

CHAPTER XI. PUBLIC OFFENSES

ARTICLE 9. SMOKING

SECTIONS

11-901	PURPOSE
11-902	DEFINITIONS
11-903	PROHIBITION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT
11-904	PROHIBITION OF SMOKING IN PUBLIC PLACES
11-905	WHERE SMOKING IS NOT REGULATED
11-906	VIOLATION; PENALTY
11-907	PENALTY FOR VIOLATION OF ORDINANCE- REPEALED

11-901. PURPOSE. The purpose of this Ordinance is to promote the public health by decreasing exposure to secondhand smoke and creating smoke free environments for workers and citizens through regulation in the work place and all public places.

(Ord. 1773C; 01-18-99)

(Ord. 1777C; 02-16-99)

(Code 2000)

(Ord. 2195C; 11-20-06)

11-902. DEFINITIONS. For the purposes of this Ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

- a. **Employee.** Any person who performs services for an employer, with or without compensation.
- b. **Employer.** A person, partnership, association, corporation, trust, or other organized group of individuals, including the City or any agency thereof, which utilizes the services of one (1) or more employees.
- c. **Enclosed.** A space bounded by walls (with or without windows or doors) continuous from the floor to the ceiling, including, but not limited to, offices, rooms and all space(s) therein screened by partitions or Office Landscaping.
- d. **Open Office Landscaping.** Indoor areas without permanent walls, or walls that are not floor to ceiling; open space such as waiting areas and atriums; cubicles and/or open desk seating areas.

- e. **Place of Employment.** Any enclosed area under the control of a public or private employer which employees may enter during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, private rooms in nursing homes, private meeting/conference rooms and halls not open to the general public while being used for private functions or located within private clubs 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.
- f. **Public Place.** Any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, hotels, motels, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a “public place.”
- g. **Service Line.** Any indoor 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.
- h. **Smoking.** Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other tobacco product.
- i. **Sports Arena.** Sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice 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.

(Ord. 1777C; 02-16-99)
 (Code 2000)
 (Ord. 2195C; 11-20-06)

11-903. PROHIBITION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT.

- (a) **Prohibition.** Smoking shall be prohibited in all enclosed places of employment within the City.
- (b) **Employer Responsibilities.** It shall be the responsibility of employers to:
 - 1. Provide a smoke-free workplace for all employees.
 - 2. Each employer having any enclosed place of employment located within the City shall adopt, implement, make known and maintain, a written smoking policy which shall contain the following requirement:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. 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.

The smoking policy shall be communicated to all employees within one (1) week of the adoption of this Ordinance and all employers shall provide a written copy of the smoking policy to each new employee upon hire and upon request to any existing or prospective employee.

(Ord. 1777C; 02-16-99)

(Code 2000)

(Ord. 2195C; 11-20-06)

(Ord. 2461C; 09-20-10)

11-904.

PROHIBITION OF SMOKING IN PUBLIC PLACES.

(a) Smoking shall be prohibited in all enclosed public places within the City, including, but not limited to, the following places:

1. Any vehicle of public transportation, including but not limited to buses, limousines for hire and taxicabs.
2. Elevators.
3. Restrooms.
4. Libraries, educational facilities, childcare and adult day care facilities, museums, auditoriums, aquariums and art galleries.
5. Any health care facility, health clinics 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. The statute allows adult care homes and long term care facilities to designate smoking areas.
6. Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, betting establishments, bowling alleys, arenas and swimming pools.
7. Service lines.
8. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; provided, however, that smoking may take place on stage during live theatrical performances, where smoking is integral to the plot or storyline and prior notice is given to the audience.
9. Shopping malls.
10. Sports arenas, including enclosed places in outdoor arenas.
11. Bars. Statute allows private clubs.
12. Restaurants.
13. Convention facilities.
14. Hotels and motels, including sleeping rooms. Statute allows 20% of sleeping rooms
15. All public areas and waiting rooms of public transportation facilities, including but not limited to bus and airport facilities.
16. Any other area used by the public or serving as a place of work, including open office landscaping.

17. 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 City 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 City.
18. All enclosed facilities owned by the City.
19. Rooms in which meetings or hearings open to the public are held, except where such rooms are in a private residence.
20. Within a 10 foot radius of any doorway, open window or air intake leading into a building or facility that is not otherwise exempt under the provisions of this Ordinance.

The proprietor or other person in charge of the premises of a public place, or other area where smoking 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 is prohibited by state law.

(Ord. 1777C; 02-16-99)
 (Code 2000)
 (Ord. 1993C; 06-02-03)
 (Ord. 2195C; 11-20-06)
 (Ord. 2461C; 09-20-10)

11-905. WHERE SMOKING IS NOT REGULATED. Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall not be subject to the smoking restrictions of this Ordinance:

- (a) Private residences, not serving as enclosed places of employment or an enclosed public place, except when such residence is used as a day care home, as defined in K.S.A. 65-530.
- (b) An existing retail establishment whose primary business is the sale of tobacco products deriving not less than 65% of its gross receipts from the sale of tobacco and new retail establishments whose primary business is the sale of tobacco products which derive not less than 65% of gross receipts from the sale of tobacco and which are located in a stand-alone building not attached to or the part of any building devoted to other uses.
- (c) Outdoor seating areas at restaurants or bars, provided, however, that smoking may be allowed only if it does not violate 11-904 and that reasonable efforts are made to minimize the chance of smoke affecting the inside occupants of the establishment.

(Ord. 2195C; 11-20-06)
 (Code 2000)
 (Ord. 2461C; 09-20-10)

11-906. VIOLATION; PENALTY.

- a) 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 is prohibited, to fail to comply with all or any of the provisions of this ordinance.
- (b) 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 is prohibited, to allow smoking to occur where prohibited by law. Any such person shall be deemed to allow smoking to occur under this subsection if such person: (1) Has knowledge that smoking is occurring; and (2) acquiesces to the smoking under the totality of the circumstances.
- (c) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this ordinance.
- (d) Any person who violates any provision of this ordinance, shall be guilty of a cigarette or tobacco infraction punishable by a fine:
 - (1) Not exceeding \$100 for the first violation;
 - (2) Not exceeding \$200 for a second violation within a one year period after the first violation; or
 - (3) Not exceeding \$500 for a third or subsequent violation within a one year period after the first violation.

For purposes of this subsection, the number of violations within a year shall be measured by the date the smoking violations occur.

- (e) Each individual allowed to smoke by a person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, in violation of subsection (b) shall be considered a separate violation for purposes of determining the number of violations under subsection (d).
- (f) No 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 reports or attempts to prosecute a violation of any of the provisions of this ordinance.
- (g) In addition to the fines established by this Section, violation of this Ordinance by a person having control of a public place or place of employment may result in the suspension or revocation of any permit or license issued by the City of Leawood to the person for the premises on which the violation occurred.

(Ord. 1777C; 02-16-99)
(Code 2000)
(Ord. 2195C; 11-20-06)
(Ord. 2461C; 09-20-10)

11-907. PENALTY FOR VIOLATION OF ORDINANCE. Repealed.

See Section 11-906.

(Ord. 1777C; 02-16-99)

(Code 2000)

(Ord. 2195C; 11-20-06)

(Ord. 2461C; 09-20-10)