theaters, concert halls, bingo halls, arenas and swimming pools;
- f. Service lines;
- g. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital or other similar performance;
- h. Shopping malls or retail establishments;
- i. Indoor and outdoor sports arenas;
- j. Restaurants, including lounge and bar areas, except outdoor dining areas;
- k. Convention facilities;
- l. All indoor public areas and waiting rooms of public transportation facilities, including, but not limited to bus and mass transportation facilities;
- m. Any other area used by the public or serving as a place of work;
- n. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including, but not limited to joint committees, or agencies of the County or any political subdivision of

the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the County;

- o. All enclosed areas owned by the County;
- p. Rooms in which meetings or hearings open to the public are held, except where such rooms are in a private residence;
- q. Sidewalks, driveways and other open areas within fifteen (15) feet of the entry to any building owned or occupied by any governmental entity, or within fifteen (15) feet of the entry to any building open to the public; provided, however, that this entryway prohibition shall not apply within outside dining areas where smoking is permitted or to entries that are located less than fifty (50) feet from another public entry.

3. It shall be unlawful to dispose of smoking waste, or to place or maintain a receptacle for smoking waste, in an area in which smoking is prohibited under this chapter.

**605.050 Responsibilities of proprietors, owners and managers.-** 1. It shall be unlawful for any person having control of a place listed in this chapter knowingly to permit, cause, suffer or allow any person to violate the provisions of this chapter. It shall be an affirmative defense to an alleged violation of this subsection that the person having control of a place has asked that the lighted or heated cigarette, cigar, pipe or other tobacco product be extinguished and asked the person to leave the establishment if that person has failed or refused to extinguish the lighted or heated cigarette, cigar, pipe or other tobacco product.

2. A person having control of a place shall 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) near all entrances where smoking is prohibited pursuant to this chapter. Such signage shall consist of letters not less than one inch in height.

3. It shall be the responsibility of employers to provide smoke-free workplaces for all employees.

4. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

**605.055 Declaration of establishment as nonsmoking.-** Notwithstanding any other provision of this chapter, 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. No person shall smoke in places so declared and posted with signs pursuant to Section 605.050.

**605.060 Exceptions. -** Notwithstanding any other provision of this chapter to the contrary, the following shall not be subject to the smoking restrictions of this chapter:

- a. Private residences, not serving as enclosed places of employment or enclosed public places;
- b. Private clubs;
- c. Performers on stage in a theatrical production, where smoking is required as part of the production;
- d. Private and semi-private rooms in nursing homes and

- long-term care facilities, the residents of which are all smokers and have all requested the management of the facility to be placed in a room where smoking is permitted;
- e. Retail establishments in which food is not prepared on the premises and where more than 60% of the volume of trade or business carried on is the sale of tobacco and tobacco-related products;
  - f. Permanently designated smoking rooms, not to exceed twenty percent of the guest rooms;
  - g. Cigar bars, provided such entity is in operation on or before the effective date of this chapter and provided that smoke does not infiltrate into areas where smoking is otherwise prohibited;
  - h. Casino gaming areas;
  - i. Drinking establishments which are in operation on or before the effective date of this chapter; provided, however, that no smoke infiltrates into areas where smoking is otherwise prohibited, and further provided that each such drinking establishment has posted in a place visible to the public from its exterior a certificate of exemption issued by the Department of Revenue pursuant to Section 605.076;
  - j. Areas designated and posted as smoking areas by the Airport Authority of Lambert St. Louis International Airport pursuant to Section 721.045, Title VII SLCRO 1974 as amended.

**605.070 Chapter not to preclude more extensive prohibitions.**

Nothing in this chapter shall be construed or applied in such a manner as to interfere with or prohibit a property owner, business operator or public entity, including the County or municipalities located within the County, from more broadly prohibiting smoking on or about their property or from prohibiting smoking in areas, at times, or under conditions which do not fall within the prohibitions established by this chapter.

**605.075 Notice to license applicants.** Notice of the provisions of this chapter shall be given to all applicants for licenses issued by St. Louis County pertaining to use of property for business or commercial purposes to which the public will be invited or permitted.

**605.076 Department of Revenue to issue certificates of exemption to qualified drinking establishments.**- 1. The owner or operator of a drinking establishment which seeks a smoking exemption certificate shall submit his or her signed and notarized statement, on a form provided by the Director of Revenue, certifying:

- (a) the amount of the drinking establishment's previous annual gross revenue and that food sales from the licensed premises comprised no more than 25% of gross sales of both food and beverages during that year and is not reasonably expected to comprise more than 25% of gross sales of both food and beverages going forward; or
- (b) that the drinking establishment has been operating for less than one year and that the owner or operator reasonably believes that the annual gross revenue derived from the sale of food consumed on the premises will constitute a maximum of 25% of gross revenue of the establishment going forward.

2. Any drinking establishment granted an exemption under subsection (b) above shall submit to the Director of Revenue, no

more than 100 days after issuance of a certificate of exemption, a signed and notarized statement by the owner or operator identifying the actual gross revenue and liquor sales for the previous 90 days of operation. The Director of Revenue shall suspend or revoke any certificate of exemption issued under subsection (b) if this certification is not timely provided or if the certificate fails to demonstrate that the drinking establishment derived a maximum of 25% of its gross revenue from the sale of food during that period.

3. There shall be a fee of \$35 for each application for a smoking exemption certificate, which fee shall be paid at the time of application.

4. The Director of Revenue may suspend or revoke any certificate of exemption issued hereunder if the drinking establishment is determined not to qualify for same, in accordance with the procedures set forth in Section 801.120 SLCRO 1974 as amended.

**605.080 Enforcement.**- 1. This chapter shall be enforced by the St. Louis County Department of Health and by any authorized designee of the Director of the Department of Health.

**605.090 Penalties.**- 1. Every person who shall be convicted of a violation of Section 605.040 or 605.055 shall be fined not more than \$50.00 for each offense.

2. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who shall be convicted of a violation of Section 605.050 shall be fined as follows:

- a. A fine not exceeding \$100.00 for a first violation,
- b. A fine not exceeding \$200.00 for a second violation within one (1) year.
- c. A fine not exceeding \$500.00 for each additional violation within one (1) year.

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

**605.090 Severability.**- Each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof. In the event that any part of this Ordinance shall be determined to be unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect.

SECTION 2. This ordinance shall become effective on January 2, 2011.