

Frequently Asked Questions Regarding the St. Joseph Smoke-Free Indoor Air Ordinance of 2014

- 1) **Why did the City of St. Joseph adopt the St. Joseph Smoke-Free Indoor Air Ordinance of 2014?**
When presented with an Initiative Petition containing the requisite number of signatures (as mandated by the City Charter), the City Council decided to submit the question to a vote of the people.

The voters of the City of St. Joseph voted in favor of the St. Joseph Smoke-Free Indoor Air Ordinance of 2014 at an election held on April 8, 2014. The ordinance amends Chapter 17 of the City of St. Joseph Code of Ordinances by adding a new Article XI, which prohibits smoking in enclosed public areas and workplaces.
- 2) **When does the ordinance go into effect?**
On June 7, 2014 at 12:01am, (The ordinance was adopted on April 8, 2014, but the effective date was set for 60 days *after* the date of adoption.)
- 3) **What will occur during this 60-day period prior to when the ordinance will go into effect?**
City staff will engage in a public education process from now until the effective date of June 7, 2014. During this period of time, city staff will work with business owners to assist them with the preparation necessary to meet the requirements of the ordinance prior to its effective date.
- 4) **Will there be public meetings held to discuss revisions to the ordinance?**
There will be *administrative meetings* scheduled between city staff members and interested stake-holders for the purpose of discussing the various questions and concerns of these stake-holders as to (1) how the various provisions of the ordinance will be interpreted and (2) what steps they will need to take to ensure that they are in compliance (as noted above in Q3). Because the ordinance was passed by a vote of the people, any *public meetings* to discuss revisions to the ordinance will not occur without the interest of a majority of the City Council, and likely not until after the ordinance has been operative for an adequate period of time in order to provide any potential problem areas the time and opportunity to sufficiently "present" themselves. This approach will allow the city to provide full justification for any proposed revisions that may be deemed necessary to an ordinance that was adopted by a vote of the people.
- 5) **Are private vehicles affected by the ordinance?**
No.
- 6) **Are private residences affected by the ordinance?**
No – *unless* the private residence is used as a child day care, adult day care, or health care facility.
- 7) **What is the definition of a Place of Employment under the ordinance?**
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, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a Place of Employment unless used as a child day care, adult day care, or health care facility.

- 8) **Is a private residence considered to be a Place of Employment under the ordinance when it is used for a licensed business, such as an insurance broker, real estate agent, financial/tax consultant or other legally-authorized home business?**

Private residences are exempt from the ordinance, unless they are used as a child day care, adult day care, or health care facility. This includes any employee who is allowed to telecommute or work from home. However, if the individual who is operating the home business employs any "outside" individual(s), (i.e., any person who is not a family member residing in the private residence), then the ordinance will apply and smoking will be prohibited.

Please note that any licensed home business will still need to comply with any other applicable City Code requirements including, but not limited to, those set forth in the city's Zoning Ordinance related to the type of home business, any impact the home business might have on the appearance of the property, or any potential disturbance the home business might cause for neighbors.

- 9) **Is a private residence considered to be a Place of Employment under the ordinance when service workers, such as housekeepers, plumbers, electricians, or other contractors, are present?**

No. Private residences are exempt from the ordinance, unless used by the resident as a child day care, adult day care, or health care facility.

- 10) **Is a private residence considered to be a Place of Employment under the ordinance when home health care is being provided?**

No. Private residences are exempt from the ordinance, unless used by the resident as a child day care, adult day care, or health care facility.

- 11) **Does the ordinance apply to a home or building that is under construction?**

Yes. A Place of Employment is defined in Section 17-326(10) as 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, meeting rooms, classrooms, employee cafeterias, hallways, *construction sites*, temporary offices, and vehicles. Construction sites are only covered by the ordinance if they are a Place of Employment or open to the public.

- 12) **What workplaces and public places are impacted by the ordinance?**

The ordinance prohibits smoking in all workplaces, including any enclosed public place located in the city of St. Joseph; except within private vehicles, as well as private residences – *unless* a private residence is used as a child day care, adult day care, or health care facility.

- 13) **What is the definition of a Public Place under the ordinance?**

Public Place means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to banks, bars, educational facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, 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.

- 14) **What is the definition of Enclosed Area under the ordinance?**

Enclosed Area means all space between a floor and 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, whether temporary or permanent and whether or not containing openings of any kind.

- 15) **How many walls define an Enclosed Area under the ordinance?**
Two. Section 17-326 defines an Enclosed Area as “all space between a floor and 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, whether temporary or permanent and whether or not containing openings of any kind.” The definition provides no leeway for retractable walls or garage doors or other physical barriers, even if there are windows. If a business owner has any questions concerning how the ordinance applies to any particular facility, contact the Building Regulations Division at 816-271-5341 to schedule a site visit.
- 16) **Can I smoke in my garage, or is it an Enclosed Area under the ordinance?**
It will depend on the structure of the garage. Section 17-326 defines an Enclosed Area as “all space between a floor and 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, whether temporary or permanent and whether or not containing openings of any kind.” If a garage is *attached* to a private residence in which smoking is prohibited (child day care, adult day care, or health care facility) and meets with definition of an Enclosed Area, then smoking would be prohibited there. However, if a garage is *detached* from a private residence in which smoking is prohibited (child day care, adult day care, or health care facility) smoking would be allowed in that separate structure to the extent no aspect of the business is operated from this detached location. If a business owner has any questions concerning how the ordinance applies to any particular facility, contact the Building Regulations Division at 816-271-5341 to schedule a site visit.
- 17) **How far away from a particular building or structure do I need to be if I want to go outside and smoke?**
You must be fifteen (15) feet (in any horizontal direction) from the center of any means through which smoke may enter a building or structure in which smoking is prohibited, such as doors, windows, air intake ventilation systems, etc.
- 18) **Does a half wall qualify as a wall?**
No. A half wall is not the equivalent of a full wall.
- 19) **Does a security chain link wall qualify as a retractable wall disqualifying the area as a smoking area?**
Yes. A security chain link wall would be the equivalent of a retractable wall; (although a chain link *fence* would not be the equivalent of a retractable wall).
- 20) **Does a gate qualify as a door?**
No. A gate is not the equivalent of a door.
- 21) **Does a covered patio qualify as an Enclosed Area if awnings and/or wind shields are installed?**
No, not if the covered patio has a floor and a ceiling with *three open sides*, i.e., one wall (as opposed to two). If a business owner has any questions concerning how the ordinance applies to a covered patio, contact the Building Regulations Division at 816-271-5341 to schedule a site visit.
- 22) **Do I need to inform my employees about the ordinance?**
Yes. As a business owner/manager, it is recommended that you adopt a formal policy for your establishment and fully inform your employees of that policy.

- 23) **Does the ordinance allow for a smoking area somewhere within a Place of Employment where no customers are allowed access, for purposes of allowing employees to smoke?**
Yes, *provided* the smoking area does not constitute an Enclosed Area and is further than fifteen (15) feet (in any horizontal direction) from the center of any means through which smoke may enter a building or structure in which smoking is prohibited, such as doors, windows, air intake ventilation systems, etc.
- 24) **Do I need to post No Smoking signs if my business is considered to be a Place of Employment under the ordinance?**
Yes. Signs must be posted to indicate that smoking is not allowed inside the business. The ordinance provides instructions that "owners, operators, managers ... are to... (1) 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 place." These signs must be placed at *all* entrances of the business – both public and private, i.e., a shipping area or loading dock (entrances that only employees would use).
- 25) **Where can stickers for no smoking in cars be purchased and at whose cost?**
Sign templates are available at local sign shops located within the city, as well as various sites on the internet. Signs must be posted at the owner's expense.
- 26) **Is there a special type of sign that must be used, or a particular size required?**
No. The sign is simply required to be visible and easy to read.
- 27) **Is there specific wording that must be included on the sign?**
No. The sign must only state that smoking is prohibited, or use the international no smoking symbol. Citizens may use City Code Section 17-335(1) and (2) for a general reference.
- 28) **Is each business tenant (i.e., the owner of a business who rents space within a structure owned by a separate landlord) also required to post a sign(s) within his/her office suite(s)?**
Yes.
- 29) **Can a hotel or motel room be defined as a Private Residence?**
No. Hotel and motel rooms are not defined as private residences. The ordinance provides that up to 10% of hotel and motel rooms may be designated as smoking rooms.
- 30) **If I have a home health care worker at a hotel, do I have to choose a no smoking room?**
No.
- 31) **Are Membership Clubs exempt from the ordinance? Specifically, is smoking allowed at locations such as the Knights of Columbus Hall, the Elks Lodge, etc.?**
Membership Club is defined in Section 17-326 (9) of the ordinance and generally includes any tax exempt 501 organization, with bylaws and a constitution, a management structure and which is "operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation." Such Membership Clubs are exempt from the ordinance except when employee(s) are present and/or the general public is allowed in. However, even if the Knights of Columbus Hall, the Elks Lodge, etc. meet the definition of Membership Club, smoking will still be prohibited if they are considered to be a Place of Employment, or if the public is invited into the facility for an event.

32) Is the use of e-cigarettes allowed?

No. The definition of smoking contained in the ordinance includes the use of e-cigarettes.

33) What are the exemptions?

The following areas are not subject to this ordinance, pursuant to Section 17-332 and 17-331:

- Private residences, unless used as a child day care, adult day care, or health care facility.
- Private vehicles.
- Not more than ten percent (10%) of hotel and motel sleeping rooms rented to guests 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 the provisions of this Article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- Membership Clubs that have no employees present except when being used for a function to which the general public is invited; provided that smoke from such clubs does not infiltrate into areas where smoking is prohibited under the provisions of this ordinance. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this ordinance.
- Casino gaming areas as defined by this ordinance.
- Fifteen (15) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited to prevent tobacco smoke from entering those areas.

34) How will the ordinance be enforced?

Enforcement will occur primarily through a complaint-driven process, but secondarily through routine inspections conducted by health department staff members. Individuals who wish to lodge a complaint related to the ordinance will be directed to contact the health department at 816-271-4636.

Police officers and health department officials will not be dispatched throughout the city solely for the purpose of effecting compliance with the ordinance.

35) What if a patron or employee smokes in a work place or enclosed public place?

The owner/manager of any business required to comply with the ordinance is responsible for ensuring that employees and patrons are in compliance. If an employee within a business is found to be violating the ordinance, the owner/manager will need to ask his or her employee to cease the behavior and enforce the ordinance as a matter of employment. If a patron within a business is found to be violating the ordinance, the owner/manager will need to ask him or her to cease the behavior. If the patron refuses to cease the behavior, the owner/manager will need to ask him or her to leave the business. If the patron refuses to leave the business, the owner/manager will need to contact law enforcement.

36) How much information will be needed to successfully prosecute an individual who has received a summons for violating the ordinance?

The municipal prosecutor must prove "beyond a reasonable doubt" that a violation of the ordinance occurred. The amount of evidence needed to satisfy this burden of proof will be determined on a case-by-case basis.

37) Will video or photographic evidence of smoking be acceptable for prosecuting a violation of the ordinance?

Video and photographic evidence may be helpful when the municipal prosecutor's office receives summons to review. Whether or not this evidence is subsequently used during the prosecution of any particular case will be determined by the municipal prosecutor on a case-by-case basis.

38) **What are the consequences associated with a violation of the ordinance?**

Please refer to the Penalty Information at the end of this document for specific information.

39) **Who should I contact if I have a question or a complaint related to the ordinance?**

Contact the health department at 816-271-4636, with questions or to file a complaint. The ordinance can be viewed on the city's website at <http://www.stjoemo.info/DocumentCenter/View/1425>.

Please note: Any individual who wishes to construct a new structure or an addition to an existing structure must comply with all applicable building and zoning regulations contained in the Code of Ordinances of the City of St. Joseph, Missouri. This was the case prior to passage of the ordinance and it is still the case after the passage of the ordinance. Please contact the Building Regulations Division at 816-271-5341 for any inquiries related to the Building Code and the Zoning Division at 271-4648 for any inquiries related to the Zoning Code.

City staff will be happy to meet with you to discuss your goals and help to determine if there are ways to achieve them in compliance with applicable codes.

PENALTY INFORMATION

A person, who owns, manages, operates or otherwise controls a public place or place of employment and who fails to comply with the ordinance shall be subject to:

1. A fine not exceeding one hundred dollars (\$100) for a first violation.
2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

Normally, only one ticket is issued per day if a business is in violation of the City Code. If the business is allowing smoking and there are various persons smoking within the facility, an inspector could issue both the smoker and the business owner a ticket for each violation.

In addition to the fines established by the ordinance, a violation of this ordinance by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred. Although *extremely* remote, the revocation of a business license has occurred in the past when businesses have been deemed to have violated certain provisions of the City Code (*again, in only a handful of circumstances*). Whether or not this type of action might be needed will be determined on a case-by-case basis.