BILL NO. 10-2015 **ORDINANCE NO.** 1288-2015

AN ORDINANCE PROHIBITING SMOKING IN ENCLOSED PLACES AND ENCLOSED PLACES OF EMPLOYMENT

WHEREAS, the City has received a petition from citizens asking the City to consider passing an ordinance regulating smoking in the City, and

WHEREAS, prior to enacting this ordinance a majority of citizens voting in an election indicated that they were in favor of such regulations, and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke is a cause of disease in smokers and healthy nonsmokers alike, including heart disease, stroke, respiratory disease and lung cancer, and

WHEREAS, the purpose of this ordinance is to promote public health by decreasing citizen's exposure to secondhand smoke and creating smoke free environments for workers and citizens.

NOW, THEREFORE, be it ordained by the Board of Aldermen of the City of Kearney, Missouri, as follows:

SECTION 1. DEFINITIONS

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

Bar means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

Employee means any person who performs services for an employer, with or without compensation.

Employer means 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 or more employees.

Enclosed means all space between a floor and a ceiling that is enclosed 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.

Permanently designated means a hotel or motel room may be designated as a smoking room for a period of no less than 12 months.

Place of employment means 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.

Public place means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundering facilities, 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."

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 at no cost or 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 an attached bar.

Service line means any line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other tobacco product.

Sports arena means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, 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.

SECTION 2. PROHIBITION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT AND ALL ENCLOSED PUBLIC PLACES.

A. The possession of lighted smoking materials in any form, including but not limited to, the possession of lighted cigarettes, cigars, pipes or other tobacco products, shall be prohibited in all enclosed places of employment within the city.

B. The possession of lighted smoking materials in any form, including but not limited to, the possession of lighted cigarettes, cigars, pipes or other tobacco products, 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 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;
6) Any indoor place of entertainment or recreation, including but not limited to public or private club facilities, 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;
9) Shopping malls;
10) Sports arenas, including enclosed places in outdoor arenas;
11) Bars;
12) Restaurants;
13) Convention facilities;
14) All public areas and waiting rooms of public transportation facilities, including but not limited to bus and airport facilities;
15) Any other area used by the public or serving as a place of work;
16) 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;
17) All enclosed facilities owned by the city; and
18) Rooms in which meetings or hearings open to the public are held, except where such rooms are in a private residence.

C. No one shall possess lighted smoking materials in any form, including but not limited to lighted cigarettes, cigars, pipes or other tobacco products within 10 feet of the primary entrance to or exit from a building where smoking is prohibited pursuant to this section.

D. It shall be unlawful for any person to violate the provisions of this section.

SECTION 3. RESPONSIBILITIES OF PROPRIETORS, OWNERS AND MANAGERS.

A. A person having control of a place listed in Section 2. shall not knowingly permit, cause, suffer or allow any person to violate the provisions of Section 2 in that place. 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 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 cigarette, cigar, pipe or other tobacco products.

B. A person having control of a place listed in Section 2 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 by this Article. Such signage shall consist of letters not less than one inch in height.

C. It shall be the responsibility of employers having any enclosed place of employment located within the City to provide smoke-free workplaces for all employees.

D. Each employer having any enclosed place of employment located within the City shall

communicate the smoke restrictions of this article to all employees within 30 days of the adoption of this Ordinance by the City Council, and shall supply a written copy of these smoking restrictions upon request to any existing or prospective employee.

SECTION 4. WHERE SMOKING IS NOT REGULATED.

Notwithstanding any other provision of this article to the contrary, the following shall not be subject to the smoking restrictions of this article:

A. Private residences, not serving as enclosed places of employment or enclosed public places;

B. Twenty-five percent of hotel and motel rooms may be permanently designated as smoking.

C. Patio areas of any restaurant, bar or other commercial establishment designated by the owner or operator of the business as a smoking area; provided that no such area shall be open to or allow smoke into a nonsmoking area or must be crossed to obtain access to a nonsmoking area or a restroom.

SECTION 5. PENALTY FOR VIOLATION OF THIS ARTICLE.

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

B. A person having control of a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an ordinance violation, punishable by:

1) A fine not exceeding $l00.00 for a first violation.
2) A fine not exceeding $200.00 for a second violation within a one-year period.
3) A fine not exceeding $500.00 for a third or subsequent violations within a one-year period.
4) Each day on which a violation of this article occurs shall be a separate and distinct violation

SECTION 6. CONSTRUCTION.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. This article shall be liberally construed so as to further its purposes, The provisions of this article are severable. If any provision or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

SECTION 7. ENFORCEMENT OF ARTICLE.

A. The authority to administer the provisions of this article is vested in the Chief of Police and his or her duly authorized representative(s).

B. Whenever the need arises, the Chief of Police may call upon other departments of the city to aid in the enforcement of the provisions of this article.

C. Notice of the provisions of this article shall be given to all applicants for a business license in the city.

D. Any citizen who desires to register a complaint under this article may initiate enforcement with the Police Department.

E. In addition, any person, including the City, aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or place of employment to comply with the provisions of this ordinance may apply for injunctive relief, without bond, to enforce these provisions in any court of competent jurisdiction.

SECTION 8. SEVERABILITY.
Should any provision hereof for any reason be deemed or ruled illegal, invalid or unconstitutional by any court of competent jurisdiction, no other provision of this Ordinance shall be affected; and this Ordinance shall then be construed and enforced as if such illegal or invalid or unconstitutional provision had not been contained herein.

SECTION 9. EFFECTIVE DATE
This Ordinance shall be in full force and made effective 30 days after its passage by the Board of Aldermen and approval by the Mayor.

PASSED BY THE BOARD OF ALDERMEN AND APPROVED BY THE MAYOR THIS 31 DAY OF August, 2015.

APPROVED:

Bill Dane, Mayor

ATTEST A TRUE AND CERTIFIED COPY:

Jim Eldridge, City Administrator/Clerk

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